

POLICY BRIEF

Inconvenient Human Rights:

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

NuLawLab

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

Key points

- Municipalities can, and should, be guided by **human rights** norms in addressing issues relating to vulnerable EU citizens.
- Vulnerable individuals **should not be evicted** on grounds of sanitation when no alternatives have been provided to the individuals.
- **Local communities** benefit when informal settlements are provided with access to water and sanitation.
- **Focused solutions** such as lowering or eliminating the cost of public toilets, and providing public toilets near informal settlement locations makes water and sanitation more accessible and affordable for vulnerable EU citizens.
- **Public-private partnerships** between the municipality, religious bodies, social service agencies and the affected individuals are a positive start to municipal human rights implementation.
- 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.

Introduction

For most residents of Sweden, the cost and availability of residential water and sanitation services is not a concern. Water is inexpensive relative to other household costs and for most low income families, the social insurance scheme will offer support to maintain water services if the household is struggling financially.

There are, however, a few individuals who fall through the cracks. Vulnerable EU citizens residing in Sweden, principally Roma, are often unable to access household water and sanitation in ways that meet the nation's international human rights obligations.

Both water and sanitation are firmly established as independent human rights protected by both European and international human rights law. Water and sanitation access is regulated on the local level, and therefore municipalities can, and should, be guided by human rights norms in providing access to these human rights. Focused solutions and public-private partnerships are two effective ways to provide water and sanitation to vulnerable EU citizens on the municipal level. Local communities can benefit when informal settlements are provided with access to water and sanitation.

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.

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. Codified in the Free Movement Directive, 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.

Essential to the freedom of movement within the European Union is the principle of equal treatment between persons with no discrimination on grounds of nationality.

Water, Sanitation and Roma Settlements in Sweden

Roma people have historically suffered discrimination 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.

Throughout the 20th century and before, municipalities sought to deter traveling Roma groups from settling by controlling their access to water and sanitation. 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. Municipalities identified Roma settlements with “sanitary or ‘hygienic’ issues,” and used these labels to remove encampments deemed unsanitary. Unfortunately, that practice continues in many municipalities today.

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.

- 73 were granted in the interim by the Swedish Enforcement Authority
- 1 was decided by the Environmental Board of Malmö municipality
- Most of the evictions were carried out in and around the cities of Stockholm and Gothenburg
- The vast majority of the decisions to evict were based on grounds of sanitation, often without an alternative for those evicted. The grounds generally did not differ regardless of the 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.

This data is just the tip of the iceberg, because not all municipalities responded to our query and the evictions carried out solely by the Swedish Police are not included in this report.

Accompanied by an interactive [on-line map](#), courtesy of the NuLawLab of Northeastern University School of Law, we also set out the records of sanitation-related eviction proceedings initiated against informal settlements in Sweden, primarily Roma, from 2013 through January 2016.

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

The European Union, Council of Europe, European Commission, United Nations and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have all firmly established water and sanitation as independent human rights. 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.

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. Courts and government authorities are obliged to interpret national law in accordance with the binding commitments that Sweden has assumed by ratifying these human rights conventions.

Meeting the Standards for Water and Sanitation

UN bodies and international experts have set minimal standards necessary for ensuring the rights to water and sanitation.

The standards for the human right to water focus on:

- availability
- affordability
- acceptability
- accessibility
- sufficient quality

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
- affordable
- safe
- hygienic
- acceptable
- providing privacy and dignity

The Right to Water and Sanitation of Informal Settlements

The rights to water and sanitation unequivocally extend to informal settlements and homeless individuals, and require States to take **affirmative steps** to assure minimum standards of water and sanitation accessibility, affordability, acceptability and quality.

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.” 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.”

In official visits to the U.S. and Brazil, the UN Special Rapporteur on the Right to Water and Sanitation noted that the evacuation of the bowels and bladder is a necessary biological function and, if denied, could result in cruel, inhumane or degrading treatment. 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.

The Municipal Role in Protecting Rights to Water and Sanitation

European and international human rights law makes clear that it is up to the State to ensure compliance, and secure cooperation of any local government in adopting policies that honor human rights. In Sweden, like many other countries, policies regarding water and sanitation affordability and access are set at the local level. Therefore, municipalities have an obligation to support the national government in addressing these human needs from a human rights perspective. **Municipal failure** to progressively realize the right of water and sanitation for everyone, regardless of legal status, **can put the national government in default** of its human rights obligations, with serious international repercussions.

When municipalities fail to honor human rights, local businesses, non-governmental organizations and private residents feel the burden, often providing a patchwork of necessary services at their own expense. **Local communities can benefit when informal settlements are provided with access to water and sanitation because the costs of these necessities is spread evenly.**

Accessible water and sanitation diminishes the stigma associated with homelessness and increases the time that vulnerable EU citizens can devote to productive activities such as education and work. 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.

Promising Practices of Municipal Human Rights Implementation

Sweden

- **Public-private partnerships** typically involve the municipality, religious bodies, social service agencies and the affected individuals. They work together to develop housing-based solutions and access to established campsites for vulnerable EU citizens living in unstable housing situations. Such partnerships have been established in Lund, Malmö, Linköping, and Gothenburg, among others.
- **Focused Solutions** are an incremental approach to addressing human rights needs. Solutions such as lowering or eliminating the cost of public toilets and providing public toilets near informal settlement location, make water and sanitation more accessible and affordable for vulnerable EU citizens.

- Community participation of affected individuals in the development of these solutions is the best way to ensure that these measures are successful.

Innovations from Other Settings

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.

- **Brazil:** Porto Alegre has overseen the installation of “public water networks” in public areas occupied by informal settlements.
- **Japan:** Access to clean, convenient and affordable public washing and water facilities in parks and other settings for short term use.
- **Entrepreneurial Responses to Human Needs.** A notable innovation from 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.

Conclusion

Sweden’s compliance with the ICCPR was reviewed by the UN Human Rights Committee in March 2016. In June 2016, the Committee governing the ICESCR reviewed Sweden’s compliance with that treaty. The Human Rights Committee’s concluding 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 CESCR Committee was more detailed in its recommendations, urging the Swedish government to extend access to basic services to vulnerable foreigners, including citizens of other EU countries, notably of Roma origin. Additionally, the Committee reminded the Swedish government of its responsibility to implement the Covenant not just nationally, but also on a local level.

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. Repeated evictions, without providing alternatives to meet these basic needs, violate human rights principles.

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. 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.

Link to interactive on-line map: <http://maps.nulawlab.org/view/map-rebuild>

Link to full report: <http://rwi.lu.se/app/uploads/2016/06/Inconvenient-Human-Rights.pdf>

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