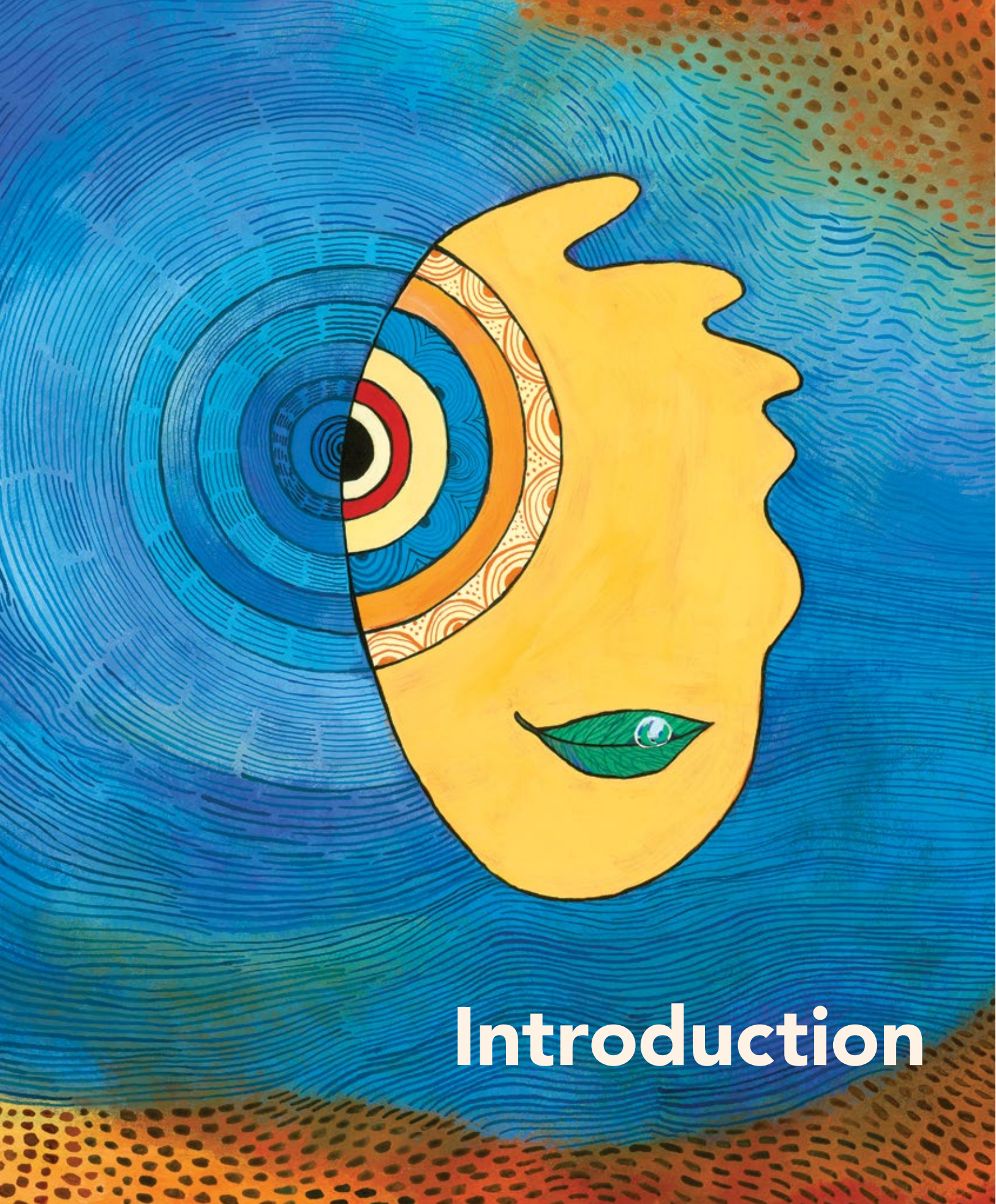


Introduction

REALISING THE HUMAN RIGHTS TO WATER AND SANITATION:
A HANDBOOK BY THE UN SPECIAL RAPPORTEUR
CATARINA DE ALBUQUERQUE

Introduction

HUMAN RIGHTS TO WATER & Sanitation
UN SPECIAL RAPPORTEUR

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UN SPECIAL RAPPORTEUR

Realising the human rights to water and sanitation:
A Handbook by the UN Special Rapporteur
Catarina de Albuquerque

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FOR A BETTER URBAN FUTURE

Contents

01. **Acknowledgements** 5

02. **Preface** 8

03. **Foreword** 10

04. **Foreword** 12

05. **What is the Handbook for realising the human rights to water and sanitation?** 15

- 5.1. How the Handbook was conceived 16
- 5.2. What the Handbook covers and the approach taken 18

06. **Introduction to the structure of the Handbook** 21

07. **The legal foundations and recognition of the human rights to water and sanitation** 23

08. **State obligations in realising the human rights to water and sanitation** 25

- 8.1. Progressive realisation and maximum available resources 25
- 8.2. The obligations to respect, protect and fulfil the human rights to water and sanitation 26
- 8.3. Extraterritorial obligations 27

09. **Human rights principles as they relate to the human rights to water and sanitation** 29

- 9.1. Non-discrimination and equality 29
- 9.2. Access to information and transparency 30
- 9.3. Participation 31
- 9.4. Accountability 31
- 9.5. Sustainability 32

10. **The content of the human rights to water and sanitation** 33

- 10.1. Availability of water and sanitation 33
- 10.2. Physical accessibility of water and sanitation 34
- 10.3. Quality and safety 35
- 10.4. Affordability 35
- 10.5. Acceptability, dignity, privacy 36

11. **Links between the human rights to water and sanitation and other human rights** 37

12. **Focus of this Handbook** 41

13. **Image credits and references** 43



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02.
Preface

by Catarina de Albuquerque, UN Special Rapporteur
on the human right to safe drinking water and sanitation



I am very proud to present this Handbook, which represents the accumulated lessons I have learnt during the six years of my mandate as United Nations Special Rapporteur. It embodies the expectations that I have seen among the many people I have met, decision-makers as well as activists, and the excitement of exploring new ways of resolving the persistent problem of poor water and sanitation service provision. It seeks to combine the demands of the human rights framework with practical approaches, providing guidance on how to implement the human rights to water and sanitation and pointing towards solutions that have been tested and proved to be successful.

These past six years as Special Rapporteur have shown me the immense hope and political investments that both individuals and States place in the UN system, but also the distance and sometimes the disjuncture between decisions taken at the Human Rights Council in Geneva or at the General Assembly in New York and the practical realities of the lives of people around the world. To have true impact, these decisions made at the

international level must be translated into practical action at the national and local levels. The explicit recognition of the human right to water and sanitation by the UN General Assembly and Human Rights Council in 2010 has stimulated immense interest in, as well as a positive attitude towards, the human rights to water and sanitation, with States and development actors exploring how understanding and enforcing these rights can help to improve access to water and sanitation, and particularly help to address inequalities in access to these services. Nevertheless, there are still misunderstandings and uncertainties regarding what needs to be done to realise the human rights to water and sanitation, by States, as well as by NGOs and by the individuals themselves. I have seen it as my responsibility – one that I have taken on with great pleasure – to address these misconceptions, to respond to calls to provide practical guidance, and to translate the sometimes distant language of human rights into practical steps to be taken to improve people's lives.

States are often willing to focus on the good practices that they can demonstrate through their policies and legislation, such as formally recognising rights in their constitutions and laws, and even putting processes in place to ensure that services are affordable and of good quality. They may however be less able to recognise and address violations of the human rights to water and sanitation. The more countries I visited, and the more complaints of alleged violations of the human rights to water and sanitation I received over the years, the more I realised that the good practices that countries demonstrated represented only a part of the story. All too often, States are also facing bad practices, and are not acknowledging that they have an obligation to address these.

This Handbook attempts to clarify not only the good practices, but also those practices that may lead to violations of the human rights to water and sanitation. Challenges exist and persist which still need to be addressed and overcome. Being guided by the human rights to water and sanitation requires States to be self-critical and open to admitting their limitations, failures and even violations of the human rights to water and sanitation, so that they may devise strategies and actions to overcome these, including strategies to ensure the full justiciability of these rights.

I have valued my time as Special Rapporteur, both for the positive and for the negative experiences. As the Portuguese poet Pessoa once wrote: "Stones in the way? I collect them all. One day I will build a castle". And this is what this Handbook represents: using problems, difficulties, challenges, obstacles, uncertainties, and lack of knowledge as starting points, and transforming them into positive tools, as well as using good practices and examples to demonstrate that it is feasible to address all of these challenges. The resulting guidance will help the human rights to water and sanitation become reality for all.

Catarina de Albuquerque
UN Special Rapporteur on the human right to safe drinking water and sanitation.



03.
Foreword

by the UN High Commissioner for Human Rights, Navi Pillay



Access to water and sanitation is a human right. This human right is in itself essential for life and dignity, but it is also the foundation for achieving a wealth of other human rights, including the right to health and the right to development.

The human right to water and sanitation was explicitly recognized only in 2010 by the United Nations General Assembly and the Human Rights Council. Three years later, the Human Rights Council agreed on the comprehensive normative content of this right, and by now many States have incorporated this human right in their constitutions and national legislation. Moreover, at the international level, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights entered into force in 2013. The Protocol created a complaint mechanism allowing individuals or groups to file formal complaints on violations of the human right to water and sanitation, among other rights.

The real challenge now is to translate human rights obligations into meaningful action on the ground. We must place the human right to water and sanitation firmly at the centre of legislation, policies and regulations.

We must also ensure that those who do not fully enjoy this human right have access to justice.

I am delighted to introduce this Handbook, which provides direction and concrete examples to help us understand how the human right to water and sanitation can be made real for everybody – whether they are people living in informal settlements, children belonging to ethnic minorities, migrants, refugees, women living in rural areas or people living in extreme poverty. This Handbook offers clear, practical guidance, including checklists, to assist in implementing the human right to water and sanitation. It is the culmination of six years of work by Catarina de Albuquerque, the first United Nations Special Rapporteur on the human right to safe drinking water and sanitation.

In her country missions and dialogue with States, Ms. de Albuquerque's passion has inspired not only water and sanitation sector specialists, but also policy-makers. Her focus has been consistent: she has given a voice to the most marginalized groups in society who lack access to water and sanitation. She has articulated how this right can be used to attain greater equality in virtually every United Nations Member State. And she has challenged politicians and other policy makers to acknowledge that water and sanitation are indeed human rights.

The increasing demand from stakeholders for guidance on how to apply human rights principles in their work is a sign of commitment. With the help of this Handbook, I am confident that we can work together to ensure access for all to water and sanitation, and thus promote human dignity and equality, in all countries and for all people.

Navi Pillay
UN High Commissioner for Human Rights



04.
Foreword

By the Executive Director of UNICEF, Anthony Lake



The right to safe water and decent sanitation is, at heart, the right of every individual to better health and human dignity. It is also fundamental to a healthier, safer society.

Although we have made significant progress toward the drinking water and sanitation targets set out in Millennium Development Goals, in 2012 nearly 2.5 billion people still lacked sanitation and nearly 750 million people still lacked access to an improved water source. This has had a devastating effect on the health of millions of children, especially the most disadvantaged. Unsafe water and inadequate sanitation are the top sources of diarrheal disease – a leading cause of death in children. And lack of access to water and sanitation also has significant consequences for the realization of other human rights, including the right to education, since children – especially girls – are often kept home from school because of inadequate hygiene facilities.

The United Nations General Assembly, the UN Human Rights Council, and the UN Special Rapporteur on the human right to safe drinking water and sanitation – together with many partners in government, international

organizations, civil society, and communities – have helped drive greater global awareness of the importance of safe water and sanitation to all our development goals. The conclusion of the MDGs and the advent of the Post-2015 era must serve as a challenge to build on the progress we have made. That means focusing greater attention, investment, and effort on reaching the children, families, and communities whose right to these fundamental necessities has not yet been fulfilled.

This Handbook reflects that goal. It emphasizes the practical work still to be done to promote the human right to water and sanitation. The recommendations provided here can assist States in their effort to translate the right to water and sanitation into law, policy, budgets, and service provision. The Handbook focuses special attention on the critical necessity of increasing investment and effort on realizing the rights of the most disadvantaged and marginalized groups, including children with disabilities and girls, who face particular barriers to accessing safe water and sanitation. This equity-based approach to human development and human rights is both a moral and a strategic imperative, helping achieve greater results for children and their societies.

UNICEF is proud to have supported the mandate of the UN Special Rapporteur on the human right to safe drinking water and sanitation, and looks forward to our continued work together to make safe water and sanitation available to every child – not only in this generation, but future generations.

Anthony Lake
UNICEF Executive Director





05.
What is the Handbook for realising the human rights to water and sanitation?

This Handbook has been developed to:

- clarify the meaning of the human rights to water and sanitation;
- explain the obligations that arise from these rights;
- provide guidance on implementing the human rights to water and sanitation;
- share some examples of good practice and show how these rights are being implemented;
- explore how States can be held to account for delivering on their obligations;
- provide its users with checklists, so they can assess how far they are complying with the human rights to water and sanitation.

The target audiences for this Handbook are governments at all levels, donors and national regulatory bodies. It provides information that will also be useful to other local, regional and international stakeholders, including civil society, service providers and human rights organisations.

5.1.
How the Handbook was conceived

In 2010, the United Nations General Assembly recognised the human right to safe drinking water and sanitation[1] and the Human Rights Council reaffirmed this recognition.[2] Since the adoption of these resolutions, the UN Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, has received many requests from States (national and local authorities), United Nations agencies, service providers, regulators and civil society organisations to provide more concrete and comprehensive guidance and to clarify what the implications of these human rights are for their work and activities.

The Special Rapporteur has been working closely with many different stakeholders – including State institutions (such as national ministries and local governments), national human rights institutions and regulatory bodies – and with international organisations, including the Office of the High Commissioner for Human Rights; UNICEF; the World Health Organisation; the UN Economic Commission for Europe; the World Bank Water and Sanitation Programme; the Water Supply and Sanitation Collaborative Council; the Sanitation and Water for All partnership; the International Water Association; WaterAid; Freshwater Action Network; Helvetas; the International Commission of Jurists; Amnesty International, and several academic institutions and other groups, all of which are interested in implementing the human rights to water and sanitation in order to translate these human rights into reality. This engagement and interest in transforming principles into practice and human rights into reality led the Special Rapporteur to develop this Handbook to help States and other stakeholders to meet their obligations and responsibilities where the human rights to water and sanitation are concerned.

THE SPECIAL RAPPORTEUR FOLLOWED A COLLABORATIVE APPROACH TO MAKE THE HANDBOOK RELEVANT AND HELPFUL

The Special Rapporteur developed this Handbook collaboratively, first identifying the key barriers, dilemmas, challenges and opportunities that stakeholders face in realising the human rights to water and sanitation, and then testing and verifying the guidance, checklists and recommendations featured in the Handbook. This collaborative approach was followed to make the Handbook relevant and helpful to people at all levels of government who are working on the implementation of these human rights.

The Special Rapporteur organised a series of consultations both online and in person, and held countless discussions with interested parties. These consultations included an initial meeting with the Advisory Group for this Handbook in September 2012, and a brief survey to identify the main issues that key stakeholders wanted to

see analysed. This online survey was undertaken in January 2013 and received 850 responses from five continents. The Special Rapporteur then convened a strategy meeting in April 2013 to discuss the content of the Handbook in detail.

In late 2013 and early 2014, she convened two regional consultations (a Latin-American and Caribbean consultation in Bolivia, about local authority responsibilities, and an Asian consultation in Nepal, covering financing and budgeting), as well as a shorter meeting in Kenya at which the specific concerns affecting the implementation of the human rights to water and sanitation in urban areas were discussed. In late 2013 the Special Rapporteur also sent a *note verbale* to all UN member States, asking them to share any relevant information and experience in realising the human rights to water and sanitation. She organised two e-discussions in collaboration with the Rural Water Supply Network and with HuriTALK, focusing on specific issues to be addressed in the Handbook, including non-discrimination, sustainability, and the roles and responsibilities of the different actors. The first draft of the Handbook was shared online, hosted by www.righttowater.info; it received comments and ideas from around the world.



STATES ARE ENCOURAGED ULTIMATELY TO SURPASS THE STANDARDS SET BY INTERNATIONAL HUMAN RIGHTS LAW

5.2. What the Handbook covers and the approach taken

Human rights texts adopted by the United Nations frequently seem quite vague, making it hard for States to understand exactly what they must do. Even when committed to realising human rights, States find it difficult to translate the abstractness of universal human rights norms into an appropriate course of action. This Handbook has been developed to fill that gap.

The main focus of this Handbook is to provide guidance for State actors. This does not reflect a lack of understanding or of respect for the crucial and central role that civil society, service providers and others play in ensuring the realisation of the human rights to water and sanitation. However, all States have an obligation to create an enabling environment for the realisation of human rights.

This Handbook gives guidance on the implementation of the human rights to water and sanitation as defined by the international human rights legal framework, which provides a minimum universal standard. Given the range of different local, regional and national standards that exist around the world, the Special Rapporteur cannot give detailed and differentiated guidance for each country, but States can use these international standards to define how these rights can best be implemented nationally. States are encouraged ultimately to surpass the standards set by international human rights law, by preparing national legislation, regulations and policies that go beyond these minimum legal requirements.

The international legal norms can be incorporated into national laws, regulations and policies, into national and sub-national budgets and into the planning processes for service delivery. Human rights can be provided for in complaints procedures administered either by service providers or by regulators or equivalent bodies, as well as by ensuring people with access to justice for violations.

The Handbook also seeks to identify common challenges and obstacles and how these can be overcome, in order to respond to the practical problems that States face when realising the human rights to water and sanitation.

Examples of problems and possible solutions will be given wherever possible, to provide a concrete understanding of how States can bring about the realisation of the human rights to water and sanitation.

The Handbook also provides checklists for States and discusses the different roles of the various actors and the essential partnerships between them that are necessary to bring about the realisation of the human rights to water and sanitation.

Water and sanitation as two separate human rights

The 2010 United Nations General Assembly resolution that explicitly recognises the human right to water and sanitation, along with the UN Human Rights Council resolution of the same year and the 2011 Human Rights Council resolution renewing (and renaming) the mandate of the Special Rapporteur on the human right to safe drinking water and sanitation[3], all refer to a single human right. However, the Special Rapporteur argues that water and sanitation should be treated as two distinct human rights with equal status, both included within the human right to an adequate standard of living.

There are pragmatic reasons for this approach: all too often, when water and sanitation are mentioned together, the importance of sanitation is downgraded because of the political and cultural preference given to the right to water. Defining the human rights to water and sanitation as separate and distinct allows governments, civil society and other stakeholders to create standards specifically for the human right to sanitation and for its realisation. Distinguishing between these two rights also makes it easier for States and other stakeholders to understand the distinct responsibilities, obligations and roles implicit in the realisation of each of them.

The situation of people who lack sanitation differs from that of people who lack water. One household's lack of adequate, safe and hygienic sanitation can have a negative impact on the health not just of the people in that dwelling, but also on others living nearby (even where these neighbours do have access to sanitation). This means that people have a responsibility to improve their sanitation, for the sake of those around them as well as their own. One household's lack of access to water, on the other hand, would not generally have such an impact on the health and access to water of its neighbours.

This Handbook will therefore refer to the human rights to water and sanitation in the plural, except when directly quoting from the language contained in official documents adopted by the United Nations.

UN Special Procedures and the UN Special Rapporteur on the human right to safe drinking water and sanitation

The Human Rights Council has a mandate to promote the realisation of human rights. One of the ways that the Human Rights Council does this is through the appointment of Special Procedures mandate-holders (called Special Rapporteurs, Independent Experts, Special Representatives of the Secretary-General, and Working Groups). These are human rights experts who report to the Human Rights Council, and often also to the UN General Assembly, on a particular human right or a particular country's human rights situation.[4] Special Rapporteurs are also advocates for the human right they are in charge of monitoring.

The mandate of Special Rapporteur on the human rights to water and sanitation was created in 2008; Catarina de Albuquerque is the first incumbent. In the course of her work she has undertaken fact-finding missions to fifteen countries and visited many more, prepared fourteen thematic reports, advocated for the recognition and realisation of these human rights, and worked closely with different stakeholders in the water and sanitation sectors, clarifying and promoting the human rights to water and sanitation. She has also sent several Allegation Letters and Urgent Appeals to States that were alleged to be violating the human rights to water and sanitation and she has issued dozens of press releases raising awareness on issues related to the human rights to water and sanitation.

06.
Introduction to the structure of the Handbook

This Handbook is organised into booklets relating to five main areas relevant to States working towards realisation of the human rights to water and sanitation. These areas are:

Legislative, policy and regulatory frameworks

In order to implement the human rights to water and sanitation, States must ensure that existing legal, policy and regulatory frameworks incorporate human rights considerations, and reform them where this is not the case. These frameworks clarify the commitments of the State with respect to human rights principles in general and access to water and sanitation in particular. Without a clear legal framework, the State cannot be held accountable by the individuals, or 'rights-holders', who live within its jurisdiction.

Financing and budgeting

States must take their human rights obligations into account when developing financing strategies and budgets for water and sanitation. This helps States to ensure that those areas or populations that lack adequate access to water and sanitation receive targeted funds to address inequalities. Financing strategies and budgets must also be monitored to ensure that they have been developed and executed in compliance with the human rights to water and sanitation.

Services

To comply with the human rights to water and sanitation, the delivery of water and sanitation services requires clear planning processes, institutions with a clear mandate, and the necessary financial and human resources. Different settlement types will require different approaches in terms of technology and management, but must still meet the necessary standards of the human rights to water and sanitation. States must set appropriate targets to ensure that services are sustainable, available, accessible, safe, affordable and culturally acceptable, without discrimination.

Monitoring

Monitoring compliance with the human rights to water and sanitation is essential, not only to understand the extent to which the State has been successful in realising these rights, but also to gather the necessary data for future planning and resource allocation. Monitoring includes collecting data on service levels (such as quality, accessibility and affordability) and on who has (or does not have) access to water and sanitation, in order to assess discriminatory practices and levels of inequality. With accurate data on who has access to water and sanitation, and at what level of service, States can prioritise the provision of services to the people who need them the most.

STATES HAVE AN OBLIGATION TO CREATE AN ENABLING ENVIRONMENT FOR THE REALISATION OF THE HUMAN RIGHTS TO WATER AND SANITATION

Access to justice

States must ensure that people whose human rights are either not realised or being violated have access to justice. There is a wide range of different remedies available, from administrative processes such as complaints procedures, managed by service providers, to quasi-judicial and judicial procedures, potentially leading to court cases at the national, regional or international level.

Principles

One further booklet highlights State obligations relating to specific human rights principles: participation, non-discrimination and equality, access to information and sustainability. This booklet underlines the importance of these principles for the realisation of the human rights to water and sanitation.

Each booklet provides guidance for States on their obligations and on how they can implement the human rights to water and sanitation, and is accompanied by a checklist.

There are two reference booklets, one compiling all the checklists of the different areas, and another containing the bibliography, resources and index.

07.
The legal foundations and recognition of the human rights to water and sanitation

When the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948, the human rights to water and sanitation were not explicitly included in the text. This omission can be understood in the context of a time when colonialism was still a dominant force. Many countries whose populations suffered from a lack of access to water and sanitation were not directly represented at the negotiating table.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) consecrates economic, social and cultural rights within the international human rights framework. Negotiated within the Commission on Human Rights, the text of this Covenant was submitted to the UN General Assembly in 1954 and adopted, practically unchanged, in 1966. Both the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights provide for the human right of all people to an adequate standard of living[5], including food, clothing and housing. It has been argued that to include food, clothing and housing specifically, without explicitly mentioning water, can only be explained by an assumption that water, like air, was already freely available to all.

RECOGNITION OF WATER AND SANITATION AS HUMAN RIGHTS WAS REAFFIRMED BY THE UN GENERAL ASSEMBLY AND HUMAN RIGHTS COUNCIL IN 2010

As the water and sanitation crisis became more pronounced in the final decades of the twentieth century, bringing negative health and economic consequences with it, the development and human rights community became increasingly aware of the growing importance of water and sanitation. Several recent international human rights treaties refer explicitly to the importance of water and sanitation (separately or together) in realising human rights, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[6], the Convention on the Rights of the Child (CRC)[7], and the Convention on the Rights of Persons with Disabilities (CRPD).[8]

In 2002, the Committee for Economic, Social and Cultural Rights (CESCR), the treaty body responsible for monitoring State compliance with the International Covenant on Economic, Social and Cultural Rights, adopted General Comment No. 15 on the human right to water. General comments are authoritative interpretations of the ICESCR, clarifying the content of human rights; they are used to help monitor the compliance of States parties to the agreements. The human rights to water and sanitation are derived from several provisions of the ICESCR and their analogues in customary international law. General Comment No. 15 found that the human right to water is implicitly included in the human right to an adequate standard of living and the right to health (articles 11 and 12 of the ICESCR). While article 11 does not explicitly mention water or sanitation, the use of the term "including" in the Covenant requires the incorporation of all aspects that are indispensable for reaching an adequate standard of living.

Further, following the Special Rapporteur's 2009 report outlining human rights obligations relating to sanitation[9], in November 2010 the ICESCR stated: "The Committee is of the view that the right to sanitation requires full recognition by States parties in compliance with the human rights principles."[10]

Access to water and sanitation is required for the realisation of other human rights, including the right to adequate housing, the right to the highest attainable standard of health, and the right to life.[11] Recognition of water and sanitation as human rights was reaffirmed by the UN General Assembly in July 2010[12] and by the Human Rights Council in September 2010.[13] In 2013, the UN General Assembly and the Human Rights Council both reaffirmed recognition of the human rights to water and sanitation in consensus.[14]

08.
State obligations in realising the human rights to water and sanitation

The human rights to water and sanitation include some specific obligations for States.

8.1.
Progressive realisation and maximum available resources

"Article 2 (1) of the ICESCR requires States to take steps to progressively realise economic, social and cultural rights; such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognised in the Covenant."[15]

States have an obligation to move as quickly and effectively as possible towards full realisation of the human rights to water and sanitation, using the maximum available resources. The failure to do so would be contrary to the obligations of States under the Covenant.[16] While recognising that the full realisation of human rights may take a long time, and faces many technical, economic and political constraints[17], the notion of progressive realisation is not intended to provide States with an excuse not to act; rather, it acknowledges that full realisation is normally achieved bit by bit.[18]

Progressive realisation requires not only an increase in the number of people with access to water and sanitation, with a view to achieving universal access, but also an improvement in the general levels of service for present and future generations.[19]

Retrogression in the enjoyment of the rights contained in the Covenant therefore frustrates the object and purpose of the treaty. The Committee recognises that the resources available to States for the implementation of economic, social and cultural rights will vary with time and economic cycles. Even if resources are very limited, as during financial or economic crises, States should, as a matter of priority, seek to ensure that everyone has access to, at the very least, minimum levels of rights. States should also take measures to protect poor, marginalised and disadvantaged individuals and groups by using targeted programmes, among other approaches.[20]

For the Committee, "any deliberately retrogressive measures require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources".[21]

This obligation to access and use the maximum available resources includes the State's duty to raise adequate revenues, through taxation and other mechanisms, and to seek international assistance where necessary.[22] This clause is flexible and merely acts as a safeguard, to ensure that States do not attempt to meet their international obligations with mere empty promises and half-measures.

WATER MUST NEVER BE USED AS AN INSTRUMENT OF POLITICAL OR ECONOMIC PRESSURE

Although the progressive realisation of economic, social and cultural rights may be a gradual and continuous process, there are also immediate obligations. The obligation to respect, protect, and fulfil human rights in a participatory, accountable and non-discriminatory way is a duty that is immediately binding.[23]

8.2. The obligations to respect, protect and fulfil the human rights to water and sanitation

All human rights impose three types of obligations on States: they must respect, protect and fulfil human rights. These obligations are clarified in General Comment No. 15 on the human right to water[24] and the Special Rapporteur's 2009 report on the right to sanitation.[25]

The obligation to respect the human rights to water and sanitation means that States may not prevent people from enjoying their human rights to water and sanitation; for example, by selling land with a water source on it that is used by the local population without providing an adequate alternative, thus preventing users from continuing to access the source.

The obligation to protect the human rights to water and sanitation requires that States must prevent third parties from interfering in any way with people's enjoyment of the human rights to water and sanitation.

The obligation to fulfil the human rights to water and sanitation requires States to ensure that the conditions are in place for everyone to enjoy the human rights to water and sanitation. This does not mean that the State has to provide the services directly, unless there are individuals or groups of people who cannot access their human rights through other mechanisms.

The obligation of States parties to guarantee that the human rights to water and sanitation are enjoyed without discrimination pervades all three obligations.

8.3. Extraterritorial obligations

General Comment No. 15 on the human right to water identifies that States have obligations beyond their borders.[26]

Extraterritorial obligations require States parties to the relevant agreements to respect the human rights of people in other countries. Water must never be used as an instrument of political or economic pressure, and States must not impose embargoes or similar measures that prevent the enjoyment of the human rights to water and sanitation.

With regard to the obligation to protect, States must prevent third parties, for example, a company based in one State and functioning in another, from violating the human rights to water and sanitation in other countries.

Furthermore, States in a position to do so must assist in the full realisation of the human rights to water and sanitation in other countries.[27] In disaster relief and emergency assistance, economic, social and cultural rights, including the human rights to water and sanitation, should be given due priority in a manner that is consistent with other human rights standards, and that is sustainable and culturally appropriate.

The latest development in this area, spelling out these obligations in detail, are the "Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights", adopted by a group of experts in international law and human rights in 2011.[28]

Agreements concerning trade and investment must not limit or hinder a country's capacity to ensure the full realisation of the human rights to water and sanitation.



09.
Human rights principles as they relate to the human rights to water and sanitation

The human rights principles of non-discrimination and equality, access to information, participation and accountability must be ensured in the context of realising all human rights, not just the human rights to water and sanitation; these principles are clarified here in the context of water and sanitation.

9.1.
Non-discrimination and equality

Equality and non-discrimination[29] are the bedrock principles of human rights law. The Universal Declaration of Human Rights (UDHR) proclaims in article 1 that "All human beings are born free and equal in dignity and rights", and article 2 explains that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status […]".

Discrimination is either *de jure* (direct), meaning that it is enshrined in discriminatory laws, or *de facto* (indirect), resulting from policies or actions that are purportedly neutral, but have a discriminatory impact. Both of these forms of discrimination are prohibited, although the second can be harder to identify and address.

States are also required to ensure that individuals and groups enjoy substantive equality, which means that States must take active and affirmative measures to ensure that all people enjoy their full human rights and their right to equality, in terms both of opportunity and of results, whatever their position in society.

The principles of non-discrimination and equality recognise that people face different barriers and have different needs, whether because of inherent characteristics or as a result of discriminatory practices, and therefore require differentiated support or treatment. Human rights law will sometimes require States parties to take affirmative action to diminish or eliminate conditions that cause or perpetuate discrimination.

In order to reach equality of water and sanitation service provision, States must work towards eliminating existing inequalities. This requires knowledge of disparities in access, which typically exist not only between and within groups with different incomes, but also between and within rural and urban populations. There are further disparities based on gender and the exclusion of disadvantaged individuals or groups.

'ALL HUMAN BEINGS ARE BORN FREE AND EQUAL IN DIGNITY AND RIGHTS'

— ARTICLE 1, UDHR

9.2. Access to information and transparency

To fully realise human rights, States must be transparent and open, realising the human right to access to information.[30] This is an integral part of ensuring access to water and sanitation services for all.[31]

Individuals must both be aware of their rights and also know how to claim them. States must therefore ensure that information relating to standards, as well as progress towards meeting those standards, is available and accessible, and that the mechanisms (including service delivery options) used to ensure that these standards are indeed met are available and accessible to all.

Transparency establishes openness of access to information without the need for direct requests; for example, through the dissemination of information via the radio, internet and official journals.

9.3. Participation

The human rights to water and sanitation can only be realised effectively through full, free and meaningful participation[32] in decision-making processes by people affected by the decisions. Participation ensures better implementation and enhances the effectiveness and sustainability of interventions, offering the possibility of social transformation.

Participation must be an integral part of any policy, programme or strategy concerning water or sanitation, and concerned individuals and groups must be made aware of participatory processes and how they function.[33]

9.4. Accountability

Accountability is the process by which people living under a State's jurisdiction can ensure that States are meeting their obligations with respect to the human rights to water and sanitation.

Accountability covers two important areas: first, it establishes monitoring and other mechanisms for controlling the different actors responsible for ensuring access to water and sanitation services. This includes the monitoring of service levels and of compliance with standards and targets, as well as monitoring which individuals and groups have access to adequate water and sanitation services and which do not.

Second, accountability demands that individuals or groups who consider that their human rights have been violated should have access to courts or other independent review mechanisms, in order that their complaints may be heard and resolved. Access to justice can take many forms, from administrative complaints procedures to judicial processes at local, national, regional and international levels.

Building accountability into the realisation of the human rights to water and sanitation requires the definition of institutional mandates, clarifying exactly who is responsible for each step of the process. Actions taken and decisions made under those mandates must then be monitored or regulated.[34] Where service providers and State institutions fail to meet their duties, oversight institutions, such as regulators and courts, must have mechanisms, through complaints procedures or judicial processes, available to enforce the rules.

Accountability procedures can also challenge and lead to corrections in legislation, regulations or policies by identifying systemic failures that lead to discriminatory impacts or perpetuate inequalities in access to water and sanitation services.[35]

9.5. Sustainability

Sustainability is a fundamental human rights principle; it is essential to the realisation of the human rights to water and sanitation. Human rights law requires States to take immediate steps towards progressively achieving the full realisation of the human rights to water and sanitation for everyone: once services and facilities have been improved, the positive change must be maintained and slippages and retrogression must be avoided.

Water and sanitation must be provided in a way that respects the environment and ensures a balance of the different dimensions of economic, social and environmental sustainability. Services must be available sustainably for present and for future generations, and the provision of services today should not compromise the ability of future generations to realise their human rights to water and sanitation.[36] Importantly, sufficient expenditure in operation and maintenance of existing services must be ensured.



10.
The content of the human rights to water and sanitation

International human rights law obliges States to work towards achieving universal access to water and sanitation, guided by human rights principles and their defined standards, while prioritising those most in need. The legal content of the human rights to water and sanitation encompasses the following dimensions: availability, accessibility, acceptability, affordability and quality. These are outlined below:

10.1.
Availability of water and sanitation

Availability requires that water and sanitation facilities meet people's needs now and in the future:

- **Water** supply must be sufficient and continuous for personal and domestic uses, which ordinarily include drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene.[37]
- There must be a sufficient number of sanitation facilities to ensure that all of the needs of each person are met. Where facilities are shared, long waiting times should be avoided. In addition, the collection, transport, treatment and disposal (or reuse) of human excreta, and associated hygiene must be ensured.[38]

- Facilities to meet **hygiene** requirements must be available wherever there are toilets and latrines, where water is stored and where food is being prepared and served, particularly for hand-washing, menstrual hygiene management and the management of children's faeces.[39]

Water, sanitation and hygiene facilities and services must not only be available at the household level, but in all places where people spend significant amounts of time. This includes health and educational institutions such as schools and clinics, detention centres such as prisons, and workplaces, markets and other public places.

10.2. Physical accessibility of water and sanitation

Water and sanitation infrastructure must be located and built in such a way that it is genuinely accessible, with consideration given to people who face specific barriers, such as children, older persons, persons with disabilities and chronically ill people. The following aspects are particularly important:

HUMAN RIGHTS DO NOT REQUIRE SERVICES TO BE PROVIDED FREE OF CHARGE

- **Design of facilities:** Water and sanitation facilities must be designed in such a way that users can physically access them. For example, the pump fitted to a public well must be easy to use for older persons, children and persons with disabilities, and the location must also be within reach and accessible to all at all times.
- The **time and distance** taken to collect water or to reach a sanitation facility determines the amount of water users will collect and whether they will use sanitation facilities or resort to defecating in the open. Water outlets and sanitation facilities must therefore be placed within, or in the immediate vicinity of, each household, workplace, educational and health institution, as well as any other place where people spend significant amounts of time.[40] Access at the household level is always preferable, but in the process of progressive realisation intermediate solutions, such as communally used water-points, may comply with human rights obligations in the short term.
- The location of facilities is also crucial in ensuring the **physical security** of users. Sanitation facilities in particular must be easily reachable via safe paths; it is preferable that these be well-lit at night.[41]

10.3. Quality and safety

The quality and safety of water and sanitation services must be ensured to protect the health of users and the general public. From the perspective of the human rights to water and sanitation, the following considerations are important:

- **Water** must be of a quality that is safe to use for human consumption (drinking and the preparation of food) and for personal and domestic hygiene. It must be free from microorganisms, chemical substances and radiological hazards that constitute a threat to human health.[42]
- **Sanitation** facilities must be safe to use and must effectively prevent human, animal and insect contact with human excreta, to ensure safety and to protect the health of users and the community. Toilets must be regularly cleaned, and provide hygiene facilities for washing hands with soap and water. Women and girls also require facilities to enable menstrual hygiene management, including the disposal of menstrual products. Ensuring safe sanitation further requires hygiene promotion and education, to ensure that people use toilets in a hygienic manner.[43]

10.4. Affordability

People must be able to afford to pay for their water and sanitation services and associated hygiene. This means that the price paid to meet all these needs must not limit people's capacity to buy other basic goods and services, including food, housing, health and education, guaranteed by other human rights. While human rights laws do not require services to be provided free of charge, States have an obligation to provide free services or put adequate subsidy mechanisms in place to ensure that services always remain affordable for the poor.

10.5.
Acceptability, dignity, privacy

The acceptability of any water and sanitation services provided is crucial: water and sanitation facilities will not be used if they fail to meet the social or cultural standards of the people they are meant to serve. Acceptability has important implications for dignity and privacy, which are themselves human rights principles that permeate international human rights law and are especially relevant to the human right to sanitation and associated hygiene.

- **Water** must be of an acceptable odour, taste and colour to meet all personal and domestic uses. The water facility itself must be acceptable for the intended use, especially for personal hygiene.[44]
- **Sanitation** facilities will only be acceptable to users if the design, positioning and conditions of use are sensitive to people's cultures and priorities. Sanitation facilities that are used by more than one household should always be separated by gender and constructed in such a way that they ensure privacy. Toilets for women and girls must have facilities for menstrual hygiene management and for the disposal of menstrual materials.[45]
- Particularly with respect to sanitation and associated **hygiene**, a number of practices exist that are unacceptable from a human rights perspective. These include manual scavenging (the manual emptying of pit latrines, which is associated with specific scheduled castes in the Indian subcontinent) and the taboos attached to women and girls during menstruation. States must ensure that these practices are eliminated, which will often require a range of measures, including changes to the physical infrastructure, concerted political leadership, awareness raising and legal and policy change.

11.
Links between the human rights to water and sanitation and other human rights

All human rights are indivisible, interrelated and interdependent, whether civil and political rights, such as the right to life, access to justice or the prohibition of torture; or economic, social and cultural rights, such as the rights to water, sanitation, health or education.[46]

The indivisibility principle recognises that if a State violates the human rights to water and sanitation, this affects people's ability to exercise other rights as well, such as the right to life. This fact also makes it possible to adjudicate economic, social and cultural rights under the International Covenant on Civil and Political Rights.

The human rights to water and sanitation do not exist in isolation from other human rights and water and sanitation are also essential to the realisation of many other human rights. Priority should be given to the supply of water for domestic and personal use, as well as to the requirements of the other Covenant rights; for example, water for growing essential food crops and for health interventions that protect people from disease.[47]

Water and sanitation are fundamental for life and are indispensable to human dignity. The impact of the lack of access to water and sanitation on people´s health can be linked to the human right to life[48], as well as jeopardising the right to health.[49] For instance, unclean water or inappropriate sanitation often leads to diarrhoea, which remains the second-largest cause of mortality in children under five.

THE HUMAN RIGHTS TO WATER AND SANITATION DO NOT EXIST IN ISOLATION FROM OTHER HUMAN RIGHTS

For the realisation of the right to adequate housing[50], access to essential services such as water and sanitation is indispensable. Privacy and physical security[51] are also an issue in situations where women and children have to go to shared latrines or open spaces to defecate, because this makes them particularly vulnerable to harassment, attacks, violence or rape.[52]

Further, the right to education[53] cannot be guaranteed where water is not available at school and sanitary facilities are not separated by gender, because often girls will not attend school during their periods if sanitation is inadequate.

Access to water is essential for agriculture in order to realise the right to adequate food.[54] While the recognition of the human rights to water and sanitation has brought attention to the requirement to prioritise access to water for personal and domestic use for marginalised individuals and groups, there is also a requirement to ensure access to sufficient water for marginalised and poor farmers for subsistence and small-scale farming.

The right to work can be negatively affected if there is a lack of access to water and sanitation at the workplace, particularly for women during menstruation and pregnancy.[55]

Article 9 of the ICESCR guarantees the right to social security, which encompasses the right to access and maintain social security or other benefits in order to be able to secure water and sanitation (among other necessary goods) and to realise the rights of children and adult dependents.[56]

The lack of access to water and sanitation may lead to inhuman or degrading treatment, particularly in the context of deprivation of liberty.[57] The International Committee of the Red Cross[58], the Human Rights Committee[59], the Committee against Torture[60], and the Special Rapporteur on torture[61] have expressed concern about poor sanitation and water in detention, out of respect for the dignity of detainees and because many diseases among detainees are transmitted by the faecal-oral route. In these circumstances where people cannot provide their own services, the State must do so. This may also be relevant to homeless people, slum dwellers and refugees.[62]

Human rights law includes environmental obligations. Finite resources must be protected from overexploitation and pollution[63], and facilities and services dealing with excreta and wastewater should ensure a clean and healthy living environment.[64]

The prohibition of discrimination and the right to equality, including gender equality[65], the rights to information and to free, full and meaningful participation are also essential for the realisation of the human rights to water and sanitation, with realisation of each right having an impact on the others.

The human right to water vs. water rights

The human right to water is sometimes confused with water rights.

The human right to water is held by every individual, regardless of who he or she is, or where he or she lives, and safeguards his or her access to water for personal and domestic uses.

Water rights, on the other hand, are generally conferred to an individual or company through property rights or land rights, and are rights to access or use a water resource. These are generally gained through land ownership or through a negotiated agreement with the State or landowner, and are granted for a variety of water uses, including for industry or agriculture.

Someone availing themselves of their water rights may be violating another person's human rights to water and sanitation, for example, in cases of over-extraction or pollution. This may be the case even where the water rights have been legally conferred. Priority must always be given to water required for the realisation of the human right to water, and water resources must be protected from over-use or pollution to this end.



12.
Focus of this Handbook

This Handbook is predominantly intended for State actors and other entities that have an obligation to realise the human rights to water and sanitation.

Recognising the crucial role that activists and other civil society actors play in realising human rights, including the human rights to water and sanitation, the UN Special Rapporteur carefully considered the possibility of providing practical advice for both State actors and civil society stakeholders in the same Handbook. Given the widely differing roles played by these various entities, she decided that it would not be possible to write a Handbook that would meet the needs of all the stakeholders, and decided to use this opportunity to provide guidance to States, as they are the main bearers of human rights obligations, and have a legal duty to the people living within their borders. However, the UN Special Rapporteur encourages and welcomes the development of additional guidance aimed at other stakeholders.

This Handbook is intended to provide advice on how the human rights to water and sanitation can be incorporated into the institutional regulatory and legal frameworks of the State, as well as into budgeting and service-delivery processes and accountability mechanisms.

This Handbook is not intended to provide specific technical guidance on appropriate technologies or tariff structures for each State. The Special Rapporteur respects the fact that States "may adopt a range of possible policy measures for

the implementation of the rights set forth in the Covenant".[66] This Handbook seeks, instead, to provide guidance (without providing any ready-made "formula") to what States must consider as they develop the institutions, legal frameworks, technologies and financing structures in order to fully integrate the human rights to water and sanitation. States must then determine what policies and measures are best to ensure the rights are realised. As far as possible, this Handbook will also refer readers to sources able to provide more details of technical solutions, and to examples of policies and approaches that have already been used to address issues discussed .

While it is evident that water is essential to the realisation of other human rights, including the human rights to food, health, education and work, this Handbook will limit its guidance to the human rights to water and sanitation, focusing on personal and domestic uses.



13. Image credits and references

Image Credits:

Page 5 Mayanna washes her feet in a toilet constructed by AWED, Puthur village, Kanyakumari District, Tamil Nadu, India. WaterAid/Dieter Telemans.

Page 8 Catarina de Albuquerque on mission in Brazil 2013. Andrew Paterson.

Page 10 Navi Pillay, the UN High Commissioner for Human Rights. OHCHR Photo.

Page 12 Executive Director of UNICEF, Anthony Lake. UNICEF/NYHQ2010-0697/Markisz.

Page 14 Children washing their hands before a mealtime. UNICEF/India/2014.

Page 17 Mother and young boy in India, standing next to their self-constructed latrine. UNICEF/India/2014.

Page 28 Girl collects water at a protected spring, Democratic Republic of the Congo . UNICEF/DRC/2014.

Page 32 Girl washing her hands. UNICEF/Iraq/2014.

Page 40 Watering crops. UNICEF/Chad/2014.

Page 42 Bat-Ochir Tegshjargal, 8 visits the school toilet block at Zavkhan Soum school. UNICEF WASH programme assisted with its construction. Zavkhan Soum. Uvs Aimag, western Mongolia, 2007. UNICEF/MGLA2007-00839/Holmes.

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56 CESCR, General Comment No. 19: The right to social security, 2008 (E/C.12/GC/19), para. f (18).

57 Article 7, ICCPR.

58 International Committee of the Red Cross, Water, sanitation, hygiene and habitat in prisons (2005), p. 58: http://www.icrc.org/eng/assets/files/other/icrc_002_0823.pdf.

59 *See* for example, Human Rights Committee, Concluding Observations: Ukraine, 2013 (CCPR/C/UKR/CO/6), para. 11. For more sources *see* also Independent Expert on human rights obligations related to access to sanitation, Human rights obligations related to access to sanitation, 2009 (A/HRC/12/24), footnote 61.

60 Committee Against Torture, Concluding Observations: United Kingdom, 2004 (CAT/C/CR/33/3), para. 4 and Concluding Observations: Nepal, 2007 (CAT/C/NPL/CO/2), para. 31.

61 UN Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Indonesia, 2008 (A/HRC/7/3/Add.7), para. 68; *see* also: Mission to Togo, 2008 (A/HRC/7/3/Add.5), para. 42 and Appendix, paras. 3, 31, 46-47, 70 and 95; and Mission to Nigeria, 2007 (A/HRC/7/3/Add.4), para. 37 and Appendix, paras. 41, 95, 101 and 110.

62 Special Rapporteur on the human rights to water and sanitation, Stigma, 2012 (A/HRC/21/42), para. 53.

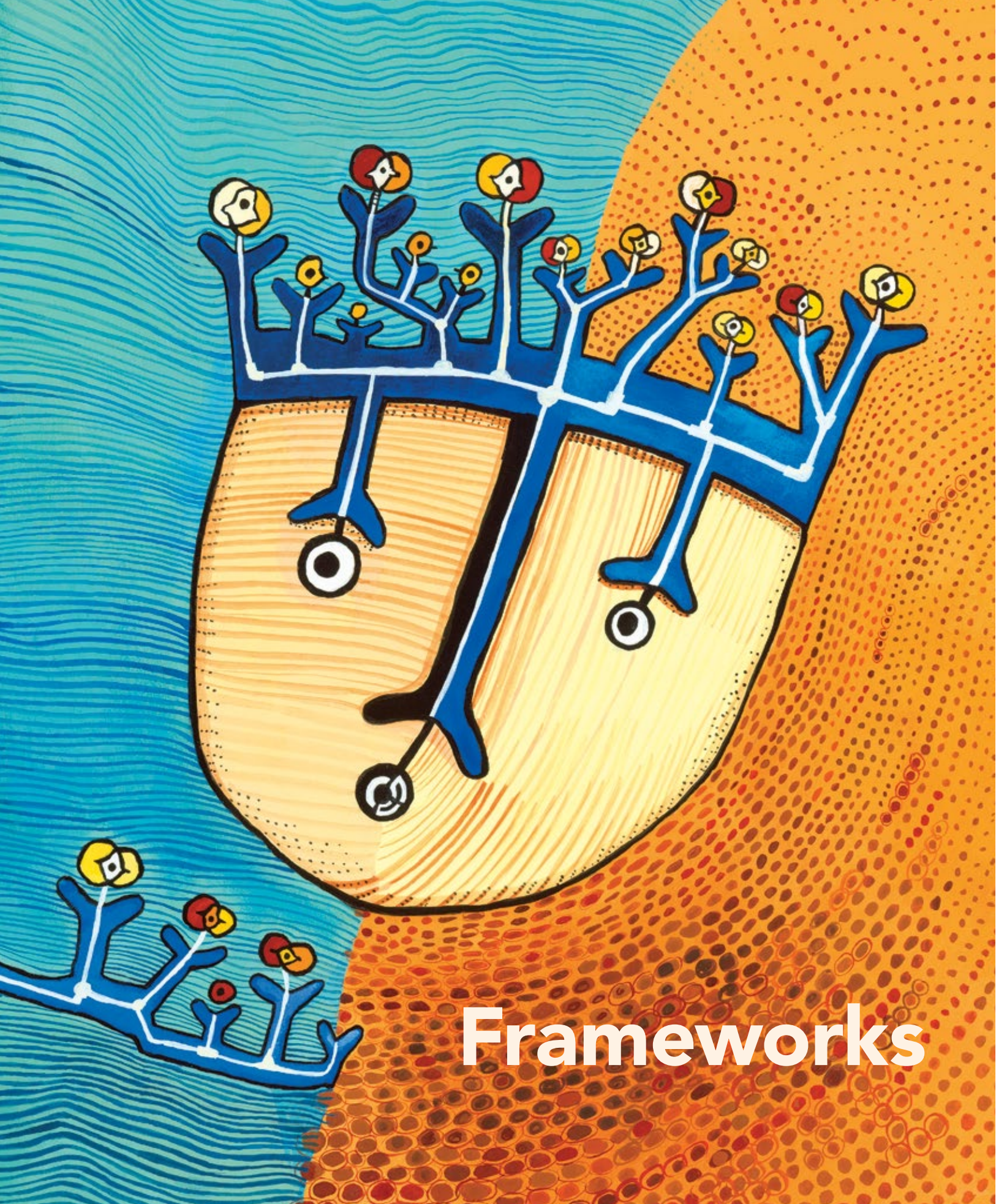
63 Special Rapporteur on the human rights to water and sanitation, Sustainability and non-retrogression, 2013 (A/HRC/24/44), para. 21.

64 Special Rapporteur on the human rights to water and sanitation, Managing wastewater and controlling pollution, 2013 (A/68/264), paras. 2, 13; Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment: Background paper No. 4 (2002): http://www2.ohchr.org/english/issues/environment/environ/bp4.htm.

65 OHCHR, UN-Habitat and WHO, Fact Sheet No. 35: The right to water (2010), pp. 12 – 13: http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf.

66 Article 8 (4), Optional Protocol to the ICESCR.





Frameworks

REALISING THE HUMAN RIGHTS TO WATER AND SANITATION:
A HANDBOOK BY THE UN SPECIAL RAPPORTEUR
CATARINA DE ALBUQUERQUE

Legislative, regulatory and policy frameworks

HUMAN RIGHTS TO WATER & Sanitation
UN SPECIAL RAPPORTEUR

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Realising the human rights to water and sanitation:
A Handbook by the UN Special Rapporteur
Catarina de Albuquerque

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Contents

01. **The definition of the human rights to water and sanitation** 5

02. **The relationship between international human rights law and national legal frameworks** 7

2.1. The role of national legal frameworks....8

2.2. The structure of national legal and policy frameworks....8

03. **The status of the human rights to water and sanitation in the national legal framework** 11

04. **Human rights principles in the national legal framework** 13

4.1. Non-discrimination and equality....14

4.2. Access to information and transparency....17

4.3. Participation....21

4.4. Accountability....25

05. **The legal content of the human rights to water and sanitation as reflected in national legal frameworks** 31

5.1. Availability....32

5.2. Physical accessibility....39

5.3. Quality and safety....43

5.4. Affordability....48

5.5. Acceptability....51

06. **Checklist** 53

07. **Image credits and references** 59



01.
The definition of the human rights to water and sanitation

This Handbook uses the definitions of the human rights to water and sanitation set out in the boxed text below. The interpretation of the norms and definitions that give substance to the legal content of the human right to water has been developed in General Comment No. 15[1] of the UN Committee on Economic, Social and Cultural Rights (CESCR).

The Committee also confirmed the status and legal content of sanitation as a human right, and defined the norms that apply to this right in its Statement on Sanitation[2], based on a 2009 report on human rights obligations related to sanitation, written by the then Independent Expert (now the Special Rapporteur on the human right to safe drinking water and sanitation).[3]

The human right to **WATER** entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.

SANITATION is defined as a system for the collection, transport, treatment and disposal or reuse of human excreta, and associated hygiene. The human right to sanitation entitles everyone to sanitation services that provide privacy and ensure dignity, and that are physically accessible, affordable, safe, hygienic, secure, and socially and culturally acceptable.

02.
The relationship between international human rights law and national legal frameworks

International human rights law demands that States work towards achieving universal access to water and sanitation, being guided by human rights principles and the standards of the human rights to water and sanitation.

In monist States international law and national law constitute a single legal system. Therefore, rules of international law constitute an integral part of domestic law and produce direct legal effects without any further law being enacted within a country. In dualist States, however, international law and national law are two separate and independent legal systems. In such States, therefore, for international law to be applied, it is necessary for the State to transpose international legal norms into the national legal system through the adoption of a national law.

2.1. The role of national legal frameworks

International human rights law cannot provide the very detailed guidance that it is necessary to have in national law, where the particular circumstances of each country affect how the State will go about realising the human rights to water and sanitation. The detailed parameters for the provision of water and sanitation services that will bring taps and toilets to people can only be set in the context of each State.

While States are free to choose how they realise human rights, article 2 (1) of the International Covenant on Economic, Social and Cultural Rights points out the particular role of legislation in the realisation of Covenant rights.[4] Legal frameworks constitute the formal expression of a State's intentions and have a legally binding and (generally) permanent nature.

This section provides an outline of what legislators, policy makers and civil servants should consider when drafting, revising and applying legal and policy frameworks, in order to ensure that these are compatible with the human rights to water and sanitation.

LEGAL FRAMEWORKS CONSTITUTE THE FORMAL EXPRESSION OF A STATE'S INTENTIONS

2.2. The structure of national legal and policy frameworks

National legal frameworks are diverse – there is no single structure that applies to all legal systems the world over. However, similarities between them do exist. Legal frameworks generally consist of different tiers, with a certain hierarchical consistency. In describing how States should incorporate the human rights to water and sanitation into their national systems, this Handbook uses a common categorisation of possible instruments at different levels, namely, 'constitution', 'laws', 'regulations', and 'policies'. These categories separate the different legal instruments into a hierarchy of levels of power and also distinguish between instruments that come from the executive and those from the legislative branch of government.

The structure of national legal and policy frameworks

LEGISLATIVE BRANCH

Constitution

The Constitution is the supreme and fundamental law that sets out the State's basic structure, including the exercise of political power and the relationship between political entities and between the State and the people.[5] This usually includes a set of human rights. Generally, constitutions are difficult to alter and represent the most durable form of legislation.[6] In a national legal hierarchy, constitutions qualify as supreme laws. All other legislation must be in harmony with the provisions of a State's constitution.

Laws

The legislature has the sole power to create, amend and repeal laws. It thereby sets the parameters within which the executive branch of government has to act.[7] Laws contain more detail than a constitution does, including provisions for governing the country, which extend to the realm of human rights. Laws can, within limits, delegate parts of the authority to create rules to the executive branch. In most countries, some special courts – mostly supreme or constitutional courts – have the power to order a change to laws when these contravene the constitution or, in some jurisdictions, international human rights law.

This Handbook uses 'law' for all legal instruments that emanate from the legislature. This term covers other common terms, such as 'act', 'bill' or 'statute'.

EXECUTIVE BRANCH

Regulations

Where laws delegate the power to make rules to the executive branch, this Handbook uses the term 'regulation'. This delegated legislation has the same legal force as a law, but it allows the technical, scientific and other expertise available to the executive branch to be incorporated more easily. Regulations are commonly used to insert specific meaning into the general terms contained in laws. However, regulations are usually not as rigid as laws, as they can be changed by the executive. In many countries, courts can also repeal regulations that contravene laws, as laws are hierarchically superior.

This Handbook uses 'regulation' for all rules that emanate from the executive branch. This term covers other common terms, such as 'decree', 'ordinance', 'circular' or 'by-law'.

Policies

Policies constitute the general principles a government follows in its management of public affairs. They are used to shape the 'plan of action' that the executive uses to put its vision into practice. As with regulations, policies must not contravene laws. However, they also have a role in shaping future laws; for example, by recommending the revision of laws to bring them into line with human rights. Unlike regulations, laws and the constitution, policies are generally difficult to enforce judicially, as they serve as a declaration of intentions rather than as a description of rights and obligations. Their association with a certain government may also render them less durable.

This Handbook refers to 'policies' for all executive instruments that do not have the legal force of a law. This term covers other common terms, such as 'strategy', 'plan' or 'programme'.

A written description of the way these categories work and the interaction between the different tiers, using as an example the affordability of sanitation services:

The **constitution** of a country guarantees that water and sanitation are human rights.

A **law** further specifies the standards of sanitation service provision for households. It states that sanitation services must be affordable, and that all households must connect to the network (where a sewerage network exists). The law tasks the sanitation utility, together with a regulator, with regulating the tariffs for connecting households.

The corresponding **regulation** – passed by the regulator – states, for example, that each household must bear the capital costs of laying connecting pipes. The regulation provides for the payment of this connection fee in instalments for households that are unable to pay the full amount in a single payment.

Most households in the area are able to pay, either in a single payment or in instalments, and the utility can usually recoup its capital investment costs. One family approaches the utility to seek connection to the sewerage network. Their household income is so low that they are unable to pay the requested fee, even in instalments. The utility – on the basis of the regulation – refuses to connect the household.

In this example, the regulation does aim to ensure affordability by allowing payment in instalments. However, for this individual family, the regulation, unintentionally, does not ensure affordability. In this individual case, the insistence by the utility on abiding by the **regulation** contravenes the **law**. As the higher-level norm, the law guarantees affordability for every household. The family in question is therefore entitled to demand to be connected to the network at a cost that is affordable to them; this bypasses the regulation and is based directly on the law. The state – in cooperation with the regulator and utility – in turn has a duty to find a solution; for example, through a scheme that adjusts connection fees for very low-income families, or one in which the State provides a grant or subsidy to the household to pay the charge.

The role of **policies** is somewhat different: they are a 'plan of action'; governments should use them to plan for the progressive realisation of the human rights to water and sanitation. In the example given above, a policy could plan the revision of the **regulations** to include a 100% waiver of fees for households that are unable to afford any connection fee.

03.

The status of the human rights to water and sanitation in the national legal framework

The constitution provides the strongest general guarantee of human rights within national legal frameworks, because it represents the supreme law of the State with which all subordinate tiers of the legal framework must comply, and which cannot easily be changed. This constitutional guarantee then serves as a reference for drafting and interpreting subordinate laws, regulations and policies.

A constitutional guarantee of the human rights to water and sanitation can take different forms: it can be explicit or implicit and the level of detail may vary.

The human right to water and – to a lesser extent the human right to sanitation – are and have been part of many constitutions, including some that were established prior to the recognition of the human right to safe drinking water and sanitation by the UN General Assembly in 2010. In 2004, Uruguay became the first country to include an explicit guarantee of the human rights to water and sanitation in its Constitution, stating in article 47 that:

> […] Access to clean water and access to sanitation constitute fundamental human rights […]

India provides an example of an implicit constitutional guarantee of the human rights to water and sanitation. While the human rights to water and sanitation are not explicitly mentioned in the Constitution, settled case law from courts at both State and federal level interprets article 21 of the Constitution – the right to life – as encompassing the right to safe and sufficient water and sanitation.

In Argentina, the constitutional rights to health and a clean environment have been interpreted as including the human right to clean water; for example, in the context of a case of (ground-) water pollution that adversely affected the health of a community.[8]

International human rights law does not oblige States to include a guarantee of the human rights to water and sanitation in their constitutions, nor does it prescribe whether such a guarantee should be explicit or implicit. However, a constitutional guarantee is highly desirable if the rights are to have meaning within the legal framework of a country. In the absence of a clear, top-level norm, the protection of the human rights to water and sanitation may be piecemeal, spread over a number of provisions in different laws, regulations and policies, and be interpreted differently by different actors. This is problematic for two reasons: first, individuals will often find it difficult to identify and pursue their human rights. Second, legal frameworks are unlikely to do justice to every individual case. It is precisely in those cases where laws, regulations and policies – often unintentionally – do not provide for an individual's human rights to water and sanitation that a constitutional guarantee can override subordinate norms and grant the rights in practice. The formal recognition of the human rights to water and sanitation in a constitution ensures greater legal certainty regarding the existence and legal content of these human rights.



04.
Human rights principles in the national legal framework

General human rights principles include safeguards that relate to the process of realising the specific human rights to water and sanitation. These are: non-discrimination and equality, information, participation and accountability.

Human rights principles must be ensured in the context of realising any and all human rights, not just the human rights to water and sanitation. The following sections therefore refer both to the general legal frameworks of countries – which typically include norms defining general human rights principles – and to norms specific to the water and sanitation sectors.

4.1. Non-discrimination and equality

Constitutional guarantee

Because of the fundamental importance of non-discrimination and equality for the enjoyment of human rights in general and the human rights to water and sanitation in particular, it is highly desirable for a State's constitution to guarantee non-discrimination and equality. As with the human rights to water and sanitation, such constitutional provision clearly gives individuals a legal claim, guaranteeing non-discrimination and equality even in those cases where the remainder of the legal framework results – sometimes unintentionally – in discrimination.

Constitutional guarantees of equality before the law, and of non-discrimination, exist in most countries. They usually include at least a guarantee of equal treatment for all, and it is preferable that positive measures aimed at achieving substantive equality for all also be enshrined in the constitution, as in the Constitution of South Africa, which states in article 9 that:

EVERYONE IS EQUAL BEFORE THE LAW

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

Laws

Along with the constitutional guarantee of the right to equality, a law that specifies the prohibition of discrimination, as well as the duty to work towards equality, is essential.[9] Laws should also provide for complaint mechanisms – including courts – in order to ensure that any instances of discrimination are addressed.

The UK's Equality Act 2010 is an example of a law that outlaws discrimination in the workplace and in the wider society; it applies equally to private actors and government agencies. The latter are bound by the 'equality duty', which obliges public bodies to shape policy and deliver services in such a way that discrimination is eliminated and equality of opportunity advanced.[10]

Regulations

In the legal framework specific to the provision of water and sanitation services, regulations should contain positive measures or affirmative action for disadvantaged individuals and groups. These will include targeted investments to eliminate disparities, as well as measures to make water and sanitation services affordable for poor people. Enforcement is crucial in order effectively to outlaw discriminatory practices and exclusion by private sector actors.

Honduras, Law for the Drinking Water and Sanitation Sector, Decree No. 118–2003, 2003:

Article 22: Priority shall be given, without forbearing from the objectives of improved efficiency and quality, to the goals of maintaining and extending the coverage of potable water and sanitation services in economically deprived areas, applying criteria of equity.

Article 36: The tariffs for water and sanitation services provided to users with low family incomes, which are determined by means of socio-economic studies, shall be set in a manner that allows a partial recovery of costs and shall, as long as the condition of social vulnerability endures, be assigned as preferential tariffs.

STATES MUST ELIMINATE DISCRIMINATION IN ACCESS TO WATER AND SANITATION SERVICES

Policies

Policies play a specific role in working towards substantive equality, which can only be achieved through a process of affirmative action for people without access to water and sanitation services. This affirmative action should be included in policies.

Ghana, National Water Policy, 2.2.2 Focus Area 2 – Access to Water:

Principles and Challenges – The main principles and challenges include:

(i) the fundamental right of all people without discrimination to safe and adequate water to meet basic human needs; […]

Policy Objectives – The policy objectives are to:

(ii) facilitate improving access to potable water without discrimination; and

(iii) enhance the management and development of water resources in a manner which, as first priority, safeguards that the entire population, particularly the poor and vulnerable, will have access to adequate and potable water.

States must monitor the implementation of measures that aim to ensure equality. Policies and plans should use or develop appropriate indicators and benchmarks to assess both the steps taken and the results achieved in their attempts to eliminate discrimination in access to water and sanitation services. (see Monitoring, pp.11-13)

Common challenges

1. Informal settlements

Lack of security of tenure in informal housing settlements is often used as a reason to deny households or communities a connection to formal water and sanitation networks. Tenure status must never be invoked as a justification for denying access to water and sanitation.

2. Open defecation and urination

In many countries, defecating and urinating in the open are prohibited by law. While there are clear health reasons for such laws, this type of prohibition has a discriminatory effect on people who do not have access to a toilet. Homeless people and people living in informal housing settlements without sanitation facilities may have no choice but to defecate in the open. Enforcement of such rules against people who have no other option constitutes discrimination and must be discontinued. As an interim solution, States should urgently provide access to public sanitation facilities, at night as well as during the day, until adequate housing is provided.[11]

3. Covert discrimination

Many discriminatory practices are concealed in apparently neutral laws or policies. Indigenous people, or people of a particular ethnicity or language group, often face unequal access to water and sanitation, perhaps because of where they live rather than for explicitly discriminatory reasons.[12] In the United States of America, regulation of water services in certain rural areas provides for water quality standards lower than those that in urban settlements. This has a negative impact on poorer rural populations, who are not necessarily in a position either to purchase safe water or to remain informed about water quality standards. Rich households living in the same regions do not suffer in the same way.[13] States must adopt active measures to eliminate both direct and indirect discrimination; they must devote greater resources to neglected individuals and groups in order to close the gaps between them and other sections of the population. For example, the Municipality of Prekmurje in Slovenia has waived the strict regulations on house ownership to enable Roma families to access municipal water and sanitation services.[14]

4. Stigmatisation through special procedures for subsidies

Subsidies and other mechanisms to increase affordability are needed in virtually all countries, to ensure that people who are unable to pay the standard charges for services are still able to use water and sanitation services. In establishing these mechanisms, States must take care to avoid unintended discriminatory effects. In South Africa, people can apply under indigent policies for free access to essential services, including water and sanitation.[15] This is necessary if low-income households are to access services. However, the Indigent Register is published, and all members of the public are able to see who features on it. It has been reported that people are reluctant to apply because of the stigma attached to the status of being indigent. While public oversight of State subsidies is crucial to ensure transparency, this should not lead to discriminatory effects.

States must incorporate provisions to address discrimination and eliminate inequalities in access to water and sanitation into their constitutions, laws, regulations and policies.

4.2.
Access to information and transparency

The right to access information must be an integral part of legal frameworks that relate to the provision of water and sanitation services.[16] Legislation should require that adequate resources are devoted to ensuring access to information, and that access to information regarding water and sanitation services is available to all.

Laws

Laws guaranteeing access to information are based on the principle of ensuring access to information about affairs that concern the public in general, and not only water and sanitation service provision.

The Right to Information Act in India provides residents with the means to access information that is under the control of public authorities, promoting accountability in service delivery and transparency among public authorities. It has been used by individuals and communities to demand information on programmes, projects and budgets for a range of different public services, including water and sanitation.[17]

STATES MUST ENSURE ACCESS TO INFORMATION ABOUT AFFAIRS THAT CONCERN THE PUBLIC

Some countries have legislation that refers specifically to the need for access to information in the water and sanitation sectors.

Brazil, Law on Water and Sanitation, article 27

Users of [basic] public water, sanitation and solid waste services, in accordance with the legal, regulatory and contractual rules, are granted:

I broad access to information on the services rendered;

II previous knowledge of all their rights and duties and of penalties to which they may be subject;

III access to a service delivery manual and user service manual, prepared by the service provider and approved by the corresponding regulatory entity;

IV access to periodical reports on the quality of the services rendered. […]

Regulations

Data and information on water and sanitation provision that are held by public authorities and third parties, and are of direct concern to stakeholders, should be publicly available. Information must be made accessible and understandable for everyone, including, for example, people who speak a minority language or are unable to read.

> **Honduras, Law for Drinking Water and Sanitation, Decree No. 118-2003, article 25:**
>
> The users of the public potable water and sanitation services enjoy, *inter alia*, the following rights: […]
>
> 2) To receive information about the provision of the services, tariff system and method of payment, plans regarding expansion and improvement of services, and any other circumstances that may be of interest to them, with sufficient detail to enable them to exercise their rights as users; […]



Policies

States should thoroughly assess the transparency of governance and the ways people can access information. They should create policies and plans for more openness, and improve levels of access to information. This includes, for example, the creation of mechanisms to ensure an effective and timely response to information requests, and to disseminate information through channels that are accessible to all.

Republic of Rwanda, National Policy and Strategy for Water Supply and Sanitation Services 2010:

7.6 Collective Sanitation

[…] Awareness campaigns to households on hygiene practice shall include information about investment and operating costs of sewerage in order to increase cost understanding and willingness to pay.

The following policy example includes an analysis of gaps in information assessments and plans for improvement.

LEGISLATIVE AND POLICY FRAMEWORKS MUST SAFEGUARD THE RIGHT TO PARTICIPATION

South Africa, Cape Town, Water Supply and Sanitation Policy White Paper, 1994, p. 30:

Monitoring and information

Information and decision support systems […]

In order to successfully support a national basic water supply and sanitation programme, the existing information systems in the country need to be upgraded to overcome various shortcomings. Information is dispersed amongst a range of organisations such as the former homelands, various Government Departments, Water Boards, consultants and non-government organisations, and is not readily available. Information is also duplicated and data inconsistencies exist. […]

The information system must provide useful and accessible information for communities, Local Water Committees and Local Authorities, second tier water bodies i.e. Water Boards, Provincial Governments, consultants, NGOs, and various other Central Government Departments.

The principles of the proposed National Water Supply and Sanitation Information Management System will be:

- The National System must be people-focused and service orientated.
- Information should be accessible to communities and to all levels of the water industry. Information available to different sectors should be useful, relevant, reliable and in an appropriate format (electronic formats and printed format). […]

Common challenges

1. Avoiding the *de facto* exclusion of people from access to information

The ways in which information is made available should fit the habits of the people to be reached. Information that is disseminated only through the internet will only reach people who have internet access. Regulation of the ways information is shared is therefore crucial.

Namibia, National Sanitation Strategy 2010/11 – 2014/15, Second Draft 2009, pp. 42-44:

The Sanitation Balanced Scorecard, Theme C: Community Education and Participation
Develop general IEC [Information, Education and Communication] materials, incl. all media, e.g. pamphlets, posters, radio and TV programmes, booklets and manuals (tech & health); Translate IEC materials in[to] local languages (considering illiterate communities)
Develop participatory guidelines and IEC tools for rural and urban areas (design and languages for local context).

2. Ensuring that information is understandable

Even the best system for making information accessible and transparent to the public will fail if people are not able to understand the information provided. Experts – in government and outside of government – have a tendency to use language that will be understood by other experts, but difficult for non-experts to understand. Transparency and access to information can therefore only be ensured when information is set out clearly. The United Kingdom has developed a style guide for all government websites, with the aim of achieving this.

1.5 Plain English – UK Government, Content Style Guide – Writing for GOV.UK

[…] Use plain English. Don't use formal or long words when easy or short ones will do. Use 'buy' instead of 'purchase', 'help' instead of 'assist', 'about' instead of 'approximately' and 'like' instead of 'such as'.

We also lose trust from our users if we write government 'buzzwords' and jargon. Often, these words are too general and vague and can lead to misinterpretation or empty, meaningless text. We can do without these words: […]

3. Awareness raising and capacity building

The adoption of laws, policies or programmes to ensure access to information can only be effective where adequate attention is paid to awareness raising and capacity building. This can include informing people about national and local strategies (including tariff structures and plans of action for the delivery of water and sanitation services) or about policy changes that may have an impact on people's enjoyment of the rights to water and sanitation.[18]

Pakistan, National Drinking Water Policy, 2009:

6.6 Public Awareness

(i) Intensive information, education and communication campaigns will be developed and implemented to promote water safety, water conservation and safe hygiene practices. To this effect, a National Behavioral Change Communication Strategy will be formulated and implemented; and

(ii) Hygiene promotion will be made an integral component of all water supply programmes.

States must incorporate provisions into their constitutions, laws, regulations and/or policies to ensure that people are able to access information relevant to their enjoyment of their human rights to water and sanitation.

4.3. Participation

Legislative and policy frameworks must safeguard the right to participation. In the process of developing laws, regulations and policy-level instruments, active, free and meaningful participation must be guaranteed. Legal and policy frameworks must be as detailed as possible in setting out the institutions and procedures that will enable participation at the various stages of decision-making. Opportunities for people to engage should be spelled out, and the responsible agency or official clearly identified. Without this, the right to participation can remain vague and merely aspirational.

Constitution

Constitutional and legislative provisions from all regions of the world demonstrate increasing recognition of the right to participation. Some constitutions explicitly set out a *right* to participation[19], others provide directive principles on participation.[20] For example, the Ethiopian Constitution contains an explicit right to participation: the right to development not only guarantees participation to those affected but states that "citizens shall have the right to participate in national development, and in particular, to demand that their opinions be heard on matters […] pertaining to the community of which they are members".[21] A number of constitutions stress opportunities for participation by specific population groups, including youth[22], minorities and marginalised groups[23], and older persons.[24]

STATES MUST GUARANTEE ACTIVE, FREE AND MEANINGFUL PARTICIPATION

Ecuador's Constitution refers to participation as a directive principle and prescribes that "at all levels of government, entities of participation shall be set up […]"[25], specifying particular areas of participation [including] participatory budgets".[26]

Participation should also be included in constitutional provisions. For example, in Uruguay a referendum proposing a constitutional amendment on water was approved by 64.6% of voters in 2004.[27] In Kenya, the human right to water and sanitation was explicitly recognised in the Constitution after extensive public consultation, and was adopted by a referendum in 2010 with an approval rate of more than 67%.[28]

Laws

Public participation in deliberations on new or reformed legislation is itself as important as the creation of legislation mandating participation in water and sanitation services.

The Law on Water and Sanitation[29] in Brazil establishes clear instructions on participation, such as: "[…] holding a previous public hearing and consultation about the bidding announcement, in case of concession, and on the draft contract […]".[30] Many other countries include similar provisions on participation in water and sanitation legislation, including Mozambique[31], Venezuela[32], and São Tomé and Príncipe.

São Tomé and Principe, Law [on the Environment] No. 10/1999:

Article 7: Principle of Participation

1. Citizens and various social groups shall be involved in the formulation and implementation of environment and development policies.
2. The State must ensure the participation of citizens and stakeholders in the decision-making process.[33]

Although South Africa's National Water Act (1998) contains robust provisions on public engagement in integrated water resource management, it was only after 2007, when detailed guidelines were issued regarding the development of Catchment Management Strategies, that public officials understood and began to implement public participation. It has been proposed to transform these guidelines so that they become task-oriented step-by-step guides to engaging the public in integrated water resource management.[34]

Regulations

States must stimulate participation by all stakeholders affected by decisions about service levels, the maintenance and operation of water and sanitation services, and tariffs. Special efforts or affirmative action will often be required to ensure that all people, including marginalised and vulnerable groups and people facing particular barriers, are afforded a real opportunity to take part in making decisions. An example of the consultative management of communal water points:

Kenya, Model Water Services Regulations 2002, Section 71: Communal based supplies

(1) The Water Service Provider shall install a communal water kiosk for the provision of water supply services to several consumers at a location it considers appropriate, provided that a majority of consumers, who in the opinion of the Water Service Provider constitute a substantial majority, and to whom water services will be provided by the Water Services Provider, has been consulted by him or the Water Services Board.

(2) The Water Service Provider may provide communal water supply services through a communal installation designed to provide a controlled and measurable volume of

water to several consumers and commercially managed in consultation with the community.

(3) The Water Service Provider shall ensure that the water tariffs charged at such a water point shall be appropriate for the consumers and shall be published in a prominent place at the water point.

Policies

Governments must develop programmes and policies that guarantee and encourage the participation of all people affected by a decision, with a particular focus on those individuals and groups who are disadvantaged or marginalised.

Peru's National Programme for Rural Water and Sanitation (PRONASAR) aims to set up participatory management structures to meet the needs of poor, marginalised and isolated rural populations.[35] For this purpose, it has defined strategies for service provision in rural areas and small towns. The strategy for rural areas states the following with respect to community participation:

STATES MUST DEVELOP PARTICIPATORY MANAGEMENT STRUCTURES TO MEET THE NEEDS OF POOR, MARGINALISED AND ISOLATED RURAL POPULATIONS

e) Community Participation

The community participates in the entire project cycle, defines its needs in the choice of the technology, level of service and commitment to pay for AOM [administration, operation and maintenance], identification of the family fee based on their ability to pay, choice of governing board, assistance for communal training and health education, in the execution of the work by the governing board, [..] with the understanding that the active participation of the people is the best way to ensure the sustainability of services.[36]

The **2009 National Drinking Water Policy of Pakistan** highlights the role of women in domestic water provision and hygiene and therefore demands women's participation, in particular in decision-making:

5. Policy Principles […]

(iv) Recognizing the fact that women are the main providers of domestic water supply and maintainers of hygienic home environment, their participation in planning, implementation, monitoring and operation and maintenance of water supply systems will be ensured; […]

6.5 Community Participation and Empowerment

(i) Participation [of] communities, especially women and children, in planning, implementation, monitoring, and operations and maintenance of water supply systems will be encouraged, to promote community ownership and empowerment as well as sustainability;

(iii) Community mobilization units will be established in water supply related institutions;

(iv) Special focus will be placed on gender training programs for the staff of water supply related institutions at all levels so that they are able to respond in a sensitive manner to the gender differentiated needs in the drinking water sector;

Because Brazil recognises a constitutional right to participation, the government of Brazil, in developing its national plan for water and sanitation (PlanSab), undertook a broad-based participatory process. The process included public hearings and consultations, with additional participation through the national policy councils responsible for water resources and environment. The government then gave an account of how the views received had been considered. By the government's account, at least 67% of the contributions made have been incorporated either wholly or partly into the plan.[37]

Common challenges

1. Barriers to participation

Even where formal opportunities to participate in decisions exist, people may not be aware of these opportunities; if they are aware they may doubt their ability to influence outcomes. Where consultations are only announced at very short notice, or with unrealistic registration rules, or only announced in writing or in a majority language, or are scheduled at inconvenient times or in inconvenient locations, people will not be able to attend and take part. Therefore, regulations and policies must provide guidelines for a State to follow when organising opportunities for people to participate. (see Justice, pp.14,18; Principles, pp.57-69)

States must incorporate provisions into their constitutions, laws, regulations and/or policies that ensure that people have opportunities to active, free and meaningful participation in decisions relating to the realisation of the human rights to water and sanitation.

4.4. Accountability

Constitutions

The right to an effective remedy is contained in article 8 of the Universal Declaration of Human Rights and constitutes a principle of customary international human rights law. It demands that individuals be able to claim their rights before competent institutions when they feel their rights have been violated. While States have discretion as to how they incorporate this principle into their national legal frameworks, the fact that human rights can be enforced gives them legal weight, both for individuals and for all actors involved in service provision.[38] Ideally, the right to a remedy should be enshrined in a State's constitution.

Accountability and access to justice should permeate the legal framework and should involve judicial, administrative, regulatory and other bodies, as well as a range of mechanisms. The principle of access to justice should be enshrined at constitutional level to ensure that it is available to all. Constitutional guarantees of the right to a remedy or the right of access to courts are common.

ACCOUNTABILITY AND ACCESS TO JUSTICE SHOULD PERMEATE THE LEGAL FRAMEWORK

Constitution of Portugal 1976, (7th revision of 2005), article 20 (1):

Everyone is guaranteed access to the law and the courts in order to defend those of his [or her] rights and interests that are protected by law, and justice may not be denied to anyone due to lack of sufficient financial means.

Many constitutions also establish oversight bodies that are competent to hear individual complaints, such as ombudspersons or human rights commissions. This can help ensure that remedial mechanisms are accessible.

Constitution of Argentina, 1994:

Section 86: The Ombudsperson is an independent authority created within the sphere of the National Congress, operating with full autonomy and without receiving instructions from any other authority. The mission of the Ombudsperson is the defence and protection of human rights and other rights, guarantees and interests contained in this Constitution and the laws, in the face of deeds, acts or omissions of the Administration; as well as the control of public administrative functions. The Ombudsperson has the capacity to be a party in a lawsuit. He is appointed and removed by Congress with the vote of two-thirds of the members present of each House. He has the immunities and privileges of legislators. He shall hold office for the term of five years and may only be re-appointed once. The organisation and operation of this body shall be ruled by a special law.

Laws

The right to a remedy demands that every individual or group must be able to enforce her, his or their rights against the State or private actors. Enforcement can take place at different levels: first, complaint procedures must be established at the level of service provision to ensure that users can hold service providers to account if problems arise. Second, quasi-judicial institutions, such as national human rights institutions or ombudspersons, should be given a role in resolving those complaints that cannot be resolved directly between service providers and users, but which might be resolved without the courts having to be involved. Third, everybody must have the right to bring complaints before competent civil or administrative courts to seek the legally binding resolution of a conflict. An example for the establishment of complaint procedures at the level of service providers:

> **Colombia, Law 142 (1994), establishing the framework for public household services:**
>
> Article 152: The right to petition and appeal
> The essence of the contract of public services is that the subscriber or user can present to the company petitions, complaints, or appeals relating to the contract of public services.

EVERYBODY MUST HAVE THE RIGHT TO BRING COMPLAINTS BEFORE COMPETENT CIVIL OR ADMINISTRATIVE COURTS

An example for the establishment of complaint procedures at the level of the regulatory authority:

> **Kenya, Water Act 2002, No. 8 of 2002:**
>
> Section 47: The Regulatory Board shall have the following powers and functions […]
> (c) to establish procedures for handling complaints made by consumers against licensees;

Iceland has established a parliamentary ombudsperson with the capacity to receive complaints and make recommendations in cases involving the State, public administration and private parties vested with public authority.

> **Iceland, Act No. 85/1997 on the Althing [parliament of Iceland] Ombudsperson:**
>
> Article 4, Complaint to the Althing Ombudsperson: The Ombudsperson may take up a case following a complaint. Any person who feels unjustly treated by any of those indicated in paragraphs 1 and 2 of article 3 can complain thereof to the Ombudsperson. A person who has been deprived of his or her liberty has the right to lodge a complaint with the Ombudsperson in a sealed letter.

With respect to accountability between the different actors involved in water and sanitation service provision, clear institutional mandates must be defined, and the fulfilment of these mandates must be accountable to bodies tasked with oversight functions, such as an independent regulator. South Africa's Water Services Act contains a chapter on 'Monitoring and intervention', which provides for the regulatory bodies to monitor service providers, and the Ministry of Water Affairs and Forestry and Provinces to monitor the work of the regulatory body. It also allows for intervention by the Minister of Water Affairs and Forestry, where the performance of either the service provider or the regulatory body has been unsatisfactory, to apply sanctions up to and including the assumption of functions.[39]

Regulations

In order to guarantee monitoring and compliance with the human rights to water and sanitation, regulations must allow for independent monitoring mechanisms by the different organs of the State and independent monitoring bodies, to keep track of how the water service providers are performing. Whenever an agency or body has not effectively performed a function imposed on it, another level of government, or the judiciary, must be able to intervene. In addition, regulations serve to set out clear institutional mechanisms to ensure that individual complaints are heard.

REGULATIONS MUST ALLOW FOR INDEPENDENT MONITORING MECHANISMS

For example, in Ghana the Public Utilities Regulatory Commission is an independent body set up to regulate and oversee water services to consumers. One of its functions is to receive and investigate complaints and settle disputes between users and the public utility.[40]

Ghana, Public Utilities Regulatory Commission Act (Act 538), 1997 (Complaints Procedures) Regulations:

4(1) the Commission shall make a preliminary enquiry into the complaint.

4(2) If the Commission considers that the complaint may be mediated upon and settled, it shall invite the parties concerned and initiate a settlement of the complaint.

4(3) If the complaint cannot be settled, the commission shall follow the procedure for a formal hearing of the complaint as provided in these regulations.[41]

The law that delegates the powers to the Commission also specifies enforcement powers for the Commission.

Ghana, Public Utilities Regulatory Commission Act:

32. Enforcement of Decisions of the Commission

Where the Commission, whether before or after any investigation, makes any decision or gives any direction, requiring any person to do or desist from doing any act, and there is failure on the part of the person to comply with the decision or direction, within a specified period, if any, or within a reasonable time, the Commission may apply to the High Court for the enforcement of the decision or direction.

Policies

Accountability starts with monitoring the actions of the government and the progress it has made in reaching targets. This involves the collection of data on progress, as well as the examination of underlying institutional structures.[42] Policies should plan to improve the oversight structures and accountability mechanisms through which individuals and groups can seek remedies.

ACCOUNTABILITY STARTS WITH MONITORING THE ACTIONS OF THE GOVERNMENT AND THE PROGRESS IT HAS MADE IN REACHING TARGETS

In the United Kingdom, the Secretary of State for Constitutional Affairs has issued a White Paper that looks at how dispute resolution between citizens and the State can be improved. The White Paper is part of the UK public sector reform programme. It sets out the current challenges related to access to justice for citizens, and then outlines strategies to improve justice and complaint mechanisms.[43]

White Paper: Transforming Public Services: Complaints, Redress and Tribunals:

2. Proportionate Dispute Resolution [...]

2.2 Our strategy turns on its head the Department's traditional emphasis first on courts, judges and court procedure, and second on legal aid to pay mainly for litigation lawyers. It starts instead with the real world problems people face. The aim is to develop a range of policies and services that, so far as possible, will help people to avoid problems and legal disputes in the first place; and where they cannot, provides tailored solutions to resolve the dispute as quickly and cost-effectively as possible. It can be summed up as 'Proportionate Dispute Resolution'.

Common challenges

1. Devolution of powers and decentralisation

Responsibilities in water and sanitation service provision are often divided between a range of different actors. Especially where government is decentralised, a system of accountability, based on clear mandates, is crucial. Decentralisation often leads to greater participation and knowledge of local conditions, as services are brought closer to the communities they serve. However, local authorities often do not have the capacity and resources to comply fully with all obligations that the human rights to water and sanitation entail. They are often less familiar with international or national human rights law than people working in central government are. Therefore, any decentralisation of responsibilities for service provision must be accompanied by the establishment of adequate capacity and resources and clear accountability mechanisms.

2. Disconnections

DECENTRALISATION OFTEN LEADS TO GREATER PARTICIPATION AND KNOWLEDGE OF LOCAL CONDITIONS

Legal frameworks must put adequate procedural safeguards in place prior to any disconnection. It is crucial that users are able to seek remedies in cases where they feel that their human rights to water or sanitation have been violated. Users must be given the chance to pay arrears; if they are unable to pay, they must receive services free of charge or adequate subsidy mechanisms must be in place to ensure affordability.

South Africa, Water Services Act, Section 4 :

(3) Procedures for the limitation or discontinuation of water services must –
(a) be fair and equitable;
(b) provide for reasonable notice of intention to limit or discontinue water services and for an opportunity to make representations, unless –
(i) other consumers would be prejudiced:
(ii) there is an emergency situation; or
(iii) the consumer has interfered with a limited or discontinued service; […]

States must incorporate provisions into their constitutions, laws, regulations and/or policies allowing individuals and groups to hold the relevant institutions to account on any issue relevant to their exercise of the human rights to water and sanitation.



05.
The legal content of the human rights to water and sanitation as reflected in national legal frameworks

If the human rights to water and sanitation are to have an impact at the national level, States must set clear standards; for example, on the quantity and continuity of water provision and the maximum time and distance people should have to travel to facilities. States may use international minimum standards as guidance, but should bear in mind that minimum standards may in some cases be below the requirements set by international human rights law (to ensure progressive realisation within the maximum available resources), or they may fail to meet an individual's particular needs (as in the cases of people living with chronic diseases or of persons with physical disabilities, who often require more water). These minimum standards must never be used as absolute standards, because the progressive realisation of human rights requires constant improvement in access over time, to levels that are above minimum standards.[44]

5.1. Availability

Laws

A general safeguard asserting that water, sanitation and hygiene facilities should be available to all people is best placed in law, which provides guidance for the lower tiers of the legal framework and ensures that individuals can claim their rights.

> **South Africa, Water Services Act, Act 108 of 1997:**
>
> Section 3:
>
> 1. Everyone has a right of access to [a] basic water supply and basic sanitation.
> 2. Every water services institution must take reasonable measures to realise these rights.
> 3. Every water services authority must, in its water services plan, provide for measures to realise these rights.[45]

A GENERAL SAFEGUARD ASSERTING THAT WATER, SANITATION AND HYGIENE FACILITIES SHOULD BE AVAILABLE TO ALL PEOPLE IS BEST PLACED IN LAW

This provision aims to ensure the availability of services; it also guides institutions with respect to the progressive realisation of availability for all. The use of the word "basic" implies a minimum standard, defined in the Act itself[46], and further clarified in regulations and policies.

With respect to sanitation, a system for the collection, transport, treatment, and disposal (or reuse) of human excreta, and for associated hygiene, is indispensable. To ensure that collection and treatment systems are prioritised, a clear legal statement is desirable. The South African Water Services Act includes treatment of wastes in its definition of basic sanitation:

> Chapter 1, Definitions:
>
> In this Act, unless the context shows that another meaning is intended […]
>
> (ii) "basic sanitation" means the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste-water and sewage from households, including informal households; […][47]

In some countries there is an obligation to connect to the sewerage system. In Uruguay, a law on mandatory connection to the sewerage system (Law No. 18.840 of 2011) was recently adopted, with the objective of getting previously unconnected households connected. This law requires house owners and potential house buyers to connect to the sewerage system, where it is available, within a one-year period. Failure to comply leads to fines until the connection to the sewage pipe is made (articles 6 and 7).[48]

In rural areas not suitable for connection to a centralised network, laws must address availability by ensuring access to natural resources that comply with human rights.

Peru, Water Resources Act 2009, article 38:

The State guarantees free access to natural sources and piped services […] to satisfy directly the primary needs of the population. The National Authority creates places or zones for open access where necessary.

If centralised service provision is not available in urban areas, States must guarantee intermediate measures to ensure that people receive a basic minimum until more permanent solutions are found. An example for water supply in informal settlements:

Nicaragua, General Law on National Water Resources 2007, article 71:

In such cases where there exists no permanent and continuous coverage of the supply system for drinking water, the institutions competent and responsible for this public service are obliged to temporarily guarantee the minimum provision in quantity and quality, in any form and through any measure. These institutions shall elaborate basic projects to supply drinking water affordable for everyone, especially when destined for marginal sectors or populations living in urban squatter settlements or rural areas.

IN INFORMAL SETTLEMENTS WITHOUT PIPED SEWERAGE SYSTEMS, STATES MUST STILL ENSURE THAT SANITATION FACILITIES, WASTE COLLECTION AND TREATMENT ARE AVAILABLE

In informal settlements without piped sewerage systems, States must still ensure that sanitation facilities, waste collection and treatment are available.

Regulations

Regulations serve to give "availability" a practical definition by assigning standard numerical values to the minimum desired quantity and continuity of water and sanitation supply. To set these minimum standards, States can use international research as guidance.[49] For example, the World Health Organisation has determined water service levels and how they relate to health promotion.[50] Nonetheless, States must always take account of people's particular needs and continue to progressively increase minimum standards.

Regulations for water typically prescribe a minimum amount that must be available to each person or household.

Indonesia, Regulation No. 23/2006, article 1 (8):

Standard of basic need for drinking water shall be the need for water as much as 10 cubic meter/head of family/month or 60 litres/person/day or as much as other volume unit stipulated further by the Minister in charge of resource affairs. […]

In many developing countries, disruptions to water supply are common, as networks do not have the capacity to deliver water continuously. In order to ensure continuity of supply, it is advisable to regulate interruptions.

> **South Africa, Regulation relating to compulsory national standards and measures to conserve water 2001, paragraph 3:**
>
> The minimum standard for basic water supply services is […]
>
> b) a minimum quantity […]
>
> (iii) (with an effectiveness such that no consumer is without supply for more than seven full days a year.

With respect to sanitation, the ideal situation is for every household to have access to a sanitation facility, but where this is not immediately possible, sanitation requirements must be assessed according to the needs of individuals and households. General standards can be applied for institutional settings, such as schools, workplaces and health institutions. In all cases, sanitation facilities must always provide water and soap for handwashing and menstrual hygiene management.

THE STATE HAS A DUTY TO RAISE AWARENESS OF THE NEED FOR ADEQUATE SANITATION

Where networked sanitation is not available, households are often responsible for arranging sanitation facilities themselves. The State then has a duty to raise awareness of the need for adequate sanitation and to ensure that the construction, maintenance, and the disposal and treatment of waste is regulated so that this complies with the human right to sanitation.

Last but not least, States have an important regulatory role to fulfil in the area of water and sanitation for places controlled by people other than the users of the water, such as workplaces and rented housing. The State must ensure that water and sanitation facilities are always present; this may be arranged through building codes or regulations that set standards. With respect to rented housing, care must be taken to ensure that high standards do not lead to unaffordable housing.

> **USA, Occupational Safety and Health Standards, Section 1910.141:**
>
> 1910.141(b)(1)(i): Potable water shall be provided in all places of employment, for drinking, washing of the person, cooking, washing of foods, washing of cooking or eating utensils, washing of food preparation or processing premises, and personal service rooms.
>
> 1910.141(c)(1)(i): Except as otherwise indicated in this paragraph (c)(1)(i), toilet facilities, in toilet rooms separate for each sex, shall be provided in all places of employment in accordance with table J-1 of this section. […]

An example of a law[51] ensuring sanitation in homes:

> **Benin, Law no.87-015, Public Hygiene Code, article 20:**
>
> Each owner shall provide his/her habitation with a sewerage system for excreta and domestic wastewaters, namely latrines, septic tanks and cesspools.

Policies

States must frame policies in order to ensure that water and sanitation services become progressively available to all. Often, investments in infrastructure and supply bypass some regions or communities. To comply with international human rights obligations, States must expand services so that substantive equality is measurably advanced, with a focus on those who are not served, in order to eliminate inequalities. Policies play a crucial role here, as they guide the prioritisation of action and investment. They should define clear targets and timelines for reaching a basic level of services for all, as well as intermediate steps along the way and the improvement of services beyond the basic level.[52]

POLICIES GUIDE THE PRIORITISATION OF ACTION AND INVESTMENT

> **Kenya National Water Services Strategy, 2007–2015, Section 3.3, Goals of the National Water Services Strategy:**
>
> The Goals of the NWSS are:
>
> - To increase sustainable access to safe water complying [with] the Kenyan standards, such as drinking water quality (formal service provision), from 60% to 80% in the urban setting by 2015, and to reduce the time taken to nearest public/communal outlet and back home to an average of 30 minutes.
> - To increase sustainable access to water complying with the Kenyan standards, such as drinking water quality (formal service provision) from 40% to 75% in the rural setting by 2015 and reduce the distance to the nearest public/communal outlet to 2 km. […]
> - To increase access to waterborne sewage collection, treatment and disposal from 30% to 40% in the urban setting, and from just under 5% to 10% in the rural setting by 2015.

The National Policy for Safe Water Supply and Sanitation (1998) of Bangladesh includes a provision for the prioritisation of people who are not yet served:

> 4. Strategy: The strategy of the National Drinking Water Supply and Sanitation Policy will be developed on the following principles: […]
> e) Assigning priority to under-served and un-served areas; […]
> 7. Policy Principles: Basic needs – It is necessary to expand and improve the water supply and sanitation services in order to satisfy the basic needs of the people. The need to expand these facilities is greater in the case of under privileged groups and regions. […]

Common challenges

The challenges mentioned in the introduction can be addressed via laws, regulations and policies.

1. Lack of tenure security

As the lack of land tenure in informal settlements often leads to inhabitants being refused access to water and sanitation services, one approach is to make access to water and sanitation services independent of tenure status in the legal framework.[53]

Brazil, Law of the Municipality of Porto Alegre, article 219:

The populations living in non-regularised settlements have the right to be served by municipal public services.

2. Prioritisation of use

Prioritisation of water resources for personal and domestic uses, as well as for subsistence farming, should be guaranteed in water resource laws, guiding, for example, water licensing for agriculture or industries.[54]

THE LACK OF LAND TENURE IN INFORMAL SETTLEMENTS OFTEN LEADS TO INHABITANTS BEING REFUSED ACCESS TO WATER AND SANITATION SERVICES

Russian Federation, Water Code, Law No. 74-FZ 2006, article. 3:

The water legislation and normative acts adopted in accordance with this legislation are based on the following principles: […]

5) priority of use of water objects for the purposes of drinking and domestic water supply before uses for other purposes. Their allocation to uses for other purposes is allowed only if sufficient water resources are available.

Similarly, in countries where droughts are common, restrictions on the use of water for non-essential domestic purposes are important to ensure availability for personal and domestic uses.

Australia, Water Act 2000:

Section 24: Limiting taking of water under section 20A(2)

(1) If there is a shortage of water, the chief executive may, by publishing a notice, limit or prohibit the taking of water under section 20A(2) for –
  (a) the domestic purpose of watering a garden; or (b) stock purposes generally.
(2) If the notice is for limiting the taking of water, the notice maybe for either or both of the following –
  (a) the times when water may be taken;
  (b) the volume of water, measured or estimated, that may be taken.
(3) The notice remains in force for the period stated in the notice or, if no period is stated, until the chief executive publishes another notice withdrawing the first notice.
(4) A person must not take water in contravention of the notice. Maximum penalty for subsection (4) – 500 penalty units.

3. Water and sanitation services in public places

In Paris, France, public drinking water and sanitation facilities can be used free of charge. This means that homeless people and people living in inadequate housing do at least have access to basic water and sanitation facilities. The network of public facilities includes public baths and showers, some of which are equipped with laundries.[55]

In general, transgender and intersex individuals can face exclusion, denial of access, verbal harassment, physical abuse, and sometimes even arrest when using public sex-segregated sanitation facilities.[56] States cannot just dismiss this kind of discrimination as a social phenomenon over which they have no influence. Human rights are universal, and must be protected. States must take measures and establish programmes to combat the stigmatisation of and discrimination against these individuals, and anti-discrimination laws must then be enforced.

4. Sustainability of services

States must establish clear responsibilities for the sustainable operation of water and sanitation services. For decentralised solutions, sustainability is best ensured through technologies that can be maintained locally, with States playing a role in the regulation of services.

SUSTAINABILITY IS ENSURED THROUGH TECHNOLOGIES THAT CAN BE MAINTAINED LOCALLY

With respect to centralised networks, the Kenyan Model Water Services Regulations provide that:

> **Kenya, Model Water Services Regulations 2002, Section 19:**
>
> All Water Service Providers shall be under an obligation: - […]
>
> e) To create and implement an Asset Management Plan and Procedures for Maintenance Services to provide for the efficient routine and preventative maintenance of the assets and facilities in accordance [with] relevant guidelines issued by the regulator.
>
> f) To undertake major repairs [of] assets when it can be shown that the major repairs are necessary due to the failure of the water service provider to fulfil its obligations of maintenance or repair of those relevant assets.

States must incorporate provisions into their constitutions, laws, regulations and/or policies to ensure that water and sanitation services are available to all.



5.2.
Physical accessibility

Laws

A general safeguard of everyone's human rights to water and sanitation is best enacted in a law. This should include both a general guarantee and specific guarantees for people who commonly face accessibility problems, such as persons with disabilities. This will ensure that the norms that establish precise details for time, distance, physical security and other particular needs cannot exclude people, even unintentionally.
A general guarantee of access to water within a reasonable distance:

> **Namibia, Water Resources Management Act (24 of 2004), article 3:**
>
> This Act must be interpreted, and be reasonably and fairly applied, in a manner that is consistent with and promotes the following fundamental principles - […]
>
> b) access by every citizen, within a reasonable distance from their place of abode […]

A GENERAL SAFEGUARD OF EVERYONE'S HUMAN RIGHTS TO WATER AND SANITATION IS BEST ENACTED IN A LAW

A law demanding that toilets be accessible for persons with disabilities:

> **India, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1994, article 46:**
>
> Non-discrimination in the built environment
>
> The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for- […]
>
> b. adaptation of toilets for wheel chair users; […]

Regulations

Regulations serve to set minimum standards that give a practical meaning to the physical accessibility of water and sanitation facilities. To determine national standards for the location of water and sanitation facilities, States may use international minimum standards as guidance, while ensuring that these are not used as absolute values. For example, according to the WHO/UNICEF Joint Monitoring Programme, water outlets should be placed so that a round trip to fetch water will take a maximum of 30 minutes in order to ensure that a minimum quantity of water is collected. Where household sanitation is not possible in the short term, sanitation facilities should be shared by a maximum of five households.[57]

An example relating to the maximum distance between a household and a water source:

> **South Africa, Regulations relating to compulsory national standards and measures to conserve water 2001, article 3s:**
>
> The minimum standard for basic water supply services is – […]
>
> (ii) within 200 metres of a household; […]

Standards for the accessibility of sanitation facilities in the workplace can also be defined:

> **USA, Accessibility Guidelines for Buildings and Facilities 1996:**
>
> 4.17 Toilet Stalls
>
> 4.17.1 Location. Accessible toilet stalls shall be on an accessible route and shall meet the requirements of 4.17. […]
>
> 4.17.6 Grab Bars. Grab bars complying with the length and positioning shown in Fig. 30 (a), (b), (c) and (d) shall be provided. […].

The barriers facing persons with disabilities must be considered.

> **India, Policy Circular No. 46, Pay and Use Toilets, Ministry of Railways:**
>
> 3.II. Basic Aminities to be Provided: […]
>
> Separate toilets for ladies and gents, duly making one of the toilets disabled-friendly. […]

Many countries include these kinds of standards in policies, rather than in regulations.

> **Sri Lanka, Rural Water Supply and Sanitation Policy 2001:**
>
> Section 3.2.2
>
> […] - The maximum haul of water to the dwelling of any user should not exceed 200m. In steep terrain this should be reduced with consideration to the effort for hauling water.

It is preferable to place provisions like these in regulations, as they are then directly linked to laws and can more easily be enforced and updated, whereas a policy is more perennial.

Policies

While regulations set standards for the design of water and sanitation facilities, the role of policies in making water and sanitation accessible for all is to schedule the implementation of these standards. Many public toilets are, for example, not within easy reach of households and do not comply with minimum accessibility standards for persons with disabilities. Policies should be made on the basis of an assessment of existing service levels; they should plan targeted improvements.

Rwanda, National Policy and Strategy for Water Supply and Sanitation Services 2010:

6.3 Targets and Indicators: Rural water supply coverage

1. Raise rural water supply coverage to 85% by 2012 and to 100% by 2020 by assisting the Districts to plan, design, finance and implement infrastructure projects.

In the above example, people living within 500m of an improved water source are defined as having access to rural water supply. Based on the 2008 baseline of 71% coverage, the policy establishes yearly benchmarks and aims for 90% coverage by 2014/15.

Places that require particular consideration

Even where the general legal framework regulates the accessibility of water and sanitation services in a satisfactory manner, there are places that require specific regulations to ensure accessibility for a specific group of users. Countries should make sure that they identify these places and regulate accordingly.

SCHOOLS AND KINDERGARTENS MUST HAVE WATER, SANITATION AND HYGIENE FACILITIES

- Schools and kindergartens must have water, sanitation and hygiene facilities. A technical design manual for school sanitation, issued by the Kenyan Ministry of Education, adds further detail to what is laid out in the National School Health Policy of 2009:

  The pit latrines should be located at an easily accessible distance from the classrooms and not in the farthest corner of the school compound.[…] They should also be visible from the main school to ensure the safety of the pupils.[58]

- Care homes [and] assisted living spaces should ensure that toilets are accessible for all residents:

  USA, State of Georgia, Rules and Regulations for Assisted Living Communities:

  Bathing and Toileting Facilities: The assisted living community must provide bathing and toileting facilities that meet the accessibility needs of the residents and the following requirements […][59]

- In detention centres, detainees must always be able to access water and sanitation facilities:

  Panama, Executive Decree 393 of 2005, article 12 regulating the Panamanian penitentiary system:

  1. Prisons, based on their classification, must have the following facilities: […] toilets and bathrooms with adequate privacy […]
  4. Sanitation facilities shall comply with the requirements that allow the inmate to meet the needs of nature whenever necessary and in a clean and decent manner. […]
  7. Units in which inmates with physical disabilities reside will be adapted to the conditions of these users. […]

Challenges

1. Access in rural areas

There are significant impediments to delivering safe and affordable water and sanitation in rural locations, particularly where there are large distances between households or where water is scarce. While community-level user groups can manage some aspects of water-point management, States must put systems in place, through policies and regulations, to ensure that water and sanitation services are sustainable. (see Services, p.28)

States must incorporate provisions into their constitutions, laws, regulations and/or policies to ensure that water and sanitation services are accessible to all.



5.3. Quality and safety

Laws

Laws should guarantee that all water destined for human consumption is safe for this purpose.

Costa Rica General Health Law No. 5395 1973/1996, article 267:

Every water supply system destined for use and consumption by the population **must deliver drinking water,** in a continuous manner, in sufficient quantity to satisfy the needs of the population and with the pressure necessary to allow for the appropriate functioning of the sanitation devices being used.

Tajikistan, Law on State Sanitary Supervision No. 987, 1994, article 15:

Economic drinking water supply of the population

1. The inhabitants of cities and other settlements shall be provided with safe drinking water in sufficient quantities for the satisfaction of physiological and economic needs of humans. […]

WATER MUST BE PROTECTED FROM CONTAMINATION

Water as a resource must also be protected from contamination; for example, by prohibiting the dumping of sewage or waste, and by enforcing the containment of any seepage from fertilizers, industrial effluents and other pollutants into the groundwater. Protection of water resources from contamination should be based on the precautionary principle.[60]

Cote D'Ivoire Water Code, Law No. 98-755 1998:

48. Spills, the dumping of waste of any kind, or of radioactive waste, or of anything that may cause or increase the pollution of water resources is prohibited.
49. Any discharge of wastewater into the environment must respect the standards in force.

Lao PDR, Water and Water Resources Law No. 02-96/NA 1996, article. 30:

The Government will determine Water and Water Resource Protected Zones to ensure adequate supplies of water of sufficient quality to serve the drinking and domestic needs of people in both urban and rural areas. Protected zones shall be delineated with boundary fencing. No development, including building, agriculture, industry, extraction of rock, sand or wastewater and the dumping of garbage, chemicals, mine-tailings or any harmful material will be allowed within the Protected Zone. […]

EU Drinking Water Directive, 98/83/EC of 3 November 1998, article 4:

1. Without prejudice to their obligations under other Community provisions, Member States shall take the measures necessary to ensure that water intended for human consumption is wholesome and clean. For the purposes of the minimum

requirements of this Directive, water intended for human consumption shall be wholesome and clean if it:

(a) is free from any micro-organisms and parasites and from any substances which, in numbers or concentrations, constitute a potential danger to human health, and

(b) meets the minimum requirements set out in Annex I, Parts A and B; and if, in accordance with the relevant provisions of articles 5 to 8 and 10 and in accordance with the Treaty, Member States take all other measures necessary to ensure that water intended for human consumption complies with the requirements of this Directive.

Laws against water pollution and for the regulation of household-level waste collection and disposal are a good way to ensure the proper disposal and treatment of wastewater in non-networked supply areas. Where there is a service provider that runs a networked supply system or is otherwise responsible for a certain area, States should define services as a right.

Peru, General Law 26338 1994, on Water and Sanitation Services, article 11:

Every person, natural or legal, residing within the area for which a service provider is responsible, has the right to be provided with the services offered by that entity, within the levels and technical conditions set for those services, in conformity with this law and corresponding regulations.

THE REGULATION OF WATER QUALITY AND WASTEWATER TREATMENT PROVIDED IS ESSENTIAL

Regulations

The setting of national standards relevant to the national context, regulating water quality and wastewater treatment provided by both public and private bodies, is essential. Standards must consider a range of common contaminants, as well as those that may only be prevalent in certain areas. An independent regulatory body, and the capacity of this body and the State to carry out regular monitoring of compliance with water quality and wastewater treatment standards, are important to ensure consistent performance from service providers.

A regulation to ensure the quality of water for sale, for example, at water kiosks:

Kenya, Model Water Services Regulations 2002, Section 72:

Quality and Handling of water

(1) All portable water shall be from an approved point source which meets the quality standards set under these regulations and regulations issued by the Water Resources Management Authority, and shall not contain any constituent in quantities that may be injurious to health.

(2) Unless authorised by the water service provider, no water packaging for sale will be allowed from its connections. If such abstraction is allowed, the point of abstraction must be indicated in the package by the vendor otherwise it shall be an offence punishable according to the sanctions prescribed in these regulations.

In cases where water quality is compromised, the competent authorities should be obliged to inform the public about precautionary measures. In emergencies, the public must be informed immediately, and adequate procedures must exist for doing this. For example, the German regulation on drinking water demands the following in situations where benchmarks and standards for drinking water are not guaranteed:

> […] the affected consumers must be adequately informed and advised about feasible additional measures that they can take themselves, or necessary restrictions on their use of drinking water.[61]

An example of a regulation for the placement of on-site sanitation facilities to avoid contamination of groundwater:

Ethiopia, Construction Usage and Maintenance of Sanitary Latrine Extension Package:

5.8 Building latrine using local resource – 5.8.1. Site selection for latrine

- Must be sited at least 30 meters from any water source meant for human consumption and at lower gradient from water source.
- In order to avoid health risk and create convenience, the site should be at least 6 meters from living house and on the leeward side.
- The depth of the latrine should be reckoned in such a way [as] not to contaminate ground water.
- The latrine should be built in a site where air circulation is not obstructed.
- If not possible to bail out when full, site should be prepared to build new one.
- Latrine facility meant for public and institutions should be located in easily visible place.
- Ensure that there is a path or road to bail out when full.
- Latrine location should not be waterlogged and exposed to flooding.[62]

MENSTRUAL HYGIENE MANAGEMENT MUST ALSO BE FACILITATED THROUGH DISPOSAL FACILITIES

Regulations should set standards to ensure that sanitation facilities are constructed in such a way as to prevent human, animal and insect contact with human excreta and facilitate good hygiene practice by including soap and water for hand washing. States should set regulations for workplaces, public spaces, hospitals, schools and kindergartens, as well as for rented housing, to ensure a safe construction, regular cleaning, and regular emptying of pits or other places that collect human excreta.[63] Menstrual hygiene management must also be facilitated through disposal facilities and culturally adequate options for cleansing.

Australia, New South Wales, Work Cover NSW Health and Safety Code of Practice 2001:

Section 5.1.2. Design

[…] Adequate and hygienic means for the disposal of sanitary items should be provided for female employees. Toilets should be kept clean and hygienic at all times […]

Policies

Policies must plan for the expansion of adequate services to people who are not yet served, and for the continual improvement of services over time, setting targets and benchmarks. Policies should outline methods and plans for raising public awareness and changing people's behaviour, especially with respect to hygiene. States may refer to international monitoring standards on sanitation and water quality for guidance.[64]

Common challenges

1. Ensuring safety of use

Regulations can provide for extra safety requirements.

POLICIES SHOULD OUTLINE METHODS AND PLANS FOR RAISING PUBLIC AWARENESS AND CHANGING PEOPLE'S BEHAVIOUR

Kenya, Model Water Services Regulations 2002, Section 100:

A ventilated improved pit latrine must have […]

d) Protection preventing children from falling into the pit […]

2. Access to information

Access to information on water quality is essential to ensure that there is public trust in the quality of drinking water. However, this information is often available only in technical language without further explanation. In some countries this information is not available to the public, as the State considers that the general public would not understand the technical analyses and might misuse and/or misinterpret the information.[65]

States must incorporate provisions into constitutions, laws, regulations and/or policies to ensure that water and sanitation services are safe to use.



5.4. Affordability

Laws

It is crucial that there be a general safeguard in law for the affordability of water and sanitation services for all users, including the people least able to pay. This necessity provides a point of departure for the drafting and revision of subordinate tiers of the legal framework, and a reference point for the judiciary in individual cases where affordability is at issue. While the aim of recouping investment costs and providing services effectively is important in order to ensure that services are financially sustainable, the aim of ensuring this sustainability at the macro level must never lead to situations in which individuals are unable to afford services. Affordability provisions in water and sanitation laws are common.

THE AIM OF ENSURING SUSTAINABILITY AT THE MACRO LEVEL MUST NEVER LEAD TO SITUATIONS IN WHICH INDIVIDUALS ARE UNABLE TO AFFORD SERVICES

Namibia, Water Resources Management Act No.24 2004, article 26.1:

The Minister must ensure that all Namibians are provided with an affordable and a reliable water supply that is adequate for basic human needs

Nicaragua, General law on drinking water and sanitation services, article 40:

The State will establish a rational system of subsidising the consumption of water and sanitation services for poor people who do not consume more than the basic amount. Funding for this subsidy will be established in the annual budget law.[66]

Chile, Law 18778 establishing subsidies for the payment of drinking water consumption and sanitation services 1989/1994, article 10:

For investments in rural water systems, a subsidy may be granted to cover the difference between the costs and the amount fundable by users according to their ability to pay. […][67]

Regulations

Regulations must spell out the mechanisms that will ensure affordability of services for all. In establishing definitions of affordability, States may refer to international guidance. These vary significantly, and no one standard is appropriate for everyone, even within a single country.[68] There may be segments of the population for whom any payment is unaffordable and to whom the affordability standard cannot apply. Subsidised or free services should be considered for households with very low or no income.

Affordability must be considered with respect to two kinds of expense: first, the cost of connection and/or construction, which is relatively high but not paid regularly. For expenses of this sort, subsidies, payment waivers and other mechanisms, such as in-kind contributions, can be established to ensure affordability. The second expense is the cost of the regular charges, such as tariffs, or operation and maintenance charges. These must be affordable; this can be ensured through an independent regulatory body that operates on the basis of human rights.[69] The cost of constructing water and sanitation infrastructure can be prohibitive for communities. The Rwandan National Policy includes the possibility of in-kind contributions by communities both in rural and in densely populated urban areas, especially for low-cost technologies.

Rwanda, Policy and Strategy for Water Supply and Sanitation Services 2010, Section 4.6.3:

In densely populated areas: 4.6.3 Implement cost recovery for collective sewerage systems Communities shall be involved in project planning, construction and maintenance of simplified sewerage systems with the option to contribute in kind to reduce costs (lower tariffs).

REGULATIONS MUST SPELL OUT THE MECHANISMS THAT WILL ENSURE AFFORDABILITY OF SERVICES FOR ALL

Some countries supply a free basic amount of water and free sanitation services for low income groups – sometimes even for everybody. This type of subsidy can be an administratively efficient way of ensuring a lifeline service for all, but it can raise questions of appropriate use of maximum available resources. (see Financing, p.29; Services, p.20; Monitoring, p.19)

South Africa, Durban, 4.6.6: Service Subsidy – Sanitation:

[…] b) Informal communities are served by communal toilet blocks which are both provided and serviced at no cost to the community. […][70]

Belgium, Decree of the Flemish Council, 20 December 1996, amending the 1933 Law on the Protection of Drinking Water § 3: Special provisions for Flanders region:

The municipalities, […], and all other enterprises responsible for public water supply, are obliged […] to provide all households connected to the public water grid, per annum, with 15 m^3 of tap water per person residing at the address of the connection to the public water grid, free of charge.[71]

Policies

In order to ensure affordability progressively for all users, States should use policies to assess affordability at the household level when making plans to improve service provision. The people who would be least able to pay without compromising their ability to pay for other vital services must be identified, and affordable services made available to them.

Lesotho, Interim Strategy for the water and sanitation sector in Lesotho, 2010-2012:

Access to water supply […]

Section 4.2.4.1: Affordability for households to connect is one of the bottlenecks for increasing […] access. The Interim Strategy will therefore focus on developing strategies for assuring a minimum of 30 l/capita/day to the poorer households, as enshrined in the Water Policy. WASA [Water and Sanitation Authority] is already testing different methods for making connections more affordable and this will be intensified. The strategy will focus on increased access to public standpipes using the pre-paid technology and [on] ways of making domestic connections affordable (subsidies, staged payments etc.). […]

Section 4.2.1, Objective 2, l): As a way of promoting equity, the Government shall endeavour to ensure that the maximum expenditure on water shall not exceed 5% of disposable income, and that the water service providers apply a uniform tariff in all areas as opposed to regional tariffs; […]

Common challenges

1. Disconnections

Legal frameworks must put adequate procedural safeguards in place in cases of disconnection for non-payment, so that the reason for non-payment is established prior to any disconnection, and users must then be given the chance to pay arrears. Where households are unable to pay, disconnections may not be permitted. Institutions where users are particularly reliant on water and sanitation services should never be disconnected. This includes health-care centres, schools and kindergartens, prisons, and homes for the elderly. (see Services, pp.40-42; Justice, p.8)

South Africa, Section 4, Water Services Act, No. 108, 1997:

[…] 3. Procedures for the limitation or discontinuation of water services must – […]

c) not result in a person being denied access to basic water services for nonpayment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services, […]

States must incorporate provisions into their constitutions, laws, regulations and/or policies to ensure that water and sanitation services are affordable to all.

5.5. Acceptability

Laws

Participation is crucial to ensure that the technology and design of water and sanitation facilities will be acceptable to users, for example, in terms of allowing good hygiene practice. Including the concept of acceptability in laws is necessary but insufficient, as the only way to ensure genuine acceptability is with the full participation by users of the service in decisions about technology and design.

Regulations

The regulatory framework must give the notion of acceptability a practical meaning in the context of each country. It is difficult to generalise about which specifications should be made – squat toilets are preferred in some cultures, seated toilets in others; the use of water or toilet paper for cleaning after defection depends on culture, and the preferred materials for menstrual hygiene management vary. However, a range of standard technologies can be provided as a guide for building requirements.

THE ONLY WAY TO ENSURE GENUINE ACCEPTABILITY IS WITH THE FULL PARTICIPATION BY USERS OF THE SERVICE

South Africa, Durban, Temporary Supply of Water and Sanitation to Informal Settlements:

1.4.3. Sanitation

Sanitation is provided by means of either

i) An ablution block connected to Municipal waterborne reticulation (an ablution block consists of toilets, showers, and clothes washing facilities)

Or

ii) A toilet block where no connection to waterborne reticulation is available (a toilet block consists of toilets and urinals only with no water supply provided to the toilet block). Each toilet is provided with its own VIP [Ventilated Improved Pit] […] which will be emptied as and when required.[72]

Policies

In order to ensure that all water and sanitation facilities will progressively meet acceptability standards, States should assess whether and how far existing facilities conform to general acceptability standards, paying special attention to shared facilities. Policies should then be devised, setting clear targets and responsibilities for meeting these standards. States that want to ensure acceptability should solicit the participation of service users before making decisions about the kinds of service they establish. Last but not least, policies play an important role in working towards the elimination of practices that are unacceptable from the perspective of human rights. An example of the right to participate in decision-making:

Namibia, Water Supply and Sanitation Policy 2008:

2.2 Overall sectoral policy statement

3. Communities should have the right, with due regard for environmental needs and the resources and information available, to determine which water and sanitation solutions and service levels are acceptable to them within the boundaries of the national guidelines. […]

POLICIES PLAY AN IMPORTANT ROLE IN WORKING TOWARDS THE ELIMINATION OF PRACTICES THAT ARE UNACCEPTABLE FROM THE PERSPECTIVE OF HUMAN RIGHTS.

Common challenges

A number of social practices exist that are unacceptable from a human rights perspective, particularly with respect to sanitation and associated hygiene.

1. Restrictions faced by women and girls during menstruation

The Supreme Court of Nepal has outlawed the practice of chhaupadi (compelling menstruating women to live in secluded and unsafe huts outside the home) and directed the Government to formulate laws against it, but further action must be taken to change behaviour and practice.[73]

States must incorporate provisions into their constitutions, laws, regulations and/or policies to ensure that water and sanitation services are culturally acceptable to all users.

06.
Checklist

State Actors

Constitution

	Yes	In progress	No
Does the Constitution guarantee water and sanitation as clearly defined human rights that can be claimed by all?			
Does the Constitution guarantee that equality and non-discrimination have the status of overarching legal principles? Does the Constitution also include the concept of affirmative action?			
Is the right to a remedy and/or access to justice enshrined in the Constitution?			
Are independent oversight bodies established by the Constitution? Are these bodies competent to hear individual complaints?			

Laws and/or regulations

Please note: The elements in the checklist may figure in laws and/or in regulations, depending on the constitutional or legal framework

Do laws and/or regulations define the human rights to water and sanitation, using the legal content of availability, accessibility, quality, affordability and acceptability, as guaranteed under international human rights law, as a basis to give substance to these rights?			
Are standards regularly reviewed, and do standards progressively improve over time?			
Does standard-setting take account of the barriers facing particular individuals?			
Do standards take into account which type of service would be most efficient in the context of the local situation?			
Are there building requirements and regulations in place that cover general standards for water and sanitation facilities; for example, toilets in rented accommodation, the provision of single-sex toilets in public places?			
Is there an independent regulatory body in place that operates on the basis of human rights and is tasked to set standards based on the legal content of the human rights to water and sanitation?			
Has the State undertaken any measures to regulate water supply by informal vendors?			
Do the State and/or providers give access to formal water and sanitation services to households regardless of their tenure status?			

Non-discrimination and equality

Are there laws and/or regulations in place that prohibit direct and indirect discrimination and promote equality in access to human rights?			

Information	Yes	In progress	No
Are there laws and/or regulations in place to ensure that everyone, including people who live far from centres of information and people who cannot read, is able to access information relating to water and sanitation services, in relevant languages and formats?			
Participation			
Are there laws and/or regulations in place that guarantee that full, free and meaningful participation takes place before any decision is finalised, including participation in the process of developing any laws, regulations or policy level documents?			
Do laws and/or regulations set out precise rules on participation in matters of infrastructure, service levels, tariffs, and the operation and maintenance of water and sanitation services?			
Accountability			
Are there effective complaint mechanisms at the level of the service provider?			
Are there quasi-judicial bodies available that can resolve conflicts?			
Can individuals enforce their rights against both the State and private actors?			
Are remedies provided by law; for example, restitution, compensation, legally binding assurances of non-repetition, and corrective action?			
Do laws and/or regulations provide for mechanisms that ensure individual complaints are effectively heard, and processed in a timely way?			
Availability			
Where people do not have access to a networked water supply system, do laws and/or regulations provide for the right of everyone to use natural resources for domestic and personal uses?			
Do laws and/or regulations prioritise water for personal and domestic uses over other uses?			
Does the legal definition of sanitation include not only the instalment of the toilet, but also the collection, transport, treatment, disposal or reuse of human excreta, and associated hygiene? Do regulations include guidance on safe construction, regular cleaning, and emptying of pits or other places that collect human excreta?			
Do laws and/or regulations clearly spell out what "availability of water and sanitation" means in different settings where people spend significant amounts of time, including homes, workplaces, schools and kindergartens, hospitals and health care centres, places of detention and public places?			
Do laws and/or regulations specify that facilities allowing for hand-washing, and for women and girls to practice good menstrual hygiene, must be available in schools and other public institutions?			
Do standards include a minimum amount of water to be available, and a maximum permitted interruption of services?			

Accessibility	Yes	In progress	No
Do laws and/or regulations take into account the maximum distance and time it takes to reach a facility, as well as the location of the facility, in order to ensure the physical security of users; do these standards consider the barriers faced by particular individuals and groups?			
Are the State and/or service providers obliged to give access to formal water and sanitation services to households regardless of their tenure status?			
Quality and safety			
Are there laws and/or regulations in place that protect the quality of water resources; for example, by prohibiting the dumping of sewage and waste and demanding the containment of any seepage of fertilizers, industrial effluents and other pollutants?			
Do regulations set standards on water quality and wastewater treatment, and are they relevant for both public and private service providers?			
Are water quality standards set according to the national and local contexts, considering contaminants that occur only in specific regions?			
Are there regulations on householders' arrangements for waste collection and disposal?			
Affordability			
Do regulations provide for mechanisms that ensure the affordability of services for all, while considering connection costs, operation and maintenance; do regulations establish subsidies, payment waivers and other mechanisms to ensure affordability?			
Do regulations provide opportunities for users to pay their arrears, or to receive services for free, when they are unable to pay?			
Is there an independent regulatory body in place that operates on the basis of human rights and is tasked to determine the affordability of services, including the setting of tariffs?			
Policies			
Is there a comprehensive water and sanitation policy in force that integrates the human rights to water and sanitation and their legal content?			
Is the policy reviewed regularly to track discriminatory effects; if it is found to discriminate, is it repealed or amended?			
Are existing inequalities in accessing water and sanitation currently assessed? Are there plans and policies developed that use indicators and benchmarks to assess both the steps taken and the results achieved in the elimination of inequalities in water and sanitation service provision?			
Are there enough public facilities in place and planned to ensure that people without domestic access to water and sanitation can use these as intermediate solutions?			

Continued...

Policies continued...	Yes	In progress	No
Does the State provide for measures raising awareness of the possibility of obtaining information; for example, information about water and sanitation services, management and infrastructure?			
Are there programmes and policies in place that guarantee and encourage the participation of all stakeholders?			
Do policy-level documents plan for clear assessments of current accessibility standards?			
Are there any mechanisms or programmes to train local authorities in how to manage budgets, tariffs and the operation and maintenance of facilities?			
Is there a policy that outlines processes for ensuring water safety?			
Are the people who are least able to pay identified, and are there specific targeted programmes to ensure that water and sanitation services are made affordable for them?			
Are there policy-level documents that outline methods and plans for raising awareness and changing behaviour, especially with regard to hygiene practices?			
Do policy level-documents set clear targets and timelines for reaching a basic level of service for all?			
Do policy-level documents set clear targets and responsibilities for meeting general acceptability standards?			
Are there policies in place that effectively organise awareness raising and education programmes to eliminate unacceptable practices; for example, manual scavenging, and the exclusion of women from daily life during menstruation?			
Are there policies in place that plan to improve services continually over time?			



07. Image credits and references

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Page 38 Suvodra Modal, 96, and Aloka Halder, 60, with their solar distillation panel, Boiragirchak village, Koyra, Bangladesh, 2011. WaterAid/ GMB Akash/Panos.

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Page 47 Yashoda Shrestha washing a vegetable in Jogidanda village, Bahuntilpung VDC, Sindhuli district, Nepal, December 2011. WaterAid/Tom Van Cakenberghe.

Page 58 Washing on line in Fortaleza Brazil, 2013. Catarina de Albuquerque.

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Financing

REALISING THE HUMAN RIGHTS TO WATER AND SANITATION:
A HANDBOOK BY THE UN SPECIAL RAPPORTEUR
CATARINA DE ALBUQUERQUE

Financing, budgeting and budget tracking for the realisation of the human rights to water and sanitation

HUMAN RIGHTS TO WATER & Sanitation
UN SPECIAL RAPPORTEUR

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Contents

01. **Obligations from international law relating to financing and budgeting** 5

1.1. Immediate obligations 6

1.2. Maximum available resources 6

1.3. Progressive realisation 8

1.4. Non-discrimination: 10

1.5. Access to information 10

1.6. Participation 12

02. **The budget, budget cycle and budget actors** 15

2.1. Formulation 16

2.1.1. Macroeconomic policies: 17

2.1.2. Financing for the human rights to water and sanitation 18

2.1.3. Allocations 27

2.2. Enactment 33

2.3. Executing the budget 34

2.4. Audit and Monitoring 36

2.4.1. The role of State and non-State institutions in monitoring budgets 37

03. **Checklist** 41

04. **Image credits and references** 45

State budgets are vital tools for translating human rights obligations into practical reality. This booklet outlines how States can meet these obligations by allocating the maximum available resources for the realisation of all human rights, and, in this context, the human rights to water and sanitation.

Specifically, this booklet outlines how the human rights to water and sanitation are integrated into the four stages of a State's budget cycle: formulation, enactment, execution and oversight.

01.
Obligations from international law relating to financing and budgeting

In ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR), States commit to developing not just laws, regulations and policies but also financing strategies and budgets that are in line with their human rights obligations.

There are immediate obligations relating to the human rights to water and sanitation, such as the adoption and implementation of national water and sanitation policies and plans, and the prioritisation of access to water and sanitation services for disadvantaged individuals and groups.

Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and similar provisions contained in other treaties, require States to progressively achieve the realisation of human rights, using the maximum available resources in a non-discriminatory manner.[1] These obligations have a direct bearing on the budgets of States that are party to these treaties and for which the Committee on Economic, Social and Cultural Rights (CESCR) has provided authoritative interpretations.[2]

Articles 19 and 25 of the International Covenant on Civil and Political Rights (ICCPR) complement the obligations under the ICESCR, reinforcing the State's obligation to ensure that people have access to information and are able to participate in decisions relating to the realisation of the human rights to water and sanitation, including the budgeting process.[3]

1.1. Immediate obligations

Immediate obligations relating to the human rights to water and sanitation include ensuring that budgets are allocated for aligning legislation, policies and programming with the human rights to water and sanitation. This includes ensuring that funds are allocated for issues such as capacity building, standard setting and monitoring. (see Introduction, pp. 25-27)

In developing their budgets, States must take cognisance of the immediate obligations imposed by the human rights to water and sanitation. These include ensuring that legislation, policies and planning are not discriminatory in their execution, and that budgets make sufficient allowance for capacity building and the monitoring of service levels and service provision.

1.2. Maximum available resources

In developing their budgets, States must consider what financial resources are required to realise all human rights obligations, make decisions on how to raise the necessary financial resources, and allocate these resources where required. As well as the human rights to water and sanitation, States must consider their obligations for realising, *inter alia*, the right to education, the right to health and the right to food.

In allocating the maximum available resources for all their human rights obligations, States may have to make difficult choices between different human rights. The Committee on Economic, Social and Cultural Rights has suggested that prioritisation in allocations can be assessed by comparing the share of the budget devoted to a particular human right to the proportion devoted to the same right in similarly-situated countries[4], or to regionally or internationally agreed-upon standards.

The priority given in the national budget to the realisation of the human rights to water and sanitation can be demonstrated by comparing the amount directed to water and sanitation with the allocation for other sectors, or by comparing the allocations committed to water and sanitation from year to year.

The 2006 UNDP Human Development Report[5] recommended that governments should aim to spend a minimum of 1% of their Gross Domestic Product on water and sanitation, while the 2008 eThekwini Declaration commits more than 30 African governments to aim to spend 0.5% of their Gross Domestic Product on sanitation alone.[6]

The Sanitation and Water for All (SWA) partnership also tracks financing committed to the water and sanitation sectors. Their *2013 Progress Update* cites significant increases in the budgets for water and sanitation in a number of countries.[7]

However, the 2014 GLAAS (Global Analysis and Assessment of Sanitation and Drinking-Water) Report also points out that allocations for water, and particularly for sanitation, continue to be inadequate in many countries, with 77% of countries indicating that available financing is insufficient to reach coverage targets for sanitation.[8]

Lack of resources does not reduce the State's obligation to take steps to realise the human rights to water and sanitation, and cannot be used to justify inaction. Those States with insufficient resources have an obligation to increase their existing resources through progressive taxation or external resources, such as donor financing, whether by loans or by grants.[9]

The World Bank argues that States should prioritise their spending on sectors such as sanitation, where the benefits will reach disadvantaged people and those living in poverty. Beyond the long-recognised high rate of return for investments in sanitation[10], there is evidence that children gain health benefits from village-wide improvements in sanitation even where they don't themselves have access to a household latrine (although this is less than the health benefit to those children who have access to a household latrine).[11] Recognising sanitation as a public good, which the State must prioritise in its national budget and programming, can improve health and work towards the elimination of inequalities in access to sanitation.

States must allocate maximum available resources to progressively realise all their human rights obligations, including the human rights to water and sanitation.

There is no fixed percentage of the budget that must be allocated to water and sanitation, but in their decisions on budget allocations, States must consider the national and international commitments that they have undertaken to realise these human rights.

1.3. Progressive realisation

Budget allocations must take into account the full costs of progressively realising human rights. Inadequate allocations for regular maintenance lead to the degradation of existing water and sanitation services, resulting in retrogression in people's enjoyment of their human rights to water and sanitation. The GLAAS 2012 Report suggests that 75% of investment in water and sanitation should go to operation and maintenance, but this is not currently achieved.[12]

Nepal's 2009/10 budget promised to fulfil a policy of "One Toilet in One House". However, WaterAid Nepal calculated that the government's budget would provide only 250 Nepali Rupees (2.54 US dollars) for each individual without access to sanitation up to 2017. This would not have been sufficient to meet the all the costs of sanitation promotion, hygiene education, and assistance to the very poor, even if the government were to rely on households to pay most of the construction costs for their own latrines. After this discrepancy between policy and budgets was brought to the government's attention, additional money was promised for sanitation.[13]

BUDGET ALLOCATIONS MUST TAKE THE FULL COSTS OF PROGRESSIVELY REALISING HUMAN RIGHTS INTO ACCOUNT

States must achieve a balance among water and sanitation budget allocations directed to: infrastructure construction; operation and maintenance; training and capacity building; and awareness-raising activities, in order to comply with the obligation of progressive realisation and to avoid retrogressions.

The benefits of financing water and sanitation, the costs of not financing water and sanitation

The benefits of investing in water and sanitation are particularly evident in improved health. Such investment averts illnesses such as diarrhoea, reducing child mortality, and increasing adults' productivity and children's attendance at school. There are further benefits that are not directly monetary, but which have a positive impact on economic and sustainable development, such as dignity gained, progress towards realising gender equality, the avoidance of environmental degradation, and, where efforts are made to prioritise access for disadvantaged individuals and groups, the elimination of inequalities.

Not financing water and sanitation means ill-health, high rates of mortality (particularly among children under the age of five), poor long-term health and education outcomes, limits on future employment opportunities, workdays lost to ill-health, and threats to the environment, including the future safety of water resources.

1.4. Non-discrimination:

The principle of non-discrimination requires States to ensure that budgeting and expenditure work towards the elimination of inequalities in access to water and sanitation.

Levels of access to sanitation and water systems often vary considerably within a country, for example, between formal and informal settlements, or rural and urban areas. Where a State devotes considerable resources to infrastructure development in areas that are already better-served while neglecting those where infrastructure is limited or non-existent, this constitutes discrimination.

To address this, Brazil's planning document for water and sanitation services, PlanSab, published in December 2013, shows a greater allocation of funding for the highly disadvantaged rural areas of the North and Northeast regions of Brazil in comparison to the richer South and Southeast regions[14] – with the aim of making up for long-standing marginalisation of the former regions.

States must prioritise budget allocations for services for disadvantaged people and for people living in areas that do not have access to services, so as to progressively eliminate inequalities.

1.5. Access to information

The State must ensure that the population has access to information about the budget, and is able to participate in its formulation, enactment, implementation and oversight or evaluation, and have access to remedies when the budget fails to help realise their rights.

Transparent budgeting is essential to the sustainability and long-term success of any improvements in the sector. Lack of transparency facilitates the siphoning off of resources, bribery, and other unsavoury behaviour.

Budget documents should be prepared and presented in such a way as to provide readers with understandable, useful information. Budgets are preferably presented as 'consolidated budgets', breaking down line items for water, sanitation, and hygiene[15], as well as specifying the regions, settlements, and population groups that are being prioritised, and the types of solutions and services financed by the State budget. The State budget should also clarify allocations and expenditures, including: new construction; the extension of services to new areas; rehabilitation, operation and maintenance; and capacity building. The State budget should also make allocations for ensuring participation and access to information.

The Open Budget Survey, produced by the International Budget Partnership (IBP) is an independent survey of budget transparency and accountability. The 2012 Survey shows that the national budgets of 77 of the 100 countries assessed fail to meet basic standards of budget transparency, and there are insufficient opportunities for citizens and civil society to engage in budget processes.[16]

In an analysis of the Mozambique 2012 budget, UNICEF said:

> […] analysing the [water and sanitation] sector […] is difficult. The National Water Directorate (DNA), for example, does not have its own organic classifier, unlike some directorates in other sectors […] DNA is accounted for within the Ministry of Public Works and Housing (MOPH). Thus it is necessary to separate manually the MOPH investments that go towards water and sanitation from those that cover public works and housing programmes. In addition, the running costs of the MOPH are excluded from the Water and Sanitation Sector (and are within the Public Works Sector). The same happens with the Provincial Directorates of Public works (DPOPH), whose costs are accounted for in the Public Works Sector and not in the Water and Sanitation Sector. This is a difficult exercise, particularly for civil society, and may lead to inadequate analyses.[17]

TRANSPARENT BUDGETING IS ESSENTIAL TO SUSTAINABILITY

Modern Architects for Rural India (MARI), a non-governmental organisation based in Andhra Pradesh, India, has been working with village communities to help them access local budgets in order to monitor allocation against spending. Using the Right to Information Act, they have succeeded in securing information about misspent funds, which has led to budgets being reinstated and services delivered.[18]

Following serious dissatisfaction with increasing service charges and claims of undue profits by the public-private utility, the civil society network Berliner Wassertisch (Berlin Water Round Table) pushed for and secured public access to documentation, including the contracts for the 1999 public-private partnership process of the city's utility, Berliner Wasserbetriebe.[19]

States must make national and local budget documents for water and sanitation service provision available to the public.

States should provide a consolidated budget that separates line items for water, sanitation, and hygiene, so that allocations and expenditure on these items can be tracked both within and between the relevant line ministries and regional and local budgets.

1.6. Participation

According to article 25 of the International Covenant on Civil and Political Rights, States must enable individuals, communities and civil society to participate in the budget process.[20] This helps governments to make informed decisions about local spending priorities for water and sanitation infrastructure, operation and maintenance.

Public participation in the area of finance and budgeting is currently the exception rather than the norm. In many countries, documents are not made publicly available, information relating to the time-frame to allow people to participate is not available and there is no effort made to make the public aware of the various institutions in charge of the process so that they may register their views with them.[21]

States should enable the public to meaningfully participate in decisions relating to the allocation of resources and to how financing is raised for the water and sanitation sectors.



Participatory budgeting

The most robust example of public participation in budgeting is Participatory Budgeting, a process that gives people the right to allocate public resources, not simply to express their views.[22] The Brazilian Constitution expressly requires participatory budgeting at the municipal level. This has been implemented in several municipalities, the best-known being the city of Porto Alegre, which has practiced participatory budgeting since 1989.[23] Delegates elected from all over the city form a city-wide Participatory Budgeting Council where the budget is formulated and approved. The city budget is informed by a forum in each neighbourhood, facilitated by locally elected regional delegates. The Council has the power to call city officials to account for the previous year's expenditure, and planned expenditure is only approved if the Council is satisfied with the city's accounts.

In order to guarantee transparency and to avoid corruption, participatory budgeting needs appropriate monitoring. Porto Alegre created a specific monitoring working group of the Council. In other contexts, residents or neighbourhood associations (Caxias do Sul, in Brazil), citizen organisations, specific commissions of such organisations (Montevideo) or the local government's executive (mainly in Europe) monitor implementation and execution.[24]

The positive outcomes for water and sanitation in Porto Alegre justify having invested in more than improved access to water and sanitation services. Participatory budgeting opened up the city's financing to scrutiny by residents, leading to increased transparency and virtually uprooting entrenched patronage-based spending.



02.
The budget, budget cycle and budget actors

A government's budget is not simply a document, but a multi-step, multi-actor process. Line ministries, departments, agencies and local or sub-national governments will also follow their own multi-step, multi-actor processes for budgeting for their areas of responsibility.

A budget, whether national, sector-specific, or local, is generally realised in four stages (the budget cycle): formulation, enactment, implementation and oversight/evaluation.

2.1. Formulation

The principal actors in the formulation of the national budget are the Ministry of Finance (or, in some countries, the Ministry of Planning or the Central Bank); line ministries (for example, the Ministries of Water, Health, Public Works) and local or sub-national governments. The roles different actors play in developing the national budget will vary according to the political structure of government in a country. Sub-national governments will have their own formulation stage, which is generally synchronised with the budget cycle of the national government. In some countries, there is provision made for civil society actors to engage in the formulation of national, local or sector budgets, and this should be standard practice everywhere. At the formulation stage of the national budget, the national Ministry of Finance (MoF):

1. Articulates the macroeconomic policies and assumptions regarding growth in the economy, inflation, etc., that underlie and shape the executive's budget;
2. Estimates the total expected revenue for the coming fiscal year and spells out the sources of that revenue;
3. Allocates available resources among different ministries, departments and agencies, influenced by information and requests provided by those different ministries, departments and agencies; and
4. Spells out the budget surplus or deficit that it anticipates, and, if a deficit, what the government will do about it (for example, rely on donors to make up the difference or borrow on the domestic or international markets).

National allocations for each of the line ministries will be decided through discussions between the Ministry of Finance and the relevant line ministry. Once the budget for water and sanitation sectors has been allocated, this budget is divided between water and sanitation, and between regions and localities. This distribution will be discussed between the line ministries, local governments, donors and civil society actors. National legislation, regulatory and policy frameworks will guide the formulation of the budget. (see Frameworks)

The fact that resources and responsibilities are often dispersed across institutions and projects presents a challenge to the accurate formulation of budgets. With multiple government ministries, departments, agencies and other actor focusing on the same sector, there can be overlap or duplication of services as well as gaps in provision. To avoid this, States should ensure coordination among all stakeholders, and adopt comprehensive sector-wide policies for water and sanitation.

When formulating the national budget, States must allocate the maximum available resources to the realisation of human rights, including the human rights to water and sanitation – paying particular attention to the rights and needs of the most vulnerable, poor and marginalised segments of the population.

2.1.1. Macroeconomic policies:

Macroeconomic policies reflect a government's beliefs about how to manage the economy. While human rights do not dictate macroeconomic policies, the human rights framework provides certain parameters regarding the prioritisation of public expenditure within the overall economy, including how taxes will be raised, the role of the private sector in the provision of public goods and services and other policy choices.

Most importantly, the State has the obligation to ensure that the macroeconomic policies underlying the national budget enhance the realisation of rights rather than creating obstacles, and this obligation must be passed to the relevant line ministries.

Measures that directly or indirectly lead to backward steps in the enjoyment of human rights are retrogressive and inhibit the progressive realisation of the human rights to water and sanitation. Failure to commit resources to operation and maintenance, for example, which then leads to infrastructure breakdown, may be retrogressive. While such retrogression cannot always be avoided, the human rights framework puts forward certain requirements for States even where retrogression is non-deliberate: States must act with care and deliberation, exercise due diligence to assess the impacts of their actions and omissions on the realisation of human rights, and adjust their policies and measures as soon as they become aware that current policies might lead to unsustainable results. In times of financial and economic crisis, austerity measures may lead to retrogression. Austerity measures as currently being enacted in many countries in Europe often have a disproportionate impact on people who are already disadvantaged in society. Such retrogressive measures are prohibited if they deliberately interfere with the progressive realisation of human rights.[25]

RETROGRESSIVE MEASURES ARE PROHIBITED

The State must ensure that the macroeconomic policies underlying the national budget enhance the realisation of human rights and do not create obstacles.

States should avoid imposing caps on public expenditure that will slow down the progressive realisation of the human rights to water and sanitation unless absolutely necessary. Where such caps are deemed necessary, they must not have a negative impact on the poorest and most disadvantaged individuals and groups.[26]

2.1.2. Financing for the human rights to water and sanitation

States must develop an overall financing strategy to achieve universal access to water and sanitation, incorporating the human rights principles of accountability, participation, access to information and non-discrimination into financing mechanisms. This will ensure that resources are raised fairly, and are spent on improving access for those who currently have inadequate access to water and sanitation. In line with the obligation of non-discrimination, revenue should be raised in a way that does not unduly penalise disadvantaged individuals and groups.

Three sources of potential funding for water and sanitation services are generally identified:

- Household and user contributions (for example, tariffs);
- Government-raised financing (for example, taxes paid by residents); and
- Transfers, which may take the form of grants or loans from international organisations or other States, or as investments from the private sector.

a. Household and user contributions.

Households contribute significantly to the realisation of the human rights to water and sanitation through self-financing household-level water and sanitation services.[27] These expenditures may include buying and installing hardware; maintaining the service, including pit-emptying; and paying for soap and hygiene materials. Households may also contribute significantly to water and sanitation services through payments to an informal or community system. There is little information available on these spending patterns[28], and as a result it can be difficult to know the impact on different populations of the costs of water and sanitation services, or whether these services meet affordability standards. As long as these household contributions remain affordable, further mobilisation of this source of funding may be a crucial aspect of financing water and sanitation services – and is an aspect of, for example, community-led total sanitation (CLTS) programmes. (see Services, p.25)

Connection charges and tariffs for households connected to formal services are better understood, and these, along with non-domestic connections, provide significant funds for water and sanitation service provision. Connection charges and tariffs must be set carefully to ensure affordability for all users. If the rates are set too high, they become unaffordable and users (including, for example, industry) will prefer to use alternative sources, leading to a potential drop in overall revenue. However, if the tariffs are set too low (and below the level set by the affordability standard) this may require an injection of funds from general revenue, which could perhaps better be spent on other priorities.

As the regulatory body is responsible for setting and monitoring affordability standards and targets, this body should also set tariffs. However, regulatory bodies

may face challenges from two directions. Because low service charges are frequently a vote-catcher, politicians may intrude on the decision-making process for tariffs, pushing the prices down to secure a better outcome in local elections. On the other hand, service providers may push for higher tariffs to secure better profits. In both cases, the regulatory body must have a legal mandate for independent tariff-setting.

The tariff structure for formal service provision must guarantee that people living in poverty have access to adequate services, regardless of ability to pay. This can be achieved either through differential tariffs, or by a subsidy or grant system, which is carefully targeted at those who have a low income.[29]

Connection charges can also be a barrier for households if they are set too high or fail to differentiate between low- and high-income households. Some regulatory bodies have therefore reduced or eliminated connection charges, incorporating the costs into the tariff structure.[30]

Pro-poor units within a utility can have a positive impact on ensuring that services are extended to informal settlements, and that the services (including connection charges) are affordable for the poor.[31] However, research also shows that subsidised services are often still more beneficial to the non-poor, and this must be monitored and addressed.[32]

In many countries and settlements, even piped water does not meet water quality standards. In these cases, in addition to paying for their water provision, individuals or households must pay prohibitive amounts (in time and in money) to ensure that it is safe to drink. This may include buying sachets or bottles of water (which are often not guaranteed to be safe to drink) or using other methods to purify water, such as water filters or boiling. While bills for the basic service may be affordable, water treatment or the purchase of drinking-quality water may push the total price paid over the affordability limit.

States must set an affordability standard for water, sanitation and hygiene that is fair and human rights compliant.

To ensure that this is complied with, States must gather information on how much money households spend on access to water, sanitation and hygiene services in a range of situations and by different income or social groups.

Increasing 'maximum available resources' for water and sanitation

Charges for service provision are key for increasing the maximum available resources for water and sanitation. This can be done in different ways, including through 'ring-fencing' funds raised from service charges, or through the obligation to reinvest profits in the sector or company.

Ring-fencing funds raised from service charges increases the financial sustainability of service provision. Further, the amount of money available for water and sanitation will rise as the number of connections grows, giving an incentive to service providers to extend services to new households.[33]

At the National Water and Sewerage Corporation in Kampala, Uganda, funds raised from connection charges are intended to be ring-fenced to pay for further connections as part of efforts to extend services into informal and poor settlements.[34] This can be an effective way of prioritising available resources for service provision for disadvantaged individuals and groups.

However, States must ensure that they meet all of their human rights obligations, including, for example, the right to education. Education, however, does not have a potential income stream as water and sanitation do. So while ring-fencing the funds raised from service charges for water and sanitation is a positive approach in situations where there are still people without access to these services, States may wish to retain the option of using these resources to fulfil other human rights obligations.

In some cases, particularly where service provision is delegated to non-State actors, some of the resources raised through service provision charges are taken out of the company and distributed among shareholders as 'profits'.[35] However, the State's obligation to use maximum available resources in a non-discriminatory fashion also applies where governments commercialise service delivery. SABESP, the 51% State-owned water and sanitation utility in São Paulo, Brazil, is listed on the New York Stock Exchange. 75% of the annual profits raised from service provision are reinvested in the company's core activities ('ring-fenced'), while 25% of the profits are shared among the shareholders. The 51% of this 25% owned by São Paulo, amounting to approximately USD 125 million in 2013, is spent on state expenditures unrelated to water and sanitation.

The rest, also approximately USD 125 million, is shared among the private shareholders. Meanwhile, many São Paulo households remain unconnected to water and sanitation services, and for many others the tariff is unaffordable.[36]

In Kenya the new draft Water Bill 2014, which recognises the human rights to water and sanitation, but has not yet been passed, proposes that all profits from service delivery be reinvested in the sector until all residents have adequate access to water and sanitation services.[37]

From a human rights perspective, it is appropriate for the State to limit the amount of profit that may be shared with shareholders, especially in regions where full access to the human rights to water and sanitation

has not yet been achieved, and to use these funds to improve the accessibility, affordability and sustainability of service provision. (see Services, p.46)

States must consider whether finances raised through service charges should be reinvested in the water and sanitation sectors or spent on other human rights obligations.

States must consider whether to limit the percentage of profits that may be extracted from the provision of public services, such as water and sanitation, in order to use the 'maximum available resources' to realise their human rights obligations.

Challenge: Affordability of informal service provision, and in informal settlements

People living in slums generally have to pay more than those living in formal settlements, to receive unregulated, poor quality services. During her country mission to Senegal, the Special Rapporteur found that the price paid for water from standpipes – used in places where there is no household water connection – might be four to five times higher than the price paid by those who have household connections and benefit from the social tariff. In cities such as Nairobi, Jakarta and Lima the cost of water is approximately five to ten times higher for households living in slums than for those living in formal settlements in the same city.[38] Equally, people using on-site sanitation, often living in informal settlements, pay more for their sanitation service, including for the emptying of pit latrines and septic tanks, than those who benefit from the sewerage system.[39]

Affordability must be carefully considered, as the costs of constructing, operating and maintaining water and sanitation services and related hygiene can be prohibitive, resulting in poor quality services that do not protect health and dignity.

SUFFICIENT FUNDS MUST BE RAISED TO COVER OPERATION AND MAINTENANCE WHILE ENSURING AFFORDABILITY

States must ensure that the affordability standard is met in informal settlements and for services provided by informal service providers.

Challenge: Affordability vs. Financial sustainability

The financial sustainability of a service is measured by comparing the revenue raised through tariffs to expenditure. While it is not expected that developing countries are able to recover all costs of service provision through tariffs, many countries aim for sufficient funds to be raised to cover operation and maintenance, so that the service can be seen as 'financially sustainable'. This is a useful principle, but has to be combined with the affordability standard. The full cost of sanitation services is often prohibitively expensive for households to pay – but the lack of adequate sanitation has 'hidden' costs through the negative impact on health and dignity.

The State must find alternative resources where tariffs and connection charges are insufficient to sustain services. The concept of financial sustainability may not be used to impose unaffordable tariffs or other charges.

Challenge: Tariff structures and subsidies: access to information and participation

Regulatory bodies and providers should engage residents of urban informal settlements in the design of tariffs, subsidies and the mode of payment of service charges. This has multiple positive impacts, but a particular benefit is that increasing people's understanding of the rules of tariffs limits opportunities for petty corruption, and increases transparency between service providers and users. Further, this approach enhances people's ability to pay, helps to identify the households that need assistance to pay for services, and provides an opportunity to air grievances with the service provision.

The residents of an informal settlement in Nairobi, Kenya negotiated a Social Connection Policy with Nairobi Water (a State-owned company), through its Urban Informal Settlements Programme, which enables households to spread out their payment of the connection fee over a period of 24 months.[40] Other opportunities for residents to engage include discussions on how, when and where payments can be made.

States must ensure that people are able to participate in the design of tariffs and modes of payment for water and sanitation services, and that households eligible for special tariffs, subsidies and grants are aware of these, and are given the right tools to apply for them, without barriers.

This can include:

- the creation of pro-poor units, which work to identify appropriate subsidy and / or tariff structures.
- dedicated information programmes to inform the relevant individuals and groups about subsidies and tariff structures.

b. State revenue

Generally, tariffs and other household expenditure can only be expected to cover part of the cost of ensuring access to water and sanitation services, particularly in countries with low rates of access, where significant investment is required.[41]

In keeping with its obligation to use the maximum available resources, the State should raise as much revenue as it reasonably can through taxation.[42] However, different approaches to revenue-raising affect different population groups differently; for example, value-added taxes (VAT), or consumption taxes, are acknowledged to hit the people on low incomes the hardest.[43] Progressive tax regimes that make use of income and wealth taxes are generally a more equitable solution from the perspective of non-discrimination.[44]

States must take human rights considerations, particularly those related to non-discrimination, into account when making decisions about how revenue in the sector is raised, in order to ensure that taxation does not disproportionately burden disadvantaged or poor households.

c. External assistance and transfers.

Where user contributions and government resources are insufficient, States must request external or international assistance to fill the gap.[45]

This may come from donor funding, from bilateral or non-governmental organisations, from loans from banks (national, regional or international) or private sector investments.

These resources are sometimes reflected in the government's budget, but even where they are not, they can have a significant effect on how a State decides to allocate resources to specific sectors, programmes and projects. The Government of Nepal is in the process of trying to ensure that all donor funding is reflected in the national budget and complies with the national and sub-national water and sanitation plans.[46]

Donors may not impose conditions that do not uphold human rights; for example, by providing finance only if States agree to manage water and sanitation services with 'full-cost recovery' without considering affordability.

DONORS MAY NOT IMPOSE CONDITIONS THAT DO NOT UPHOLD HUMAN RIGHTS

Donors, including bilateral and multilateral agencies and NGOs, should ensure that the loans and grants they commit to recipient States comply with human rights, and that funding for water and sanitation includes measures to eliminate inequalities in access, and does not impose conditions.

Donors, including bilateral and multilateral agencies and NGOs, may not offer grants or loans that do not uphold human rights; for example, by providing grants or loans on condition that States engage non-State service providers in service provision, without allowing for public consultation and meaningful participation.

States should incorporate financing from all bilateral and multilateral donors, private sector actors, and NGOs into their overall financial planning, to ensure that this external financing complies with the legislative, regulatory and policy frameworks that govern water and sanitation provision.

Access to information, participation and the raising of finances

Access to information is an important tool for raising public awareness of State financing strategies, and is key if civil society is to participate in making decisions about how to raise and spend money better.

Sometimes governments are pressed to impose private involvement in water and sanitation service provision, ostensibly to raise extra finances. States must ensure that these decisions are made in an open and transparent manner, with opportunities for public participation. For example, concerns have been expressed by UN Special Rapporteurs on the non-transparent manner in which major decisions on issues such as the rapid privatisation of State assets were made during the economic crisis in Portugal, with limited public information or opportunities to participate in decision-making.[47]

States should make information available to the public on the potential gap between requirements for water and sanitation services and available government funds, and provide opportunities for people to participate in decisions on how to address this gap.



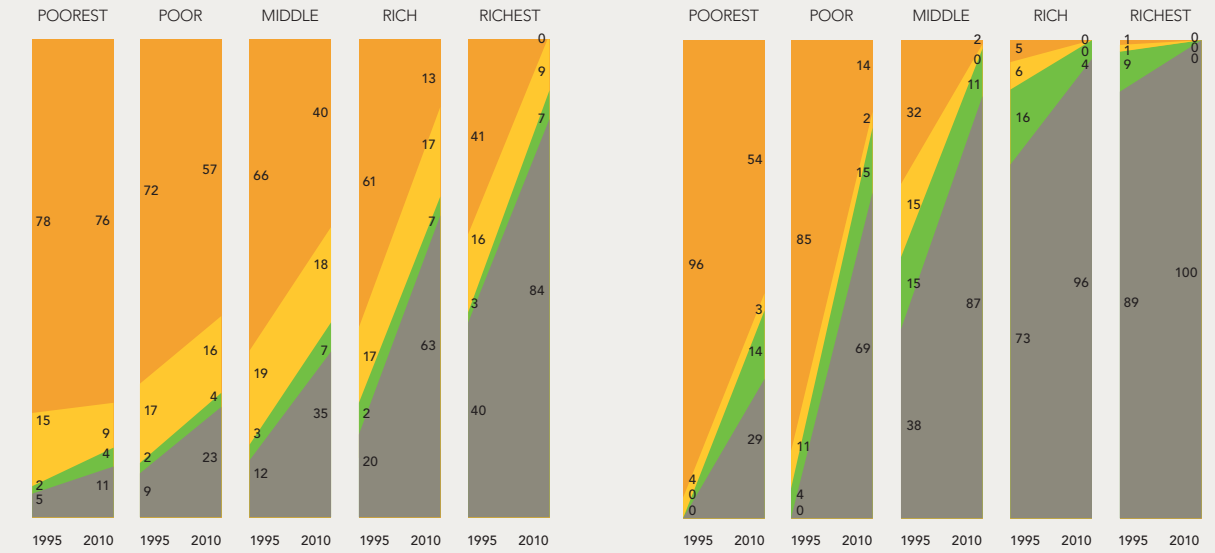
2.1.3. Allocations

The total amount that a national budget allocates to a specific line ministry will generally be agreed by the ministry of finance (or other national State body) and the relevant line ministry. It will be based on resources raised, for example, by tariffs, taxes and external transfers.

Meeting the immediate obligations related to water and sanitation means guaranteeing basic access to all, while prioritising the needs of the most vulnerable and marginalised. However, funding patterns tend to favour large systems in urban areas disproportionately over rural and deprived urban areas, and these systems tend to benefit the more politically or economically powerful households. While there is still a need to increase resources committed to the water and sanitation sectors generally, more can also be done to realise human rights using existing funds, through allocating budgets to target disadvantaged individuals and groups.

The process for determining allocations to different regions or areas should take into account existing disparities and inequalities, so that disadvantaged individuals and groups receive higher (and targeted) allocations even when they are living in regions that are otherwise adequately served. For example, informal settlements in urban areas often receive smaller per capita allocations than formal settlements, which tend already to have better services. States should address these

PROGRESS IN COVERAGE IN URBAN RURAL SANITATION IN TWO COUNTRIES, ACCORDING TO WEALTH QUINTILE



Adapted from source: Demographic and Health Surveys, Multiple Indicator Cluster Surveys and World Health Surveys 1995 – 2010

inequitable budget allocations. In Namibia, efforts have been made to prioritise the most marginalised rural regions with a higher budget allocation.[49]

Investments and planning must also take into account the long-term costs of water or sanitation provision, in order to avoid retrogression (changes for the worse). Too little attention is currently paid to the operation and maintenance costs of providing services, and this has led to loss of access for some communities that had previously received good quality services. For example, during her country mission to the United States, the Special Rapporteur called on the federal, state and local governments to establish adequate programmes to assure the maintenance of their ageing infrastructure.[50]

In their WASHCost research in Burkina Faso, Ghana, Mozambique and India, the International Water and Sanitation Centre (IRC) has developed a toolkit to help practitioners understand the costs of different interventions and technologies. This considers costs beyond construction, operation and maintenance, and includes awareness-raising and capacity building, particularly for interventions related to sanitation and hygiene, where behavioural change is often as important as the hardware.[51]

INVESTMENTS AND PLANNING MUST TAKE INTO ACCOUNT THE LONG-TERM COSTS OF WATER AND SANITATION PROVISION

Where States have decided to provide subsidies to disadvantaged individuals to ensure affordability or to make services available for free to those who cannot afford to pay anything, these must be carefully designed to reach the intended recipients. State subsidies tend to be appropriated by the non-poor, partly because the conditions that are imposed (such as proof of habitation, which people living in informal settlements will not have) are too stringent for those living in poverty to comply with, and partly because the non-poor are better informed and better able to take advantage of subsidies. Some countries, such as South Africa, Chile and Belgium, make subsidies automatically available to those registered as requiring extra support.

In allocating the budget, the ministry of finance and relevant line ministries must fully integrate the obligations of the human rights to water and sanitation.

Where specific groups of people have historically been neglected, the national line ministry must consider how to address this neglect, and provide the relevant sub-national governments with (earmarked) funding and other resources, such as subsidies, that target the provision of services for disadvantaged individuals and groups.[52]

Free or universally subsidised access to water and sanitation?

States have an obligation to progressively realise the human rights to water and sanitation, with a particular focus on the needs of disadvantaged individuals and groups. In some countries, recognition of water and sanitation as human rights has been interpreted by States (and others) to mean that access to these human rights should be free or universally subsidised. However, as the free or subsidised services generally apply only to formal provision, subsidies benefit the non-poor, as they are more likely to have access to formal services.[53]

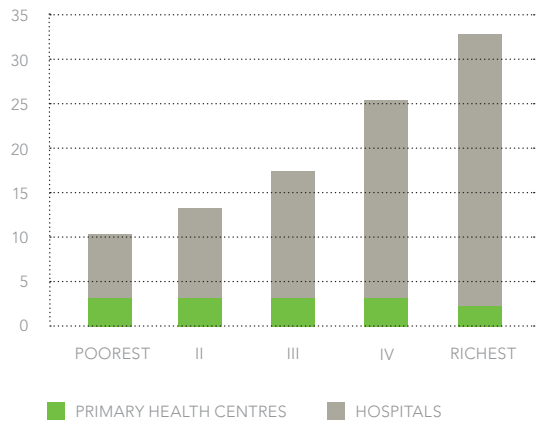
From a human rights point of view, providing water or sanitation services free of charge, or with universal subsidies, is likely to lead to a use of resources for services that are not available to the poorest or most disadvantaged individuals and groups. This is not only true of access to water and sanitation, but also of higher education and health, where States allocate significantly greater funding to services that are more likely to be used by the non-poor.

In the health budget, for example, available resources may be better spent on local health care centres that focus on preventative medicine, rather than on hi-tech hospitals that are only accessed by a privileged few.

Similarly, it is more in line with human rights principles to allocate the sanitation budget to maintenance or training to support improved use of latrines used by those living in rural areas, than on hi-tech waste-water treatment plants that benefit a few formal urban settlements.

States must allocate their often limited resources specifically to services that will benefit disadvantaged individuals and groups.

DISTRIBUTION OF HEALTH CARE SUBSIDIES: ALL INDIA, 1995–6



Source: http://blogs.worldbank.org/futuredevelopment/rights-and-welfare-economics

Information and participation in budget allocation

Budgeting processes should always be transparent and open to scrutiny from civil society. There may sometimes be a disconnect between the priorities of residents and those that service providers and/or governments are willing to invest in – these issues should be discussed and resolved through public hearings or processes such as citizen juries. This will help to ensure that allocations are appropriate, but also limits opportunities for corruption.

In Uganda, the non-governmental organisations CIDI and Water Aid Uganda provide training to help communities understand local government planning and budgeting cycles, making it possible for people to participate more knowledgably in budgeting and planning processes.[54]

Information on how the budget is allocated must be accessible and easy to understand, so that civil society can contribute to planning and monitoring of the budget.

Challenge: Donor-driven, large-scale infrastructure

UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS) provides information on donors' budgets, disaggregated according to water, sanitation and hygiene, as well as comparing allocations to large-scale systems with local systems.[55] This shows that donor funds for water are currently predominantly directed to construction of large-scale infrastructure.[56] This preference for new construction often leads to the degradation of existing systems. In addition, most donor funds for water and sanitation are allocated to water rather than to sanitation.

As a result, countries that rely heavily on donor support for the provision of water and sanitation services may find that awareness-raising, operation, maintenance, and investments in smaller, low-tech systems are given inadequate attention, in terms both of funding and of planning.

For example, the Special Rapporteur, report on her mission to Kiribat, discusses the high costs of desalination plants, which involve expensive technology and whose operation costs (mainly for energy) were very unlikely to be sustainable in the long run.[57]

Donors should review their funding allocations and consider directing their funds differently, so as to do more to realise the rights to water and sanitation through small-scale rather than large-scale infrastructure, and by allocating more funds to operation and maintenance, capacity building and awareness-raising.



Budget allocation for access to information and participatory processes

Ensuring that people have access to information and can participate in budgeting processes costs money, and the amount allocated affects what is delivered and whether or not it has any real impact.

Information leads to participation, which leads to better-tailored programmes that address the needs and expectations of the population that they aim to benefit. The provision of information and dialogue with communities also tends to reduce conflict and should diminish unwarranted criticism (while increasing justified criticism).

Programmes to ensure access to information should focus particularly on those individuals and groups that are hard to reach. Information on specific subsidies or grants that are available for low-income individuals, households or communities should be made available, using relevant media.[58]

For example, the Phnom Penh Water Supply Authority created a Customer Information Program through which a broadcast team was appointed at the local level, which aimed to raise awareness among its customers, especially the poor, on the financing process of the water supply.[59]

States must allocate resources for the creation of infrastructure and personnel to support:

- the provision of information;
- the training of civil servants involved in producing or sharing information; and
- promotional measures aimed at disseminating knowledge about freedom of information and access to opportunities to participate.

2.2. Enactment

In the enactment stage of the budget cycle, the executive submits the national budget to the legislature for review, amendment and approval. The executive should give the legislature adequate time before the start of the fiscal year to consider the budget proposal. Democratic decision-making requires that parliaments have the authority and effective power to amend the proposed budget in order to ensure that the human rights to water and sanitation are adequately taken into account. [60] As with the other stages of the budget process, budget documents being considered by the legislature should be made available to the public, and opportunities for meaningful public input should be provided.[61] Civil society organisations working either in water and sanitation or on budget advocacy may be able to provide information to legislators who are otherwise unfamiliar with these issues. [62]

The legislative arm of the State must be able to access sufficient expertise with respect to water and sanitation and the human rights to water and sanitation to enable it to review the water and sanitation-related components of the budget in a meaningful fashion.

2.3. Executing the budget

Once the legislature has approved the budget, the executive can disburse funds to ministries, departments, agencies and sub-national government bodies.

When funds are transferred from national to sub-national government, a number of issues that bear on the rights to water and sanitation may arise:

1. Delays in funds arriving to the sub-national government can result in under-spending or wasteful spending.
2. When funds are relayed from the national budget through intermediate levels of government (for example, state or municipal government) to the service provider, there can be problems of "leakage" at one or more levels, that is, of funds being improperly diverted *en route*. The Committee on Economic, Social and Cultural Rights has said that corruption amounts to a failure by a government to comply with its obligation to use the maximum of available resources to progressively realise economic, social and cultural rights.[63]

The World Bank and many other institutions and organisations have used the Public Expenditure Tracking Survey (PETS) methodology to identify leakage.[64] This methodology was used in Tanzania to track pro-poor expenditures, with a specific focus on four schools and five clinics. The survey revealed that there were substantial delays in the disbursement of funds at all levels of government. It also uncovered the fact that rural schools and clinics received a smaller share of the funds allocated to them than did their urban counterparts. Such information can be invaluable for identifying where changes need to occur in the budgeting and expenditure process.[65]

Decisions on budget allocations may most appropriately be made at the local level, where context, including data on existing service levels, levels of poverty or disadvantage within a population and access to reliable water resources, is best understood. However, provision of water and sanitation is often hampered by insufficient capacity at this level.[66]

Under-spending of funds allocated to the realisation of economic, social and cultural rights constitutes a failure to use the maximum available resources. Lack of capacity to spend funds allocated to disadvantaged areas or groups of people may result in under-spending, with funds either being returned to central government, or being captured by more powerful groups. For example, on her country mission to Slovenia, the Special Rapporteur regretted that in 2008, due to lack of political will, only half of the funds offered to municipalities by the Ministry of the Environment and Spatial Planning for regularising settlements where Roma people live were used, and urged the Slovenian government to monitor and report on all municipalities' activities that aim to improve the living conditions of Roma people.[67]

In Brazil, local authorities must show that they have sufficient capacity to use budget allocations well before funds are allocated and disbursed. A challenge here is that as disadvantaged areas will often lack human resources to manage the above processes, they will not qualify for budget allocations, further compounding existing disadvantages and inequalities. Such conditions must be coupled with support, and enhancement of capacity, as mentioned above.[68]

National government should disburse allocated funds fully, in a timely fashion, so that sub-national governments are able to implement their plans.

National government must enhance local capacity to ensure that the allocations for water and sanitation are not under-spent or spent wastefully, and should identify gaps in local capacity, ensuring that budget allocations reflect these needs.

Donors should make information about their disbursements publicly available and accessible, so that people are informed of allocations and expected expenditures. [69]

As with national governments, donors should release any funds they have promised promptly.



2.4.
Audit and Monitoring

Systematic oversight and evaluation of the government's budget is essential if States are to be able to:

- assess the impact of expenditure on the realisation of the human rights to water and sanitation;
- ensure that resources are used in an effective and efficient manner; and
- ensure that funds directed from the national to sub-national government arrive in full and on time to the service provider.[70]

At the national level, Brazil's Water and Sanitation Plan, Plansab, tracks budgeting and financing across regions and between types of expenditure.[71]

Reliable information about expenditure related to the water and sanitation sectors must be made available to the public as quickly as possible, and opportunities must be provided for civil society and oversight organisations to check this information.

States must monitor expenditure to make sure that allocations directed to realising the human rights to water and sanitation are spent as intended.

States must ensure that budgets can be tracked to reduce the risk of corruption

States should make information about the results of their oversight and monitoring publicly available, and they should assist civil society in their monitoring of government expenditures.



2.4.1. The role of State and non-State institutions in monitoring budgets

Monitoring of budgets can only be effective if the bodies responsible for monitoring are independent of State interference.

Supreme audit institutions (SAIs)

Supreme audit institutions are national bodies in charge of auditing government revenue and spending. Their main purpose is to monitor the management of public funds and the quality and credibility of the data that governments report regarding their finances.[72] The supreme audit institution can promote efficiency, accountability, effectiveness and transparency in public administration. In a resolution, the UN General Assembly stressed that supreme audit institutions "can accomplish their tasks objectively and effectively only if they are independent of the audited entity and are protected against outside influence".[73]

MONITORING OF BUDGETS CAN ONLY BE EFFECTIVE IF THE BODIES RESPONSIBLE FOR MONITORING ARE INDEPENDENT OF STATE INTERFERENCE

For example, in June 2013 the European Union's Court of Auditors issued a report criticising the way the EU had provided foreign aid to Egypt between 2007 and September 2012. The Court used as its criteria for success whether aid had been effective in improving the management of public finances, reducing corruption and promoting human rights and democracy. It criticised the EU for failing to use its leverage to encourage greater respect for human rights during that time. It pointed out that between January 2011 and Mohamed Morsi's election to the Presidency in June 2012, "no new major initiatives" to address essential human rights issues had been taken, while insufficient attention had been paid to the rights of women and minorities in the midst of a "tide of growing intolerance".

The supreme audit institution (SAI) must ensure that a government's budget has been formulated and implemented in a way that is in keeping with the laws of the country. It must monitor the government's budget and expenditure from a human rights perspective, taking into account the State's human rights obligations

Legislatures

Supreme audit institutions often face limitations with regard to the follow-up of their audit. Control over public funds is only effective if audit reports are followed up by parliament and acted on by the executive.[74]

States must take stock of how resources are being spent. Institutional fragmentation, lack of transparency and the absence of mechanisms for monitoring individual contributions can make it difficult measure accurately or track the funds flowing into, or leaking out of, the sector. States must ensure that funding is reported by all actors, including donors, private providers and non-governmental organisations, in order to obtain a complete picture of the resources allocated to water and sanitation and how the funds are allocated. Where funds are not allocated or spent properly, States must be held to account. (see Justice, pp. 22, 47-48, 53)

The legislature should review and take action on the government's annual financial reports, as well as the supreme audit institution's reports, to determine the extent to which the government's budget spending has contributed to realising the human rights to water and sanitation.

Regulatory bodies

Some countries do not have a formal and independent regulator to monitor operators' budgets, but the function is a crucial one. Individual mandates for regulatory bodies differ, but broadly these institutions set quality standards and tariffs, and they monitor operators' investments, activities and impact, comparing these to their own and the government's stated policies and to international and local standards. For example, the Portuguese regulator, ERSAR, which has a relatively broad mandate with considerable powers, reviews operators' investment plans against government policy, sets tariffs, and monitors the impact of the investment.[75]

One of the difficulties identified in terms of improving services for disadvantaged households is the lack of information relating to specific households that might require additional assistance. While the State may have this information, it is sometimes not possible to share this with the regulator or operators due to concerns about data protection.

States should ensure that there is an independent institution that can regulate operators' budgets, investments and expenditure.

States should ensure that relevant information on the needs of people who can't afford to pay for water and sanitation is available to the regulators, so that they can ensure that appropriate subsidy and tariff structures are in place.

Civil Society

Civil society has an important role to play in monitoring budget expenditure, in order to hold States to account for the budgets that they have set, as well as to limit opportunities for corruption. There are a number of approaches for civil society monitoring, including:

- social audits, which involve communities in assessing the accuracy of government financial records;
- procurement monitoring, by which civil society reviews procurement processes and the contracts awarded following such processes, in order to identify any shortcomings in the process;
- citizens' report cards, which 'grade' people's satisfaction with government services and correlate the results with spending; and
- public expenditure tracking surveys.[76]

In Tanzania a civil society network working on water and sanitation, TAWASANET, investigated how water and sanitation allocations had actually translated into facilities and access across urban and rural areas, districts, wards and even social groups. In looking at outcomes for different social groups, the study went beyond simply investigating how allocations had translated into physical outputs. It also visited local communities to establish which groups were being excluded from water and sanitation investments. One finding was that small towns were being neglected in budget allocations. It recommended that local governments should help service providers to improve the targeting of their water supply investments to vulnerable households within communities.[77]

The Federation of Water and Sanitation Users in Nepal (FEDWASUN) is a network rooted in households and user's groups in rural Nepal. FEDWASUN provided the user networks with basic information about government expenditure decisions, so that they could track how money was being spent and whether it translated into water and sanitation programmes. Through their monitoring the groups learned that three remote areas had received no budget allocation for water and sanitation that year, and that there was no allocation for school latrines, and thus no sanitation facilities for more than a quarter of schools. At public hearings, users spoke about their findings and FEDWASUN lobbied the government on their behalf. The local government then allocated funds to the three areas, and the district education office committed to providing latrines for all schools.[78]

Civil society must be provided with the opportunity, through access to information and participatory processes, to engage with State monitoring processes.

Civil society monitoring approaches should also be recognised in State monitoring processes.



03.
Checklist

State Actors

National and sub-national Governments

	Yes	In progress	No
Is the national government allocating sufficient funding for water and sanitation, allowing the human rights to water and sanitation (including availability, accessibility, quality, affordability and acceptability) to be progressively realised on a non-discriminatory basis?			
Where a State has insufficient resources to realise the human rights to water and sanitation, has the State actively sought international cooperation and assistance?			
Are the funds the national government is directing to sub-national governments sufficient to enhance equality in access to water and sanitation, and targeted particularly at those who are disadvantaged within different regions and population groups? Are there criteria for allocating funds to sub-national governments? What are these?			
Are national and sub-national governments collaborating to ensure that all funds directed from the national government to water, sanitation and hygiene projects and services reach sub-national governments promptly?			
Has the State made water, sanitation and hygiene related budgets publicly accessible?			
Has the State enabled meaningful participation by civil society in discussions about the formulation, implementation and monitoring of budgets?			
Has the State set a fair affordability standard, taking into account all aspects of water, sanitation and related hygiene?			
Are people made aware of existing subsidies, grants and payment options?			

Ministry of Finance (or Planning, or Central Bank)

Have the rights to water and sanitation been accorded due priority within the national budget?			
Has the Ministry of Finance reviewed water and sanitation related budgets to determine if, taken together, the allocations contribute to the realisation of the rights to water and sanitation, as well as promoting non-discrimination, sustainability, accountability and participation?			
Have any cuts been made in water, sanitation and hygiene related budgets in the past five years? If so, was an assessment made of the likely impact of these cuts on people's realisation of their rights to water and sanitation, particularly for disadvantaged individuals and groups?			
Has the finance ministry, or, where appropriate, the competent line ministry allocated sufficient funds for subsidies for those unable to afford charges and costs relating to access to water and sanitation services?			
Have water, sanitation and hygiene related funds been released to line ministries and sub-national governments in full, and in a timely fashion?			

Line ministries	Yes	In progress	No
Is the structure of tariffs and/or subsidies such as to ensure that disadvantaged individuals and groups have access to a necessary amount of water, and access to sanitation facilities, regardless of ability to pay? Does it also ensure affordability to the middle and lower-income households without representing more than a certain percentage of household income?			
Do water, sanitation and hygiene budgets appear to have reached an appropriate balance of infrastructure spending vs. operation/maintenance/repair spending, so as to ensure the sustainability of existing systems?			
Have the line ministries produced sufficiently disaggregated budgets so that it is clear how much money they are directing to water, to sanitation and to hygiene, and for what purposes?			
Donors			
Does donor or development agency support comply with human rights, in particular with the principles of non-discrimination, sustainability, accountability and participation?			
Is donor or development agency support incorporated into, or reflected in, the national or subnational budget?			
If donor financing is not incorporated into or reflected in the national or subnational budgets, does it harmonise its support with the recipient government's policies and plans?			
Has the donor or development agency considered giving a higher priority to support for the water and sanitation sectors? If it already provides such support, has it considered directing more of its contribution to operation, maintenance and capacity-building?			
Does the donor or development agency make information about its water, sanitation and hygiene related support publicly available?			
Does the donor or development agency provide advice on ensuring that the recipient State's water and sanitation budgets reflect human rights obligations?			
Have water, sanitation and hygiene related funds been disbursed or spent in full, and in a timely fashion?			
Supreme audit institutions			
Is there an independent supreme audit institution, and does it have sufficient human and financial resources to operate?			
Does the supreme audit institution explicitly use a human rights framework in auditing government budgets?			
What is the follow up to and impact of the supreme audit institution's findings? What is the rate of the State's compliance with the supreme audit institution's recommendations?			
Civil society			
Are there capacity-building strategies on budgeting and budget tracking for civil society?			
Do States make provision for budget monitoring by civil society, and take note of the results?			



04.
Image credits and references

Image Credits:

Page 12 Village Assaini Programme, household constructed latrine, Democratic Republic of the Congo. UNICEF/DRC/2014.

Page 14 A locked waterpoint in Dzita, Volta region, Ghana. DIMR/Antonia Bartning.

Page 26 Sanitary officer Abdul Kamara inspects toilets in the village of Fayama, Sierra Leone, May 2013. WaterAid/ Anna Kari.

Page 31 Water tanks, Za'atari Camp, Jordan 2014. Madoka Saji.

Page 35 Rainwater harvesting, Tuvalu 2012. Madoka Saji.

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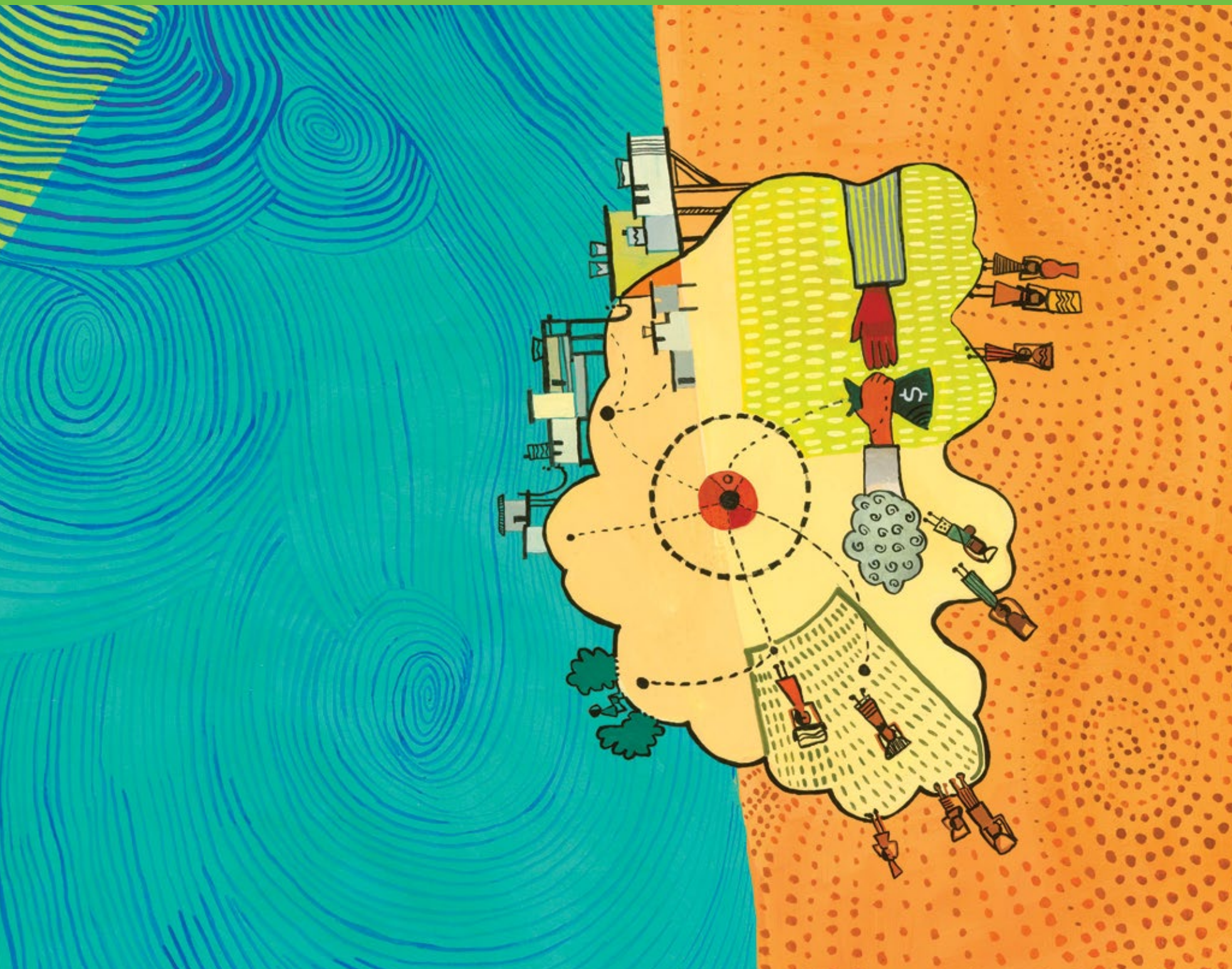
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Services

REALISING THE HUMAN RIGHTS TO WATER AND SANITATION:
A HANDBOOK BY THE UN SPECIAL RAPPORTEUR
CATARINA DE ALBUQUERQUE

Planning processes, service providers, service levels and settlements

HUMAN RIGHTS TO WATER & Sanitation
UN SPECIAL RAPPORTEUR

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A Handbook by the UN Special Rapporteur
Catarina de Albuquerque

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Contents

01. **Planning** 5

1.1. Assessment and analysis 6
1.2. Setting targets and developing plans of action 10
1.3. Allocating roles and responsibilities to different actors 10
1.4. Implementation 12
1.5. Monitoring and evaluation – ensuring accountability 12

02. **Setting national and local standards and targets** 13

2.1. Addressing discrimination in standards and target setting 15
2.2. Availability standards 15
2.3. Accessibility standards 17
2.4. Quality standards 18
2.4.1. Water quality standards 18
2.4.2. Standards for quality of sanitation 19
2.5. Affordability standards 20
2.6. Acceptability standards 21
2.7. Sustainability 21

03. **The challenges of delivering services in different situations** 23

3.1. Services for the household 24
3.1.1. Informal settlements 26
3.1.2. Rural areas 28
3.2. Services beyond the household 29
3.3. Stigma and taboos 30
3.4. Fragile States 31
3.4.1. Emergencies and disasters. 32
3.4.2. Conflict situations 33

04. **Service providers** 35

4.1. Introduction 35
4.2. Formal service provision – public, private and everything in between 36
4.2.1. Concerns relating to non-State service provision 43
4.3. Informal and small-scale service providers 48

05. **Checklist** 53

06. **Image credits and references** 57


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01.
Planning

The incorporation of human rights standards and principles into national and local planning processes is crucial to ensure the human rights to water and sanitation. This is ambitious but realistic, and provides States with tools to improve services and eliminate inequalities in access.

The strategy of starting by improving services in well-to-do areas, thereby increasing the amount of money that can be used later to deliver services to disadvantaged individuals or groups, has been shown again and again to be insufficient to eliminate inequalities in access to services. States should direct their efforts to creating the institutions and structures necessary for enabling environment that ensures everyone can exercise their rights, while prioritising direct assistance for the individuals and groups who face the greatest barriers to access to water and sanitation services.
Financial transfers from the State to service providers should be properly targeted, so as to benefit only the poor and disadvantaged individuals and groups, as opposed to the utility's customers in general.

Planning takes place at the national, as well as at regional and local levels, depending on the extent of decentralisation and how State functions are organised. A wide range of actors may be involved, from finance ministries and relevant line ministries to local authorities, service providers, national human rights institutions and regulatory bodies, civil society organisations, and the users of water and sanitation services themselves.

The planning process in cities and at the national level may be more complex than for a small town or village, but it will generally follow the same steps:

- assessment and analysis
- setting of targets and developing plans of action
- allocating roles and responsibilities to different actors
- implementation
- monitoring and evaluation ensuring accountability

Planning must be open and transparent, with opportunities for people to participate actively in decisions made relating to their access to water and sanitation.

States must devise strategies and set targets to address discrimination and eliminate inequalities in access to water and sanitation. This will require the development of tailored interventions for specific circumstances and careful monitoring of progress for disadvantaged individuals and groups. Without this focus, improvements in water and sanitation services tend primarily – or exclusively – to reach people who are better off, reinforcing existing inequalities.

PLANNING MUST BE OPEN AND TRANSPARENT

1.1. Assessment and analysis

The first step of a comprehensive planning process is an assessment of the status quo. This should include examining the extent to which the human rights to water and sanitation have already been realised, as well as analysing existing institutional and policy frameworks. This process includes reviewing:

- laws, regulations and policies (see Frameworks);
- financing and budgeting strategies (see Financing);
- strategies and plans for water and sanitation;
- institutions and how they interact;
- data on access to water and sanitation, with a focus on disadvantaged areas and individuals (see Monitoring);
- accountability processes (see Justice);
- barriers to access.

Where any of the above do not meet human rights standards and principles they must be adapted or revised.

Data about access to water and sanitation may already be available, for example, from national statistic offices, Demographic and Health Surveys (DHS) or Multiple Indicator Cluster Surveys (MICS), or directly from service providers. These data generally provide a broad national outline and can assist in overall planning and the allocation of national budgets. For planning at the local level, however, feasibility studies and local data showing the existing access to water and sanitation in detail are essential. Any baseline study must pay particular attention to assessing the levels of access of disadvantaged individuals and groups, such as people living in rural areas or in informal settlements in urban areas. Studies should identify existing gaps, exclusions, barriers and constraints, in order to design adequate responses that address the root causes for lack of access. (see Monitoring)



Common barriers to access to water and sanitation

Legal: There are frequently legal barriers for people who, for example, do not have documents proving they have the right to live where they are living. People who live in 'informal' settlements are often directly or indirectly excluded from provision because they do not have security of tenure.

Institutional: Institutional responsibilities are often fragmented and poorly coordinated. This results in inconsistencies and contradictions in service provision and makes it difficult for people to know where to turn for help and whom to hold accountable for realising their human rights to water and sanitation.

Administrative: Complicated administrative procedures to get a connection to the water supply or sewerage system may disproportionately burden those who do not have the necessary documentation, or who have low levels of education or literacy.

Physical: Persons with disabilities, children, older persons, pregnant women and others often face physical barriers because of inappropriate design, such as limited space, facilities that require users to squat, small doors, or steps leading to the facility.

Geographical: People living in rural areas or in informal settlements in urban areas are often the last to gain access to services.

Economic: High construction costs, connection charges and tariffs can limit people's access to safe and affordable services.

Linguistic: People belonging to minority language groups may not be able to get information or participate in meetings; they may not be able to read and understand warnings, such as notices informing people of the need to treat their drinking water, or letters advising of disconnections or interruptions in water supply.

Environmental: Some people face increasing environmental challenges due to pollution, dropping water levels or changing weather patterns.

Cultural: Many individuals and groups experience deeply entrenched stigmatisation, for example, ethnic minorities, 'low' castes, or homeless people.

Often, people are confronted with multiple barriers simultaneously. For example, people living in slums often face the cumulative challenges of abject poverty, population density, contaminated environments and a lack of formal land tenure, which all combine to limit their access to services.

Existing tools for assessing barriers and constraints and improving planning can be used to identify blockages in implementing the rights to water and sanitation. One such instrument is UNICEF's Bottleneck Analysis Tool[1], which helps States to identify barriers to access, and examines existing legislation, policies and budgets to identify changes that could be made to encourage a more 'enabling environment'.

Feasibility studies can be used to assess the social, financial, technical and legal challenges of delivering services to people living in informal settlements or in rural areas, and will help determine how services can best be provided.

Impact assessments that consider environmental, social and human rights concerns are also an important planning tool, highlighting barriers and potential risk factors.[2]

WaterLex, a Swiss NGO working on the human rights to water and sanitation, has created a planning toolkit, outlining what needs to be considered in planning for implementing the human rights to water and sanitation.[3]



1.2. Setting targets and developing plans of action

Once data and information on significant barriers and inequalities in access have been gathered, specific targets with a realistic timeframe can be developed to map progress to the ultimate goal of universal access to water and sanitation services. Progress towards the elimination of inequalities in access to water and sanitation should be included as an interim target.

When deciding on targets, States must take into account different economic scenarios, the long-term sustainability of infrastructure, of operation and maintenance systems and, critically, of the institutional and managerial structures.

1.3. Allocating roles and responsibilities to different actors

Building suitable institutions that can fulfil their responsibilities in realising the human rights to water and sanitation is key to an effective planning process.

There are many government institutions responsible for ensuring access to water and sanitation services. Every State will organise these responsibilities differently, but broadly, ministries, departments and agencies of water, sanitation, health, housing, infrastructure, environment, education, agriculture, tourism, industry and water resources, at national as well as at regional, municipal and local levels, will all have a role to play. Finance ministries must understand the value of water and sanitation for human development, as well as offering advice, for example, on conditions related to international loans. The ministry of social affairs may be responsible for managing social or pro-poor policies. Other entities may be involved in the monitoring and regulation of the water and sanitation sectors: the department of health and / or of environment may be responsible for regulation of water quality and monitoring water availability; responsibility for the regulation of tariffs may lie with the government or the regulator.

The clear allocation of responsibilities to different ministries and departments (horizontal coordination) and different levels of government (vertical coordination) is crucial.

Increasingly, States are developing decentralised structures, with one of the intentions of this being to increase the involvement of the users of services in decisions about issues such as service levels and technologies. This requires that more attention be paid to coordinating planning processes between national and local levels, and among local governments, to ensure that water and financial resources are shared fairly, both to address disparities in access to water and sanitation across regions, as well as to share common water resources fairly.

There may be conflicts of interest between different bodies, for example, in the allocation of scarce water resources for a range of uses. The creation, at the highest political level, of a body or lead agency with the mandate and funding to allocate resources, including water resources, is advisable in order to avoid or resolve potential conflicts.

The Colombo Declaration, adopted at the fourth South Asian Conference on Sanitation in April 2011, calls on countries "to establish one national body with responsibility for coordinating sanitation and hygiene, involving all stakeholders, including, but not limited to, those responsible for finance, health, public health, environment, water, education, gender and local government at national, subnational and local levels".[4]

To avoid a disjuncture between the different phases of planning, it is essential that the same institutions be involved throughout the planning cycle.

The decentralisation of functions does not reduce human rights obligations at the local level, as local governments are also bound by human rights law. The national government has an obligation to regulate the activities of local governments, and to monitor and control their performance to ensure that they comply with international human rights obligations[5], as well as the relevant national legislation, regulations and policies.[6] Clear lines of responsibility at and between the different levels of government are crucial to avoid conflicts of competencies and inefficiency. States must ensure that local authorities have the financial, human and other resources necessary to discharge their duties effectively.

1.4. Implementation

States must continue to scrutinise the impact of the plans as they are implemented, to ensure that targets are being met. The human rights principles of non-discrimination and equality, access to information, participation and accountability must be respected in the implementation as in the planning phase. (see Services)

1.5. Monitoring and evaluation – ensuring accountability

Monitoring and evaluating the implementation of plans is essential to ensure that States are held accountable for progress (or lack thereof) in realising the human rights to water and sanitation. The monitoring of service provision by regulatory bodies should be an integral part of plans and strategies, if it is not already determined by existing legislation.

States must adopt indicators that reflect the legal content of the human rights to water and sanitation. These indicators should be designed not only to measure the outcome in terms of access figures, but also to capture the extent of government efforts and of progress made towards eliminating inequalities. States must develop mechanisms and remedies to hold actors to account for following the plan and achieving the targets, including measures to overcome obstacles in access to justice, such as high costs, language requirements, requirements for representation and the geographical location of the courts and other mechanisms. (see Monitoring, pp.9-21; Justice, pp. 41-45)

02.
Setting national and local standards and targets

States must set national and local standards and targets that reflect the legal content of the human rights to water and sanitation. These are outlined below.

National standards for levels of service are often based on international guidelines, such as the World Health Organization's (WHO) guidelines for drinking water quality.[7] Standards must take into account existing service levels and local context, such as settlement types, and the availability of water resources. It may be necessary to set interim standards, with accompanying targets, before the best possible standard is achieved.

The process of setting standards and targets must follow human rights principles, in order to ensure that they are appropriate and relevant for all individuals and groups.

Access to information

Information on the standards and targets set by national and local government must be available to the public, in accessible formats and language that is easy to understand. Where interim targets are set, information on when and how the full standard will be reached must be made publicly available.

Information should also be made available when standards are not reached, so that people can make informed decisions regarding, for example, their health and household budgets. (see Principles: Information, pp.37-49)

Participation

The UN Sub-Commission Guidelines on the Promotion of the Realisation of the Right to Drinking Water and Sanitation state that "Communities have the right to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose and manage their own services with assistance from the State."[8]

National and local standards and targets should therefore be based on studies and consultations to ascertain what different individuals or groups, particularly those who are disadvantaged, consider to be the most essential aspects of their water and sanitation services, so as to ensure the relevance of the standards to the local context. (see Principles: Participation, pp. 57-69)

Minimum service level standards that reflect the legal content of the human rights to water and sanitation should be set nationally, but with some flexibility to be adapted to local realities.

People must be informed about standards and targets, and must be able to participate in the setting of standards and targets to ensure that are relevant and achievable.



2.1. Addressing discrimination in standards and target setting

States must strive for universal access to water and sanitation services. However, setting a 'universal' goal without setting specific targets to address inequalities may perversely result in States prioritising those to whom it is easier to deliver services, in order to demonstrate rapid progress towards the goal of universal access. In this case, the most disadvantaged individuals and groups would be the last to be reached.

States must therefore devise specific strategies to reach the most disadvantaged individuals and groups and remove discriminatory practices. This requires setting targets to progressively eliminate inequalities in access. Without this focus, interventions in water and sanitation may reinforce existing inequalities.

It is not acceptable to set lower standards for poorer or disadvantaged households, and any lower interim targets must not become long-term solutions, but must be time-bound.

An overarching goal of universal access to water and sanitation must be complemented by progressive and focused targets to eliminate inequalities.

2.2. Availability standards

Water supply must be sufficient and continuous for personal and domestic uses. The human rights to water and sanitation do not define a fixed daily quantity of water, so States must assess local conditions and requirements and refer to relevant studies before setting standards for the availability of water and sanitation, which may include a specific number of litres of water to be available to each person or household per day.[9]

There are many competing demands for water use, but human rights oblige States to prioritise domestic and personal uses, as well as, where necessary, the commitment of sufficient water resources to realise the rights to food and health and other human rights. Any plans for river basin or water resources management must reflect the obligations stemming from the human rights to water and sanitation.

Climate change leading to extreme weather events, drought or flooding, and environmental factors including pollution from agriculture and industry, often have a negative impact on water resources. Planning for resilience to climate change is essential for the protection of water resources, and requires careful consideration of how water can safely be reused in domestic, agricultural and industrial contexts.

In areas where water is scarce, or where households do not have a safe water source on the premises, it is unlikely that householders will be able to collect the optimum amount of water. Interim local targets may be set to recognise this.

Where households are connected to a piped supply of water, standards and targets should specify that the provision of water be continuous. Frequent increases and decreases in pressure cause strain on pipes, leading

FREQUENT INCREASES AND DECREASES IN PRESSURE CAUSE STRAIN ON PIPES

to increased leakage, burst pipes and contamination of the water supply through intrusion when the pipes are unpressurised.[10] Rationing of water through intermittent supply therefore is a false economy, as this invariably leads to increased losses.[11] Interruptions in water supply must not disproportionately affect disadvantaged or poor households or settlements.

Households using water-borne sanitation systems may require more water to ensure that these systems work effectively. This should not be a reason for allowing richer and urban households, which are more likely to be connected to a water-borne sewerage system, to monopolise water resources.

The availability of sanitation depends on the presence of a latrine, as well as, crucially, adequate systems for the collection, treatment, and disposal or reuse of wastes. States must therefore set standards for sanitation that reflect this, also taking into account the requirements in different environments, whether rural or urban, and informal or formal settlements. Setting standards relating to the construction and maintenance of a latrine alone, without consideration of collection, treatment and disposal or reuse of wastes does not ensure the availability of sanitation.

As with water availability, States may need to set interim targets for sanitation services, with a longer-term goal of reaching universal access to full sanitation services.

States must clearly prioritise available water resources for personal and domestic uses and allocate water in a transparent and participatory way.

States should identify a minimum daily quantity of water necessary to realise the human rights to water and sanitation.

States must reflect their human rights obligations in river basin development or water resources management plans, and ensure the latter increase resilience to climate change and natural disasters.

States must set standards and targets for the collection, treatment and disposal or safe reuse of sewage and other faecal waste.

2.3.
Accessibility standards

The accessibility of water is directly related to availability, and will have an impact on how much water a household uses, affecting people's health, work, education and dignity. The longer it takes members of a household to get to a water source, the less water that household uses.[12] Standards for access to water should therefore reflect the fact that in order to gain the most benefits from the service, water should be available within or near the home.

Accessibility also refers to ease of access – water sources must be accessible to everyone, including people who face specific barriers to access, such as persons living with illness or disability, older persons and children. Standards for technology choices must consider the needs of the people who will be using the service, as well as addressing the barriers that people may face.

WATER SHOULD BE AVAILABLE WITHIN OR NEAR THE HOME, AND LATRINES WITHIN THE HOME OR YARD

Similar requirements apply to sanitation, with the added assumption that access to sanitation within the home is essential for health, privacy, security (particularly for women and children) and dignity. Therefore while it is permissible for States to set interim targets for access to sanitation that include latrines shared between households, or in extreme cases public or community latrines, the preferred immediate standard should be for latrines within the home or yard.

Water and sanitation services must also be accessible to people when they are not at home, including at work, at school, in public places and in places of detention. (see p. 29)

Standards for accessibility of water and sanitation services must:

- **reflect the different needs that people may have;**
- **take account of challenges presented by different types of settlement;**
- **apply to services within the home, as well as at work, school, health centres, in public places and in places of detention.**

2.4. Quality standards

2.4.1. Water quality standards

The WHO Guidelines for drinking-water quality define recommended limits for chemical and biological substances, and are set to maximise water safety for human beings.[13] In the long term, all States should aim for full compliance with these guidelines. However, there are many parts of the world where water is often unsafe to drink, and achieving lower interim standards would already result in significant health improvements. In contrast, the high level of investment required to achieve the best standards for piped water in countries where water supplies are currently intermittent, and where many people do not receive any public service at all, would provide additional health benefits to the few who have access to piped water, to the detriment of the many who don't. This would slow down the realisation of the human rights to water and sanitation.

The authorities responsible for public health commonly adopt achievable interim standards, and these are acceptable in countries with limited resources. In recognition of the incremental approach to improving water quality, the WHO Guidelines for drinking-water quality promote Water Safety Plans[14], which encourage States to establish standards that are realistic in a concrete socio-economic context, with the ultimate goal of achieving the highest possible international standards.

The USA Safe Drinking Water Act of 1974 sets maximum levels for contaminants in drinking water and its sources, and requires regular testing for contaminants. These standards apply to every public water system in the United States. However the 1996 amendments to the Safe Drinking Water Act permit variances allowing rural utilities (fewer than 10,000 connections) to provide lower quality water. Moreover, there are no federal standards regulating private wells, which are the primary source of drinking water in many rural areas putting many people at risk of using contaminated water.[15]

Where water is supplied through public standpipes or other public sources, access to the necessary equipment for storage, and awareness-raising about household water storage, are crucial to ensure that water remains safe for human consumption after collection.

States must adopt national standards for water quality, where necessary setting interim targets.

2.4.2. Standards for quality of sanitation

To realise the human right to sanitation, toilets must be hygienic to use and to maintain, and waste matter must be safely contained, transported, treated and disposed of or recycled. Water-borne sanitation is by no means the only acceptable solution – depending on the context, including the housing density and the availability of water, there are many other possible solutions.

To safeguard the health benefits of access to sanitation and to protect water resources, standards and targets for the full cycle of sanitation provision must be set, from collection to the transport, treatment and disposal or reuse of wastes.

As sanitation service provision involves the management of faecal wastes, in setting standards, States must ensure that workers are adequately protected in terms of health and dignity. (see p.51)

TOILETS MUST BE HYGIENIC TO USE AND TO MAINTAIN

States must adopt national standards for sanitation that ensure that latrines and toilets can be safely used, and that the transport, treatment and disposal or reuse of wastes is safely managed.

2.5. Affordability standards

Affordability standards and targets are essential to ensure that people are able to pay for their water and sanitation services, as well as afford access to other human rights, such as food and housing.

Generally, people are prepared to pay a high price for water because it is essential for so many aspects of a person's life, but this does not justify a high affordability threshold.

Affordability standards must be considered together with standards of minimum quantity of water or quality of sanitation to ensure that these are realistic and that people can afford to pay for the minimum standard of services. Where the minimum standard of service is not affordable, States must provide alternative financial resources, for example, subsidies or grants.

Brazil's Law on Water and Sanitation recognises that a household's water consumption is not related to the household's income.[16] In developing affordability standards, States must ensure that tariffs and other service charges do not result in higher payments for poorer households, as this would have the effect of subsidising "the consumption of water of those who do not need social protection while punishing the poor with a higher rate, due to the higher water consumption [because of] the larger number of residents in each household".[17]

In setting affordability standards for sanitation, States must consider both on-site and networked sanitation and consider the full costs of sanitation, including the collection, transport and disposal or reuse of human wastes.[18]

In many situations, and for those living on low incomes or in informal settlements where there is no sewerage or other wastewater management system, sanitation tends to be either affordable or safe, but is seldom both. The State must therefore provide the necessary financial and technological support to improve the affordability and safety of sanitation services.

In settlements that are not connected to the sewerage system, households often rely on tankers and other informal service providers to empty their pit latrines and septic tanks. These costs are often forgotten in assessments of affordability. Further, as informal service providers tend to be unregulated, they charge prices determined by what the market will bear or by price-fixing between providers, rather than by considerations of affordability. For example, there may be extra charges for distance or difficult access.

In Brazil in some informal settlements people pay 10 – 20 % of their household income on water services.[19] Such unacceptable percentages exist because Brazil has not (yet) set a federal affordability standard .

Where regulation is inadequate, and quality and affordability are not safeguarded, this is a violation of the right to sanitation and must be addressed.

States should develop affordability standards, while considering the full costs of delivering water and sanitation services.

Affordability standards must be considered together with other standards, particularly those for availability and quality, to ensure that people can afford to pay for the services that they are entitled to.

2.6. Acceptability standards

The acceptability of services is important if these are to be used hygienically and sustainably, and if everyone is to be able to use the services without discrimination or stigma. Where services are not acceptable to the intended users, whether due to poor positioning or the wrong type of services, the service will not be used, or will be used inappropriately. Meaningful participation in decisions relating to service provision will help to ensure that the service is acceptable.

States must set standards and targets that require that users of a planned service are able to participate in decisions about what technology will be used, as well as about the management of service provision, to ensure that services, particularly sanitation services, are acceptable to the people who are expected to use them.

AFFORDABILITY STANDARDS MUST BE CONSIDERED TOGETHER WITH STANDARDS OF MINIMUM QUANTITY OF WATER AND QUALITY OF SANITATION

2.7. Sustainability

Water and sanitation must be provided in a way that respects the natural environment and the rights of future generations, and that ensures a balance among the different dimensions of financial, social and environmental sustainability.

The human rights framework demands that financial, social and environmental sustainability be understood as the direct counterpart to retrogression, or slippage, in access to water and sanitation services. States must develop standards and targets that take into account the operation, maintenance and rehabilitation of services, as well as the financial and human capacity to manage services, whether this is carried out by government, service providers or civil society actors.

In those countries or areas of countries where water is scarce or at risk of natural disasters such as earthquakes and flooding, States must consider resilience planning, to reduce the risk to water and sanitation facilities.

States must define standards for ensuring that water and sanitation services are sustainable, including a percentage of available resources being committed to operation and maintenance, for the funding of subsidy or other mechanisms, to ensure affordability, for the setting up of institutions and management structures, and for training and capacity building.

Hygiene behaviour

To gain the full benefits in public health and dignity of improved access to water and sanitation services, people must practice good hygiene behaviour, particularly hand-washing at critical moments. States therefore have the responsibility for promoting good hygiene behaviour, and should include standards and targets for hygiene behaviour in policies and plans.

Worldwide, Global Hand-washing Day (15 October) is a campaign to motivate and mobilise people around the world to wash their hands with soap, as a key approach to disease prevention. A similar campaign is being built around International Menstrual Hygiene Day (28 May).[20]

Many countries have 'water mascots' or similar campaigns to help build awareness of good hygiene.[21] In Peru, 'La Gotita', an animated drop of water, passes on important messages about issues such as hand-washing and saving water.[22]

Other approaches include WASH in Schools. These are educational campaigns aimed at children, often included in the school curriculum, to teach children good hygiene behaviour. The intention can also be for children to bring these good practices home to their families.[23]

Good hygiene behaviour can also be promoted through community health workers. States should bear in mind that these messages are more easily reinforced where water, sanitation and soap are available in homes and public places.

States should set out standards and targets for improving hygiene behaviour in water and sanitation policies and plans.

03.
The challenges of delivering services in different situations

General Comment No. 15 of the Committee on Economic, Social and Cultural Rights states, "[s]ufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace."[24] This section considers the challenges implicit in reaching all people in all aspects of their lives, including people who have no control over their access, such as prisoners, detainees and people living in refugee camps.[25]

3.1. Services for the household

In rapidly expanding cities or in countries where significant numbers of people do not have access to water and sanitation services, it may not be possible or desirable to provide the same type of services to all settlements. Population densities, the size of settlements, land ownership and tenure security, the scarcity of available water resources, and local capacity to maintain and operate services are all relevant in determining the most appropriate technological options. Whatever technologies are chosen, the national and local standards and targets, including interim standards, must be met, with a view to making the necessary improvements to meet the full standard by a specific date.

For example, it may be acceptable in the short term to provide limited services on the edge of a settlement where there are problems with land ownership, tenure or settlement density, as long as medium- to longer-term planning includes strategies to remove these barriers and provide services that comply fully with national and local standards.

The WHO/UNICEF Joint Monitoring Programme is working on a clarification of acceptable technologies according to settlement type.[26] This might state, for example, that a pit latrine would be acceptable in a rural settlement, but inappropriate (due to the risk of groundwater contamination) for a densely populated urban environment. Likewise, the ideal standard for convenience and health benefits is to have water provided by pipes to each household in cities and densely populated settlements, but in rural areas, particularly those that are sparsely populated, this is not realistic, and a protected well within a limited distance may be appropriate. In countries with nomadic populations, water supplied by tanker may be an acceptable solution for those populations.

In differentiating between areas, the relevant government body must create a clear policy that sets out the parameters used to determine which technologies are acceptable in any given area, as well as how these could be upgraded in future. This 'ladder' concept of progressive realisation helps plan upgrades over time.

eThekwini Water and Sanitation Services in Durban, South Africa, have defined the areas where it is possible to provide piped sewer reticulation and other areas where only on-site solutions are possible at present. They have also approved a policy that sets out how they will bring households from the current level of service to improved services.[27]

States must set short and long term targets regarding access to water and sanitation services, and ensure that these work towards eliminating inequalities in access to water and sanitation services at home.

Community-Led Total Sanitation

Much can be learned from the approach known as Community-Led Total Sanitation, which relies on a community's capacity for collective action to put an end to open defecation and improve sanitation and hygiene behaviour. This approach challenges the dominance of 'expert' solutions and donor or State-provided subsidies, focusing instead on behaviour change through community mobilisation. It looks beyond individual households to attempt to create whole villages free of open defecation.

Facilitators engage community members in analysing the implications of open defecation, from disease to loss of dignity and the implications for women's personal security. This helps everyone in the village to understand that unless the whole village constructs and uses latrines, everyone suffers.[28] Eighteen governments have adopted Community Led Total Sanitation as part of their sanitation policies.[29]

3.1.1. Informal settlements

An informal settlement is usually defined by its lack of legal status or the irregular tenure of its inhabitants, and by high-density, low-quality housing, without formal streets, water supply or access to sanitation. The people living in informal settlements are often poor, with low social status. The residents may be employed in the informal labour market, have no formal education, and no documents (such as housing contracts, bank statements, or utility bills) that officials would accept as the 'proof of residence' required in order to be connected to formal water and sanitation services. In these settlements water and sanitation services, such as they are, are often provided by informal service providers that are generally unregulated and do not comply with human rights standards.

Realising the human rights to water and sanitation in informal settlements therefore requires the analysis and removal of the barriers created by the legal, physical, social, cultural and institutional status of the settlements.

As States have an obligation to ensure that all individuals and households have access to water and sanitation services, they must work towards removing these barriers. Appropriate measures by the State to facilitate provision include:

- steps to grant legal status to settlements;
- overcoming legal impediments to service provision in informal settlements;
- guarantees that people will not be forcibly evicted;
- engagement with residents on solutions;
- the provision of financial support; and, in some circumstances,
- resettlement to an alternative area, where this is agreed with the active, free and meaningful participation of the residents.

Where security of tenure has not yet been resolved, States must still ensure that service provision meets minimum human rights standards. This can be through informal service provision or with provisional services delivered by formal service providers, with a longer term, timebound plan to provide formal services.

In Dhaka, Bangladesh, the government has attempted to overcome the lack of legal status for slums by separating the provision of water and sanitation services from tenure status, allowing service providers (formal and informal) to deliver services to these settlements.[30]

In Brazil there are various innovative, low-cost provisional solutions to ensure access to water for people living in informal settlements. For example, in Porto Alegre the Water and Sanitation Department provides for the extension of public water networks to informal settlements through the use of provisional networks until the settlements are regularised or the communities resettled elsewhere.[31] However, in other states, the Public Prosecutor's Office claims that it is illegal to provide water and sanitation services to informal settlements, as this is deemed to constitute an improper use of public resources.[32] These legal impediments to bringing services to these areas have led some providers, and, in many cases, the State to dismiss the residents of these settlements as 'illegal' themselves, and therefore not eligible for services.

Where efforts are being made to deliver formal services to an informal settlement, it is crucial that the relevant government agencies and utilities understand the specific context and characteristics of a given settlement, and the efforts that are being made by informal service providers and the residents to improve the situation. States'

institutional capacity to deal with informal settlements can be increased through the creation of 'informal settlements units' within governmental departments and public utilities, which can work together with formal and informal service providers and the local communities to identify how best to deliver better services.

The Citywide Sanitation Project of the International Institute for Environment and Development and Shack/ Slum Dwellers International is exploring pro-poor approaches to improving services in informal settlements in four cities in Africa, putting the residents of the settlements at the centre of the process. As a result of this work the Blantyre City Council has set up the Informal Settlement Unit to work directly with the residents of the informal settlements in the city.[33] This research has also shown that landlords in informal settlements are often a stumbling block to sanitation improvements, and lack incentives to ensure that their tenants have adequate sanitation services.[34]

In Kenya in 2008, the Nairobi City Water and Sewerage Company (NCWSC) established the Informal Settlements Department with a mandate to expand the water supply and sewerage system to serve more slums and their residents, and to identify illegal connections in order to control water theft and wastage. However, the department is small and its task large; an estimated 60% of Nairobi's population lives in informal settlements.[35]

In Mukuru (Lunga Lunga area), one of the largest slums in Nairobi, Practical Action, in partnership with the NCWSC, created a tri-sector partnership involving the NCWSC, local small-scale water enterprises, and the Mukuru community, with the NGO acting as a facilitator. As a result, where once the relationship between the water company and the residents of Mukuru was confrontational, it is now built on understanding and trust. The NCWSC now works with the small water enterprises rather than against them, and this has improved both its understanding of the community and its ability to provide them with water and sanitation services.[36]

States must repeal or amend any legal impediments to delivering water and sanitation services to informal settlements.

States are obliged to find short-term solutions to ensure access to water and sanitation in places where people do not have secure tenure, while planning for long-term solutions.

States should ensure that local authorities, service providers (formal and informal) and residents work together to find lasting solutions to water and sanitation services in informal settlements.

3.1.2. Rural areas

People who live in rural areas have consistently worse access to water and sanitation than people living in urban settlements, both in terms of absolute numbers served and in terms of the percentage of the population without adequate water and sanitation services.[37] This discrepancy in access often derives from lower budget allocations for rural areas, with more investment devoted to large-scale infrastructure that provides services for formal urban settlements, where the elite live. Donor agencies from Switzerland[38] and Spain are counteracting this imbalance by targeting their funding towards rural areas.

Local governments often lack the institutional and financial capacity to support sustainable access to water and sanitation services. Because of this, donors and local governments have turned to community management approaches. These promote decision-making by communities, with the assumption that this will generally lead to better decisions about which technologies to use and where, and to better 'ownership' of services. It is then expected that communities will be better able to maintain and operate their own local services. Unfortunately, there continues to be a high rate of failure under community management, with an estimated thirty per cent of all water-points assumed to be out of action, due to lack technical skills, management capacity, spare parts, or funds to pay for the necessary repairs.[39] Further, as people are understandably unwilling to pay for services that are unreliable, there is inadequate funding for repairs.

Institutional reform and increased financial and human resources are required if the human rights to water and sanitation are to be realised in rural areas.[40] Building communities´ capacity through the establishment of community development associations and by providing training and information about their rights and how to enforce them is critical, but this must be supported by external support, whether from local government or service providers.

Local Safe Water and Sanitation Committees, such as those in Nicaragua, when duly supported by local governments, ensure not only service provision to small, disperse rural communities, but equally maintain and operate systems. By raising awareness among the local population that for access to water to be sustained in the future implies costs, they manage to collect tariffs as well as connection fees from users – which are reinvested in the system.[41]

One model explored by Oxford University (UK) and Rural Focus Ltd. (Kenya) has created a management service, which is informed of any breakdown by a mobile-enabled transmitter installed into hand-pumps. Working with a District Water Office in Kenya, the study examined whether reliable and timely information on how the hand-pumps were working could improve institutional, operational and financial performance. Initial results suggest that the improved data on breakdowns has led to a faster response and better service and a greater willingness by the users to pay for the service. As the payments for the maintenance service are based on actual use of the pump, better services mean an increase in funding for the service.[42]

States must seek innovative solutions to overcome barriers to access, where necessary providing additional resources for building the capacity of local governments to provide better support to community water management processes.

3.2.
Services beyond the household

Standards must be set for access to water and sanitation services outside the household, for example, in schools, hospitals, health centres and places of detention, as well as in public places, such as markets. Standards should take into account not only the number of people using these services, but also who the users are likely to be. For example, the particular needs of older persons and pregnant women should be considered for health centres.[43] Refugee camps require service levels that reflect the potential health concerns for people living there.[44]

States must consider the needs of people going to market places or city centres where people congregate, and set standards to ensure that they are met. This is particularly important for cities or towns with a high homeless population. Water and sanitation services must also be accessible in the workplace, without hindrance, for all employees. This is best clarified in employment codes. (see Frameworks, pp. 34, 45)

REFUGEE CAMPS REQUIRE SERVICE LEVELS THAT REFLECT POTENTIAL HEALTH CONCERNS

There is also a role for business to play in ensuring that water and sanitation are accessible and acceptable. The members of the World Business Council for Sustainable Development have developed a pledge to deliver access to safe water, sanitation and hygiene at the workplace for all employees in all premises under direct company control.[45] By implementing the pledge, companies are respecting the human rights to water and sanitation as specified in the UN Guiding Principles on Business and Human Rights.[46]

States must ensure that standards and targets are set for ensuring access to water and sanitation services outside the home. This includes standards in building codes for schools, hospitals, the workplace, market places, places of detention and other public spaces.

3.3.
Stigma and taboos

The stigmatisation of particular individuals and groups is a deeply entrenched sociocultural phenomenon, and lies at the heart of discrimination. The attitudes, stereotypes and prejudices that arise from taboos and stigma and result in discrimination must be uncovered and challenged.

There is often stigma attached to menstruating women, due to the taboos relating to menstruation. Likewise, the stigma attached to sanitation workers comes from people's misplaced disgust at someone handling faecal matter. This taboo and the accompanying stigma is not limited to developing countries, but is also reflected in attitudes to sanitation workers in Germany, for example.[47]

Often, cultural prejudices develop at an early age. Schools should educate children to act as agents of change, developing tolerant behaviour towards others, encouraging dialogue and interaction on stigma and taboos.[48] Education should be inclusive, so sex education, including information about menstruation, should be provided for both girls and boys, in order to provide accurate information and to combat silence and stigma.[49]

THE ATTITUDES, STEREOTYPES AND PREJUDICES THAT ARISE FROM TABOOS AND STIGMA MUST BE UNCOVERED AND CHALLENGED

The People living with HIV Stigma Index aims to address stigma relating to HIV while also identifying and raising awareness of the key barriers and issues perpetuating stigma. The data collected can be used to empower people and advocate for change.[50] This provides stigmatised people with an amplified voice to articulate their needs and rights.

The NGO Forum for Urban Water and Sanitation, together with WaterAid Nepal, commissioned ten artists to create art relating to menstruation, with the aim of raising awareness of the harm done by menstruation taboos. This exhibition highlighted the harsh reality of the stigma attached to menstruation in the Nepali tradition.[51]

UNICEF Bangladesh, aiming to help develop better menstrual hygiene, trains community hygiene promoters, who target the 30 million people living in rural Bangladesh.[52]

3.4.
Fragile States

About 1.5 billion people live in fragile environments around the world.[53] Although there is no internationally agreed definition of the term 'fragile States', most development agencies identify a fundamental failure of the State to perform functions necessary to meet individuals' basic needs and expectations. Most definitions refer to a lack of State capacity to provide stability or security to the residents because of weak institutions, poor governance, corruption and inefficient decision-making. This could be due to prolonged internal conflict, natural disasters or economic crises, which result in a poor or non-existent government.

The Covenant on Economic, Social and Cultural Rights has no derogation clause, meaning that it is applicable at all times, including in fragile States. Furthermore, "during armed conflicts, emergency situations and natural disasters, the right[s] to water [and sanitation] embrace[s] those obligations by which States parties are bound under international humanitarian law", which "includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies […] ensuring that civilians, internees and prisoners have access to adequate water [and sanitation]".[54]

THE COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS IS APPLICABLE AT ALL TIMES

In the event of armed conflicts, emergency situations and natural disasters, the human rights to water and sanitation include human rights obligations, as well as international humanitarian law obligations, by which States and other actors are bound. The Sphere Project provides minimum standards for water and sanitation installations in humanitarian responses to disaster and conflict.[55]

This section will discuss two types of fragility: first, that caused by emergency situations or natural disasters, and second that caused by armed conflicts.

COUNTRIES THAT REGULARLY EXPERIENCE EXTREME WEATHER OR EARTHQUAKES OR ARE PRONE TO FLOODING MUST PLAN FOR THE RESILIENCE OF WATER AND SANITATION SERVICES

3.4.1. Emergencies and disasters.

States' obligations to realise the human rights to water and sanitation include planning for resilience. Countries that regularly experience extreme weather or earthquakes or are prone to flooding must plan for the resilience of water and sanitation services. This includes considering the siting and construction of water and sanitation installations and planning for water scarcity, so that any necessary rationing does not disproportionately affect disadvantaged individuals and groups and allows for a minimum quantity of water for personal and domestic uses.

The situation in Haiti demonstrates how crucial it is that fragile States vulnerable to natural disasters develop emergency preparedness plans and disaster risk reduction strategies in order to avoid a recurrent disruption of service delivery. In the period immediately after a natural disaster it is important that fragile States show leadership and political will in their immediate response (even if relying on the support of the international community), incorporate human rights principles fully in those endeavours and, at a later stage, in their reconstruction efforts.

Despite the fact that water and sanitation were identified as priority areas by both the Haitian Government's Action Plan for National Recovery and Development and the Inter-American Development Bank (IDB) country strategy, the transition from donor-led emergency interventions to country-led sector development in these areas has been poor.[56]

There are no universal solutions for making the transition from emergency to development in relation to water and sanitation provision in fragile environments. A Water and Sanitation Program report proposes four opportunities to accelerate this transition.[57]

In order for emergency relief provided by international organisations to be effective, it must be closely coordinated with national and local relief organisations and governmental structures, including local authorities, which can better understand the local conditions.

When working in fragile environments, development planning must integrate the human rights to water and sanitation into the initial needs assessment, as well as into the identification, design, implementation and final evaluation of a specific project.[58] Given the complex and often sensitive situation in fragile States, it is essential that any development project working in these countries ensures the participation of all the actors involved in service delivery at national, local and community levels.

3.4.2. Conflict situations

Fragile States affected by conflict retain the core obligation to provide a minimum essential amount of water that is sufficient and safe for personal and domestic uses. This obligation cannot, in any circumstances, be subject to limitations, as these would be incompatible with the nature of the human right to water.[59]

In States where fragility is the result of conflict, its impact on the realisation of the human rights to water and sanitation depends on the type and level of conflict. Protracted internal conflicts associated with a total loss of territorial control often render States incapable of performing even the most basic governmental functions, and water is often one of the first services to be affected. In such situations humanitarian intervention may be required.[60]

Under international humanitarian law, specifically under the Third and Fourth Geneva Conventions of 1949, States have certain obligations in relation to water and sanitation, namely to ensure that prisoners of war and civilians/internees have access to sufficient drinking water; to provide sufficient water and soap for washing; to provide sanitary conveniences, day and night; and to provide separate sanitary conveniences for women prisoners of war and for women civilians/internees.

STATES HAVE THE OBLIGATION TO ENSURE THAT PRISONERS OF WAR AND CIVILIANS/ INTERNEES HAVE ACCESS TO SUFFICIENT DRINKING WATER

The customary rule prohibiting parties to an armed conflict from attacking, destroying, removing, or rendering useless objects indispensable to the survival of the civilian population also covers drinking water installations and supplies, and irrigation works.[63]

In the case COHRE v. Sudan, the African Commission on Human and Peoples' Rights considered that the right to health under the African Charter had been breached, given that "[...] the poisoning of water sources, such as wells, exposed victims to serious health risks".[64]

The international community, notably bilateral agencies and international organisations, must prioritise water and sanitation services and incorporate the human rights to water and sanitation into their policies and plans in their assistance to fragile States.

All parties to armed conflicts must comply with their obligations under international humanitarian law to ensure that all protected persons have access to water and sanitation.

All parties to armed conflicts shall refrain from targeting water and sanitation as a method or means of combat where this is in contravention of international humanitarian law.



04.
Service providers

4.1.
Introduction

All service providers must comply with the human rights to water and sanitation and should be monitored and regulated by independent State institutions.

To realise the human rights to water and sanitation, every service provider, whether formal or informal, publicly or privately owned, must therefore understand what is required of the service and change its procedures, approaches and rules accordingly.

There are many different forms of service delivery: from State-owned utilities that are publicly managed, through State-owned and independently managed utilities, utilities which are co-owned by the State and the private sector (but independently managed), to companies that are privately owned and managed. Co-operatives, owned by the community, but operating on a not-for-profit basis, may also be delegated by the State to provide services. The State has an obligation to ensure the delivery of services, whatever the structure of, and legal framework applicable to, the service provider.

Informal service providers often act independently of any State control, as do some not-for-profit service providers (such as community-based organisations or non-governmental organisations) and this must be addressed.

4.2.
Formal service provision – public, private and everything in between

Within a single country there may be many different contractual and ownership arrangements for formal service provision. States have an obligation to ensure that all instruments for delegating service provision, including contracts, are in line with human rights standards and principles, and contribute to the realisation of the human rights to water and sanitation.[65]

While strong regulation is important to ensure that service providers fulfil their responsibilities, in most cases a regulatory framework does not preclude the need for contractual arrangements between States and service providers, just as a contractual arrangement does not preclude the need for independent regulation. Where contracts were drawn up prior to the formal recognition of the human rights to water and sanitation in international or national legal frameworks, provisions for these rights should be added at their next review.



CHECKLIST:
Integrating human rights into contracts with service providers

This checklist outlines what States should include in contracts between the relevant State body (whether at national or local level) and service providers, to ensure that they comply with the human rights to water and sanitation.

	Yes	In progress	No
i. A clear definition of the service providers' human rights responsibilities with respect to realising the human rights to water and sanitation;	○	○	○
ii. Explicit integration of human rights standards, including: a. Water quality standards and targets that protect human health[66]; b. Service level targets to be met, including affordability, accessibility, safety, acceptability, and sustainability;	○	○	○
iii. Performance targets that include delivering services to un-served and underserved areas and specify investment plans to address inequalities in access between different areas;	○	○	○
iv. Incentives to deliver services to disadvantaged areas or households;	○	○	○
v. Clarity about how tariffs or other charges are set. Clarity on pro-poor pricing arrangements, subsidies and alternative methods of payment, and protection for low-income households in times of economic or other crisis;	○	○	○
vi. Disconnections permissible only after full review of reasons for non-payment, with a ban on disconnections due to inability to pay;	○	○	○
vii. Relevant information about the service must be available to users, and transparency should not be undermined by commercial confidentiality;	○	○	○
viii. Meaningful participation of those for whom the services are intended in decisions that will affect their enjoyment of the human rights to water and sanitation;	○	○	○
ix. Clause obliging service providers to ensure training in the necessary skills and knowledge for municipalities and regulatory bodies to fulfil their regulatory roles;	○	○	○
x. Clarity about how profits for shareholders can be limited and are regulated;	○	○	○
xi. Clear monitoring and oversight mechanisms that scrutinise compliance with the established standards.	○	○	○

Challenges: Corruption in the water and sanitation sectors

Widely defined as 'the abuse of entrusted power for personal gain'[67], corruption is both a cause and a result of the State's failure to realise the human rights to water and sanitation and leads to human rights violations. Corruption can take many forms, but common examples specific to the water sector include: falsified meter readings; bribery for new connections; favouritism in public procurement; and nepotism in the allocation of public offices. Monopolies in the water and sanitation sectors, large-scale construction projects, limited transparency and accountability systems, a high demand for water, and resource scarcity all increase the risk of corruption.[68]

In 2006 The World Bank estimated a loss of 20 billion US dollars in water financing over the following decade because of corruption.[69]

Decision-makers often neglect poorer areas when planning new water connections in favour of wealthier districts, due to corrupt practices such as nepotism and favouritism.[70] A lack of transparency in decisions about technology or the contracting of implementing agencies may also lead to more expensive or inappropriate choices. Corruption also affects prices directly when bribes have to be paid in order to pay bills, for repair work or for water and sanitation connection or reconnection. All of these corrupt practices disproportionately affect poor and disadvantaged individuals and groups who lack the resources to pay bribes, and the voice to oppose the vested interests of elites.[71] Corruption changes the rules of resource allocation, perpetuates exclusion and distorts accountability, leading to denials of human rights.[72]

CORRUPTION CHANGES THE RULES OF RESOURCE ALLOCATION, PERPETUATES EXCLUSION AND DISTORTS ACCOUNTABILITY

Anti-corruption measures and the promotion of human rights are mutually reinforcing. A strong legal structure, that encompasses the human rights legal framework, can clarify anti-corruption regulations and rules, enhance transparency in procedures, provide systematic mechanisms to ensure accountability and render sanctions more effective.[73]

For example, in the *SERAP v Nigeria* case, the judgement found that the misappropriation of public funds can constitute a violation of the right to education when the government does not sufficiently promote the prosecution of corrupt officials, and that funds stolen have to be compensated for by the government to ensure that everyone's basic rights can be guaranteed.[74]

The UN Convention Against Corruption (UNCAC) underlines the importance of active participation in planning by individuals and groups that are outside the public sector, in order to address corruption.[75] Participation gives people a voice in decisions and leads to a more equal distribution of power and resources. Unequal power

relations facilitate corruption: public participation can help limit opportunities for corruption through social monitoring by civil society and independent institutions.[76]

The Phnom Penh Water Supply Authority, as part of successful efforts to increase access to water and sanitation for the poor, introduced measures to address corrupt practices; for example: establishing public offices for customers to settle their bills directly so as to avoid corrupt bill collectors; training; performance-related pay for employees; and the introduction of meters for all connections.[77]

The Water Integrity Network (WIN) has developed approaches for tackling corruption in the water sector, including a toolkit developed specifically for Kenya, to improve the financial and operational performance of water and sanitation service providers.[78]

Helvetas and WIN have also been working together to address corruption in rural water and sanitation in Nepal, Mozambique and Guatemala through their Local Water Integrity Programmes.[79]

States can strengthen their approaches to identifying and tackling corrupt practices by promoting human rights, particularly the principles of access to information, participation and accountability.



Challenges: Disconnections

A disconnection is the interruption of the delivery of water (and sanitation, in the case of water-borne sanitation systems)[80], and can be temporary or permanent. Disconnections may take place for a variety of reasons, including people moving out of the house, or householders deciding to use an alternative source of water (or a septic tank instead of a sewerage system). These are usually justifiable in human rights terms.

However, disconnection of services due to inability to pay is unjustified, constitutes a violation of the human rights to water and sanitation, and is a retrogressive measure.[81] Disconnection due to non-payment is only permissible if it can be shown that the householder is able to pay but is not paying – in other words, that the tariff is affordable. Certain procedural safeguards (before, during and after disconnections) must be followed to ensure the rights of individuals have been effectively protected, for example by ensuring there is an alternative water source or toilet that will provide a basic minimum service. States must ensure they have effective administrative and judiciary systems that provide the opportunity to challenge disconnections and receive appropriate remedies.

States must bear in mind that a disconnection from water may simultaneously disconnect a household from sanitation, with negative consequences for public health. Disconnections, in extreme cases, have been used as a method of exerting power, with a view to evicting people from their homes.[82]

The affordability of water and sanitation services is an aspect of human rights, so service providers must assess whether the reason for any non-payment is a genuine inability to pay or an unwillingness to pay; they must examine the impact of any disconnections for non-payment, to make sure the action is necessary and proportionate.

Disconnection from water and sanitation services at the request of the household itself may also result from lack of affordability where poor households choose to rely on an alternative source of water.[83] This can have an impact on regulatory services, which will need to monitor the water quality of household-level services to ensure that the health of the disconnected household and broader public health are not jeopardised.

If water is disconnected due to non-payment and this has been proven to be due to an inability to pay, there is a core and immediate obligation to ensure that the individual or household is immediately reconnected, regardless of payment.

When water is scarce or the water service provider is carrying out maintenance or repair work[84], temporary (but not permanent) disconnections may be justified, but the State has to ensure that its core obligations are fulfilled: it must continue to provide an essential amount of water; those affected must be informed of the timing and duration of any temporary disconnections.[85]

If it becomes necessary to ration water because of scarcity, it is crucial that the most vulnerable or marginalised people are not disproportionately affected. For example, water rationing must not occur predominantly in low-income neighbourhoods (as is often the case), but must be distributed equitably across the entire service area.

In 2013 in Ozd, Hungary, at a time of water scarcity, the municipality decided to disconnect public water-points, which were mostly used by the Roma population. This was ostensibly in order to save both water and money, but no information was provided to the people who would be affected.[86] The disconnection of public standpoints, particularly where these provide the only water for disadvantaged populations without an affordable alternative, is a violation of the human rights to water and sanitation.

The UK Water Industries Act 1991 recognises that disconnections may be carried out for the purpose of maintenance work, but if supply is cut off for longer than twenty-four hours, an emergency supply of water within a reasonable distance must be provided.[87]

The Act was amended in 1999, to ban disconnections from water and sewerage services for non-payment by domestic customers.[88] The government adopted the position that, "Where the water supply is disconnected, the maintenance of good health and hygiene can only be put at risk."[89]

Detroit Water and Sewerage Department, on the other hand, has been disconnecting water services from households that have not paid bills for two months, with no consideration of whether people are unable to pay, leading the Special Rapporteur to state publicly that "when there is genuine inability to pay, human rights simply forbids disconnection" and to demand residents' immediate reconnection.[90]

During the Special Rapporteur's 2011 mission to the USA, she observed situations in which children were separated from parents and placed into custodial care because the household water supply was disconnected. The US authorities should therefore address the underlying causes of the inability to pay, and act in the best interest of the household and public health. In some states of the USA, legal protections are provided against some water disconnections; for example, to households with children under 12 months, persons over 65 years or persons with certain medical conditions. However, there is no federal affordability standard.[91]

In South Africa, procedures for the limitation or discontinuation of water services must provide reasonable notice of the intention to limit or discontinue water services, and provide an opportunity for the user to make representations.[92] The 1997 Water Services Act, while not banning disconnections, clearly states that procedures for the limitation or discontinuation of water services must not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services.[93]

In a case heard at the High Court in Zimbabwe, it was found that because water is a human right, access to which can only be denied with "just cause", service providers, in this case the city council, cannot disconnect water supplies without a court order.[94]

Some service providers, particularly in Africa, have introduced pre-paid water meters that only supply water when it has been paid for in advance.[95] As the human rights to water and sanitation also apply to the use of such pre-payment technology, the affordability and availability of water provision must be respected, and disconnections must always follow due process. In the case of prepaid meters, disconnections may occur every time a household does not have the money to put into the meter; these are effectively 'silent disconnections'. This represents a retrogressive measure and does not comply with human rights obligations.

Plans to use pre-paid meters for essential services must be carefully examined before a decision is made to install them, particularly if they are intended for households that have no or low incomes, as such households must not be disconnected. Every household that uses this technology must be assessed for ability to pay for the necessary amount of water for all personal and domestic uses, and those that cannot afford to pay must receive water service at a reduced rate or free of charge. Some pre-paid water meters will allow for access to a limited quantity of water even where the individual or household has not paid. This

quantity of water would need to be carefully assessed for human rights compliance. The concern about 'silent disconnections' is especially serious for households that use water-borne sanitation, because disconnection from water results in disconnection from sanitation and can quickly become a public health issue.

An effective regulatory system must ensure that where water and sanitation services are unaffordable, they will not be disconnected. Service providers can also establish appropriate flexible payment schemes, such as phased payment, for people on low incomes. In some cases, flexible payment schemes are not sufficient to alleviate unaffordable tariffs.

Laws and policies should outline the steps that service providers must follow before disconnecting households from water and sanitation services, and these must be in compliance with human rights obligations.

Those affected must be:

- informed in advance, with reasonable notice, of the planned disconnection;
- informed of their options for recourse to legal remedies before the disconnection takes place, and
- informed of how to gain legal assistance to obtain remedies.[96]

Technologies such as pre-paid water meters must be assessed for human rights compliance, in particular with respect to affordability, to avoid 'silent disconnections'.

AN EFFECTIVE REGULATORY SYSTEM MUST ENSURE THAT WHERE WATER AND SANITATION SERVICES ARE UNAFFORDABLE, THEY WILL NOT BE DISCONNECTED

4.2.1. Concerns relating to non-State service provision

Non-State service provision refers to the involvement of those service providers that do not belong to any institution of the State, including: private companies, entrepreneurs, NGOs and community-based organisations as well as companies that are State-owned but not State-managed. It does not include direct state provision, for example municipalities acting as service providers, where no other actor than the States is involved. This involvement can differ according to the scale of operations, ownership of assets, responsibility for capital investments, allocation of risks, responsibility for operation and maintenance, and the duration of contracts.

Given this wide range of activities and different legal frameworks and contexts, this section will only outline some of the general elements and challenges that States should take into account in the process of deciding whether and how to involve non-State or private sector actors.

While the human rights framework does not dictate a particular form of service provision, the State retains its human rights obligations, continuing to bear the main duty to ensure access to water and sanitation, regardless of the type of provider chosen.[97] States must therefore ensure that the involvement of non-State actors does not result in human rights violations, for example because of disconnections or unaffordable tariffs.

Service provision can be delegated to private companies, to public companies or to State-owned companies that are completely or mostly owned by the State, but are legally distinct from the State itself and are therefore governed by commercial law. However, from the perspective of human rights, the crucial similarity between State-owned, delegated service provision and private actors is that in both cases, the State has passed the task of providing human rights compliant water and sanitation services to a third party.

The delegation of services that are directly related to the fulfilment of human rights, in this case the human rights to water and sanitation, might have legal and practical consequences that must be made clear to the public, and to the service providers in question.

The State must create an enabling environment, outline who is responsible for service provision and where, and plan for and provide resources for an independent regulator. Where a business enterprise is controlled by the State, or where its acts can be directly attributed to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own human rights obligations.[99]

Where States delegate water and sanitation service provision to third parties, including the private sector, they still retain the obligation to ensure that the human rights to water and sanitation are realised, and must adopt the necessary safeguards to ensure that the human rights to water and sanitation are not threatened.

Participation and access to information in non-State service provision

States must comply with their international human rights obligations when making decisions and conducting their activities. Decisions must be made in a democratic, transparent and participatory way in line with the right to participation (article 25 ICCPR) and access to information (article 19 ICCPR). This is true whether the State provides services directly or delegates service provision to non-State actors. Article 25 of the ICCPR also provides for the right to participation through referendums on public issues.[100]

In Uruguay, in a referendum promoted by civil society organisations, the population voted for an amendment to the constitution regarding water and sanitation issues.[101]

In Berlin, a referendum in 2011 decided that the State must disclose relevant information on private sector participation and contracts relating to the Berlin water provider, Berliner Wasserbetriebe (BWB).[102]

In Scotland in 1994, Strathclyde Regional Council organised a local referendum to decide on their model of service provision, in the context of the privatisation of services in England and Wales.[103]

DECISIONS MUST BE MADE IN A DEMOCRATIC, TRANSPARENT AND PARTICIPATORY WAY

Once the fundamental decision to delegate service provision to non-State actors has been taken, access to information and participation should continue to be safeguarded in the subsequent process of tendering, bidding and contract negotiation. The terms of reference and the draft contract should be made available for public scrutiny and comment. Transparency and access to information are the best ways to ensure that decisions limit corruption and promote the public interest.

States must have strict rules in place that ensure that all documentation including tendering and contracting related to delegation of service provision is open and transparent, and that those who will be affected are able to participate fully in debates, before the decision is made to delegate service provision to non-State actors.

Challenges: Loan conditions

The Guiding Principles on Foreign Debt and Human Rights state that creditors should not make loans or debt relief conditional on the implementation of policies such as private sector participation.[104] Donors who impose such conditions undermine democratic decision-making, limit the State's regulatory and policy options and ignore the capacity of national and subnational authorities to address and solve local problems.

One of the ideas behind these Guiding Principles is the protection of independent processes of national development, which must be "free from pressure, influence or interference from external actors, including other States and international financial institutions".[105]

The Committee on Economic, Social and Cultural Rights has urged borrower States to take into account their obligations under the Covenant in all aspects of their negotiations with international financial institutions, in order to ensure that economic, social and cultural rights, particularly those of the most vulnerable sectors of society, are not undermined.[106]

The Committee has also encouraged donor countries to do all they can to ensure that the policies and decisions of the international financial institutions of which they are members, in particular the International Monetary Fund (IMF) and the World Bank and regional development banks, conform with the obligations of States parties to the Covenant, particularly those provisions concerning international assistance and cooperation.[107] Both the World Bank and the IMF, as specialised agencies of the UN, have obligations arising from the UN Charter, including the implementation of the two international Covenants.[108] Recently, in a letter on austerity measures addressed to States parties to the ICESCR, the Committee underlined that when States parties are working within international financial institutions (such as the World Bank, the IMF, and regional financial institutions) on issues of official development assistance, they should respect their obligations relating to economic, social and cultural rights.[109]

Financial institutions must include assessments of the impact of their proposed policies, projects and programmes on human rights, both while the policies are being formed and during and after their implementation. Such assessments should be public and participatory, and should focus in particular on disadvantaged and vulnerable groups.[110] (see Justice, p.35)

Recently, however, the IMF, the European Commission and the European Central Bank have, in the Economic Adjustment Programmes for Greece, demanded private sector participation in the water and sanitation sector as a condition for receiving a loan. This private sector involvement was initiated by the Greek Government, with the reasoning that this would improve the sustainability of Greece's debt[111], but little public debate of alternative solutions took place.[112] This requirement was overturned by the decision of the Greek Council of State in May 2014 with respect to the planned privatisation of the Athens Water Supply and Sewerage, arguing that public health could be put at risk due to uncertainty as to whether water and sanitation services will remain affordable and of high quality under private sector management.[113]

States must ensure that conditions attached to the loans and grants that they receive do not result in violations of the human rights to water and sanitation.

Donors, including international finance institutions, must ensure that they do not impose conditions, particularly with respect to private sector participation, that might result in human rights violations.

Maximum available resources

The realisation of the human rights to water and sanitation requires an increase in investment in the water and sanitation sectors.[114] This is one of the reasons invoked by many States, in developing and developed countries alike, for turning to the private sector, both to deliver services efficiently and to increase the amount of capital coming into the sector. However, the motive for involvement by private sector companies in the water and sanitation sectors is profit, for the companies and for their shareholders.

Human rights law does not define a particular approach to profit-making. However, States must ensure that the compliance of service providers with water and sanitation standards is not compromised by a desire for excessive profits at the expense of constructing, upgrading or maintaining services.

When States provide services directly, they are bound by their legal obligation to take steps, to the maximum of their available resources, to progressively realise the rights.[115] Delegating service provision to the private sector does not diminish this obligation. Regulation must strike a balance between the level of profits, the performance standards achieved, incentives set, targets met, the affordability of tariffs, and investment needed, so as to make sure that the necessary resources for realising the human rights to water and sanitation are not excessively captured by public or private companies or individuals.

THE REALISATION OF THE HUMAN RIGHTS TO WATER AND SANITATION REQUIRES AN INCREASE IN INVESTMENT IN THE WATER AND SANITATION SECTORS

The pressure on public or private companies to satisfy shareholders might have the negative consequence of leading the service provider to focus on short term results and on more profitable operations while refraining from making the necessary investments in operation and maintenance and in extending and improving access to poorer or informal neighbourhoods.

States should ensure that profits by non-State water and sanitation service providers are limited and independently regulated, so that the availability of sufficient funds for operation, maintenance and extension of services to all is safeguarded.

Regulatory framework

An effective regulatory system, based on human rights standards, is vital to ensuring the compliance of State and non-State actors with the human rights to water and sanitation.[116] (see Frameworks)

Where non-State actors are involved in delivering water and sanitation, the legislative, regulatory and policy frameworks must clearly designate the roles and responsibilities of the different actors involved (private or public companies, government and regulator). When involving non-State actors, States must use regulation as well as service contracts to clarify the service provider's responsibility to ensure affordable services, complementing the State's obligations. One of the critiques of non-State involvement in the water and sanitation sectors, particularly of transnational companies, is that the private sector has far more experience in managing service delivery and, often more, economic power than either the State (particularly at the local government level) or a regulatory body. While price-setting, along with the setting of other national standards, such as quality, accessibility and service levels, will be managed by the regulatory body, there can be problems where the private actor is stronger than the body that is there to regulate it.

States must ensure that there is a regulatory body with the mandate and capacity to regulate private sector participation in water and sanitation service provision effectively, including with control of issues such as tariff setting.



4.3.
Informal and small-scale service providers

In most developing countries, formal and informal service provision coexist, with informal provision responding to a need in areas not covered by formal provision. It has been estimated that up to 25% of the urban population of Latin America and almost 50% of the urban population in Africa relies on small-scale informal providers to some extent.[117]

Therefore, the role of informal and small-scale providers cannot be dismissed, despite the fact that they generally operate on their own terms, using technologies and approaches that are unregulated, and often compromising on standards such as affordability and quality. As small-scale providers, they can often overcome accessibility problems through flexible delivery systems, and might offer a lower rate to regular customers.

THE ROLE OF INFORMAL AND SMALL-SCALE PROVIDERS CANNOT BE DISMISSED

Non-governmental and community-based organisations tend to work locally (with some exceptions), with extensive community involvement in making decisions about the types of services provided as well as in the construction, operation and maintenance of services. While the motivation of non-governmental and community-based organisations may be charity rather than the profit that drives other informal service providers, many of the same challenges for regulation and accountability apply.

In Costa Rica, community association groups (ASADAS) are the main water providers (principally in rural areas) and many of these have delegation agreements with the State.[118]

States have an obligation to ensure the human rights to water and sanitation in the context of informal and small-scale service provision, and must work towards improving the accountability of these service providers.

Challenge: Regulating informal service provision

States' obligations to realise the human rights to water and sanitation apply equally to informal as to formal service providers. States are therefore required to ensure that these operators at the least do not interfere with the enjoyment of the human rights to water and to sanitation, and in the best cases that they contribute to the realisation of the rights. This is particularly relevant in the context of informal settlements, where residents tend to be disadvantaged and living in poverty, and are most in need of State support and protection. To date, far less attention has been paid to the regulation of informal, small-scale providers than to the regulation of utilities and large private companies.

Before informal service providers can be integrated into the regulatory framework or replaced with formal service provision, States must acknowledge and understand the activities of informal providers, creating the space for informal and small-scale service providers to develop and, where possible, plan for better services and improved regulation. In some countries, cities and settlements, informal provision is tolerated, and has been accepted and incorporated into service delivery.

States can protect the human rights to water and sanitation in different ways. In some cases, formalising informal providers and finding the right incentives to improve the quality and affordability of their services while retaining the flexibility of the informal market will be appropriate.

States may also encourage individual informal providers to become linked with formal water service providers and regulatory bodies, or offer incentives for the provision of improved services at affordable prices.

In many cases, informal provision has existed for decades, so there can be significant resistance from the providers and from the users when these services are phased out. States must ensure that the measures taken (for example, strict licensing requirements), do not worsen the situation and leave people without access to water or sanitation services.

Private water operators in Mozambique mainly invest in boreholes and independent mini-networks for water distribution. In the Maputo metropolitan area alone, there are 800 small-scale water providers serving 190,000 households, and about 180,000 connections provided by the formal utility. Informal service provision is tolerated and even encouraged in the short term, because it extends access to services. However, at a water sector stakeholders meeting in Maputo in 2012, broad consensus was reached about the need for a tailored licensing and regulatory framework for private operators.[119]

A recent assessment of user preferences and satisfaction in Maputo by the Mozambican Water Regulatory Council showed that people prefer the service obtained from small-scale operators to that of the utility, due to a mix of factors which includes more reliable supply, reduced travel and waiting times, and ease of payment.[120]

Legal instruments to regulate the informal water and sanitation sector must be adapted to the decentralised and localised nature of small-scale service provision. For example, septic tanks must be emptied, but there is no guarantee that the faecal sludge will be properly disposed of or treated. It is unlikely that a central agency can adequately oversee the activities of small-scale providers, so a different institutional set-up may be required, managed by local governments and setting incentives for service providers; for example, making payments to the provider only after the proper disposal of faecal sludge. This requires investment from the State or other actors to pay for the construction of adequate waste management and/or treatment plants.

In Kenya, in accordance with the 2002 Water Act, the regulatory framework does not apply to water providers who supply fewer than 20 households or less than 25 cubic meters of water per day for domestic use. Most of the unlicensed providers who fall into this category are mobile vendors who obtain water from a variety of sources, protected and unprotected, and set prices almost entirely at their own discretion. These providers are currently outside of the regulated tariff structure, and of the system of regular quality inspections.[121] The Government's position is that in the long term, informal service providers should be linked to the formal system, and should comply with official tariffs and quality standards.[122] In the short term, the Government is pragmatic and tolerates informal provision.

States should recognise and understand the role and extent of informal provision of water and sanitation services, in all its different forms, in order to overcome the challenges of a lack of regulation, which often results in inadequate services.

State regulation of water and sanitation service delivery should also apply to informal provision and fully integrate all components of the human rights to water and sanitation.

Challenge: Sanitation workers and manual scavengers

All over the world, sanitation workers play a key role in realising the human right to sanitation, by emptying pit latrines or septic tanks, cleaning sewers and managing wastewater treatment plants. This involves working with human and animal waste, medical waste, industrial waste, sanitary napkins, and other solid wastes. All too often, working conditions are unsafe and unhygienic and have led to injury and death. This amounts to a violation of international norms and standards concerning safe working conditions, health and dignity.

There is often stigma attached to sanitation work, and people who do these jobs may be discriminated against. This stigmatisation is common all over the world, but is perhaps most pronounced in South Asia where sanitation work takes the form of 'manual scavenging'. Manual scavenging means that people have to remove human excrement from dry toilets by hand and carry it in open baskets to dumping sites. This must be distinguished from sanitation work in general because of the intrinsic link between the activity and one of the worst aspects of the caste system, untouchability. Most of the people who do this job are women belonging to scheduled castes that have been and continue to be subject to discrimination in all areas of their lives.[123]

ALL TOO OFTEN, WORKING CONDITIONS ARE UNSAFE AND AMOUNT TO A VIOLATION OF INTERNATIONAL NORMS

The practice of manual scavenging is a direct violation of the Constitution of India, and of a number of national Acts, as well as violating international conventions and covenants to which India is party.[124]

Despite existing legislation and even court cases finding against this practice, there are still hundreds of thousands of manual scavengers in India, including some employed by government agencies.

States must not implement sanitation solutions that threaten the rights of sanitation workers and must safeguard the safety and security of sanitation workers to ensure that the essential work that they undertake does not have a negative impact on their health or dignity.

States must work to remove the stigmatisation associated with working in the sanitation sector through awareness-raising, as well as ensuring that inhuman and unhealthy practices are eliminated.



05.
Checklist

National and sub-national State actors

Planning

	Yes	In progress	No
Are national and local planning processes open, transparent and participatory? Can disadvantaged, marginalised and vulnerable individuals and groups participate fully in making decisions relating to their services?			
Are baseline and feasibility studies participatory and available for review? Do baseline studies identify the most disadvantaged individuals and groups?			
Do baseline and feasibility studies consider accessibility, affordability, adaptability and acceptability?			
Is there accurate information on the levels of services in informal settlements, including the types of service providers?			
Are targets set through inclusive processes, with sufficient information made available to the targeted individuals and groups?			
Do the national and / or local plans of action include specific targets for disadvantaged groups?			
Do the targets cover planning and financing for on-going maintenance and operation, to ensure economic and environmental sustainability?			
Are the responsibilities of the various actors at each stage of the planning process clearly defined?			
Are current and future users included in the planning processes; can they influence outcomes, does this increase their understanding and use of services?			

Capacity building

Are there programmes in place to increase capacity in the operation and maintenance of infrastructure, including access to information about who is responsible for operation and maintenance?			

Awareness raising

Does the government tackle taboos relating to menstrual hygiene and sanitation? How?			
Are there programmes in place to raise people's awareness of good hygiene behaviour?			

Regulations			
	Yes	In progress	No
Does the regulatory framework include non-State service provision?			
Does the regulatory framework include rules about how profits from water and sanitation services can be used?			
Are informal service providers, including civil society organisations, regulated?			
Contracts			
Are contracts between States and service providers fully compliant with human rights standards?			
Are the human rights responsibilities of the service providers clearly defined in the contracts, along with the standards and targets required immediately and in the long term?			
Do contracts contain coverage targets to eliminate inequalities in access to water and sanitation?			
Is there sufficient provision in the contracts for participation, access to information, capacity building and water quality standards?			
Disconnections			
Are there clear and effective regulations on how disconnections undertaken by service providers can be carried out in compliance with the rights to water and sanitation?			
Are there effective administrative and judiciary systems that allow people the opportunity to challenge disconnections and receive appropriate and timely remedies?			
Anti-corruption			
Are there regulations and rules against corruption?			
Are there measures in place, such as information about service provider responsibilities, available to the public?			

Continued...

Service providers

	Yes	In progress	No
Is official information on existing coverage of water and sanitation services available to the public?			
Are existing gaps in service provision, and the corresponding requirements for extending access to services, assessed?			
Have the regions, settlements and sectors of the population that require specific assistance been identified?			

Donors

Do international financial institutions undertake human rights impact assessments of their policies, projects and programmes, both during the process of policy and project formulation and after a period of implementation?			
Are these assessments public and participatory; do they focus in particular on disadvantaged and vulnerable groups?			
Do loans or debt relief avoid attaching conditions requiring the implementation of privatisation policies?			

06. Image credits and references

Image Credits:

Page 4 A WaterAid mobile latrine, Beltola slum, Dhaka, Bangladesh, 2011. WaterAid/GMB Akash/Panos.

Page 7 Buckets wait in a line as women and children wait to collect clean water from the pump in the village of Fayama, Sierra Leone, May 2013. WaterAid/ Anna Kari.

Page 9 Camp for internally displaced persons (IDPs) in Lodwar, Turkana, Kenya, 2014. Madoka Saji.

Page 14 Kallaya Tate, Zemacha Shalle and Gallo Genama making cement to close of part of the pipeline, at the reserve tank, Lahyte, Konso, Ethiopia, 2013. WaterAid/Mustafah Abdulaziz.

Page 34 Open drainage channel, Bairro Urbanizasao, Maputo, Mozambique. WaterAid/ Eva-Lotta Jansson.

Page 36 A jumble of Illegal water connections, Karail slum, Gulshan thana, Dhaka, Bangladesh, 2011. WaterAid/GMB Akash/Panos.

Page 39 Washing clothes in Haiti. UNICEF/Haiti/2014/Logan Abassi.

Page 47 Leyda, 12, and Caleb, 11, carry water home from a nearby pond, in the flooded village of Sachojere in the Amazonian department of Beni in Bolivia. Residents use the pond water for their household needs. UNICEF/ NYHQ2008-0388/Abramson.

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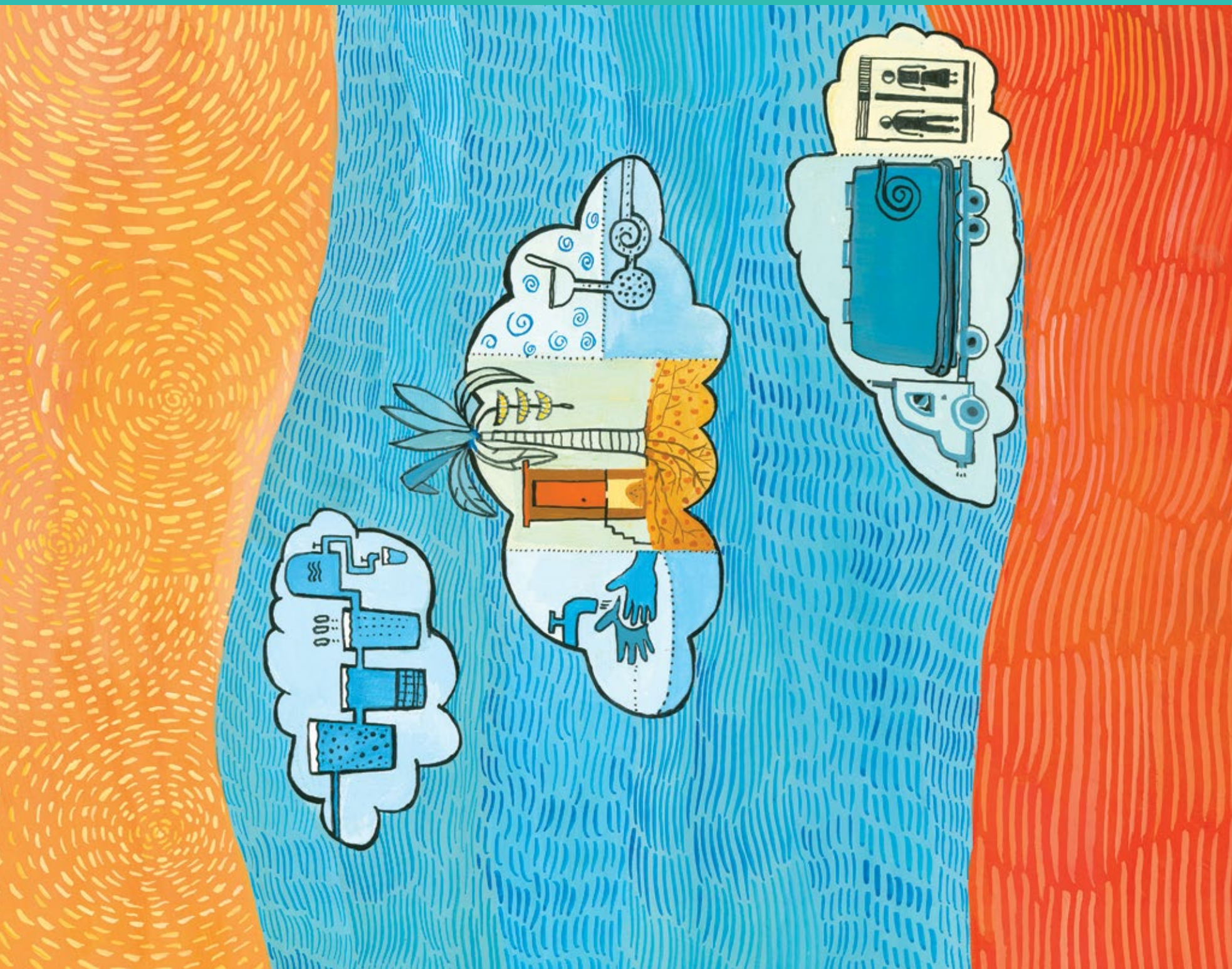
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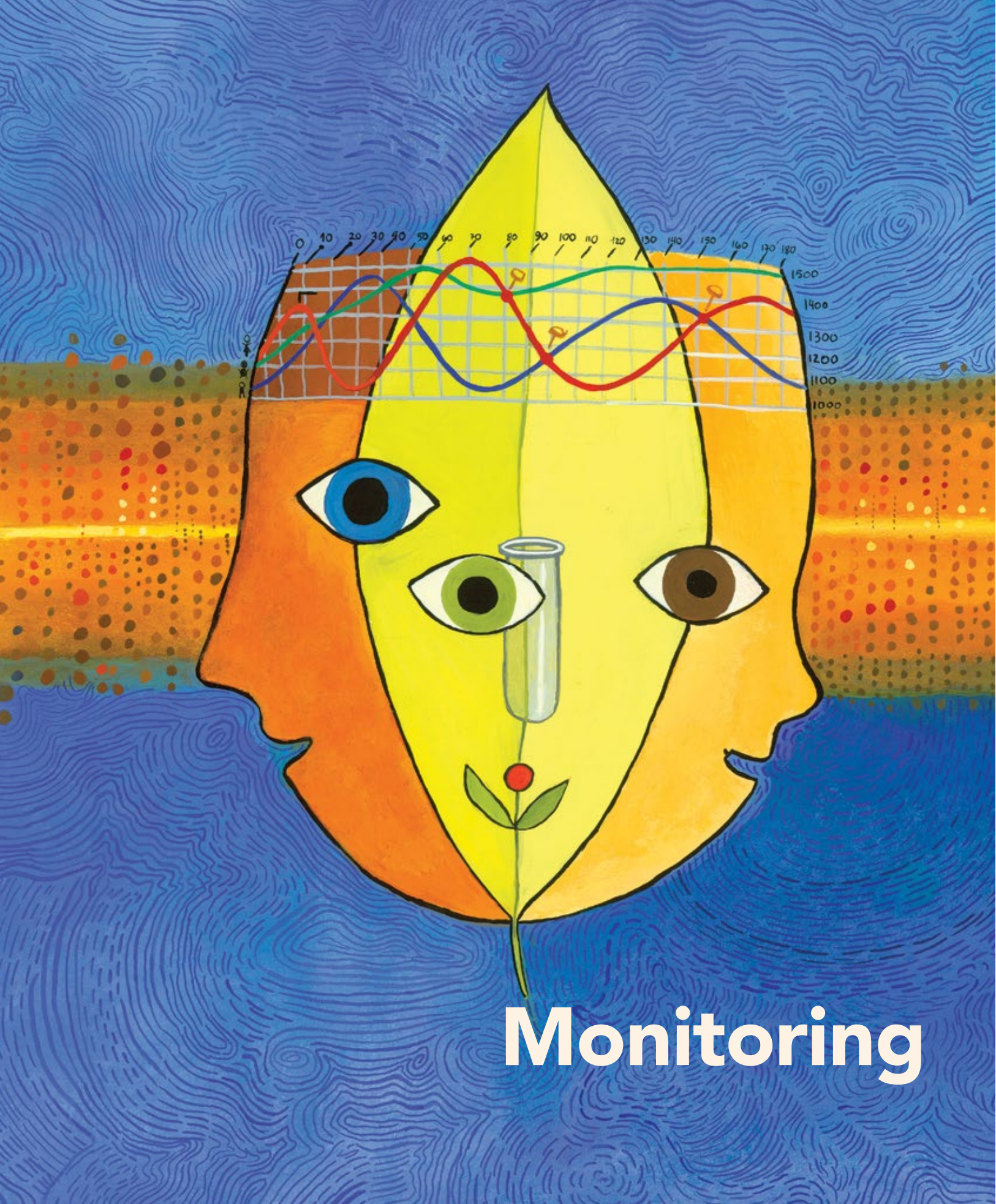
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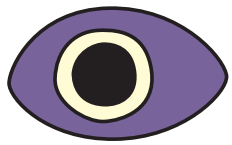
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Monitoring



REALISING THE HUMAN RIGHTS TO WATER AND SANITATION:
A HANDBOOK BY THE UN SPECIAL RAPPORTEUR
CATARINA DE ALBUQUERQUE

Monitoring compliance with the human rights to water and sanitation



HUMAN RIGHTS TO WATER & Sanitation
UN SPECIAL RAPPORTEUR

Realising the human rights to water and sanitation:
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Catarina de Albuquerque

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Contents

01. **Monitoring the human rights to water and sanitation** 5

1.1. What does monitoring of the human rights to water and sanitation require? 7

1.2. The public availability and accessibility of information 8

02. **Monitoring of national and local standards and targets** 9

2.1. Monitoring inequalities 11

2.2. Monitoring availability: challenges and solutions 14

2.3. Monitoring accessibility: challenges and solutions 15

2.4. Monitoring quality: challenges and solutions 17

2.4.1. Monitoring water quality 17

2.4.2. Monitoring the quality of sanitation provision 18

2.5. Monitoring affordability: challenges and solutions 19

2.6. Monitoring acceptability: challenges and solutions 20

2.7. Monitoring sustainability 21

03. **Other national actors in monitoring the realisation of the human rights to water and sanitation** 25

3.1. State bodies 26

3.1.3. Regulatory bodies 26

3.1.4. National human rights institutions 26

3.2. Service providers 27

3.3. Civil society organisations and non-governmental organisations 28

04. **The international frameworks for monitoring access to water and sanitation** 31

4.1. International frameworks for human rights monitoring 32

4.1.1. Monitoring through treaty bodies 32

4.1.2. Universal Periodic Review 34

4.1.3. Special Procedures 35

4.2. Using other monitoring systems to scrutinise the human rights to water and sanitation 36

05. **Checklist** 39

06. **Image credits and references** 43



01.
Monitoring the human rights to water and sanitation

Monitoring is essential to assessing whether States and other actors, including service providers, are complying with the human rights to water and sanitation; it is a prerequisite for holding States and other actors to account for violations or offences.

Monitoring for the human rights to water and sanitation will often differ from the more technical monitoring undertaken by different subnational, national and international bodies, which measures the number of latrines or the functioning of water-points.

States have the primary obligation to monitor their own and others' compliance with the legal content of the human rights to water and sanitation. There are a number of different mechanisms and institutions at the national and local levels that play a role in monitoring access to water and sanitation. These include State institutions (national statistical offices, line ministries and State-owned service providers), independent State bodies (such as national human rights institutions and independent regulators,) and non-State institutions, in particular the service providers themselves, but also non-governmental and civil society organisations.

It is the State's obligation to ensure independent monitoring of all components of the human rights to water and sanitation, as well as to scrutinise the monitoring undertaken by other national entities or bodies, such as (private or public) service

providers. This monitoring can be complemented by the oversight activities of national and local civil society organisations and of international institutions.

Information collected by these monitoring mechanisms is central to an understanding of the extent to which States are complying with their human rights obligations, and also contributes to better policy-making (Frameworks), budgeting (Financing), planning (Services), and accountability systems (Justice).

Monitoring processes gather information that helps national and local government, regulators, service providers, civil society, individuals and other actors to identify gaps in provision and to track the progress of plans. This information provides a foundation for future legal, political and financial decisions.

Making this information available to the public helps to raise awareness of the status of service provision locally and nationally, giving individuals and communities the tools to push States to improve their performance in ensuring access to water and sanitation services.[1]

Besides national monitoring, some aspects of the rights to water and sanitation are also monitored by international technical bodies or institutions. Hence UN human rights treaty bodies, regional and international organisations will each monitor different aspects of access to water and sanitation. (see pp.31-36)



1.1. What does monitoring of the human rights to water and sanitation require?

Human rights monitoring assesses State's compliance with the norms and standards defined by the human rights to water and sanitation. States and other actors may already monitor some aspects of human rights, such as water quality or the accessibility of water and sanitation services to particular population groups, but these existing monitoring mechanisms may not be able to cover all dimensions of the human rights to water and sanitation. Further, human rights monitoring examines water and sanitation in a holistic manner – looking not only at progress made, but also at existing gaps and the underlying causes of such gaps and failures.

Comprehensively monitoring a State's compliance with the human rights to water and sanitation means keeping track not only of the provision of water and sanitation services, but also of the legislative, policy, regulatory and budgeting frameworks required to ensure the realisation of the human rights to water and sanitation. This monitoring examines not only compliance with the legal content of the human rights, but also whether all of these frameworks ensure non-discrimination and equality, whether they are participatory, whether there is adequate access to information, and if it is possible for people to hold the State to account.

Human rights monitoring commonly builds on a framework of structural, process and outcome indicators. **Structural indicators** monitor whether the legislative, policy and regulatory frameworks of a State or government (at all levels) provide an environment that encourages the realisation of human rights. **Process indicators** monitor the action taken to realise human rights; for example, the allocation of resources to services for disadvantaged individuals and groups. **Outcome indicators** monitor actual access to water and sanitation services; for example, whether households have access to a latrine or whether water is of adequate quality.

Human rights indicators are developed to monitor specific legal norms.[2] They must reflect and measure all elements of the human rights to water and sanitation, including availability, accessibility, quality, affordability and acceptability. (see Introduction, pp.29-32) The process of determining indicators should allow flexibility, so as to remain relevant. The Office of the High Commissioner for Human Rights has defined indicators for verifying compliance with some of the economic, social and cultural rights, and is in the process of defining indicators for the human rights to water and sanitation.[3] The Danish Institute for Human Rights has also developed a set of indicators for monitoring economic, social and cultural rights.[4]

States should define national **structural, process** and **outcome** indicators of progress towards the realisation of the human rights to water and sanitation, which are based on those indicators developed by OHCHR.

States should assist independent monitoring bodies, such as human rights institutions and civil society organisations, in their monitoring of human rights.

1.2.
The public availability and accessibility of information

States have an obligation to collect and disseminate information related to the human rights to water and sanitation. States should be able to collate, from the monitoring bodies mentioned above, current, accurate and detailed information about water and sanitation coverage and the characteristics of un-served and under-served households. This data should be disaggregated according to different population groups, in order to highlight differences in access to water and sanitation, including, for example, informal and formal settlements, urban and rural areas, and specific population groups.

Disaggregation of data helps determine what the barriers to access to water and sanitation are, and to inform the design of necessary legislation, policies, budgets and services to overcome these.[5] This information should be reliable, complete and up-to-date and be accessible to all.

The availability of data on water quality, pricing and financing, service levels, and other standards is crucial in order to assess whether States are applying human rights principles to decisions made on issues relating to water and sanitation.

With advances in information and communications technology, there is an increasing amount of data. However, if governments release large amounts of data at their own discretion, without any dialogue with individuals and civil society organisations about what the data mean and how civil society can use them, then the information is not truly accessible to the public.[6] Genuine accessibility may require intermediaries, such as specialised civil society organisations and academics, to help make the information understandable. A group of experts on transparency in government have introduced eight principles for Open Government Data, stating that data released by the government should be: complete, primary, timely, accessible, capable of being processed by machines, non-discriminatory, non-proprietary, and free of any licensing regulation on the data or format.[7]

The obligation to make information available is often not respected by States. On her mission to Egypt, the Special Rapporteur was informed that the results of water quality testing are not made public and are a State secret. The authorities also considered that the general public would not understand such technical analyses and would perhaps misuse and/or misinterpret the information.[8] In this case, the Government of Egypt should have ensured that the information was available in a comprehensible format, so that people could understand what the water quality values meant for their water consumption.

States must ensure that access to information is enshrined in the legal framework, and that data are adequately collected, organised and stored, and then made public in a timely, accurate, accessible and useful form.

Information must reach target audiences in non-technical language, in appropriate local dialects or languages, and in a format that is culturally sensitive to each group.

02.
Monitoring of national and local standards and targets

The setting of national standards and targets that comply with human rights and the adoption of relevant indicators provide the necessary tools for monitoring whether States are complying with their obligations regarding the human rights to water and sanitation. (see Services, pp.13-21)

This section will discuss the monitoring of standards, targets and indicators relevant to non-discrimination, availability, accessibility, quality, affordability, acceptability and sustainability.

States have an obligation to develop national standards and indicators that will enable them to monitor all elements of the human rights to water and sanitation. In setting national and local standards, national governments and local actors must consider existing service levels, local context (such as the availability of water resources), and settlement types and densities. Interim standards may need to be set, with accompanying targets and indicators, before the best possible standard is achieved.

Any standards and indicators must be associated with clearly defined targets. Such targets must be time-bound, and tailored to meet the needs of particular population groups or settlements, taking into account the barriers that have to be overcome.

Indicators may be direct, for example, measuring the number of public toilets that have been built, or they may be proxy indicators. For example, latrine coverage will often be measured simply by the existence of a latrine, rather than by more complex indicators that would ascertain whether the latrine is actually being used by everyone in the household. As discussed, the indicator for water quality used by the WHO / UNICEF Joint Monitoring Programme is currently a proxy indicator, measuring the type of water source rather than monitoring the actual quality of the water source. This proxy indicator cannot inform users whether a particular water source is safe to use, but it provides rough information about the likelihood of a water source being safe to use. (see p.17)



2.1.
Monitoring inequalities

Inequalities exist in every country. Some types of discrimination, such as those based on gender, age or disability status, are present everywhere to varying degrees, while others, such as ethnic or caste-related discrimination, differ from country to country. Identifying patterns and trends of discrimination across the world can help convey a powerful message, drawing attention to the impact of discrimination on disadvantaged individuals and groups.

The principles of non-discrimination and equality oblige States to look beyond average achievements and to identify disparate impacts or less favourable treatment over time. States must specifically monitor progress within identified populations that are discriminated against, to monitor whether inequalities are increasing or decreasing.

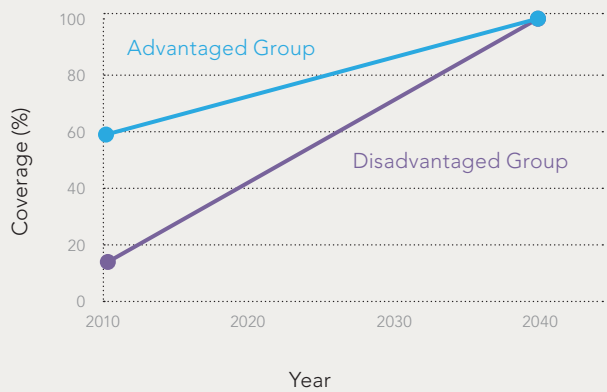
Disaggregated data is essential in order to fully understand where and how discrimination occurs with respect to access to the human rights to water and sanitation. General Comment No. 15 underscores the need for data to be disaggregated according to the prohibited grounds of discrimination[9]. (see Principles: Equality, pp.21-24)

The current lack of data on certain discriminatory practices is not accidental. Neglect often coincides with a low political profile. The way in which development, poverty and existing inequalities are measured has a tremendous influence on the direction of policies, the allocation of resources and, ultimately, the effectiveness of responses.

In many countries people living in informal settlements do not appear in the official statistics, even where they represent a high proportion of the population.

The Joint Monitoring Programme working group on equity and non-discrimination has devised a metric for monitoring the progressive elimination of inequalities. The diagram below illustrates how the elimination of inequalities requires faster rates of progress in increasing access to water and sanitation services for disadvantaged groups. The required rate of increase in service coverage over a given time can be calculated from the starting and target coverage percentages.

DETERMINING THE RATE OF PROGRESS NEEDED TO REDUCE INEQUALITIES



Source: Post-2015 Wash Targets and Indicators available at http://www.wssinfo.org/fileadmin/user_upload/resources/Fact_Sheets_4_eng.pdf

This metric can be applied to different population groups. These should include:

- poor people and rich people
- people living in rural and in urban areas
- people living in formal and in informal settlements
- the specific disadvantaged groups identified in each country, compared to the general population

The progressive elimination of inequalities can be monitored by following these steps:

1. Compare the access to water (or sanitation) of the worst-off population group with the better-off population to establish the **disparity**.
2. Determine the **necessary rate of progress** for both worst-off and better-off groups in order to meet the target (shown here as universal access – 100% coverage).
3. If the progress of both the worst-off and the better-off groups follows or even exceeds the determined rate of progress, and if the disparity between the two population groups narrows accordingly, inequalities will be progressively eliminated.

THE PROGRESSIVE ELIMINATION OF INEQUALITIES CAN AND MUST BE MONITORED

In addition to traditional sources of data, such as household surveys and service providers and regulators, the use of new technologies linked to mobile telephones and global positioning systems (GPS) can increase the volume of data relating to people's access to water and sanitation.

WaterAid and their partners map water-points using GPS to help local governments address disparities in the allocation of resources for water-points and wells in both rural and urban areas; this has also helped to identify political partisanship. [10]

A further application, where household monitoring is in place, is to examine disparities within households, such as women's and men's differing access to the water and sanitation service within the home, or that of children compared to others in the household.

The Performance Assessment System project, developed by the Center for Environmental Planning and Technology (CEPT) at the University in Gujarat, India, seeks to assess coverage, quality and service levels of water and sanitation in urban areas in Gujarat and Maharashtra. The project focuses on developing better information on ways of reaching poor households, in slum areas in particular, and has developed methods of spatial analysis for monitoring equity in service provision. [11]

The Global Water Operators' Partnerships Alliance, under the aegis of UN-Habitat

and in cooperation with the French Institute for Research in Africa (IFRA), conducted a study on inequalities in water service provision at the neighbourhood level in Nairobi.[12] In an effort to understand the underlying structural reasons for inequalities in access to water in Nairobi, they combine social and spatial analysis with a long-term assessment of the institutional framework and investment strategies pursued by the Government of Kenya and the city of Nairobi.

The study reveals a direct relationship between geographic location and variation in formal service provision, showing large disparities in water service provision between high-income and low-income areas. The study concludes that over time, the formal service provider has tended to favour investments targeting high-end consumers, in part because of limited incentives to provide services to the poor, in spite of recent far-reaching sector reforms.

The study does not examine how other dimensions of inequality, such as ethnicity or gender, influence disparities in access to water or sanitation in Nairobi, but information about these issues would be useful for understanding further barriers to access.

THE FORMAL SERVICE PROVIDER HAS TENDED TO FAVOUR INVESTMENTS TARGETING HIGH-END CONSUMERS

States must monitor not only overall outcomes, but also the measures taken to reach the most disadvantaged individuals and groups.

States must disaggregate data on their actions to realise the human rights to water and sanitation as well as outcomes. For example, to determine whether resources allocated towards increasing access to water and sanitation for people living in slums or in deprived rural areas are sufficient to eliminate inequalities.

States should integrate the 'elimination of inequalities' metric into their national monitoring processes in order to address disparities in access to water and sanitation. The same metric can be adapted for monitoring the elimination of inequalities in access to health services and education.

2.2.
Monitoring availability: challenges and solutions

The supply of water must be sufficient and continuous for personal and domestic uses, which ordinarily include drinking, personal sanitation, washing clothes, food preparation, and personal and household hygiene.[13] (see Services, p.15)

The availability of water for domestic and personal uses is often threatened by the poor management and prioritisation of water resources for other uses, such as agriculture or industry. Meeting the requirements of the human rights to water and sanitation requires close monitoring and regulation of excessive use, and of any contamination of water resources by agriculture and industry.

Water resources management plans and their implementation must be constantly monitored to assess whether the availability of water for domestic and personal uses is safeguarded, in particular for disadvantaged individuals and groups.

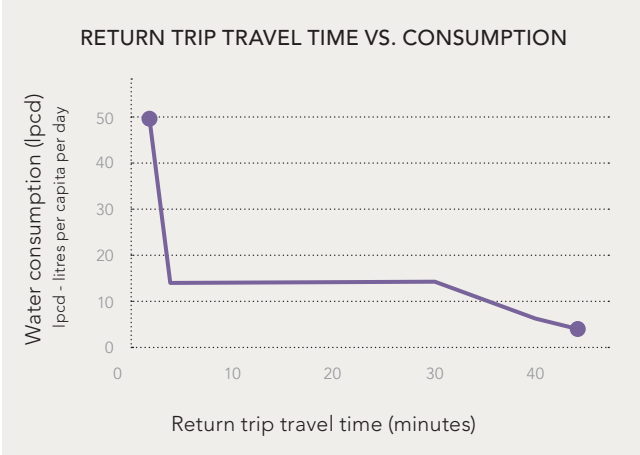


2.3.
Monitoring accessibility: challenges and solutions

The accessibility of water is directly related to availability, and will have an impact on how much water a household uses, and therefore on health, work, education and dignity. The longer it takes members of households that rely on water sources outside the home or yard to reach a water source, the less water they use.[14] (see Services, p.17)

Similar standards of accessibility apply to sanitation, with the added assumption that access to sanitation within the home is essential for health, privacy, security and dignity.

States must monitor access to water and sanitation by time and distance, as well as by accessibility for individuals and groups that face physical barriers. They must monitor these indicators within the home and outside the home.



Return trip travel time (in minutes) vs consumption, from WELL, 1998. Source: Report on Domestic Water Quantity, Service Level and Health by Guy Howard and Jamie Bartram WHO 2003.

SOMETIMES CHILDREN ARE NOT PERMITTED TO USE HOUSEHOLD TOILETS

Access in the home

Household surveys monitor the access to services of entire households, but information about whether everyone in the household has equal access to the services, or shares equally in the management of services is rarely available. Further, while, there is ample evidence that women take more responsibility for collecting water for the household than men do[15], but none about who manages sanitation services.

Anecdotal evidence suggests that in some countries some women, particularly those who are menstruating, are not permitted to use the same toilets as men; there are places where children may not use the same toilets as adults; tenants or domestic workers may not be allowed to use the latrines that home-owners use; people with stigmatised chronic illnesses such as HIV/AIDS may at times not be allowed to use a household water supply or latrines. More research needs to be carried out to understand whether this is a problem in particular national or local contexts, as unless this is monitored, the lack of access to water and sanitation services by particular individuals or groups will remain hidden.

States should carry out research into disparities in access to water and sanitation within the home, and where necessary take steps to address these disparities.

Access outside the home

Monitoring access outside the home means monitoring schools, health centres, workplaces, places where people are deprived of their liberty (such as prisons) and public places (such as markets). This monitoring is often lacking, even though it is a State's obligation. The World Health Organization carries out surveys of health institutions, monitoring access to (among other things) water and sanitation. The monitoring of access to water and sanitation in schools should be a function of the State, as water and sanitation facilities are often a requirement for building standards. UNICEF has developed a water, sanitation and hygiene monitoring module for its National Education Monitoring and Information System (EMIS) Questionnaires.[16] States must also monitor conditions in detention centres and in places of work, and include water and sanitation services in building standards.

As with the accessibility of water and sanitation services at the household level, the existence of hardware, such as a latrine, is not evidence that the service is properly used or maintained, or, in the case of sanitation, that faecal matter is adequately collected, transported, managed and reused or disposed of.

States must monitor access to water and sanitation outside the home: in schools, health institutions, workplaces, places of detention and public spaces.

2.4.
Monitoring quality: challenges and solutions

2.4.1. Monitoring water quality

Monitoring for water quality means ensuring that water is safe to drink, wash and cook with, and that it does not carry life-threatening illnesses. The WHO Guidelines for drinking-water quality[17] define recommended limits for the presence of chemical and biological substances in drinking water supply. These limits are set to maximise the probability that water is safe for human beings, and the long-term target should be full compliance with these guidelines. (see Service, p.18)

However, both achieving these standards and monitoring them is extremely costly. In most developed countries, water quality must reach stringent standards; it is tested regularly, and in many cases information about water quality is shared with the public, particularly when the standards are breached. (see Frameworks, pp.45-46) In many developing countries both reaching these strict standards and testing for them can be prohibitively expensive.

MONITORING FOR WATER QUALITY MEANS ENSURING THAT WATER IS SAFE TO DRINK, WASH AND COOK WITH

The public authorities responsible for public health often adopt achievable interim standards for water quality, and these are acceptable in countries with limited resources. For example, authorities could, as a minimum, aim to prevent water being contaminated by faecal matter and by naturally occurring minerals or metals that cause illness, such as arsenic, as well as ensuring that there is no pollution from local industry or agriculture. This minimum standard must be monitored by the service providers themselves, as must improvements to service levels and water quality standards over time.

One solution is found in Uruguay, where the State Sanitary Works (Obras Sanitarias del Estado, OSE) trains schoolteachers to measure water quality in schools, which is then reported daily.[18] In several Water Committees in Latin America, the communities themselves undertake regular – albeit basic – water quality monitoring. This is complemented by more complete water quality monitoring at a less frequent interval, by the municipality.

States must monitor whether water quality standards are being achieved, and must provide information for the public when they are breached, so that people can take the necessary steps to treat water, for example by boiling or filtering.

2.4.2. Monitoring the quality of sanitation provision

Adequate sanitation means more than just the provision of a toilet – toilets must be hygienic to use and maintain, and faecal matter must be managed properly. In the case of a sewerage system this means that sewage must be treated and disposed of safely. In the case of septic tanks and pit latrines, these must be emptied when necessary, and the faecal matter must be managed, treated and safely disposed of. (see Services, p.19)

To safeguard the health benefits of access to sanitation and protect water resources, the full cycle of sanitation provision must be monitored, from collection to transport, treatment and disposal of waste. At present, there is no agreed global indicator for monitoring this full provision, and national monitoring and regulation tend to focus on formal service provision. Surveying households that rely on informal services will not provide accurate information on the treatment and disposal of waste. Householders employing pit-emptying services will not generally be aware of what happens to the faecal waste once it has been removed from their pit or septic tank. One solution might be to provide incentives for service providers, including informal providers, to use the appropriate channels for disposal of faecal waste, for example, by only paying the service provider when the faecal waste is disposed of in the appropriate place. Supervision to check that this is carried out could be included in the mandate of regulatory bodies.

THE FULL CYCLE OF SANITATION PROVISION MUST BE MONITORED, FROM COLLECTION TO THE DISPOSAL OF WASTES

From a human rights perspective, it is crucial to understand the impact of poor wastewater management on disadvantaged individuals and groups. People who live in informal settlements often lack management systems for their wastewater and have to rely on informal service providers for many services related to sanitation. States should therefore monitor the collection and management of faecal sludge from septic tanks and pit latrines. These technologies are predominantly used in low-income areas, and have thus far received less attention than conventional sewerage systems.[19]

States must monitor the quality of sanitation services to ensure that it meets the necessary standards.

2.5.
Monitoring affordability: challenges and solutions

The total amount that people have to pay for water and sanitation services and related hygiene must not be so great that people cannot afford to pay for other essentials. If water and sanitation services are too expensive, people will turn to alternative sources and unsafe practices, which can have a negative impact on public health. It is therefore in the interests of the State to ensure that services are affordable for everyone. (see Services, p.20)

Accurate and meaningful monitoring of affordability is elusive, however, as the two necessary parameters for calculating affordability – the cost of accessing water and sanitation, and the real income of a household – are difficult to measure.

One of the standards used by many States sets an acceptable percentage of household income or expenditure that should not be exceeded. Given the difficulty of monitoring individual household income levels, States often use an 'average', or a 'lowest' income level, and an assumed acceptable volume of water to set appropriate tariffs or service charges for water and sanitation. Where households can demonstrate that their income is below the average, or their water consumption is higher than the average because there are more people living in the household than the average, or for health or other reasons, the State is then able to provide a subsidy or other relief.

However monitoring whether a household's expenditure on water and sanitation exceeds a specific proportion of their income on any particular day, month or year is not easily done, given the precarious incomes of many low-income households, and the many costs of water and sanitation services in informal settlements, where affordability concerns are most acute. Processes for monitoring the affordability must examine the full service of water and sanitation provision, including pit-emptying or water treatment, where this is necessary.

Further work must be done to improve the options for monitoring affordability adequately for these households. The WASHCost programme of the International Research Centre (IRC) monitors the 'life-cycle costs' of delivering water and sanitation services in four countries, in an attempt to highlight particular issues such as maintenance, operation and rehabilitation costs that States must consider in assessing the affordability of different service options.[20]

States must monitor affordability of water and sanitation service provision through focused studies that examine income levels in different settlements, considering all costs relating to access to water and sanitation, including hygiene and menstrual hygiene requirements.

2.6.
Monitoring acceptability: challenges and solutions

The acceptability of services is important if they are to be used, and used hygienically and sustainably. Monitoring acceptability is probably one of the most challenging aspects of monitoring the human rights to water and sanitation, because different individuals and groups have different notions of what is acceptable. If water or sanitation services are not socially or culturally acceptable they will not be used. (see Services, p.21)

To monitor acceptability it is therefore important to assess whether a service is used and paid for by households (assuming the affordability criterion is met) over time. States must set standards and targets requiring that users of a planned service be able to participate in decision-making about the technology and type of service provision, in order to ensure that they are acceptable to all of the people who are expected to use them.

Assessing whether sanitation facilities are used may require a proxy indicator, as the presence alone of a toilet or latrine is not proof that it is used by any or all of the people living in the household. Proxy indicators include whether there is soap and water present at the latrine and, for sanitation provided in the yard, whether there is a path beaten to the latrine.

Other issues to be monitored would include access to gender-separated toilets at educational or health institutions.

States must monitor whether services are used in order to assess whether they are acceptable, and may need to develop suitable proxy indicators in the case of sanitation.

2.7.
Monitoring sustainability

Sustainability is a fundamental human rights principle essential for the realisation of the human rights to water and sanitation. The human rights framework demands a holistic understanding of sustainability, as the opposite of retrogression. Water and sanitation must be provided in a way that respects the natural environment and the rights of future generations, and ensures a balance between the different dimensions of economic, social and environmental sustainability. **(see Services, p.21; Principles, Sustainability)**

This requires the development of standards and targets for the operation and maintenance of services, including developing a plan for when the various technologies used will require full rehabilitation, whether this is in months, years or decades. This is as relevant for developed countries, with sewerage systems that have not been upgraded for decades and are working beyond capacity, as for developing countries that rely on hand-dug wells. Because of the broad range of technologies used in each country for water and sanitation, the State must make the relevant decisions for each locality, in consultation with the people who live there.

SUSTAINABILITY REQUIRES THE DEVELOPMENT OF STANDARDS AND TARGETS FOR THE OPERATION AND MAINTENANCE OF SERVICES

The monitoring of sustainability is not currently being undertaken in a systematic manner. Only seven per cent of all funds allocated to water services are devoted to maintenance[21], and water systems are rarely sufficiently monitored after construction.

However, donors are increasingly requiring comprehensive systems for monitoring the sustainability of water and sanitation interventions. Some seek to include a sustainability clause in their contracts with implementers, as a means to verify whether sustainability criteria are being met. The United Nations Children's Fund (UNICEF) has developed sustainability checks aimed at auditing whether villages retain their status as 'open defecation free' and continue to enjoy good access to water supplies after projects have ended.[22] They examine several institutional, social, technical and financial indicators to measure sustainability.

From a human rights perspective, it is crucial to complement such tools with equality criteria, to ensure that everyone in society benefits.

Monitoring of sustainability should not be limited to individual projects, but must be incorporated into monitoring of legislation, policies and budgets. Before their implementation, environmental, social and specific human rights impact assessments of proposed policies can help show whether the policies are likely to

have a retrogressive effect. Austerity measures that introduce stringent rules in access to social welfare may have an impact on access to water and sanitation, and should therefore be carefully assessed. In Portugal, for example, cuts in social welfare have a direct impact on eligibility for lower service charges for water and sanitation, and can therefore effect poorer households badly.

After the implementation of policies and projects, States should use human rights impact assessments to monitor the realisation of the rights to water and sanitation.

Monitoring the functioning of facilities has benefited from considerable progress in mobile phone technology, as well as from geo-positioning technology. Detailed information about the functioning of a water-point or sanitation facility can be shared – either automatically; for example, by a monitor embedded in a pump handle – or by users, who activate an alert to an engineer or the local authority if a facility fails.

States' obligations to monitor for the sustainability of services must include:

- Monitoring of budgets: are operation, maintenance and the necessary capacity-building funded adequately?
- Monitoring water resources management: are human rights obligations prioritised, including the need for adequate water for personal and domestic use (human rights to water and sanitation) and for essential agriculture (human right to food)?
- Monitoring accessibility, quality and affordability to ensure that there is no retrogression in the water and sanitation services provided.

Monitoring service providers

Independent regulation of service providers is crucial for assessing whether they are contributing to the realisation of the rights to water and sanitation. Regulators must scrutinise service providers' compliance with national and local standards, as defined above. They also have a role to play in ensuring that services are properly implemented, including by small-scale and informal service providers, where capacity for construction, maintenance and supervision can be limited. It is important, for example, that there is adequate supervision of the construction of services, in order to ensure that facilities are properly built and are sustainable. (see Services, pp.49-50)

It is the role of a regulator to ensure the fair distribution of service coverage, including ensuring that service providers also deliver services to poorer neighbourhoods and informal settlements, while also ensuring that mechanisms are put in place so as to ensure these providers maintain the financial capacity to continue improving services and connecting more people. The Kenyan Water Services Regulatory Board (WASREB) closely monitors the expansion of networks into low income areas that don't yet have water services, and has developed Key Performance Indicators, including monitoring of financial and institutional commitments to improving services.[23]

Further, legislation and policies that govern service providers must be assessed to make sure that they make sure that they promote the elimination of inequalities and are not discriminatory. (see Frameworks, pp.14-16)

Where the service provider has a contract, this will have to be monitored for compliance with to the human rights to water and sanitation (see Services, p.37), and in addition require scrutinising with respect to financial aspects, for example by the national auditor.

In early 2014, the Portuguese Auditor of Public Accounts released a report (based on prior regulator's reports) on the audit of the regulation and management of water service concessions and public-private partnerships. Its main conclusions point out the significant negative consequences of concession contracts for the municipalities, and ultimately for the users of the services (partly because of increased tariffs), as risk was not properly transferred to private companies. Contracts and bidding procedures were poorly designed, mainly because at the time the legal framework was incomplete and there were limited opportunities for the regulator to be involved before the contract was signed. The report identifies a need for extended regulatory intervention, especially because many of these contracts expressly foresee penalties to be paid to the private companies by the municipalities, if water turnover, billing or revenues are below expected levels.[24]

States must ensure that service providers, whether formal or informal, are monitored for proper application of relevant legislation and policies, and to verify that they meet national and local standards for availability, accessibility, quality, affordability and acceptability, and that they apply all standards without discrimination.



03.
Other national actors in monitoring the realisation of the human rights to water and sanitation

This booklet focuses on State obligations to monitor compliance with the human rights to water and sanitation. However, other actors, such State bodies (regulatory bodies or national human rights institutions), civil society organisations and NGOs, as well as service providers, also have a part to play.

3.1. State bodies

3.1.3. Regulatory bodies

Where independent regulatory bodies exist, they can support monitoring of the human rights to water and sanitation. In order for this to be effective, the human rights to water and sanitation should be recognised in legislative, policy and regulatory frameworks. Regulatory bodies are often responsible for setting and monitoring indicators and targets relating to service delivery. For example, sometimes they set tariffs (including measures to ensure affordability) and water quality standards, and control data regarding these that is submitted by service providers. Regulatory frameworks are often only applied to formal service provision; they therefore have limited use for monitoring access either to services in informal settlements, or to informal service provision. (see Services, p.49-50)

States must set up independent regulatory bodies that are able to monitor service providers' compliance with the human rights to water and sanitation.

3.1.4. National human rights institutions

The booklet on Access to Justice discusses how national human rights institutions can monitor different aspects of the realisation of the human rights to water and sanitation, including legislation, policy, budgeting and service provision. Such institutions can play a powerful role in raising people's awareness and strengthening their understanding of their rights; they can also present the case for rights to governments at local and at national level, and strengthen accountability.

The Colombian human rights institution (Defensoria del Pueblo) has published the country's first nationwide study on compliance with the human rights to water and sanitation.[25] The study includes detailed information gathered from each of the country's 32 departments, making it possible to assess progress towards achieving the legal standards of the rights in nearly every municipality. The Defensoría gave this information to community members, civil society organisations and local governments. It also works with the Environmental Ministry's Vice-Minister of drinking water and basic sanitation to raise public awareness of the objectives of the country's drinking water and sanitation strategy.[26]

States should set up independent national human rights institutions that are able to monitor economic, social and cultural rights, including the human rights to water and sanitation.

3.2. Service providers

Formal service providers should carry out regular monitoring of service provision, such as water quality and regularity of supply.[27] Many also track and record users' complaints and whether they have been resolved. In many countries, however, a significant proportion, often the majority, of the population does not have access to piped water, and even fewer have access to sewerage systems. In these situations, data received from formal service providers do not provide full and comprehensive information about access to services for all households. This means that the data are of limited use for information or planning purposes.

The Zambian Devolution Trust Fund was established by the National Water Supply and Sanitation Council to assist service providers to improve services for poor communities. The Trust Fund conducted a baseline study analysing data on water and sanitation according to area (urban or rural) and income level.[28] Based on these findings, Zambia now targets low-income areas by promoting low-cost technology, such as water kiosks with tariffs set at the lowest level. As well as this cross-subsidisation through the tariff structure, the construction of infrastructure in urban low-income areas is financed through the Trust Fund.[29]

NATIONAL HUMAN RIGHTS INSTITUTIONS CAN PLAY A POWERFUL ROLE IN RAISING PEOPLE'S AWARENESS OF THEIR RIGHTS

States must ensure that all service providers provide full information on their activities to realise the human rights to water and sanitation, including information on how they comply with the standards of availability, accessibility, quality, affordability and acceptability.

Service providers must also provide information on how many complaints they have received and whether these have been adequately dealt with.

States must provide the necessary support to small-scale and informal service providers to allow them to monitor their own services provision.

3.3. Civil society organisations and non-governmental organisations

Many civil society organisations and non-governmental organisations monitor issues relating to access to water and sanitation locally and nationally, using many different approaches to collect data.

This monitoring can gather detailed information on access to services by individuals and groups that can be used in lobbying local and national governments on levels of access to water and sanitation in particular settlements and for specific individuals and groups of individuals. This also provides an opportunity to raise awareness among communities of their human rights, and of the legal requirements and standards set by the government. Slum Dwellers International use monitoring processes in their work, called 'enumerations', to gather information and to politicise local populations and make them aware of discriminatory practices, and to inform people about how they can challenge discrimination. These processes highlight inadequate access to water and sanitation, particularly for those living in informal settlements, and this information then provides a basis for lobbying the State (at the local and / or national level) to allocate resources and remove social, legal and financial barriers to improved access for these individuals and groups.[30]

MONITORING CAN PROVIDE DETAILED INFORMATION THAT CAN BE USED LOBBYING LOCAL AND NATIONAL GOVERNMENT ON LEVELS OF ACCESS

Amnesty International has initiated civil society monitoring of economic, social and cultural rights through their Haki Zetu (Your Rights) programme. They have put together checklists for civil society organisations that help identify violations and obligations that are not being met, and identify ways of making communities and the authorities more aware of the human rights to water and sanitation. Specific checklists have been devised to help monitor the provision of water and sanitation services in informal settlements and to check for discrimination in access to water and sanitation.[31]

Technology such as Global Positioning Systems can help to identify geographical regions that lack access to adequate services, and alert States and service providers to the weaknesses in funding allocation and failures in existing water and sanitation provision, so that they can plan improvements.[32]

(see p.21)

The Tanzania Water and Sanitation Network, a civil society initiative, monitors equity in the water sector and presents annual reports that focus on inclusion, accountability, participation and the sustainability of policies. These reports analyse the barriers to access and identify ways to remove them. It found many variations in access, for example, better access in urban than in rural areas and disproportionately high budgets allocated to urban water services.[33]

Strong community-based monitoring strategies can ensure that data collected are analysed and specifically disaggregated to identify marginalised groups and the reasons for retrogression or slippage. This promotes transparency, participation and accountability as the community becomes more involved and information becomes more easily accessible. (see Financing, pp.13, 39)

Civil society's role in monitoring State or service providers' compliance with their obligations and responsibilities with respect to the human rights to water and sanitation must be respected and supported.





04.
The international frameworks for monitoring access to water and sanitation

Several UN mechanisms contribute to the monitoring of human rights at the international level. Treaty bodies, the Universal Periodic Review and Special Procedures are the main tools of the UN to monitor human rights.

4.1. International frameworks for human rights monitoring

4.1.1. Monitoring through treaty bodies

Each United Nations human rights treaty establishes a treaty body to monitor the implementation of the provisions contained within the treaty. These treaty bodies (or committees) are made up of independent experts, nominated and elected for fixed, renewable terms of four years by the States Parties to each treaty. Although each treaty body is independent from other treaty bodies, they aim to coordinate their activities.[34]

The Committee on Economic, Social and Cultural Rights is tasked with monitoring the implementation of the obligations of States Parties to the International Covenant on Economic, Social and Cultural Rights, and it has been active in pressing States to realise the human rights to water and sanitation and in clarifying the legal content of the obligations of States Parties under the treaty. The Committees on the Rights of the Child and on the Elimination of All Forms of Discrimination Against Women have also included the human rights to water and sanitation in their work.

In addition to considering complaints or communications regarding human rights violations (see Justice, pp.36-37), treaty bodies monitor States Parties' implementation of treaties. With the exception of the Subcommittee on Prevention of Torture, treaty bodies have a mandate to consider reports on the application of the treaty provisions by States. The treaty body issues guidelines on the form and content of these reports[35] to ensure that they are consistent and of good quality. These reports must be submitted periodically (every 4 or 5 years), and show the legal, administrative and judicial measures taken by the States Parties to put the treaty into effect. They should also list difficulties encountered in implementing the treaty provisions. This is an important tool, helping States to assess the achievements and the challenges of realising human rights nationally.[36]

Treaty bodies have benefited from the participation of civil society in the different stages of the reporting cycle and in procedures such as petitions, inquiries and early warnings.[37] States should consider all information produced by treaty bodies when implementing human rights at the national level.

The Committee on Economic, Social and Cultural Rights reviewed its Reporting Guidelines in 2009 in order to orient and support States Parties drafting their national reports on the implementation of the Covenant. At this time, it included several questions on the human rights to water and sanitation[38], and since then has increasingly asked questions about national realisation of these rights during the reporting process. For example, in its Concluding Observations on Togo´s 2013 initial report, the Committee stressed the need for sanitation, waste and sewage treatment services and safe drinking water distribution systems, particularly in named rural regions.[39] Similarly, the Concluding Observations on Armenia by the Committee on the Rights of the Child recommend improving school water and sanitation facilities, especially in pre-primary schools.[40] The Committee on the Elimination of Discrimination Against Women, in its Concluding Observations on Pakistan´s 2013 report, recommended increasing efforts to provide clean water and sanitation

facilities to rural women.[41] The Human Rights Committee, which monitors the Covenant on Civil and Political Rights addressed access to water and sanitation under the right to life and the right to equal protection under the law in its Concluding Observations on Israel, where, among other observations, it expressed its concern about the disproportionate effects of water shortages on the Palestinian population.[42]

Five treaty bodies – the Committee against Torture; the Committee on the Elimination of Discrimination against Women; the Committee on the Rights of Persons with Disabilities; the Committee on Enforced Disappearances; and the Committee on Economic, Social and Cultural Rights – may carry out inquiries if they receive reliable information containing well-founded indications of serious, grave or systematic violations of the treaty in a State party.[43] The inquiry procedure enables the Committee to undertake a mission to the State Party in question, in order to assess the alleged violations at first hand.

There are also regional treaty bodies responsible for monitoring compliance with human rights by their States parties. (see Justice, pp.31-34) The Inter-American Commission on Human Rights, for example, has a mandate to observe the situation of human rights in States parties, and visits countries to conduct an in-depth analysis of the general or specific human rights situation. In a follow-up report on Bolivia, the Commission reiterated previous recommendations on the need to ensure that minimum requirements for drinking water, sanitary facilities and personal hygiene are met in prisons. It also observed that indigenous peoples and peasant communities continue to face discrimination in the provision of public services, including water, and called on Bolivia to take all necessary steps to end such discrimination.[44]

States should to take into account the Concluding Observations from the Committee on Economic, Social and Cultural Rights in their future planning and ensure that they follow up on them.

4.1.2. Universal Periodic Review

The Universal Periodic Review of the Human Rights Council is an inter-State cooperative mechanism established by the UN General Assembly in 2006. It is an opportunity for each State to declare what it has done to improve its human rights situation, and fulfil its human rights obligations, and is reviewed by other Member States. It also enables civil society and others to scrutinise the human rights record in the State. As a peer review, the Universal Periodic Review aims to ensure equal treatment for every country in the assessment of their realisation of human rights.

Under the Universal Periodic Review, all UN Member States have an obligation to submit a report to the Human Rights Council on the general human rights situation in their respective countries every four and a half years. The Office of the High Commissioner for Human Rights drafts a separate report on each country using official information compiled from UN sources. Other stakeholders, including NGOs and national human rights institutions, can also send submissions, which are compiled in a third report.

This process can be very valuable in stimulating public discussion within a country about its human rights record. Each Member State's human rights situation is reviewed on the basis of these three reports at a session of the Human Rights Council, with the participation of a high-ranking national delegation. Other UN Member States ask questions on particular issues and then direct recommendations to the Member State under review.[45] After the review, States should implement the recommendations. In the following cycles, the State is expected to provide information on what has been done to implement the recommendations made during the previous cycles.[46]

Issues related to the human rights to water and sanitation have been taken up by Member States within the Universal Periodic Review. For example, the effects of mining projects and their impact on the enjoyment of the human right to water were taken up in Ghana's review in 2008[47], and in Ireland's 2011 review, concern was expressed about inadequate sanitation in prisons.[48]

A key aspect of the Universal Periodic Review is that States themselves are reviewing the human rights situation in other States, in comparison to monitoring by the treaty body or by Special Procedures, which is guided by independent experts. It is essential that all human rights be reviewed under the Universal Periodic Review, irrespective of whether the State in question has ratified each and every treaty. The Universal Periodic Review is generally not very critical nor assertive about human rights issues and alleged violations, as Member States may turn a blind eye to human rights problems in other countries, knowing that one day they will also be subject to the same scrutiny.[49] Further, the Universal Periodic Review addresses all human rights together in a short period of time, which limits deeper exploration. Another negative aspect of the Universal Periodic Review is that the implementation rate is generally low.[50]

The upcoming reporting cycles will be critical for the assessment of the system's efficacy and to check whether and how States have implemented recommendations directed to them during the previous reporting cycles.

States should submit to the Universal Periodic Review and take steps to address the concerns expressed in the recommendations.

4.1.3. Special Procedures

The system of Special Procedures is a central component of the United Nations human rights mechanisms and covers all civil, cultural, economic, political and social rights. It consists of a range of procedures to examine, monitor, advise and report publicly on human rights violations in relation to specific themes or issues, or in specific countries. While the mandates and approaches of the various Special Procedures differ, they share many characteristics. As of 1 July 2014 there are 38 thematic and 14 country mandates.[51]

Special Procedures visit countries and issue reports with recommendations; they act on human rights concerns in individual cases or in those of a broader structural nature, by sending communications to States and other bodies (in the form of Allegation Letters or Urgent Appeals), bringing alleged violations or abuses to their attention. They prepare expert consultations and thematic studies, contribute to the development of international human rights standards and provide guidance on their implementation; they raise awareness through promotional activities on issues within their mandate. Each year they report to the Human Rights Council and most of them also report to the General Assembly. Their tasks are determined in the UN resolutions that create or extend their mandates. States should engage with Special Procedures and invite the mandate holders for country missions; they should implement their recommendations and respond promptly to any letters of allegation and urgent appeals.

Special Procedures, treaty bodies and the Universal Periodic Review often share and complement their work and concerns.[52] For example, Tuvalu´s report for their 2013 Universal Periodic Review refers to the recommendations made by the Special Rapporteur on the human right to safe drinking water and sanitation during her 2012 country mission.[53] The findings and definitions contained in the UN Special Rapporteur´s report on the Human Rights Obligations related to Access to Sanitation[54] were also included in the Statement on the Right to Sanitation[55] issued by the Committee on Economic, Social and Cultural Rights in November 2010.

Mandate-holders of Special Procedures are selected on the basis of their expertise and experience in the field covered by the mandate. The independence and objectivity of the mandate-holder are crucial if they are to fulfil their functions impartially.[56]

The UN Human Rights Council established the mandate of the Special Rapporteur on the human right to safe drinking water and sanitation in March 2008, and Catarina de Albuquerque took it up in November 2008.

Part of the monitoring function of this mandate is to carry out country missions to scrutinise whether States are complying with these human rights. Ms. de Albuquerque has carried out country missions to Bangladesh, Brazil, Costa Rica, Egypt, Japan, Jordan, Kenya, Kiribati, Namibia, Senegal, Slovenia, Thailand, Tuvalu, the United States and Uruguay.

For more on the Special Rapporteur, see Introduction, p.20.

States should issue a standing invitation for Special Procedures to visit the country and assess whether the State is in compliance with its human rights obligations.

4.2.
Using other monitoring systems to scrutinise the human rights to water and sanitation

While there are significant differences between the indicators for human rights monitoring and standard indicators that are used to monitor outcomes in the context of national or global development goals or targets, those standard monitoring processes can reveal information that demonstrates how States are realising, or failing to realise, these human rights.

The WHO and UNICEF Joint Monitoring Programme[57] has been compiling global data on access to water and sanitation for over 20 years, using national household surveys (commonly the Demographic and Health Surveys and Multi-Indicator Cluster Surveys) as the primary sources.

THE WHO AND UNICEF JOINT MONITORING PROGRAMME COMPILES GLOBAL DATA ON ACCESS TO WATER AND SANITATION

Since 2002, the Joint Monitoring Programme has been used to monitor global progress towards target 7C of the Millennium Development Goals, which is to halve the proportion of the population without access to safe drinking water and sanitation. As the Millennium Development Goals themselves do not reflect human rights norms, this monitoring programme is not a substitute for human rights monitoring, but it does provide an indication of progress in national and global coverage of water and sanitation services, and touches on some human rights concerns. For example, recent refinements include analysing data according to wealth quintile and over time, which provides a better understanding of where progress is being made with respect to different income groups, and, more importantly, where it is not. Other refinements that reflect human rights include plans for improved monitoring of water quality, going beyond the proxy indicator of 'improved' or 'non-improved' water sources for assessing water quality to actually testing the water quality of each water source.[58]

As 2015, the Millennium Development Goals' end date, approaches, there is a drive to integrate human rights elements into the post-2015 development framework. The WHO / UNICEF Joint Monitoring Programme convened four working groups to identify ambitious, but also realistic, water, sanitation and hygiene indicators that would comply with the human rights criteria. One of these working groups, chaired by the UN Special Rapporteur, examined monitoring of inequalities and considered appropriate goals, targets and indicators for the post-2015 development agenda.[59] (see pp.11-13)

The three other working groups focused on developing goals, targets and indicators for water, sanitation and hygiene. Proposals included more accurate measuring of water quality; a broader understanding of what constitutes adequate sanitation (including management, treatment and disposal of faecal matter); and monitoring of appropriate measures for managing menstrual hygiene.

The Global Annual Assessment for Water and Sanitation (GLAAS) is an international survey, based on questionnaires sent to all States. This survey is managed by the World Health Organization on behalf of UN-Water. It was originally designed to monitor how much funding is committed to water and sanitation by each State, but has been expanded to include questions on other key aspects of States' legislative, policy and regulatory frameworks. The questions now include whether these frameworks explicitly or implicitly incorporate the human rights to water and sanitation; whether these human rights are justiciable before courts of law; and whether legislation ensures that services are accessible to persons living with disabilities or chronic illness.[60]

States should use aspects of standard monitoring procedures to understand whether or not they are successfully implementing the human rights to water and sanitation, particularly through disaggregation of existing data to monitor inequalities in access to water and sanitation.



05.
Checklist

General

	Yes	In progress	No
Has the State established indicators to monitor the human rights to water and sanitation?			
Is there an institution that monitors the availability of water and sanitation at the national and local levels?			
Is there an institution that monitors the accessibility of water and sanitation facilities, including accessibility for people who may face barriers in access, such as marginalised or excluded individuals and groups, persons with disabilities, the young, and older persons?			
Is there an institution that monitors access to water and sanitation outside the home: at workplaces, schools, health institutions and public spaces, as well as for people who live in places where they have no control over their own access, such as in detention centres?			
Is there an institution that monitors access to services at the level of the household? Does monitoring of access within the household consider people suffering from stigmatised chronic illnesses such as HIV/AIDS?			
Is there an institution that monitors water quality?			
Is there an institution that monitors the quality of sanitation provision?			
Does monitoring include the availability of water and sanitation services?			
Is there an institution that monitors the affordability of water and sanitation services?			
Is there an institution that monitors the acceptability of water and sanitation facilities? Are participatory approaches to monitoring put in place?			
Is there an institution that monitors the sustainability of new water and sanitation facilities?			
Is there an institution that monitors inequalities? Have the most disadvantaged and excluded individuals and / or groups been identified? Is disaggregated data available?			
Is there an institution that monitors inequalities? Have the most disadvantaged and excluded individuals and / or groups been identified? Is disaggregated data available?			
Are the data for the worst-off populations compared with those for the better-off populations, to establish the disparities?			
Is the rate of progress necessary to meet the target determined for both the worst-off and better-off groups?			

Specific

State actors

	Yes	In progress	No
Has the government accepted recommendations on the human rights to water and sanitation in the context of the treaty bodies review and the Universal Periodic Review? Has it taken steps to implement them?			
Is there an independent regulator that supports the monitoring of the human rights to water and sanitation?			
Is there an independent national human rights institution that supports the monitoring of the human rights to water and sanitation?			

Donors

Do donors monitor their own projects for compliance with the human rights to water and sanitation?			
Do donors monitor recipient States' policies and plans for compliance with the human rights to water and sanitation?			
Before investing in constructing water and sanitation facilities, are the costs of operating and maintaining such facilities fully considered?			

National human rights institutions

Does the national human rights institution monitor the human rights to water and sanitation?			
Does the national human rights institution play a role in raising awareness and strengthening understanding of the human rights to water and sanitation within the population?			
Does the national human rights institution promote the human rights to water and sanitation to government at local and national levels, and does it strengthen accountability systems?			

Service providers

Do service providers monitor whether they are in compliance with the human rights to water and sanitation? (see general questions)			
Is the quality of sanitation infrastructure and services monitored?			
Are any informal service providers supported by the authorities / State to perform their monitoring functions?			
Where Local Water Committees exist, do they undertake monitoring? How are they supported by the State in this?			

Civil Society

Does civil society monitor inequalities? Has it identified the most disadvantaged and excluded individuals and / or groups? Does it collect disaggregated data?			
Does civil society monitor the human rights to water and sanitation in informal settlements?			



06. Image credits and references

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Page 4 Water fountains, Kathmandu, Nepal, 2014. Virginia Roaf.

Page 6 Shramik Bharti water testing team, Goswami Nagar, a post intervention slum, Kanpur, Utter Pradesh, India, 2013. WaterAid/ Poulomi Basu.

Page 10 A drilling site in Folakara village. Akondromena commune in Miandrivazo district, Menabe region, Madagascar. February 2014. WaterAid/ Ernest Randriarimalala.

Page 14 A bucket of clean water collected from the pump next to a bucket of dirty water collected from the Wanjai River, showing the difference between the two water sources in the village of Nyeama, Sierra Leone, May 2013. WaterAid/ Anna Kari.

Page 24 Tirtha Lal, 55, Master Leader of Goswami Nagar, with Shramik Bharti members conducting a water cleansing process, Goswami Nagar, a post intervention slum, Kanpur, Utter Pradesh, India, 2013. WaterAid/ Poulomi Basu.

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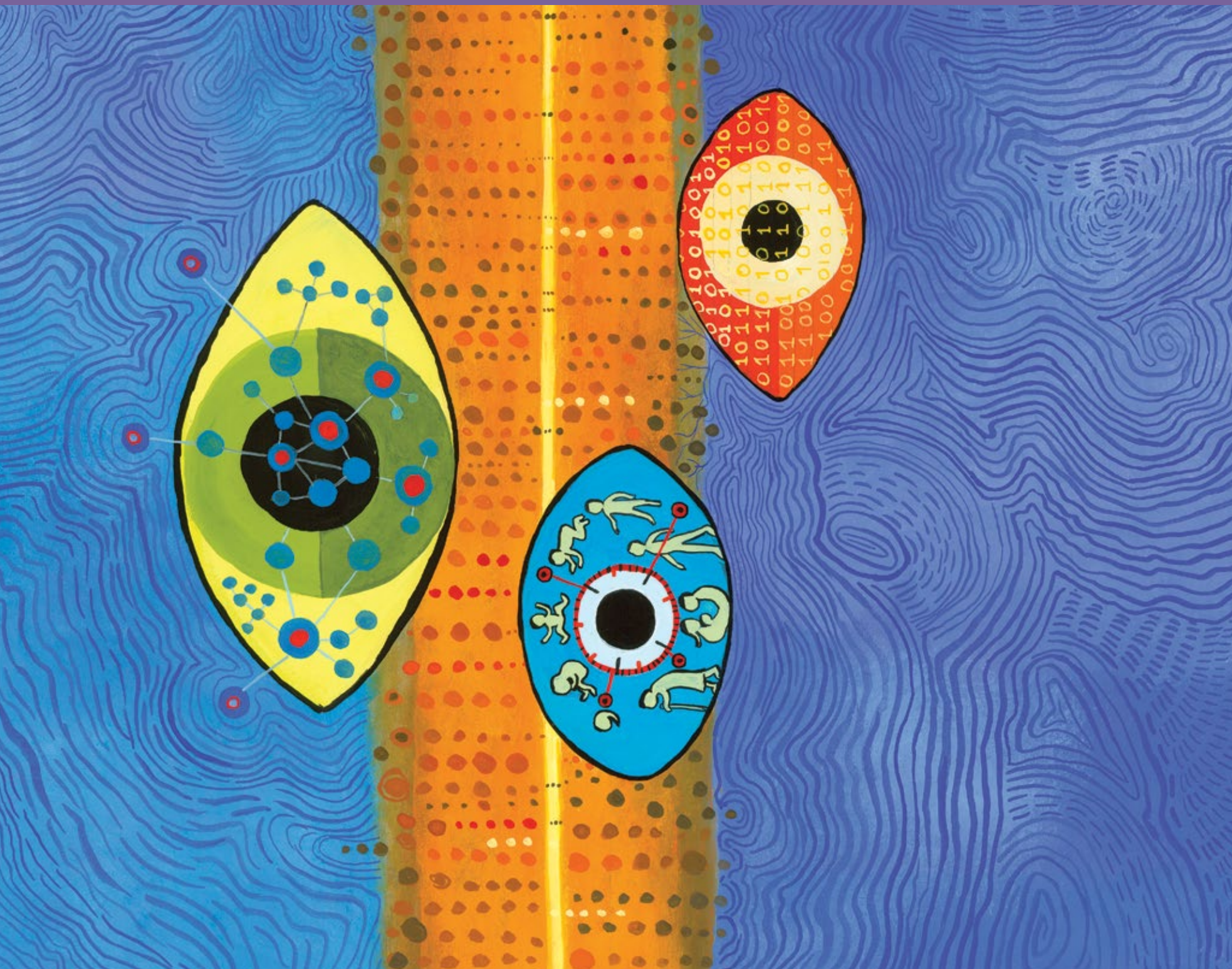
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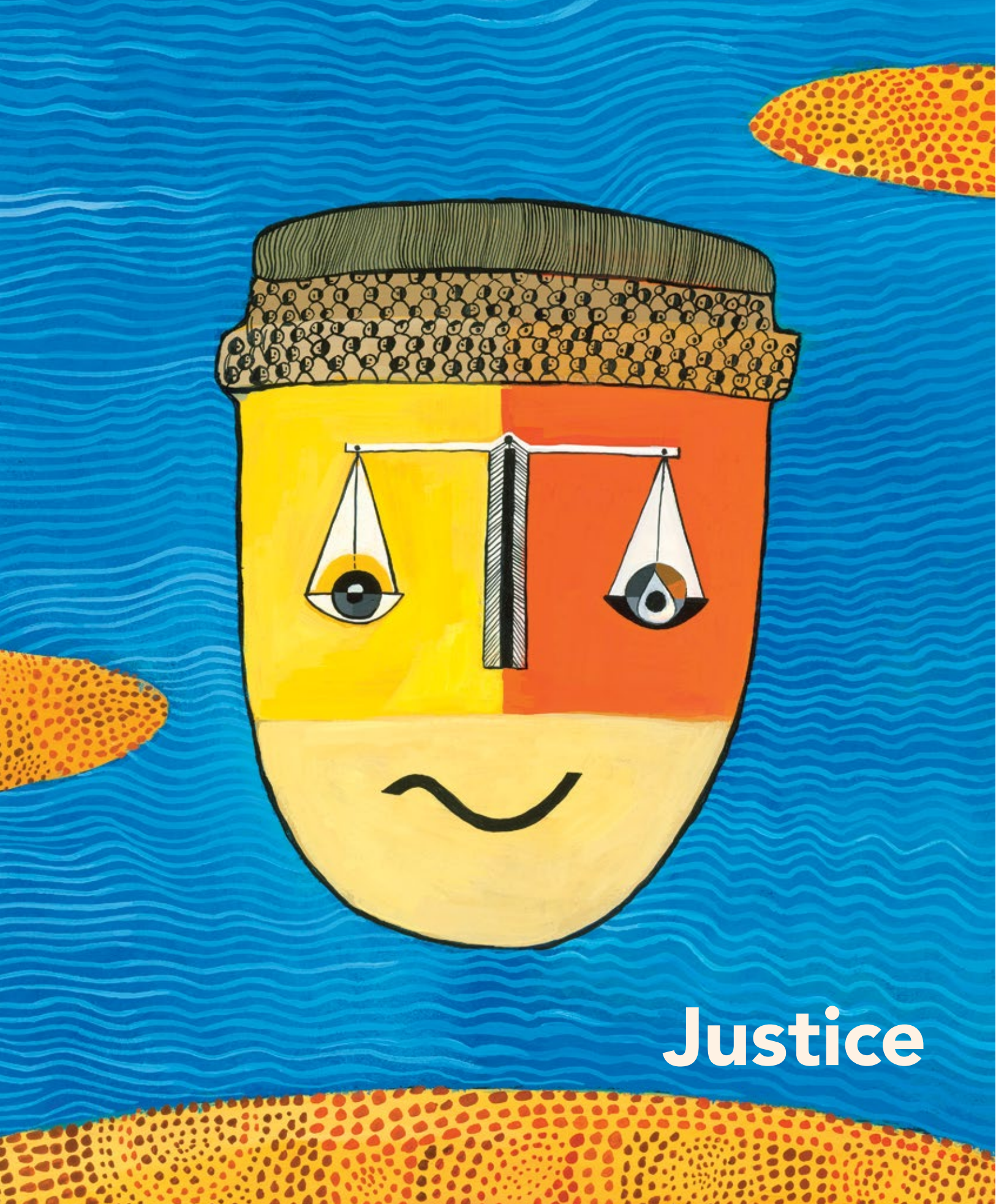
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Justice

REALISING THE HUMAN RIGHTS TO WATER AND SANITATION:
A HANDBOOK BY THE UN SPECIAL RAPPORTEUR
CATARINA DE ALBUQUERQUE

Access to justice for violations of the human rights to water and sanitation

HUMAN RIGHTS TO WATER & Sanitation
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UN HABITAT
FOR A BETTER URBAN FUTURE

Contents

01. **What is access to justice?** 5

1.1. Legal foundations ... 6

1.2. The justiciability of the human rights to water and sanitation ... 7

1.3. The dimensions of access to justice ... 8

1.3.1. The obligation to respect ... 8

1.3.2. The obligation to protect ... 9

1.3.3. The obligation to fulfil ... 10

1.3.4. Non-discrimination and equality ... 12

1.3.5. Participation ... 14

1.3.6. Violations of extraterritorial obligations ... 15

1.4. Addressing systemic violations ... 19

02. **Mechanisms for access to justice** 25

2.1. Mechanisms at the national level ... 25

2.1.1. Service providers ... 26

2.1.2. Administrative and regulatory procedures ... 26

2.1.3. National human rights institutions ... 28

2.1.4. Courts ... 30

2.2. Mechanisms at the regional level ... 31

2.2.1. Africa ... 32

2.2.2. Americas ... 33

2.2.3. Europe ... 34

2.3. Mechanisms at the international level ... 36

03. **Making access to justice effective** 39

3.1. Overcoming common barriers to access to justice 41

3.1.1. Access to information 41

3.1.2. Physical accessibility 42

3.1.3. Affordability 42

3.1.4. Legal services 43

3.1.5. Other barriers 44

3.2. What is required to ensure access to justice? 46

3.2.1. Expertise and training 47

3.2.2. Independence, impartiality, transparency and accountability 48

3.2.3. Prompt and timely decision making 48

3.2.4. Understandable processes and decisions 49

3.2.5. Interpreting domestic law in line with international law 49

3.3. Appropriate and effective remedies 50

3.3.1. Crafting appropriate remedies, including systemic remedies 50

3.3.2. Ensuring enforcement of judgements 52

04. **Checklists** 55

05. **Image credits and references** 61

01.
What is access to justice?

States have an obligation to realise the human rights to water and sanitation, and can be held accountable for this. The right to access to justice is central to putting this fundamental principle into practice.

The human right to access to justice means that individuals have the right to bring alleged violations of human rights before independent and impartial bodies. The decisions of these bodies must be based on standards of fairness and justice, and the remedies they decide on must be effective. Where necessary, people must be able to seek redress before a court or tribunal, although other bodies, including administrative bodies, may offer effective remedies and be able to settle disputes. States have discretion as to how they structure their domestic legal and judicial system to ensure access to justice[1], which is often also referred to as the right to a remedy.[2] In this Handbook, these terms will be used interchangeably.

The right to a remedy also has a preventative purpose. That the human rights to water and sanitation can be enforced, and that authorities can be held accountable if they don't comply, is an incentive for States to observe their obligations to realise these rights. Access to justice in a particular case is not only about remedying one specific human rights violation, but also about preventing such violations from recurring by addressing the underlying structural causes of violations.

This booklet starts by clarifying the legal foundations of access to justice, and continues with a brief discussion on the justiciability (the capacity to be decided by a court) of economic, social and cultural rights, and an outline of States' human rights obligations in ensuring access to justice. Seeking a remedy for a specific violation can involve different institutions and mechanisms, ranging from administrative bodies or other quasi-judicial mechanisms to courts at national, regional and international levels.

Finally, this booklet considers the barriers people often face when seeking justice and outlines the key principles that States must follow in guaranteeing people the right to a remedy for violations of the human rights to water and sanitation.

1.1. Legal foundations

The right to a remedy is explicitly guaranteed in many human rights treaties, for example, article 2 of the International Covenant on Civil and Political Rights (ICCPR):

> […] any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.
>
> "[…] any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedies.
>
> […] the competent authorities shall enforce such remedies when granted.

The human rights to water and sanitation are components of the human right to an adequate standard of living, enshrined in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). While the Covenant itself contains no provision on the right to a remedy, the Committee on Economic, Social and Cultural Rights (CESCR) has consistently recognised the right to an effective remedy for economic, social and cultural rights.[3]

CESCR's General Comment No. 15 on the right to water states that "any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels", and "all victims of violations of the right to water should be entitled to adequate reparation".[4]

The principles clarified in General Comment No. 15 on the right to water apply equally to the human right to sanitation.[5]

1.2.
The justiciability of the human rights to water and sanitation

Justiciability means that human rights can be legally enforced through the court system. The justiciability of economic, social and cultural rights, including the human rights to water and sanitation, has been challenged in the past, but today this debate has become largely irrelevant. Many economic, social and cultural rights cases have been decided by national judicial and quasi-judicial institutions, and their number is growing exponentially. At the international level, the question was finally resolved with the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), which entered into force in 2013.[6] This Optional Protocol establishes a complaint mechanism that allows individuals or groups to file formal complaints with the CESCR, alleging that States have violated their economic, social and cultural rights.

JUSTICIABILITY MEANS THAT HUMAN RIGHTS CAN BE LEGALLY ENFORCED BY THE COURT SYSTEM

It has been argued that economic, social and cultural rights are not justiciable because cases involving these rights often challenge policy decisions about the allocation of resources, and that this would cause courts to exceed their competence and violate the separation of powers between the judiciary, the executive and the legislative functions of the State.[7] However, the role of the judiciary includes ensuring that human rights are upheld. When settling claims for economic, social and cultural rights, courts do not themselves re-arrange budgets or adopt policies; their role is to determine whether government decisions are in line with human rights, and to oblige government to adopt measures to meet their human rights obligations.

The question is therefore not whether economic, social and cultural rights are justiciable and courts have a role to play in their enforcement, but rather how courts can best fulfil that role in a meaningful way.

States must ensure that economic, social and cultural rights – including the human rights to water and sanitation – are effectively justiciable at international, regional, national and sub-national levels.

1.3. The dimensions of access to justice

All aspects of economic, social and cultural rights and the corresponding State obligations are justiciable. Where State fail to comply with any of its human rights obligations, whether by failing to use the maximum available resources for the realisation of the human rights to water and sanitation or by deliberate actions (for example, by polluting water sources), it has committed violations of these rights.[8]

This section discusses the obligations to respect, protect and fulfil the human rights to water and sanitation, putting particular emphasis on equality, non-discrimination and participation, and also examines extraterritorial obligations. All of these dimensions can and must be fully addressed by courts and other human rights bodies. The following section gives guidance on how courts can do this and presents a number of cases in which courts have successfully adjudicated on the human rights to water and sanitation.

1.3.1. The obligation to respect

The obligation to respect the human rights to water and sanitation requires that States do not take actions that deprive people of their existing access to water and sanitation. This obligation is of immediate effect and is not tied to the duty of progressive realisation or the availability of resources. Common violations of the obligation to respect these rights include disconnections from the water supply when people are unable to pay, and the pollution or depletion of water resources.

National courts and international bodies have held in many cases that disconnections from the water supply violate the obligation to respect the human right to water. (see Services, pp.40-42)

The Court of Appeal of Botswana interpreted national constitutional provisions by using General Comment No. 15 on the right to water and the 2010 UN General Assembly resolution on the right to water and sanitation. It found that preventing a community of Bushmen from accessing their traditional boreholes amounted to inhuman and degrading treatment.[9]

Bulgaria was found by the UN Human Rights Committee to have violated the right to home and family, and the rights to life and non-discrimination, by allowing the Municipality of Sofia to disconnect the water supply of a Roma community. The Committee issued interim measures requiring the authorities to reconnect the water supply.[10]

In Argentina, a court considered the situation of impoverished neighbourhoods in Córdoba, where wells had been contaminated with faecal and other matter from a water treatment plant overflowing with untreated sewage.[11] The Court ordered the municipality to take urgent measures to address the situation, including the provision of 200 litres of safe water per household per day until a permanent solution was found.

States must ensure that legal protections and mechanisms are in place to enable individuals and groups to gain access to justice in cases where State actions violate their obligation to respect the human rights to water and sanitation, by directly or indirectly interfering with their enjoyment.

1.3.2. The obligation to protect

The obligation to protect the human rights to water and sanitation means that the State must put mechanisms in place to prevent violations by non-State actors. 'Non-State actors' could mean businesses, international organisations, civil society organisations or individuals. Where non-State actors are involved in the provision of water and sanitation services, their role comes with human rights responsibilities. Other private actors may also have an impact on the human rights to water and sanitation through industrial or agricultural activities. As with the obligation to respect, the obligation to protect is generally considered to be of immediate effect and is not subject to progressive realisation.

Violations of the obligation to protect can occur in the context of service provision when States fail to protect access to water and sanitation services. This usually stems from a lack of adequate regulation. A violation may also be the result of service providers excluding certain settlements from the service contract, or failing to protect water resources or infrastructure from pollution, for example, when States do not regulate industrial discharge. Non-State actors have a responsibility to respect human rights and to exercise due diligence to avoid human rights abuses, and this is independent of the State's obligation to protect human rights.[12]

The obligation to protect also means that States must ensure that non-State service providers do not disconnect people from their water supply if they are unable to pay. (see Services, pp.40-42)

In Argentina, the court prohibited a private company from disconnecting households from the water supply due to non-payment, on the basis of the International Covenant on Economic, Social and Cultural Rights (article 11) and other human rights instruments.[13]

The Greek Council of State recently blocked the planned privatisation of the Athens Water and Sewerage Company, arguing that it could put public health at risk because of uncertainty as to whether the quality and affordability of the services can be safeguarded.[14]

In the case of *Sardinal*, the Constitutional Chamber of the Costa Rican Supreme Court ordered the authorities to stop the construction of a pipeline destined to bring water to tourist resorts until an assessment was carried out that would show whether the amount of water withdrawn by the pipeline would deprive the local population of water for personal and domestic uses, which must get priority allocation.[15]

The African Commission on Human and Peoples' Rights found violations of the rights to life and to health, among others, because of the failure of the Nigerian government to monitor the impact of oil operations that were polluting water in the Niger Delta.[16]

States must have the legal mechanisms in place to ensure that the obligation to **protect** the human rights to water and sanitation is justiciable, by enabling individuals and groups to challenge situations in which non-State actors interfere with the complainants' enjoyment of the human rights to water and sanitation or that of future generations.

1.3.3. The obligation to fulfil

The obligation to fulfil the human rights to water and sanitation means that States are obliged to progressively realise rights by prioritising essential levels of access for all, using 'maximum available resources'. States have the obligation to progressively realise the rights to water and sanitation by ensuring access to sufficient, safe, acceptable, accessible, and affordable services. (see Introduction, pp.33-36)

Where individuals or groups allege a violation of these obligations, judicial and quasi-judicial mechanisms must be available to review any of the measures adopted by the State for conformity with the human rights to water and sanitation. State measures include:

- adopting legislation and regulations (see Frameworks);
- adopting policies, strategies and plans of action (see Services);
- raising, allocating and using the maximum available resources (see Financing); and
- prioritising basic needs, where necessary through direct provision of services. (see Introduction, pp.33-36)

Courts and other bodies have a role to play in assessing whether States are meeting their human rights obligations. It is not their role to dictate alternative policies, budgets or other measures, but to review the existing ones and order the government to revise them if necessary. In such cases, courts and other bodies should critically evaluate policies and other measures on the basis of the evidence:

- provided by claimants on the actual effects of policies on their enjoyment of their rights;
- provided by governments about available resources and competing needs.

Courts can then pass independent judgement on whether policies and programmes are consistent with human rights obligations.

With regard to immediate obligations, courts have held that a minimum essential provision of services must be made available immediately.

> The Constitutional Court of Colombia held that the authorities had to connect households to water and sewerage and to ensure a sufficient daily amount of water[17]
>
> The Supreme Court of India dealt with a lack of basic sanitation in more desperate circumstances in a case where people living in informal settlements collectively complained that the cesspits used for sanitation were overflowing and causing serious health concerns. The Court ordered the municipality to construct a sufficient number of public latrines and to provide daily water and de-sludging services.[18]

States must make sure that the obligation to fulfil the human rights to water and sanitation is justiciable, by ensuring that legal mechanisms are in place that will enable affected individuals and groups to challenge any failures by governments to adopt reasonable measures and strategies before judicial and/or quasi-judicial bodies.

Retrogressive measures

A measure is called retrogressive if it takes backward steps with respect to the human rights to water and sanitation. Such a measure is only acceptable in exceptional circumstances.[19] The Committee on Economic, Social and Cultural Rights has stated that the burden of proof rests with the State, which must show that:

- the adoption of any retrogressive measure is based on the most careful consideration of alternatives;
- that disadvantaged groups have been prioritised;
- that any such measures can be justified by reference to other human rights that rely on water for their realisation; and
- that full use was made of available resources.[20]

The Committee has expressed concern about policy choices that are deliberately retrogressive, in particular in the context of austerity measures.[21] Some actions and failures to act may have a retrogressive effect, even if they're not deliberately retrogressive. The failure by States to ensure operation and maintenance, for example may cause services to fail. Even where retrogression is not deliberate, the human rights framework obliges States to assess the impacts of their polices carefully, and to adjust them as soon as they become aware that these might lead to retrogression.[22]

States must carefully assess whether their policies and other measures will lead or are leading to retrogression, and adapt and reform them accordingly.

1.3.4. Non-discrimination and equality

The prohibition of discrimination is of immediate effect. Positive measures and programmes to ensure equality may require targeted resources and infrastructure development, and may take time. The two major human rights treaties include a non-exhaustive list of the prohibited grounds for discrimination.[23] The Committee on Economic, Social and Cultural Rights has included guidance on the prohibition of discrimination in General Comments No. 15 on the right to water and No. 20 on non-discrimination.[24]

The prohibition of discrimination allows for, and in many circumstances requires, differential treatment and other measures designed to eliminate systemic discrimination. This covers States and other actors, including private companies, when they adopt measures to address attitudes that cause or perpetuate discrimination. The Convention on the Rights of Persons with Disabilities explicitly recognises that a failure to provide reasonable accommodation to ensure access for persons with disabilities constitutes discrimination.[25]

THE PROHIBITION OF DISCRIMINATION ALLOWS FOR DIFFERENTIAL TREATMENT AND OTHER MEASURES DESIGNED TO ELIMINATE SYSTEMIC DISCRIMINATION

Violations of the right to equality and non-discrimination may occur where States:

- fail to prevent and combat discrimination and stigmatisation;
- exclude certain individuals or groups from services or facilities;
- fail to take the appropriate steps to achieve equality;
- fail to address systemic patterns of inequalities.

States also have an obligation to ensure that other entities, including non-State service providers, do not discriminate against particular individuals or groups, or exclude them from using facilities.

Courts have successfully adjudicated non-discrimination in the provision of water and the requirement to prioritise access for marginalised groups in order to remedy systemic discrimination.

> In a case in the United States, a predominantly African-American neighbourhood had no access to piped water and groundwater was heavily contaminated, whereas the predominantly white neighbouring areas were all connected to the water supply system. The Court concluded that "there is only one explanation for the fifty years of conduct [by the public authorities]: racial discrimination".[26]

Violations of the human rights to water and sanitation of indigenous peoples are evidence of patterns of systemic discrimination.

The European Committee of Social Rights ordered Portugal to take remedial action to improve the situation with regard to housing and water for Roma people.[27]

The Inter-American Court of Human Rights determined that denying the people of an indigenous community access to their ancestral lands denied them access to water and sanitation and violated their right to life.[28]

While the stigmatisation of particular cultural practices is often deeply entrenched in society and requires a multi-pronged response, courts can play a role in challenging and condemning such practices and requiring the government to adopt measures to act on eliminating them.

In Nepal, a public interest litigation initiative was launched to challenge the practice of 'chhaupadi' (the isolation of women and girls during menstruation). The Supreme Court of Nepal outlawed the practice in 2006 and a law was subsequently passed banning it.[29]

STATES MUST COMMIT TO LONG-TERM STRATEGIES AND PLANS FOR PUBLIC EDUCATION AND ENGAGEMENT TO PREVENT AND RESPOND TO STIGMATISATION

Long-term stigmatisation is impossible to remedy through a single judgment or law and therefore States must commit to long-term strategies and plans for public education and engagement to prevent and respond to stigmatisation.[30]

Sanitation workers frequently face stigmatisation, serious health risks, violence and exploitation.

The Indian parliament adopted an Act requiring that sanitation systems be overhauled to eliminate the need for 'manual scavengers', who clean dry toilets by hand. The Act sought to eradicate stigma, in part by arranging for alternative jobs for these workers.[31] The Supreme Court of India observed that, "manual scavengers are considered as untouchables by other mainstream castes and are thrown into a vortex of severe social and economic exploitation".[32] It held that the continuation of manual scavenging violates human rights, and ordered the State to implement the new Act fully and take appropriate action in response to any violations.[33]

States must

- ensure that courts and other relevant bodies can provide effective remedies to end discrimination and bring about substantive equality;
- adopt positive measures to ensure an end to discriminatory practices.

1.3.5. Participation

Participation is not only a human right in itself, but participation in decision-making by the people who will be affected is invaluable, as this leads to decisions that are more likely to be sustainable. States may be committing a violation if they deny people the opportunity to participate.

> The South African Constitutional Court developed the concept of "meaningful engagement" in the *51 Olivia Road* case, finding that rights holders have a right to participate in decisions affecting the enjoyment of social rights, including the development of plans. The Court found that the City of Johannesburg had made no effort to engage with the affected residents and hence did not meet these obligations.[34]

This concept of meaningful engagement has since been taken up by courts in other countries, including Kenya and South Africa.[35]

> In *Beja v. Western Cape* the High Court of the Western Cape in South Africa found that a denial of meaningful engagement and effective community participation in decision-making regarding the design and installation of toilets violated constitutional rights. The Court held that "[t]he legal obligation to reasonably engage the local community in matters relating to the provision of access to adequate housing, which includes reasonable access to toilet facilities in order to treat residents 'with respect and care for their dignity', was not taken into account when the City decided to install […] unenclosed toilets." The Court further found the City of Cape Town to be in violation of Section 152(1)(e) of the South African Constitution, "which provides for public involvement in the sphere of local government", by requiring it to "provide democratic and accountable government for local communities; and encourage the involvement of communities and community organisations in the matters of local government".[36]

States must ensure that alleged violations of the right to participation are justiciable.

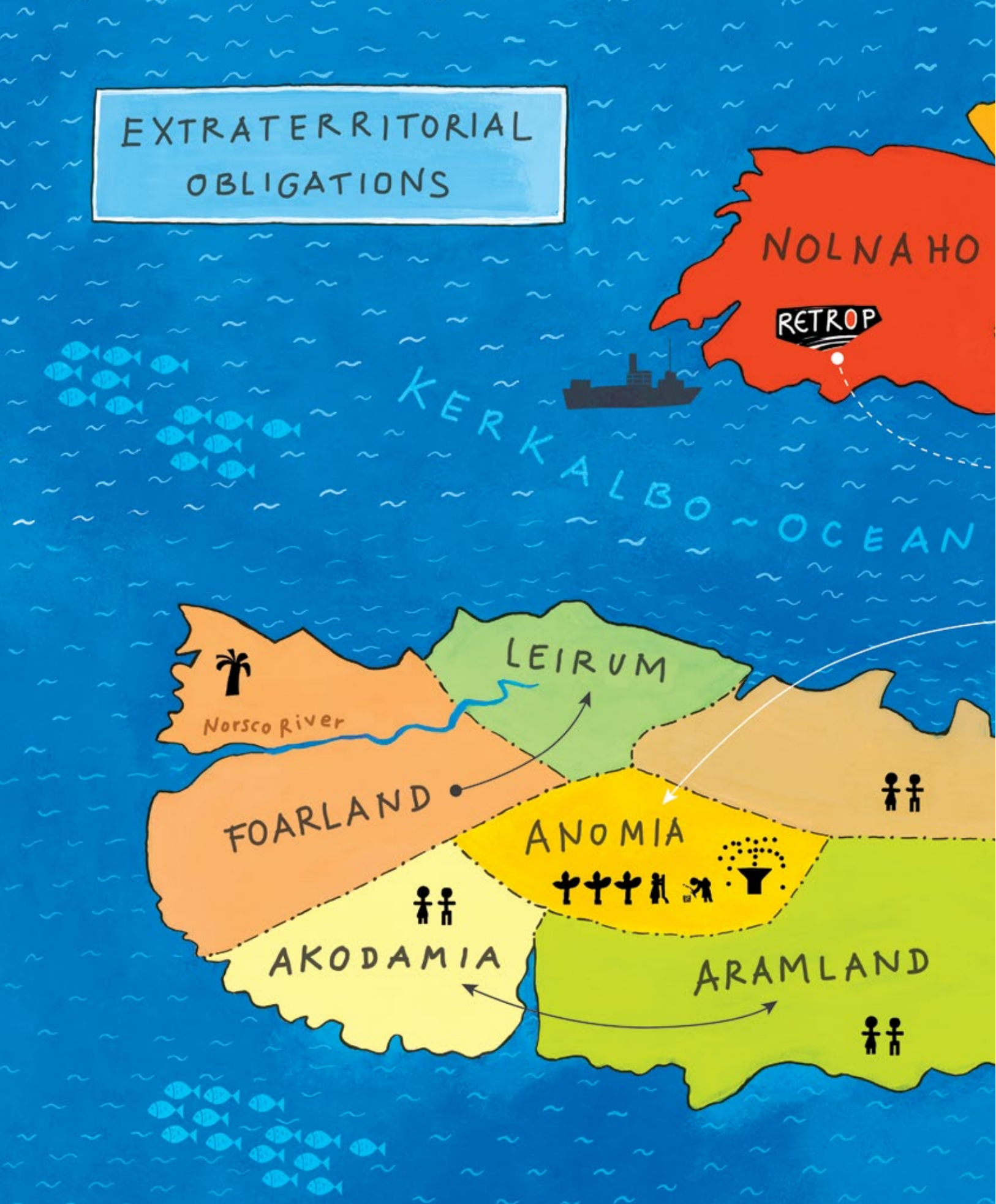


1.3.6. Violations of extraterritorial obligations

States' human rights obligations do not stop at their national borders, but extend beyond them. The Maastricht Principles on Extraterritorial Obligations of States, adopted in 2011 by forty experts in international law and human rights, clarify the extraterritorial obligations of States on the basis of existing international law.[37] They affirm that the obligations to respect, to protect and to fulfil all extend extraterritorially.[38] The Principles also demand that a "prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of ESC [economic, social and cultural] rights" be established.[39]

The following fictional scenarios illustrate situations in which extraterritorial obligations are relevant to the human rights to water and sanitation:

- **Development assistance:** Angistan provides development assistance to Anomia for agricultural projects. These projects contribute to violations of the human right to water in Anomia, decreasing the availability of water sources and causing pollution. Angistan must ensure – as part of its own obligations under international human rights law – that such development cooperation with other countries produces results that are compliant with human rights standards and principles.[40]
- **Economic sanctions:** Arualand has imposed economic sanctions on Reyemeunistan that include banning the export of goods to Reyemeunistan that are essential for the delivery of services, such as chlorine needed to ensure water safety. Arualand must ensure that these sanctions do not lead to violations of the human rights of people living in Reyemeunistan through the collapse or partial collapse of water and sanitation services.
- **International business:** Company RETROP Inc. is based in Nolnaho, and also has business interests in Elieth. As a result of the operations of Company RETROP Inc. in Eleith, violations of the human rights to water and sanitation occur. As part of its duty to protect human rights, Nolnaho – where Company RETROP, Inc. is based – must ensure that companies under its jurisdiction are controlled in so that they cannot commit human rights abuses in Eleith or any other country.[41]
- **Investment agreements:** Akodamia and Aramland have concluded a bilateral investment agreement that protects the rights of investors in both countries. Both parties must ensure that such an investment agreement is formulated and interpreted in a way that integrates human rights. An Akodamian investor in Aramland expects to realise profits from its investments in water and sanitation service delivery, which may restrict Aramland's ability to set and regulate tariffs for service provision. However, under its human rights obligations Aramland must still ensure that water and sanitation services remain affordable for all, including poor people.
- **International watercourses:** Foarland uses a water resource that extends beyond its border with Leirum. International water law obliges States to equitable and reasonable use and to avoid causing significant harm in other countries.[42] Foarland must also consider the human rights, including the right to water, of the population of Leirum. It must ensure that its own use of the resource does not compromise the ability of Leirum to ensure sufficient and safe water for its own population.[43]


EXTRATERRITORIAL OBLIGATIONS
NOLNAHO
RETROP
KERKALBO~OCEAN
LEIRUM
Norsco River
FOARLAND
ANOMIA
AKODAMIA
ARAMLAND


ANGISTAN
ARUALAND
retrop
REYEMEUNISTAN
ELEITH
N

Human rights obligations also apply to the actions of States as members of international organisations.[44] A member State of a UN agency, regional organisation or international financial institution is breaking international law if it causes the organisation to commit an act that, under international law, would be illegal for a State to carry out itself.[45] Further, a regional organisation must not impose the privatisation of water service delivery in any country without allowing for active, free and meaningful public participation and debate on the decision.

To gain access to justice, people can turn to courts and other bodies in their own country. They can also bring claims before judicial or quasi-judicial bodies in another country where the alleged violation originates (extraterritorial claims). Such claims could also be brought before regional and international institutions

Case law in the context of extraterritorial obligations is rare, but UN treaty bodies have increasingly addressed violations of extraterritorial obligations. The Human Rights Committee has called for the regulation and monitoring of corporate activities abroad that may violate human rights, and for access to remedies in the event of such violations.[46] In another context, both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have expressed concern about Israel's denial of access to water and sanitation to Palestinians, and destruction of Palestinian infrastructure.[47]

The UN Convention on the Law of the Non-Navigational Uses of International Watercourses entered into force in August 2014.[48] This Convention governs the use of water resources that flow through more than one country, and its basic principles, such as the equitable and reasonable use of water resources and the obligation not to cause harm, reflect customary international water law.[49] Article 32 of the Watercourse Convention, entitled "Non-discrimination", deals with access to judicial or other procedures. It stipulates that States shall not discriminate on the basis of nationality or residence in giving individuals access to judicial or other procedures, or to a right to claim compensation or other relief. In other words, an individual from one country who feels her or his rights have been violated by a second country should be able to bring a claim in the second country, even if she or he is neither a national nor a resident.

States must

- comply with their extraterritorial obligations as reflected in the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.

States should

- ratify the Convention on the Law of the Non-Navigational Uses of International Watercourses;
- ratify the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and its Protocol on Water and Health[50];
- implement Concluding Observations and other guidance by UN treaty bodies for the regulation and monitoring of corporate activities abroad that may violate human rights, and ensure access to remedies when violations occur[51];
- implement Concluding Observations by UN treaty bodies relating to international assistance and cooperation.

1.4.
Addressing systemic violations

Although the right to individual litigation over economic social and cultural rights is an important guarantee against State violations and failures, it risks only benefitting the few people who have access to justice. Such cases may not lead to the necessary structural reform to the legislative, regulatory or policy frameworks to ensure progressive realisation of the human rights to water and sanitation for all, and to eliminate inequalities. If they do not address and correct systemic violations, courts will be unable to provide remedies for some of the most widespread violations of the human rights to water and sanitation.

Systemic obstacles to the realisation of the human rights to water and sanitation must be identified and addressed. For example, if people wishing to connect to water and sanitation services must, by law, provide official tenancy documents, this presents a barrier to the realisation of the rights of all people living in many informal settlements. In such cases, courts can and should play a corrective role, by ordering the legislative and executive branches to change their legislation and policies so they comply with human rights. **(see Frameworks; Services)**

SYSTEMIC OBSTACLES TO THE REALISATION OF THE HUMAN RIGHTS TO WATER AND SANITATION MUST BE IDENTIFIED AND ADDRESSED

Where governments fail to take reasonable measures to address the circumstances in disadvantaged regions, for example, those with a predominantly indigenous population, courts should identify these policies of neglect as violations of the rights to water and sanitation, and require governments to design and implement programs to remedy these violations.

In some cases, collective rights may be at stake, for example, those involving land or resource rights, or damage to the environment. Such cases may affect the rights of indigenous peoples.

> In *Xákmok Kásek Indigenous Community v. Paraguay*, the Inter-American Commission submitted an application to the jurisdiction of the Court, after having in 2001 received a complaint from community leaders of the Xákmok Kásek indigenous community concerning their living conditions. The Xákmok Kásek community had no access to water sources, because the State had sold their traditional land to private owners. The court decided that the measures adopted by the State had not "been sufficient to provide the members of the Community with water in sufficient quantity and of adequate quality, and this has exposed them to risks and disease".[52]

Issues of standing

'Standing' determines who may bring a complaint to courts and quasi-judicial bodies. One challenge in addressing systemic human rights violations is that standing has traditionally been limited to individuals or groups of individuals. However, these rules are evolving to embrace more categories of complainants. The South African provision on legal standing in Section 38 of the Bill of Rights, confers standing to anyone acting on behalf of persons who cannot act in their own name, as well as on class actions, actions in the public interest, and associations acting in the interests of their members.[53]

Public interest litigation can respond to systemic violations by enabling people to take legal action on behalf of the general public or of particular groups in the public interest. In some instances, it is the courts themselves that press a particular issue. The focus of public interest litigation is on the community rather than the individual and this provides an important mechanism for addressing systemic human rights violations.[54]

In India, there are many examples of court orders based on public interest litigation, filed by civil society organisations to ensure the human rights to water and sanitation.

PUBLIC INTEREST LITIGATION ENABLES PEOPLE TO TAKE LEGAL ACTION ON BEHALF OF THE GENERAL PUBLIC

> On 18 October 2011, the Supreme Court of India ordered all states and union territories to build toilets, especially girls' toilets, in all public schools by the end of November 2011, on the basis of public interest litigation.[55]

> In Colombia, the writ of protection (*acción de tutela*), enshrined in article 86 of the Constitution, is a proceeding on an individual case involving people who need immediate protection against the action or omission by any public authority or provider of a public service. It also addresses whether policies are 'reasonable' and can therefore challenge systemic violations. Article 86 has proved to be an important instrument to help guarantee respect for the human rights to water and sanitation. The Constitutional Court of Colombia ruled to prohibit disconnections in homes where people need special protection, for example children or older persons.[56]

Another way of introducing broader arguments into a particular case are *amicus curiae* briefs. These are submissions by 'friends of the court' who are not parties to a given case, but can offer additional information and arguments. *Amicus curiae* briefs are increasingly common and are a way to introduce matters of broader concern into a particular case, so that it is relevant for people other than the two parties. Often, *amicus* briefs are based on bringing international human rights law to the attention of the court.

> The NGO Centre on Housing Rights and Evictions (COHRE) submitted an *amicus curiae* brief to the South African Constitutional Court case of *Mazibuko v. City of Johannesburg*, highlighting relevant international human rights law on the right to water.[57]

Standards of review

The standard of review in this context is the degree of deference accorded to the legislative and executive branches of government. An appropriate standard of review has the purpose of guaranteeing that judges fulfil their duty to issue judgements that comply with human rights. The relevance a judgment has beyond the particular case in question, and whether it can be used as a precedent to address systemic violations, may depend on the standard of review adopted by the court. It is the judiciary's task to ascertain whether any measures, including legislation and policies created by the legislative and executive branches, comply with the norms set out in the higher legal hierarchy, including human rights norms. Courts may, in such cases, limit themselves to declaring that a certain policy violates human rights and ordering the legislative or executive branches to revise the measures in question and adopt a solution that complies with human rights law.

At the international level, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) has taken up the standard of 'reasonableness'.

States must:

- ensure that courts can adopt effective standards of review;
- abide by and implement courts' findings; and
- make any necessary changes to legislation, policies and practices.

Standard of reasonableness

There are many ways for governments to implement human rights. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights uses the 'standard of reasonableness' to determine whether the policy choices made are in line with human rights. Explaining how it will interpret this standard, the Committee on Economic, Social and Cultural Rights has explained:

"In assessing whether [the measures taken by a State party] are 'adequate' or 'reasonable', the Committee may take into account the following considerations:

(a) The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of economic, social and cultural rights;

(b) Whether the State party exercised its discretion in a non-discriminatory and non-arbitrary manner;

(c) Whether the State party's decision (not) to allocate available resources was in accordance with international human rights standards;

(d) Where several policy options are available, whether the State party adopted the option that least restricts Covenant rights;

(e) The time frame in which the steps were taken;

(f) Whether the steps had taken into account the precarious situation of disadvantaged and marginalised individuals or groups and, whether they were non-discriminatory, and whether they prioritised grave situations or situations of risk."[58]

The standard of reasonableness was originally developed by the South African Constitutional Court in the context of the right to housing. In the seminal *Grootboom* case, the Court held that a reasonable programme must: be comprehensive, coherent and coordinated; be capable of facilitating the realisation of the right; prioritise the needs of those in the most desperate situations; make appropriate financial and human resources available; be balanced and flexible and make appropriate provision for short, medium and long-term needs; be reasonably devised and implemented.[59]

Through this 'reasonableness review', the Court has made it clear that while it is the role of the government to determine precise policies and programmes, it is the proper role of courts to assess whether the government's policies and programmes comply with human rights.[60] In this case, the Court found that the State's programmes failed to give priority to the people in the most desperate situations and required the government to take measures to correct this.[61]

With regard to budgets, the same Court demonstrated the role that courts can play in determining whether budgets comply with human rights obligations. In the *Blue Moonlight* case, it held that "it is not good enough for the City to state that it has not budgeted for something, if it should indeed have planned and budgeted for it in the fulfilment of its obligations".[62] Maximum available resources are not being committed to water and sanitation budgets if such budgets have been developed on the basis of decisions or fiscal policies that fail to prioritise the human rights to water and sanitation.

Other bodies

National human rights institutions (NHRIs), non-governmental organisations, regional quasi-judicial commissions and international monitoring mechanisms, such as the regular reviews of State's performances by the Committee on Economic, Social and Cultural Rights, can also recommend changes when systemic human rights violations are found.[63] (see Monitoring, p.26)

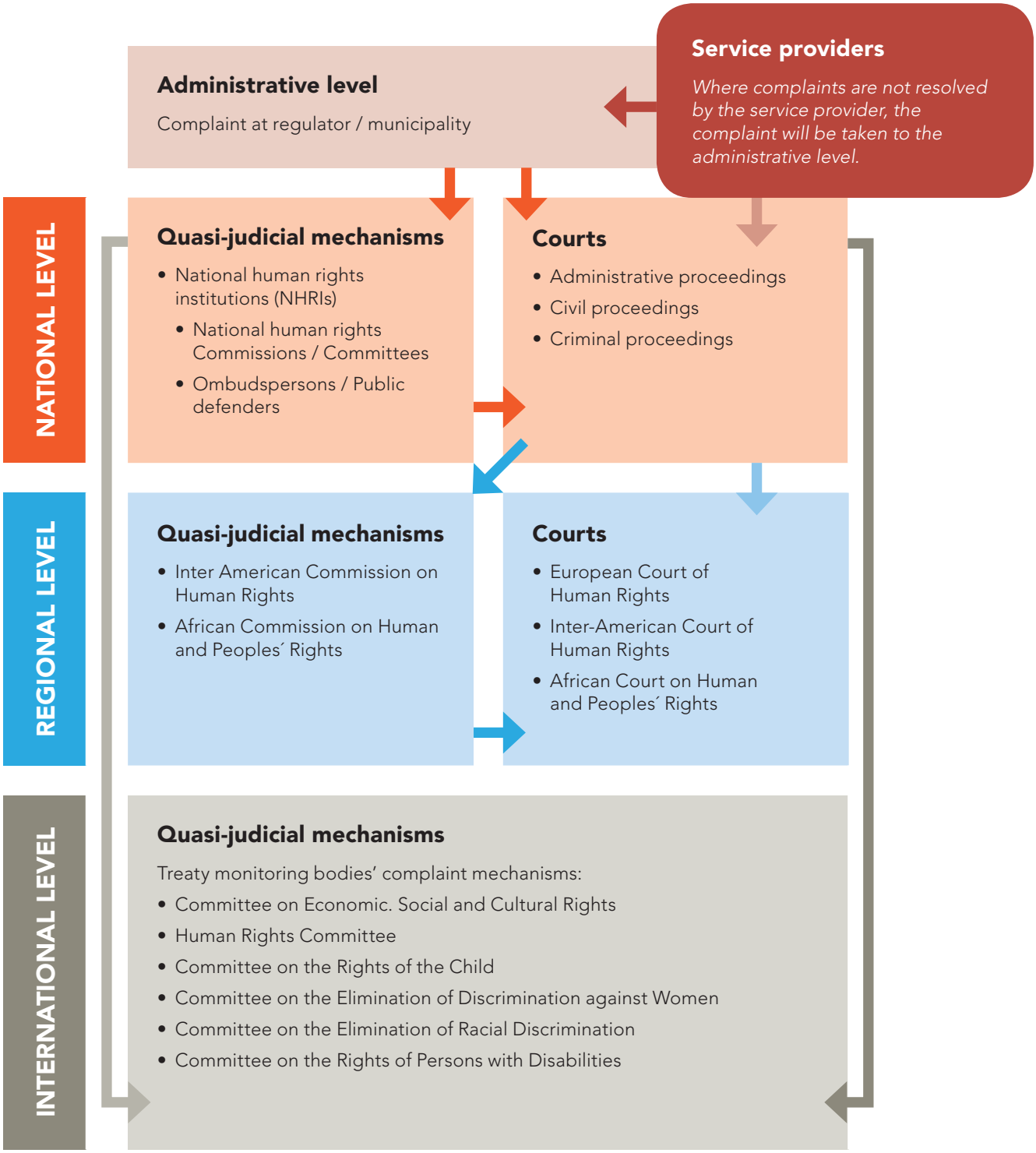
The Peruvian national human rights institution, the Defensoría del Pueblo, conducted extensive consultations and research and published a report analysing the legal protection and implementation of the human rights to water and sanitation in Peru. The Defensoría identified significant systemic violations of the human rights to water and sanitation, and made recommendations for remedial action.[64]

States must ensure that:

- systemic violations of the human rights to water and sanitation are within the mandate and authority of courts to address and remedy;
- that courts have the competence to assess whether laws and regulations are compatible with the human rights to water and sanitation, by ensuring that judges and other members of the legal profession are provided with training in the justiciability of rights to water and sanitation, and that all of the necessary evidence, including expert opinions and *amicus curiae* submissions, is available to courts.

States should:

- ensure that public interest litigation and class action claims are allowed for in the national legal framework;
- adjust procedures and rules of standing to ensure that communities have standing as parties, and that they have access to resources, information and legal representation in order to make the case in their collective interest fully;
- allow for mechanisms that group claims together, and, in relevant areas, permit socially relevant litigation to have effects beyond the particular case, to ensure that people who do not have access to courts can still benefit from judicial decisions;
- mandate and encourage national human rights institutions to initiate investigations into the systemic causes of the denial of economic, social and cultural rights, and to scrutinise national laws and policies for their consistency with human rights.


Service providers
Where complaints are not resolved by the service provider, the complaint will be taken to the administrative level.
Administrative level
Complaint at regulator / municipality
NATIONAL LEVEL
Quasi-judicial mechanisms
National human rights institutions (NHRIs)
National human rights Commissions / Committees
Ombudspersons / Public defenders
Courts
Administrative proceedings
Civil proceedings
Criminal proceedings
REGIONAL LEVEL
Quasi-judicial mechanisms
Inter American Commission on Human Rights
African Commission on Human and Peoples´ Rights
Courts
European Court of Human Rights
Inter-American Court of Human Rights
African Court on Human and Peoples´ Rights
INTERNATIONAL LEVEL
Quasi-judicial mechanisms
Treaty monitoring bodies' complaint mechanisms:
Committee on Economic. Social and Cultural Rights
Human Rights Committee
Committee on the Rights of the Child
Committee on the Elimination of Discrimination against Women
Committee on the Elimination of Racial Discrimination
Committee on the Rights of Persons with Disabilities

02.
Mechanisms for access to justice

States must provide a national legal and policy framework that addresses all aspects of the human rights to water and sanitation. This legal framework must clearly assign responsibilities for implementing the human rights to water and sanitation, thus providing the basis for accountability. In order to ensure that effective remedies can be claimed by rights holders, the framework must ensure that administrative complaint mechanisms, courts, and quasi-judicial mechanisms at the regional and international levels can decide on cases related to the human rights to water and sanitation. **(see Frameworks)**

2.1.
Mechanisms at the national level

This section clarifies the range of options for individuals and groups to have their complaints addressed and remedied **(see diagram opposite)**.

2.1.1. Service providers

When someone faces a problem with their water or sanitation services, they should be able to turn to their service provider with their complaint. The service provider is often able to resolve problems directly. As the service provider is not independent and impartial this does not constitute 'access to justice', but it often provides a rapid and effective solution for problems with access to water and sanitation, relating, for example, to faulty bills.

The service provider may provide complaint hotlines, advisory services or mediators to resolve complaints.

Where services are provided directly by the State, individuals and groups of individuals may submit a complaint to the public service provider, which – if the complaint is not resolved– can progress directly from the service provider to the regulator or a similar administrative oversight body.

In situations where water and sanitation are provided by a non-State service provider, people can refer to customer complaint mechanisms via the service provider in the first instance, but will then have to complain to the relevant authorities if they feel that the initial response is unsatisfactory.

ADMINISTRATIVE BODIES SHOULD BE ABLE TO RESOLVE COMPLAINTS QUICKLY AND IMPLEMENT DECISIONS PROMPTLY

Legislation regulating water and sanitation service providers must stipulate that they have a responsibility to create effective and timely complaint procedures.

2.1.2. Administrative and regulatory procedures

If the service provider's complaints mechanisms do not resolve a particular problem, individuals should be able to turn to administrative or regulatory bodies with their complaints. Generally, this will be preferable to going to court. As administrative bodies are often organised at the local level, their procedures tend to be more accessible than those of courts, and it should be possible for them to resolve complaints quickly and implement decisions promptly.

As the Committee on Economic, Social and Cultural Rights explains, "those living within the jurisdiction of a State party have a legitimate expectation […] that all administrative authorities will take account of the requirements of the Covenant in their decision-making".[65] This means in practice that all legislation, regulations, and policies must be consistent with the human rights to water and sanitation. Regulatory bodies are also often mandated to receive complaints.

The responsibilities of the Portuguese Regulator for Water and Wastewater, ERSAR, include setting standards, regulating services, monitoring the quality of services, analysing consumer complaints and supporting conflict resolution between consumers and service providers. ERSAR receives an increasing number of complaints each year, as new legislation has made it obligatory for all service providers to document all complaints and forward them to ERSAR.[66]

The Water Services Regulatory Board (WASREB), in Kenya, has a mandate to oversee the implementation of policies relating to the provision of water and sewerage services. It sets rules and enforces standards that guide the water and sanitation sector towards ensuring that consumers are protected and have access to adequate services. It also establishes and monitors procedures for handling complaints by consumers against service providers and created Water Action Groups to improve responsiveness to consumer concerns.[67] As a regulator, WASREB has powers to compel service providers, including the option to recommend the removal of boards of directors and top management and – ultimately – the power to withdraw licenses.[68]

Independent review mechanisms play an important role in overseeing and reviewing administrative decisions, ensuring that they are consistent with the human rights to water and sanitation. For example, administrative decisions about affordability and the consequences of not paying for water and sanitation services must be monitored and reviewed for consistency with the human rights to water and sanitation.

People can turn to courts when administrative bodies fail to consider and apply the human rights to water and sanitation properly.[69]

The State should put in place impartial and independent administrative complaint procedures, including regulatory bodies, to guarantee that government officials implement laws, regulations and policies correctly and consistently.

Administrative decision-makers at all levels must interpret legislation and exercise the discretion conferred by law in a way that is compliant with the human rights to water and sanitation.

States should ensure that there is effective oversight of administrative bodies, that they are accountable, and that officials are properly informed about the human rights to water and sanitation.

States must ensure that quasi-judicial and judicial appeal is available to review administrative decisions.

States must also ensure that independent administrative or judicial bodies can review whether existing statutory entitlements are adequate.

Individuals and groups must be able to access a court that is able to review whether existing entitlements or provisions are consistent with the human rights to water and sanitation.

2.1.3. National human rights institutions

National human rights institutions (NHRIs), such as human rights commissions and ombudspersons (also known in some countries as public defenders or public protectors) are State bodies that have been established in many countries. The role, status and functioning of NHRIs for the protection and promotion of human rights is set out in the Paris Principles, endorsed by the UN General Assembly. They are quasi-judicial bodies with a broad mandate to promote and protect human rights. Autonomy and independence from the government are fundamental to such institutions and an essential precondition for their effective functioning and credibility.[70]

NHRIs have a mandate, among other things, to publicly promote and monitor the implementation of human rights, and promote the harmonisation of national law and practice with international human rights. While the Paris Principles do not require that NHRIs be authorised to receive and address complaints of violations of rights, in practice most do have this capacity.

Regardless of whether NHRIs have monitoring functions only or can receive individual complaints, States must always ensure that the NHRI's mandate covers the entire human rights framework, including economic, social and cultural rights. For example, the South African Human Rights Commission is explicitly mandated to monitor economic, social and cultural rights, including the human right to water.[71]

NATIONAL HUMAN RIGHTS INSTITUTION PROCEDURES TEND TO BE MORE ACCESSIBLE THAN COURTS

NHRIs cannot usually take binding decisions as courts can; instead, they issue recommendations. The advantage of such quasi-judicial mechanisms is that NHRI procedures tend to be less time-consuming, less expensive, less formal, less confrontational, more flexible, and thus more accessible, than courts. Where necessary, the majority of NHRIs can refer complaints to courts, which then consider the NHRI's recommendations and may enforce them through a legal judgement.

When NHRIs receive numerous similar complaints, this often leads to an expanded review of the particular human rights situation in question. The complaints should be resolved in a manner that has both an educational and a preventive function.

> Colombia's Defensoría del Pueblo published the country's first nationwide study on compliance with the human right to water. The study includes detailed information gathered from each of the country's 32 departments, making it possible to assess progress toward achieving the legal content of the rights in nearly every municipality. The Defensoría disseminated this information to communities, civil society organisations and local governments.[72] The Defensoría also collaborates with the Environmental Ministry's Vice-Minister of drinking water and basic sanitation, to raise public awareness of the objectives of the country's drinking water and sanitation strategy.[73]

In the case of *Makhaza*,[74] the South African Human Rights Commission found violations of the right to dignity and the right to privacy by the City of Cape Town, which provided unenclosed toilets for an informal settlement, as the lack of enclosures was deemed not reasonable. When the Commission's recommendations were not implemented, the community appealed to the High Court, which confirmed the Commission's view that requiring an impoverished community to enclose the toilets was unreasonable and ordered interim relief, including meaningful consultation with the community and the construction of temporary enclosures. Ultimately, the High Court also ordered the City to enclose all of the toilets fully, because failing to do so violated the inhabitants' constitutional rights to dignity, as well as the right to adequate housing and the right to adequate services.

The South African Human Rights Commission's findings prompted it to carry out a more comprehensive investigation into whether South Africa was fulfilling its obligations relating to the human rights to water and sanitation. The Commission held provincial hearings on the right to access water and sanitation in 2012.[75] The findings indicated that many people, particularly in poorer areas, suffered from a complete lack of access, or only had access to non-functional infrastructure, which has a disproportionate impact on disadvantaged individuals and groups, such as women, children and persons with disabilities.[76]

The Commission developed comprehensive recommendations, which included improving institutional arrangements to reflect the obligations of the human rights to water and sanitation better, and improving access to services in schools, particularly for girls. In an effort to hold the government to account, the Commission engaged extensively with government departments on the subject of these recommendations.[77]
(see p.19)

States must ensure that the mandate of the national human rights institution covers the entire human rights framework, including economic, social and cultural rights.

States should establish or strengthen national institutions for the promotion and protection of economic, social and cultural rights.

2.1.4. Courts

Many complaints are satisfactorily resolved by the service provider, the regulator or an administrative body. Where this is not the case, the right to an effective remedy requires that people be able to turn to a court. Judicial enforcement is (or should be) considered only as a last resort, when administrative or national quasi-judicial mechanisms are not successful.[78]

However, access to judicial remedies is a crucial component of access to justice. Moreover, the mere fact of being able to turn to a court has an important preventive function. The CESCR has pointed out that "An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate. […] whenever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary".[79]

Judges serve as impartial arbiters in disputes about rights and obligations, impose enforceable remedies, and sometimes fulfil a monitoring and corrective role. Depending on the type of claim and alleged violation of the human rights to water and sanitation, different courts will be involved, including civil, criminal, administrative and constitutional courts at various levels.

JUDGES SERVE AS IMPARTIAL ARBITERS IN DISPUTES ABOUT RIGHTS AND OBLIGATIONS

States must ensure that courts are competent to deal with economic, social and cultural rights, and magistrates, including judges, must receive, in their initial and on-going training, information on economic, social and cultural rights, in particular the human rights to water and sanitation.

2.2.
Mechanisms at the regional level

Regional human rights mechanisms in Africa, the Americas and Europe provide a further avenue for accountability, and for remedying violations of the human rights to water and sanitation. When people have exhausted all mechanisms available at the national level[80], they can still seek remedies at the regional level. Regional bodies apply human rights standards that stem from human rights treaties. Some of these bodies (regional courts) issue binding decisions, others (commissions or committees) issue non-binding recommendations. In the Inter-American system, individuals must usually file their complaint with the Commission first, before the Commission can decide to refer it to the Court.[81]

States should ratify or accede to regional human rights mechanisms that guarantee economic, social and cultural rights, including the human rights to water and sanitation, as well as to regional mechanisms that establish complaints procedures for alleged violations of these rights.



An outline of the main regional human rights mechanisms in Africa, the Americas and Europe follows, including examples of relevant decisions that demonstrate how remedies for violations of the human rights to water and sanitation can be sought using regional mechanisms.

2.2.1. Africa

The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights

Individuals may bring a complaint to the attention of the African Commission on Human and Peoples' Rights, alleging that a State party to the African Charter on Human and Peoples' Rights violated any of their rights. If no friendly settlement is reached, the Commission takes a decision. If the concerned State seems unwilling to comply with the decision, the Commission can refer individual cases to the African Court on Human and Peoples' Rights. Individuals and non-governmental organisations with observer status before the African Commission can also access the Court directly if the State involved in the case has made a Declaration accepting the jurisdiction of the Court. Decisions of the African Court are final and binding on States parties to the Unique Court Protocol.[82]

A JUSTICIABLE HUMAN RIGHT TO WATER IS IMPLICIT IN ARTICLE 16 (RIGHT TO HEALTH) OF THE AFRICAN CHARTER

The Commission found a justiciable human right to water implicit in article 16 (right to health) of the African Charter.[83] In the case of *Centre on Housing Rights and Evictions v. Sudan*, the Commission held that "the destruction of homes, livestock and farms, as well as the poisoning of water sources, such as wells" amounted to a violation of the Charter's article 16.[84]

African States are encouraged to ratify/accede to the African Charter and Protocol and make a declaration accepting the competence of the Court to receive complaints. States that have entered any reservations should withdraw these and fully implement the recommendations and decisions from these regional bodies.

2.2.2. Americas

Inter-American Commission on Human Rights and the Inter-American Court of Human Rights

Individuals, groups and non-governmental organisations may lodge "petitions", alleging violations of the human rights guaranteed under the inter-American human rights treaties. If no friendly settlement is reached and the Commission determines that a State has violated the human rights of a person or group, it will issue a report that includes non-binding recommendations. In case of non-compliance with these recommendations, the Commission may refer the case to the Inter-American Court. A State party must submit to the Court's jurisdiction for the Court to be competent to hear a case involving that State.[85]

> In the case of the *Sawhoyamaxa Indigenous Community v. Paraguay*[86], the Court found that the human rights to water and sanitation are implicit in article 4 (right to life) of the American Convention on Human Rights. The Court held that Paraguay must adopt measures to protect and preserve the right to life, which, for the Court, included the provision of sufficient water for consumption and personal hygiene to the members of the community, as well as the provision of latrines or other sanitation facilities in the settlements of the community.

THE HUMAN RIGHTS TO WATER AND SANITATION ARE IMPLICIT IN ARTICLE 4, AMERICAN CONVENTION ON HUMAN RIGHTS (RIGHT TO LIFE)

American States are encouraged to ratify or accede to the American Convention on Human Rights, as well as to the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights. They should accept the Inter-American Court's jurisdiction to hear cases of alleged violations of human rights, and fully implement the recommendations and decisions from these regional bodies.

2.2.3. Europe

European Court of Human Rights

The European Court of Human Rights was established by the European Convention on Human Rights and Fundamental Freedoms. The Court hears applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the States Parties of the rights set forth in the Convention or the Protocols thereto. The mandate of the European Court is judicial; its judgments are binding and typically involve compensation for the victims of violations, to be paid by the State party found to be violating the Convention.

The European Court of Human Rights has dealt with issues related to the human right to water, basing its findings on implicit guarantees in the provisions of the European Convention on Human Rights.

> In the case of *Dubetska and Others v Ukraine*[87], the European Court found a violation of article 8 (the right to respect for private and family life and the home) of the European Convention. The Court found that Ukraine had failed to prevent pollution by mining and industry, which negatively affected the quality of drinking water and led to health problems.

European States should ratify the European Human Rights Convention and all its Protocols; they should withdraw any reservations entered to the Convention or its Protocols. States Parties to the Convention should fully implement the judgments and decisions of the European Court of Human Rights.

European Committee of Social Rights

The European Committee of Social Rights is a body set up under the European Social Charter, tasked with monitoring the compliance of States parties with the Charter. Non-governmental organisations with consultative status to the Council of Europe can submit collective complaints. The Committee adopts decisions. If a State does not implement a decision, the Committee of Ministers addresses a recommendation to the State concerned.[88]

> In the case of *European Roma Rights Centre v. Portugal*, the Committee found that Roma people suffered disproportionately from inadequate housing. Consequently, the Committee ordered remedial action, recommending that such a violation should "trigger a positive obligation of authorities to take such [disproportion] into account and respond accordingly", and that the right to adequate housing "includes a right to fresh water resources".[89]

European States should ratify the European Social Charter and its Additional Protocol providing for a system of collective complaints, as well as making a declaration, in accordance with article 2 of the Additional Protocol to the European Social Charter. States that have submitted reservations should withdraw these.

States should fully implement decisions of the European Committee of Social Rights.

Other international mechanisms

The World Bank Inspection Panel

The World Bank Inspection Panel is a complaint mechanism for people and communities that consider that they have been, or are likely to be, adversely affected by a project funded by the World Bank. The Panel aims to promote accountability and provide redress where needed. After receiving complaints, the Panel assesses their compliance with internal safeguard policies and has a mandate to review projects funded by the World Bank. The World Bank management is involved in the critical stages of the investigation process, which could detract from the independence of the investigation proceedings and decisions of the Inspection Panel. Cases may relate to the displacement and resettlement of people; environmental risks; and adverse effects on natural habitats, including protected areas such as water bodies.[96]

Mechanisms similar to the World Bank Inspection Panel exist at other major development banks and development actors, including for example the European Bank for Reconstruction and Development and the UK's Department for International Development.[97]

The Organisation for Economic Cooperation and Development's Guidelines for Multinational Enterprises are recommendations developed by States to guide multinational enterprises operating in or from countries that are signatories to the Declaration on International Investment and Multinational Enterprises. The Guidelines have a dispute resolution mechanism for resolving conflicts involving alleged corporate misconduct.[98]

States represented on the Board of Directors of the World Bank and other development banks should make sure, should make sure that its internal safeguards are informed by international human rights standards, including the human rights to water and sanitation, so that the Inspection Panel can provide effective remedies for projects that may contribute to violations of those rights.

States represented on the World Bank's and other development banks' Board of Directors should make sure that its internal safeguards are informed by international human rights standards, including the human rights to water and sanitation, so that the Inspection Panel can provide effective remedies for projects that may contribute to violations of those rights.

2.3.
Mechanisms at the international level

United Nations human rights treaty bodies, such as the Committee on Economic, Social and Cultural Rights (ICESCR), are committees of independent experts that monitor the implementation of the most important international human rights treaties. Almost all of these committees are able to receive complaints from individuals who consider that their rights have been violated. The individual complainant must have exhausted domestic remedies, and normally the complaint must not have been submitted to another international or regional body. The State concerned must have recognised the competence of the Committee to receive such complaints.

Individual complaint mechanisms relevant to the human rights to water and sanitation are found under six conventions: the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the First Optional Protocol to the International Covenant on Civil and Political Rights; the third Optional Protocol to the Convention on the Rights of the Child; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; article 14 of the Convention on the Elimination of All Forms of Racial Discrimination; and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

UN TREATY BODIES ISSUE VIEWS AND RECOMMENDATIONS THAT HELP TO ADDRESS SYSTEMIC VIOLATIONS

Cases related to the right to water have been brought before the UN Human Rights Committee under the First Optional Protocol to the International Covenant for Civil and Political Rights (OP1-ICCPR). The Human Rights Committee has found that the denial of access to water amounts to a violation of the ICCPR, and in particular of articles 6 (right to life)[90], 26 (equal protection of the law)[91] and 27 (minority group rights).[92]

Even though a complaint mechanism directly linked to ICESCR is now in force, the Human Rights Committee will remain an important mechanism for cases involving States that have not yet ratified the Optional Protocol to ICESCR, or that are not party to the ICESCR itself.

Individual complaints presented to these international bodies serve as an extra layer of protection for human rights. In the adjudication of individual cases, international norms that may otherwise seem abstract are put into practice. Treaty bodies can guide States, non-governmental organisations and individuals in interpreting the meaning of human rights in particular contexts.[93] When they consider individual cases, the UN treaty bodies issue views and recommendations that may affect similar cases in the country in question, thereby highlighting and helping to address systemic violations of rights. (see p.19)

The Committee´s decisions represent an authoritative interpretation, and although recommendations are not legally binding, the State has an obligation to consider and act upon views and recommendations in good faith.[94] All of the committees have developed follow-up procedures to monitor whether States have implemented their recommendations. If the State party fails to take appropriate action, the case is kept under consideration by the Committee. A dialogue is pursued with the State party and the case remains open until satisfactory measures are taken.[95] The role of the treaty bodies can be complemented by civil society and national human rights institutions, which can advocate for the effective implementation of decisions. These quasi-judicial decisions are a way of creating legal precedents at the international level and these precedents can be used for advocacy at the national level.

States should ratify or accede to international human rights treaties and accept the complaints procedures that they establish.

States that have entered reservations to any of these treaties relating to economic, social and cultural rights should withdraw them.

States should fully implement the Views of UN treaty bodies regarding any communications, inquiry procedures and inter-State procedures.



03.
Making access to justice effective

All accountability mechanisms must adjudicate promptly, expeditiously, effectively, impartially and independently on complaints[99]; remedies must be accessible, affordable, timely or prompt, and effective.[100]

Middle- and high-income households benefit the most from access to justice. States must therefore adopt all necessary measures to ensure access to justice for all people equally, and overcome the barriers that disadvantaged individuals and groups face. Only in this way will it be possible to strengthen access to justice and address the structural and systemic challenges that slow the realisation of the human rights to water and sanitation. The people whose human rights to water and sanitation are most likely to be violated are rarely in the position to access complaints mechanisms.[101] This section starts by setting out some of the barriers to justice, and how to overcome them. It then explains the fundamental principles that must be taken into account to ensure that such mechanisms can effectively address violations of the rights to water and sanitation.

States have an obligation to set up accountability mechanisms (administrative complaint mechanisms, courts and other mechanisms) and to make them accessible, so that rights-holders can bring alleged violations to the attention of the responsible authorities and courts

States must:

- establish courts or tribunals that are independent of the executive and legislative branches of government;
- provide them with sufficient resources;
- ensure that they are competent to deal with cases relating to economic, social and cultural rights, including the human rights to water and sanitation;
- ensure access to free legal counsel where necessary for cases of alleged violations of the human rights to water and sanitation.

STATES MUST ADOPT ALL NECESSARY MEASURES TO ENSURE ACCESS TO JUSTICE FOR ALL PEOPLE EQUALLY

3.1.
Overcoming common barriers to access to justice

People often face significant barriers in accessing remedies. Obstacles to seeking redress may take various forms, but it is often the poorest, most vulnerable and marginalised individuals and groups in society that face these obstacles.

Everyone is entitled to equal access to judicial and quasi-judicial mechanisms without discrimination, "as failure to provide effective remedial mechanisms can itself amount to a breach of human rights obligations".[102]

States must take positive measures to eliminate barriers to access to justice and conditions that cause or perpetuate discrimination, while paying particular attention to the poorest, most vulnerable and marginalised individuals and groups.

3.1.1. Access to information

AWARENESS OF THE EXISTENCE OF LEGAL RIGHTS IS FUNDAMENTAL TO THE ENJOYMENT OF ALL HUMAN RIGHTS

Awareness of the existence of legal rights and the possibility of enforcing them is fundamental to the enjoyment of all human rights and to seek remedies. Many people do not have sufficient knowledge or skills to engage with administrative and court procedures, or to secure the assistance they need.

States must anticipate the barriers people may face in accessing relevant information, such as linguistic barriers because of legal terminology and jargon, or because important information is not available in minority languages.[103] Written information will not reach people who have limited or no reading skills; dissemination in only one language can exclude minorities or indigenous groups[104]; information that is only published online or in commercial newspapers will remain largely useless where access to the internet and newspapers is limited.

States must proactively inform the public about human rights, including the human rights to water and sanitation. States must inform people about how they can gain access to remedial mechanisms, while using:

- **non-technical and accessible language, including relevant local languages;**
- **relevant and accessible formats;**
- **a variety of media, particularly radio and traditional forms of communication.**

3.1.2. Physical accessibility

People must be able to physically reach the places where they can seek remedies for violations of their human rights to water and sanitation. The lack of courts and other mechanisms at the local level constitutes a serious obstacle to their access to justice. Frequently it is the family members responsible for managing household water and sanitation, often women, who cannot submit a complaint or claim, or attend a hearing, because of their responsibilities at home.[105]

States should adopt concrete measures to address and overcome the difficulties people may face in accessing courts and administrative offices.

States should identify and implement solutions to overcome barriers to physical access, for example, by establishing decentralised institutions, enacting regulations that (financially) support travel by claimants, or appointing intermediaries who can represent claimants at some stages of the proceedings,

States should ensure that persons with disabilities are provided the necessary resources to participate fully in all aspects of the justice system and that they are consulted regarding the removal of barriers they may face.

3.1.3. Affordability

Economic barriers often prevent access to justice.[106] The costs of seeking remedies for violations of human rights, including administrative and legal costs, must be affordable for all.[107] Costs include legal assistance and the fees that have to be paid at every stage of the administrative or judicial process, including fees for registration, obtaining legal documents, the commissioning of independent expertise, and making photocopies and phone calls. There is also the expense of transportation and accommodation when complainants travel to reach lawyers, courts and other bodies. Further, the loss of income while away from employment may constitute an insurmountable burden. Women may be disproportionally disadvantaged, as they are often less financially independent, or have limited access to financial resources.[108] Finally, illegal fees, or bribes, are often exacted before complainants are granted access to administrative officials, procedures and courts.[109]

States should establish provisions in legislation or regulations for the waiving or reduction of legal fees for people who would otherwise not be able to make a claim.

States should support or put into place programmes, which may incorporate paralegal assistance or support from NGOs, to ensure that access to remedies is affordable for all people.

States must take immediate and sustainable measures to prevent and combat corruption, and prosecute State and local officials for any acts of corruption. They should also train the police and other law enforcement officers, prosecutors and judges to address corruption, and require public authorities to operate in a transparent manner.

3.1.4. Legal services

People will often require assistance with the procedures and deadlines that apply to legal processes, and this should be provided for by States, using the maximum available resources.[110]

> The Irish Human Rights Commission has an explicit mandate to provide legal assistance for legal proceedings that involve human rights. The Commission can in such cases provide (1) legal advice, (2) legal representation, and/or (3) such other assistance as is appropriate.[111]

If a case proceeds to court, financial aid to pay for legal counsel is often needed to ensure that claimants who cannot afford a lawyer can adequately present their cases. The right to financial assistance to claim and enforce human rights has been found to be implicit in a number of international and regional human rights instruments.[112]

> In the case of *Airey v. Ireland*, the European Court of Human Rights determined that the right to a "fair hearing"[113] includes a right to legal representation in situations in which an unrepresented litigant would be unable to present his or her case "properly and satisfactorily".[114]

The right to legal aid has been recognised in domestic law in many countries, where it may be provided on the basis of low-income level[115], disadvantage or marginalisation; through constitutional provisions and statutory guarantees[116]; or by way of court decisions.

People may also find it difficult to access remedial mechanisms because of the complexity of a system they are not familiar with. The labyrinth of laws, traditions and interactions, the use of legal jargon, and the restrictive time limits and procedural rules can deter people from seeking justice.[117]

States often allocate inadequate human and financial resources to the justice sector, undermining the quality of legal services.[118] The fees legal aid lawyers are paid often fail to reflect the amount of time and effort required to litigate effectively in a criminal or civil case, with the result that lawyers working on legal aid cases are often inexperienced, in short supply and overstretched.

States must:

- create a system of legal aid to ensure compliance with the human right to a remedy;
- ensure that the lawyers provided through legal aid are independent, adequately trained and paid, and meet the quality standards of the legal profession;
- ensure that legal aid is available for all types of proceedings related to alleged violations of the human rights to water and sanitation, including claims by rights holders before administrative bodies and other mechanisms;
- inform the public widely about their right to seek legal aid when needed and ensure the process to receive such aid is not difficult or restrictive;
- introduce legal literacy programmes;
- ensure that independent national human rights institutions and/or non-governmental organisations have a mandate to assist individuals and can guide victims of alleged violations of the human rights to water and sanitation, both through a first assessment of a case, their options, and whether litigation seems promising, and through the first steps in legal proceedings.

3.1.5. Other barriers

There may be additional obstacles facing people who seek remedies. These include:

- Social barriers faced by women who want to submit a case because of cultural norms against women speaking on their own behalf.[119] Justice systems must be sensitive to these circumstances, while at the same time working towards empowering women.
- People may be unfamiliar with, and are often intimidated by, regulations and traditions in court on where to sit, when to speak and how to address the judge or person in charge.[120]
- People may avoid seeking justice because they fear deportation. Measures to guarantee non-deportation or non-exposure of undocumented status must be put in place.
- People may face barriers in accessing justice because they are economically dependent on the people or groups that violate their rights.[121]
- People may avoid seeking justice because they fear reprisals, discrimination or stigmatisation from within their communities or from beyond. In some cases, courts may be required to protect the privacy and anonymity of claimants, or allow groups to speak on behalf of affected individuals. Courts may also encourage the participation of human rights institutions to bring to light problems that may be difficult or dangerous for individuals to address alone.

PEOPLE MAY AVOID SEEKING JUSTICE BECAUSE THEY FEAR REPRISALS, DISCRIMINATION OR STIGMATISATION

Since violations of the human rights to water and sanitation are often systemic in nature, affecting entire communities, the provision of remedies should not be confined to individual complaints. Infringements of the human rights to water and sanitation often affect more than one person or household. Procedures and rules of standing should allow group claims, with, for example, the support of a non-governmental organisation. This way, one person does not have to bear the burden of the entire proceedings alone. For example, article 2 of the Optional Protocol to the ICESCR states that communications may be submitted by or on behalf of individuals or groups.

The role of civil society organisations in overcoming barriers to access to justice

Civil society organisations play a significant role in supporting the most disadvantaged individuals and groups to gain access to justice, motivating and empowering people to seek justice. States should support human rights advocacy groups to raise awareness about potential violations among those affected and the broader public, and to outline options for change. Civil society organisations, in cooperation with the people concerned, can often identify the root causes of human rights violations, through fact-finding and research, as well as careful analysis of the findings. Public interest litigation can enable organisations to take legal action on behalf of the general public or particular groups.

Provision of financial and legal support for the involvement of civil society organisations in developing group-based claims is critical.

In Kenya, the Akiba Mashinani Trust and the Muungano Support Trust have documented poor drainage, inadequate sanitation services, and lack of access to clean, potable water in Nairobi. Questionnaires have been distributed to women to gain an understanding of the gendered dimension of these problems. This research has provided the basis for litigation invoking the right to sanitation under the Kenyan Constitution, demanding the sustainable management of human waste, using both State and community resources.[122]

States should:

- provide support for human rights advocacy groups, so that they can organise group claims, identify systemic barriers, collect evidence and hold meetings with claimant groups to ensure that claimants can make informed decisions for the litigation process;
- disseminate general legal information and ensure that civil society and community-based organisations are able to take up informal legal education;
- promote and fund independent research and collaborative work between communities and universities about the human rights to water and sanitation;
- support test case litigation and other activities that help enforce the human rights to water and sanitation, by providing resources to community legal clinics and independent centres specialising in litigation on the human rights to water and sanitation.[123]

3.2.
What is required to ensure access to justice?

This section outlines the principles that States must follow to ensure effective decision-making in cases related to violations of the rights to water and sanitation.



3.2.1. Expertise and training

Ensuring access to justice for violations of economic, social and cultural rights requires competent administrative and judicial bodies.[124]

Claims relating to water and sanitation may raise challenges for courts and human rights bodies, as they may require specific technical expertise.

In many countries, judges, judicial officials, prosecutors and law professionals receive initial and on-going professional training in human rights, international and regional human rights treaties and related subjects.[125]

Specific expertise may also be required in relation to budgetary decisions. In cases that concern the obligation to progressively realise the human rights to water and sanitation, courts and human rights bodies must assess whether the State has used the maximum available resources. In these cases, government bodies must provide the necessary information about budgetary allocations to enable courts to make an assessment. Independent experts and organisations engaging in human rights budget analysis can assist courts.

COURTS AND HUMAN RIGHTS BODIES MUST ASSESS WHETHER THE STATE HAS USED THE MAXIMUM AVAILABLE RESOURCES

The Canadian Centre for Policy Alternatives provides detailed research and recommendations on reasonable budgetary allocations in particular circumstances to realise the human rights to water and sanitation.[126]

The US Center for Economic and Social Rights has developed resources to monitor the obligation to fulfil social rights.[127]

On the basis of the evidence provided, courts and human rights bodies must review whether budgetary decisions by the legislature are in violation of human rights law, while respecting the prerogative of the legislature to set budgets.

Legal systems should ensure that the "burden of proof" to show that the budget is insufficient is not placed on rights claimants, because they do not have full access to the relevant government information.

States must ensure relevant training for members of the legal profession on the human rights to water and sanitation.

States should make sure that courts and other accountability mechanisms are able to call on independent technical advice, to enable them to make a competent assessment of the facts.

3.2.2. Independence, impartiality, transparency and accountability

Accountability mechanisms must be independent and impartial.[128] Once each administrative or quasi-judicial procedure has run its course, there must be the possibility of accessing an independent court.

In many countries – often because of overstretched and underfunded administrative and judicial systems – corruption is entrenched in the entire system. Illicit payments and special favours enable people with financial and social capital to access the justice system and even help secure a particular outcome. The cases of the poorest and most disadvantaged individuals and groups, who cannot afford to pay bribes and don't know anyone within the system, may not be taken up, and their claims may be delayed or even not accepted.[129]

To ensure that remedial mechanisms are independent, accountable and equally accessible for everyone, States must take a proactive role in eliminating corruption, investigating and sanctioning the people involved.[130] State budgets must ensure that proper financing and adequate human resources are allocated to accountability mechanisms, and that the right incentives exist to address some of the causes of corruption.

States must ensure that courts and other mechanisms, and the personnel involved, are independent, transparent and accountable.

3.2.3. Prompt and timely decision making

When access to justice is delayed, people are denied access to justice. Proceedings should not result in 'unwarranted delays'.[131] All quasi-judicial mechanisms at the regional and international levels provide for the possibility of submitting complaints, not only when domestic remedies are exhausted, but also when proceedings at the national level take unreasonably long.[132]

Sometimes remedies require prompt decisions in order to be effective.[133] Access to justice may also require interim measures to ensure access to water and sanitation during the course of litigation.

> In the case of *Assenova Naidenova et al v. Bulgaria*[134], the Human Rights Committee used interim measures to order the reconnection of water supply to a community. (see p.8)

States must:

- **Ensure that remedial mechanisms for violations are able to resolve cases in a prompt and timely manner;**
- **Allocate sufficient financial and human resources to ensure the efficient and effective functioning of all organs of the judicial system, including police stations, the prosecution corps and courts.**

3.2.4. Understandable processes and decisions

Judicial and administrative processes are often characterised by the complexity of procedural rules, traditions, copious paperwork, legal jargon, and strict timeframes.[135]

The use of legal jargon makes it difficult for lay people to understand the process and the outcome of the court experience, and the impact a judgment may have on their lives.

States must take measures to make legal procedures more accessible and ensure that all proceedings and decisions are understandable for everyone involved.

3.2.5. Interpreting domestic law in line with international law

Judges interpret and apply the legal framework to come to a decision. When faced with a choice between an interpretation of domestic law that contradicts international human rights law and an interpretation that would enable the State to comply with it, judges are required by international law to choose the latter interpretation.[136]

One way to invoke the human rights to water and sanitation in national courts is to rely on the rights that are guaranteed in international human rights law. Courts can also rely on national provisions and constitutional norms. Whether or not courts apply international law directly, the judiciary has to interpret and apply domestic law consistently with the human rights to water and sanitation.

> In a 2004 case related to the leakage of untreated municipal wastewater into a community's drinking water supply, the Civil and Commercial Court of Córdoba, Argentina invoked General Comment 15 of the CESCR to rule that the municipality had not acted to prevent the threat to public health posed by the contaminated water.[137]

States should ensure that courts and administrative decision-makers are exposed to the legal decisions of international human rights mechanisms, and to the successful enforcement of the human rights to water and sanitation in other countries.

Where there are two possible interpretations of national law, judges must follow the interpretation that complies with human rights.

States should widely disseminate and, when necessary, translate case law on the human rights to water and sanitation as decided by international human rights bodies among law schools and members of the legal profession.

3.3. Appropriate and effective remedies

The right to a remedy requires that remedies be effective, just and enforceable. An effective remedy will be reached when the appropriate type of remedy is found, when the remedy is properly enforced, and when all aspects of violations of the rights to water and sanitation are fully corrected.

3.3.1. Crafting appropriate remedies, including systemic remedies

The most appropriate remedies will depend on the circumstances of each case, including the goals of the litigation and the needs and capacities of stakeholders. Because cases involving violations of the human rights to water and sanitation often have serious effects on people´s day-to-day lives, a decision by the court may require immediate action. Ordering interim measures can be important for granting immediate relief.

> In the case of *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council* on disconnection of the water supply because of non-payment, the applicant requested interim relief while the case was being heard by the High Court of South Africa, and this was granted by the judge.[138]

In some cases, the appropriate decision will be to require private actors to provide compensation for violations of the rights to water and sanitation.

> In the case of *Enviro-Legal Action v Union of India*[139], brought forward as public interest litigation, the Supreme Court of India considered the appropriate remedy in a case in which "the damage caused by the untreated highly toxic wastes […] inflicted untold miseries upon the villagers and long lasting damage to the soil, to the underground water and to the environment of the area in general". The Supreme Court required the government to recover the costs for the remedy from the industry responsible.

When one person brings a case to court and there are many other people living in similar situations, who suffer from the same violations and require similar remedies, these can be understood as systemic violations. For example, regulations and policies may pose a barrier, preventing people from accessing water and sanitation.[140] (see p.19)

In such cases, courts often have to scrutinise measures adopted by the legislative or executive branches of government, including laws, policies and budgets. The decision

taken by the court must be effective, but may be limited to declaring that a certain policy violates human rights, and ordering the government to revise the measures in question and adopt a solution that complies with human rights law. In some cases, remedies will involve the court requiring government to put policies in place, with appropriate monitoring of compliance with goals, timelines and other indicators of compliance.

In the *Grootboom* case, the Court did not re-write the government policies or budgets. Rather, it explained the nature of the human right to housing and the corresponding obligations and found that the government programmes to meet these obligations were unreasonable, thus requiring the government to adopt a reasonable policy.[141]

The primary concern may not always be compensation for past harms or the prevention of imminent harm, but rather ensuring that water and sanitation services are provided in the present and into the future. In these cases, a court may order both immediate and long-term remedies, or require the executive to adopt appropriate policies and plans for long-term solutions. Again, in the *Grootboom* case, the Court stated that "programmes must be balanced and flexible and make appropriate provision for attention to housing crises and to short, medium and long term needs".[142]

A COURT MAY ORDER BOTH IMMEDIATE AND LONG-TERM REMEDIES

States must guarantee the right to adequate, effective and prompt compensation, reparation, restitution, and rehabilitation, as well as making guarantees of non-repetition and public apologies.

States should ensure that these measures are effectively implemented.[143]

States must comply with court decisions on the revision of legislation, regulations and policies, so as to ensure compliance with the human rights to water and sanitation.

3.3.2. Ensuring enforcement of judgements

Studies have shown that while the number of judicial decisions about economic, social and cultural rights such as the human rights to water and sanitation is on the rise, not every such judgement is immediately enforced.[144] While the complexity of implementing certain decisions, particularly those dealing with positive obligations or structural and systemic reform, has been cited as an obstacle to implementation, evidence demonstrates that these obstacles can be overcome.

Factors that favour the effective enforcement of remedies are:

- continued oversight or supervision by courts;
- active engagement by stakeholders;
- monitoring and promotion of enforcement by third parties such as human rights institutions or NGOs.

One way to ensure the enforcement of decisions is for the decision-making body to retain supervisory jurisdiction over the enforcement of its rulings. Courts and other bodies can set up monitoring processes, including direct monitoring by the court, periodic reporting by governments on steps taken to implement decisions, and reliance on non-governmental organisations and other groups for information about the implementation of decisions.

TRANSFORMATIVE REMEDIES WHICH AIM TO CORRECT THE UNDERLYING STRUCTURAL CONDITIONS ARE REQUIRED IN ORDER TO PROVIDE COMPREHENSIVE REMEDIES FOR STRUCTURAL AND SYSTEMIC VIOLATIONS

Restorative remedies for violations, whereby the *status quo ante* (the state of affairs that existed previously) is restored, may fall short of addressing the underlying violations at the structural or systemic level. Consequently, transformative remedies, which aim to correct not only direct violations but also the underlying structural conditions, are required in order to provide comprehensive remedies for structural and systemic violations. For example, court orders may aim to change the structural causes of human rights violations through a participatory process. "Participatory structural injunctions" require the State to adopt a plan to correct a structural violation, with the meaningful participation of the people who will benefit from the changes. The State then reports back to the court on progress made. This allows courts to supervise progress and make ancillary orders to ensure that both the process and its outcomes are consistent with the rights to water and sanitation. As such, transformative remedies can move claimants further towards the full enjoyment of human rights.[145]

> In India, the Supreme Court can appoint Commissioners who monitor the implementation of court orders. In interim orders of May 2002 and 2003, the Supreme Court appointed two Commissioners to monitor the implementation of all orders relating to the right to food.[146] The Commissioners are empowered to enquire about any failure to implement

the orders and to demand redress, with the full authority of the Court; they are also expected to report regularly to the Court.[147]

In Argentina, the Supreme Court in *the National Ombudsmen v. the State* and others granted an injunction and ordered the Government to provide drinking water and food to indigenous communities, also ordering that the defendants must inform the Court within thirty days about the implementation of a number of measures and programmes related to water supply and health care, as well as information on budget allocations.[148]

In Bangladesh, a public interest petition sought a court order to oblige the Government to take measures against severe arsenic contamination of groundwater. The Court ordered measures to be undertaken by the State, and ordered the Government to provide a yearly report to the Court regarding the steps taken to implement arsenic policies and plans.[149]

The implementation of court decisions may also be furthered by social mobilisation and political pressure, with the aim of ensuring that the authorities meaningfully implement court decisions and orders, including those coming from international bodies.

Monitoring of the implementation of remedies by human rights institutions, ombudspersons, independent commissions, research institutions or non-governmental organisations can also play a critical role in ensuring effective implementation of remedies.[150] They can use court judgements where they entail an authoritative decision that orders States to undertake or refrain from certain actions as an advocacy tool. Legal cases can be used to educate the broader public about the human rights to water and sanitation, and to galvanise public support for the realisation of human rights. Such public support and mobilisation can in turn contribute to furthering the political will to abide by judicial and quasi-judicial rulings. Through press releases and published reports, monitoring bodies can put pressure on governments to comply with remedies, and ensure that governments receive positive recognition when they do comply.

In *Beatriz Mendoza and others v. Federal Government*, the Supreme Court of Argentina ruled on the negative impact of the pollution of a river, ordering the authorities to develop an integrated environmental plan and improve the quality of life of the inhabitants. The plan and its implementation should include measurable short, medium and long term objectives. The Court decided to entrust the ombudsperson with the formation of a Commission, which was to include the non-governmental organisations that participated as third parties in the litigation.[151]

States should ensure that their constitutional and legislative frameworks give their judicial systems clear responsibility for providing systemic remedies and accepting complaints in the public interest.

States must ensure the effective enforcement of judgements, and compliance with judicial rulings.

States should encourage civil society organisations, NGOs and other monitoring bodies to play a consultative role to help identify the right approach to the implementation of court decisions on human rights by proposing amendments to policies, law or practice.

States must respect judicial decisions and take remedial orders seriously, making use of international assistance where necessary.



04.
Checklists

State actors

	Yes	In progress	No
Are judicial remedies available for violations of economic, social and cultural rights?			
Is information about the existence of legal rights, and the options for enforcing them, available? Does the government proactively inform the public about the enforceability of the human rights to water and sanitation?			
Does the government ensure that remedies are financially accessible? Is financial assistance for legal counsel available? Do governments allocate adequate human and financial resources to legal services, so as to guarantee their quality?			
Does the government ensure that no illegal fees or bribes are demanded or paid before access to remedies is possible?			
Does the government provide legal assistance that guides people through the procedures and deadlines?			
Does the government take special measures to ensure that migrants who are unfamiliar with the host country's legal system, and who may be fearful of deportation, have meaningful access to courts and other procedures to enforce their rights?			
Do State actors provide training on international legal standards regarding economic, social and cultural rights; is international human rights law on the curriculum at law schools?			
Do State actors, including governments, ensure that courts and administrators are aware of the legal decisions of international mechanisms? Do they promote the application of international human rights law in domestic court proceedings? Do they encourage review by regional or international human rights bodies?			
Has the State ratified the relevant international conventions establishing regional or international complaint mechanisms?			
Are remedies available for extraterritorial claims?			
Do State actors make people aware of complaints procedures and other ways of accessing justice with respect to access to water and sanitation? Are measures taken by the State to strengthen its capacity to hold providers of water and sanitation services accountable?			

Legislators

Do laws and regulations fully integrate human rights principles and the legal content of the human rights to water and sanitation?			
Are there mechanisms to hold service providers accountable? Do these mechanisms involve the use of external resources or are they wholly financed by the service provider?			
Are the mechanisms for ensuring that service providers are accountable planned and administered with the participation of the people who use the services and may need access to remedies?			

Administrative bodies

	Yes	In progress	No
Are administrative bodies impartial and independent?			
Is the oversight and accountability of all administrative actors properly informed by the human rights to water and sanitation?			

Courts

Do the courts proceed on cases regarding the obligations to respect, protect and fulfil the human rights to water and sanitation?			
Do the courts critically and proactively evaluate budget allocation policies, in order to fulfil the human rights to water and sanitation for underserved and un-served individuals and communities?			
Do the courts address systemic violations of the human rights to water and sanitation?			
Can people take their complaint to a court when administrative bodies fail properly to consider and apply the human rights to water and sanitation?			
Do judges serve as impartial arbiters in disputes about rights and obligations? Do they impose enforceable remedies, and do they sometimes fulfil a monitoring and corrective role?			
Do courts settle complaints promptly, expeditiously, effectively, impartially and independently? Are courts transparent and accountable? Are judicial remedies timely and / or prompt?			
Are proceedings understandable? Is information also available in local languages, including minority and indigenous languages?			
Do courts provide a full explanation of their decisions on the merits of the claim? Do they indicate the consequences and applicable reparations?			
Are remedies effective, just and enforceable? Are remedies then properly enforced?			
Is domestic law interpreted in line with international law?			
Are courts and tribunals aware of the nature and implications of the International Covenant on Economic, Social and Cultural Rights? Does judicial training take full account of the justiciability of the Covenant?			
Do courts base their decisions on the recommendations of national human rights institutions?			
Are mechanisms that provide people with a remedy for violations of their rights equally accessible to all, without distinction on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (including socio-economic status) ensured? Are all parties in any proceedings treated without discrimination?			

Continued...

Courts continued...

	Yes	In progress	No
Are the courts physically accessible to all?			
Are remedial bodies sensitive to social and cultural barriers?			
Do remedial systems empower women?			
Do courts protect the privacy and anonymity of claimants who face barriers in accessing courts because they fear reprisals, discrimination or stigmatisation within or outside their communities or society?			
Do courts allow groups to speak on behalf of affected individuals in order to ensure that rights claimants are not subjected to further stigmatisation or reprisals?			
Do courts set up monitoring processes to ensure the full enforcement of their decisions?			

National human rights institutions

Is there an independent national human rights institution?			
Is the national human rights institution authorised to receive and adjudicate complaints of violations of economic, social and cultural rights?			
Does the mandate of the national human rights institution cover the entire human rights framework, including economic, social and cultural rights?			
Do national human rights institutions address systemic violations?			
Do national human rights institutions monitor the implementation of legal remedies?			

Non-governmental organisations

Do States support NGOs' contributions to monitoring the effective implementation of legal remedies?			
Do States support NGOs' contributions to overcoming the barriers that prevent people from accessing remedies?			





05. Image credits and references

Image Credits:

Page 14 'Unenclosed' toilet in Cape Town. Social Justice Coalition.

Page 31 A disabled man uses the accessible latrine designed specifically to accommodate his needs, Beltola slum, Dhaka, Bangladesh, 2011. WaterAid/Guilhem Alandry.

Page 40 Waterpoint, Kathmandu, 2014. Virginia Roaf.

Page 46 Catarina de Albuquerque meeting with civil society, South Tarawa, Kiribati, 2012. Madoka Saji.

Page 54 A boy pours water to flush the latrine at the UNICEF-supported Sahara Community School in the village of Manfalout in the Assiut Governorate in Upper Egypt. UNICEF/NYHQ2005-1604/Pirozzi.

Page 59 Berthine and Fara on their way to fetch dirty water from a local source. Pre-intervention situation in Ampizaratany village, Tsinjoarivo Imanga commune in Tsiroanomandidy district, Bongolava region, Madagascar. WaterAid/ Ernest Randriarimalala.

Page 60 Village chief and his wife washing their hands – Village Assaini programme, Democratic Republic of the Congo. UNICEF/DRC/2014

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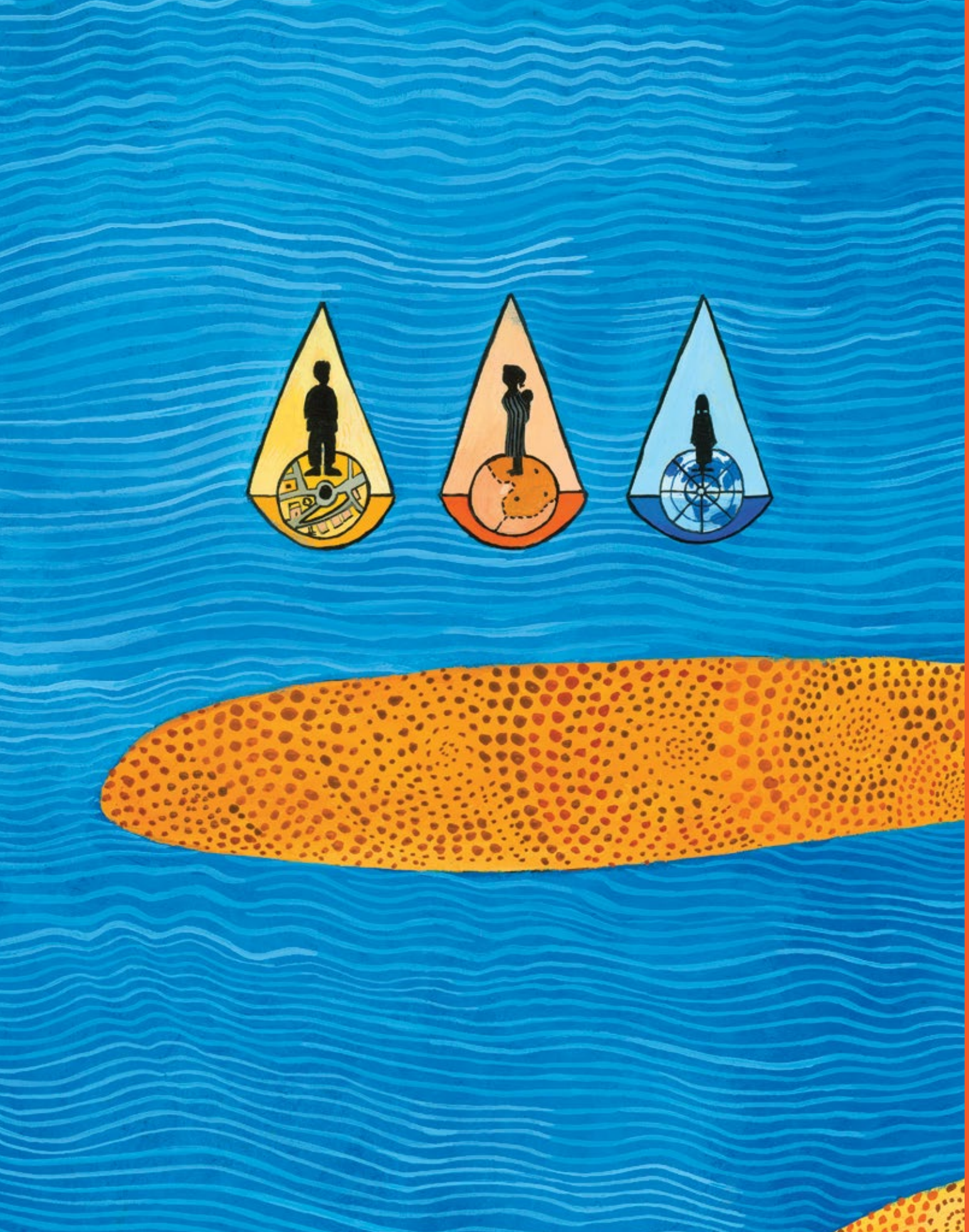
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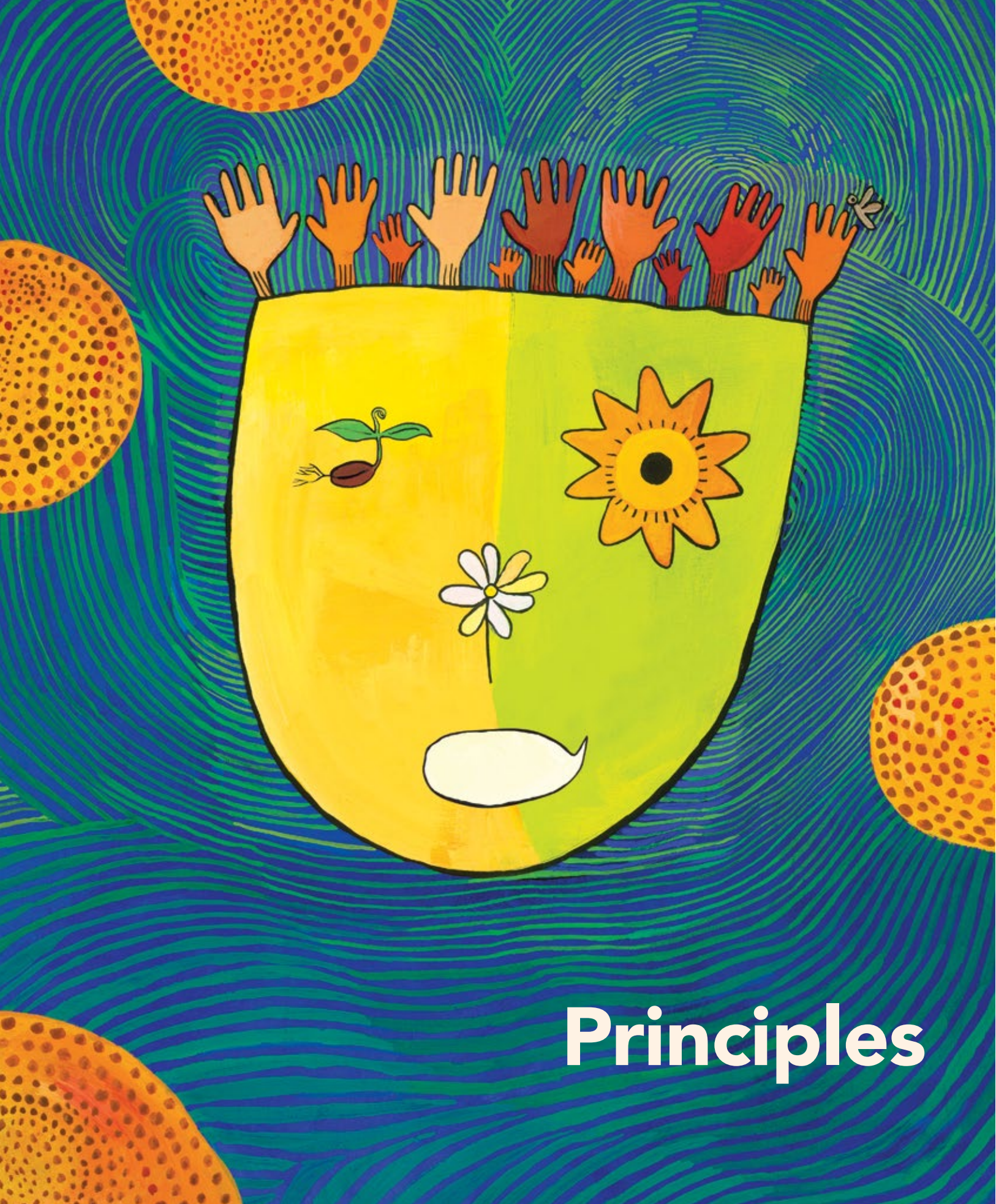
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Principles



REALISING THE HUMAN RIGHTS TO WATER AND SANITATION:
A HANDBOOK BY THE UN SPECIAL RAPPORTEUR
CATARINA DE ALBUQUERQUE

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HUMAN RIGHTS TO WATER & Sanitation
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Principles:

Non-discrimination and equality 7

Access to information 33

The right to participation 53

Sustainability and non-retrogression 73

Image credits and references 85





PRINCIPLES:

Non-discrimination and equality

Contents

01. The legal foundations of non-discrimination 11

02. Achieving substantive equality 14

03. Adopting targeted measures and affirmative action 15

04. Immediate and progressive obligations 17

05. Linking discrimination to marginalisation, vulnerability, stigmatisation and disadvantage 19

06. Prohibited grounds of discrimination 23

07. Multiple discrimination 27

08. More than wealth disparities 28

09. Checklist 29



01.
The legal foundations of non-discrimination

Equality and non-discrimination are the bedrock principles of human rights law. The Universal Declaration of Human Rights states in article 1 that "All human beings are born free and equal in dignity and rights", and in article 2 that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind. […]".

All of the major human rights treaties that have come into force since the adoption of the Universal Declaration of Human Rights contain legal obligations to end discrimination and ensure equality. The International Covenant on Economic, Social and Cultural Rights (ICESCR) specifies that the rights set out in the treaty will be extended "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", and the International Covenant on Civil and Political Rights (ICCPR) includes an almost identical guarantee. The Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) include extensive and specific protections against discrimination on the basis of race and sex. Likewise, the Convention on the Rights of the Child (CRC), the International Convention on the Protection of All Migrant Workers and Their Families, and the Convention on the Rights of Persons with Disabilities (CRPD) all include guarantees of non-discrimination.

THE STATE MUST ACT WITHOUT DISCRIMINATION IN ALL SPHERES

Discrimination is defined as any distinction, exclusion or restriction which has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.[1]

The principle of non-discrimination prohibits the less favourable or detrimental treatment of one individual or group based on a prohibited ground, such as ethnicity, sex, or religion. It also proscribes less favourable or detrimental impact on any individual or group identified on the basis of a prohibited ground. This principle is binding for all levels and entities of a State: the State must act without discrimination in all spheres and at all times. All rights and benefits guaranteed by a State must be extended without discrimination, even if those rights and benefits are not themselves required under human rights law.[2]

Different forms of discrimination

Human rights instruments and documents use various terms to explain different forms of discrimination.

Formal and substantive discrimination:

The Committee on Economic, Social and Cultural Rights distinguishes between formal and substantive discrimination: In its General Comment No. 20 on Non-Discrimination, the Committee states that "Eliminating **formal discrimination** requires ensuring that a State's constitution, laws and policy documents do not discriminate on prohibited grounds". However, merely addressing formal discrimination will not eliminate **substantive discrimination**. General Comment No. 20 further states that "Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice, instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination."[3]

Sometimes, formal and substantive discrimination are referred to as *de jure* and *de facto* discrimination, that is, discrimination in law and in practice.

Direct and indirect discrimination:

The Committee on Economic, Social and Cultural Rights also distinguishes between direct and indirect discrimination: "**Direct discrimination** occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground. […] Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation. […] **Indirect discrimination** refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates."[4]

02.
Achieving substantive equality

Non-discrimination and equality are linked under human rights law: States must ensure that individuals and groups do not suffer from discrimination and that they can enjoy full equality.

Equal does not mean 'the same' nor "identical treatment in every instance".[5] Human rights law requires equal access to basic services, but this does not mean that everyone must benefit from the same technical solutions or the same type of service, such as flush toilets.

Equality does not imply treating what is unequal equally. People who are not equal may require different treatment in order to achieve substantive equality. States may need to adopt affirmative measures, giving preference to certain groups and individuals in order to redress past discrimination.

For instance, CEDAW requires States to take measures "to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men".[6]

03.
Adopting targeted measures and affirmative action

In order to achieve substantive equality, States have an obligation to prioritise individuals and groups that are particularly vulnerable to exclusion and discrimination. Depending on the circumstances, they may need to adopt targeted positive measures to redress existing discrimination.

There are times when historical or deeply engrained discrimination will be so intractable that temporary special measures – often called 'affirmative action' or 'positive discrimination' – are required. Where barriers exist and persist, leading to the denial of rights to individuals and groups, positive measures are necessary to ensure the equal participation of all and the redistribution of power and resources to groups subordinated by discrimination.[7]


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04.
Immediate and progressive obligations

States have an immediate obligation to guarantee non-discrimination in the exercise of the human rights to water and to sanitation. They must ensure that their laws, policies, programmes and practices do not discriminate. However, it must be acknowledged that addressing and remedying inequalities and discrimination and their underlying structural causes takes time and costs money.

The Limburg Principles point out that "*de facto* discrimination occurring as a result of the unequal enjoyment of economic, social and cultural rights, on account of a lack of resources or otherwise, should be brought to an end as speedily as possible".[8]

The Committee on Economic, Social and Cultural Rights calls on States to adopt measures against discrimination as a matter of priority: "failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority".[9] Hence, human rights law acknowledges that eliminating discrimination and achieving substantive equality is dependent on the availability of resources, but the Committee on Economic, Social and Cultural Rights puts the burden of proof on States to justify their inaction where they fail to eliminate inequalities.



05.
Linking discrimination to marginalisation, vulnerability, stigmatisation and disadvantage

The individuals and groups that States must target to address discrimination are usually the most marginalised, vulnerable, stigmatised and disadvantaged – in their access to water and sanitation, but also in society at large.

Marginalisation refers to the process that systematically denies people opportunities and resources that are available to other members of society, and which would otherwise serve to promote social integration.

Exclusion is the most extreme form of marginalisation.

Vulnerability often refers to individuals or groups under threat of physical or mental harm, for example, at times of conflict, abuse, rape or neglect, and perhaps because of their disadvantaged social or economic status.

All individuals may sometimes be vulnerable, requiring help to realise their human rights. By emphasising the situation that makes individuals vulnerable, rather than assigning entire populations groups that status, the concept of vulnerability becomes less patronising and victimising.

Stigma can be understood as a process of dehumanising, degrading, discrediting and devaluing people in certain population groups; it is often based on a feeling of disgust. Stigma attaches itself to an attribute, quality or identity that is regarded as 'inferior' or 'abnormal'. Stigma is based on a socially constructed 'us' and 'them', which serve to confirm the 'normality' of the majority through the devaluation of the 'other'.[10] Stigma often lies at the root of discrimination; it is an antecedent to and a rationale for discrimination. It provides a 'justification', so that discrimination comes to be seen as natural, necessary and desirable. Stigma plays an insidious role in making systemic discrimination possible.

Disadvantaged individuals and groups is a useful term to refer to all people who are discriminated against, experience inequalities or inequities, or are marginalised, vulnerable or stigmatised.

Key terms

Discrimination: Any distinction, exclusion or restriction that has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Non-Discrimination: This legal principle prohibits the less favourable treatment of individuals or groups, or detrimental impacts on such individuals or groups based on prohibited grounds.

Prohibited grounds: The grounds on which basis States are prohibited from differentiating among different individuals and groups. Several grounds are explicitly listed in the ICESCR, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. "Other status" has been interpreted to include grounds such as disability, age, health status and economic and social situation.

Equality: The legally binding obligation to ensure that everyone enjoys everyone can enjoy her or his rights equally of their rights. Equality does not imply treating people who are unequal equally; it does not indicate identical treatment in all cases.

Substantive equality: This requires a focus on all groups in society experiencing direct or indirect discrimination, and the adoption of targeted measures to support these groups when barriers persist, including affirmative action or temporary special measures.

Affirmative action / Temporary special measures: Measures required to redress existing discrimination and to ensure the equal participation of all, or the redistribution of power and resources to groups and individuals who experience discrimination.

Equity: The moral imperative to dismantle unjust differences, based on principles of fairness and justice. It requires a focus on the most disadvantaged and the poorest individuals and groups. From a human rights perspective, relying on equity carries risks because its definition is malleable and not legally binding. Equity may dilute rights claims if considered separately from equality and non-discrimination.


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06.
Prohibited grounds of discrimination

Human rights treaties specify that individuals belonging to particular groups must be protected against discrimination. Article 2(2) of the International Convention on Economic, Social and Cultural Rights lists the prohibited grounds of discrimination as "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The reference to "other status" indicates that this is not an exhaustive list. Other prohibited grounds of discrimination that are of a comparable nature may be incorporated in this category, allowing for the evolution of protections to match evolving discrimination. Human rights law recognises that discrimination is highly contextual and can change over time.

Inequalities are present in every country across the globe. Some types of discrimination, such as those based on gender, age or disability, exist in most, if not all, countries. Ethnic, religious and caste discrimination can take different shapes from country to country. While the specific groups may vary, patterns of marginalisation, exclusion and discrimination are consistent across the world.

Race, colour, language, religion, national origin, birth, caste, descent and ethnicity

"Discrimination on the basis of "race and colour", which includes an individual's ethnic origin, is prohibited by the International Covenant on Economic, Social and Cultural Rights as well as by other treaties, including the International Convention on the Elimination of Racial Discrimination."[11] The Committee on Economic, Social and Cultural Rights points out that "The prohibited ground of birth also includes descent, especially on the basis of caste and analogous systems of inherited status."[12] Discrimination based on language, religion, national origin and ethnicity is also prohibited.

In some countries, indigenous peoples living on reserves do not have access to water or sanitation services.[13] Similarly, pastoralist communities and nomadic or semi-nomadic tribes are often neglected in terms of access to services.[14] Roma or traveller populations in many European countries do not have access to water and sanitation that is comparable to that enjoyed by the majority population[15], while scheduled castes experience discrimination in access to water and sanitation in some South Asian countries.[16] Moreover, scheduled castes are regularly forced into the most menial, socially degrading, dirty and hazardous jobs, such as working as manual scavengers or sweepers (emptying toilets by hand).

Religious and linguistic minorities also face inequalities in many countries. In Nepal, data show that while open defecation rates for the majority Hindu population is 37%, the rate for the minority Muslim population is 70%. In Laos, the open defecation rate for the majority Lao-speaking population is 39%, while the rates for minority-speaking populations were significantly higher: 55% among Khmou speakers, 67% among Hmong speakers, and 85% among speakers of other languages.[17]

Sex and gender

In the context of water and sanitation, women and girls experience inequalities in several ways. Where it is necessary to collect water, this job almost always falls to women and girls, and they are often physically and sexually threatened when they do so.[18]

Women also face security risks when they defecate in the open, as well as risking their health by waiting until dusk to relieve themselves.[19]

In parts of Nepal, women's menstruation is subject to cultural stigmatisation and discriminatory practices. In the traditional practice of chhaupadi, women are obliged to stay in secluded huts or sheds for the duration of their menstruation.[20] Girls stay out of school during menstruation, or drop out completely at puberty, because there are often no appropriate facilities to manage their menstruation.

Disability, age and health

Human rights law provides strong protections for persons with disabilities, in particular through the Convention on the Rights of Persons with Disabilities. The World Health Organization estimates that over one billion people worldwide live with some kind of physical, mental, intellectual or sensory impairment.[21] Persons with disabilities are disproportionately represented among those who lack access to safe drinking water and sanitation.[22] Water and sanitation facilities may not be designed to meet the needs of persons with disabilities. A case study in Ethiopia revealed that the entrances to toilets are often too narrow for wheelchairs, forcing individuals to crawl or drag themselves on the floor to reach the toilets.[23]

With regard to age, the Convention on the Rights of the Child offers strong protection for children and their particular needs.[24] Human rights bodies have acknowledged age as a prohibited ground of discrimination[25], and efforts are currently underway in

the UN system to create a human rights instrument on the rights of older persons. Depending on their particular situation, older persons might face challenges in accessing water and sanitation due to mobility, vulnerability or other restrictions.

With respect to health status, the Committee on Economic, Social and Cultural Rights clarifies that "States parties should also adopt measures to address widespread stigmatisation of persons on the basis of their health status, such as mental illness, diseases such as leprosy and women who have suffered obstetric fistula, which often undermines the ability of individuals to enjoy fully their Covenant rights."[26] Similarly, people who are HIV-positive may face discrimination[27], leading to their exclusion from access to communal water and sanitation facilities by their neighbours. [28]

States must also take into account the fact that women with obstetric fistula or people living with HIV/ AIDS often have increased sanitation and hygiene needs, and so need more water.

Property, place of residence and economic and social situation

HOMELESS PEOPLE MUST NOT BE DENIED EQUAL RIGHTS

The Committee on Economic, Social and Cultural Rights has pointed out that "Covenant rights, […] should not be made conditional on a person's land tenure status, such as living in an informal settlement."[29] Further, people "must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society". [30] Specifically with respect to water, the CESCR has emphasised that people living in slums and homeless people must not be denied equal rights.[31] However, slums and informal settlements are often not taken into account in urban planning and the people living there are often simply absent from official records and urban plans.

Discrimination against homeless people becomes apparent in their criminalisation, for instance through the adoption of local ordinances criminalising proxy behaviours including public urination and defecation. While such laws seem neutral, they disproportionately affect homeless people, who rely on scarce public toilets.[32]

A person's economic and social situation is often closely linked to her or his profession or occupation, sometimes also leading to discrimination. For example, sex workers, while often comparatively affluent, are frequently marginalised and socially excluded, with service providers failing to provide services to the places where they work and live.[33]

Nationality – Refugees, internally displaced persons and asylum seekers

"The Covenant rights apply to everyone, including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation."[34] Under such circumstances, people often have difficulties contributing to the realisation of their human rights to water and sanitation with their own means. They often lack access to resources and cannot rely on the usual coping mechanisms. States are therefore required to take measures to ensure that refugees and other displaced persons are able to access water and sanitation.[35]

Prisoners

Prisoners have the same human rights to water and sanitation as everyone else. The CESCR has called on States to ensure that "prisoners and detainees are provided with sufficient and safe water for their daily individual requirements"[36], and this also applies to sanitation services. Prison conditions, including water and sanitation, are notoriously substandard in many parts of the world. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted that in many countries, "authorities simply do not regard it as their responsibility to provide detainees with the most basic services necessary for survival, let alone for a dignified existence or […] an 'adequate standard of living' ".[37]

Other prohibited grounds of discrimination

Other prohibited grounds of discrimination may have an impact on people's access to water and sanitation, including political or other opinion, marital and family status, sexual orientation and gender identity.[38] "The notion of the prohibited ground "sex" has evolved considerably, to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights"[39], including to accessing water and sanitation facilities. For example, people who don't conform to a fixed idea of gender may experience harassment and abuse when using gender-segregated sanitation facilities.

The groups and individuals mentioned here illustrate some of the most common forms of discrimination in relation to the human rights to water and sanitation, but new relevant grounds may evolve over time.

07.
Multiple discrimination

Often, inequalities intersect and their effects accumulate. For example, a woman with a disability or a girl belonging to an ethnic minority may experience multiple discrimination. Social, cultural, economic and political inequalities all have reinforcing effects that perpetuate social exclusion.[40]

08.
More than wealth disparities

While the focus is often on people living in poverty, it must not be forgotten that the world's poorest people are not randomly distributed – they disproportionately share one or several of the factors that commonly lead to exclusion and discrimination.

A focus on wealth disparities cannot address the root causes of exclusion and lack of access to social development, including water and sanitation. Sometimes, the barriers to access for certain groups are not financial, but rather it is the existence of laws, policies or cumbersome administrative procedures that lead to their exclusion.

A person with a disability and a person from an ethnic minority might both be poor and lack access to water and/or sanitation, but the reasons for their lack of access differ, and the policy responses necessary to guarantee them access are also different.

09.
Checklist

Legislative, policy and regulatory frameworks

	Yes	In progress	No
Does the Constitution or legislative framework specifically provide for non-discrimination and equality?			
Does the Constitution require affirmative action or temporary special measures to achieve substantive equality?			
Are there laws providing complaint mechanisms, to ensure that discriminatory practices are addressed?			
Do policies specifically target people who don't have adequate access to water and sanitation?			

Financing and budgeting

Are the regions and population groups that lack access to services prioritised in budgets?			
Do financial reports reveal an enhanced financial effort on the part of the government to ensure that the most marginalised and hardest-to-reach communities are able to realise their human rights to water and sanitation?			
Are tariffs set in a way that ensures affordability for all individual users?			
Are there progressive tax regimes in place to raise the revenue for water and sanitation services in a way that does not overly burden people living in poverty?			

Planning

Do strategies and plans prioritise basic access, and focus on the progressive realisation of safe and sustainable water, sanitation and hygiene for all, while eliminating inequalities?			
Do strategies and plans address spatial inequalities, such as those experienced by communities in rural areas and informal settlements or slums?			

Target setting

Have disadvantaged individuals and groups been identified?			
Has the process of identifying disadvantaged individuals and groups been inclusive and participatory?			
Are the barriers and reasons for lack of access understood and addressed?			
Have specific targets been set for disadvantaged groups?			
Have targets been set to eliminate inequalities in access?			

Monitoring

	Yes	In progress	No
Is data disaggregated according to prohibited grounds of discrimination?			
Are targets for specific population groups monitored?			
Are the efforts to reduce inequalities measured, including the targeting of resources?			
Is the increase or decrease in inequalities being monitored?			

Awareness raising

Are there awareness raising and advocacy campaigns to uncover and address discrimination, stigma and stereotypes, including campaigns aimed at local authorities, ministries, the judiciary, regulatory bodies and civil society?	
Are the people who experience discrimination, stigmatisation and stereotyping able to participate in the design of measures to address these?	
Is human rights education, with a focus on non-discrimination and equality, part of the school curriculum?	


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PRINCIPLES:

Access to information

Contents

01. **The value of access to information** 37

02. **Standards and frameworks** 39

2.1. International Standards....39

2.2. The right to information in national law 40

2.3. Principles for the right to information 40

2.4. Model laws 42

2.5. Regional mechanisms for the right to information 42

03. **Actors that are obliged to comply with the right to information** 43

3.1. Legitimate restrictions 44

04. **Challenges to realising the right to information** 45

4.1. Weak legislation and enforcement 46

4.2. Culture of secrecy and corruption....46

4.3. Lack of information about the right to information.... 47

4.4. Complex processes for accessing information, and poor data management.... 47

4.5. State and trade secret legislation 48

05. **Checklist** 49



01.
The value of access to information

Access to information, itself a human right, is critical for realising all other human rights and is a prerequisite for active, free and meaningful participation. Governance and accountability can only be strengthened by an informed public that is able to hold the State to account for decisions made and services delivered. Openness is one of the best antidotes to corruption.[41]

People need to have access to information:

- for democratic engagement, such as through community councils and participatory budgeting;
- for active, free and meaningful participation in the design of policies and planning on water and sanitation related issues;
- to monitor their representatives and hold them accountable; and
- to make daily decisions about their use of water and sanitation services.

Poor and marginalised individuals and communities are often the passive objects of policymaking, excluded from public debate, unable to participate in political life and prevented from influencing the decisions that have a profound effect on their everyday lives. Access to information helps balance the unequal power dynamic that exists between marginalised individuals and groups and the State and other bodies such as service providers.


HAND WASHING
•Wash your hands with soap and water.and stay free from germs and diseases.
•Wash your hands with clean water and soap before eating.after using the toilet.and before and after handling food.
•Washing hands is cool and keeps you in school.
SAFE WATER
•Collect drinking water hygienically
•Boil or treat and store water properly before drinking.
•Always drink safe water.

02.
Standards and frameworks

2.1.
International Standards

Article 19 of the Universal Declaration of Human Rights states that the right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds. A similar provision is found in article 19 of the International Covenant on Civil and Political Rights (ICCPR).

In 1946 the United Nations General Assembly affirmed that "Freedom of information is a fundamental human right and […] the touchstone of all the freedoms to which the United Nations is consecrated".[42]

The Human Rights Committee's General Comment No. 34[43] clarifies that article 19 of the Covenant embraces a right to information held by public bodies, and that other entities may be subject to obligations when carrying out public functions. Further, the Committee confirms that States have an obligation to proactively publish information of public interest and that they should ensure "easy, prompt, effective and practical access to such information".[44] The CESCR's General Comment No. 15 on the right to water confirms that:

> "Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties".[45]

The Aarhus Convention of the United Nations Economic Commission for Europe (UNECE) requires that all information that could enable the public to take measures to prevent or mitigate harm arising from an environmental threat, such as contaminated water, and is held by a public authority, is disseminated immediately and without delay to members of the public who may be affected. [46]

2.2. The right to information in national law

The right to information is typically recognised at the national level through constitutional provisions and national laws. To date, more than 95 countries have adopted relevant legislation.[47] (see Frameworks, pp. 17-20)

2.3. Principles for the right to information

9 PRINCIPLES FOR PARTICIPATORY PROCESSES

The UN Special Rapporteur on Freedom of Opinion and Expression endorsed nine principles for participatory processes in his report to the 2000 session of the (then) United Nations Commission on Human Rights.[48]

These Principles are based on international and regional law and standards, evolving State practice as reflected in national laws, and the judgements of national courts. These are:

1. Maximum disclosure

Public bodies have an obligation to disclose information and every member of the public has a corresponding right to request and receive information.

2. Obligation to publish

Public bodies should be legally obliged to publish and disseminate information, as well as respond to requests.

3. Promotion of open government

Public bodies should actively challenge the practices and attitudes that protect deep-rooted cultures of secrecy, by training public officials, improving maintenance of records, and providing the right incentives and penalties for those responsible for facilitating access to information.

4. Limited scope of exceptions

Exceptions to the right to information should be clear, narrow and subject to strict 'harm' and 'public interest' tests.

5. Processes to facilitate access

The law should stipulate clear processes for applications for information, with an independent appeal body to review decisions not to make information available.

6. Costs

Individuals should not be deterred from making requests for information by excessive costs.

7. Open meetings

Meetings of public bodies should be open to the public.

INDIVIDUALS WHO RELEASE INFORMATION ON WRONGDOING MUST BE PROTECTED

8. Disclosure takes precedence

Laws that are inconsistent with the principle of maximum disclosure should be amended or repealed.

9. Protection for whistleblowers

Individuals who release information on wrongdoing (whistleblowers) must be protected against any legal, administrative or employment-related sanctions.

2.4. Model laws

At the regional level, the Organization of American States approved a Model Law on Access to Public Information in 2010.[49] This Model Law defines the right of access to information, its scope, purpose and interpretation; it describes measures to promote openness; it suggests procedures for the filing and processing of information requests; it proposes a regime of restricted exceptions and an appeals system; and it highlights the importance of setting up an Information Commission.

The Model Law also lists key classes of information subject to proactive disclosure by any public authority, irrespective of specific demands by the public.

The African Union followed suit in 2013, adopting a Model Access to Information Law.[50]

2.5. Regional mechanisms for the right to information

PEOPLE CAN TURN TO REGIONAL AND INTERNATIONAL HUMAN RIGHTS PROTECTION SYSTEMS

Where no constitutional provision and no specific law is available to individuals, people can turn to regional and international human rights protection systems. Individuals in Africa, the Americas and Europe can appeal to their regional commissions and courts. In other regions, the global system provided by UN bodies provides protection. (see Justice, pp.31-34) In Europe, the Compliance Committee created by the Aarhus Convention can receive complaints concerning a State's failure to observe its obligation to protect the right to information.[51]

03.
Actors that are obliged to comply with the right to information

The obligation to make information available to the public should apply to all public bodies and authorities owned or controlled by States (at local, municipal and national levels).[52]

The UN Human Rights Committee's General Comment No. 34 expressly supports and extends this understanding to private entities that perform public functions or receive public funds.[53]

In several countries, State-owned or subsidiary companies are subject to right to information laws.[54] However, while many laws extend their protection to bodies that perform 'public functions', they often fail to define what this means.

Armenia's Access to Information law enumerates functions of "public importance" to include "sport, education, culture, social security, transport, communication and communal services".[55]

Several courts and tribunals have clarified that private companies, even when not controlled by the government, should fall under the scope of right to information laws – for example in South Africa.[56] According to this interpretation, private entities involved in water and sanitation service provision are covered by most national access to information frameworks. (see Frameworks, pp.17-20)

3.1. Legitimate restrictions

There are limited circumstances in which international law considers that publicly held information may not be disclosed to the public. According to article 19(3) of the International Covenant on Civil and Political Rights (ICCPR), article 13 (2) of the American Convention on Human Rights, and, with slightly different language, article 10 of the European Convention on Human Rights, restrictions on access to information are only permitted to protect: the rights or reputations of others; national security; public order; public health; and morals. The Human Rights Committee, when interpreting article 19(3) of the ICCPR, considers that a limitation may be considered legitimate if it falls within strict conditions defined in a three-step test:

1. The information must relate to a legitimate aim listed in law.
2. Disclosure of information must threaten to cause substantial harm.
3. If the disclosure of information could lead to harm, any harm to the aim must be greater than the public's interest in the information.[57]

LIMITATIONS TO THE OBLIGATION TO MAKE INFORMATION PUBLIC ARE ONLY LEGITIMATE IF THEY FALL WITHIN A THREE-STEP TEST

Therefore, even categories of information in principle listed as legitimate exceptions may not be used as grounds to withhold information when the public interest test / harm test assessing a concrete case leads to the conclusion that public interest in the disclosure is higher.

The interpretation of cases that fall under the national security exception is complex and this exception has been repeatedly used to promote very restrictive 'State secrets', and secrecy bills, including cases relating to information on water held by the State or private actors.

The Chilean access to information law applies to public bodies and public services, as well as public companies or companies where the State holds more than 50% of shares or has major decision power[58]; and the South African Constitution allows individuals and government bodies to access records held by the State and by private bodies when the record is "necessary for the exercise or protection" of people's rights.[59]

04.
Challenges to realising the right to information

Even in countries that have clear right to information legislation, there are challenges to realising this right.

4.1. Weak legislation and enforcement

In many countries, legislation on the right to information lacks clear procedures to realise the right, and does not take adequate account of the Principles as outlined above.

For example, there may be a long list of broad exceptions to realising the right, and limited right of appeal for those wishing to challenge refusals to make information available to the public.

Even in cases where an adequate framework for freedom of information exists, relevant authorities often fail to meet their minimum obligations:

In 2007, Jordan was the first Arab country to adopt a law on access to information, which stipulates that every Jordanian has the right to obtain information, requires officials to facilitate access to information and guarantees the disclosure of information. In practice, however, this right only applies to citizens and it is difficult to exercise it due to the number of conditions, including the need to prove "a lawful interest or a legitimate reason" in order to obtain information. In the event that the competent department refuses to supply a citizen with the information requested, the citizen is entitled to submit a complaint against the official concerned to the Information Council, which is almost exclusively composed of members of the executive. This raises doubts about the Council's independence.[60]

4.2. Culture of secrecy and corruption

Access to information is important to tackle corruption and create transparent and open governance. Refusals to provide access to information can be due to a 'culture of secrecy', where States do not expect to be held to account for their actions. (see Services, pp.38-39)

The Indian Right to Information Act provides opportunities for access to information but in many cases, it is not an easy process. In one case, when a complainant filed his Right to Information request to the local authority seeking information about the beneficiaries of a government scheme, he was threatened and told to drop his request for information. On lodging a complaint at the local police station, he was advised to move away as the local leader was well connected to senior politicians.[61]

4.3. Lack of information about the right to information

The public is generally not sufficiently aware of their right to access public information and of how to use the relevant legislation. All those who produce information and data should ensure that the information is available in accessible formats, both in terms of language and distribution. Incentives and, where necessary, sanctions may need to be applied for public officials tasked with ensuring access to information and compliance with access to information legislation.

Promotional materials, including manuals and guidelines, information campaigns (through the main media channels, but also using community and alternative broadcasters) and partnerships with the media and civil society organisations should also be developed with the aim of informing individuals about legislation relating to access to information, especially key responsibilities and procedures. Materials should be user friendly, culturally sensitive and translated into all relevant languages and dialects to ensure the greatest possible circulation. In some areas, spaces such as community and religious centres may be the most appropriate places to ensure that information reaches all members of the community. Music and theatre have been used to disseminate information about both the right to information and the human rights to water and sanitation.[62]

4.4. Complex processes for accessing information, and poor data management

Often the procedures for accessing information are difficult to follow for both the government authorities as well as the individuals seeking information, particularly at the local level.

Governments will often not commit sufficient human and financial resources to be able to provide the requested information as quickly as required, or to work proactively to provide access to information.

Record keeping, particularly at local levels, can be very limited, with little accurate collection of data, using out-dated indicators. Where information is available, it will often only be translated into majority languages, and may not be in accessible formats for those who are not able to read.

Information technology should simplify access to information, through the availability of databases on websites, but the data must be clearly presented so that it is easily understood by users. For those without access to the internet, or who are not able to read, however, there must be other ways of accessing this information, perhaps by ensuring that local authority officials are able to provide support enabling users to access this data.

4.5.
State and trade secret legislation

State and trade secrets legislation will undermine access to information.

In the USA, the Court of Appeals for the District of Columbia feared that information on dam failures and chemical spills, and on emergency plans related to these events, could be used by terrorists to plan an attack. Therefore such information does not have to be made public, despite the clear public interest in having access to information on potential problems with water quality.[63]

In some states of the USA, companies are not obliged to publish information on the chemicals used in the hydraulic fracturing process (fracking), as this is a trade secret. Local residents have had significant problems with water quality in areas where fracking takes place.[64]

State and trade secrets legislation must be assessed for compliance with the test for legitimate restrictions on access to information and, when necessary, be amended or repealed.



05.
Checklist

State actors

	Yes	In progress	No
Is there a constitutional provision or national law on the right to information?			
Does such a provision or instrument include the following features:			
The right to present information requests without having to show a legal interest in the information;			
The duty of bodies to reply, including the obligation to set procedures and deadlines for handling information requests;			
A limited set of exemptions that allow for the withholding of certain categories of information, as long as the overriding public interest does not require disclosure;			
Internal appeal mechanisms;			
External independent review mechanisms and / or			
A requirement for public bodies to proactively publish some types of relevant information?			
Are all individuals able to request all information held by a public body, including the executive, legislative and judicial branches of the state, as well as public corporations and publicly-funded bodies?			
Are public bodies legally obliged to publish and disseminate information, as well as to respond to requests?			
Are there incentives and penalties for those responsible for facilitating access?			
Is the general public made aware of their rights and how to exercise them?			
Are the costs associated with requests for information affordable?			
Are meetings of public bodies open to the public?			
Have laws that are inconsistent with the principle of maximum disclosure been amended or repealed?			
Are individuals who release information on wrongdoing (whistleblowers) protected against any legal, administrative or employment-related sanction?			

Continued...

State actors continued...

	Yes	In progress	No
Is information on the state of the environment and/or human health issues, and on policies and measures, made public? Is it disseminated immediately and without delay to members of the public who may be affected?			
Are the people aware of the existence and the potential uses of access to information frameworks and of the provision of data on water and sanitation?			
Is there training within public administration to foster a culture of openness and transparency?			
Are promotional materials, including manuals, guidelines, and information campaigns in partnerships with the media and civil society organisations developed with the aim of informing individuals about the access to information framework?			
Is information spread through the main channels and via alternative community broadcasters? Is the information user-zfriendly and culturally sensitive and translated into all relevant languages and dialects?			

Non-State actors that perform public functions or receive public funds

Does the national legal framework enable everyone to request information held by private entities that perform public functions or receive public funds?			
Does the national legal framework entitle everyone to request information on water and sanitation that is held by service providers?			

Business actors

Does the national legal framework require business enterprises whose operations or operating contexts pose risks to human rights to provide information on the potential impact on human rights?			


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गाँव में कुल
गाँव में कुल सरकारी हैण्ड पम्प-62



PRINCIPLES:

The right to participation

Contents

01. **Legal basis of the right to participation** 57

02. **Elements of "active, free and meaningful" participation** 59

2.1. Involving people in setting out the terms of engagement 59

2.2. Creating space for participation 60

2.3. Enabling people to access participatory processes 60

2.4. Guaranteeing free and safe participation 60

2.5. Ensuring access to information 61

2.6. Providing reasonable opportunities to influence decision-making 61

03. **Difficulties in ensuring participation** 63

3.1. Complementing representative democracy with direct participation 63

3.2. Continuous State support and oversight in the context of community management 64

3.3. Balancing technical expertise and experiential knowledge 64

3.4. Factoring in the costs of participatory processes 65

3.5. Balancing competing interests 65

3.6. Ensuring inclusion 66

3.7. Balancing direct participation and representation 67

04. **Checklist** 69

Participation brings many advantages in terms of empowerment, ownership, and sustainability, but above all, participation is a human right. This short essay outlines the legal foundations of the right to participation and describes barriers to participation and how they can be overcome.

01.
Legal basis of the right to participation

The right to participation is enshrined in numerous international human rights instruments. Article 21(a) of the Universal Declaration of Human Rights states that everyone has the right to take part in the government of his or her country.

The 1986 UN Declaration on the Right to Development, though not legally binding, has significantly influenced the understanding of participation, and article 2(3) requires participation to be "[…] active, free and meaningful". This is the definition that this Handbook uses.

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) recognises a general right for all people to participate politically, providing for the right to vote in elections as well as the right to take part in public affairs. This covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.[65]

Treaties adopted subsequent to the Covenant on Civil and Political Rights expand the understanding of participation. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) spells out the right of women to participate in the formulation and implementation of government policy (article 7(b)) and further specifies that women living in rural areas have the right to participate in development planning at all levels (article 14(2)(a)).[66]

PUBLIC PARTICIPATION IN TARGET-SETTING AND DEVELOPING WATER-MANAGEMENT PLANS

The Convention on the Rights of the Child guarantees the right of children to be heard and to have their views taken into account, and refers to their right to participate and express their views freely in all matters affecting them, and these views should be given due weight. [67]

"Full and effective participation and inclusion in society" is one of the general principles of the Convention on the Rights of Persons with Disabilities.[68]

In Europe, article 5(i) of the Protocol on Water and Health to the UNECE Water Convention identifies access to information and public participation in decision-making as a principle, and articles 6(2) and (5)(b) require public participation in target-setting and developing water-management plans.

The UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) is a pioneering instrument with regard to participation. It guarantees the right to participate in specific activities, including in the establishment of plans, programmes and policies and in the development of laws (articles 6-8). Efforts are underway to develop a similar instrument under the auspices of the UN Economic Commission for Latin America and the Caribbean.[69]

Other relevant regional instruments in Africa, Europe and the Americas also promote the right to participation. This right is also enshrined in many national legal systems. **(see Frameworks, pp.21-24)**

02.
Elements of "active, free and meaningful" participation

The essential elements for ensuring active, free and meaningful participation set limits on the use of tokenistic forms of participation, mere sharing of information or superficial consultation

2.1.
Involving people in setting out the terms of engagement

People must be involved in determining the terms of participation, the scope of the questions to be addressed, how they are framed, and rules of procedure. The choice of mode of engagement determines whether people will be willing and able to participate. The people involved should, for instance, help decide about venues, meeting times, and the balance between electronic and face-to-face interaction.[70]

2.2. Creating space for participation

States must ensure that people have the opportunity to engage and develop participatory initiatives. However, States must not put the entire burden on people taking the initiative to engage and thereby justify State inaction. States have an obligation to create opportunities for participation, and eliminate barriers to participation.

2.3. Enabling people to access participatory processes

The most persistent barrier to participation may lie in surmounting a culture of low expectations and cynicism, held among both, individuals and public officials. States should revise the incentive structures for public officials so that they are rewarded for facilitating authentic participation. This may require training on facilitation and inter-personal skills.

Enabling participants can take many forms. To support village-level autonomy in development planning in the late 1990s, the Indian state of Kerala offered seminars to teach participants the basics of conducting assessments and formulating development plans.[71] In Brazil, Porto Alegre invests in budget seminars for regional delegates elected to the Participatory Budgeting Council and other interested participants.[72]

Other barriers may relate to language, literacy, meeting times, venue, advance registration, and physical access. If deadlines for public input into a proposed law or policy are too tight, some individuals may be excluded. Meeting times may be a barrier for an entire community if times fail to take into account people's livelihoods, for example, seasonal migration in pastoralist communities. .

2.4. Guaranteeing free and safe participation

Free participation rules out any form of coercion, inducement, manipulation or intimidation, whether direct or indirect. There must be no conditions attached, such as linking a person's access to water and sanitation to attendance of a public hearing. Participation must not have been secured through bribery or the promise of a reward.[73]

Participation must be safe. People must be able to voice their concerns freely or request information without fear of reprisals or discrimination. This implies, for instance, that armed forces must not be present at hearings. Some individuals, including sex workers, undocumented migrants, survivors of human trafficking, or rejected asylum seekers face particular barriers and fear exposing themselves when taking part in official processes. Similarly, sanitation workers in many countries may not want to be identified. States must take specific measures to enable people to take part without fear of exposure, for example by allowing anonymous participation.

2.5.
Ensuring access to information

People must understand how to participate, and have access to the information they need in order to engage and form an opinion.

Access to information must be "full and equal"[74] and information must be clear and consistent and presented in different formats and appropriate language to be understandable. In order for people to respond appropriately to the information presented, it must be provided well in advance of any opportunity to provide input.[75] Cost must not be a barrier to accessing information. (see Principles: Information)

2.6.
Providing reasonable opportunities to influence decision-making

Meaningful participation entails more than expressing an opinion: the views expressed must be able to influence both the process of decision-making as well as the outcome. Where people are involved in processes that have no impact on policy-making, the potential for frustration is enormous. The Aarhus Convention requires that public bodies take due account of the outcome of public participation and notify the public of the decision made, giving reasons and spelling out what was considered in reaching the decision.[76]




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03.
Difficulties in ensuring participation

Great efforts may be needed to ensure that all those concerned have the opportunity to influence decision-making and that existing power structures are addressed.

3.1.
Complementing representative democracy with direct participation

Some argue that direct participation would be unnecessary where structures for representative democracy exist. However, periodic elections are a blunt tool for public participation, let alone for ensuring inclusion[77], and the realisation of human rights is an everyday concern. For this dynamic process of realising rights, participatory processes complement representative democratic structures and allow for more direct influence.

3.2. Continuous State support and oversight in the context of community management

The terminology of 'user participation' and 'community ownership' has been part of the water and sanitation sector for decades. This has sometimes led to States delegating service delivery to communities, thus in effect withdrawing from their obligations in the name of 'participation'. While communities have various vital roles to play in constructing and managing their own services, States retain the obligation to ensure that services are adequate through support, regulation and oversight. Participation in decision-making must not be confused with 'free labour' in the construction of facilities.

3.3. Balancing technical expertise and experiential knowledge

The delivery of water and sanitation services is often seen as complex, technical and best solved by experts.[78] This can be used as pretext to exclude people from decision-making, on the basis that issues are too complicated for lay people to understand. Experts have a vital role to play, but ideally act as facilitators, helping to synthesise expert knowledge and enabling people to take informed decisions.

This approach has been successful in disability modifications for water and sanitation facilities, through discussions between engineers and the persons with disabilities themselves, who have a better understanding of the barriers to their access and what the best solutions might be.[79]

When this balance has not been struck, negative results are common. Providing communities with a standard design of latrines was expected to solve the rural sanitation challenge. However, such latrines are often not used, or are put to other use, for example, as storage facilities. Specialist knowledge of the local culture plays the crucial role of analysing the strengths and weaknesses of various options so that people can make informed choices in light of individual household needs.[80]

The idea of testimony can be extremely powerful and effective for bringing people's experiences to bear. Poverty truth commissions can lead to a useful inversion of power dynamics, with experts through experience testifying and those 'in power' hearing the testimony.[81]

3.4. Factoring in the costs of participatory processes

Participation costs money and time. While the focus is often on costs for the State and service providers, the time and opportunity costs for people participating must not be overlooked. While this is not an argument against promoting participation, it should serve as a reminder of the constant dilemma people face.

Such investments pay off in terms of sustainable realisation of the rights. The waste of facilities that are not used demonstrates that investing in participatory processes is well worth it. The cost of participation should not be viewed as an external expense, but should be factored in from the beginning.

3.5. Balancing competing interests

Ensuring participation and gathering everyone's views inevitably brings diverse and competing interests to the fore. Workers in utilities or small-scale service providers have interests that differ from those of water users. The framework for balancing these interests is that of human rights and the law. Many tensions will be resolved through applying the legislative framework, which rules out illegitimate interests.

The challenge is to balance the legitimate interests and to find solutions that—while not taking all competing views on board—are acceptable to everyone. This is achieved through interaction, bringing all views to the table, open discussions, analysis of the different interests and corresponding rights, agreement on a way forward, due protection given to minority concerns and, monitoring progress on the agreed plan.

3.6. Ensuring inclusion

Participatory processes will not automatically include everyone. When no specific measures are taken, men, majority ethnic groups, wealthier, more educated households, and people with a higher social status tend to dominate participatory processes.

Identifying disadvantaged individuals and groups requires deliberate efforts because they are often invisible to policy makers. Processes to identify everyone concerned can be made more successful by decentralising processes, by working together with a wide range of local non-governmental organisations and the national human rights institution as well as with others who can help identify the most marginalised individuals.

Efforts must enable effective participation. For example, a mode of engagement that relies on writing would marginalise those who cannot read.

Even when they are able to take part in meetings, marginalised people often exercise self-censorship, being intimidated either by the presence of others with 'higher' status, or by formal procedures. One approach to avoid this is starting the process with more homogenous groups to discuss particular issues, e.g. groups of women or of young people, and then bring their input into the larger process. At the international level, the United Nations Environment Programme engages with 'major groups' rather than civil society *per se* including children and youth, farmers, indigenous peoples, women, and workers and trade unions.[82]

Another approach is to have an explicit discussion on the rules for deliberation, accompanied by a conscious attempt to draw out the voices of marginalised individuals.

An assessment of barriers must take account of all obstacles: physical, institutional, attitudinal and social, so that these can be addressed and overcome. (see Services) Institutional barriers include where consultations take place, meeting times that suit civil service employees rather than the communities, and whether childcare is provided.[83] Social barriers include prejudices and stereotypes. In many instances, social norms translate into legitimising women's exclusion from decision-making. Taboos around menstruation, combined with inadequate access to water and sanitation, explain why a significant number of girls consistently lose about a week of schooling each month.[84] Without deliberate efforts to draw out their own analysis and ideas, solutions will often fail to address women's and girls' needs.[85]

Children are among those most often excluded from participatory processes, and it must not be assumed that adults will automatically represent their views. It is essential to create the space and allow for sufficient time for child-led processes.

Deliberate inclusion is even more crucial in circumstances where people are marginalised because of stigma, which 'legitimises' exclusion.[86]

3.7.
Balancing direct participation and representation

People hold rights as individuals and have varied and often conflicting views and interests, which makes it difficult for anyone to represent anyone else. However, direct participation poses challenges in terms of processing and responding to the variety of inputs. Channelling participation through representatives is seen as a solution for making participation manageable, but this carries with it the danger of creating and reinforcing exclusions. The Convention on the Rights of Persons with Disabilities, for instance, stresses that persons with disabilities must be enabled to participate and, not only organisations working on their behalf (articles 29, 33(3)).

In representative participation, people do not engage with policy makers directly, but through collective entities 'representing' them: NGOs, neighbourhood associations, or community-based groups. In some instances, stakeholder participation has been limited to a few well-established NGOs, raising doubts about whether their involvement amounts to authentic, inclusive participation.

STATES MUST MAKE DELIBERATE EFFORTS TO GUARANTEE EXTENSIVE INCLUSION

Stakeholder participation can enhance or detract from meaningful participation depending on a range of factors, including:

- accurate, sensitive and transparent identification, so that the invited groups are representative of those most concerned;
- the degree to which the collective entity is indeed representative of the interests of those it claims to represent;
- a deliberate effort to 'map' concerned people who may not be reached through this method, and devising a way to fill this gap. Examples include extremely poor people who are not likely to join associations, or stigmatised persons.

Other approaches that have been used include random selection, which has the advantage of avoiding biases in selection and getting different perspectives.[87] The crucial thing is to make deliberate efforts to guarantee extensive inclusion.



04.
Checklist

State actors

Institutionalising participation

	Yes	In progress	No
Is active, free and meaningful participation recognised as a human right in national legislation and ensured at all levels of decision-making, including in the development of laws, policies, programming, budgeting, service provision and monitoring of water and sanitation? Is this justiciable?			
Is the State party to international and regional instruments that guarantee the human right to participation, as well as their respective complaint mechanisms?			
Are people who are likely to be affected by any plans or investments able to participate meaningfully in planning?			
Are the costs for participatory processes incorporated in the initial design of any measures?			

Ensuring inclusive processes

Are marginalised people and groups identified and included in the participation process?			
Are there measures to overcome existing barriers to participation by all?			
Are there safe spaces for deliberation among marginalised groups?			
Are the individuals and groups who are invited to consultations identified in a transparent, accurate and sensitive way?			

Ensuring active, free and meaningful participation

Do people have access to information about participatory processes, and are they able to determine the terms of their participation, the scope of the issues to be addressed and the rules of procedure?			
Have concrete measures been put in place to ensure that participation is free from direct or indirect coercion, inducement, manipulation or intimidation?			
Do participatory processes give people real opportunities to influence decisions? Have concrete measures been put in place to achieve this?			

Service providers

	Yes	In progress	No
Is the service provider obliged to engage in active, free and meaningful participatory processes on the types of service delivered?			
Are these processes inclusive?			
Is there oversight of these processes?			

International organisations, multilateral and bilateral donors

Do international organisations, multilateral and bilateral donors include participation as a mandatory requirement for projects / interventions in recipient countries?			
Do they ensure that any conditions imposed on recipient countries do not circumvent participatory processes?			





PRINCIPLES:

Sustainability and non-retrogression

Contents

01. **Situating sustainability in the human rights framework** 77

02. **Principles to achieve sustainability** 79

2.1. Holistic and coordinated planning 79

2.2. Support from donors and NGOs 79

2.3. Private sector participation 80

2.4. Sustainable financing 80

2.5. Forever and for everyone 80

2.6. Meaningful participation 80

2.7. Appropriate technology choices 81

2.8. Effective monitoring, independent regulation and accountability 81

03. **Checklist** 82



01.
Situating sustainability in the human rights framework

Sustainability is a fundamental human rights principle essential for realising the human rights to water and sanitation. The human rights framework warrants a holistic understanding of sustainability as the direct counterpart to retrogression. For services to be sustainable, they must be available, accessible and affordable to everyone on a continuous and predictable basis, without discrimination.

Human rights law requires progressive realisation towards fully realising the human rights to water and sanitation for everyone. Once services and facilities have been improved, the positive change must be maintained and slippages or retrogression must be avoided. Sustainability is more than mere reliability or functionality. Water and sanitation must be provided in a way that respects the natural environment[88] and ensures a balance of the different dimensions of economic, social and environmental sustainability. Services must be available for present and future generations, and the provision of services today should not compromise the ability of future generations to realise their human rights to water and sanitation.[89]

Ensuring sustainability provides significant challenges in the water and sanitation sectors. Throughout Africa, it is estimated that, at any given moment, between 30 and 40 per cent of hand pumps are not functional.[90] Similarly, wastewater plants sometimes

AUSTERITY MEASURES OFTEN HAVE A DISPROPORTIONATE IMPACT ON THOSE WHO ARE ALREADY DISADVANTAGED IN SOCIETY

stop being operational a short time after their construction, or never reach their optimum capacity.[91] In comparison to gains in access, such retrogression is not systematically monitored, such that the measured progress in access is inflated and inaccurate.

These challenges are aggravated in times of economic and financial crisis. In adopting 'austerity measures', States may not use the policy space afforded to them in order to protect human rights adequately. Austerity measures, as currently being enacted in many countries in Europe, often have a disproportionate impact on those who are already disadvantaged in society. These measures are often deliberately retrogressive, and are applied to reduce costs.

However, examining the broader challenges of ensuring sustainability, some State acts and omissions may have a retrogressive effect, even if not deliberate. Where States fail to ensure adequate operation and maintenance, where they fail to implement adequate mechanisms for regulation, monitoring and sector oversight, or where they fail to build and strengthen their capacity in the long term, the result may be unsustainable interventions that lead to retrogression in the realisation of the human rights to water and sanitation. While such retrogression cannot always be avoided, the human rights framework requires that States act with care and deliberation, exercise due diligence to assess the impacts of their actions and omissions on the realisation of human rights, and adjust their policies and measures as soon as they become aware that current policies might lead to unsustainable results. Challenges to sustainability should be addressed holistically, both in times of economic growth as well as in times of economic crisis, so that States are better prepared for times of crisis.

02.
Principles to achieve sustainability

2.1.
Holistic and coordinated planning

States must plan holistically, aiming for sustained, universal coverage. It is the State's obligation to develop its vision of how to ensure services for everyone and forever, including in instances where other actors are involved in service provision. States must devote the necessary financial and institutional resources to operation and maintenance in order to avoid retrogression. During periods of growth, States should plan for the long-term realisation of the human rights to water and sanitation so as to build resilience for times of crisis. States must strengthen the capacity for coordination and integrated planning.

2.2.
Support from donors and NGOs

While the support and participation of donors and NGOs in water and sanitation service delivery is welcome, there can be challenges to sustainability when they act as service providers without ensuring that services provided will receive the necessary support in the long-term. Sustainability strategies are therefore crucial to guarantee permanent operation and maintenance and to plan with governments and communities for phased exits, local ownership and the necessary government regulation.

2.3. Private sector participation

Austerity measures are often accompanied by calls for increased private sector participation as a means for governments to raise revenue in the short term. While certain safeguards are often in place to protect users, concerns relating to sustainability remain. Often profits made by private operators are mainly distributed among shareholders, rather than being reinvested in maintaining and extending service provision, the result being increased prices for consumers, continued need for public investment, and potentially unsustainable services. States must ensure that the necessary investments are committed back into the system, thus ensuring sustainability, and that contracts for service provision take account of long-term requirements for operation and maintenance.

2.4. Sustainable financing

While sustainable service provision relies on raising sufficient revenue for maintaining, improving and expanding systems, this must be achieved in such a way as to ensure the social dimension of sustainability for all people, including those living in poverty. The human rights framework does not require water and sanitation services to be provided free of charge, but they must be affordable, requiring a safety net for those who cannot afford to pay (full) costs. Service provision is funded through tariffs, taxes and transfers from either from within a country, or from external sources. Where service tariffs are not sufficient to fully fund sustainable services, States must mobilise tax revenue in an appropriately targeted manner. External and domestic resources must be consolidated to enable States to target resources effectively so as to prioritise essential levels of access for everyone.[92]

2.5. Forever and for everyone

As resources are scarce, policy-makers may perceive a dilemma of prioritising sustainability ("forever") or expanding services to those yet unserved ("everyone"). The human rights framework stresses the imperative of achieving equality through the efficient use of resources. States must eliminate inequalities in access and expand access to minimum essential service levels before improving service levels for those already served. If the available resources are only invested in maintaining existing systems, inequalities in access will never be overcome. The principles of sustainability and equality complement each other: true sustainability can be achieved only when everyone has access to services.

2.6. Meaningful participation

Meaningful participation is not only required to ensure that water and sanitation services are socially and culturally acceptable, but also secures their sustainable use. Ensuring meaningful participation is challenging, in particular during times of crisis, due to time constraints and the perceived need for quick solutions. However, without participation, States and other actors may misunderstand the barriers to access and their origins, resulting in choices that are unacceptable to the people they aim to serve, resulting in unsustainable solutions. For example, in Tuvalu a participatory approach comprising education, awareness raising to address misconceptions, and a redesign of toilets has led to a change of perception among the general public concerning previously rejected eco-sanitation solutions.[93]

2.7.
Appropriate technology choices

Technology choices need to be appropriate as well as economically and socially viable. Sustainable service provision may require a higher investment cost, or it may depend on regular maintenance. The choice of technology must be carefully made dependent on existing resources, and projected resources in the medium- and long-term. For example, in regions where water is scarce, it may be preferable to promote sanitation that is not based on sewerage systems.[94]

2.8.
Effective monitoring, independent regulation and accountability

These prevent corruption, improve data, and lead to informed planning and budgeting decisions. States must improve continuous and independent monitoring, including of the sustainability of interventions. They must ensure independent regulation of the water and sanitation sectors, and they must put in place accountability mechanisms to deal with unsustainable and retrogressive practices.



03.
Checklist

State actors

	Yes	In progress	No
Is planning coordinated and integrated between different ministries, departments and agencies, and aiming for sustained, universal coverage?			
Are the necessary financial and institutional resources committed to operation and maintenance?			
During periods of economic growth, is there planning for resilience at times of crisis?			
When adopting austerity measures, is there adequate protection of human rights, with a particular focus on disadvantaged individuals and groups?			
Do contracts for private sector participation take account of long-term requirements for operation and maintenance? Are profits reinvested in maintaining and extending service provision?			
Are water and sanitation services affordable for all people, including those living in poverty; are revenues sufficient for maintaining, improving and expanding systems?			
Are technology choices appropriate?			
Are there monitoring and accountability mechanisms in place to deal with unsustainable and retrogressive practices?			

Donors

Does international cooperation for water and sanitation service delivery include strategies for sustainability, including operation and maintenance strategies?			





PRINCIPLES:

Image credits and references

Image Credits:

Page 4 Mariama Tarowallauy washes one of her grandchildren with soap and clean water in the village of Fayama, Sierra Leone, May 2013. WaterAid/Anna Kari.

Page 8 Water kiosk, Kibera Nairobi, Kenya, 2014. Madoka Saji.

Page 14 Toilet designed for use in emergencies, Japan, 2010. Catarina de Albuquerque.

Page 16 Women from the management committee meet with community members to discuss hygiene and sanitation education, Kalshi Takar Baa slum, Dhaka, Bangladesh, 2011. WaterAid/GMB Akash/Panos.

Page 20 Vandy Konneh holds a cup of clean water in the village of Nyeama, Sierra Leone, May 2013. WaterAid/ Anna Kari.

Page 34 Christianah, ten years old drinking some water at the new water point, Tsimahavaobe primary school, commune Morondava, Menabe region, Madagascar. September 2013. WaterAid/ Ernest Randriarimalala.

Page 36 Hand-washing instructions, School toilets, Lodwar, Turkana county, Kenya, 2014. Madoka Saji.

Page 46 A women and child prepare a meal in the village of Fayama, Sierra Leone, May 2013. WaterAid/ Anna Kari.

Page 50 Rekha, showing the new map of the post intervention village, Raitha Village, Lucknow, Uttar Pradesh, India, 2013. WaterAid/ Poulomi Basu.

Page 59 Women cleaning and taking care of water point no. 8. Ampizaratany village, Tsinjoarivo Imanga commune in Tsiroanomandidy district, Bongolava region, Madagascar. June 2014. WaterAid/ Ernest Randriarimalala.

Page 60 Pupils in the public primary school of Ambohimasina village, carrying materials to build a fence around the new sanitation block. Talatan' Angavo commune, Ankazobe district, Analamanga region, October 2013. WaterAid/ Ernest Randriarimalala.

Page 66 Yupa Wahup, 5, and a classmate wash their hands at Ban Triem Early Childhood Development Centre in Phang Nga Province, Thailand. As part of its tsunami response, UNICEF provides safe water supplies, sanitation facilities and promotes hygiene education. UNICEF/ NYHQ2009-2066/Estey.

Page 70 Waste in Timor Leste. UNICEF/TimorLeste/2014/Martine Perret.

Page 74 A father, Pascal, 50 years old, at the last line to finish building a latrine for his family. Ampizaratany village. Tsinjoarivo Imanga commune, Tsiroanomandidy district, Bongolava region, Madagascar. June 2014. WaterAid/ Ernest Randriarimalala.

Page 79 Pupils from the public primary school of Akondromena washing their hands at tippy taps after using the newly built school toilet. Akondromena, Miandrivazo district, Menabe region, Madagascar. February 2014. WaterAid/ Ernest Randriarimalala.

Page 82 Children and women queue to collect water from taps connected to a large tank in the Abu Shouk camp for displaced people, near El Fasher, capital of North Darfur. UNICEF/ NYHQ2006-0523/Noorani.

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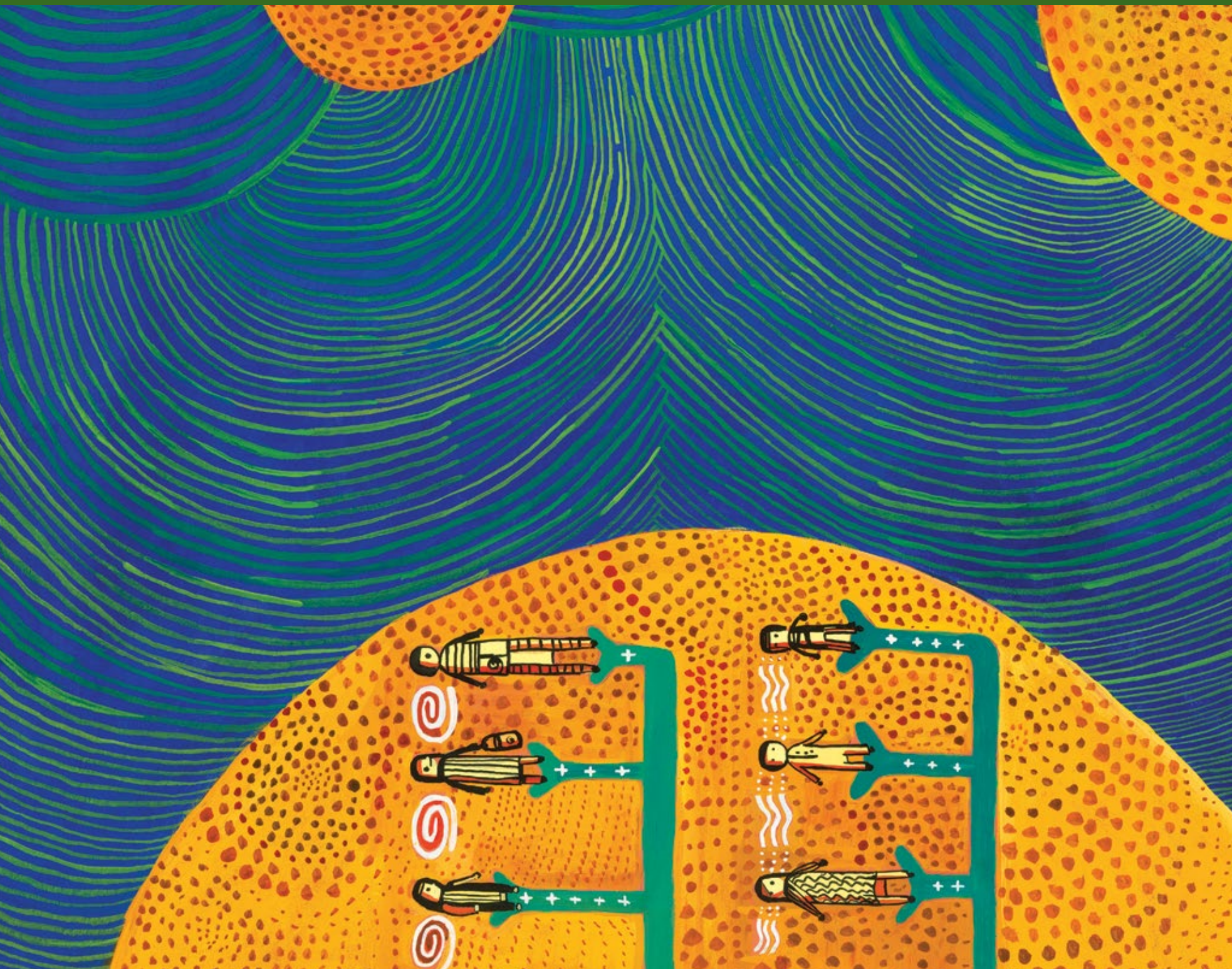
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Checklists

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A HANDBOOK BY THE UN SPECIAL RAPPORTEUR
CATARINA DE ALBUQUERQUE

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Catarina de Albuquerque

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Entidade Reguladora dos Serviços de Águas e Resíduos
The Water and Waste Services Regulation Authority

UN HABITAT FOR A BETTER URBAN FUTURE

Contents

01. Legislative, regulatory and policy frameworks 5

02. Financing, budgeting and budget tracking 11

03. Planning processes, service providers, service levels and settlements 15

04. Monitoring compliance with the human rights to water and sanitation 21

05. Access to justice for violations of the human rights to water 25

06. Principles: Non-discrimination and equality 31

07. Principles: Access to information 35

08. Principles: Right to participation 39

09. Principles: Sustainability and non-retrogression 43



01.
Checklists

Legislative, regulatory and policy frameworks

State Actors

Constitution

	Yes	In progress	No
Does the Constitution guarantee water and sanitation as clearly defined human rights that can be claimed by all?			
Does the Constitution guarantee that equality and non-discrimination have the status of overarching legal principles? Does the Constitution also include the concept of affirmative action?			
Is the right to a remedy and/or access to justice enshrined in the Constitution?			
Are independent oversight bodies established by the Constitution? Are these bodies competent to hear individual complaints?			

Laws and/or regulations

Please note: The elements in the checklist may figure in laws and/or in regulations, depending on the constitutional or legal framework

Do laws and/or regulations define the human rights to water and sanitation, using the legal content of availability, accessibility, quality, affordability and acceptability, as guaranteed under international human rights law, as a basis to give substance to these rights?			
Are standards regularly reviewed, and do standards progressively improve over time?			
Does standard-setting take account of the barriers facing particular individuals?			
Do standards take into account which type of service would be most efficient in the context of the local situation?			
Are there building requirements and regulations in place that cover general standards for water and sanitation facilities; for example, toilets in rented accommodation, the provision of single-sex toilets in public places?			
Is there an independent regulatory body in place that operates on the basis of human rights and is tasked to set standards based on the legal content of the human rights to water and sanitation?			
Has the State undertaken any measures to regulate water supply by informal vendors?			
Do the State and/or providers give access to formal water and sanitation services to households regardless of their tenure status?			

Non-discrimination and equality

Are there laws and/or regulations in place that prohibit direct and indirect discrimination and promote equality in access to human rights?			

Information	Yes	In progress	No
Are there laws and/or regulations in place to ensure that everyone, including people who live far from centres of information and people who cannot read, is able to access information relating to water and sanitation services, in relevant languages and formats?			
Participation			
Are there laws and/or regulations in place that guarantee that full, free and meaningful participation takes place before any decision is finalised, including participation in the process of developing any laws, regulations or policy level documents?			
Do laws and/or regulations set out precise rules on participation in matters of infrastructure, service levels, tariffs, and the operation and maintenance of water and sanitation services?			
Accountability			
Are there effective complaint mechanisms at the level of the service provider?			
Are there quasi-judicial bodies available that can resolve conflicts?			
Can individuals enforce their rights against both the State and private actors?			
Are remedies provided by law; for example, restitution, compensation, legally binding assurances of non-repetition, and corrective action?			
Do laws and/or regulations provide for mechanisms that ensure individual complaints are effectively heard, and processed in a timely way?			
Availability			
Where people do not have access to a networked water supply system, do laws and/or regulations provide for the right of everyone to use natural resources for domestic and personal uses?			
Do laws and/or regulations prioritise water for personal and domestic uses over other uses?			
Does the legal definition of sanitation include not only the instalment of the toilet, but also the collection, transport, treatment, disposal or reuse of human excreta, and associated hygiene? Do regulations include guidance on safe construction, regular cleaning, and emptying of pits or other places that collect human excreta?			
Do laws and/or regulations clearly spell out what "availability of water and sanitation" means in different settings where people spend significant amounts of time, including homes, workplaces, schools and kindergartens, hospitals and health care centres, places of detention and public places?			
Do laws and/or regulations specify that facilities allowing for hand-washing, and for women and girls to practice good menstrual hygiene, must be available in schools and other public institutions?			
Do standards include a minimum amount of water to be available, and a maximum permitted interruption of services?			

	Yes	In progress	No
Accessibility			
Do laws and/or regulations take into account the maximum distance and time it takes to reach a facility, as well as the location of the facility, in order to ensure the physical security of users; do these standards consider the barriers faced by particular individuals and groups?	○	○	○
Are the State and/or service providers obliged to give access to formal water and sanitation services to households regardless of their tenure status?	○	○	○
Quality and safety			
Are there laws and/or regulations in place that protect the quality of water resources; for example, by prohibiting the dumping of sewage and waste and demanding the containment of any seepage of fertilizers, industrial effluents and other pollutants?	○	○	○
Do regulations set standards on water quality and wastewater treatment, and are they relevant for both public and private service providers?	○	○	○
Are water quality standards set according to the national and local contexts, considering contaminants that occur only in specific regions?	○	○	○
Are there regulations on householders' arrangements for waste collection and disposal?	○	○	○
Affordability			
Do regulations provide for mechanisms that ensure the affordability of services for all, while considering connection costs, operation and maintenance; do regulations establish subsidies, payment waivers and other mechanisms to ensure affordability?	○	○	○
Do regulations provide opportunities for users to pay their arrears, or to receive services for free, when they are unable to pay?	○	○	○
Is there an independent regulatory body in place that operates on the basis of human rights and is tasked to determine the affordability of services, including the setting of tariffs?	○	○	○
Policies			
Is there a comprehensive water and sanitation policy in force that integrates the human rights to water and sanitation and their legal content?	○	○	○
Is the policy reviewed regularly to track discriminatory effects; if it is found to discriminate, is it repealed or amended?	○	○	○
Are existing inequalities in accessing water and sanitation currently assessed? Are there plans and policies developed that use indicators and benchmarks to assess both the steps taken and the results achieved in the elimination of inequalities in water and sanitation service provision?	○	○	○
Are there enough public facilities in place and planned to ensure that people without domestic access to water and sanitation can use these as intermediate solutions?	○	○	○

Continued...

Policies continued...	Yes	In progress	No
Does the State provide for measures raising awareness of the possibility of obtaining information; for example, information about water and sanitation services, management and infrastructure?			
Are there programmes and policies in place that guarantee and encourage the participation of all stakeholders?			
Do policy-level documents plan for clear assessments of current accessibility standards?			
Are there any mechanisms or programmes to train local authorities in how to manage budgets, tariffs and the operation and maintenance of facilities?			
Is there a policy that outlines processes for ensuring water safety?			
Are the people who are least able to pay identified, and are there specific targeted programmes to ensure that water and sanitation services are made affordable for them?			
Are there policy-level documents that outline methods and plans for raising awareness and changing behaviour, especially with regard to hygiene practices?			
Do policy level-documents set clear targets and timelines for reaching a basic level of service for all?			
Do policy-level documents set clear targets and responsibilities for meeting general acceptability standards?			
Are there policies in place that effectively organise awareness raising and education programmes to eliminate unacceptable practices; for example, manual scavenging, and the exclusion of women from daily life during menstruation?			
Are there policies in place that plan to improve services continually over time?			



02.
Checklists

Financing, budgeting and budget tracking

State Actors

National and sub-national Governments

	Yes	In progress	No
Is the national government allocating sufficient funding for water and sanitation, allowing the human rights to water and sanitation (including availability, accessibility, quality, affordability and acceptability) to be progressively realised on a non-discriminatory basis?			
Where a State has insufficient resources to realise the human rights to water and sanitation, has the State actively sought international cooperation and assistance?			
Are the funds the national government is directing to sub-national governments sufficient to enhance equality in access to water and sanitation, and targeted particularly at those who are disadvantaged within different regions and population groups? Are there criteria for allocating funds to sub-national governments? What are these?			
Are national and sub-national governments collaborating to ensure that all funds directed from the national government to water, sanitation and hygiene projects and services reach sub-national governments promptly?			
Has the State made water, sanitation and hygiene related budgets publicly accessible?			
Has the State enabled meaningful participation by civil society in discussions about the formulation, implementation and monitoring of budgets?			
Has the State set a fair affordability standard, taking into account all aspects of water, sanitation and related hygiene?			
Are people made aware of existing subsidies, grants and payment options?			

Ministry of Finance (or Planning, or Central Bank)

Have the rights to water and sanitation been accorded due priority within the national budget?			
Has the Ministry of Finance reviewed water and sanitation related budgets to determine if, taken together, the allocations contribute to the realisation of the rights to water and sanitation, as well as promoting non-discrimination, sustainability, accountability and participation?			
Have any cuts been made in water, sanitation and hygiene related budgets in the past five years? If so, was an assessment made of the likely impact of these cuts on people's realisation of their rights to water and sanitation, particularly for disadvantaged individuals and groups?			
Has the finance ministry, or, where appropriate, the competent line ministry allocated sufficient funds for subsidies for those unable to afford charges and costs relating to access to water and sanitation services?			
Have water, sanitation and hygiene related funds been released to line ministries and sub-national governments in full, and in a timely fashion?			

Line ministries	Yes	In progress	No
Is the structure of tariffs and/or subsidies such as to ensure that disadvantaged individuals and groups have access to a necessary amount of water, and access to sanitation facilities, regardless of ability to pay? Does it also ensure affordability to the middle and lower-income households without representing more than a certain percentage of household income?			
Do water, sanitation and hygiene budgets appear to have reached an appropriate balance of infrastructure spending vs. operation/maintenance/repair spending, so as to ensure the sustainability of existing systems?			
Have the line ministries produced sufficiently disaggregated budgets so that it is clear how much money they are directing to water, to sanitation and to hygiene, and for what purposes?			
Donors			
Does donor or development agency support comply with human rights, in particular with the principles of non-discrimination, sustainability, accountability and participation?			
Is donor or development agency support incorporated into, or reflected in, the national or subnational budget?			
If donor financing is not incorporated into or reflected in the national or subnational budgets, does it harmonise its support with the recipient government's policies and plans?			
Has the donor or development agency considered giving a higher priority to support for the water and sanitation sectors? If it already provides such support, has it considered directing more of its contribution to operation, maintenance and capacity-building?			
Does the donor or development agency make information about its water, sanitation and hygiene related support publicly available?			
Does the donor or development agency provide advice on ensuring that the recipient State's water and sanitation budgets reflect human rights obligations?			
Have water, sanitation and hygiene related funds been disbursed or spent in full, and in a timely fashion?			
Supreme audit institutions			
Is there an independent supreme audit institution, and does it have sufficient human and financial resources to operate?			
Does the supreme audit institution explicitly use a human rights framework in auditing government budgets?			
What is the follow up to and impact of the supreme audit institution's findings? What is the rate of the State's compliance with the supreme audit institution's recommendations?			
Civil society			
Are there capacity-building strategies on budgeting and budget tracking for civil society?			
Do States make provision for budget monitoring by civil society, and take note of the results?			


PRIT

03.
Checklists

Planning processes, service providers, service levels and settlements

National and sub-national State actors

Planning

	Yes	In progress	No
Are national and local planning processes open, transparent and participatory? Can disadvantaged, marginalised and vulnerable individuals and groups participate fully in making decisions relating to their services?			
Are baseline and feasibility studies participatory and available for review? Do baseline studies identify the most disadvantaged individuals and groups?			
Do baseline and feasibility studies consider accessibility, affordability, adaptability and acceptability?			
Is there accurate information on the levels of services in informal settlements, including the types of service providers?			
Are targets set through inclusive processes, with sufficient information made available to the targeted individuals and groups?			
Do the national and / or local plans of action include specific targets for disadvantaged groups?			
Do the targets cover planning and financing for on-going maintenance and operation, to ensure economic and environmental sustainability?			
Are the responsibilities of the various actors at each stage of the planning process clearly defined?			
Are current and future users included in the planning processes; can they influence outcomes, does this increase their understanding and use of services?			

Capacity building

Are there programmes in place to increase capacity in the operation and maintenance of infrastructure, including access to information about who is responsible for operation and maintenance?			

Awareness raising

Does the government tackle taboos relating to menstrual hygiene and sanitation? How?			
Are there programmes in place to raise people's awareness of good hygiene behaviour?			

Regulations			
	Yes	In progress	No
Does the regulatory framework include non-State service provision?			
Does the regulatory framework include rules about how profits from water and sanitation services can be used?			
Are informal service providers, including civil society organisations, regulated?			
Contracts			
Are contracts between States and service providers fully compliant with human rights standards?			
Are the human rights responsibilities of the service providers clearly defined in the contracts, along with the standards and targets required immediately and in the long term?			
Do contracts contain coverage targets to eliminate inequalities in access to water and sanitation?			
Is there sufficient provision in the contracts for participation, access to information, capacity building and water quality standards?			
Disconnections			
Are there clear and effective regulations on how disconnections undertaken by service providers can be carried out in compliance with the rights to water and sanitation?			
Are there effective administrative and judiciary systems that allow people the opportunity to challenge disconnections and receive appropriate and timely remedies?			
Anti-corruption			
Are there regulations and rules against corruption?			
Are there measures in place, such as information about service provider responsibilities, available to the public?			

Continued...

Service providers

	Yes	In progress	No
Is official information on existing coverage of water and sanitation services available to the public?			
Are existing gaps in service provision, and the corresponding requirements for extending access to services, assessed?			
Have the regions, settlements and sectors of the population that require specific assistance been identified?			

Donors

Do international financial institutions undertake human rights impact assessments of their policies, projects and programmes, both during the process of policy and project formulation and after a period of implementation?			
Are these assessments public and participatory; do they focus in particular on disadvantaged and vulnerable groups?			
Do loans or debt relief avoid attaching conditions requiring the implementation of privatisation policies?			



04.
Checklists

Monitoring compliance with the human rights to water and sanitation

General

	Yes	In progress	No
Has the State established indicators to monitor the human rights to water and sanitation?			
Is there an institution that monitors the availability of water and sanitation at the national and local levels?			
Is there an institution that monitors the accessibility of water and sanitation facilities, including accessibility for people who may face barriers in access, such as marginalised or excluded individuals and groups, persons with disabilities, the young, and older persons?			
Is there an institution that monitors access to water and sanitation outside the home: at workplaces, schools, health institutions and public spaces, as well as for people who live in places where they have no control over their own access, such as in detention centres?			
Is there an institution that monitors access to services at the level of the household? Does monitoring of access within the household consider people suffering from stigmatised chronic illnesses such as HIV/AIDS?			
Is there an institution that monitors water quality?			
Is there an institution that monitors the quality of sanitation provision?			
Does monitoring include the availability of water and sanitation services?			
Is there an institution that monitors the affordability of water and sanitation services?			
Is there an institution that monitors the acceptability of water and sanitation facilities? Are participatory approaches to monitoring put in place?			
Is there an institution that monitors the sustainability of new water and sanitation facilities?			
Is there an institution that monitors inequalities? Have the most disadvantaged and excluded individuals and / or groups been identified? Is disaggregated data available?			
Is there an institution that monitors inequalities? Have the most disadvantaged and excluded individuals and / or groups been identified? Is disaggregated data available?			
Are the data for the worst-off populations compared with those for the better-off populations, to establish the disparities?			
Is the rate of progress necessary to meet the target determined for both the worst-off and better-off groups?			

Specific

State actors

	Yes	In progress	No
Has the government accepted recommendations on the human rights to water and sanitation in the context of the treaty bodies review and the Universal Periodic Review? Has it taken steps to implement them?			
Is there an independent regulator that supports the monitoring of the human rights to water and sanitation?			
Is there an independent national human rights institution that supports the monitoring of the human rights to water and sanitation?			

Donors

Do donors monitor their own projects for compliance with the human rights to water and sanitation?			
Do donors monitor recipient States' policies and plans for compliance with the human rights to water and sanitation?			
Before investing in constructing water and sanitation facilities, are the costs of operating and maintaining such facilities fully considered?			

National human rights institutions

Does the national human rights institution monitor the human rights to water and sanitation?			
Does the national human rights institution play a role in raising awareness and strengthening understanding of the human rights to water and sanitation within the population?			
Does the national human rights institution promote the human rights to water and sanitation to government at local and national levels, and does it strengthen accountability systems?			

Service providers

Do service providers monitor whether they are in compliance with the human rights to water and sanitation? (see general questions)			
Is the quality of sanitation infrastructure and services monitored?			
Are any informal service providers supported by the authorities / State to perform their monitoring functions?			
Where Local Water Committees exist, do they undertake monitoring? How are they supported by the State in this?			

Civil Society

Does civil society monitor inequalities? Has it identified the most disadvantaged and excluded individuals and / or groups? Does it collect disaggregated data?			
Does civil society monitor the human rights to water and sanitation in informal settlements?			



05.
Checklists

Access to justice for violations of the human rights to water

State actors

	Yes	In progress	No
Are judicial remedies available for violations of economic, social and cultural rights?			
Is information about the existence of legal rights, and the options for enforcing them, available? Does the government proactively inform the public about the enforceability of the human rights to water and sanitation?			
Does the government ensure that remedies are financially accessible? Is financial assistance for legal counsel available? Do governments allocate adequate human and financial resources to legal services, so as to guarantee their quality?			
Does the government ensure that no illegal fees or bribes are demanded or paid before access to remedies is possible?			
Does the government provide legal assistance that guides people through the procedures and deadlines?			
Does the government take special measures to ensure that migrants who are unfamiliar with the host country's legal system, and who may be fearful of deportation, have meaningful access to courts and other procedures to enforce their rights?			
Do State actors provide training on international legal standards regarding economic, social and cultural rights; is international human rights law on the curriculum at law schools?			
Do State actors, including governments, ensure that courts and administrators are aware of the legal decisions of international mechanisms? Do they promote the application of international human rights law in domestic court proceedings? Do they encourage review by regional or international human rights bodies?			
Has the State ratified the relevant international conventions establishing regional or international complaint mechanisms?			
Are remedies available for extraterritorial claims?			
Do State actors make people aware of complaints procedures and other ways of accessing justice with respect to access to water and sanitation? Are measures taken by the State to strengthen its capacity to hold providers of water and sanitation services accountable?			

Legislators

Do laws and regulations fully integrate human rights principles and the legal content of the human rights to water and sanitation?			
Are there mechanisms to hold service providers accountable? Do these mechanisms involve the use of external resources or are they wholly financed by the service provider?			
Are the mechanisms for ensuring that service providers are accountable planned and administered with the participation of the people who use the services and may need access to remedies?			

Administrative bodies

	Yes	In progress	No
Are administrative bodies impartial and independent?			
Is the oversight and accountability of all administrative actors properly informed by the human rights to water and sanitation?			

Courts

Do the courts proceed on cases regarding the obligations to respect, protect and fulfil the human rights to water and sanitation?			
Do the courts critically and proactively evaluate budget allocation policies, in order to fulfil the human rights to water and sanitation for underserved and un-served individuals and communities?			
Do the courts address systemic violations of the human rights to water and sanitation?			
Can people take their complaint to a court when administrative bodies fail properly to consider and apply the human rights to water and sanitation?			
Do judges serve as impartial arbiters in disputes about rights and obligations? Do they impose enforceable remedies, and do they sometimes fulfil a monitoring and corrective role?			
Do courts settle complaints promptly, expeditiously, effectively, impartially and independently? Are courts transparent and accountable? Are judicial remedies timely and / or prompt?			
Are proceedings understandable? Is information also available in local languages, including minority and indigenous languages?			
Do courts provide a full explanation of their decisions on the merits of the claim? Do they indicate the consequences and applicable reparations?			
Are remedies effective, just and enforceable? Are remedies then properly enforced?			
Is domestic law interpreted in line with international law?			
Are courts and tribunals aware of the nature and implications of the International Covenant on Economic, Social and Cultural Rights? Does judicial training take full account of the justiciability of the Covenant?			
Do courts base their decisions on the recommendations of national human rights institutions?			
Are mechanisms that provide people with a remedy for violations of their rights equally accessible to all, without distinction on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (including socio-economic status) ensured? Are all parties in any proceedings treated without discrimination?			

Continued...

Courts continued...

	Yes	In progress	No
Are the courts physically accessible to all?			
Are remedial bodies sensitive to social and cultural barriers?			
Do remedial systems empower women?			
Do courts protect the privacy and anonymity of claimants who face barriers in accessing courts because they fear reprisals, discrimination or stigmatisation within or outside their communities or society?			
Do courts allow groups to speak on behalf of affected individuals in order to ensure that rights claimants are not subjected to further stigmatisation or reprisals?			
Do courts set up monitoring processes to ensure the full enforcement of their decisions?			

National human rights institutions

Is there an independent national human rights institution?			
Is the national human rights institution authorised to receive and adjudicate complaints of violations of economic, social and cultural rights?			
Does the mandate of the national human rights institution cover the entire human rights framework, including economic, social and cultural rights?			
Do national human rights institutions address systemic violations?			
Do national human rights institutions monitor the implementation of legal remedies?			

Non-governmental organisations

Do States support NGOs' contributions to monitoring the effective implementation of legal remedies?			
Do States support NGOs' contributions to overcoming the barriers that prevent people from accessing remedies?			



06.
Checklists

Principles:
Non-discrimination and equality

Legislative, policy and regulatory frameworks	Yes	In progress	No
Does the Constitution or legislative framework specifically provide for non-discrimination and equality?			
Does the Constitution require affirmative action or temporary special measures to achieve substantive equality?			
Are there laws providing complaint mechanisms, to ensure that discriminatory practices are addressed?			
Do policies specifically target people who don't have adequate access to water and sanitation?			
Financing and budgeting			
Are the regions and population groups that lack access to services prioritised in budgets?			
Do financial reports reveal an enhanced financial effort on the part of the government to ensure that the most marginalised and hardest-to-reach communities are able to realise their human rights to water and sanitation?			
Are tariffs set in a way that ensures affordability for all individual users?			
Are there progressive tax regimes in place to raise the revenue for water and sanitation services in a way that does not overly burden people living in poverty?			
Planning			
Do strategies and plans prioritise basic access, and focus on the progressive realisation of safe and sustainable water, sanitation and hygiene for all, while eliminating inequalities?			
Do strategies and plans address spatial inequalities, such as those experienced by communities in rural areas and informal settlements or slums?			
Target setting			
Have disadvantaged individuals and groups been identified?			
Has the process of identifying disadvantaged individuals and groups been inclusive and participatory?			
Are the barriers and reasons for lack of access understood and addressed?			
Have specific targets been set for disadvantaged groups?			
Have targets been set to eliminate inequalities in access?			

Monitoring

	Yes	In progress	No
Is data disaggregated according to prohibited grounds of discrimination?			
Are targets for specific population groups monitored?			
Are the efforts to reduce inequalities measured, including the targeting of resources?			
Is the increase or decrease in inequalities being monitored?			

Awareness raising

Are there awareness raising and advocacy campaigns to uncover and address discrimination, stigma and stereotypes, including campaigns aimed at local authorities, ministries, the judiciary, regulatory bodies and civil society?			
Are the people who experience discrimination, stigmatisation and stereotyping able to participate in the design of measures to address these?			
Is human rights education, with a focus on non-discrimination and equality, part of the school curriculum?			



07.
Checklists

Principles:
Access to information

State actors

	Yes	In progress	No
Is there a constitutional provision or national law on the right to information?			
Does such a provision or instrument include the following features:			
The right to present information requests without having to show a legal interest in the information;			
The duty of bodies to reply, including the obligation to set procedures and deadlines for handling information requests;			
A limited set of exemptions that allow for the withholding of certain categories of information, as long as the overriding public interest does not require disclosure;			
Internal appeal mechanisms;			
External independent review mechanisms and / or			
A requirement for public bodies to proactively publish some types of relevant information?			
Are all individuals able to request all information held by a public body, including the executive, legislative and judicial branches of the state, as well as public corporations and publicly-funded bodies?			
Are public bodies legally obliged to publish and disseminate information, as well as to respond to requests?			
Are there incentives and penalties for those responsible for facilitating access?			
Is the general public made aware of their rights and how to exercise them?			
Are the costs associated with requests for information affordable?			
Are meetings of public bodies open to the public?			
Have laws that are inconsistent with the principle of maximum disclosure been amended or repealed?			
Are individuals who release information on wrongdoing (whistleblowers) protected against any legal, administrative or employment-related sanction?			

Continued...

State actors continued...

	Yes	In progress	No
Is information on the state of the environment and/or human health issues, and on policies and measures, made public? Is it disseminated immediately and without delay to members of the public who may be affected?			
Are the people aware of the existence and the potential uses of access to information frameworks and of the provision of data on water and sanitation?			
Is there training within public administration to foster a culture of openness and transparency?			
Are promotional materials, including manuals, guidelines, and information campaigns in partnerships with the media and civil society organisations developed with the aim of informing individuals about the access to information framework?			
Is information spread through the main channels and via alternative community broadcasters? Is the information user-zfriendly and culturally sensitive and translated into all relevant languages and dialects?			

Non-State actors that perform public functions or receive public funds

Does the national legal framework enable everyone to request information held by private entities that perform public functions or receive public funds?			
Does the national legal framework entitle everyone to request information on water and sanitation that is held by service providers?			

Business actors

Does the national legal framework require business enterprises whose operations or operating contexts pose risks to human rights to provide information on the potential impact on human rights?			



08.
Checklists

Principles:
Right to participation

State actors

Institutionalising participation

	Yes	In progress	No
Is active, free and meaningful participation recognised as a human right in national legislation and ensured at all levels of decision-making, including in the development of laws, policies, programming, budgeting, service provision and monitoring of water and sanitation? Is this justiciable?			
Is the State party to international and regional instruments that guarantee the human right to participation, as well as their respective complaint mechanisms?			
Are people who are likely to be affected by any plans or investments able to participate meaningfully in planning?			
Are the costs for participatory processes incorporated in the initial design of any measures?			

Ensuring inclusive processes

Are marginalised people and groups identified and included in the participation process?			
Are there measures to overcome existing barriers to participation by all?			
Are there safe spaces for deliberation among marginalised groups?			
Are the individuals and groups who are invited to consultations identified in a transparent, accurate and sensitive way?			

Ensuring active, free and meaningful participation

Do people have access to information about participatory processes, and are they able to determine the terms of their participation, the scope of the issues to be addressed and the rules of procedure?			
Have concrete measures been put in place to ensure that participation is free from direct or indirect coercion, inducement, manipulation or intimidation?			
Do participatory processes give people real opportunities to influence decisions? Have concrete measures been put in place to achieve this?			

Service providers

	Yes	In progress	No
Is the service provider obliged to engage in active, free and meaningful participatory processes on the types of service delivered?			
Are these processes inclusive?			
Is there oversight of these processes?			

International organisations, multilateral and bilateral donors

Do international organisations, multilateral and bilateral donors include participation as a mandatory requirement for projects / interventions in recipient countries?			
Do they ensure that any conditions imposed on recipient countries do not circumvent participatory processes?			



09.
Checklists

Principles:
Sustainability and non-retrogression

State actors	Yes	In progress	No
Is planning coordinated and integrated between different ministries, departments and agencies, and aiming for sustained, universal coverage?			
Are the necessary financial and institutional resources committed to operation and maintenance?			
During periods of economic growth, is there planning for resilience at times of crisis?			
When adopting austerity measures, is there adequate protection of human rights, with a particular focus on disadvantaged individuals and groups?			
Do contracts for private sector participation take account of long-term requirements for operation and maintenance? Are profits reinvested in maintaining and extending service provision?			
Are water and sanitation services affordable for all people, including those living in poverty; are revenues sufficient for maintaining, improving and expanding systems?			
Are technology choices appropriate?			
Are there monitoring and accountability mechanisms in place to deal with unsustainable and retrogressive practices?			
Donors			
Does international cooperation for water and sanitation service delivery include strategies for sustainability, including operation and maintenance strategies?			

Image Credits:

Page 4 A man washes himself in clean water from a hand pump, TT para slum, Dhaka, Bangladesh, 2011. WaterAid/GMB Akash/Panos.

Page 10 Esther Lucius, harvesting paprika from her garden, Wilson village, Machinga District, Malawi. WaterAid/Layton Thompson.

Page 14 Schoolgirl Lasmi Tarami drinking clean water from a water point installed by WaterAid in Lamidamar, Surkhet, Nepal, January 2012. WaterAid/GMB Akash.

Page 20 A man enters a latrine, in Adone Village in Ta Oi District in Lao People's Democratic Republic 2012. UNICEF/NYHQ2012-1880/.

Page 24 A woman who runs a tea room prepares tea for people in the village, Kaniche village, Malawi, March 2012. WaterAid/ Kate Holt.

Page 30 A girl wrings out a hand towel at an outdoor tap at Ban Pho Preschool in Bac Han District in remote Lao Cai Province in Vietnam 2009. UNICEF/NYHQ2009-0237.

Page 34 Children's toothbrushes and toothpaste hang in an early childhood development centre in the Minero community in the eastern department of Santa Cruz, Bolivia. UNICEF/ NYHQ2008-1602/.

Page 38 Water sampling for the post implementation water quality test at one of the 12 wells in Akondromena, Miandrivazo district, Menabe region, Madagascar. February 2014. WaterAid/ Ernest Randriarimalala.

Page 42 A woman pours water to jerry can to collect water at the water spring at the village of Maru, in the island of Pura, Alor district, East Nusa Tenggara Indonesia on November 21, 2007. UNICEF/IDSA2010-00528/.

 Introduction

 Frameworks

 Financing

 Services

 Monitoring

 Justice

 Principles

 Checklists

 Sources



Sources



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A HANDBOOK BY THE UN SPECIAL RAPPORTEUR
CATARINA DE ALBUQUERQUE

Glossary, bibliography and index

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WaterAid

Entidade Reguladora dos Serviços de Águas e Resíduos
The Water and Waste Services Regulation Authority

UN HABITAT FOR A BETTER URBAN FUTURE

Contents

01. **Glossary** 5

02. **Bibliography** 11

Frameworks 15
Financing 16
Services 17
Monitoring 18
Justice 19
Non-discrimination and equality 20
Access to information 21
The right to participation 22
Sustainability and non-retrogression 23

03. **Index** 25



01. Glossary

A

Access to justice and access to remedies – means that individuals have the right to bring alleged violations of human rights before independent and impartial bodies. The decisions of these bodies must be based on standards of fairness and justice, and the remedies they decide on must be effective. Where necessary, people must be able to seek redress before a court or tribunal, although other bodies, including administrative bodies, may offer effective remedies and be able to settle disputes.

Accountability stresses that certain actors (principally States) have human rights obligations that they must comply with. They are answerable on how they realise their obligations and can be held to these obligations through various mechanisms.

Administrative and regulatory mechanisms – regulate service provision (such as tariffs and water quality) and guarantee that government officials implement laws, regulations and policies correctly and in a manner consistent with human rights. States should ensure that they are impartial and independent.

Allegation Letters – are used by Special Procedures mandate holders to communicate information to a State on alleged violations of human rights that are thought to have occurred in that State, and requesting a response.

C

Committee on Economic, Social and Cultural Rights (CESCR) – is a body of 18 independent experts. It monitors the implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW – 1979) – is a legally binding international human rights treaty that defines discrimination against women and how it is expressed, and sets out human rights obligations to stop such discrimination. This Convention provides the basis for realising substantive equality between women and men.

Convention on the Rights of the Child (CRC – 1989) – is a legally binding international instrument that protects civil, cultural, economic, political and social rights for people under 18 years of age. Its core principles are: non-discrimination; the best interest of the child; the right to life, survival and development; and respect for the views of the child.

Convention on the Rights of Persons with Disabilities (CRPD – 2006) – is a legally binding international instrument that reaffirms that all persons with disabilities enjoy all human rights. This Convention explains how human rights apply to persons with disabilities and identifies areas where protection of their human rights must be reinforced.

D

Disadvantaged individuals and groups – may be disadvantaged through their marginalisation, or their vulnerability. This is the general term used in this Handbook
to denote both vulnerable and marginalised individuals and groups.

Disaggregated data – separates data according to criteria such as gender, ethnicity, caste or age so as to reveal particular factors, including to highlight disparities between different population groups and helps to determine the particular barriers different individuals and groups face in accessing water and sanitation services.

Duty-bearers and rights-holders – are the terms that define the relationship between individuals and groups with entitlements based on human rights (rights-holders) and State and non-State actors (duty-bearers) with obligations to realise these rights.

Duty bearers are those actors who have particular obligations or responsibilities to realise human rights. The term is most commonly used to refer to State actors, but non-State actors can also be considered duty-bearers.

All human beings are rights-holders under human rights instruments. Citizens of a State are rights-holders, as are people living as refugees, immigrants (regular and irregular), and others who do not hold citizenship. All of these people can claim the realisation of their human rights, including the human rights to water and sanitation, from the State where they are resident.

E

Equality entails a legally binding obligation to ensure that everyone enjoys equal enjoyment of her or his rights. Equality does not imply treating people who are unequal equally; it does not indicate identical treatment in all cases. Substantive equality requires a focus on all groups in society experiencing direct or indirect discrimination, and the adoption of targeted measures to support these groups when barriers persist, including affirmative action or temporary special measures

Equity – is the moral imperative to dismantle unjust differences. It is based on principles of fairness and justice. In the context of water, sanitation and hygiene, equity, like equality, requires a focus on the most disadvantaged and the poorest. Many organisations in the sector have made equity a central part of their agenda; however, from a human rights perspective, relying on equity carries certain risks because it is a malleable concept that is not legally binding.

Extraterritorial obligations – are human rights obligations that relate to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory.

G

General comments or general recommendations – are authoritative interpretations of the provisions of human rights treaties by the respective treaty body. General comments also deal with wider, cross-cutting issues such as the role of national human rights institutions in the protection for economic, social and cultural rights.

Governments at all levels – national government comprises those bodies with national jurisdiction, including those of federal States. Sub-national government refers to regional and local departments institutions and agencies.

H

Human Rights Committee (HRCttee) – is an independent expert body that monitors the implementation of the International Covenant on Civil and Political Rights by its States parties.

Human rights treaty bodies – monitor the implementation of human rights treaties. There are currently ten human rights treaty bodies, which are committees of independent experts. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights are two examples of treaty bodies.

I

International Covenant on Civil and Political Rights (ICCPR – 1966) – is the UN human rights treaty that guarantees those human rights defined as civil and political, and includes the right to information, the right to life, the right not to be tortured.

I**nternational Covenant on Economic, Social and Cultural Rights (ICESCR – 1966)** – is the UN human rights treaty that guarantees those human rights referred to as economic, social or cultural rights, such as the human rights to an adequate standard of living, health, education and, of course, the human rights to water and sanitation.

J

Justiciability – relates to the capacity for a matter to be decided by an independent and impartial body. Justiciability implies the right to effective remedies for people alleging a violation of their human rights.

L

Legal or normative content – is the substance of a human right. For economic, social and cultural rights it is usually clarified under the criteria of availability, accessibility, quality, affordability, and acceptability.

M

Marginalised individuals and groups – are those people who are excluded from social, economic, cultural and political life, including water and sanitation service provision because of who they are or where they live. In some countries, marginalised individuals and groups can include a significant proportion of the population; for example, women. This term can also refer to a cultural or ethnic minority, or people suffering from particular stigmatised diseases.

N

National Human Rights Institutions (NHRIs) – can be defined as permanent and independent bodies that States have set up for the particular purpose of promoting and protecting human rights. There are many different types of national human rights institutions, with varying mandates, structures, and political and legal traditions.

Non-discrimination – is the principle that requires States to counteract any distinction, exclusion or restriction that has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Note Verbale – is used in the exchange of information between the UN and its Member States, including: the transmission of decisions or recommendations of United Nations organs; requests for and acknowledgements of information and documents; and other requests or acknowledgements to Governments relating to the work of the United Nations.

O

Optional Protocols – complement and add to existing human right treaties. They may either establish procedures that affect the way a treaty operates and is enforced or include a new substantive area that has not been sufficiently addressed in the original text of the treaty. Most optional protocols establish complaint mechanisms to allow individuals or groups to file formal complaints when States have allegedly violated the human rights recognised in the treaty. Optional protocols are open to signature and ratification by any country that is already bound by the related treaty.

P

Participation – is a human right requiring the active, free and meaningful participation of people in decision-making that affect their lives.

Progressive realisation and use of maximum available resources – requires States to take steps to progressively realise economic, social and cultural rights. Such steps must be deliberate, concrete and targeted. States have an obligation to move as quickly and effectively as possible towards the full realisation of human rights, using the maximum available resources.

R

Retrogressive measures – directly or indirectly lead to backward steps in the enjoyment of human rights. Examples include raising the price of services disproportionately, so that poor people can no longer afford water and sanitation, and allowing infrastructure to deteriorate because of a lack of investment in operation and maintenance. A "strong presumption" exists under human rights law that retrogressive measures are prohibited.

S

Special Procedures of the Human Rights Council – are independent human rights experts appointed by the UN Human Rights Council who monitor countries' situation from a human rights perspective and investigate specific human rights. The UN Special Rapporteur on the human right to safe drinking water and sanitation is one of these Special Procedures. As of 1 July 2014, there are 52 Special Procedures: 38 thematic and 14 country mandates.

States parties – are those countries that have ratified or acceded to a particular treaty, and are therefore legally bound by its provisions.

Sustainability – is a fundamental human rights principle essential for realising the human rights to water and sanitation. The human rights framework defines sustainability holistically, and as being the opposite of retrogression. Water and sanitation must be provided in a way that respects present and future generations, as well as the natural environment, and ensures a balance of the different dimensions of economic, social and environmental sustainability.



U

United Nations Human Rights Council (HRC) – (created in 2006) replaces the Commission on Human Rights (created in 1946). It is an inter-governmental body composed of 47 Member States and is responsible for the promotion and protection of all human rights around the world. The Human Rights Council appoints special procedures, sets standards on human rights, has a complaints procedure, and reviews the human rights records of all UN Member States.

United Nations Office of the High Commissioner for Human Rights (OHCHR) – is mandated to promote and protect the enjoyment and full realisation, by all people, of all rights established in international human rights law. The Office also supports the UN human rights mechanisms including the Special Procedures and treaty bodies.

Universal Declaration of Human Rights – includes significant guarantees of human rights. It largely reflects customary international law and its content has been progressively translated into legally binding treaty law. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights are two of these legally binding treaties.

Urgent Appeals – are used by Special Procedures to communicate information to a State about time-sensitive alleged violations of human rights which include loss of life, life-threatening circumstances or imminent or on-going damage of a grave nature that require urgent intervention. The appeal should guarantee that the appropriate State authorities are informed as quickly as possible of the situation so that they can intervene to stop or prevent a human rights violation.

V

Vulnerable individuals and groups – include people who have specific needs with respect to water and sanitation, and who are not able to meet those needs themselves. This may include pregnant women, new mothers, children, older persons, persons with disabilities, and those living through difficult circumstances due to disasters or climate change. Vulnerability is not necessarily life-long – people can move in and out of being 'vulnerable'.

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03.
Index

Brown numbers refer to the Booklet number, black numbers refer to page numbers.

A

Aarhus Convention of the UN Economic Commission for Europe
- access to information **7.**38
- right to participation **7.**56, **7.**59

Access to justice **1.**22, **1.**37, **2.**25, **2.**28, **4.**12, **5.**26, **7.**56

acceptability of water, sanitation **1.**36
- legal provisions **2.**51
- monitoring **5.**20
- standards **4.**21

access to information **1.**30, **2.**17-18, **3.**32, **3.**45, **6.**41, **7.**35, **7.**37, *see Booklet 7, Principles: Information*

budgets **3.**10, **3.**22, **3.**26, **3.**30
- article 19 ICCPR **4.**44, **7.**37

accessibility of water, sanitation **1.**34

monitoring **5.**15

legal provisions **2.**39
- standards **4.**17

access to justice *see Booklet 6, Justice*
- legal foundations **6.**6

accountability **1.**29, **1.**31, **2.**13, **2.**17, **2.**25, **2.**27-29, **3.**10, **3.**18, **3.**37, **4.**6, **4.**12, **4.**38-39, **4.**48, **5.**26, **5.**29, **7.**35, **7.**79; *see Booklet 6, Justice*

mechanism **1.**31, **1.**41, **2.**28-29, **4.**6 **4.**38; **5.**6, **7.**79

adequate standard of living, right to, *see human right to an adequate standard of living*

affirmative action **1.**30, **7.**13 *see also equality, substantive equality, non-discrimination*

affordability of water, sanitation **1.**35
- disconnections **4.**40
- legal provisions **2.**48
- monitoring **5.**19
- standards **4.**20

African Charter on Human and Peoples' Rights **4.**33, **6.**32

African Commission on Human and Peoples' Rights **4.**33
- Complaint mechanism **6.**32
- decision on oil pollution in Nigeria, *SERAC v. Nigeria* **6.**09
- decision on violations of the right to health, *Centre on Housing Rights and Evictions v. Sudan* **6.**32

African Court on Human and Peoples' Rights **6.**32

African Union
- Model Access to Information Law **7.**40

age, prohibited ground of discrimination **7.**22

Allegation Letters **5.**35

American Convention on Human Rights
- access to information **7.**42

amicus curiae **6.**20

Armenia
- Access to Information law **7.**41
- Concluding Observations by CRC **5.**32

Amnesty International **1.**16, **5.**28

anti-corruption measures **4.**38

Argentina
- Constitution **2.**12, **2.**25,
- judgement on disconnections, *Usuarios y Consumidores en Defensa de sus Derechos c/ Aguas del Gran Buenos Aires SA* **6.**09
- judgement on service provision for indigenous people, *Defensor del Pueblo de la Nación v. Argentina* **6.**53
- judgement on water pollution, *Beatriz Mendoza et al v. Federal Government* **6.**53
- judgement on water pollution, *Marchisio José Bautista y Otros c/ Superior Gobierno de la Provincia de Córdoba y Otros* **6.**08, **6.**49

ASADAS
- community water management in Costa Rica **4.**48, *see also community management*

asylum seekers
- barriers to participation **7.**58
- prohibited ground of discrimination **7.**24

austerity measures **3.**17, **4.**45, **5.**21; **6.**11, **7.**76, **7.**78

Australia
- regulations for menstrual hygiene facilities **2.**45
- limits on water use during drought **2.**36

Availability of water, sanitation **1.**33
- legal provisions **2.**32
- monitoring **5.**14
- standards **4.**15

B

Bangladesh
- country mission by Special Rapporteur **5.**35
- judgement on arsenic contamination, *Rabia Bhuiyan v. Ministry of LGRD and others* **6.**53
- National Policy for Safe Water Supply and Sanitation **2.**35
- UNICEF training on hygiene **4.**30

barriers to access to water and sanitation **4.**08

Belgium
- subsidies **3.**28
- minimum quantity of water free of charge **2.**49

Benin
- Household sanitation **2.**35

Berliner Wasserbetriebe (BWB) **3.**11, **4.**44

Berliner Wassertisch (Berlin Water Round Table) **3.**11

Bolivia
- Inter American Commission on Human Rights, decision on prisons **5.**33

Botswana
- judgement on Bushmen rights, *Matsipane Mosetlhanyane and Others v. the Attorney General* **6.**08

Brazil
- budget allocation **3.**34
- country mission by Special Rapporteur **5.**35
- informal settlements **4.**20, **4.**26
- Law on Water and Sanitation **2.**17, **2.**22
- right to public services **2.**36
- National Plan for Water and Sanitation (PlanSab) **2.**24, **3.**10, **3.**36
- affordability standard **4.**20
- participatory budgeting **3.**13, **7.**58
- SABESP **3.**20

budgets, *see Booklet 3, Financing*
- allocation **3.**7-8, **3.**11, **3.**16, **3.**27-28, **3.**30, **3.**32, **3.**34, **3.**39, **4.**7, **4.**28, **5.**7, **5.**29, **6.**7, **6.**47, **6.**53
- cycle **3.**15
- enactment **3.**33
- execution **3.**6, **3.**34
- formulation **3.**16
- monitoring **3.**37, **5.**21, **5.**29
- Open Budget Survey **3.**10
- oversight and evaluation **3.**36
- participatory budgeting **3.**13, **7.**58

Bulgaria
- Human Rights Committee decision on discrimination, *Assenova Naidenova et al. v. Bulgaria* **6.**08, **6.**48

Burkina Faso
- WASHCost **3.**28

business and human rights **4.**29, **6.**15

C

Cambodia

- Phnom Penh Water Supply Authority 3.32, 4.39

Canada 6.47

caste, prohibited ground of discrimination 7.22

Center for Economic and Social Rights 6.47

Center for Environmental Planning and Technology (CEPT), India 5.12

Centre for Policy Alternatives, Canada 6.47

Centre on Housing Rights and Evictions (COHRE) 6.20, 6.32

- *chhaupadi* 2.52, 6.13, 7.22

Chile

- access to information law 7.42
- subsidies 3.28
- affordability 2.48

citizen report cards 3.39

civil society 1.15-16, 1.18-19, 1.41, 3.10-12, 3.16, 3.26, 3.30, 3.33, 3.36, 3.39, 4.5, 4.21, 4.39, 4.44, 5.25, 5.26, 5.28-29, 5.32, 5.34, 6.9, 6.20, 6.37, 6.45, 6.53, 7.45, 7.64

- and budgets 3.10-12, 3.16, 3.26, 3.30, 3.33, 3.36, 3.39
- and access to information 7.45
- and monitoring 5.28, 5.08
- and monitoring budgets 3.39
- and petitions 5.32
- and access to justice 6.45

climate change, *see resilience*

Colombia

- constitutional writ of protection 6.20
- Defensoria del Pueblo 5.26, 6.28
- judgement on household service provision, *Hernán Galeano Díaz c/ Empresas Públicas de Medellín E.S.P. y Marco Gómez Otero y otros* 6.10
- right to petition and appeal 2.26

Colombo Declaration, South Asian Conference on Sanitation 4.11

Committee against Torture, *See UN Committee against Torture*

Committee on Economic, Social and Cultural Rights, *See UN Committee on Economic, Social and Cultural Rights*

Committee on Enforced Disappearances, *See UN Committee on Enforced Disappearances*

Communities, *see civil society*

Community-Led Total Sanitation 3.18, 4.25

community management 4.28, 4.48, 7.62

Complaint mechanism 2.14, 2.28, 6.7, 6.24-26, 6.35-36, 6.40; *see Booklet 6, Justice*

Complaint procedure 2.26, *see Booklet 6, Justice*

connection charges 3.19

constitutional provisions 2.09

- recognition of human rights to water, sanitation 2.11
- right to a remedy 2.25
- non-discrimination, equality 2.14

consultation 2.21-24, 3.25, 4.14, 5.21, 5.35, 6.23, 6.29

Convention on the Rights of Persons with Disabilities (CRPD), *see UN Convention on the Rights of Persons with Disabilities*

Convention on the Rights of the Child (CRC), *see UN Convention on the Rights of the Child*

Co-operatives 4.35

corruption 4.38, 6.48, 3.34

- and access to information 7.44
- and access to justice 6.42
- and participation 3.23

Costa Rica 2.43

- community associations 4.48
- country mission by Special Rapporteur 5.35
- Supreme Court judgement on priority allocation, Sardinal case 6.09

Cote D'Ivoire 2.43

country missions by UN Special Rapporteur, *see UN Special Rapporteur*

D

Danish Institute for Human Rights 5.07

Demographic and Health Surveys (DHS) 5.36, 4.07

detention 1.38, 2.41, 4.17, 5.16, 5.34

development assistance, *see international development assistance*

disability 1.34, 2.31, 2.39-41, 4.8, 4.17, 5.11, 5.37, 6.12, 6.29, 6.42, 7.19, 7.21, 7.25-26, 7.62, 7.65

- prohibited ground of discrimination 7.22

disaggregated data 3.31, 5.8, 5.11, 5.13, 5.29, 5.37

disconnections 4.40, 4.37

- pre-paid water meters 4.41

discrimination, *see also inequality, see also equality, see booklet 7, Principles: Non-discrimination and equality*

- covert 2.16
- definition 7.19
- de jure or de facto 1.29, 7.11
- direct or indirect 7.11
- monitoring 5.11
- positive discrimination 7.1
- prohibited grounds of discrimination 5.11, 6.12, 7.10, 7.11, 7.19, 7.21-22, 7.24
- setting standards, targets 4.15

donor funding 3.25, 3.31

drought, *see resilience*

dualist States 2.7, 6.49

E

earthquakes, *see resilience*

economic sanctions 6.15

Ecuador

- right to participation 2.21

education, *see human right to education*

Education Monitoring and Information System (EMIS) 5.16

Egypt

- country mission by Special Rapporteur 5.35
- information on water quality 5.08

enforcement of judgements 6.52

equality 1.22, 1.29-30, 1.38, 2.13-15, 2.35, 3.9, 3.28, 4.12, 5.7, 5.11, 5.13, 5.21, 6.8, 6.12-13, *see Booklet 7, Principles: Non-discrimination and equality*

- affirmative action 1.30

equity 7.19

eThekwini Declaration, 2008, African Conference on Sanitation 3.06

Ethiopia 2.45

- right to participation 2.21
- discrimination 7.22

ethnicity, prohibited ground of discrimination 7.22

European Union

- Court of Auditors 3.37
- water quality 2.43

European Bank for Reconstruction and Development

- complaint mechanism 6.35

European Central Bank 4.45

European Commission 4.45

European Committee of Social Rights 6.34

- decision on Roma in Portugal, *ERRC v. Portugal* 6.13

European Convention on Human Rights and Fundamental Freedoms 6.34
- access to information 7.42

European Court of Human Rights 6.34

European Social Charter 6.34

exclusion 1.30, 2.15, 2.20, 2.37, 3.10, 4.7, 4.38, 6.43, 7.10, 7.13, 7.17, 7.18-19, 7.21, 7.23, 7.25-26, 7.64-65 *see also marginalisation, discrimination, stigma*

extraterritorial claims 6.18

extraterritorial obligations 1.27, 6.8, 6.15-18

executive branch of government 2.8, 2.9, 3.13, 3.16, 3.33-34, 3.38, 6.7, 6.19, 6.21, 6.40, 6.50-51, 7.44

F

faecal sludge
- regulation 4.50. 5.18

feasibility studies 4.07

food, *see human right to food*

financial sustainability 3.22

First Optional Protocol to the International Covenant on Civil and Political Rights 6.7, 6.21-22, 6.36, 6.44

flooding, see resilience

South Asian Conference on Sanitation, Colombo Declaration 4.11

fracking 7.46

fragile States 4.31-33
- and conflict situations 4.33
- and natural disasters 4.32

France 2.37

French Institute for Research in Africa (IFRA) 5.13

Freshwater Action Network 1.16

'friends of the court', *see amicus curiae*

G

gender 1.30, 1.36, 1.38, 2.23, 3.9, 4.1, 5.11, 5.13, 5.20, 6.45, 7.21-22, 7.24, 7.64

gender identity, prohibited ground of discrimination 7.24

General Comment No. 15 on the right to water 1.24, 6.49, 6.12
- definition of human right to water 2.05
- disaggregated data 5.11
- facilities in public places 4.23
- right to a remedy 6.06
- right to information 7.37
- and extraterritorial obligations 1.27

geo-positioning technology 5.22

Germany 4.30
- Berliner Wasserbetriebe (BWB) 3.11, 4.44
- Berliner Wassertisch 3.11
- referendum on access to information 4.44

Ghana 3.28
- National Water Policy 2.15
- Public Utilities Regulatory Commission Act 2.27
- Universal Periodic Review 5.34

Global Annual Assessment of Sanitation and Drinking-Water (GLAAS) Report 5.37
- budget analysis 3.07, 3.08, 3.31

Global Hand-washing Day 4.22

global positioning system (GPS) 5.12

Global Water Operators' Partnerships Alliance 5.12

Greece
- Council of State 4.45, 6.09
- loan conditions 4.45
- privatisation 4.45
- Athens Water Supply and Sewerage 4.45

Grootboom case, South Africa 6.22, 6.51

Guatemala 4.39

Guiding Principles on Foreign Debt and Human Rights 4.45

H

Haiti 4.32

Haki Zetu (Your Rights) 5.28

health, *see human right to health, hygiene*

health status, prohibited ground of discrimination 7.23

Helvetas 1.16, 4.39

HIV/AIDS
- prohibited ground of discrimination 5.16, 7.23
- People living with HIV Stigma Index 4.30

homeless people 1.38, 7.23

Honduras 2.15, 2.18

housing, *see human right to housing*

Human Rights Committee, *see UN Human Rights Committee*

Human Rights Council (HRC), *see UN Human Rights Council (HRC)*

human rights impact assessment 5.22

human right to an adequate standard of living 1.19, 1.23-24, 6.6, 7.24, 7.57, 7.64

human right to education 1.38, 3.6, 3.20, 4.38

human right to food 1.38, 3.6, 4.15, 4.20, 4.38, 5.22, 6.52

human right to housing 1.24, 1.38, 4.20, 6.22, 6.29, 6.34, 6.51

human right to health 1.24, 1.37, 2.12, 3.6, 4.33, 4.15, 6.9, 6.32

human right to life 1.24, 1.37, 2.12, 4.8, 5.33, 6.8-9, 6.13, 6.33, 6.36

human right to participation, *see participation*

human right to social security 1.38

human right to work 1.38

human right to sanitation
- legal content 1.33, 2.5, 2.12, 2.31, 4.12, 4.14, 5.5, 5.32, 6.28
- legal foundations 1.23
- two distinct rights 1.19

human right to water
- distinct from water rights 1.39
- legal content 1.33, 2.5, 2.12, 2.31, 4.12, 4.14, 5.5, 5.32, 6.28
- legal foundations 1.23
- two distinct rights 1.19

human rights obligations
- access to justice, *see access to justice*
- access to information, *see access to information*
- extraterritorial, *see extraterritorial obligations*
- fulfil 1.27, 6.10
- participation, *see participation*
- protect 1.27, 6.09
- non-discrimination and equality *see non-discrimination, equality*
- respect 1.26, 6.08

human trafficking victims 7.58

Hungary 4.40

hygiene 1.34-36, 2.6, 2.23, 2.32, 2.35, 2.46, 2.51-52, 3.10, 3.19, 3.22, 3.31, 4.11, 4.29, 4.41, 5.14, 5.19, 6.33, 7.23
- awareness-raising 2.19-20, 2.46, 2.45, 3.8, 3.28, 4.22, 4.24, 4.30
- menstrual *see menstrual hygiene, menstruation*
- monitoring 5.16, 5.37, 5.33

I

Iceland 2.26

income tax, *see taxes*

India
- monitoring right to food 6.52
- Constitution 2.12
- IRC WASHCost 3.28
- judgement on toilets in schools, Supreme Court of India 6.20

judgement on sanitation, Municipal Council, *Ratram v. Shri Vardichand and others* **6.**10

judgement on industrial pollution, *Enviro-Legal Action v. Union of India* **6.**50

judgement on manual scavenging, *Safai Karamchari Andolan and Ors. v. Union of India and Ors.*, **6.**13

manual scavenging **4.**51, **6.**13

monitoring **5.**12

participation **7.**58

Persons with Disabilities Act **2.**39

policy on separate toilets **2.**40

Right to Information Act **2.**17, **7.**44

indicators

outcome, definition **5.**07

process, definition **5.**07

structural, definition **5.**07

direct or proxy **5.**10

OHCHR guide **5.**07

indigenous peoples **2.**16, **5.**33, **6.**12-13, **6.**19, **6.**33, **6.**41, **6.**53, **7.**22, **7.**64

prohibited ground of discrimination **7.**22

Indonesia

minimum quantity of water **2.**33

informal settlements **3.**22

inequalities, *see equality, monitoring inequalities*

informal service providers **3.**22, **4.**20, **4.**26-27, **4.**35, **4.**48-50, **5.**18, **5.**23, **5.**26-27, **4.**48, *see also service providers*

informal settlements **2.**16, **2.**33, **2.**36, **2.**51, **3.**10, **3.**19-20, **3.**22-23, **3.**27-28, **4.**7-9, **4.**16, **4.**20, **4.**26-27, **4.**49, **5.**8, **5.**11-12, **5.**18-19, **5.**23, **5.**26, **5.**28, **6.**10, **6.**19, **6.**29, **7.**23

information technology **7.**45

Inter-American Commission on Human Rights **5.**33, **6.**33

Inter-American Court of Human Rights **6.**33

judgement on indigenous people's right to land, *Yakye Axa Indigenous Community v. Paraguay* **6.**13

international development assistance **3.**25, **6.**15

International Budget Partnership (IBP) **3.**10

International Commission of Jurists **1.**16

International Committee of the Red Cross **1.**38

international humanitarian law **4.**31

International Institute for Environment and Development **4.**27

International Monetary Fund (IMF)

loan conditions **4.**45

obligations under the UN Charter **4.**45

International Water and Sanitation Centre (IRC) **5.**19

monitoring water, sanitation delivery **5.**19

WASHCost **3.**28

International Water Association **1.**16

international watercourses **6.**15, **6.**18

investment agreements **6.**15

Ireland

European Court of Human Rights judgment on right to legal representation, *Airey v. Ireland* **6.**43

Universal Periodic Review **5.**34

Sanitation in prisons **5.**34

Israel

Human Rights Committee Concluding Observations **5.**33, **6.**18

J

Japan

country mission by Special Rapporteur **5.**35

Joint Monitoring Programme (JMP), *see WHO/UNICEF Joint Monitoring Programme*

Jordan

access to information law **7.**44

country mission by Special Rapporteur **5.**35

judicial remedies *see also quasi-judicial remedies* **6.**5-7, **6.**10, **6.**15, **6.**18, **6.**20, **6.**23, **6.**27, **6.**30, **6.**41, **6.**47, **6.**48, **6.**52-53

justiciability **1.**9, **6.**6-7, **6.**23

K

Kenya

Akiba Mashinani Trust **6.**45

anti-corruption toolkit **4.**39

civil society **6.**45

Constitution **2.**21

country mission by Special Rapporteur **5.**35

Draft Water Bill 2014 **3.**20

meaningful engagement **6.**14

Model Water Services Regulations **2.**22, **2.**37, **2.**44, **2.**46

Muungano Support Trust **6.**45

informal settlements **3.**22, **4.**27

inequalities **5.**13

National Water Services Strategy **2.**35

policy on school latrines **2.**41

profits by service providers **3.**20

regulation of informal providers **4.**50

social connection policy **3.**23

Water Act 2002 **2.**26

Water Action Groups **6.**27

Urban Informal Settlements Programme **3.**23

Water Services Regulatory Board (WASREB) **5.**23, **6.**27

Kiribati

country mission by Special Rapporteur **5.**35

L

language

and access to information **7.**45

Lao, Peoples Democratic Republic of

Water and Water Resource Protected Zones **2.**43

open defecation **2.**16, **2.**4, **5.**21, **6.**4, **7.**23

Legal Aid **6.**43

legal instruments

constitution **2.**08

executive branch **2.**08

laws **2.**08

policies **2.**08

regulations **2.**08

legal tenure, *see tenure*

legislative branch **2.**09

and budgets **3.**33, **3.**38

Lesotho **2.**50

Limburg Principles on the Implementation of ICESCR **7.**15

local authorities **1.**16-17, **2.**19, **2.**29, **2.**39, **3.**13, **3.**15-16, **3.**28, **3.**30, **3.**34, **3.**39, **4.**5, **4.**11, **4.**13, **4.**27, **4.**28, **5.**6, **5.**12, **5.**22, **5.**26, **5.**28, **6.**14, **6.**28, **6.**42, **6.**50, **7.**44-45

local government, *see local authorities*

M

Maastricht Principles on Extraterritorial Obligations **1.**25, **6.**15, **6.**18, *see also extraterritorial obligations*

macroeconomic policies **3.**17

Malawi

Blantyre City Council Informal Settlement Unit **4.**27

manual scavenging **1.**36, **4.**51, **6.**13, **7.**22

marginalisation **1.**26, **1.**38, **2.**21-23, **3.**16, **3.**27-28, **4.**40, **5.**29, **6.**12, **6.**22, **6.**41, **7.**17-18, **7.**23, **7.**35, **7.**64, *see also exclusion, discrimination, stigma*

marital status, prohibited ground of discrimination 7.24

maximum disclosure of information 7.38

menstruation 1.36, 1.38, 2.52, 4.30, 6.13, 7.22, 7.64

- and stigma 4.30
- menstrual hygiene 1.34-36, 2.34, 2.45, 2.51, 4.30, 5.19, 5.37
- Menstrual Hygiene Day 4.22

mental health, prohibited ground of discrimination 7.23

migrant workers, prohibited ground of discrimination 7.24

Millennium Development Goals 5.36

mobile phone technology 5.22

Modern Architects for Rural India (MARI) 3.11

monist States 2.07, 6.49

monitoring, *see Booklet 5, Monitoring* 1.20, 1.22, 1.24, 1.31, 2.19, 2.23, 2.27-28, 2.34, 2.44, 2.46, 3.13, 3.18, 3.30, 3.36-39, 4.7, 4.10, 4.12, 4.39, 4.47, 6.18, 6.23-24, 6.27-28, 6.30, 6.34, 6.51-53, 6.57-58, 7.63, 7.76, 7.79

- acceptability 5.20
- accessibility 5.15
- affordability 3.18, 5.19
- availability 4.10, 5.15
- budgets 3.30, 3.37, 5.22, 5.29
- budget expenditure 3.39
- community-based 5.29
- equity 5.12
- household-level 5.12, 5.16, 5.19
- in schools 5.16
- inequalities 5.11, 5.13, 5.36
- local government 3.13
- mechanisms 2.27, 3.38, 5.6-8, 6.23, 6.53
- processes 5.6, 5.13, 5.28, 5.36, 6.52, 7.62
- progress 4.6
- quality 2.44, 5.17-18, 5.36, 6.27
- service levels 1.31, 3.6
- service providers 5.23, 5.27, 5.29
- sustainability 5.21
- through treaty bodies 5.32, 5.34, 6.24

Mozambique

- budget 3.11
- legislation on water and sanitation 2.22
- Local Water Integrity Programme 4.39
- informal service provision 4.49
- WASHCost 3.28
- Water Regulatory Council (CRA) 4.50

Multiple Indicator Cluster Surveys (MICS) 4.07, 5.36

Municipalities, *see local authorities*

Muungano Support Trust 6.45

N

Namibia

- country mission by Special Rapporteur 5.35
- affordability 2.48
- National Sanitation Strategy 2.20
- right to participation 2.52
- Water Resources Management Act 2.39

National human rights institutions (NHRIs) 1.16, 2.26, 4.5, 5.5, 5.25-27, 5.34, 6.23, 6.24, 6.28-29, 6.37, 6.43

Nepal

- budget 3.08
- chhaupadi 2.52, 6.13, 7.22
- FEDWASUN 3.39
- judgement on chhaupadi, Dil Bahadur Bishwakarma v. Government of Nepal 6.13
- Local Water Integrity Programme 4.39
- open defecation 7.22

nepotism, *see corruption*

Nicaragua

- General Law on Water Resources 2.33
- affordability 2.48
- Safe Water and Sanitation Committees 4.28

Nigeria

- African Commission on Human and Peoples Rights decision on corruption, *SERAP v Nigeria* 4.38
- African Commission on Human and Peoples Rights decision on oil operation in Niger Delta, *SERAC and CESR v. Nigeria* 6.9

nomadic peoples 7.22

non-discrimination, *see Booklet 7, Principles: Non-discrimination and Equality* 1.17, 1.22, 1.26-27, 1.29, 1.30-31, 1.38, 2.13, 2.15-16, 2.37, 2.39, 3.5, 3.6, 3.10, 3.20, 3.24, 4.6, 4.12, 4.15, 4.21, 4.30, 4.51, 5.7-9, 5.11, 5.21, 5.28, 5.32-33, 6.8, 6.12-13, 6.18, 6.22, 6.41, 6.44, 7.64

- budgeting 3.18
- constitutional guarantee 2.14
- definition 7.10
- legal foundations 7.9

Limburg Principles 7.15

non-governmental organisations (NGOs) 1.6, 2.19, 3.11, 3.25, 3.30, 3.38, 4.9, 4.27, 4.30, 4.35, 4.43, 4.48, 5.25, 5.28, 5.34, 6.20, 6.23, 6.32, 6.33-34, 6.36, 6.42-44, 6.52-53, 7.64-65, 7.77

- as donors 3.25
- and monitoring 5.28
- and sustainable service provision 7.77
- and representative participation 7.65

non-retrogression 1.26, 1.32, 3.8, 3.17, 3.28, 4.21, 4.40-41, 5.21-22, 5.29, 6.11, 7.73-79

non-State service provision 3.25, 4.43-44, 4.46-47, 6.9. 6.12, 6.26

O

obligations, *see human rights obligations*

obstacles to access to justice 6.44

Office of the High Commissioner for Human Rights (OHCHR) 1.16

- Human rights indicators 5.07

Older persons 1.34, 1.21, 4.8, 4.17, 4.29, 6.20, 7.23

Open Budget Survey 3.10

open defecation 2.16, 4.25, 5.21, 7.22

Open Government Data 5.08

open government 7.38

Optional Protocol to the UN Convention on the Elimination of Discrimination against Women 6.36

Optional Protocol to the UN Convention on the Rights of Persons with Disabilities 6.36

Optional Protocol to the UN International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) 6.44, 6.07, 6.36

- standard of reasonableness 6.22

Organisation of Economic Cooperation and Development,

- Guidelines for Multinational Enterprises 6.35

Organization of American States

- Model Law on access to information 7.40

P

Pakistan

- Concluding Observations by CEDAW 5.32
- National Drinking Water Policy 2.20, 2.23

Palestine, State of

- water shortage 5.33
- Concluding Observations 6.18

Panama

- access to sanitation for prisoners 2.41

Paraguay

- IACtHR judgment on water provision, *Sawhoyamaxa Indigenous Community v. Paraguay* 6.33
- indigenous peoples 6.19

participation 1.31, 1.38, 2.19-24, 2.29, 2.51-52, 3.10, 3.13, 3.18, 3.23, 3.25-26, 3.30, 3.32, 4.12, 4.14, 4.21, 4.26, 4.32, 4.38-39, 4.44, 4.45, 4.47, 5.29, 5.32, 5.34, 6.14, 6.18, 6.44, 6.52, 7.35, 7.78 *and see Booklet 7, Principles: Right to participation see also consultation*
- costs of 7.63
- direct or indirect 7.65
- right to, definition 7.55
- right to, legal foundations 7.54

Participatory Budgeting 2.21, 3.13, 3.32, 7.35, 7.58, *see also budgets*

Participatory guidelines 2.20

Participatory management 2.23

Participatory process 1.31, 2.24, 3.32, 3.29, 6.52, 6.58, 7.38, 7.61, 7.63, 7.64

People living with HIV Stigma Index, the 4.30, *see also stigma*

Performance Assessment System project, India 5.12

personal and domestic uses, water 1.33, 1.36, 1.38-39, 1.42, 2.6, 2.36, 4.15, 4.16, 4.32-33, 4.41, 5.14, 5.22, 6.9

persons with disabilities 1.34, 2.31, 2.39, 2.40-41, 4.8, 4.17, 6.12, 6.29, 6.42, 7.65 *see also disabilities, see also UN Convention on the Rights of Persons with Disabilities*
- discrimination 7.22
- participation 7.62

Peru
- La Gotita, water mascot 4.22
- responsibilities of service providers 2.44
- informal settlements 3.22
- National Programme for Rural Water and Sanitation 2.23
- National human rights institution 6.23
- Water Resource Act 2.33

Petitions 2.26, 5.32, 6.33, 7.53

physical accessibility of water, sanitation, *see accessibility of water, sanitation*

planning for resilience, *see resilience*

political opinion, prohibited ground of discrimination 7.24

Portugal
- Auditor of Public Accounts 5.23
- access to courts 2.25
- Roma 6.13, 6.34
- privatisation 3.26
- Regulator for Water and Wastewater (ERSAR) 3.38, 6.27
- austerity measures 5.22

positive discrimination 7.13, 7.19, *see also affirmative action, temporary special measures*

pre-paid water meters 4.41

prisoners, *see detention*

private sector participation 2.14-15, 2.26, 2.44, 3.17, 3.18, 3.25-26, 3.38, 4.35, 4.36, 4.43-47, 4.49, 5.5, 5.23, 6.9, 6.12, 6.50, 7.41-42, 7.78
- Private sector investment 3.25
- and sustainability 7.78
- and prohibited grounds of discrimination 7.19, 7.21

profits and human rights 4.46

progressive realisation 1.25-26, 2.31, 3.8, 3.17

progressive taxation, *see taxes*

property, prohibited ground of discrimination 1.29, 7.9, 7.19, 7.21, 7.23

pro-poor pricing 4.37

proxy indicators 5.10, 5.20, 5.36, *see also indicators*

Public Expenditure Tracking Survey (PETS) 3.34, 3.39, *see also monitoring*

public interest litigation 6.20

Q

quality of water, sanitation 1.22, 1.33, 1.35, 2.43-46, 3.19, 3.22, 3.28, 3.37, 3.38, 4.13, 4.18-21, 4.40, 4.47-50, 5.8-10, 5.12, 5.17, 5.18, 5.22-23, 5.26, 5.27, 5.32, 5.36-37, 6.9, 6.19, 6.26, 6.34, 6.43, 7.46
- legal provisions 2.43
- monitoring 5.17
- standards 4.18

quasi-judicial mechanisms 6.6-7, 6.23-24, 6.10, 6.18, 6.20, 6.25, 6.28, 6.30, 6.41, 6.48

R

race, prohibited ground of discrimination 7.22

rationing 4.32

referendum
- in Germany on access to information 4.44
- in Scotland, on service model in privatisation 4.44
- in Uruguay on constitutional guarantee 4.44

refugees 1.38
- prohibited ground of discrimination 7.24

regulation, *see also monitoring* 2.09, 4.11, 4.20, 4.18, 4.36, 4.47, 5.14, 5.18, 6.9, 6.15 6.18, 6.27, 7.62, 7.76, 7.79, *see also regulatory bodies*
- of informal service providers 4.26, 4.49-50
- of business 6.18
- anti-corruption 4.38

regulators, *see regulatory bodies*

regulatory bodies 4.5, 4.12, 4.42, 4.35, 4.47, 4.50, 5.5-6, 5.12, 5.22, 6.19, 6.24, 6.27, 6.30
- and monitoring 5.26
- complaints 6.26

rehabilitation of facilities 5.21

resilience 4.15, 4.21, 4.32, 4.35

retrogression 1.26, 6.11, *see also non-retrogression, sustainability*
- sustainability 7.75

training on human rights 6.47

right to a remedy 2.25-26, *see Booklet 6, Justice, see also access to justice, accountability*

ring-fencing 3.20

river basin management 4.15

Roma 2.16, 3.34, 4.40, 6.8, 6.13, 6.34, 7.22
- Bulgaria 6.08
- Hungary 4.40
- European Committee of Social Rights, *European Roma Rights Centre v. Portugal* 6.13, 6.34
- Slovenia 3.34

rural areas 1.30, 2.16, 2.20, 2.23, 4.28 2.33, 2.35, 2.42-43, 2.49, 3.10, 3.27-28, 3.39, 4.7-9, 4.16, 4.18, 4.24, 4.28, 4.30, 4.48, 5.8, 5.12-13, 5.27, 5.29, 5.32, 7.55

rural sanitation 2.23, 2.40, 3.27, 3.29, 4.39, 7.62

rural water supply 2.23, 2.40-41, 2.48, 4.39

Rural Water Supply Network 1.17

Russian Federation
- Water Code 2.36

Rwanda
- participation 2.49
- rural water supply 2.41
- National Policy for Water and Sanitation 2.19

S

Sanitation and Water for All partnership 1.16, 3.07

sanitation workers 4.30, 4.51, 7.58

São Tomé and Príncipe 2.22

scheduled castes 4.51, 7.22

Scotland
- referendum on service model 4.44

security of tenure 2.16, 2.36, 4.8, 4.24, 4.26-27, 6.19, 7.23

Senegal
- standpipes 3.22
- country mission by Special Rapporteur 5.35

service providers 1.15-16, 1.18, 1.22, 1.31, 2.17, 2.22-23, 2.26-27, 2.37, 2.44, 2.50, 3.19-20, 3.22-23, 3.25, 3.30, 3.34, 3.36, 3.39, 4.20-21, 4.26-28, 4.35-51, 5.5-6, 5.12-13, 5.17-18, 5.23, 5.25-29, 6.9, 6.12, 6.24, 6.26-27, 6.30, 7.23, 7.35, 7.63, 7.77

rural 4.18

small-scale service provider 4.27, 4.48-50, 5.23, 5.27, 7.63, *see also informal service providers*

complaints 6.26

and monitoring 5.27, *see also monitoring service provision*

sex, prohibited ground of discrimination 1.29, 2.37, 7.9-10, 7.19, 7.21-24

sex education 4.30

sexual orientation, prohibited ground of discrimination 7.24

sex workers 7.23, 7.58

Shack Dwellers International, *see Slum Dwellers International*

Slovenia

discrimination 2.16

country mission by Special Rapporteur 5.35

Roma 3.34

Slums, *see informal settlements*

slum dwellers 1.38, 4.27, 5.28, *see also informal settlements*

Slum Dwellers International 4.27, 5.28

small-scale service providers, *see also service providers, informal service providers*

social audits 3.39

South Africa

access to information 7.41

judgement on budgeting, *Blue Moonlight case* 6.22

Judgement on unenclosed toilets, *Beja and Others v. Premier of the Western Cape and Others* 6.14

constitution, equality before the law 2.14

disconnections 4.41

eThekwini Water and Sanitation Services 4.24

Grootboom case 6.22, 6.51

indigent register 2.16

judgement on access to water, *Mazibuko v. City of Johannesburg* 6.20

judgment on disconnection, *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council* 6.50

judgement on meaningful engagement, *Occupiers of 51 Olivia Road v. City of Johannesburg* 6.14

National Water Act 2.22

regulations 2.34, 2.40, 2.49, 2.51

South African Human Rights Commission 6.29

standing 6.20

subsidies 3.28

Water Services Act 2.27, 2.29, 2.32, 2.50, 4.41

water supply, sanitation White Paper 1994 2.19

South Asian Conference on Sanitation, Colombo Declaration 4.11

Spain 4.28

Special Procedures, *see UN Special Procedures*

Sri Lanka 2.40

standard of review 6.21

standards for supply of water, sanitation 4.13

acceptability 4.21

accessibility 4.17

affordability 4.20

availability 4.15

quality 4.18-19

sustainability 4.21

standing

definition 6.20

statelessness, prohibited ground of discrimination 7.24

stigma 2.16, 2.37, 4.8, 4.21, 4.30, 4.51, 5.16, 6.12-13, 6.44, 7.17-18, 7.22-23, 7.64, 7.65

definition 7.18

and manual scavenging 4.51, 7.22

and menstruation 4.30

and sanitation workers 4.30

subsidies 3.19, 3.23, 3.29

targeting 3.28

Substantive equality 1.22, 1.29-30, 1.38, 2.13-15, 2.35, 3.9, 3.28, 4.12, 5.7, 5.11, 5.13, 5.21, 6.8, 6.12 -13, *see Booklet 7, Principles: Non-discrimination and equality*

affirmative action, *see also positive discrimination, temporary special measures*

Sudan

Sudan Human Rights Organisation and COHRE v. Sudan 4.33, 6.32

Supreme audit institutions (SAI) 3.37

sustainability 1.22, 1.31, 1.32, 2.23, 2.37, 2.48, 3.10-11, 3.20-22, 4.10, 4.21, 4.45, 5.21-22, 5.28-29, *see also non-retrogression, retrogression*

definition 7.75

monitoring 5.21

retrogression 5.21

Switzerland 4.28

systemic violations 6.19-21, 6.23, 6.36, 6.40, 6.44, 6.50, 6.52

T

Tajikistan 2.43

Tanzania

monitoring 5.29

TAWASANET 3.39

tracking expenditure 3.34, 3.39

target-setting 1.22, 1.31, 2.41, 3.5, 3.7, 3.19, 3.27-28, 3.39, 4.6, 4.10, 4.13–24, 5.9-10, 5.17, 5.26, 5.37, 7.13, 7.18, 7.56

interim targets 4.10-18, 4.25, 5.10, 5.17

for operation and maintenance 5.21

tariffs 3.18-19

regulation 3.18, 4.10

participation 3.23

taxes 3.7, 3.17-18, 3.24, 3.27, 7.78

temporary special measures 7.19, *see positive discrimination, affirmative action, see also non-discriminaton, equality*

tenure, *see security of tenure*

Thailand

country mission by Special Rapporteur 5.35

Third Optional Protocol to the Convention on the Rights of the Child 6.36

Togo 5.32

trade secrets legislation 7.46

transformative legal remedies 6.52

transgender people

discrimination 2.37

treaty bodies, *see UN Committee on Economic, Social and Cultural Rights*

Tuvalu

country mission by Special Rapporteur 5.35

participation 7.78

Univeral Periodic Review 5.35

U

Uganda

ring-fencing 3.20

participation 3.30

UK

Department for International Development, complaint mechanism 6.35

Equality Act 2.14

Plain English Guide 2.20

Water Industries Act 1991 4.41

White Paper, Transforming Public Services 2.28

Ukraine

European Court judgement on pollution, *Dubetska and Others v Ukraine* 6.34

UN Committee against Torture, 1.38, 5.33

UN Committee on Economic, Social and Cultural Rights (CESCR) 1.6, 1.24, 2.5, 3.5-6, 3.34, 4.23, 4.45, 5.32-33, 5.35, 6.6, 6.9, 6.11-12, 6.18, 6.22-24, 6.26, 6.30, 6.36-37, 7.11, 7.15, 7.22-24, 7.37

- General Comment No. 20 on non-discrimination 7.11
- monitoring treaty implementation 5.32
- Reporting Guidelines 5.32
- right to remedy 6.06
- Statement on the Right to Sanitation, 2010 5.35
- General Comment No. 15 on the right to water 1.24, 1.26-27, 2.5, 4.23, 5.11, 6.6, 6.8, 6.12, 6.49, 7.37
- Concluding Observations 6.18
- Inquiry procedure 5.33

UN Committee on Enforced Disappearances 5.33

UN Committee on the Elimination of All Forms of Discrimination against Women 5.33

UN Committee on the Elimination of Racial Discrimination 6.24

UN Committee on the Rights of Persons with Disabilities 5.33, 6.24

UN Committee on the Rights of the Child 5.32, 6.24

UN Convention Against Corruption (UNCAC) 4.38

UN Convention on the Elimination of All Forms of Discrimination against Women 1.24, 6.12, 6.24, 7.9, 7.55

UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 7.09, 7.22

UN International Convention on the Protection of All Migrant Workers and Their Families 7.09

UN Committee on the Rights of Persons with Disabilities 1.24, 6.12, 6.36, 7.9, 7.22, 7.56, 7.65

UN Convention of the Rights of the Child 1.24, 7.9, 7.22, 7.56

UN International Covenant on Civil and Political Rights (ICCPR) 1.37, 3.12, 5.33, 6.6, 6.36, 7.9, 7.37, 7.42, 7.55

- art. 2, non-discrimination 7.09
- art.2, right to a remedy 6.06
- art. 19, access to information 3.05, 7.37, 7.42
- art. 25, right to participation 3.05, 3.12, 7.55
- First Optional Protocol, complaint mechanism 6.36

UN International Covenant on Economic, Social and Cultural Rights (ICESCR) 1.23-26, 1.38, 2.8, 3.5, 4.31, 4.45, 5.32, 6.6-7, 6.9, 6.26, 6.30, 6.36, 6.49, 7.9, 7.11, 7.19, 7.22-24, *see also human right to education, human right to food, human right to health, human right to housing*

- progressive realisation, maximum resources 3.5
- art. 11, right to adequate standard of living 6.06
- non-discrimination 7.09

UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 5.32, 7.09

- and the human rights to water and sanitation 1.24
- right to participation 7.55

UN Convention on the Elimination of Racial Discrimination (CERD)

- article 14, complaint mechanism 6.36

UN Convention on the Law of the Non-Navigational Uses of International Watercourses 6.18

UN Convention on the Rights of Persons with Disabilities (CRPD)

- human rights to water and sanitation 1.24
- discrimination 6.12
- non-discrimination 7.09
- right to participation 7.56, 7.65

UN Convention on the Rights of the Child (CRC) 7.22

- human rights to water and sanitation 1.24
- non-discrimination 7.09
- right to participation 7.56

UN Declaration on the Right to Development

- participation 7.55

UN Development Programme Human Development Report, 2006 3.6

UN Economic Commission for Europe (UNECE) 1.16

- Convention on the Protection and Use of Transboundary Watercourses, Protocol on Water and Health 6.18
- Protocol on Water and Health 7.56
- Aarhus Convention 7.58, *see also Aarhus Convention of the UNECE*

UN General Assembly 1.16, 2.11, 3.37, 5.34, 6.28

- right to freedom of information 7.37
- resolution on the human right to water and sanitation 1.19, 2.11, 6.8

UN Guiding Principles on Business and Human Rights 4.29

UN Sub-Commission Guidelines on the Promotion of the Realisation of the Right to Drinking Water and Sanitation 4.14

UN-HABITAT 5.12

UN Human Rights Committee 1.38, 5.33, 6.8, 6.18, 6.24, 6.36, 6.48, 7.37, 7.41, 7.42

- and extraterritorial claims 6.18
- Bulgaria 6.08
- Concluding Observations 6.18
- Palestine 6.18
- General Comment No. 34 on freedom of opinion and expression 7.37, 7.41

UN Human Rights Council (HRC) 1.16

- resolution on human right to water and sanitation 1.19, 2.11
- resolution renewing mandate of Special Rapporteur 1.19

UNICEF 1.16

- Bottleneck Analysis Tool 4.09
- sustainability 5.21
- monitoring 5.16
- WHO/UNICEF Joint Monitoring Program 2.39, 4.24, 5.10-11, 5.36

Universal Declaration of Human Rights 1.23, 1.29

- art. 8, right to an effective remedy 2.25
- art. 19, access to information 7.37
- art. 21, right to participation 7.55
- arts. 1, 2, equality and non-discrimination 1.29, 7.09

Universal Periodic Review 5.34

- implementation of recommendations 5.34
- monitoring 5.31

UN Special Procedures 1.20, 5.35

- monitoring 5.34

Urgent Appeals 5.35

- Allegation Letters 5.35
- Country missions 1.20, 5.35

UN Special Rapporteur on the human right to safe drinking water and sanitation 1.20, 2.05, 5.35

- country missions 1.20, 5.35

UN Special Rapporteur on Torture 1.38, 7.24

UN Subcommittee on Prevention of Torture 5.32

"untouchability" 4.51

Urgent Appeals 5.35

Uruguay

- Constitutional amendment 2.21
- country mission by Special Rapporteur 5.35
- mandatory connection 2.32
- water quality 5.17
- Montevideo 3.13
- referendum on water, sanitation 4.44

USA
country mission by Special Rapporteur **5.**35
isconnections **4.**41
racial discrimination **6.**12
regulations **2.**34, **2.**40-41
Safe Drinking Water Act **4.**18
maintenance **3.**28
emergencies **7.**46
fracking **7.**46

V

value-added taxes (VAT), *see taxes*

Venezuela **2.**22

vulnerability **7.**18

W

WASHCost, *see IRC*

WASH in Schools **4.**22

wastewater
management **4.**20, **5.**18
plants **7.**75
treatment **2.**44, **4.**51

WaterAid **1.**16, **3.**08, **3.**30, **4.**30, **5.**12

water and sanitation
as two distinct human rights **1.**19

Water and Sanitation Program (WSP) **4.**32

water for personal and domestic uses, *see personal and domestic uses, water*

water for growing essential food **1.**37

Water Integrity Network (WIN) **4.**39, *see also corruption*

WaterLex **4.**09

water mascots **4.**22

water quality standards **5.**17, *see also quality*

water rationing **4.**40

water rights
distinct from human right to water **1.**39

water scarcity **4.**40

Water Supply and Sanitation Collaborative Council **1.**16

whistleblowers **7.**39

WHO/UNICEF Joint Monitoring Programme, **2.**39, **4.**24, **5.**10-11, **5.**36
metric for monitoring elimination of inequalities **5.**11

World Bank **3.**07, **4.**38
persons with disabilities **7.**22
obligations arising from UN Charter **4.**45
expenditure tracking **3.**34
Water and Sanitation Programme **1.**16

World Bank Inspection Panel **6.**35

World Business Council for Sustainable Development **4.**29

World Health Organization (WHO) **1.**16
guidelines for drinking-water quality **4.**13, **4.**18, **5.**17
surveys of health institutions **5.**16
WHO/UNICEF Joint Monitoring Program, **2.**39, **4.**24, **5.**10-11, **5.**36

writ of protection
in Colombia Constitution **6.**20

www.righttowater.info **1.**17

Z

Zambia
Devolution Trust Fund **5.**27
low-cost water technology **5.**27
National Water Supply and Sanitation Council **5.**27

Zimbabwe
judgement on disconnection, *Farai Mushoriwa v. City of Harare* **4.**41

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Page 4 A girl wets her toothbrush at a community tap in Itopenty Village, near the town of Monteagudo, capital of Hernando Siles Province in the south-central department of Chuquisaca in Bolivia 2008. UNICEF/ NYHQ2008-1620/.

Page 9 Lizbeth Vela, 11, washes clothes at a tap outside her home, in the Molle Mayu community in Icla Municipality, in the drought-affected department of Chuquisaca in the Chaco Boliviano region of Bolivia in 2013. UNICEF/NYHQ2013-1483/.

Page 15 Boy carries water from protected spring to his village. UNICEF DRC/2014.

Page 24 Cleaning products displayed inside a home in Goswami Nagar, a post intervention slum in Kanpur, Utter Pradesh, India, 2013. WaterAid/ Poulomi Basu.

