

“We all want the same thing. We want a world where everyone has access to sanitation and water. We want a world where people do not get sick from the water they drink or make other people sick because they are forced to defecate in the open. The good news is that we can do this.”

CATARINA DE ALBUQUERQUE, STATEMENT AT THE FIRST CONSULTATION ON POST-2015 MONITORING OF DRINKING WATER AND SANITATION, BERLIN, MAY 2011.

Defining, analysing, assessing and presenting good practices has been a challenging but uplifting task for the UN Special Rapporteur on the human right to safe drinking water and sanitation. Through her work, she has found that increased participation, the strengthening of accountability and removal of discriminatory practices is transforming the landscape and making the rights to water and sanitation a reality. She has encountered optimism and determination within communities, local and national government, and international organisations, as well as the vision of a better world where all people, including those who are traditionally excluded, have access to water and sanitation services.

C. de Albuquerque

ON THE RIGHT TRACK

Good Practices in realising the rights to water and sanitation

Catarina de Albuquerque

UNITED NATIONS SPECIAL RAPPORTEUR

ON THE HUMAN RIGHT TO SAFE DRINKING WATER AND SANITATION

with Virginia Roaf



ON THE RIGHT TRACK

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FOREWORD BY

UN Secretary-General Ban Ki-moon

The important advances of 2010, when the United Nations General Assembly and the Human Rights Council recognised the human right to water and sanitation, provide a solid legal framework for Governments and the UN system alike. Water and sanitation are central to the achievement of development goals, resulting in a momentum that helps to focus the attention on these sectors that they urgently need.

It is not acceptable that close to half of all people in developing countries are suffering from health problems caused by poor water and sanitation, or that slum-dwellers pay five or even ten times as much for their water as wealthy residents of the same cities, or that more than one billion people in rural communities live without toilets and have to defecate in the open.

The task now is to translate this commitment into specific obligations – both at international and national levels. This is not an easy task that lies ahead, there are doubtless challenges that we cannot foresee, but it is crucial to set the framework to protect those who are least able to protect themselves.

This unique book initiated and authored by the UN Special Rapporteur on the right to safe drinking water and sanitation, Ms. Catarina de Albuquerque, offers solutions, ideas and pragmatic examples of legislation, policies, programmes, advocacy approaches and accountability mechanisms to demonstrate how the rights are becoming reality for the excluded, forgotten and the voiceless.

It is inspiring and thought-provoking to discover examples of what States, UN agencies, service providers, civil society organisation and other stakeholders can achieve by working together, aiming at addressing discrimination, ensuring that services are affordable to the poorest, and ensuring that children are able to

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fulfil their potential, by remaining healthy, and attending school, and that women and girls can be empowered and achieve equality.

Many governments have already included the rights to water and sanitation in their constitutions and domestic legislation, but there is more to be done by States in ensuring that the right policies are developed, that financing is available to fund the policies, that discriminatory practices, against women, or minorities, the elderly or the sick, are identified and eliminated, such that all people do not have to suffer the indignity of a lack of access to sanitation and water.

I welcome the publication of this book and take this opportunity to recommit the support of the United Nations system to reaching the target of reduction by half, by 2015, the proportion of people living without safe water and sanitation.

Ki Mow Ban

FOREWORD BY

His Royal Highness, the Prince of Orange, Chair of UNSGAB



2.6 billion people do not have access to improved sanitation, and almost 1 billion people do not have access to improved water sources, according to the latest figures from the UN Joint Monitoring Programme. These figures hide the fact that drinking water from improved sources is not a guarantee of good quality, and that over 1 billion people defecate in the open, with no dignity and no privacy. Women and girls are particularly badly affected by lack of access to water and sanitation,

because of the traditional role that women play in managing these services, and also because their voices, particularly those of poor women, are not heard by those in power. Unclean water and poor sanitation are the world's second biggest killers of children globally.

I passionately believe that this shocking and humbling reality must be overturned, so that all people can live better lives, in health, dignity and safety. I am convinced that the rights to water and sanitation have a significant contribution to make.

The recognition of universal human rights is one of the three pillars of the United Nations. The ability of every human being to exercise his or her equal, inalienable rights is the foundation of freedom, justice and peace in the world, and is crucial for global security and development. Adoption of the 2010 United Nations General Assembly and Human Rights Council resolutions on the right to safe drinking water and sanitation has been a crucial step towards affirming our responsibility to ensure that all people have access to water and sanitation services that are safe, sufficient, continuous, affordable, accessible and acceptable, regardless of who we are or where we come from, what we believe in or how we choose to live our lives.

The UN Special Rapporteur on the right to safe drinking water and sanitation has made it her mission to call the world to arms, by mainstreaming the rights to water and sanitation into international, regional, national and local

organisations, as well as into all the available instruments, treaties, legislation, policies, programming and implementation processes. The rights to water and sanitation provide a framework for governments, service providers, regulators and civil society to work together to find solutions to entrenched problems of lack of access to water and sanitation services.

This book demonstrates not only why the rights to water and sanitation provide a crucial understanding of why people do not have access, but also provides numerous examples of how access to water and sanitation services is being delivered, providing safe, affordable services that are accessible to all, with respect for human dignity. This book shows that human rights are possible and provides invaluable guidance for policy-making.

The UN Secretary-General's Advisory Board on Water and Sanitation (UNSGAB) in particular, is committed to exploring and promoting the value of the rights to water and sanitation. 2015 – the end date for the MDGs – is just around the corner. We hope that human rights will help us to define ambitious goals for water and sanitation in the post-2015 development agenda, providing an inspiring framework for achieving full universal access to water and sanitation.



PREFACE BY

Catarina de Albuquerque



When I was appointed Special Rapporteur on the right to safe drinking water and sanitation in 2008,¹ one of the first assignments the UN Human Rights Council gave me was to collect good practices on the implementation of the rights to water and sanitation. At first I was overwhelmed by the task ahead, because human rights advocates

and defenders have traditionally focused on drawing attention to cases of violations and disrespect for human rights, with the objective of giving a voice to the voiceless and pushing governments to implement changes. We are used to concentrating on what is still wrong, on the shortfalls in Governmental policies and actions, and less on the good steps that are already being taken to implement human rights. The request by the Council to work on good practices therefore obliged me to venture into a new area of work.

Furthermore, given that the compilation of good practices was to include both water and sanitation, and practices from all stakeholders and from all over the world, I was concerned that it would be difficult to determine which practices to include, and how to create a convincing structure to showcase them.

However, when I started my search for good practices, and first met with different stakeholders who had so many interesting and inspiring ideas and initiatives to share, I quickly realised that this task would be a wonderful opportunity to show what is already being done to secure these rights, inspire those wanting to learn how to implement the rights, and gain a better understanding of the challenges involved in their implementation. I also realised that determining whether a practice is good would also assist in clarifying why a practice is bad, or why it violates human rights.

When I started to work on the compilation, the rights to water and sanitation had not yet been expressly recognised by the United Nations and I saw this work as an opportunity to show mainly UN Member States, but also other stakeholders

that are sometimes a little sceptical regarding the meaning and implications of human rights, that the rights to water and sanitation are tangible, and that their realisation is possible and not a mere aspiration or distant dream. Human rights are part of our daily lives and work, and the stakeholders I met with were often already working for the implementation of human rights, even if they did not know it.

The first step I took in this task was to consider the full intention of the mandate given to me by the Human Rights Council. My mandate was to compile “best” practices, however I found it more useful to define practices as “good” rather than “best”, to enable broader discussions of what is acceptable from a human rights perspective and also to recognise that, while a practice may be excellent, there is often room for improvement. Additionally, I wanted to acknowledge that a “best practice” in one setting may well be a poor practice in another, that practices are products of their environment, time and context and that no practice is ever complete, but has to continue indefinitely to ensure relevance and sustainability. Finally, I also found the expression “best” too ambitious, since it assumed that a thorough examination had been made of every single practice in the world, and that the best one has been chosen – a task impossible to undertake within a period of three years.

My second step was to define criteria that would enable me to decide on which practices to select. I had come across projects or approaches that were being labelled as good practice by a certain stakeholder – a government or an international organisation for example – and simultaneously criticised by grassroots organisations and others. Hence, I convened a consultation to discuss criteria for the definition of a good practice, addressed in the introduction to this book, and prepared a questionnaire based on these criteria, which was disseminated as widely as possible in English, French and Spanish to elicit as many good practices as possible. I provided an opportunity to discuss practices in more detail by organising seven further stakeholder consultations with governments, civil society organisations, national human rights institutions and regulators, development cooperation agencies, the private sector, service providers and UN agencies.

For the purposes of this book, I have taken a broad approach to the term “practice”. Practices encompass legal and policy frameworks as well as implementation and accountability mechanisms. What constitutes a good practice can thus include initiatives as diverse as international treaties, legislation (at national, sub-national and local levels), regulations, policies, strategies, institutional frameworks, planning and coordination procedures, international cooperation policies, programmes, projects, campaigns, subsidies, financing mechanisms, tariff structures, operators’ contracts, complaints procedures and judicial and quasi-

judicial decisions. Furthermore, I decided that it would be possible to classify a practice as good and contributing to the realisation of the human rights to water and sanitation, even if it did not explicitly mention human rights – as long as it complied with the pre-defined criteria.

In September 2011, I delivered a report to the Human Rights Council based on the submissions I had received – hence the task that had been entrusted to me by UN Member States had been fulfilled.

However, given the extremely high response rate to the questionnaire, and the level of engagement and interest, not just at the consultations, but also via email and at WASH sector events, I decided to publish this book of good practices as an opportunity to examine the practices more deeply, include more practices and attempt to address some of the more thorny questions. Furthermore, I wanted the opportunity to celebrate the extent to which the rights to water and sanitation have been accepted into the discourse of international human rights law and development, and to inspire other States and stakeholders to use the principles supporting the rights in their own work.

Lack of space and background information has meant that not all practices that can be seen as “good” will be included in this book. Of those that are included, I have offered constructive comments where I think that there could be improvements.

Practices provided by a wide range of stakeholders, covering all aspects of the rights to water and sanitation, have been presented – but of course there are gaps in knowledge which demand further exploration and discussion. I have relied mainly on the information that was provided to me, either by the responses to the questionnaire or the consultations held with the various stakeholders, as well as my country missions.

After engaging in this broad, exciting and sometimes cumbersome process for over three years, I must say that I have gained important insights from all of the submissions received. While the rights to water and sanitation are relatively new on the international agenda and have only recently been recognised officially, activities that aim at their implementation are not new. There is a host of good practices – sometimes not explicit in relation to the human rights dimension, sometimes requiring a little tweak here and there, but overall contributing to the realisation of human rights. The role of human rights advocates as watch-dogs and monitors is extremely important of course, and promoting, supporting and implementing the rights will speed up the process of realising the rights to water and sanitation.

Just as no practice is perfect, this book is not perfect, but I have tried to extract the most valuable information from each practice, demonstrating the various

aspects of the implementation of the rights to water and sanitation. This book is not an exhaustive list of good practices, but an attempt to address as broad a spectrum of practices as possible. I am also aware that certain areas require further attention, particularly where practices are developing as the knowledge and understanding of the rights to water and sanitation grows.

I want to take this opportunity to give very warm thanks to all those who have helped me in accomplishing this three-year-long task. Firstly, all those individuals and institutions who completed the questionnaire and sent valuable information to us; secondly those who gave up their precious time to attend my consultations, enabling me to gain a better understanding of the details of their work; thirdly, OHCHR and in particular the Special Procedures Division (Jane Connors and Mara Bustelo); and fourthly the past and present members of my team (Lucinda O'Hanlon, Barbara Mateo, Robert Painter, Daniel Spalthoff, Inga Winkler and, above all, Virginia Roaf) without whose determination, dedication, enthusiasm, and intelligence this book would not have been possible. I would also like to thank the editorial team – Girish Menon, Peter van Maanen and Jaime Baptista for painstakingly reading the drafts of this book. Finally, I would also like to thank His Excellency the UN Secretary General and HRH the Prince of Orange for agreeing to write the book's forewords.

I owe a large debt of gratitude to ERSAR, the Portuguese Regulator for Water and Wastewater, for its support of this book and financing of its publication.

I hope that the practices contained in this publication will be useful in promoting the implementation of the rights to water and sanitation, and will serve as an inspiration for those who work in the water and sanitation sectors, helping them embrace human rights to guide their work in this area.

This book represents the first step, not the last word.

¹ From 2008 to 2011, my mandate was as Independent Expert on the issue of human rights obligations relating to access to water and sanitation. Since 2011, the mandate has been renamed Special Rapporteur on the right to safe drinking water and sanitation, to reflect the adoption of the right to water and sanitation by the UN General Assembly and the Human Rights Council in 2010.

Abbreviations

ADERASA	Association of Latin American Water and Sanitation Regulatory Entities
AMCOW	African Ministers' Council on Water
CCPR	United Nations Committee on Civil and Political Rights
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CESCR	United Nations Committee on Economic Social and Cultural Rights
CLTS	Community Led Total Sanitation
CRC	Convention on the Rights of the Child
CSR	Corporate Social Responsibility
DFID	UK Department for International Development
DSK	Dushtha Shasthya Kendra
ErsAR	Portuguese Regulatory body (Entidade Reguladora dos Serviços de Águas e Resíduos)
FAN	Freshwater Action Network
HDR	UNDP Human Development Report
HRBA	Human Rights Based Approach
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IRC	International Water and Sanitation Centre
IWRM	Integrated Water Resource Management
JMP	WHO and UNICEF Joint Monitoring Programme
GIZ	German Development Cooperation
GLAAS	UN-Water and WHO Global Analysis and Assessment of Sanitation and Drinking Water
MDG	Millennium Development Goal
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
OHCHR	United Nations Office of the High Commissioner for Human Rights
PETS	Public Expenditure Tracking Survey
SDC	Swiss Development Cooperation
SDI	Shack/Slum Dwellers International
SR / Special Rapporteur	UN Special Rapporteur on the human right to drinking water and sanitation
TI	Transparency International
UDHR	Universal Declaration of Human Rights
UIS	Urban Inequities Survey
UNDP	United Nations Development Programme
UNECE-WHO	Protocol on Water and Health
UNICEF	United Nations Children's Fund
UN-HABITAT	United Nations Human Settlements Programme
UNSGAB	UN Secretary General's Advisory Board on Water and Sanitation
WASH	Water, Sanitation and Hygiene
WECF	Women in Europe for a Common Future
WHO	World Health Organization
WIN	Water Integrity Network
WSSCC	Water Supply and Sanitation Collaborative Council



Participants of the expert consultation on Stigma and the Rights to Water and Sanitation organised by the UN Special Rapporteur in Geneva, January 2012.

PHOTO: MADOKA SAJI

Introduction

Will applying a human rights perspective to development and water and sanitation in particular make our lives more complicated? Yes. Unfortunately yes. The progress we have made might not seem so great once we have our human rights glasses on. But, with human rights, we are painting a more honest picture of progress. We are getting closer to the reality and are thus more able to devise strategies to change it.

CATARINA DE ALBUQUERQUE AT THE COMMITTEE ON
DEVELOPMENT/ SUBCOMMITTEE ON HUMAN RIGHTS JOINT PUBLIC HEARING
ON THE RIGHT TO WATER AND SANITATION, 24 JANUARY 2011

Why is access to water and sanitation so vital?

We are living in a world where close to one billion people do not have access to improved water sources, and 2.6 billion people do not use improved sanitation facilities.¹ The repercussions of this are myriad on an individual as well as societal level. For the individual, access to safe water and sanitation is fundamental for leading a dignified life, and improves health, access to education and work opportunities. On a societal level, a population that has access to safe water and sanitation services will be healthier, more available to work and can contribute to development and economic growth, while living in a cleaner environment.

Sanitation plays a vital role in our daily lives, but this is often downplayed or not discussed due to cultural taboos. Defecating in the open, on streets and in fields is an unacceptable reality experienced daily by over one billion people.² Women in particular must protect their dignity by urinating or defecating only under cover of darkness – thereby risking their safety from attack by men or animals, and their health, as they cannot urinate or defecate when they need to. Even where people are able to use a dedicated toilet or latrine, these are frequently unhygienic, unaffordable, or at too great a distance from the home or workplace. Furthermore, there is seldom consideration of women's and girls' needs for menstrual management.

For those who have access to sanitation, in much of the world, wastewater treatment, and disposal and / or reuse of domestic or sanitation wastewater is not considered, with wastewater released back into water bodies or into the ground without treatment. This has an extremely negative impact on the environment, on the quality of drinking water and ultimately on human health.

There is no life without water, and there is nothing that can be substituted for it when water is scarce. Every woman, man and child requires access to at least a minimum daily amount of water to live healthily.

Beyond the absolute need to guard against dehydration, water is required to fulfil many of the most basic human needs, including personal hygiene and the preparation of food. Failure to practice good hygiene, including washing hands at critical times, such as before eating and after using the toilet, will limit the health

benefits of having access to safe water and sanitation. Water is also required for menstrual hygiene management. Water also plays a crucial role culturally and religiously, with cleanliness and washing often playing a symbolic as well as a hygienic role in many people's lives.

More than 3600³ children die every day from preventable diarrhoeal diseases, which is more than from malaria, HIV/AIDS and measles combined. Children are more likely to die from diarrhoea than adults,⁴ due to their undeveloped immune systems, and the children most at risk are those living in poverty. Furthermore, the odds of stunting⁵ at age 24 months increase exponentially with each diarrhoeal episode and with each day of diarrhoea.

Women face greater difficulties due to the social roles assigned to them, such as collecting water and doing household tasks for which water is essential. Millions of women living in rural areas in Africa and Asia spend several hours every day collecting water, travelling great distances with heavy loads. In the majority of cultures, women and girls are responsible for the care of sick relatives, who will not only require good quality water to ensure better recovery, but may also be suffering from illnesses that demand good access to safe sanitation and good hygiene behaviour to ensure that illnesses are not transferred to other members of the family. The heavy burden of these responsibilities prevents many women from engaging in productive activities or education, thus reproducing and exacerbating existing gender inequalities.

Despite these well-known disparate impacts on women and girls, they are still too often excluded from the decision-making processes about access to water and sanitation. For instance, in many cases women may not be consulted about the placement of water points and sanitation facilities, about their daily needs or the type of facility that is best suited to their needs, even though women are the ones who use and maintain the services and face the greatest dangers when accessing these facilities if they are not fit for use.

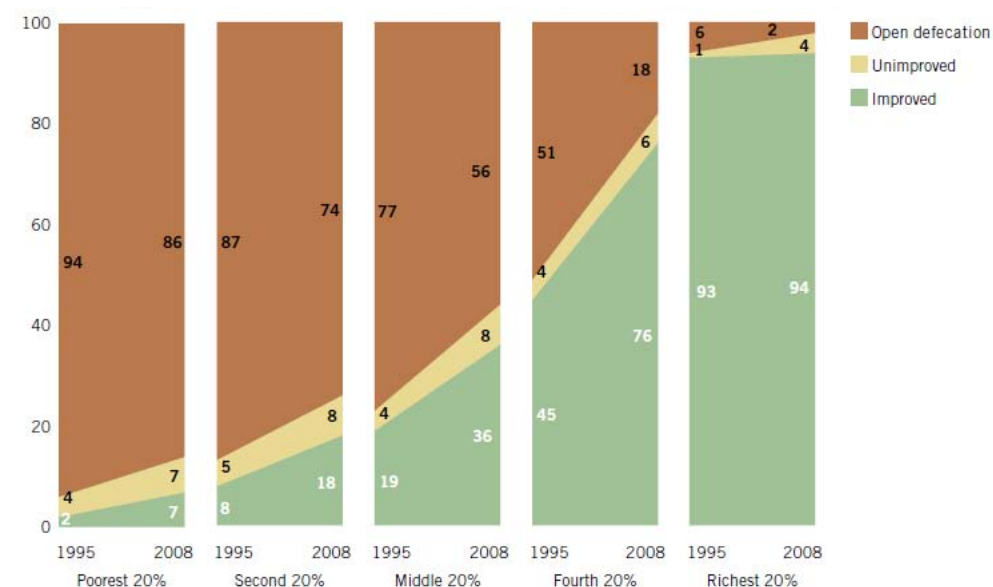
The likelihood of a person having access to water and sanitation is dependent on where he or she lives. People living in developed countries are more likely to have access to sufficient quantities of safe water in the home than those living in developing countries – and those living in formal settlements in a city in a developing country are more likely to have affordable access to safe water than those living in informal urban settlements or in rural areas. The same is true of access to sanitation and open defecation (see graph below).⁶ The majority of people living in informal settlements do not have a reliable source of water, but purchase water from street-sellers or collect water from surface water sources such as rivers or streams, which are likely to be contaminated. Despite only having

access to small quantities of poor quality water, the price of accessing water is significantly higher per litre for those accessing their services from these informal vendors than for those who receive their services directly from a utility.

It is therefore people living in poverty, and particularly marginalised and vulnerable groups and individuals, who are most likely to lack access to safe water and sanitation. These groups are also less likely to enjoy access to adequate housing, health and education, in part due to this lack of access to water and sanitation.

This picture is unlikely to improve without a significant change in approach, as the world's population is continuing to increase, with a predicted growth of nine billion from the current seven billion by 2050. There needs to be better management and distribution of existing water resources and more consideration of sanitation needs, from the collection of wastes to its safe treatment and disposal, to ensure universal access for all.

Proportion of population by sanitation practices and wealth quintile, Southern Asia, 1995 and 2008 (Percentage)



Source: The Millennium Development Goals Report 2011, United Nations, New York, 2011, p.56.

What are human rights?

All human rights can be traced back to the Universal Declaration of Human Rights (UDHR), adopted in 1948 by the United Nations General Assembly. The UDHR – a “simple” Declaration, with no independent legally binding force, and limited to stating general human rights principles and standards – was followed by the adoption of two Conventions dealing with specific groups of rights. In 1966, the United Nations Member States adopted the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights with their Optional Protocols form the International Bill of Human Rights.

The rights set forth in the International Bill of Human Rights have been made more explicit over the years. Firstly, a series of additional human rights treaties protecting particular groups of people, or dealing with particular situations that present specific challenges or threats to human rights were adopted. These include the International Convention on the Elimination of All forms of Racial Discrimination (1965),⁷ the International Convention on the Elimination of all Forms of Discrimination against Women (1979),⁸ the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984),⁹ the International Convention on the Rights of the Child (1989),¹⁰ the International Convention on the Rights of Migrant Workers and All Members of their Families (1990),¹¹ the International Convention on the Rights of Persons with Disabilities (2006),¹² and the International Convention Against Enforced Disappearances (2006).¹³ Furthermore, international human rights bodies – such as the United Nations General Assembly, the Human Rights Council (formerly the Commission on Human Rights), but also the independent experts’ committees in charge of monitoring compliance with the above mentioned human rights treaties by States Parties, have defined and interpreted human rights in far more detail and specificity. Therefore, today international human rights law is more protective of specific individuals and groups, and covers a wider range of issues, addressing threats and challenges that are currently of concern to humankind. Furthermore, many of the rights set out in treaties have also become binding as customary international law—a collection of rules and norms that apply to States as a general matter.¹⁴

All human rights impose three types of obligations on governments: obligations to respect, protect and fulfil human rights. For the rights to water

and sanitation, the obligation to respect suggests that States may not prevent people already enjoying the rights from continuing to enjoy them, for example by selling land with a water source on it, and preventing users from continuing to access the source without an adequate alternative being provided. The obligation to protect the rights to water and sanitation suggests that States must prevent third parties from polluting a water source. The obligation to fulfil the rights to water and sanitation requires that States ensure that the conditions are in place for everyone to realise their rights. This does not necessarily mean that the State has to provide the services; but rather, that it must make provision for the services to be delivered, perhaps by a third agency, but also via municipal services, and through the facilitation and promotion of the rights. In some circumstances, where groups cannot access their rights through other mechanisms, the State may be required to provide the rights directly.

This does not imply that individuals and households are not responsible at all for ensuring their own access to water and sanitation services. For sanitation, in particular, there are certain aspects that can only be the responsibility of the individual or household, such as the hygienic maintenance of a toilet or latrine and good hygiene behaviour. The State, however, has an obligation to ensure that individuals are able to fulfil their responsibilities, including by ensuring that services are affordable.

All economic, social, and cultural rights, including the rights to water and sanitation, are subject to the principle of “progressive realisation”. Progressive realisation is a shorthand way of affirming the duty of States parties to the ICESCR to take “deliberate, concrete, and targeted steps” toward meeting their Covenant obligations, while recognising that the full realisation of human rights is a long-term process that is frequently beset by technical, economic and political constraints.¹⁵ Progressive realisation is not intended to provide States with an excuse not to act; rather, it acknowledges the fact that full realisation is normally achieved incrementally, and that improved conditions are always possible.¹⁶ General Comment No. 3 of the Committee on Economic Social and Cultural Rights on the nature of States parties obligations states that, “deliberately retrogressive measures... would need to be fully justified... in the context of the full use of the maximum available resources”.¹⁷ The obligation to access and utilise the “maximum available” resources entails the duty of the State to seek international assistance where necessary, and to raise adequate revenues through taxes and other mechanisms.¹⁸

Although the progressive realisation of economic, social, and cultural rights may be an ongoing process, these rights also entail obligations of immediate

effect. These obligations will vary depending on the context, but the obligation to respect, protect, and fulfil rights in a non-discriminatory, participatory and accountable manner is a duty that is immediately binding. Similarly, every state must take immediate steps toward full implementation of the rights for all. In the case of water and sanitation, States must begin efforts toward universal and full realisation by providing a minimal level of access to all people.¹⁹ Non-discrimination, participation and accountability are central tenets of States' efforts to improve access to water and sanitation and should be safeguarded immediately.²⁰

The principles of non-discrimination and equality recognise that people have different needs as a result of inherent characteristics or discrimination and therefore require different support. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status, as explained by the human rights treaty bodies. Human rights law will sometimes require States parties to take affirmative action to diminish or eliminate conditions that cause or perpetuate discrimination.

Discrimination can either be *de jure*, meaning that it is enshrined in law, or *de facto*, which includes indirect discrimination resulting from outwardly neutral policies and from social discrimination. Both of these forms of discrimination are prohibited, although the second type can be harder to identify and address. Furthermore, States are required to ensure that individuals and groups enjoy substantive instead of formal equality, meaning that they must take active and affirmative measures aimed at ensuring all people the right to equality and full enjoyment of their human rights, both in opportunity and results, no matter what their station or position in life.

Every person is entitled to active, free and meaningful participation in, contribution to and enjoyment of civil, cultural, economic, political and social development.

States must comply with legal norms and standards enshrined in human rights instruments and customary international law, and rights-holders are entitled to appropriate redress where States fail to comply with human rights. Human rights define the relationship between the State and rights-holders.

Human rights violations include governmental contraventions of the rights guaranteed by human rights law, as well as acts and omissions directly attributable to the State. Violations occur when a law, policy or practice contravenes or ignores human rights obligations held by a State or when the State withdraws or removes existing human rights protections.

Where do the rights to water and sanitation originate?

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 its text. This omission has to be understood in the context of the world of that time, where the world's governing framework was very different from today's, with colonialism still a dominant force and many countries with populations suffering from a lack of access to water and sanitation not represented at the negotiating table. Civil society played a less prominent role in the past than it plays today, as it draws our and our governments' attention to the suffering of people around the world. Countries were less urbanised, with few densely populated informal settlements, which meant that the issue of a lack of water and sanitation in urban areas was not as extreme as it is today.

The International Covenant on Economic, Social and Cultural Rights was the first internationally binding treaty to consecrate economic, social and cultural rights. The substantive negotiations of the Covenant within the Commission on Human Rights ended in 1954.²¹ The text was then submitted to the UN General Assembly and hardly changed after that. Hence the justifications invoked above to explain the silence of the UDHR when it comes to the rights to water and sanitation, also fully apply to the ICESCR. Both the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights provide for the right of everyone to an adequate standard of living,²² which explicitly includes food, clothing and housing. It has been argued that to include food, clothing and housing, without explicitly mentioning water, can only be explained by an assumption that water, like air, was assumed to be available to all.

As the water and sanitation crisis became more pronounced in the second half of the twentieth century, with its attendant health and economic consequences, the human rights community took account of the growing importance of water and sanitation. Several of the more recent international human rights treaties make explicit reference to the importance of water and / or sanitation in realising human rights, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²³, the Convention on the Rights of the Child (CRC)²⁴ and Convention on the Rights of Persons with Disabilities (CRPD).²⁵

In 2002, the Committee for Economic, Social and Cultural Rights (CESCR), the treaty body responsible for monitoring State compliance with the ICESCR, adopted General Comment No. 15 on the right to water. General comments are authoritative interpretations of the ICESCR. They clarify the content of rights and are used in the monitoring of States parties' compliance.

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 right to water is implicitly included in the right to an adequate standard of living (Article 11 of the ICESCR) and since 2010, sanitation has also been brought within this understanding. 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 related to non-discrimination, gender equality, participation and accountability,²⁶ which followed the Special Rapporteur’s own 2009 report on sanitation, outlining human rights obligations relating to sanitation.²⁷ Additionally, access to water and sanitation is required for the realisation of the right to adequate housing, the right to the highest attainable standard of health, and the right to life.²⁸ Recognition of water and sanitation as human rights was re-affirmed by the UN General Assembly in July 2010²⁹ and by the Human Rights Council in September 2010.”³⁰

The 2007 Declaration on the Rights of Indigenous Peoples also highlights particular concerns relating to access to water, with a particular focus on Indigenous Peoples’ “distinctive spiritual relationship”.³¹

Finally, the Geneva Conventions for the protection of war victims (1949) and their Additional Protocols (1977) emphasise the importance of access to water and sanitation for prisoners of war and civilian populations for health and survival in armed conflicts, whether international or non-international.³²

The Independent Expert calls upon States and the international community to ensure access to safe drinking water and sanitation for people affected by conflict and natural disasters. They must take immediate action to rebuild appropriate facilities and to ensure access for humanitarian actors. States and the international community also must prevent the spread of disease by prioritising safe drinking water and sanitation during and in the aftermath of an emergency.

CATARINA DE ALBUQUERQUE, WORLD WATER DAY, GENEVA, 20 MARCH 2009

Discussion Box 0.1 Human right or human rights to water and sanitation?

The 2010 General Assembly resolution explicitly recognising the human right to water and sanitation, and the Human Rights Council resolution of the same year, clarifying that this right derives from the right to an adequate standard of living, and the 2011 Human Rights Council resolution renewing (and renaming) the mandate of the Special Rapporteur on the right to safe drinking water and sanitation, all refer to a single human right. The Special Rapporteur herself, however, is of the opinion that water and sanitation should be treated as two distinct human rights, both included within the right to an adequate standard of living and with equal status.

There are pragmatic reasons for this approach. All too often, when water and sanitation are mentioned together, the importance of sanitation is downgraded due to the political preference given to water. Naming both water and sanitation as separate human rights provides an opportunity for governments, civil society and other stakeholders to pay particular attention to defining specific standards for the right to sanitation and subsequently for the realisation of this right. Further separating the right to sanitation from the right to water recognises that not all sanitation options rely on water-borne systems.

This book 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.

Links to other human rights

All human rights have equal status and are universal, indivisible, interdependent and interrelated – every person has equal claim on all human rights, whether civil, cultural, economic, political or social, and there is no hierarchy of rights.³³

The rights to water and sanitation do not exist in isolation from other human rights, and there is a strong correlation between those people who are not able to enjoy the rights to water and sanitation and those who also do not enjoy the rights to housing, food, education and health.

The rights to water and sanitation can be seen as central to achieving the realisation of many of these other human rights. Health is in jeopardy without adequate access to safe drinking water and sanitation. Children fail to attend or cannot pay attention in school when they are sick. Children, particularly girls, also miss school because they have to walk long distances to collect water. Adolescent girls are more likely to miss or drop out of schools that do not have separate and safe toilets for girls. Maternal and child health mortality are affected

by a lack of safe water and accompanying poor hygiene. Realising the right to housing requires access to the services necessary to ensure that the housing is adequate – including water and sanitation. Furthermore, all economic, social and cultural rights require guarantees of personal security, freedom of expression and representative government, as is ensured by the principles of accountability and participation.

Civil and political rights, such as the right to freedom of expression, the right to organise, the right to representative government, the right to participate in public affairs, the right to freedom from torture and cruel, inhuman or degrading treatment, the right to life, the right to information and the guarantee of personal security are also essential for securing the rights to water and sanitation, and vice-versa. This is discussed further in chapter four.

Why the rights to water and sanitation are essential for social justice and equality: Challenging social norms, promoting empowerment

Determining why particular individuals and groups do not have access to water and sanitation and other essential services will open our eyes to a world of inequalities, often built into the fabric of society. Human rights challenge the existing power relations by stating that inequalities in access to water and sanitation are not only morally unacceptable, but also prohibited in international law. This requires States to revisit legislation, policies and practice, and to examine how to ensure that all people enjoy their rights equally.

The rights to water and sanitation entitle everyone to sufficient quantities of safe water and sanitation services that are affordable, accessible, culturally acceptable, and which are delivered in a participatory, accountable and non-discriminatory manner. Governments are obliged to ensure that everybody gains access to these services over an acceptable timeframe, through adopting appropriate legislation, policies, programmes and ensuring that these are adequately resourced and monitored. The rights to water and sanitation provide not only a legal framework for holding States accountable for delivering these services, but also a set of principles that assist States in prioritising where resources should be dedicated, using the principles of participation and non-discrimination to ensure access for all.

The principles of non-discrimination and equality demand that States prioritise the needs of people who are targets of discrimination or are marginalised or at risk. This will include analysing whether existing water and sanitation practices and policies are discriminatory, whether explicit in law, or stemming more from historical discrimination or social and cultural practices. The right to equality

requires States to ensure that legislation, policies and programmes are reformed to address and remedy discrimination and marginalisation.

Putting the principles of non-discrimination and participation into practice has had a dramatic impact on ensuring that women and children have a voice. Women's increased engagement in development processes, particularly in programmes designed to improve access to water and sanitation, which are very much women's responsibility, is recognised as having had a positive effect on the sustainability and appropriateness of water and sanitation services. Furthermore, children can be agents of change, particularly in relation to hygiene behaviour and the adoption and use of latrines. Where schools promote good hygiene practices through health clubs and the positive use of sanitation, this information is often transferred back to the children's families and households.

The realisation of human rights in general, and of the rights to water and sanitation in particular, is independent of political and economic systems. Hence human rights are "susceptible of realisation within the context of a wide variety of economic and political systems".³⁴ Human rights do not follow or demand a particular political agenda. Human rights recognise that all individuals' needs and rights must be respected, with the preamble to the Universal Declaration of Human Rights reaffirming, "the equal rights of men and women and...[the promotion of] social progress and better standards of life in larger freedom".³⁵ As stated above, it is no accident that those living in poverty tend to be the people lacking access to water and sanitation, and the human rights framework provides an opportunity to examine the structural reasons for poverty and lack of access, and to find ways of alleviating this.

Realising any right, including the rights to water and sanitation, will almost invariably require that existing power structures be challenged, so that people who do not enjoy their rights to water and sanitation are given the opportunity to claim these rights. This happens not only through protest or through the courts, but also by means of policy, legislation and regulation, understanding and respecting the key principles of human rights and prioritising the needs of those living in poverty, targets of discrimination, the marginalised, and vulnerable individuals and groups.

Human rights principles and standards provide a framework that States and other actors can use to assess current access to water and sanitation services, and to design approaches to improve access for those who lack it. The rights to water and sanitation have as much value in countries where only a few people do not have access to water and sanitation as they do in countries where significant numbers of people do not have access.

Discussion Box 0.2 Human rights and the Millennium Development Goals

The Millennium Development Goals (MDGs) have been invaluable for raising awareness among States, as well as among the general public, of the situation too many people suffer under, including abject poverty, shocking maternal and child mortality figures, the poor status of education in so many countries, and of course the lack of access to safe water and sanitation. The MDGs have been particularly useful for pushing governments to make public commitments to making progress on particular targets, and for engaging civil society in assisting governments to achieve these.

However, MDGs do not reflect human rights principles, and this needs to be recognised in the discussions on new post-2015 goals and targets. Firstly, and perhaps most importantly, many of the targets do not aim for universal access, but instead call for a proportion of those without access to gain access. This is the case for water and sanitation, where the specific targets are to halve the proportion of the population without access to water and sanitation by 2015. These targets were set to be realistic and for access to water, the target will probably be achieved globally, although there is considerable regional variation. However, given that there are still almost one billion people without access to “improved” water sources, much remains to be done. The sanitation target is the one of the most off-track of all the MDGs, and it is estimated that—without significant changes in priorities—this target will be missed by one billion people.³⁶ To encourage States to be more ambitious and to reflect the status of water and sanitation as human rights, it is necessary to ensure that post-2015 goals and targets aim for universal access to water and sanitation. Indicators and timelines for achievement could then be designed taking into account the requirements of progressive realisation, specific country needs and the necessary financial provisions for achieving universal access.

Perhaps as a result of the Millennium Development Goal process, reaching targets has been the major preoccupation of many countries, both developing and developed. Inevitably at times this focus on quantity has been at the expense of quality, and on immediate impact rather than lasting change. Reconciling the desire for quick, readily quantifiable results with substantive, long-term progress has been one of the most salient difficulties with targeting resources for meeting the MDGs.

Implementing the rights to water and sanitation suggest that it is the means, as well as the end, that define a rights-compliant approach to delivering services, the key principles being participation, access to information, transparency, non-discrimination and accountability.

The current MDGs also do not take into account the enormously important human rights question for which portions of the population should be prioritised. In recent discussions, water and sanitation experts agreed that applying the principle of non-discrimination, and ensuring that the most vulnerable and marginalised individuals and groups are prioritised, should be reflected in new goals and targets. The new goals and targets should also address water and sanitation quality and affordability, human rights elements not addressed at all in the current MDGs

Future tools for monitoring access to water and sanitation, and post-2015 goals and targets must reflect human rights concerns. Since the governments that have universally recognised water and sanitation as human rights are the same as the ones that will be called upon to negotiate the post-2015 global development agenda, coherence between the positions taken at these different forums is crucial. Human rights must not be forgotten as the post-2015 agenda is negotiated. Progress has already been made in this area, and an updated questionnaire for the GLAAS report and the Joint Monitoring Programme of UNICEF and WHO, the main body responsible for monitoring target 7C on access to water and sanitation, is also in the process of including the criteria required by human rights principles and standards. There is further discussion on this in chapter four.

States have a positive duty to begin reducing disparities in access to water and sanitation that may affect certain groups and individuals at risk, such as women, children, persons living in rural or isolated areas, indigenous communities, minority groups and persons with disabilities.³⁷ Throughout the process, all projects aimed at improving access to water and sanitation must be based on principles of participation, accountability and transparency.³⁸

Participation and access to information have long been key aspects of good development practice, helping to ensure acceptability, affordability and sustainability of water and sanitation services. The human rights framework obliges States to ensure participation of all stakeholders, and makes provision for individuals and groups to hold the State, or other delegated bodies, to account if this participation is not adequately facilitated. Access to a participatory process must be facilitated for all stakeholders affected by a decision, including those who lack social status, and who are stigmatised in the community or who may require particular accommodations to fully participate. The element of State obligation is important, as this ensures that participation is a continuing requirement, rather than simply suggesting that participation is a good idea that can be removed on a whim.

Improving access to water and sanitation services depends on political will, the right policy environments and the availability of sufficient financial and management capacity to deliver services. Unless a specific decision is taken to deliver services to all, regardless of where those without services live or what their income is, universal access will remain a pipedream. Sanitation in particular must be considered in its entirety, from the collection of wastes to its transport, treatment and disposal. People living in informal settlements have rights to water and sanitation services, and States must ensure that the policy environment takes account of this and enables service providers, whether public or private, large

or small-scale, to deliver safe and affordable services to these areas, regardless of tenure status. This may require a different approach to service delivery in more formal areas – there may be a need for an interim solution that includes shared latrines, or water kiosks, or the provision of water from water tankers – while longer-term and more appropriate solutions are sought. This may require reconsidering the incentives put in place to encourage service providers to deliver services, including providing financing or reforming fee structures to ensure that they are pro-poor. Solutions may also include finding alternative accommodation in situations where the settlement is on unsuitable or dangerous land, when agreed upon with the participation of the residents.

Financial, technical and managerial capacity, particularly at the local level, continues to be a problem for the delivery of water and sanitation services, requiring increased training and capacity building and an increased understanding of participation, accountability and non-discrimination.

A key benefit of using a human rights framework to ensure universal access to water and sanitation services is accountability, providing the framework for monitoring, complaint mechanisms and redress for State violations or failures to deliver services.

These principles and standards provide a framework that can be adapted to every country – and state not only the goal of universal access in line with human rights criteria, but also outline a process of how to achieve this goal.

Criteria for good practices related to the rights to water and sanitation

Progressive realisation is bolstered by a number of attendant obligations designed to keep States on track. States must not simply work progressively to achieve the full realisation of human rights, but must do so using the maximum of available resources.³⁹ What is possible will naturally vary from country to country. The clause is flexible and merely acts as a safeguard to ensure that States do not attempt to meet their international obligations with empty promises and half-measures.

To ensure progressive realisation,⁴⁰ and avoid impermissible retrogression, States must also ensure that policies or actions do not prevent those who have access to water and sanitation from losing this access. This includes not raising the price of water and sanitation services so that people can no longer afford a basic minimum.

The human rights principles and the standards set out in General Comment No. 15 on the right to water, which apply equally to sanitation⁴¹ (as they do to all human rights), form the basis of the criteria for determining whether a practice could be included in this book, and have been divided into five cross-cutting criteria, applicable to all human rights, and five criteria derived from the normative content of the rights to water and sanitation. Non-discrimination, participation and accountability are overarching human rights principles. Two further cross-cutting criteria have been included – impact and sustainability – to reflect that a good practice must have a positive impact in the environment where it is practiced in order to be effective, and must also be sustainable, to ensure that individuals and groups can continue to have access to water and sanitation services after the project or programme is completed.

The cross-cutting criteria can be described as follows, bearing in mind that these descriptions are not exhaustive:

Non-discrimination

Water and sanitation services must be provided without discrimination of any form, and particular care must be taken to provide services to those who are not able to provide for themselves, as well as to excluded individuals and groups and those at risk. While the twin requirements of equality and non-discrimination mean that individuals may not be treated differently for illegitimate reasons, they also oblige States to take affirmative measures where necessary to dismantle discriminatory access to water and sanitation. This means looking beyond the averages to consider discrimination based on where an individual lives and to which ethnic group he or she belongs, and how other forms of discrimination impact on him or her. A good practice will ensure that all people have access to a basic level of access before improving service levels for those who already enjoy this level of access.

Participation

All actions that have an impact on people's access to water and sanitation services must provide meaningful opportunities for engagement. Users, particularly those who are generally under-represented, including women, ethnic and racial minorities, and marginalised groups, must have the opportunity to participate in decision-making relating to their access to water and sanitation. Transparency and access to information are essential for participation to be meaningful (please see discussion box 3.14 on levels of participation in chapter three).

Accountability

States are obliged to respect, protect and fulfil the rights to water and sanitation, and should be held accountable for meeting these obligations to the people under their effective control. Accountability can take many forms, but will include monitoring, complaints mechanisms, dispute resolution and transparent governance.

Impact

The impact of a practice can be limited to a small community or to a whole country, but there must be demonstrable benefits of a practice, which further the progressive realisation of the rights to water and sanitation. A good practice protects and provides for the needs of those without access to water and sanitation, and also ensures continuity for those with adequate access.

Sustainability

Practices should be economically, environmentally, and socially sustainable so that future generations can enjoy rights to water and sanitation, and must therefore look beyond the short-term goal of assisting people to gain access to water and sanitation services. Practices must show that the resources required for operation and maintenance are in place. Where insufficient time has passed to make this possible to assess, the practice must demonstrate that the sustainability of the project has been considered and included in the planning. In the case of sanitation, it is important to ensure that sustainability also involves changes in behaviour and use. Service providers and policy makers are therefore responsible for ensuring that this is integral to planning, and their responsibility does not end with the mere provision of a facility.

The five criteria relevant to the normative content of the rights to water and sanitation are as follows:

Availability

States are responsible for ensuring that they are able to fulfil their obligations, by putting the relevant systems and structures in place, and ensuring that water and sanitation services are available in all spheres of life, including at work. Furthermore, water must be available in sufficient quantity for personal and domestic uses, with these aspects prioritised over water uses for agriculture and industry. This is particularly crucial where water scarcity has led to the overuse of water resources. Waste treatment and disposal facilities must be available to protect people's health and dignity, and the environment.

Quality/safety

Both toilets and water must be of good quality and safe to use, day or night. Water must be free of all organic and chemical contaminants that can cause ill health. Toilets must be well constructed so as not to endanger physical health, straightforward to keep hygienically clean, and safely accessible to all, including at night.

Acceptability

Water and sanitation services must be culturally acceptable to all, with gender specific toilets available where appropriate. Schools should provide separate toilet facilities for girls and boys, particularly for older children, where privacy becomes necessary. Water and sanitation services must be located appropriately, respecting the fact that water and sanitation are often subject to cultural or religious habits or requirements. This is also important in other public institutions and public places (e.g. hospitals, transport facilities and markets).

Accessibility

Water and sanitation services must be easily accessible to all, including children, the elderly and people with disabilities, in or near the household, workplace and in all other spheres of their lives, in order to be of maximum benefit in terms of health, safety and dignity (particularly sanitation). This also sets a requirement that people do not have to queue or wait excessively to access water and sanitation services.

Affordability

Water and sanitation services must be affordable to all and not detract from the ability to buy other necessities and access other human rights, such as housing, food or health services. This can be assured, for example, via an effective tariff structure that ensures that the poorer households pay a lower rate for a basic amount of water.

These criteria are deliberately broad, flexible and adaptable. Human rights law does not prescribe a particular choice of policy or technology, but instead calls for context-specific solutions. It requires individual needs to be met and therefore excludes one-size-fits-all solutions. In this regard, human rights law stresses the perspective of the individual, provided that the exercise of individual rights does not infringe the rights of others. Keeping this in mind, the identification of good practices aims to capture as wide a spectrum of different approaches as possible, ensuring that everyone's human rights are met, with specific reference to those who are "voiceless", are living in poverty, are marginalised or are excluded.

For the purposes of this book, a “good” practice is one that meets all or most of the criteria that have been discussed here, without undermining any of them. It is not necessary, however, for a practice to be developed specifically with human rights principles in mind, as some approaches to development, and delivery of water and sanitation services include issues such as participation, accountability or universal access as key considerations without using rights language. The difference between good development practice and specific use of human rights principles is not always clear-cut.⁴² This book attempts to contextualise and analyse practices through a human rights lens, as defined by the criteria outlined above.

A holistic approach

The practices presented in this book illustrate particular approaches to implementing the rights to water and sanitation, whether water quality monitoring or assuring that water and sanitation services are available to people with disabilities. A good practice may exist in isolation, but for impact and sustainability, good practices must be supported through a system of measures that ensure the long-term realisation of the rights to water and sanitation. This will be achieved through the government reform of relevant legislation and policy, structuring regulatory frameworks so that they support targeting the marginalised and vulnerable groups with limited access and ensuring that resources are available. Governments have a significant role to play in creating the right environment conducive to transparency and accountability, and to ensure that policies and programmes promote access to water and sanitation services. However, it is also important that local communities and civil society hold governments to account for their actions by making the appropriate demand for services, and also by contributing appropriately, whether through participating in decisions made about access, financial contributions or the provision of services themselves. As has been stated above, individuals and households also have responsibilities to maintain and use services within the household, and to practice good hygiene behaviour where this is possible.

The environment conducive to ensuring access to services that the government must provide includes: a legal and policy framework that embraces the key aspects of the rights to water and sanitation; clarity of who is responsible for delivering specific parts of those frameworks, in the form of a strategy and plan of action; a regulatory framework, which includes ensuring protection of the user, and clear standards to be independently monitored; funds and good

management of those funds; a clear understanding of the nature and scale of assuring access to services, including access to information for the general population; capacity at the local level to deliver services, with local solutions, and full public participation in decisions made relating to access to services; and full monitoring of both targets and standards set, with emphasis on equality and pro-poor indicators, as well as monitoring which people do not have adequate access to services.

Any individual action can be valuable, but probably not sustainable or replicable at scale without this full set of frameworks in place.

Water is also required to fulfil many other human activities and needs, such as agriculture and industry, with these two activities together accounting for 92 percent of global water use.⁴³ However, this book will only consider the specifics of water use for realising the rights to water and sanitation.

Importance of partnership and the role of different stakeholders

This book considers a wide variety of different practices, from small-scale sanitation service delivery in Malawi to urban water supply in Senegal and sector reform in Kenya, carried out by a range of different stakeholders, from local NGOs working to eradicate open defecation in Bangladesh to governments committing to realising the right to sanitation in South Asia. These stakeholders and practices are all attempting to promote or deliver universal and full access to water and sanitation services and in many, but not all cases, using the framework of the rights to water and sanitation.

A few of the practices submitted to the Special Rapporteur have been submitted by single organisations, but the majority have been submitted on behalf of two or more stakeholders and almost all explicitly mention a wide range of different stakeholders involved in the practice. Partnership is central for the delivery of water and sanitation, as well as for meeting human rights criteria, and specifically for ensuring participation and accountability.

Equal access to water and sanitation services requires political choices on the part of the State, coupled with well-considered planning, budgeting and financing, not just for capital costs, but also for operation and long-term, capital maintenance. The State bodies engaged in ensuring access to water and sanitation can include public works, health, housing, education, planning, finance, agriculture, urban ministries and departments and local government, among others. Service providers can be large, medium or small-scale and managed either by the private or public sector, or a combination of the two.

International stakeholders include donor States, who have an obligation under human rights law to refrain from interfering in the ability of States to fulfil human rights and to provide international assistance and cooperation to States that cannot fulfil their responsibilities, as well as international agencies (UNDP, UN-HABITAT, WHO etc.) NGOs and development banks, (such as the World Bank or the regional development banks), which may provide funds, research and expertise. NGOs, civil society organisations, and indeed the consumers/users/communities themselves will also be engaged at all levels of ensuring the delivery of safe, affordable, culturally acceptable water and sanitation services for all, from planning and implementation to monitoring and maintaining the services.

The success of any practice is dependent on the partnership between some and, in a few cases, all of the above actors. It is particularly dependent on the engagement of the users of the services themselves, not only to ensure that the services are appropriate and accessible to the groups that they are intended for, but also to ensure accountability – for transparency in contracts, for monitoring the provision of services, and for holding governments and other stakeholders, to account for failures to deliver these essential services. Civil society also has a role to play in ensuring that policies and legislation are appropriate, meet the human rights principles and are not led by conditionalities that favour more powerful groups. This is critical, as sanitation in particular is not just a necessity for the individual, but also a social responsibility.

How to read this book

This is not a manual or a toolkit for the way the rights to water and sanitation should be implemented, and should not be read as guidance for how the rights to water and sanitation should or could be realised. It provides discussion and analysis of existing practices, which, it is hoped, will inspire policy- and decision-makers, practitioners, activists and civil society in general to engage with the rights to water and sanitation to assist in the difficult but crucial process of ensuring that everyone has access to safe drinking water and sanitation services for all daily personal and domestic purposes.

The practices presented here have been taken from submissions, consultations and meetings with a range of actors,⁴⁴ and the Special Rapporteur has done her best to reflect this multitude of approaches and ideas across regions and between stakeholders and sectors.

The legal framework of human rights governs and controls the behaviour of States. As stated above, this book also offers examples of practices designed and implemented by non-State actors, including civil society and the private sector. While States remain the primary duty bearers when it comes to respecting, protecting and fulfilling human rights, non-State actors must, at the very least, respect human rights and should play an active role in supporting State efforts to achieve universal realisation.⁴⁵ States must take steps to ensure that non-State actors comply with human rights law and do not impair access to water and sanitation for all.

Practices have been organised into four main types, and the chapters are named accordingly. Chapter one examines State actions and the legal and institutional frameworks that promote the realisation of the rights to water and sanitation. International and national legislation and policies, such as constitutions, Water Acts and water and sanitation policies and programmes, and the institution of the regulator will be presented in this chapter.

Chapter two considers financing for the sector, and presents good practices for targeted budgeting and appropriate subsidies to ensure affordability of services for all, with a particular focus on the difficulties of securing sufficient funding for realising the right to sanitation.

Chapter three looks at what non-State stakeholders are doing to promote and protect the rights to water and sanitation, and presents specific practices for the delivery of water and sanitation services to hard-to-reach areas, and for those groups that may be discriminated against. This chapter also presents practices that raise awareness about what the rights to water and sanitation can mean to civil society, particularly to those who do not have access to these rights. It also touches upon the responsibilities of non-State actors in the realisation of the rights to water and sanitation.

Chapter four completes the picture by presenting practices that demonstrate how States and other actors can be held accountable through the monitoring of water and sanitation services, including water quality and affordability of services, by monitoring budgets and plans to check whether promises of funding are fulfilled and allocations are spent as intended, and through formal and informal adjudication processes such as court cases and the role of national human rights institutions. This chapter ends by examining how the rights to water and sanitation contribute to ensuring the transparency of service provision, which helps to limit opportunities for corruption.

The concluding chapter discusses gaps in the practices, the areas where there continue to be problems in both understanding and implementing the

rights, and attempts to look into the future to see where these practices may take us.

A final word. The practices presented in this book have been assessed according to the criteria stipulated in the questionnaire and clarified in this introduction and in other reports by the Special Rapporteur.⁴⁶ The Special Rapporteur has done her best to check that the practices described in this book are correct, but cannot take responsibility for any misrepresentations, as it is difficult to judge the impact of a particular practice on the ground. The Special Rapporteur acknowledges that a practice that is heralded as “good” by one stakeholder may be perceived differently by another – this is inevitable and unavoidable. The intentions or aspirations of the laws and policies cited above must translate into sustainable progress and achievement on the ground. They require innovative thinking and technical expertise. They require sound, reliable sources of financing. They require accountability mechanisms to ensure that they are responsive to the needs of individuals and are not skewed in the favour of particular groups as a result of corruption or poor governance. This chapter has hence emphasised how national planning can assist States by mitigating potential waste, improving coordination between institutions at national and local levels, and ensuring that human rights principles are fully integrated into sector projects, from design to implementation and evaluation. The chapters that follow present practices that address the financing and implementation of legislation and policies, and that demonstrate how States can be held accountable for delivering on these frameworks. Community management processes generally require on-going support to be effective, which is a challenge when funding is unlikely to be accessed through tariffs.

FOOTNOTES - INTRODUCTION

¹ Progress on sanitation and drinking-water: 2010 update, WHO and UNICEF Joint Monitoring Programme for Water Supply and Sanitation (2010 JMP Report), pp. 6-7. These figures refer to ‘improved’ water and sanitation facilities, which is the definition used by JMP for those sources and facilities that are more likely to be ‘safe’. For a full definition of ‘improved’ facilities, see 2010 JMP Report, pp. 22-25. The figures for those not enjoying the rights to water and sanitation are probably significantly higher than this if water quality, affordability and other accessibility issues are taken into account. This is discussed later in the introduction.

² 2010 JMP Report, p.22.

³ Black R.E., Cousens S., Johnson H.L., Lawn J.E., Rudan I., Bassani D.G., Jha P., Campbell H., Fischer Walker C., Cibulskis R., Eisele T., Liu L. and Mathers C., for the Child Health Epidemiology Reference Group of WHO and UNICEF, Global, regional, and national causes of child mortality in 2008: A systematic analysis, *The Lancet*, 5 June 2010; 375(9730): 1969-87.

⁴ Other than adults suffering from illness, or elderly people.

⁵ Stunting or low height for age is caused by long-term insufficient nutrient intake and frequent infections. Stunting generally occurs before age two, and effects are largely irreversible. These include delayed motor development, impaired cognitive function and poor school performance. Source: www.unicef.org/progressforchildren/2007n6/index_41505.htm.

⁶ 2010 JMP Report, p. 30.

⁷ UN General Assembly resolution 2106 (XX).

⁸ UN General Assembly resolution 34/180.

⁹ UN General Assembly resolution 39/46.

¹⁰ UN General Assembly resolution 44/25.

¹¹ UN General Assembly resolution 45/158.

¹² UN General Assembly resolution A/RES/61/106.

¹³ UN General Assembly resolution A/RES/61/177.

¹⁴ For a discussion on whether the right to water is part of customary international law, see Winkler, Inga, *The Human Right to Water – Significance, Legal Status and Implications for Water Allocation*, Hart Publishing, Oxford (to be published in 2012).

¹⁵ CESCR, General Comment No. 3, paras. 2 and 9.

¹⁶ For specific provisions related to the rights to water and sanitation, see CESCR General Comment No. 15, para. 18.

¹⁷ CESCR, General Comment No. 3, para. 9.

¹⁸ *Ibid.*, para. 13.

¹⁹ CESCR, General Comment No. 3, para. 10;

CESCR, General Comment No. 15, para. 37.

²⁰ CESCR, General Comment No. 15, para. 13.

²¹ Official Record of the Economic and Social Council, eighteenth session, Supplement N° 7, paras. 24 to 321 and annexes I, II and III.

²² ICESCR, art. 11, para. 1.

²³ UNECE/WHO-Europe, No one left behind – Good practices to ensure equitable access to water and sanitation in the pan-European region, 2012.

²⁴ Art. 24, para. 2. The CRC also includes a reference to hygiene.

²⁵ Art. 28, para. 2(a).

²⁶ E/C.12/2010/1.

²⁷ A/HRC/12/24.

²⁸ CESCR, General Comment No. 15, para. 3; Statement of the Committee on the Right to Sanitation (45th session, E/C.12/2010/1).

²⁹ A/RES/64/292.

³⁰ A/HRC/RES/15/9.

³¹ A/RES/61/295, Article 25.

³² Treaties and Optional Protocols available at: www.icrc.org/ihl.nsf/CONVPRES?OpenView.

³³ A/CONF.157/23, para. 5.

³⁴ CESCR, General Comment No. 3, para. 8.

³⁵ Universal Declaration of Human Rights (UDHR), preamble.

³⁶ Off-track, off-target – Why investment in water, sanitation and hygiene is not reaching those who need it most, WaterAid, 2011, p.13.

³⁷ CESCR, General Comment No. 15, paras. 14-16.

³⁸ CESCR, General Comment No. 15, paras. 48, 55.

³⁹ ICESCR, art. 2, para. 1.

⁴⁰ E/C.12/2007/1.

⁴¹ A/HRC/12/24.

⁴² Gready, Paul. Reasons to be cautious about evidence and evaluation, *Journal of Human Rights*, Volume 1, No. 3, OUP, 2009.

⁴³ www.unesco.org/water/wwap/facts_figures/water_industry.shtml.

⁴⁴ More information available at: www.ohchr.org/EN/Issues/WaterAndSanitation/SRWATER/Pages/GoodPractices.aspx.

⁴⁵ CESCR, General Comment No. 15, para. 60.

⁴⁶ www.ohchr.org/srwaterandsanitation.

LEGAL AND INSTITUTIONAL FRAMEWORKS



Catarina de Albuquerque meets the Namibian Prime Minister, Nabas Angula, at his office in Windhoek, Namibia, July 2011.

PHOTO: UNICEF / NAMIBIA

I am convinced that the biggest barrier to the enjoyment of these rights is lack of political will. Without political will to recognise and prioritise these rights, it is highly unlikely that they will be realised. National plans of action, when undertaken in a comprehensive and serious manner, can be an important manifestation of political commitment.

CATARINA DE ALBUQUERQUE, STATEMENT TO THE 18TH SESSION
OF THE HUMAN RIGHTS COUNCIL, 15 SEPTEMBER 2011

Introduction

Legal and institutional frameworks are the formal expression of a government's intentions. Through developing the relevant laws, policies and institutions, a State demonstrates its commitment to realising particular goals. For the realisation of the rights to water and sanitation, therefore, the relevant laws, policies and agencies provide the framework that ensures that access to water and sanitation is affordable, of good quality and accessible to all, including those groups that are frequently excluded. Furthermore, this framework must ensure a participatory approach, and provide the necessary tools to hold the relevant institutions accountable for complying with the laws and policies.

Human rights law places considerable importance on the explicit recognition of rights by States, not simply by ratifying human rights treaties, but also by incorporating their principles into domestic legal systems. The significance of explicitly enshrining a right is to confer on people an entitlement, which States must then deliver and protect within a framework of law and policy.

This chapter examines initiatives at international and regional levels, firstly to achieve the explicit recognition of the rights to water and sanitation and then to begin clarifying and operationalising their normative content. This section also considers legal frameworks, national policy initiatives, strategies, plans, and regulatory systems and institutions employed by States that are most consistent with and supportive of human rights norms.

Legal and institutional frameworks for water and sanitation often support the sustainability of interventions by creating a legal reference point for actors seeking to hold States accountable for their efforts. In terms of good practices, the frameworks should focus on improving one or more of the criteria set out above. For instance, a State may pass a law setting minimum water quality standards and assigning responsibility to an agency for monitoring compliance with that standard. Likewise, a State may pass a law creating a public subsidy programme to enhance the affordability of water and sanitation services for individuals and households living in poverty. Useful policy initiatives, meanwhile, might involve efforts to harmonise the activities of different agencies, or set up a lead agency, that emphasises achieving access for vulnerable or marginalised

groups, or set realistic achievement targets towards reaching the goal of universal access.

Throughout this chapter, the Special Rapporteur also offers examples of legislative and policy frameworks and institutions that she recognises as good practices despite the fact that they often do not make explicit reference to the human rights to water and sanitation. Additionally, she recognises that there is a risk that even the best laws can lead to policies and implementation strategies that are not compliant with human rights principles. The Special Rapporteur emphasises that anything short of explicit recognition of water and sanitation as human rights can lower State accountability. However, she does not ignore legislation that, while not perfect, may nevertheless support substantive gains in realising the rights. Accordingly, for the purposes of this chapter, the laws and policies are examined in isolation as examples of the type of legislation that can best support efforts to realise the rights.



Participants of SACOSAN IV join a toilet queue to show solidarity with those without adequate access to sanitation, Colombo, Sri Lanka, April 2011.

PHOTO: ANIL STHAPIT, FRESHWATER ACTION NETWORK

1.1 International legal frameworks and policy initiatives

The past decade has witnessed a remarkable development in international human rights law with respect to water and sanitation. In 2002, the **Committee on Economic, Social and Cultural Rights (CESCR)** adopted **General Comment No. 15**, which recognises that the right to water is an implicit but essential component of the right to an adequate standard of living and the right to the highest attainable standard of health, enshrined in articles 11 and 12 of the **International Covenant on Economic, Social, and Cultural Rights (ICESCR)**.¹ The General Comment also clarifies standards for the right to water and points out the importance of sanitation and hygiene for realising this right. This expert interpretation has played a catalytic role for further developments on the right to water. In March 2008, at the initiative of **Germany and Spain**, the **United Nations Human Rights Council** established the mandate of the **Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation**, with a mandate, *inter alia*, to further clarify the nature and content of these obligations. In July 2010, the **United Nations General Assembly** adopted a **resolution**, introduced by **Bolivia**, which recognised the right to water and sanitation.² The Human Rights Council, again at the initiative of Germany and Spain, affirmed this by consensus in September of the same year, clarifying its foundations and legally binding status.³ Subsequently, in November 2010, the CESCR issued a statement emphasising sanitation as an indispensable component of the right to an adequate standard of living, but also integrally related to the rights to health and housing, contributing to greater recognition of sanitation as a distinct right.⁴

In March 2011, recognising the significance of the resolutions of 2010, the Human Rights Council changed the title of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, to the **Special Rapporteur on the human right to safe drinking water and sanitation**, squarely placing recognition of the right in the name of the mandate. The mandate was also extended for a further three years. These developments have reinforced the realisation of the rights to water and sanitation as legally binding obligations on all States parties to the International Covenant on Economic, Social and Cultural Rights and other human rights treaties⁵, promoting the deepening and enrichment of international norms.

DISCUSSION BOX 1.1 The UNECE Protocol on Water and Health⁶

Fully realising the rights to water and sanitation is a challenge throughout the developed and developing world. Despite Europe's general economic prosperity and significant achievements in the implementation of human rights, it is estimated that 120 million people living in the region still do not have access to safe water or adequate sanitation.⁷ In 1999, the member States of the United Nations Economic Commission for Europe (UNECE) adopted the Protocol on Water and Health to the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes. This Protocol acts as a driver toward ensuring universal access to safe drinking water and adequate sanitation, by linking water management and health issues.⁸ The Protocol largely shares the same principles as the rights to water and sanitation, with a particular emphasis on equitable access. To date, the Protocol has 25 Parties with other countries in the process of accession.⁹ All Parties must set national and local targets for access to water, access to sanitation, water quality, performance of the water supply and sanitation systems, including affordability, and develop institutions and cross-sectoral cooperation to monitor progress toward these targets. The Protocol stresses the importance of the participation of all stakeholders, including the private sector and civil society, and provides an opportunity for States to redesign policies and programming relating to water and sanitation services to reflect the requirements of the Protocol. Parties are accountable for their progress through a compliance review and are encouraged to make themselves more accountable to the general public by allowing for judicial and administrative review of Government decisions made pursuant to the Protocol.

The first reporting cycle on implementation, concluded in April 2010, showed that the Protocol has triggered national action to improve access to safe water and adequate sanitation, but institutional, social and economic challenges remain. In particular, the final report from this cycle noted that the water and sanitation sectors continue to be highly fragmented, in particular in States transitioning from centralised to free-market economies, and that there are insufficient resources to respond to the need to maintain, improve and expand water supply and sanitation systems. However, the process of target setting and reviewing existing policies and programmes has had the benefit of increasing national and regional focus on the need for improved water and sanitation services, particularly for marginalised and vulnerable groups, and has increased the understanding and access to information of civil society.

The pan-European nature of the Protocol has increased understanding across the region, and the clear targets, based on political commitments, have furthered progress based on cross-sectoral analysis and clear priorities. The role of the Protocol is of particular importance in countries with economies in transition in Eastern Europe, Caucasus and Central Asia, where it represents the only international binding legal reference for issues related to water and sanitation.¹⁰

The rights to water and sanitation have also been prioritised in international initiatives in the context of development cooperation.

Since 2000, improving access to safe drinking water has been a key target of the Millennium Development Goals (MDGs), with the Johannesburg World Summit on Sustainable Development adding sanitation as an additional target in 2002.¹¹ While the MDG targets are primarily driven by the development agenda, there has been a significant push from the human rights community for States and international donors to recognise that progress toward achieving the MDGs is greatly supported when those efforts comply with human rights principles. In the same vein, the **UN Secretary General's Advisory Board on water and sanitation (UNSGAB)** embraced the 2010 adoption of the resolution on the right to water and sanitation by the UN General Assembly and in a letter to the **UN Secretary General**, the Chair of UNSGAB, the Prince of Orange, requested that the scope of the monitoring be widened to include indicators of neglected issues such as water quality, accessibility and affordability.¹²

In July 2011 the President of the United Nations General Assembly convened a High Level Plenary Meeting of the General Assembly devoted to the Human Right to Water and Sanitation, in which the UN Secretary General and the Special Rapporteur, as well as UN Member States participated. This meeting was aimed at sharing progress and remaining challenges in the implementation of these rights.

Development targets can be “steps” in the progressive realisation of human rights, and specifically here of the human rights to safe water and sanitation. The international community's work is not complete once targets set by the MDGs are reached, but will require further work to reach those people not yet covered by the MDG targets. As part of wider efforts to integrate human rights into the post-2015 development agenda, the Special Rapporteur will lead a task force to discuss how non-discrimination and equality can be monitored globally. Monitoring of the MDGs and the development of future goals is discussed further in chapter four.

The Global Sanitation Fund, discussed in more detail in chapter two, also supports States to achieve their targets by providing financing for the implementation of programmes to deliver on sanitation policies.

In addition to these international efforts, several regional forums have emerged in recent years to shore up political commitment to improving access to water and sanitation. The **South Asian Conference on Sanitation (SACOSAN)**, made up of Afghanistan, Bangladesh, Bhutan, India, The Maldives, Nepal, Pakistan and Sri Lanka, has met regularly since 2003 to exchange ideas and

identify priorities in improving access to sanitation. At SACOSAN III, held in Delhi, India, in 2008, representatives from **national water ministries** and **NGOs** and **academics** agreed on the Delhi Declaration, which explicitly recognises access to drinking water and sanitation as a human right and emphasises a participatory, flexible and non-discriminatory effort toward achieving universal access to sanitation.¹³ SACOSAN IV, held in Colombo, Sri Lanka, in April 2011 reiterated the importance of recognising the right to sanitation, focusing on the theme of sanitation as it relates to quality of life.¹⁴ The equivalent **2011 African Conference on Sanitation (AfricaSan)** picked up similar issues, agreeing to focus on equity and pro-poor outcomes and that States should work harder towards meeting their previously agreed commitments for sanitation.¹⁵

Organisations working in development cooperation also promote human rights principles through their work. **Sanitation and Water for All (SWA)**, a partnership of developing countries, donors, multilateral agencies and civil society, was launched in 2010 to support the political prioritisation of sustainable sanitation and drinking water, particularly for poor, vulnerable and unserved populations, while creating a forum for mutual accountability between governments and international donors.¹⁶ Primarily designed to facilitate national-level action, and the development of national plans of action, the initiative's immediate focus is on achieving the Millennium Development Goals for water and sanitation by offering technical assistance and generating high-level support for national level development. SWA emphasises the need to prioritise progress in the most off-track countries in MDG terms, using the economic argument that investment in water and sanitation delivers positive results in terms of development and the economy.

German Development Cooperation (GIZ) has also proved instrumental in incorporating the rights to water and sanitation into national development plans and sector reform.¹⁷ For instance, it has worked closely in partnership with the Government of Kenya (see Discussion Box 1.6 below) to reform that country's water sector, placing particular emphasis on developing pro-poor strategies such as cross-subsidies in tariff structures.

Swiss Development Cooperation (SDC) has been promoting the rights to water and sanitation in their work since General Comment No. 15 was adopted. This has included supporting NGOs such as the Centre on Housing Rights and Evictions (COHRE) and their work on the rights to water and sanitation, as well as exploring how the rights to water and sanitation can support the work of the Water Integrity Network in promoting transparency in the water and sanitation sectors.¹⁸

WaterAid, an international NGO focusing on developing practical solutions for improving access to water and sanitation within poor communities, has recently incorporated a commitment to promoting and securing the human rights of people living in poverty as a central tenet of their global strategy.¹⁹ Each of their national offices is in the process of developing new strategies that promote rights-based approaches for ensuring access to water and sanitation, which will be a central part of working with local partners to deliver services and of national and regional advocacy plans. WaterAid has also integrated the concepts of equity and inclusion throughout the organization, ensuring that the needs of people who are traditionally excluded gain access to services, including planning for access for those with disabilities, and working with stigmatised groups such as (ex-)prisoners and sex-workers.

The **International Federation of Private Water Operators, Aquafed**, has been involved in securing the rights to water and sanitation internationally since General Comment No. 15 was adopted and this is reflected in their work.²⁰

1.2 National legal frameworks: laws, regulations, and regulators

While international momentum toward broad-based support for the rights to water and sanitation is essential, the actual implementation of the rights depends heavily on national legal frameworks, anchored by constitutional and statutory provisions. In turn, these laws must give voice to national policies, and aspire to achieving universal realisation of the right, and be operationalised through a robust system of rules and regulations emanating from government institutions and, ideally, national water and sanitation regulators.

The strongest domestic legal frameworks exist where explicit recognition of the rights to water and sanitation is included in the national constitution. As the principal legal instrument describing the relationship between the State and residents, as well as the roles and responsibilities of each, such recognition underscores a national commitment to realising the rights for all people and ensures their lasting inclusion in domestic law. Moreover, the recognition provides a critical reference point for policymakers, government ministries, judicial bodies, and civil society, all of which aim to influence policy, set standards and hold the relevant actors accountable. At present, many countries have recognised the right to water in their constitutions, including, **Bolivia**,²¹ the **Democratic Republic of Congo**,²² **Ecuador**,²³ **Kenya**,²⁴ the **Maldives**,²⁵ **Nicaragua**,²⁶ **South Africa**²⁷ and **Uruguay**.²⁸ A few of these constitutions also recognise the right to sanitation.

Constitutional recognition, often requiring a qualified majority to be passed in parliament, furnishes the rights with more enduring support than by simply recognising them through other legislation or executive decree. In Kenya, for example, the right to water was initially recognised via an Executive Decree but was incorporated, along with the right to sanitation, into the new 2010 constitution, after concerted lobbying by human rights NGOs (see section 3.8 for further information on advocacy).

Constitutional provisions that recognise the rights to water and sanitation should be bolstered by an enabling statutory framework, giving that recognition practical and tangible significance. After recognition, statutory frameworks are often the first step toward implementation. They allow States to begin addressing the normative content of the rights, and can serve as the basis for new policy initiatives, the creation of a new regulatory entity or simply a more comprehensive set of rules and regulations to be implemented and enforced by one or more government ministries.



Catarina de Albuquerque meets the Ombudsman and her office staff in San José, Costa Rica, March 2009.

PHOTO: MANDATE OF THE SPECIAL RAPPORTEUR, OHCHR

DISCUSSION BOX 1.2 South Africa: Operationalising constitutional and statutory provisions²⁹

The right to water is enshrined in the South African Constitution.³⁰ Along with the 1997 Water Services Act, which also recognises the right to sanitation³¹, and the 1998 National Water Act, this legal framework lays the groundwork for South African efforts to realise the rights. The Act identifies basic norms and standards, defining “basic water supply” and “basic sanitation”, and clearly outlines the roles and responsibilities of different government entities in order to ensure, among other issues, the participation and mobilisation of all available resources. For instance, it requires the Minister of Water Affairs to establish and maintain a national information system on water services, essential for monitoring the impact of the relevant policies and practices. Additionally, the National Water Act establishes a water reserve, meaning that a certain portion of the country’s water resources must be secured for domestic use.³²

The Constitution and the Water Services Act have also served as the foundation for a number of policy initiatives for the realisation of the rights to water and sanitation. The 2002 Free Basic Water Implementation Strategy set out the framework for the provision of 6,000 litres of free, safe water per household per month,³³ and this is modified where there is waterborne sanitation, to allow for the extra use of water. This was followed in 2009 by the Free Basic Sanitation Implementation Strategy, which aims to provide all people with access to sanitation by 2014. The Department of Water Affairs defines basic sanitation as “the provision of a basic sanitation facility which is easily accessible to a household, the sustainable operation of the facility, including the safe removal of human waste and wastewater from the premises where this is appropriate and necessary, and the communication of good sanitation, hygiene and related practices.”³⁴

Another policy stemming from these laws, which aims to support the realisation of the right to sanitation is the Bucket Eradication Programme.³⁵ Prior to 1994, there were about 250,000 households in townships using bucket latrines, a system of sanitation management where backyard latrines are emptied daily by municipal sanitation workers. In 2005, the government launched this programme with the aim of replacing all bucket latrines with safe, acceptable sanitation by December 2007. By March 2008, 91 per cent of the buckets had been replaced by better alternatives such as VIP latrines and flush toilets. However, it is expected that bucket latrines will always be part of a short-term solution for those living in newly formed informal settlements in those cases where the sanitation system has not been planned in advance of occupation.³⁶

Additional policy initiatives include the 2003 Strategic Framework for Water Services, designed to align policies, legislation and strategies within the water sector.³⁷ The 2008 National Water and Sanitation Regulatory Strategy outlines 11 key performance indicators, including water quality and customer service standards, to ensure compliance with the Water Services Act.³⁸ Coupled with the

National Framework for Municipal Indigent Policies, which provide guidelines for municipalities to improve access to free basic services (including water, sanitation and energy), these strategies assist in reaching those living in poverty.³⁹

Full and meaningful participation is one of the defining tenets of the human rights framework and must be a central component of any implementation effort. **Brazil's 2007 Basic Water and Sanitation Law**,⁴⁰ itself developed through a multi-stakeholder process, underscores the centrality of participatory processes to achieve the goal of universal access to sanitation, with a focus on marginalised groups and those living in poverty. The statute provides that, in order to receive funds from the central government, each municipality needs to develop a fully articulated plan, including data collection and monitoring processes. Additionally, it affirms that service providers, both public and private, are responsible for delivering services to all persons living in urban areas, including those living in informal settlements. Finally, it mandates extensive public participation in decision-making processes through a body known as the Council of Cities. This multi-stakeholder body is set up to discuss and make decisions on urban issues, including the allocation of resources.⁴¹

Statutory frameworks are also important for ensuring the affordability of drinking water and sanitation. **Venezuela's Organic Law on the Provision of Potable Water and Sanitation Services** addresses the affordability of water and sanitation services,⁴² establishing a variety of subsidies for low-income users and designed to encourage both public and private services providers to expand access to low-income and under-serviced communities. **Chile's Law 18.778 (1989)** and **Colombia's Law 142 (1994)** lay the groundwork for direct and cross-subsidisation programmes to support payments to water and sanitation service providers.⁴³ These two subsidy systems are discussed in greater depth in chapter two.

Statutory frameworks can also serve as the basis for coordinating the activities of various government agencies and setting clear national priorities. In **Mexico**, the **National Water Law** represents a comprehensive effort to regulate the management and quality of water and sanitation services. Among other activities, it identifies the actors who will be primarily responsible for providing water and sanitation services,⁴⁴ and creates an incentive for clean and efficient use while establishing a "polluter pays" principle,⁴⁵ and a national regulatory body, **Comisión Nacional del Agua (CONAGUA)**.⁴⁶ In terms of allocating water resources, the Law gives explicit priority to personal and domestic uses. It emphasises the

need for service providers to pay special attention to the needs of marginalised and vulnerable groups and affirms that social support should be a basic instrument of national water policy.⁴⁷ Additionally, the Law mandates that CONAGUA promote and facilitate the participation of society in the planning, decision-making, execution, evaluation and monitoring of the national water policy.⁴⁸

In the **United States of America**, the **Safe Drinking Water Act (SDWA)** sets stringent minimum standards for drinking water quality in all 50 states.⁴⁹ While each state may promulgate and enforce higher standards for public sources within their borders, none may fall below the federal standard. States are required to produce regular water quality assessments, which must be made public. Meanwhile, service providers failing to maintain the minimum water quality standards may also face civil or even criminal actions brought by state or federal executive agencies. The SDWA requires quality monitoring for all public water sources as well as private water services serving more than 25 individuals, hence risking the exclusion of individuals who live in remote areas.⁵⁰ California's failure to provide clean, safe drinking water to its residents, noted by the Special Rapporteur on her mission to the USA in 2011,⁵¹ has been partially addressed by a package of "human right to water" bills, signed by the Governor in October 2011. These bills provide for disadvantaged communities without access to water to apply for grants to fund the necessary infrastructure projects,⁵² requires utilities to give notice of water quality violations in appropriate languages, and requires utilities to plan to serve communities excluded from the services. The bills were enacted after continued pressure from a coalition of environmental justice, faith-based and human rights organisations.⁵³

Germany has enacted a law to prevent water pollution which, while not directly related to the rights to water and sanitation, has an impact on protecting water resources that are used for personal and domestic purposes.⁵⁴

In order to promote the protection of water resources and reduce consumer water expenses, in May 2011, **France** adopted a law on the right of the user to be informed of water leaks within their premises.⁵⁵ This law requires the water supplier to inform the user should current consumption be found to be significantly higher than previous consumption, or average consumption, as this may suggest that there is a leak in the system. If the supplier does not notify the user, he or she is not required to pay for consumption that is over double the normal level, as long as the user fixes the leak within a month of being notified. This law is significant because most user complaints due to high bills are linked to an undetected leak. There is now also a water ombudsman to solve water issues arising between suppliers and users at no cost.

As constitutional provisions support new legislation which, in turn, acts as the basis for regulatory frameworks, a greater number of actors and institutions become involved in supporting the rights to water and sanitation. It can thus become increasingly difficult to ensure that water and sanitation standards are upheld, monitored and protected. To respond to this challenge and begin to harmonise regulatory efforts, many States have created independent regulators. A regulator can play a range of different roles, from rulemaking and policy development, to examining water and sanitation services for compliance with relevant standards, providing a forum for complaints by individuals, setting or signing off on tariffs to ensure that services are affordable, and working to promote non-discrimination. The most effective regulators must be independent and endowed with the human and financial capacity, as well as the legislative support to carry out their mandate. Some countries have different regulators for different aspects of monitoring service delivery, such as England and Wales, which have different bodies for the regulation of the abstraction and disposal of water, assurance of water quality and economic issues such as performance monitoring and tariff setting, with a consumer council for water representing the interests of customers.

States have interpreted the role of the regulator in various ways depending largely on the norms applicable to their particular context and corresponding needs, leading to a range of different policies and institutional arrangements. In **Mozambique**, the **Water Regulatory Council** is involved in decisions taken about service delivery standards and affordability in order to ensure access for people in poverty, particularly in slums.⁵⁶ The Council has found that for services to be delivered effectively, it is necessary to go beyond traditional models, to understand who does not have access and why, and to find solutions based on the reality on the ground. One of the particular problems that the regulator faces is the provision of safe, affordable services to residents of slums, who account for approximately 75 per cent of the urban population, with over 50 per cent living below the poverty line of 1 USD per person per day. Under the existing conditions of nearly full cost-recovery for water service provision, cross-subsidisation between higher-income groups and lower-income groups is hardly feasible, as there are insufficient users who can afford to subsidise the increasing usage of the poorest people.

A further struggle has been to understand the conditions and access to services already existing in the slum settlements, in order to be able to address the shortfall in service provision. A full survey of services provided including beneficiary assessment studies has been carried out to identify, monitor and

expose the so-called “critical areas” of low service, and this is followed by attempts to address these.

Alternative service options are considered, including legalising the re-sale of water from a neighbour’s yard-tap, and the conversion of public standpipes into private water vending kiosks. Different options for regulation are being piloted, including the registration of the resellers, and these pilots will be assessed in 2012. Although a household does not need to prove land tenure for the provision of a house connection, the regulator supports the regularisation of tenure status, promoting upgrading from low tenure security to a situation with more security. For sanitation, both on- and off-site options are considered, with an emphasis on encouraging greater coverage through business models, and on the treatment and disposal of wastes. The regulator wants to develop an improved public service for on-site sanitation, to give it equal status with a sewerage system, providing faecal sludge management systems, but this is still under development. The Council also promotes tariff restructuring to improve affordability and provides alternatives to paying a monthly bill and restructuring the connection charge so that it is included in a longer term bill, while still allowing for profitable service delivery. The regulator has also realised that it is not sufficient to target those households that need assistance, but must also include those that are able to pay more.⁵⁷



WSUP's USAID-funded *African Cities for the Future* programme: community consultation on extending the water supply to Ximpaminine in Maputo, Mozambique, for house and shared connections, December 2010.

PHOTO: CARLA COSTA, WSUP

DISCUSSION BOX 1.3 Regulation of urban informal service provision

Regulation to ensure water quality, accessibility, reliability and affordability are key aspects of implementing and monitoring the rights to water and sanitation. It is the role of a regulator to ensure a fair distribution of service coverage and, where possible, it should ensure a bias towards serving the poorer neighbourhoods.

While regulation should be a relatively straightforward process for utilities that provide services to formal settlements in urban areas, the picture is significantly different for people receiving informal services, particularly those living in slums and informal settlements. In these environments, informal service provision, through a variety of means, can make regulation and monitoring difficult, with the impact that services are generally lower in quality and higher in cost.

Vendors may sell jerry cans of water of uncertain provenance, at prices that reflect the conditions of supply rather than demand, so that water becomes more expensive at times of scarcity. People receiving informal water services often pay 5-10 times more than the price paid per litre by those connected to formal services. For those living in informal settlements, public latrines are often poorly cleaned or maintained, or are locked, and individuals and households must often find their own sanitation solutions without a suitable system for disposing of or treating wastes. Due to the informal nature of the provision, users of these services (or lack of services) do not have anyone to complain to if the service is inadequate or too expensive.

One solution to this problem is to ensure that formal service providers are under obligation to deliver services to all households, regardless of where they live. This obligation of a service provider to provide a universal service, whether public or private, is a reflection of the need to ensure public health in densely populated urban areas.

However, both public and private utilities may be unwilling to deliver services to informal settlements due to a lack of experience of working in such areas, corruption or resistance from existing cartels of informal providers. Authorities frequently resist allowing people with insecure tenure to connect to the water and sanitation networks because such connections can confer legal rights over the land that they occupy, and thus be seen to encourage the development of informal settlements.

Human rights law does not specify which type of service provision is most appropriate, but states that standards are to be met progressively. Different countries have proposed different solutions for the issue of informal service provision. In Kenya, for example, according to recent water legislation (Water Act 2002),⁵⁸ informal service provision is prohibited as cost and quality cannot be guaranteed to comply with the normative content of the rights to water and sanitation. Nevertheless, informal service providers are tolerated until the utility moves into these low-income areas as it is thought that regulating informal service providers (formalising informality) and

integrating informal service provision is an impossible task there. The approach in Kenya is for utilities to provide water kiosks, supported by the Water Services Trust Fund, to bring formalised service provision to all urban poor settlements within 10 to 15 years.

On the other hand, in Mozambique informal service provision is tolerated, and even encouraged in the short-term, to promote the expansion of access to services, recognising that this type of service delivery is essential to ensure that people receive crucial services.⁵⁹ Residents of these settlements would often have no services at all without these informal service providers. In the longer term, it is hoped that the areas receiving informal service provision will be integrated into the formal services, whether networked supplies or more decentralised systems. In the short term, however, this means that a number of options for provision, such as selling on to neighbours from a yard-tap, are being legalised, despite the fact that it is hard for the State to ensure affordability, quality or accessibility, and this can lead to discriminatory practices concerning access.

Countries such as Bangladesh, committed to ensuring better access to water and sanitation services for all, are exploring approaches to regulating informal service provision effectively without stamping it out altogether. However, until there is better planning for the increase in populations in urban areas, it is to be expected that unregulated informal provision will continue to be the norm in informal settlements, particularly with respect to sanitation.

ERSAR, the Portuguese regulator, has played a critical role in ensuring universal access to water and sanitation.⁶⁰ It has established a number of hard-line rules for service providers, mandating, for instance, that any person living within 20 metres of the public system has the right to be served by that system and that service providers must respond to service requests within five days. ERSAR has also implemented policies to control the affordability of water and sanitation services. It has set a benchmark for the charges of each service (water and sewerage) at 0.5 per cent of average disposable income,⁶¹ for an average consumption (120 m³ per year). Furthermore, this percentage must be below 1 per cent for each service in order for the service to be considered of good quality. ERSAR recommends the use of a social tariff for low-income households, and a family tariff for large families, which significantly lowers the price of the services.

Additionally, ERSAR is working toward the elimination of connection charges. To reduce the financial barrier that connection charges create for those seeking to access services for the first time, it now incorporates the cost of connecting a new user into their regular tariff charges throughout the contract lifetime, and it is hoped that beneficiaries will include low-income families that were failing to connect to the services. This means that every user already

connected to the service will pay a little bit more in the regular monthly tariff in order to subsidise the connection of people who are not yet served. A discussion on cost recovery is included in chapter two.

OFWAT, the regulator for **England and Wales**, is primarily an economic regulator, responsible for both ensuring the financeability of functioning water and sanitation services and for protecting customers. As such, it is a major driver for the creation of incentives for increasing the efficiency of water and sanitation service providers in the context of the requirement to deliver cost-reflective tariffs. OFWAT estimates that water bills in England and Wales are more than 30 per cent cheaper than they would be without such controls on service providers.⁶² Generally speaking, OFWAT determines annual revenue requirements over five year periods, allowing for inflation plus increases in any given year, then oversees how the service providers reflect this total in individual tariffs.⁶³ It has also developed several specific policies and strategies to ensure that services are as affordable as possible, within its financeability constraint. For instance, for large households and persons living with an illness that requires a great deal of water (e.g. dependence on a dialysis machine) and who are already supported by other social welfare programmes, OFWAT requires service providers to cap volumetric charges at the level of the average volumetric bill.⁶⁴

Information sharing and the exchange of experience has proved a useful exercise for regulators in Latin America who, in 2001, formed a network of water regulators from 16 countries, the **Association of Potable Water and Sanitation Regulators for the Americas (ADERASA)**⁶⁵. ADERASA serves as a reference point for the water and sanitation sectors throughout Latin America, providing an opportunity to share information on the delivery of water and sanitation services between members and to the populations of the countries they come from. One of the network's focus areas is monitoring, target-setting and benchmarking, particularly for water quality and affordability. The members of the network report that this collaborative work has assisted in improving strategies for delivering water and sanitation services, and has fostered a sense of responsibility towards sharing. While some members of the network are not yet able to provide comprehensive figures, the exchange of information provides guidance for regulators on how to improve the national monitoring process and begin collecting actionable data that can be used for more vigilant controls over tariffs, water quality and other relevant measures in the future.

DISCUSSION BOX 1.4 Disconnection for non-payment

Laws and policies that permit service providers to disconnect water and sanitation users in response to the non-payment of bills must allow for due process. Such disconnection policies *per se* are not contrary to human rights principles, but authorities must ensure that the person faced with the disconnection is given opportunities for consultation and for rectifying the situation. They must also ensure that basic minimum amounts of water and access to sanitation are made available to the person (and members of his or her household) regardless of their ability to pay, to protect his or her dignity, health as well as other human rights, even where a disconnection is agreed. The circumstances of that person must also be taken into account when making a decision about whether to disconnect (in particular the financial means of the person or household, as well as any particular vulnerabilities such as illness or other condition requiring special access to water). When disconnections occur, those affected must be informed in advance, with reasonable notice, of the planned disconnection, recourse to legal remedies and legal assistance to obtain remedies.⁶⁶

Disconnections can disproportionately affect minority and low-income populations, thus contravening the principle of non-discrimination. For instance, during a recent country mission to the USA, the Special Rapporteur visited a neighbourhood in Boston Massachusetts, where it was reported that, for every one per cent increase in the minority population, the number of disconnections by service providers in that area rose by four per cent.⁶⁷

One way to avoid any negative impact of disconnections on human rights is to adopt legislation to ban them outright. For instance, to ensure better access to water and sanitation services, particularly for those on low-incomes, the United Kingdom amended its Water Industry Act in 1999 to ban disconnections of water and sewerage services for non-payment by domestic customers.⁶⁸ New Zealand's Local Governments Act likewise bans the discontinuation of service except in cases where it is in the interest of public health.⁶⁹ This has significantly reduced the rate of disconnection of these services.

However, a "no disconnections" policy may also have negative implications for the realisation of the rights. In the United Kingdom, some argue that households that are able to pay, but choose not to, are abusing the policy. The costs for service providers, who must either use the court system to seek payment or write off these bills entirely, once they have convinced the regulator that they have done all they can to collect bad debts, can be considerable and are passed on to all consumers, increasing bills by about two per cent.⁷⁰ This could be seen, potentially, as a negative transfer from those who can pay, but who choose not to, to those who may be less able to pay, but are conscientious. However, from the point of view of ensuring affordability for all, the benefits of this policy outweigh the costs of implementing it. It has been argued that if the costs were to be carried by the shareholders rather than the paying customers, there might be more success in recovering bad debts. This is the approach in Chile where bad debts are passed through to shareholders, not to paying consumers, which perhaps changes the balance of incentives in debt collection.

1.3 National policies, planning and programming

Including the rights to sanitation and water in the national legal framework, and supporting this with legislation defining specific standards for service provision is a critical step for embedding human rights in the water and sanitation sectors. Bringing national policies and plans into compliance with the human rights standards outlined above will require significant sectoral reform. Supporting the rights in difficult to reach areas such as informal settlements will differ from strategies to improve coverage in rural areas, and the specific issues and contexts have to be understood to ensure that appropriate policies are developed. Ensuring meaningful public participation in far-flung rural villages, and affordability in areas where it is expensive to deliver services, create challenges that require careful consideration to resolve.

Legal and regulatory frameworks work best when they are guided by a national vision for how the rights to water and sanitation should be realised. National policies aim to ensure that decision-making within the water and sanitation sectors are coherent, mutually reinforcing, and consistently engage with human rights principles. The rights cannot be realised without good national policies and planning supported by the necessary resources, which ensure that laws are implemented correctly.

Recognising that poorer, marginalised and isolated rural populations often lack access to water and sanitation services, **Peru's** Ministry of Housing, Construction and Sanitation launched the **National Programme for Rural Water and Sanitation (PRONASAR)**. One of several national programmes in the area of water and sanitation, PRONASAR aims to shore up access to water and sanitation among under-served populations through a number of individualised interventions. This includes improving and expanding existing systems and constructing new systems for rural areas as well as small towns with populations of no more than 15,000. The programme also offers communities health and hygiene training.⁷¹ PRONASAR also seeks to build awareness among users, service providers and the municipalities of their respective roles and responsibilities. The programme aims to devise and implement participatory management structures that best meet the needs of the community, and aims to strengthen the capacity of local institutions based on principles of co-financing and shared responsibilities between national and local authorities.⁷²



UN Secretary General's Advisory Board on Water and Sanitation meets in Sofia, Bulgaria, May 2009.

PHOTO: UNSGAB SECRETARIAT



Woman standing in front of her new latrine in Ndiba, Koalack, Senegal during the SR mission to Senegal, November 2011.

PHOTO: CATARINA DE ALBUQUERQUE

DISCUSSION BOX 1.5 The centrality of national planning: Namibia's National Sanitation Strategy

Still in its early stages, Namibia's National Sanitation Strategy exemplifies the type of national planning that supports the full realisation of human rights.

Namibia has identified a considerable lag between improvements in access to water versus improvements in access to sanitation, particularly in rural areas. Based on the most recent studies, access to water in rural areas sits at around 80 per cent, while only 13 per cent of the rural population has access to "improved" sanitation.⁷³ Examining previous water and sanitation strategies, the Namibian government identified a number of problems that limited their efficacy, including insufficient budget allocations, a lack of coordination, an opaque and variable tariff and subsidy system, and the absence of hygiene promotion.⁷⁴ The new strategy, to be implemented between 2010 and 2015, aims to limit these problems and envisions a highly detailed, methodical process for achieving its goals. The Strategy identifies six key themes: sector coordination; institutional capacity building; community education and participation; construction; operation and maintenance, performance management and enforcement; and social-economic-environmental outputs and outcomes. These themes are then broken down further into specific objectives with targets and performance indicators. The strategy also includes a timeline for implementation.⁷⁵

As an illustration, the implementation of the strategy begins with the Directorate of Water Supply and Sanitation Coordination (DWSSC), which is charged with laying the groundwork for improved coordination as well as developing, harmonising, and disseminating the relevant legislative and regulatory frameworks. The Directorate then collaborates with the Ministry of Regional and Local Government, Housing and Rural Development to develop more detailed technical guidelines and identify specific costs. At the next stage, every institution is responsible for ensuring that they have adequate human and physical resources in place at all levels to begin moving forward with community education and construction.⁷⁶ Each individual initiative must be evaluated on the basis of a "scorecard", which includes an estimated total cost for the project and identifies the phase of the initiative in which it will be implemented.⁷⁷ For instance, as part of the goal to improve sector coordination, the development of a water and sanitation helpdesk is identified as an urgent priority falling under the ambit of the DWSSC with the support of the national Water and Sanitation Forum (WSF). Ideally, such an organised and methodical approach will greatly improve access to sanitation services while guaranteeing their long-term sustainability. As Namibia moves into the implementation phase of its strategy, it must continue to build political will, work to ensure a steady flow of resources to the sectors, including the development of human resources, and further strengthen coordination.

Hungary prioritises access for low-income and disadvantaged groups, having developed national legislation and a **National Environmental Plan** that addresses access to water and sanitation, particularly focusing on affordability within the Roma community. Affordability is addressed through a combination of cross-subsidies, State assistance and debt management schemes, as well as a comprehensive disconnections policy designed to ensure that people always have access to at least minimum amounts of water for personal and domestic uses.⁷⁸

DISCUSSION BOX 1.6 Water sector reform in Kenya⁷⁹

Efforts by the Government of Kenya to create a pro-poor, rights-based focus in the water and sanitation sectors are supported by a statutory framework centring on the 2002 Water Services Act⁸⁰ and, more recently, the explicit recognition of the rights to water and sanitation in the 2010 Constitution. Since 2002, the Government has created a wide range of new institutions, such as the Water Services Trust Fund (in 2002) and the Water Services Regulatory Board (in 2003), while also reforming several already in existence, such as the Ministry of Water and Irrigation.

A central aim of these efforts has been to establish more clearly defined roles and responsibilities for all actors operating within the sectors. The Water Services Trust Fund,⁸¹ for instance, was set up to focus exclusively on informal settlements in an effort to fast-track access, by providing financial incentives for service providers to extend services to these areas and to eliminate the heavy reliance on informal service providers, as these generally charge considerably higher prices than the formal sector, with no guarantees of service quality. The Trust Fund is also responsible for MajiData, a slum-mapping exercise and, eventually, an online database that monitors access to water and sanitation for people living in poverty. Further information is available on MajiData in chapter four.

The Water Services Regulatory Board (WASREB),⁸² meanwhile, is responsible for promulgating minimum standards for water quality and ensuring that service providers comply with these standards. WASREB is also responsible for ensuring that the tariff structures proposed by service providers meet the Kenyan Tariff Guideline, which requires that they be pro-poor and imposes a price cap at five percent of household expenses. Finally, it is required to set up adequate complaints mechanisms, including customer care desks and regular surveys to measure customer satisfaction and expose corruption.

In addition to its regulatory activities, WASREB seeks to empower consumers, particularly those living in un-served communities, to organise Water Action Groups (WAGs) with a view to making them a formal negotiating partner with the service providers, providing feedback on consumer concerns and commenting on tariff adjustments. The 2010 Annual Impact Report (designed to

inform the public about progress made, focusing on targets such as access figures, water quality, and cost of operation and maintenance) has reported that the WAGs have proven to be an enormous success (for more information on the activities of the WAGs and similar efforts, see chapter four).⁸³

Access to information for stakeholders is also contained within the 2002 Water Act, including public consultation processes for the development of national strategies and the granting of water licences. All information about access to water and sanitation must be available to all, and public consultations must be advertised in advance in a national newspaper and on local radio.

In 2007, the Government followed up on its efforts with the National Water Services Strategy and the Pro-Poor Implementation Plan for Water and Sanitation, both of which explicitly recognise the rights to water and sanitation. The National Water Services Strategy set ambitious targets to increase access to water in urban areas from 60 to 80 per cent and in rural areas from 40 to 75 per cent by 2015. Kenya predicts that the new strategies will allow it to expand access to around 500,000 additional users each year in a manner that conforms to human rights standards for quality, affordability, accessibility and non-discrimination.

India's **2005 Jawaharlal Nehru National Urban Renewal Mission** (JNNURM) is a multifaceted initiative that aims to improve the sanitation infrastructure in 63 cities to assist in ensuring access to services for the urban populations living in poverty, particularly in informal settlements. The JNNURM is managed by the Ministry of Housing & Urban Poverty Alleviation and focuses on improving basic services while providing those living in informal settlements with an opportunity to acquire secure land tenure for an affordable price.⁸⁴ The JNNURM also envisions considerable improvement in accountability between users and local, as well as state governments. For instance, in exchange for the national government covering 50 per cent of the cost for improvements in sanitation infrastructure, state governments are obliged to earmark funds for the low-income communities, enact community participation laws and assign greater responsibility to local level institutions.⁸⁵ While maintaining adequate funding remains a problem, the JNNURM has seen success in some areas. For instance, as of April 2011, the national government reports that Vishakhapatnam City in the state of Andhra Pradesh has created 36, 850 new sewer connections since it began participating in the programme.⁸⁶

Even more optimistically, the **Rajiv Awas Yojana** initiative, which began in 2009, hopes to make **India** slum-free by 2014, beginning with 30 cities across 16 states, and focuses on delivering services, including water and sanitation, and

improving land tenure status.⁸⁷ This initiative is discussed in more detail in chapter three.

There are also national programmes for rural water supply and sanitation services, such as the 1991 **Rajiv Gandhi National Drinking Water Mission** in India.⁸⁸ This programme institutionalises community participation and partnership with the relevant local authorities and Village Water and Sanitation Committees. This also incorporates the Total Sanitation Campaign, following the Community Led Total Sanitation approach, discussed further in section 3.1, with an online monitoring system, discussed in section 4.2.

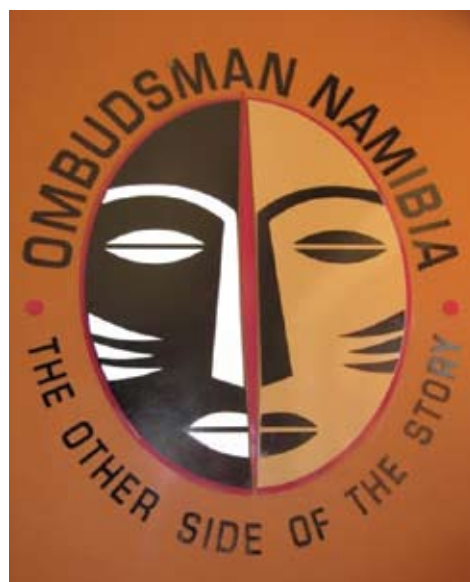
Bangladesh has recently begun implementing its own ambitious sanitation plan. Beginning with the poorest segments of the population, it hopes to achieve universal access to water by 2011 and to sanitation services by 2013.⁸⁹

National plans often benefit from realistic targets that allow stakeholders to track progress and hold both governments and service providers accountable. Target setting is an important aspect of **Nepal's National Water Plan**. Explicitly recognising principles such as public participation, local level accountability, and emphasising vulnerable groups, the Plan aims to achieve 90 per cent access to both water and sanitation by 2012 and universal access by 2017. While ambitious, the Plan makes these goals somewhat more manageable by breaking them down into specific sub-targets, differentiated by basic, medium and high quality levels of service. For instance, 27 per cent of the population will have medium or high quality water services by 2017 and 50 per cent by 2027.⁹⁰ The Plan also emphasises hygiene awareness. National plans with specific targets become much more relevant, promote the progressive realisation of the rights to water and sanitation, and support the principle of accountability when they are coupled with strong monitoring mechanisms (see chapter four). The **Nepal Sanitation and Hygiene Master Plan** was also rolled out in 2011, with the main priority being securing access for people living below the poverty line, families of single women as well as disabled and marginalised communities.⁹¹

Conclusion

This chapter has sought to present some of the most important, interesting and effective work in the area of enabling and regulating efforts to realise the rights to water and sanitation. It demonstrates how strong legislative, policy and regulatory frameworks can facilitate these efforts by consolidating and giving expression to political will, devising strategies, setting priorities, providing guidance to stakeholders and paving the way for monitoring and accountability.

Ultimately, however, laws, policies and plans are only as good as the environment in which they are implemented and the people who implement them. The “good intentions” or aspirations of the laws and policies cited above must translate into sustainable progress and achievement on the ground. They require innovative thinking and technical expertise. They require sound, reliable sources of financing. They require accountability mechanisms to ensure that they are responsive to the needs of individuals and are not skewed in the favour of particular groups as a result of corruption or poor governance. This chapter has hence emphasised how national planning can assist States by mitigating potential waste, improving coordination between institutions at national and local levels, and ensuring that human rights principles are fully integrated into sector projects, from design to implementation and evaluation. The chapters that follow present practices that address the financing and implementation of legislation and policies, and that demonstrate how States can be held accountable for delivering on these frameworks. Community management processes generally require on-going support to be effective, which is a challenge when funding is unlikely to be accessed through tariffs.



Sign for the Namibian Ombudsman.

PHOTO: CATARINA DE ALBUQUERQUE

FOOTNOTES - CHAPTER 1

- ¹ ICESCR, available at: <http://www2.ohchr.org/english/law/cescr.htm>.
- ² A/RES/64/292.
- ³ A/HRC/RES/15/9.
- ⁴ E/C.12/2010/1, referencing ICESCR, Article 12, paras. 1 and 2 (a-c).
- ⁵ See, e.g., the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child.
- ⁶ Response from UNECE-WHO to the Special Rapporteur's Questionnaire, available at: [www2.ohchr.org/english/issues/water/ixpert/docs/questionnaires2010/Various_Protocol%20on%20Water%20and%20Health%20\(UNECEWHO-EURO\).doc](http://www2.ohchr.org/english/issues/water/ixpert/docs/questionnaires2010/Various_Protocol%20on%20Water%20and%20Health%20(UNECEWHO-EURO).doc).
- ⁷ www.unece.org/env/water/text/text_protocol.html.
- ⁸ Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, London, 17 June 1999, available at: www.unece.org/env/water/text/text_protocol.htm.
- ⁹ List of signatory States available at: treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=XXVII-5&chapter=27&lang=en.
- ¹⁰ Response from UNECE-WHO to the Special Rapporteur's Questionnaire, available at: [www2.ohchr.org/english/issues/water/ixpert/docs/questionnaires2010/Various_Protocol%20on%20Water%20and%20Health%20\(UNECEWHO-EURO\).doc](http://www2.ohchr.org/english/issues/water/ixpert/docs/questionnaires2010/Various_Protocol%20on%20Water%20and%20Health%20(UNECEWHO-EURO).doc).
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- ¹⁴ SACOSAN IV Colombo Declaration and Colombo Conference Statement 2011, available at: www.wsscc.org/resources/resource-publications/sacosan-iv-colombo-declaration.
- ¹⁵ AfricaSan 3 Conference Statement, available at: www.africansan3.com/index.htm.
- ¹⁶ www.sanitationandwaterforall.org.
- ¹⁷ Presentation by GTZ (now GIZ) Germany made at the international organisations' Public Consultation on Good Practices held in Geneva in March 2011, available at: www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/ConsultationBDA.aspx.
- ¹⁸ www.deza.admin.ch/en/Home/Themes/Water/Access_to_water_An_inalienable_human_right.
- ¹⁹ WaterAid Global Strategy 2009-2015, available at: www.wateraid.org/uk/about_us/strategy/default.asp.
- ²⁰ More information available at: www.aquafed.org.
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- ²⁵ Constitution of Maldives, 2008, available at: www.presidencymaldives.gov.mv/Index.aspx?lid=15.
- ²⁶ Constitution of the Republic of Nicaragua, 2005, available at: pdba.georgetown.edu/Constitutions/Nica/nica05.html.
- ²⁷ Constitution of the Republic of South Africa, 1996, available at: www.info.gov.za/documents/constitution/1996/a108-96.pdf.
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- ³⁰ Constitution of the Republic of South Africa, chapter 2, No. 27(b), available at: www.info.gov.za/documents/constitution/1996/a108-96.pdf.
- ³¹ South African Water Services Act, chapter 2, No 2(a): www.dwaf.gov.za/Documents/Legislature/a108-97.pdf.
- ³² Postel, Sandra L., The Forgotten Infrastructure: Safeguarding Freshwater Ecosystems, *Journal of*

International Affairs, 61(2) (2008).

- ³³ It should be noted that this policy was challenged, and ultimately upheld, in the South African Constitutional Court. For more information, see the *Mazibuko* case in chapter four on Accountability.
- ³⁴ Free Basic Sanitation Implementation Strategy, 2009, available at: www.dwaf.gov.za/dir_ws/waterpolicy/default.asp?nStn=policy_detail&Policy=556.
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- ⁴⁴ Response from Mexico to the Special Rapporteur's questionnaire, p. 4, available at: www2.ohchr.org/english/issues/water/iexpert/docs/questionnaires2010/Mexico_State_Ley_de_Aguas_Nacionales.doc.
- ⁴⁵ Ley De Aguas Nacionales, Article 14 Bis 5, XVII, XVIII.
- ⁴⁶ Ibid., article 9. www.cna.gob.mx
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- ⁴⁸ Ibid., article 14 Bis.

- ⁴⁹ 104 P.L. 188.
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- ⁵¹ Ibid.
- ⁵² www.redgreenandblue.org/2011/10/10/california_water_bill_of_rights.
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- ⁵⁴ www.gesetze-im-internet.de/stgb/_324.html
- ⁵⁵ LOI n°2011-525 du 17 mai 2011 - art. 2.
- ⁵⁶ More information available at: www.cra.org.mz.
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- ⁵⁸ www.water.go.ke.
- ⁵⁹ Email communication with the Regulator, 1 December 2011.
- ⁶⁰ Presentation by ERSAR, Portugal made at the regulators' and national human rights institutions' Consultation on Good Practices held in Geneva in March 2011, available at: www.ohchr.org/Documents/Issues/Water/Consultations/Portugal_Regulator.pdf, and www.ersar.pt/website.
- ⁶¹ One of the problems associated with measuring affordability is deciding what measure to use. In this case, 'disposable income' refers to income after tax. In the UK 'disposable income' refers to income after housing costs have been eliminated.
- ⁶² Presentation by Ofwat, England and Wales made at the regulators' and national human rights institutions' Consultation on Good Practices held in Geneva in March 2011, available at: www.ohchr.org/Documents/Issues/Water/Consultations/England_and_Wales_OFWAT.pdf.
- ⁶³ www.ofwat.gov.uk/aboutofwat/whatwedo/moreaboutourwork/.
- ⁶⁴ Presentation by Ofwat England and Wales made at the regulators' and national human rights institutions' Consultation on Good Practices held in Geneva in March 2011, available at: www.ohchr.org/Documents/Issues/Water/Consultations/England_and_Wales_OFWAT.pdf.
- ⁶⁵ Presentation by ADERASA, Argentina made at the regulators' and national human rights institutions' Consultation on Good Practices held in Geneva in March 2011, available at: www.ohchr.org/Documents/Issues/Water/Consultations/Argentina_Regulator_LAC.pdf and www.aderasa.org/index.html.
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- ⁸⁶ Jawaharlal Nehru National Urban Renewal Mission Monitoring Format 2011, available at: jnnurmmis.nic.in/jnnurm_hupa/jnnurm/DMU_REPORT_JNNURM.pdf.
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- ⁹⁰ Nepalese National Water Plan, pp. 10-11 and 29, available at: www.moen.gov.np/pdf_files/national_water_plan.pdf.
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*Lodwar Water and Sewerage Company
(LOWASCO) water kiosk in Lodwar, Kenya.*

PHOTO: WSTF/UPC

Frequently, beautiful plans are written but the money is never allocated for their implementation. Without adequate and predictable financing, planning and target setting is meaningless.

The human rights to water and sanitation require that these are realized to the maximum of available resources. Governments must know how much money is available for funding access to water and sanitation – including money raised through tariffs, money available from the State budget, and funds flowing from development partners. Financing must take account of not only infrastructure needs, but also costs of operating and maintaining systems, raising awareness of populations particularly with regard to sanitation, and monitoring access and service levels.

CATARINA DE ALBUQUERQUE, STATEMENT TO THE 18TH SESSION
OF THE HUMAN RIGHTS COUNCIL, 15 SEPTEMBER 2011

Introduction

Insufficient and poorly targeted financing is a significant obstacle to realising the rights to water and sanitation and can indicate a lack of political prioritisation of the water and sanitation sectors.

National planning processes, as discussed in the previous chapter, will define the financing and budgeting considerations that must be addressed to ensure that services are universal, affordable, sustainable and of an adequate standard.

These planning processes and the accompanying budgeting considerations must reflect the different needs in all the regions and municipalities of the country, with particular focus on the poorest regions. This process will also include an understanding of what acceptable standards of provision are in different contexts, and clarification of what is affordable to different users, taking into account that some households will need to benefit from cross-subsidies or other cash transfers in order to afford water and sanitation services.

The cost of providing and maintaining both water and sanitation services is significantly less than the cost in healthcare and lost productivity of not providing these services – this should be a significant consideration when planning budgets over the long-term.¹ Studies show that investments in water and sanitation pay off since, for each US dollar invested, there is an average of eight US dollars of costs averted and productivity gained.² It is in every State's interest to ensure access to water and sanitation, as this is a necessary part of providing primary health care, safeguarding the right to the highest attainable standard of health. Furthermore, the lack of access to water and sanitation blights children's lives, often preventing access to education.

In order to meet the MDG target for water and sanitation, it has been estimated that States should aim to spend a minimum of one per cent of gross domestic product on water and sanitation- but current rates of spending are half of this.³ Despite the economic benefit of delivering water and sanitation services, in 2008, the total international aid commitment to water and sanitation was just USD 7.4 billion, or 5 per cent of all reported international aid, compared to a projected cost of providing universal access to water and sanitation services of USD 16.58 billion annually, according to one estimate.⁴ Even though this

seems a significant amount, it is less than what people in rich countries spend on bottled water each year and also less than global military spending in eight days.⁵ However, investments in water and sanitation from international donors have in fact been reduced in comparison to spending on other sectors such as health and education.⁶

Successful planning and implementation depend on adequate and predictable financing, not just for construction, but also for operation and maintenance costs. To meet human rights requirements, financing must also cover the cost of developing the right policies, participatory processes, information, regulation, monitoring and evaluation of policies and programmes, as well as investments in developing sufficient capacity for planning, implementation and monitoring. The principle of progressive realisation allows for the full implementation of the rights over time, and States are required to use the maximum available resources, such that they benefit those most in need.

Planning and budgeting processes must take the sustainable service costs of water and sanitation delivery into account, considering the above-mentioned operation, and maintenance costs, as well as the necessary costs of expanding services into new and perhaps currently unoccupied areas, particularly in the face of rapid urbanisation. The **International Water and Sanitation Centre (IRC)** has explored this issue in their **WASHCost**⁷ programme, which has carried out research in Burkina Faso, Ghana, Mozambique and India into the costs of different technologies. In their research, WASHCost has developed a toolkit for practitioners to understand the different costs of interventions. This considers costs beyond construction, operation and maintenance, including awareness raising and capacity building, particularly for interventions related to sanitation and hygiene, where behavioural change is often as important as the hardware. In Ghana, Burkina Faso and Mozambique, WASHCost's research has identified that in, the vast majority of cases, other than hygiene campaigns funded by governments, households have to pay all costs relating to sanitation themselves. Furthermore, the lack of expenditure on operation and maintenance is limiting the health benefits of spending on the construction of latrines. In Burkina Faso, WASHCost has found that in rural areas, the same amount is annually spent by households on recurring hygiene costs as on the construction of a latrine, and that in rural areas in Mozambique, people are spending 5% of their income on soap, more than they spend on water or sanitation every year. Households tend to spend more on soap where there are effective and continuous hygiene campaigns.⁸

Choosing the right technologies and the appropriate management systems is crucial for understanding long-term financing needs. For example, centralised

pipled water systems tend to be the most capital intensive of all water provision. However, when adequately financed, these systems can deliver relatively low-cost, high quality services, offering significant economies of scale, particularly in densely populated areas.

For sanitation, non-networked services or localised sewerage systems, based on lower-cost technologies, may be more appropriate in some contexts, as long as they do not compromise human rights standards, but care must be taken that installing technologies with low construction costs do not hide more expensive or less sustainable operation and maintenance costs.

There may be significant cost implications for governments in reaching certain of the un- and underserved populations, as delivering services to remote rural areas, peri-urban areas or informal settlements can be expensive. However, realisation of the rights to water and sanitation does not automatically translate into prohibitively higher costs, and an increase in funding may not necessarily be required, as a lot could be achieved with better targeting of existing resources.

The practices discussed here detail approaches to committing the necessary resources, as well as using them in the most cost-effective manner, including government or third-party provided subsidies, cross-financing, and proactive budgeting to ensure that those who are most in need are able to access safe, affordable and sustained services.



Water tankers waiting for deployment at the Holding Company for Drinking Water and Wastewater in Luxor, Egypt.

PHOTO: CATARINA DE ALBUQUERQUE

DISCUSSION BOX 2.1 Why financing sanitation is often a distinct issue

Water is generally higher than sanitation on the political agenda of governments, as well as higher on the list of the budget priorities of schools, work-places and clinics. Although the benefits from investing in sanitation alongside water are considerably more pronounced than investing in water only,⁹ water sector requirements tend to be easier to finance than the sanitation sector, with a mere 20 per cent of government spending and 37 per cent of international aid funding for the water and sanitation sectors going to sanitation.¹⁰ The majority of this funding is used for expensive large-scale systems, rather than for basic systems that are more likely to be used by those living in poverty.¹¹

This lack of commitment of resources may be explained by the fact that in many cultures sanitation is a taboo subject, and is not popular with either politicians or planners. As a result, there is often not enough information on who does not have adequate access to sanitation and why, making planning and budgeting difficult.

The requirements for the financing of sanitation are often more complex than for water, and will include the purchase or construction of a latrine or toilet, storage, removal or transport of the waste matter (a sewerage system or pit/septic tank emptying system) and treatment, disposal and/or reuse of waste matter. To ensure the hygienic use of sanitation facilities, the costs to governments also include hygiene promotion and awareness-raising campaigns. The costs for institutions and households include the cost of purchasing soap, and water, for both hygiene and in some cases for flushing toilets. This range of services generally requires a number of different service providers, which are not often coordinated, either in terms of management or in terms of securing the necessary financing.

Governments and donors in developing countries tend not to target sanitation spending on those living in poverty, more often focusing on massively subsidised networked sewerage systems that are used by a small percentage of the urban population. The faecal sludge from latrines used by the majority of the population is generally not factored into the design of wastewater treatment systems.¹² Conventional sewerage solutions may not only be capital intensive to construct and operate, but are costly in terms of the amount of water required to operate them effectively, increasing water bills of individuals and households.

To make up for the lack of government spending on appropriate sanitation systems, households themselves must make significant investments in sanitation. This figure is unknown, due to a lack of research and effective household budget monitoring. New research suggests that households may actually be committing more resources to meeting sanitation needs than they do to water as despite the lack of government funding, more households have “improved” sanitation facilities in the home than a domestic connection to a water system.¹³

However, even where households plan effectively for the costs of construction of a toilet or latrine, planning and budgeting for the recurring costs of appropriate emptying, transport, treatment, disposal and reuse tends to be more *ad hoc*, and these costs can be considerable, particularly in urban areas. Latrines that are not maintained or emptied can bring significant health risks and attendant costs to those living within household as well as to the wider community.

Some governments are finding ways of supporting household investments in sanitation by improving their planning for localised sanitation systems that provide for the transport, treatment and disposal of wastes. This was discussed in chapter one (the Mozambican regulator), and will also be discussed in chapter three (Senegal).

2.1 Sources of financing

As with many public services, water and sanitation services are financed through user charges, such as tariffs and connection charges, and household costs, such as construction, operation and maintenance costs; national or local taxes; and international transfers. The mix of financing sources depends on the type of service, the technology option, and whether financing for construction, operation and maintenance, or advocacy and promotion is required.

The capital-intensive nature of piped water supply and sewerage requires significant “up-front” financing for construction, and requires State or external donor funding in most cases. Governments generally require that the principle of cost recovery be followed at a minimum for operation and maintenance costs, meaning that all costs related to operating and maintaining water (and in some cases, sanitation) services must be covered by funds raised by tariffs. This may be achievable in some countries for water services, but is seldom achievable for sewerage services (including wastewater treatment), as these services are usually only accessible to the much higher-income households, and are rarely charged for at a cost-reflective rate.

Tariffs which do not reflect the cost of long-term capital maintenance (renewal and re-investment etc) or the cost of capital (interest payment on debt financing) cannot generate the level of revenue needed to deliver adequate services in the present, let alone to invest in new projects or expand existing infrastructure for either water or sanitation services.¹⁴ The irony is that people who buy their water from the informal market often pay more per litre than what would be necessary to cover the costs of a system that has been financed by municipal bonds as well as the costs of renewal, repair and operation and maintenance.

There is sometimes a tension when utilities are expected to deliver services on a commercial basis and at the same time provide affordable services, so it is crucial that tariffs are structured in such a way that those who cannot afford to pay for the full cost-price of the delivery of water (and sanitation) services are assisted through supplementary systems that ensure affordability, whether through cross-subsidising across households or from subsidies direct from national or local government.

Increasingly, service providers' finances are ring-fenced, so that the funds raised from tariffs and connection fees can only be used on operation, maintenance and improving or extending access to water and sanitation services, and cannot be utilised for other purposes. Connection fees should ideally be used to support extension investments, and not be part of revenue when calculating cost reflective tariffs.

An example of this is the **Kenyan** Water Service Providers, as discussed in chapter one. This is less often the case where water and sanitation service utilities are a department of local municipal government.

Households themselves generally finance non-networked supplies for both water and sanitation, although how much is spent by household is unknown and is not monitored. In some cases, there is also financing from international or local NGOs or donors, or by government programmes.

The following sections of this chapter explore how the different stakeholders contribute to the financing of water and sanitation services in order to implement the rights to water and sanitation.

2.2 Household contributions

There are several means by which households contribute financially to improving their access to water and sanitation, depending on whether the service is at household level (for example wells or pit latrines) or part of a wider service (such as a networked supply).

In cases of networked supply, user charges or tariffs, i.e. direct payments by households for access to water and sanitation services, are the most common form of contribution, but households will also be required to pay for the level of service that they require inside the home (taps and toilet hardware), and also possibly a connection fee to allow access to the network. These latter costs often prohibit poorer households from connecting to the network.¹⁵

In developed countries, the proportion of the population that cannot afford to pay the full financial price for services is relatively low, which means that the

provision of subsidised services can be absorbed into the prices charged to the wider population. However, there is still considerable State support for the water and sanitation sectors. In **Japan**, government subsidies account for seven per cent of investment in these sectors, while in **Portugal**, 31 per cent of financing for the water and sanitation sectors is provided through financing from the national and municipal budgets, rather than from tariffs.¹⁶ Furthermore, increasing requirements for environmental standards for wastewater treatment, combined with the current financial crisis, may push the cost of water and sanitation services beyond affordability levels.¹⁷

In many developing countries, where a higher proportion of the population would find the full cost price unaffordable, additional financing may be required for operation and maintenance as well as for construction costs.

Sometimes the main barriers to enjoying access to water and sanitation services are the methods available for paying service charges. Users traditionally have to visit central service offices to pay bills, but this is changing in many countries. In **Kampala, Uganda**, the **National Water and Sewerage Corporation (NWSC)** has introduced a new policy making it easier for users to pay bills using banks, direct debit, mobile banking, mobile money, scratch cards and payments at points of sale such as supermarkets and fuel stations. These options can also make it possible for users to pay for services more regularly than once a month, reducing the need to pay a large amount in one go, which can be prohibitive for low-income users.¹⁸

Construction costs as well as the operation and maintenance of non-networked services will often be financed by households themselves, rather than by government contributions. This can expose them to fluctuations in the prices charged by the private sector, as well as in terms of sustainability, when financing is not planned for operation and maintenance costs. The absence of sufficient financing for maintenance leads to intermittent or failing services, with the poorest overpaying to informal service providers, while the higher-income consumers have to invest in coping strategies, such as water storage or pumps to extract water from the network.

Household contributions for water and sanitation services in rural areas and in informal settlements can differ quite substantially from household contributions for standard piped water and sewerage provision. In these cases, user costs can range from the construction of communal or individual household provision (a well, and communal or household toilets) for storing water (buckets, jerry cans and tanks) and for treating water (boiling, chlorine, filters, etc.), and for cleaning,

maintaining and emptying latrines or septic tanks, and disposing of excreta. The availability of hardware and spare parts, particularly for those technologies that do not require the regular replacement of parts, can be a considerable barrier to maintaining services, particularly in rural areas. Organisations such as **UNICEF** and **WaterAid** have supported the development of “SaniMarts”, small shops that supply sanitation hardware, from latrine slabs to soap, and software in the form of technicians-for-hire, with the aim of building up the necessary supply chains for sanitation services. To be successful, these SaniMarts rely on awareness building programmes to keep demand for the products at a level that will allow for economic returns on the business. **Nepal Water for Health (NEWAH)** is one such organisation that has used SaniMarts to address the lack of access to sanitation in Nepal.¹⁹

The sanitation marketing approach takes the “SaniMart” approach a step further. Recognising that households tend to be the main source of financing for sanitation provision (other than sewerage systems), sanitation marketing attempts to provide a better service, with greater choice of hardware, to encourage individuals and households to construct latrines that are appropriate for them. It has been argued that “most progress in access has been achieved by the market – private suppliers supplying individual households”,²⁰ and that the millions spent on subsidies and supply-driven approaches have not yielded the desired improvements, not only in access to sanitation, but also in hygienic use and management of latrines. To this end, sanitation marketing uses conventional advertising approaches, coupled with a wider choice of sanitation options to appeal to different users’ needs and aspirations, rather than emphasising health benefits to sell sanitation hardware.²¹ Having a latrine is then seen as improving one’s social and economic status. However, while this can be an effective approach, it does not necessarily address the needs of the poorest individuals and households, or address the reasons for open defecation (see further discussion in chapter three under Community Led Total Sanitation).

For access to sanitation to be sustainable, investments in software, including awareness raising programmes, are usually necessary to stimulate demand. Where demand is low, providing sanitation hardware or subsidies to purchase the sanitation hardware risks that the facility will not be used, as has been seen in many projects.²² This is borne out, as will be seen later and in the next chapter, in programme approaches that require that households commit their own resources to the construction of a latrine, increasing the likelihood that they will then use and maintain the facility.

Subsidies

DISCUSSION BOX 2.2 Overview of subsidy mechanisms

Different mechanisms can be adopted to ensure that water and sanitation are affordable to people living in poverty. Below are some different approaches to subsidising the cost of services for low-income individuals and households.

- **Free basic water** or a **lifeline tariff** ensures access to a minimum amount of water for personal and domestic uses for free or for a minimal charge. Again, this tariff will only accrue to those individuals or households with a connection. South Africa is also recently experimenting with the provision of **free basic sanitation**. The disadvantages of the provision of water (and sanitation) for free are addressed in the box below.
- **Income supplements** provide direct support to households, based on their household income (**Chile**) or geographic location (**Colombia**). Advantages and disadvantages of these supplements are provided in the main text below.
- **Cross-subsidies** provide lower tariffs to particular groups, funded through increased tariffs to other groups. It can be difficult to target cross-subsidies effectively to those living in poverty, because those groups may not be connected to the networked service. Therefore the not-so-poor households with connections will often appropriate the benefit of the lower tariff. In some cities or countries, cross-subsidies are targeted on the basis of the type of service delivery, such as kiosks or yard taps having lower tariffs than household connections in **Kenya**.
- **Increasing block tariffs (IBT)** charge less for limited amounts of water, and increasingly more for greater consumption. This is a common approach in many countries, including **India** and **Senegal** (See chapter four for benchmarking and data sources). One of the problems with this approach is the assumption that all households will use the same amount of water, regardless of household size, or need. Large households, households sharing a connection and those households requiring larger quantities of water for health reasons, could be at a risk of moving into the second block, and therefore having to pay more per litre. Alternatively, households have to limit their *per capita* water consumption to levels that may not be sufficient for the realisation of the human right to water. It is difficult to set the tariff blocks at a rate that both ensure that households have sufficient quantities of water and at the same time act as a deterrent for the excessive use of water. Often the first block is made so large to satisfy political demands that few households have to pay the second block rate. The benefit of the cross-subsidising nature of IBT is then lost, and economic sustainability put at risk.
- **Universal Price with Rebate** charges a universal price, but with an additional subsidy for those households that require assistance. This provides the advantage of allowing the cost-price to be charged, with a rebate available for those who have a low income, as in **Hungary**.²³ The difficulty here is to ensure that the households requiring the rebate are well targeted.

In many countries, in order to improve affordability, the State applies subsidies or rebates to assist those who cannot afford to pay full price for water and sanitation services.

In 1989, **Chile** passed the **Law 18.778**, which provides for subsidies for families and households that cannot afford to pay the full cost of their water bills. These subsidies are funded through national tax revenues and channelled to municipalities, which are responsible for identifying the low-income individuals and households to benefit from subsidies, according to a list of 53 socio-economic criteria. For access to water, a subsidy for between 25 per cent and 85 per cent of the bill is available for the first 20 cubic metres per household per month, depending on the household's status. To qualify, each household must demonstrate that it fits the socio-economic profile targeted, and must currently be paying for services. For those eligible, the percentage paid by the State is paid directly to the service provider. The subsidy is only made available to those who ask for it, but it is in the interest of the service provider for eligible households to receive the subsidy, rather than fail to pay their bills, so service providers also inform households of their rights.²⁴

An alternative to the Chilean approach is the subsidy available for water and sanitation services in **Colombia** managed by the **Water and Sanitation Regulatory Commission**.²⁵ This Commission works with the Government to develop a tariff structure that is sensitive to the economic means of various groups, based on geographical area, and is coordinated with a subsidy system that supports those least able to afford water and sanitation services. The three lowest-income population sextiles receive a graduated subsidy, paid for by the tariffs, and charged to the two highest income population sextiles. The population group that each household belongs to is determined geographically, rather than based on information available from each household. Some households that do not need a subsidy receive one in these circumstances, but this is considered a risk worth taking to benefit a broad group of people living in similar circumstances. See discussion box below on targeting subsidies.

These systems are effective in countries where all residents, including those living in informal settlements, have access to the networked services. However, 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.

Furthermore, those with a household water connection pay a fee to the sanitation authority, regardless of whether or not they have a sewerage connection.

Ostensibly they are paying towards extending the sewerage network, but in the meantime they must also pay for the emptying of their septic tanks. Only 11 % of the population of Dakar have a sewerage connection, so in effect those without a sewerage connection are subsidising the use of those with.

Subsidies may be available to assist in the construction of services, but often not for those living in informal settlements, and this leads to individual households having to find their own solutions, which may include constructing unsafe latrines, using public latrines or defecating in the open. In **Malawi**, the **Centre for Community Organisation and Development (CCODE)** is working with the **Malawi Homeless Peoples Federation (the Federation)**,²⁶ a network of women-led savings groups for people living in informal settlements, to assist households in accessing small loans from a revolving fund to construct both household level and public composting latrines. This fund is ring-fenced for sanitation construction only, and is financed by external grants, loan repayments and the daily savings collected by Federation members. As these loans are designed to be repaid over two years or less, new households are able to take a loan when the funds become available again. These loans are often the only option that households have for accessing financing for household level sanitation. Land for the public latrines is provided by the local municipality, which the Federation is then responsible for constructing and managing. Similar initiatives are taking place in **Tanzania** and **Zimbabwe**, also linked to the Slum Dwellers International network, discussed in chapter three.

Disparities across Regions

The price that consumers pay for their water services is dependent on a range of different factors, including the cost of delivering services, the scarcity or abundance of water, and the ability or willingness of local authorities to provide financial support to ensure that individuals, households and institutions are able to afford water and sanitation services. In **Portugal**, for example, the price that people pay in one municipality can be more than thirty times that paid in another municipality.²⁷ This is due to the different costs of delivering services to users of the services, but also due to artificial criteria for price-setting rather than purely economic criteria. ERSAR is hoping to address these disparities by creating a “tariff harmonisation fund”, which municipalities can apply to for investment and for operation costs.²⁸ This will probably demand government investment. In smaller municipalities, the experience in **Portugal** has been that it is more economically efficient to create multi-municipal concessions for the provision of bulk services, rather than continuing with municipal level service delivery.²⁹

The **City of Paris** has made a political decision to ensure that water and sanitation services are available at an affordable price (defined as 3 per cent of household income) to all by providing social support to those having a small income. Water prices in Paris are 33 per cent lower than prices for those living just outside the city boundaries. Paris also provides public water and sanitation facilities for free.³⁰

In **Algeria**, there is a significant difference in the cost of delivering services to different parts of the country – for example water for the coastal cities must either be piped hundreds of kilometres, or go through an expensive desalination process. The Algerian government has made the political decision to make water tariffs the same all over the country, to avoid penalising those living in areas where freshwater is scarce.³¹

Similarly, in the Aragon region of **Spain**, the inhabitants of the capital city, Zaragoza, pay a cross-subsidy within their water and sanitation tariff to those living in the rural areas, which are much more costly to service with adequate wastewater treatment.³²

Hungary has taken a different approach to the same problem of managing the different costs of delivering services. There is a policy of full cost recovery in the management of water and sanitation services, but in recognition of the different costs of producing water in different municipalities, they have made a subsidy fund available to those municipalities that have a cost of producing a cubic metre of drinking water over a particular threshold. This subsidy is used to reduce the price of water for domestic users only – industry must pay full cost price for their water use.³³

Where possible, States should attempt to address this differential to avoid the situation where those living in poverty are paying more per litre for their water services than those who are better off, based on where they live or on who delivers their water and sanitation services.

A **Social Water Fund** has been introduced into the **Belgian Walloon** region with the aim of facilitating the payment of water supply bills for Belgian families that experience financial problems due to their social vulnerability. The fund aims to avoid disconnecting households from the water supply.³⁴

This fund is financed by EUR 0.0125 per cubic metre being added to every bill and is managed on the regional level by the **Société Publique de Gestion de l'Eau (SPGE)**, the public company for water management and treatment. Up to 85 per cent of the fund is designated to assist poor households in paying their water bills, five per cent is invested in technical improvements that promote efficient water use, nine per cent is used for the operational costs of municipal

social services and one per cent goes to the water supply company to support their engagement in the programme. The water supply company sends a list of defaulters to the local social services to assess whether the household is eligible for a subsidy. The local social services can also contact the water supply company on their own initiative and propose to intervene in payments on behalf of socially vulnerable families. The Brussels region has a similar social water fund.

In February 2011, **France** also adopted a law to finance a solidarity fund, whereby 0.5 per cent of each household's water bill could be set aside to provide assistance for those families that cannot afford to pay their water bills. The fund is financed voluntarily on the basis of an agreement between regional authorities and water supply and sanitation enterprises.³⁵



Yard tap locked by the head of household to control use of water by other household members to keep the water bill down.

PHOTO: CATARINA DE ALBUQUERQUE

DISCUSSION BOX 2.3 Targeting subsidies

Water and sanitation services do not have to be free, as discussed below, but it is a State obligation to ensure that services are affordable, and this can be achieved through subsidising services for low-income populations. A common problem found in subsidy schemes is ensuring that the subsidies reach those most in need rather than middle, or even high-income populations, as is often the case. One approach to ensure that all those in need receive a particular benefit or subsidy is by making this subsidy universally available, automatically and with minimal bureaucracy. An example of this is the policy of free basic water in South Africa, which makes a fixed amount of water available to all households regardless of status. The disadvantage of this is that many households that do not require a subsidy receive one – and this can be expensive in the poorer regions.

An alternative approach is to target benefits or subsidies at particular individuals or groups, and apply conditions that need to be met to receive this benefit – whether based on income (Chile), geography (Colombia) or other criteria. This is a more expensive and bureaucratic approach, as it requires resources to regulate who receives the benefit and inform households and communities of their rights to the benefit. Poor targeting can allow the “elite”, which is the middle- or high-income households or individuals, to receive the benefit by “playing the system”, leaving those who should receive the benefit without it, because of lack of adequate knowledge or because they cannot fulfil the bureaucratic requirements to access the subsidy. In the case of Chile, where there is sufficient information to ensure that subsidies are well targeted and that they reach the desired households and individuals, this information can also be used to identify those who may need support or assistance for other services.

The embarrassment of requesting a subsidy and admitting to be living in a situation of economic deprivation can also, depending on the culture or cultural norms prevalent in the country, prevent those most in need from benefiting from the subsidies they are entitled to. This circumstance was observed by the Special Rapporteur in her country mission to Japan. In some instances, subsidies are available only to individuals or households receiving a particular service; for example, subsidies for payments for a sewerage connection only accrue to those with access to this service. Likewise, households in South Africa can access a greater quantity of water for free if they have a flush-toilet. This is ostensibly sensible, as flush-toilets require more water than a latrine, but the risk is that the better-off population of South Africa will be in a better position to gain access to this subsidy.

Connection charges

Connection charges are another form of household payment for accessing formal water and sewerage services. These are payments to the utility for the cost of connecting to the network (e.g., the physical costs of bringing the pipes to the household), as well as costs for improvements within the household to enable such a connection (e.g., in-house pipes, water storage tanks, etc.). The connection charge sometimes reflects the real cost of connecting to the services, but is more generally a set charge, regardless of the actual cost of extending a service to a household. Traditionally there has been a “fee” element in addition to the physical costs, which has been seen as a contribution to the fixed assets that previously connected customers have long been paying for through their tariffs. This has also been seen as a means of self-financing for service extensions.

Connection charges are often a significant barrier for those living in extreme poverty, with recent research suggesting that the average connection cost paid by each household to utilities in Africa was USD 186 and in Asia it was USD 169. This is equivalent, in Ghana for example, of approximately a year’s income for a low-income household.³⁶ Some countries have decided to reduce the barriers to accessing water and sanitation services by removing this charge for all or some households, or by incorporating some or all of the cost of extending the service into the regular service charges. Arguably, the benefits of expanding the customer base for the water utility has the potential to bring in more revenue than insisting on high connection charges.³⁷

As detailed in chapter one, the **Portuguese** regulator **ERSAR** has established a new policy that incorporates the connection charge into the regular fee.

In **Egypt**, three rural Upper Egypt governorates, together with **UNICEF** and the **water and sanitation authorities**, have piloted a loan system, based on a revolving fund - enabling families to pay back the connection fee over a period of 24 months - for poor households. This is to be used specifically for household connections for water, but they are also exploring options for sanitation. This fund has extended access to households that have otherwise been unable to afford the high household connection cost to the water supply. As individuals and households repay the loan, the funds are made available for further households, so that they can connect.³⁸

In **Indore, Madhya Pradesh, India**, **UN-HABITAT** has been working with the **District Urban Development Agency (DUDA)** and the **Municipal Corporation of Indore (IMC)**³⁹ to improve access to water in those informal settlements that do not have access to the municipal supply, in part due to the very

high connection charges. The community, together with DUDA and the IMC, have constructed a separate reservoir to supply water to the informal settlement. This provides the bulk connection, and the Community Water and Sanitation Committee manage the piped delivery within the settlement. In time, as the municipal services expand, this project may also be incorporated into the city supply, but at that point, because the community will already have paid for these services through a service charge that includes a connection charge designed in smaller tranches, they will not have to pay the full connection charge, but will pay the standard tariffs.

In recognition of the high cost of connection to the water services in **Abidjan, Ivory Coast**, the water utility **SODECI**, in partnership with **CREPA** and using funds from **UNDP**, provided micro-finance to households in three neighbourhoods to pay the USD 36 connection fees. The programme also provided capacity building to assist the households to repay the funds, which was achieved over 17 months. This programme has been extended to Ouagadougou, Burkina Faso.⁴⁰

The **Maynilad Water Company**,⁴¹ operating in **Manila, Philippines**, assists households with limited means to connect to the water services, by reducing the connection fee, and spreading the costs over a two-year period, interest free. Maynilad also has a schools water programme, and a water programme for those living in informal settlements, providing water kiosks that sell Maynilad-supplied water at an affordable rate.

SOUTHERN REGION REPORT - JANUARY 2011
MAYNISO

DISTRICT/THO	F	M	ACQ	TOTAL	DECEMBER	JANUARY	TOTAL
BLANTYRE	37	389	46	372	4,322,904 K	276,258 K	4,599,162 K
THOULO	19	305	25	249	3,355,973 K	493,350 K	3,849,323 K
MILIMAYE	41	535	200	637	4,268,858 K	216,765 K	4,485,623 K
CHILANZALI	22	349	9	239	4,121,000 K	314,000 K	4,435,000 K
MINANZA	8	82	3	67	1,173,777 K	64,670 K	1,238,447 K
CHIKHINDIA	15	123	106	244	4,654,907 K	54,545 K	4,709,452 K
PHALIMBE	5	27	23	53	56,465 K	13,365 K	69,830 K
NSAPATE	14	161	15	170	4,180,930 K	68,330 K	4,249,260 K
MPENGO	11	37	54	91	4,143,187 K	28,786 K	4,171,973 K
TOTAL	167	1,816	421	1,852	41,902,115 K	844,780 K	42,746,895 K

The Centre for Community Organisation and Development (CCODE) supports savings schemes in the Southern Region of Malawi, demonstrating here how much they have collectively saved for their housing and sanitation needs.

PHOTO: CCODE

DISCUSSION BOX 2.4 Providing water and sanitation services for free

There is a misconception that recognition of the human rights to water and sanitation will lead to demands for free services. However, as with other human rights, such as the rights to food or health, or access to justice, there is no obligation on the part of States to provide water and sanitation services for free. However, the cost of water and sanitation services must not prevent individuals and households from accessing other necessities guaranteed by human rights, such as food, clothing and housing.⁴² States therefore have an obligation to ensure that the services are affordable, which in particular contexts will require that water and sanitation services are provided for free, for example in emergencies, or where individuals or households have no income, and no alternative for accessing these services.

Some States, such as South Africa and until recently, certain countries in Eastern Europe, provide water services or a minimum quantity of water, and in some cases sanitation services, for free to all, or some, of the population. The decision to provide services for free can either be pragmatic because, for example, the cost of collecting charges is higher than the cost of delivering the service, or political, because it serves the government to provide services for free.

Provision of services for free would appear to be a positive approach for implementing the rights to water and sanitation. There are, however, negative implications. Firstly, where free services are only available to those who have a connection to the formal provider, this generally excludes those living in informal settlements and potentially those living in rural areas. As discussed earlier, those who receive their services from informal providers generally pay more for lower quality services, and instances where those with a connection to a networked supply receive their services for free, while those living in poverty without access to formal services do not, are perverse.

It can also be argued that the revenue received from delivering services is necessary to fund the expansion of services to those areas that lack access, and further, that providing water for free not only deprives utilities and governments of an income stream to pay for this expansion.⁴³ It also means that water utilities are dependent on Government and vulnerable to political interference and delays in financial transfers. Resistance to payment does not generally come from those living in poverty, as they are accustomed to paying a high price for services of a dubious quality, and welcome paying a lower price for a better service.⁴⁴ As has been discussed earlier, the provision of sanitation hardware for free does not lead to an improved use of sanitation.

States that do decide to provide water and sanitation services for free need to consider whether the benefits of this accrue to those who most in need, or whether the benefit is going to people who can well afford to pay for these services. They also need to consider whether this choice is sustainable in the long run or whether, in the near future, it will give rise to a financially unsustainable situation that will inevitably lead to a deterioration of services and infrastructure.

2.3 Targeted budget allocations

Where revenue from tariffs does not cover all related costs, including operation and maintenance, and the extension or rehabilitation of the network or other source, funds will need to come out of budgets at national, regional and/or local levels, or from international aid budgets, NGOs or the private sector.

Additional funds may need to be made available to deliver services to those areas that are not serviced or are inadequately serviced, including rural areas and informal settlements. To achieve this, as outlined in chapter one, policies, plans and budgets need to target those who do not have access and, in rural areas, who cannot afford to provide access for themselves without State assistance. Chapter four also discusses the monitoring of budget expenditure to ensure that it complies with policies and plans.

The Bangladesh Central Government earmarks twenty per cent of its block grant to local government institutions for sanitation and hygiene promotion, recommending that 75 per cent of this allocation be used for distributing free latrine materials such as the ring slab to families living in extreme poverty, and 25 per cent for promotional activities. Subsidised hardware is also given to public places like schools or markets. Further Bangladesh is carrying out an assessment of access to sanitation in the country, and will use this to develop an action plan, using the skills and experience of the Government, NGOs and others, which aims to ensure sanitation for all by 2013.⁴⁵

The **Devolution Trust Fund** was created in 2003 by the **Government of Zambia** using bilateral agency funding, to provide grant funding to utilities to extend water and sanitation services to urban poor areas. Communities decide where the kiosks are to be placed, with community members represented in the project task team and Water Groups acting as an accountability mechanism. Tariffs for the sale of water via household connections and at kiosks are regulated by the **National Water Supply and Sanitation Council (NWASCO)**, with the tariffs for kiosks in the lowest band, in order to ensure that users are not paying high rates for their water. Household-level taps are also available, as are sanitation facilities. Where a household has its own latrine, the price for the sanitation service is applied as a percentage of the amount of water used.⁴⁶

New connections are crucial to ensure that unserved populations receive better services, but operation and maintenance costs must be incorporated into budgets to ensure that these services are sustained. The **Kyrgyzstan Clean Water Programme**⁴⁷ ensures that additional funding specifically earmarked for annual repairs is transferred to the local authority budget. Rural water user

unions have been established to encourage participation in decision-making and ensure relevant capacity building. These unions also have the role of ensuring affordability, with local authorities providing subsidies to households with income below the poverty level to assist in paying for their water and sanitation services.

Chapter four discusses the monitoring of government budgets to ensure that they are reaching the targeted populations.



Map showing transfer of water between regions in Algeria.
Water prices are controlled across the country to ensure affordability.

SOURCE: MINISTRY FOR WATER RESOURCES, ALGERIA



Biogas latrine construction as part of the work initiated by the Devolution Trust Fund in Libuyu, Livingstone, Zambia, November 2011.

PHOTO: PHILIPP FEIEREISEN, GIZ

DISCUSSION BOX 2.5 Transparent budgeting and fragmentation

A primary challenge to financing water and sanitation adequately is the absence of transparent and participatory budgeting mechanisms. All too often, national budgets do not adequately account for how, where and by whom expenditures in the water and sanitation sectors will be made. States parcel out funding for the sector along administrative lines corresponding to different ministries and departments, each of which may have its own projects, rules and objectives. Fragmenting resources and responsibilities across agencies can make it difficult to obtain a complete picture of resources for the sectors.⁴⁸ Water and sanitation are particularly susceptible to this problem as they can often span a number of sectors, ranging from public health, to housing, agriculture and the environment.⁴⁹ Moreover, fragmentation is a regular problem in the context of decentralisation when not coupled with a coherent national strategy or strong regulatory framework.⁵⁰ Financing channels become convoluted, leading to costly overlap and duplication, and inconsistent standards may be applied throughout the country.⁵¹

This makes it difficult to effectively monitor whether a State is complying with its obligations to assign the maximum available resources, but more importantly it becomes impossible to tell whether State resources are being allocated efficiently and targeting excluded groups.

Even transparent budgeting can seldom account for the additional off-budget resources spent on water and sanitation by international donors and NGOs, who often wish to manage their projects independently of national governments. Individual donors that seek to carve out personalised, extra-budgetary arrangements with national governments can undercut a State's ability to account for all available resources when developing strategies for the sector.⁵² The resources expended on these projects are almost never recorded in national budgets and can easily lead to unfunded capital maintenance liabilities within a few years. In cases where States rely on international contributions for the majority of their work in the sector, governments and communities may have little knowledge of how much funding is actually available. Money coming in as loans can cause difficulties, as these are often loaned on to local governments and utilities at higher rates of interest, which can potentially drive investments to yield excessive returns through higher tariffs at the cost of pro-poor outcomes.

Finally, different institutions, including international donors, may have different approaches and monitoring mechanisms for water and sanitation services, posing a serious problem for national governments hoping to implement a national water and sanitation strategy.⁵³

There is growing recognition within the human rights community of the centrality of transparent budgeting in the realisation of all economic, social and cultural rights.⁵⁴ Beyond being essential for accountability and public participation (see chapter four), transparent budgeting supports State obligations to realise the rights to water and sanitation to the maximum of available resources by contributing to greater predictability in spending and long-term planning. Additionally, budget allocations that are disaggregated by region or municipality help ensure that resources are distributed

in a manner that responds to the needs of excluded individuals and groups. Finally, transparent budgeting can support national planning and improve coordination among various agencies, reducing the risk of costly fragmentation. There is a key role here for economic regulators (see chapter one) in making the costs of service provision relative to performance achieved transparent – with a variety of regulatory approaches possible to create incentives for public or private service providers to become more effective and efficient over time.

2.4 International transfers

International transfers are an important source of funding for many developing countries, particularly for the capital-intensive networked water and sewerage systems.

Where insufficient funds for operation and maintenance, rehabilitation or extension of water and sanitation services are raised through user fees and national, regional or local budgets, international sources of financing may be also required for these purposes. These come most commonly from international development banks or bilateral aid, but in some countries significant resources come from international agencies and non-governmental organisations.

Regardless of the funding sources that a State chooses, it must always ensure that there are corresponding mechanisms, with the necessary financing in place to support transparency, public participation and accountability. This external funding should be driven by the programming and budgets developed by States. Regardless of the funding sources that a State chooses, it must always ensure that there are corresponding mechanisms in place to support transparency, public participation and accountability.

Good planning and budgeting, and a demonstration that a State or local government is able to use funds efficiently will often be not only a prerequisite for external financing to be made available, but will also attract more funds. **Portugal**, for example, has been able to secure more EU funding to support the extension of sewerage networks on the strength of their good planning.⁵⁵

Sometimes funding is available on a loan basis, which governments may find difficult to repay, particularly at the local level. This is particularly true of investments that are required to reach out to a large number of people who are currently unserved and/or living in poverty. It sometimes also happens that funding is available, but not disbursed, due to a lack of government capacity to spend the funds, at national, regional or local level.⁵⁶

Beyond the problem of insufficient resources to implement water and sanitation initiatives, the unpredictability of financing provided from international donors, whether small-scale funds, as provided by NGOs, or larger grants and loans, as provided by bilateral funders and international finance institutions, can limit the State's ability to use funds well (see discussion box 2.6 on conditionalities, tied aid and debt, below).⁵⁷ Finally, international donors also need to ensure that their funds reach those for whom they are intended, as “pro-poor” funds can often reach the “not-so-poor” for lack of accurate targeting.⁵⁸

In 2008 the **Water Supply and Sanitation Collaborative Council (WSSCC)** launched the **Global Sanitation Fund (GSF)**,⁵⁹ out of recognition that the growing awareness of sanitation as a fundamental development priority must be reinforced with a corresponding increase in financing. The Global Sanitation Fund encourages donors to make multi-year commitments to facilitate national efforts toward sustainable, long-term financial planning. The WSSCC emphasises its role as a support mechanism for national policymakers. The Fund is not intended to support its own projects in the sanitation sector, but rather helps to cover the implementation costs that often act as a barrier to States with otherwise sound water and sanitation policies in place.

The Fund has already proven instrumental in developing good collaborative practice between government and civil society. For instance, in **Madagascar**, the Fund has supported the creation of a five-year hygiene plan that aims to ensure universal access to some form of improved sanitation facility in eight selected regions across the country. The Fund also hopes to support financial capacity building within local communities so that they are able to maintain a sustainable, long-term sanitation and hygiene budget.⁶⁰ In **Cambodia**, the **Rural Sanitation and Hygiene Improvement Programme** has received funds to be spent over the next five years on raising awareness and increasing demand for sanitation and hygiene, as well as improving the coordination of the sector. Similar programmes are being carried out in India, Nepal, **Malawi** and **Senegal**, with further programmes planned.⁶¹

Over the past decade a number of development initiatives have been formed with the explicit mission of supporting water and sanitation as human rights and not simply as development goals. The Water and Sanitation Fund of the **Spanish Agency for International Cooperation and Development (AECID)** has dedicated US\$ 1.5 billion to support the improvement policies and planning processes for water and sanitation delivery, with particular focus on highly indebted, poor countries in Latin America, including PRONASAR, an initiative by the Peruvian government discussed in greater detail below. The Fund explicitly recognises the rights to water and sanitation in its founding document.⁶²

DISCUSSION BOX 2.6 Conditionalities, tied-aid, and debt

In low-income countries, international aid is frequently decisive for a State's ability to progressively realise the rights to water and sanitation. Indeed, States have an obligation to seek out international aid when it is needed to support compliance with their human rights obligations.⁶³ Likewise, States in a position to provide assistance have a general obligation to do so. In any event, both sides must remain aware of the effects that their cooperation may have on human rights.⁶⁴

International aid should adhere to the principles articulated in the Paris Declaration and Accra Agenda for Action. This entails ensuring that aid agreements are consistent with international human rights law and aligning aid priorities with the national policy frameworks of their development partners.⁶⁵ First of all, when money for water and sanitation is mobilised through loans and grants from international financial institutions and donors, these actors must work to eliminate inappropriate conditionalities attached to these financing agreements.⁶⁶ For instance, development aid that hinges on the enactment of particular macroeconomic policies can lead to cuts in public expenditures that could otherwise support the realisation of the rights to water and sanitation.⁶⁷ There is, therefore, an opportunity for international finance institutions, such as the World Bank's International Development Assistance facility, which is intended for the promotion of pro-poor investments to promote rights based investments in water and sanitation.

Private sector participation is not prohibited under human rights law, and there have been positive experiences of private sector participation in the delivery of water and sanitation services. However, making aid conditional on the privatisation of government assets, including water and sanitation service utilities, can also prove detrimental to human rights, where there is not simultaneous implementation of specific measures to regulate service provision and to ensure that there are sufficient incentives to expand and improve access in low-income areas

Conditionalities may also come in the form of “tied aid”, whereby loans or grants are offered to developing countries on the condition that governments hire contractors or procure products and services from the donor country. Tied aid can negatively affect the realisation of the rights to water and sanitation by undermining efforts to build local capacity as well as accountability and transparency, increasing the cost of goods and services, and steering funding away from areas that lack basic access to drinking water and sanitation.⁶⁸

Finally, international partners and creditors should remain aware of the potentially negative effects of foreign debt on a State's ability to comply with its human rights obligations. States required to devote large portions of GDP to service external debt may be restricted in their ability to plan their national budget and allocate resources for essential public services, including drinking water and sanitation.⁶⁹ In her 2009 report to the Human Rights Council, the independent expert on the issue of human rights and extreme poverty stated that, “the failure to address the short-

term needs of the poorest victims of a crisis...increases poverty and inequality in the longer term, with negative consequences for longer-term growth.⁷⁰ This issue, which has long been troubling developing countries, is also arriving in Europe and the USA, due to the current sovereign debt crisis, which is leading to a dramatic reduction in public spending in some countries.”

Conclusion

Financing for the realisation of the rights to water and sanitation should facilitate the implementation of legislation and policies articulated in the previous chapter, as well as fund the service delivery and measures required to ensure accountability that will be described in the next two chapters. Financing can be secured via one of three routes – from the households themselves, either as tariffs or self-managed processes, from national or local taxes or through international transfers in the form of either grants or loans. The type of financing suitable for different aspects of service provision and capacity building support will depend on the context, but more research needs to be done to assess the amounts contributed by of households, particularly for sanitation services. This chapter has highlighted some positive experiences of the way that financing for the water and sanitation sectors improves access for the poorest members of society. However, there is still a long way to go before financing better targets those most in need, so that water and sanitation services are accessible and affordable to all.



Household water and sanitation bills in Japan.

SOURCE: MADOKA SAJI

FOOTNOTES – CHAPTER 2

- ¹ WHO and United Nations Development Programme (UNDP), Economic and health effects of increasing the coverage of low-cost household drinking water supply and sanitation interventions (WHO/SDE/WSH/07/05), pp. 21–22, available at www.who.int/water_sanitation_health/economic/mdg10_offtrack.pdf.
- ² Ibid., p.20.
- ³ Beyond Scarcity: Power, poverty and the global water crisis, Human Development Report 2006, UNDP, p.9.
- ⁴ UN-Water Global Annual Assessment of Sanitation and Drinking Water, 2010, (GLAAS Report 2010), p. 14.
- ⁵ UNDP HDR 06 (see previous reference 3), p. 8.
- ⁶ UN Water, GLAAS Report 2010, p. 15.
- ⁷ Information available at: www.irc.nl/page/39103.
- ⁸ Applying the Life Cycle Cost Approach to sanitation: 11 key messages from Burkina Faso, Ghana and Mozambique, WASHCost 31 August 2011, available at: www.washcost.info/page/1450.
- ⁹ WHO and United Nations Development Programme (UNDP), “Economic and health effects of increasing the coverage of low-cost household drinking water supply and sanitation interventions” (WHO/SDE/WSH/07/05), pp. 21 and 22, available at www.who.int/water_sanitation_health/economic/mdg10_offtrack.pdf.
- ¹⁰ UN Water, GLAAS Report 2010, p. 29.
- ¹¹ Ibid., p. 30.
- ¹² See Black, Maggie and Fawcett, Ben, The Last Taboo: Opening the Door on the Sanitation Crisis, Earthscan, 2008, pp. 212–216.
- ¹³ Bartram, Jamie, Lessons learned from monitoring progress towards the MDG 7c target for water supply and sanitation, and the implications for future targets and monitoring, Keynote presentation at WHO and UNICEF First Consultation on Post-2015 Water and Sanitation Targets, Berlin, 3 – 5 May 2011. Globally, 61 per cent of households have “improved” sanitation in the home, compared to 57 per cent of households with “improved” water supply in the home.
- ¹⁴ Organization for Economic Cooperation and Development, Pricing Water Resources and Water and Sanitation Services, 2010, p. 70.
- ¹⁵ Ibid.

- ¹⁶ Ibid., p. 72.
- ¹⁷ The water utility in Washington DC has struggled with the necessary replacement of lead pipes, for example, as the cost of replacing the pipes is not affordable to many households.
- ¹⁸ www.nwsc.co.ug/index01.php?id=63.
- ¹⁹ www.newah.org.np/old/initiatives/index.php.
- ²⁰ Cairncross, Sandy, The Case for Marketing Sanitation, Water & Sanitation Programme, World Bank, Nairobi, 2004, also: www.wsp.org/wsp/sites/wsp.org/files/publications/af_marketing.pdf.
- ²¹ www.wsp.org/wsp/FeaturesEvents/Features/starting-sanitation-marketing-conversation, see also the Malagasy video: www.youtube.com/user/gbastinwsup#p/a/u/0/2YRZC3hZHMg.
- ²² See generally, WSSCC, Public Funding for Sanitation: The many faces of sanitation subsidies, 2009; Tremolet S., Kolsky P., Perez E “Financing On-Site Sanitation for the Poor: A Six Country Comparative Review and Analysis”, Water and Sanitation Program, Jan. 2010.
- ²³ UNECE/WHO-Europe, No one left behind – Good practices to ensure equitable access to water and sanitation in the pan-European region, 2012.
- ²⁴ Presentation by Chile made at the UN Members State’s Public Consultation on Good Practices held in Geneva in January 2011, available at: www2.ohchr.org/english/issues/water/Iexpert/docs/StateActors/ChileGeneva.pdf, and response from Chile to the Special Rapporteur’s questionnaire, available at: www2.ohchr.org/english/issues/water/Iexpert/docs/questionnaires2010/Chile_State_Obligatoriedadlegaldeservicio.doc.
- ²⁵ Response from Colombia to the Special Rapporteur’s questionnaire, available at: www2.ohchr.org/english/issues/water/Iexpert/docs/questionnaires2010/Colombia_State_PlanesDepartamentales.pdf, also: www.cra.gov.co/index.shtml.
- ²⁶ www.ccode-mw.org/ourwork/sanitnew.
- ²⁷ Personal communication with ERSAR.
- ²⁸ Presentation by ERSAR, Portugal made at the Consultation on Good Practices with Regulators and National Human Rights Institutions held in Geneva in March 2011, available at: www.ohchr.org/Documents/Issues/Water/Consultations/Portugal_Regulator.pdf.

- ²⁹ ERSAR: Draft Report on implementing the right to sanitation for the 6th World Water Forum to be held in 2012 (unpublished).
- ³⁰ UNECE/WHO-Europe, No one left behind – Good practices to ensure equitable access to water and sanitation in the pan-European region, 2012.
- ³¹ Presentation by Algeria made at the UN Members State's Public Consultation on Good Practices held in Geneva in January 2011, available at: www2.ohchr.org/english/issues/water/lexpert/docs/StateActors/AlgeriaCOMHCDHGeneva.pdf.
- ³² UNECE/WHO-Europe, No one left behind – Good practices to ensure equitable access to water and sanitation in the pan-European region, 2012. ERSAR: Draft Report on implementing the right to sanitation for the 6th World Water Forum to be held in 2012 (unpublished).
- ³³ UNECE/WHO-Europe, No one left behind – Good practices to ensure equitable access to water and sanitation in the pan-European region, 2012.
- ³⁴ Presentation by SPGE, Belgium made at the service providers' Consultation on Good Practices held in Lisbon in November 2010, available at: www2.ohchr.org/english/issues/water/lexpert/docs/presentations2010_partI/service_providers/Belgium_SPGE.pdf.
- ³⁵ N° 2011-156du 7 février 2011.
- ³⁶ Franceys, R.W.A., "Charging to enter the water shop? The costs of urban water connections for the poor", *Water Science and Technology: Water Supply* Vol. 5, No 6, 2005, pp. 209-216, 213, 215.
- ³⁷ Ibid., p. 216.
- ³⁸ Response from UNICEF, Egypt, to the Special Rapporteur's Questionnaire available at: www2.ohchr.org/english/issues/water/lexpert/docs/questionnaires2010/Egypt_Unicef_Revolving_funds_for_household_connections.doc.
- ³⁹ Response from UN-HABITAT, India, to the Special Rapporteur's Questionnaire available at: www2.ohchr.org/english/issues/water/lexpert/docs/questionnaires2010/India_UN-Habitat_Communitymanagedwatersupply.pdf.
- ⁴⁰ Microfinance for Water, Sanitation and Hygiene: An Introduction, Netherlands Water Partnership & International Water and Sanitation Centre, 2007.
- ⁴¹ Response from Maynilad Water Company, Philippines, to the Special Rapporteur's Questionnaire, available at: www2.ohchr.org/english/issues/water/lexpert/docs/questionnaires2010/Philippines_Maynilad_Drinking_water_and_sanitation.doc.
- ⁴² CESCR, General Comment No. 15 and A/HRC/12/24.
- ⁴³ Gurria, A., "Enhancing Access to Finance for Local Governments" Task Force on Financing Water for All, March 2006, p. 6.
- ⁴⁴ See generally UNDP HDR 2006, p. 52-53. See figure 1.15 for comparison of prices paid by users of formal and informal service provision.
- ⁴⁵ Presentation by Bangladesh made at the UN Members States' Public Consultation on Good Practices held in Geneva in January 2011, available at: www2.ohchr.org/english/issues/water/lexpert/docs/StateActors/BangladeshPresentation.pdf, and response from Bangladesh to the Special Rapporteur's Questionnaire, available at: www2.ohchr.org/english/issues/water/lexpert/docs/contributions/Bangladesh_State.doc.
- ⁴⁶ Presentation by Zambia made at the UN Members State's Public Consultation on Good Practices held in Geneva in January 2011, available at: www2.ohchr.org/english/issues/water/lexpert/docs/StateActors/ZambiaHumanRightWSSGeneva2011.pdf and Response from Zambia to the Special Rapporteur's Questionnaire, available at: www2.ohchr.org/english/issues/water/lexpert/docs/questionnaires2010/Zambia_State_Devolution_Trust_Fund.pdf.
- ⁴⁷ Response from Kyrgyzstan to the Special Rapporteur's questionnaire, available at: [www2.ohchr.org/english/issues/water/lexpert/docs/questionnaires2010/Kyrgyzstan_Implementation%20of%20the%20Taza-Suu%20\(Clean%20Water\)%20programme%20\(Kyrgyzstan\)%20english%20translation.doc](http://www2.ohchr.org/english/issues/water/lexpert/docs/questionnaires2010/Kyrgyzstan_Implementation%20of%20the%20Taza-Suu%20(Clean%20Water)%20programme%20(Kyrgyzstan)%20english%20translation.doc), also www.tazasuu.kg.
- ⁴⁸ Mehta, Dinesh and Mehta, Meera, Financing water and sanitation at local levels, *WaterAid*, 2008, p. 59.
- ⁴⁹ UNDP HDR 2006, pp. 12, 61.
- ⁵⁰ *WaterAid*, Financing water and sanitation at local levels, p. 59.
- ⁵¹ Ibid., p. 28.
- ⁵² Slaymaker, T and Newborne, P., Implementation of Water Supply and Sanitation Programmes under PRSPs, *Water Aid and the Overseas Development Institute (ODI)*, Aug. 2004.
- ⁵³ WHO / UNICEF Joint Monitoring Programme: www.wssinfo.org/country-collaborations/data-reconciliation.
- ⁵⁴ Report of the High Commissioner for Human Rights on implementation of economic, social, and cultural rights, E/2009/90, para. 44.
- ⁵⁵ ERSAR – Draft report on the right to sanitation, unpublished.
- ⁵⁶ Presentation: Public Expenditure Review in the sector, Tanzania, Caroline van der Berg, *Water Week* 2008.
- ⁵⁷ UN Water, GLAAS Report 2010, p. 60.
- ⁵⁸ *WaterAid*, Water for All? A study on the effectiveness of Asian Development Bank funded water and sanitation projects in ensuring sustainable services for the poor, 2006.
- ⁵⁹ www.wsscc.org/gsf.
- ⁶⁰ www.wsscc.org/countries/africa/madagascar/global-sanitation-fund.
- ⁶¹ www.wsscc.org.
- ⁶² www.aecid.es/web/es/aecid/normativa/fondos/Fondo_de_Cooperacion_para_Agua_y_Saneamiento/003.html.
- ⁶³ CESCR, General Comment No. 3, para. 13.
- ⁶⁴ ICESCR, article 11; CESCR, General Comment No. 3, para. 13-14.
- ⁶⁵ Paris Declaration on Aid Effectiveness (2005), para. 16.
- ⁶⁶ Accra Agenda, para. 18.
- ⁶⁷ Lumina, C., Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, A/65/260, 9 August 2010, paras. 8-18.
- ⁶⁸ Paris Declaration on Aid Effectiveness (2005), para. 31; See also UN Water, GLAAS Report 2010, p. 61.
- ⁶⁹ A/65/260, para. 7.
- ⁷⁰ A/64/279, paras. 80-82.



Women collecting water from a well in Ndiba, Kaolak, Senegal, November 2011.

PHOTO: CATARINA DE ALBUQUERQUE

Ensuring access to water and sanitation for all, which is safe, affordable, acceptable and sufficient, requires multiple interventions from different stakeholders, leadership, an enabling environment for interventions to be effective and sustainable, and an engaged population willing and able to claim their rights.

CATARINA DE ALBUQUERQUE, STATEMENT TO THE 18TH SESSION
OF THE HUMAN RIGHTS COUNCIL, 15 SEPTEMBER 2011

Introduction

There are many reasons for lack of access to water and sanitation, including financial, social, institutional or technical constraints, discriminatory practices and lack of understanding or neglect of the rights and needs of particular groups or communities. Poverty is defined as much by a lack of a political voice as by a lack of money. The previous two chapters have examined the legal and policy frameworks that have been put in place to realise the rights to water and sanitation, as well as the financing mechanisms that have been created to ensure that resources are available to deliver services to those who lack access. This chapter will look more closely at the initiatives and programmes that different stakeholders are implementing to ensure universal and full access to water and sanitation services. It will also present practices designed for particular environments, and will consider different types of intervention, including service delivery, research, capacity building and advocacy.

As discussed previously, sanitation often does not receive as much attention as water, either from States or from other stakeholders, including individuals and households. States have traditionally largely left individuals and households to find their own solutions for accessing sanitation in rural and in urban areas, although this is changing with more initiatives on guaranteeing sanitation, and greater understanding of the vital role it plays in ensuring dignity and improving health and realisation of other human rights. In both rural and in urban areas, the majority of solutions in most of the world are on-site solutions, with or without accompanying processes to collect, treat and dispose of the waste. The right to sanitation does not impose particular technologies but, “States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.”¹ There is therefore a range of technologies that are human rights compliant. The **WSSCC Compendium of Sanitation Systems and Technologies** provides an extensive overview of different types of sanitation, explaining their appropriateness to each context.² The **South African government** has also provided information on a range of **Sanitation Technology Options**, including the respective advan-

tages and disadvantages, and comparative costs for construction and operation and maintenance of each for use by professionals, but also to inform individuals and households of the available technologies.³

This chapter examines a wide range of approaches to implementing the rights to water and sanitation: practices in rural and urban areas; practices that address water quality; hygiene promotion and discrimination; the rights to water and sanitation in emergencies and in specific institutions, such as schools and prisons; practices that consider capacity building; advocacy and research and educational needs; and good business practices to protect the rights to water and sanitation.

DISCUSSION BOX 3.1 Human rights based approach and the rights to water and sanitation

Human rights are increasingly being promoted in development, predominantly through the human rights based approach (HRBA), a conceptual framework for the process of human development that is based on international human rights standards and directed to promoting and protecting human rights. Human rights standards and principles should guide all processes of development. This approach has been crucial in increasing the understanding of human rights and their value in providing a clear framework for action that is understood internationally. It has also been used to give legitimacy and strengthen the voice of those who are not usually heard, the excluded individuals and groups, particularly women, children and those who are discriminated against. A HRBA seeks to identify groups and people whose rights are being violated, identify who has the responsibility to act, and to understand the reasons why certain people are unable to enjoy their rights, such as the existence of discriminatory laws and social practices. In this sense it identifies rights-holders and their entitlements, and corresponding duty-bearers and their obligations, and works to strengthen the capacity of duty bearers to comply with their obligation to respect, protect and fulfil rights, and of rights holders to claim and exercise their rights. The HRBA seeks to analyse inequalities that lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.

The rights to water and sanitation provide the relevant norms and standards in the context of water and sanitation, reflected in the criteria outlined in the introduction, that are legally binding on States, and can therefore be used to hold States accountable for their actions, either through the courts or through other measures described in chapter four.



Community discussion with Church World Service in Cambodia.

PHOTO: CHURCH WORLD SERVICE, CAMBODIA



Collecting water by donkey cart from a distant water source in the Kunene region, Namibia, July 2011.

PHOTO: CATARINA DE ALBUQUERQUE



Handwashing in Comilla, Bangladesh, December 2009.

PHOTO: CATARINA DE ALBUQUERQUE



Catarina visits women from Comilla, a village suffering from water contaminated with arsenic in Bangladesh, December 2009.

PHOTO: MANDATE OF THE SPECIAL RAPPORTEUR



Himba woman drinking water, Epupa constituency in the Kunene region, Namibia, July 2011.

PHOTO: CATARINA DE ALBUQUERQUE



Catarina de Albuquerque meets with homeless people in Osaka, Japan to discuss their water and sanitation needs, July 2010.

PHOTO: LUCINDA O'HANLON, OHCHR

3.1 Rural areas

Examining the figures for access to “improved” water and sanitation services reveals that the majority of people without such access lives in rural areas.

There are significant impediments to delivering safe and affordable water and sanitation services in rural locations, particularly where there are large distances between households or where water is scarce. The distance to urban centres where the local administration offices are based, and from where supplies can be sourced for hardware, can also be an impediment to maintaining services.

People living in rural areas often have limited income, or rely on a trading economy and do not have sufficient income to pay for services. A protected well may be relatively straight-forward and inexpensive to construct, but there are often issues of quality and sustainability in terms of financial, management and technical needs, particularly where technical capacity and access to spare parts for hand pumps installed on protected wells for example is limited. In rural areas, there is frequently a lack of management or financial capacity necessary for maintaining hand pumps or other protected sources among small communities. There is also often a lack of forward-planning on the part of the provider of a water supply or sanitation project, which does not make the necessary financing available to ensure sustainability. In some cases, it is assumed that the capacity building and community management approaches initiated in the development of services will be sufficient for future sustainability, but this is not borne out by figures that suggest that more than a third of hand pumps in Sub-Saharan Africa are non-operational at any given time.⁴ Community management processes generally require on-going support to be effective, which is a challenge when funding is unlikely to be accessed through tariffs.

I have seen that it is always the same people who are excluded. It is the marginalised, the poor, those without political voice. Such lack of access is not simply an unfortunate situation nor a coincidence, but is a direct result of policies and politics which exclude certain segments of the population.

CATARINA DE ALBUQUERQUE'S STATEMENT TO THE PERMANENT FORUM ON INDIGENOUS ISSUES, 24 MAY 2011

DISCUSSION BOX 3.2 Supply-led vs. demand-driven: the human rights implications

Supply-led and demand-driven approaches to service delivery are seen as two distinct concepts. Supply-led service delivery is seen as a top-down initiative, where governments (or their agents) provide a particular service, with limited participation from future users of the service. This can be seen to be the approach in the majority of urban areas of developed countries, where there is no choice in the type or price of the service – but there is often an effective complaints mechanism, regulation, as well as pro-poor policies and mechanisms in place to protect low-income individuals and households. Demand-driven service delivery requires that households or communities make a specific request for a service to a provider, and in general will participate fully on decisions relating to the type of service and the price to be paid.

From a human rights perspective, both approaches are acceptable, while requiring particular considerations. Supply-led approaches may not fulfil the requirement that users are able to participate fully in decisions relating to their services. Demand-driven approaches, on the other hand, need to ensure that households or communities are not being left out of service provision options because of a lack of information or because of discriminatory practices.

On the surface, a supply-driven approach may appear to be closely aligned to the principle that governments are responsible for ensuring that the rights to water and sanitation are realised for all. However, without the adequate participation of future users, it is possible that the services provided do not address the specific needs and aspirations of the communities they are meant to serve, and

therefore are not used. An example of this might be the wholesale delivery of a particular type of latrine, without adequate participation from the individuals and households. In the past, this has led to latrines being used wrongly or not at all – latrinisation not sanitation.

A result of this is that supply-driven interventions (often based on a subsidy provided to households to pay for the construction of the services) have been painfully slow and inefficient in bringing sustainable sanitation in developing countries, particularly in rural areas.⁵

A demand-led approach, which depends on individuals and groups making a specific request for services, works on the principle of participation. For these approaches, it is assumed that the greater engagement of individuals in the process of delivery will ensure better use and sustainability of services, both in technical and financial terms. However, this can lead to services being provided only to those people who are able to make this request and can afford the services, or who have the resources to engage, or who are specifically targeted by the State through promotional campaigns. There can also be difficulties in taking this approach to scale, to reach all residents, due to the different contexts and different technologies demanded by households and communities.

One solution can therefore be a combination of these approaches, whereby States provide some level of bulk services, so that facilitation and promotion of individual and household level provision can be provided more easily by the individuals and households themselves. This is the approach that has been taken in Karachi, Pakistan, with the Orangi Pilot Project, where the local “lane” communities are responsible for constructing and managing their own local sewerage system, and the municipality is responsible for primary pipes and treatment of sewage.



Boy walking past a mural depicting the collection station for waste from septic tanks in Rifisque, Dakar, Senegal, November 2011.

PHOTO: CATARINA DE ALBUQUERQUE



Tanker for collecting waste from septic tanks in a high-density settlement, in Rifisque, Dakar, Senegal, November 2011.

PHOTO: CATARINA DE ALBUQUERQUE

Water scarcity may limit the availability of water for domestic uses, either due to an absolute scarcity or, more commonly, due to other uses, such as agriculture, animal husbandry, industry or tourism taking priority. Water scarcity can also often be seasonal, and be compounded by a lack of adequate storage capacity. Water quality can be difficult to monitor and regulate in small-scale systems in remote areas.

Sanitation systems in rural areas are predominantly on-site technologies, with limited organised collection or treatment systems. As has been discussed in chapter two, financing for the majority of solutions for construction and maintenance comes from the households themselves, rather than any government financing.

Living in rural areas also has implications for access to political processes by individuals and communities. These individuals and communities may not be aware of the availability of grants, subsidies or other assistance to help them in accessing services. Furthermore, living in harder-to-reach areas means that it is more difficult to engage rural individuals, households and communities in discussions on suitable policies or programmes or types of service provision available, or to inform individuals and households of the responsibilities of local authorities with regard to their access to water and sanitation services.

The two following practices promote community engagement with local authorities in order to increase the likelihood that water and sanitation services will be sustainable, and increase the accountability of local authorities in the delivery, operation and maintenance of these services.

In **Tanzania**, following years of problems with the sustainability of constructed water points,⁶ the Government, with the support of the NGO **ONGAWA, Ingeniería Para el Desarrollo Humano (formerly Ingeniería Sin Fronteras-ApD)** has created **District Water and Sanitation Unit Support**.⁷ This team has the role of assisting community-managed Water User Groups to be more effective in the running of water points, ensuring both technical and financial sustainability. Piloted in the Same District, this support is planned to be multi-sectoral, and includes representatives from the water, finance, health, community development, education, legal, and district land and forestry departments. This ensures that every aspect of accessing water and sanitation services is considered, from the technical aspects of the services to ensuring that health benefits are incorporated, securing the land that a water point or public latrine is built on, and to considerations of the groundwater sources and protection of the environment. As water user groups also require some legal engagement in order to set up the most appropriate committee, the legal department is also engaged in assisting communities with this process. The role of the support team is not only to support the

water user groups and assist in the sustainability of the services, but also to assist the district authorities in becoming more accountable to the communities, and to provide links to river basin management processes. As the support team is trained in the rights to water and sanitation, it is able to promote participatory and non-discriminatory practices within the Water User Groups activities. The Unit Support team does not advise on technical solutions, which are to be decided on by the communities themselves.

The **Water Resources Management Programme (WARM-P)** by **Helvetas Nepal** has been designed to use the limited water resources at a community's disposal as efficiently as possible, with water for personal and domestic use prioritised. Helvetas works with the communities, local NGOs and local government, including representatives of the regional offices of the Department of Water Supply and Sewerage of the Government of Nepal to develop Water Use Master Plans that incorporate drinking water and sanitation projects. Representatives from each household jointly identify all available water resources in the area, assess all the water-related needs of the people and desired uses, such as drinking, irrigation and hydropower. The community then discusses possible water projects and agrees on a priority list of the identified projects, with technical consultants available to assess the feasibility of the community's plans and recommend the most suitable technical solutions for the finalisation of the Water Use Master Plan. The inclusive nature of the planning and the links into the government structures is crucial for the programme's sustainability.

In **Bangladesh**, **Lutheran Health Care (LHCB)**⁸ has been working with local government officials, community leaders, schoolteachers, clubs and other NGOs in community health projects for the last decade. A part of this work is the construction of boreholes and latrine slabs, working to find ways of addressing the needs of the most vulnerable groups, as well as improving the sustainability of water and sanitation services. LHCB works with the whole community in a village for the site selection, planning, designing, installation and monitoring of sanitation and water services, giving particular priority to groups at risk, identified according to whether children, disabled people or those living in poverty are part of the household.

Beneficiaries are provided with adequate training and know-how to ensure that the community can manage the minor repairs themselves. The training of the community groups also includes information on the responsibilities and obligations of local authorities to promote accountability and to encourage the community to engage with the local authority to assist them in addressing their needs. LHCB also provides follow-up services as part of their general engagement with

communities to ensure that people continue to utilise the services properly. At the same time, LHCB seeks to improve their cooperation with the local authorities, using education, motivation and tools to build understanding of the needs of particular groups and individuals.

As contamination of water by naturally occurring arsenic is a particular problem in some parts of Bangladesh, LHCB also assists communities in dealing with arsenic contamination as members of the **Safe Water and Arsenic Mitigation Project (SWAM)**, in part through the construction of deep boreholes, tapping into water below the contaminated watercourses, as well as using water treatment approaches.



Solister Phiri, sanitation entrepreneur, shows a banana tree growing from an old arborloo pit in Embangweni, Malawi.



Church World Service training programme in Cambodia.

PHOTO: CHURCH WORLD SERVICE

DISCUSSION BOX 3.3 The environment and the rights to water and sanitation

An increasing human population and specific polluting human activities are causing damage to the environment in urban as in rural areas, with water resources often the hardest hit. Furthermore, climate change is having an impact on the availability of safe water resources. These two issues need to be considered in planning for improved access to water and sanitation services in order to ensure that future generations continue to have access to sufficient quantities of safe water, and that the necessary mitigating measures are in place for water management in times of water stress, whether from flooding or drought.

Whether one is concerned that unplanned development and human activity is damaging the environment, of the consequences for species and habitats or that the environment in which people live is unsafe or unhealthy, there is reason to consider the health of the environment when implementing the rights to water and sanitation. The main uses of water are for agriculture and industry,⁹ but human rights impose the protection and prioritisation of water for domestic and personal use, even if these are not the uses that have the most direct economic value. This includes ensuring that common water resources are not adversely affected by pollution from agriculture or industry. Ensuring full access to sanitation, including proper treatment and disposal or reuse of human waste is essential for safeguarding the environment and water resources. Please see discussion box 3.4 on prioritising water for personal and domestic use for further discussion.

Rural sanitation is a major challenge, as the need for safe sanitation is often unrecognised. However, for health, privacy, dignity, security and convenience, access to a hygienically maintained latrine is vital. The construction and maintenance of latrines is often neglected, partly due to the taboo surrounding sanitation. Various technical options are suitable, including latrines where the wastes can be used as fertiliser, benefiting households financially from having access to a latrine and the wastes that are stored within them. Conversely, using a poorly maintained latrine, particular one shared with many individuals, while perhaps providing privacy, does not necessarily deliver health benefits, and in some cases may cause as much incidence of disease than open defecation.

Sanitation entrepreneurs in Malawi,¹⁰ who work with local communities to encourage the construction of eco-latrines, use the economic incentive of additional income from either selling manure or improving their crops using their own manure. A range of options at varying costs are available, including dual pit latrines, which are permanent, and “arbor-loos”, which allow for the planting of a tree on the site of a full pit (young trees should be planted so that their delicate

roots are planted in topsoil and only reach the decomposing faecal matter as they get stronger). The latrines are designed so that the concrete slabs (with squat-hole) and superstructure can be moved and used again for each new pit dug. For those households that cannot afford the initial costs of buying the slab, the sanitation entrepreneurs accept payment of the first crop of bananas planted on the site of the first full pit. This approach is important because it ensures that even the poorest households can afford some kind of safe sanitation. It is hoped that, in time, the social and health benefits will also be recognised by the households, to the extent that they are prepared, not only to continue to use and maintain the latrines, but also potentially to upgrade them to more sophisticated and potentially more convenient solutions, in line with the principle of progressive realisation (please see Introduction for more information on progressive realisation).

The Village Education Resource Centre (VERC)¹¹ in rural **Bangladesh** pioneered **Community-Led Total Sanitation (CLTS)** to address the difficult issue of poor sanitation practices, specifically open defecation, in rural communities. CLTS uses a process of working with communities to help them to recognise the consequences of not using safe latrines, by raising awareness and incorporating a community-led assessment of existing defecation habits, and an open discussion of the reality of the ubiquity of faecal matter in their water and food, through contamination via feet and hands, animals or flies. The approach then relies on communities making decisions about their own sanitation practices, aiming for whole villages to become “open defecation free”, promoting human dignity and



Community members showing disgust at open defecation in Tiassalé, Ivory Coast, during an awareness-raising Community-Led Total Sanitation process, 2009.

PHOTO: AWA GUEDEGBE, UNICEF

improving health. CLTS relies on sensitive and engaged community workers to discuss this taboo subject in a way that encourages debate, thus challenging and changing existing behaviour. Unlike other approaches, in the case of CLTS, no specific design or materials can be replicated in a particular area without community approval. An important feature of the original concept is that CLTS does not rely on any form of capital subsidy for the construction or maintenance of latrines – the desire for a latrine (as well as the social pressure from other members of the community) should be strong enough for every household to ensure that they secure at least the most basic form of latrine, guaranteeing that all residents move away from open defecation. This approach has been broadly successful in rural **Bangladesh**, and has been introduced with varying degrees of success into other countries particularly in Asia and Africa, by NGOs and international agencies and through State intervention, with India using this approach as part of its National Sanitation Campaign.

There are challenges in the scaling up of CLTS, some of which are due to space constraints (see box on CLTS in urban areas) and the necessary long time frame, as it requires communities to recognise the full benefits of access to safe latrines. In some instances, the necessity of meeting targets can limit the time available for the community to understand the problems associated with open defecation and become motivated to construct and use latrines. Inadequate training might also have a negative impact on the way CLTS is implemented and awareness is raised. Observers have also recognised that incentives for encouraging behaviour change and the construction of latrines are sometimes unacceptable, and include public shaming, including photographing, of those who still practise open defecation.¹² The Water and Sanitation Program is exploring combining CLTS with the sanitation marketing approach (please see section on sanitation marketing in chapter two) to encourage behaviour change positively, rather than through shaming.¹³

In replications of the VERC CLTS approach, the role of a subsidy for latrine construction is often debated, with CLTS supporters stating that providing a subsidy removes the requirement for the individual or household to commit themselves to both constructing and then using the latrine.

Beyond improving access to sanitation and encouraging better hygiene practice, CLTS has been noted for being a useful entry point for capacity building of civil society, including the identification of community leaders, leading to other development initiatives.

DISCUSSION BOX 3.4 Prioritising water for personal and domestic use.

Historically, water resources have been managed by a variety of laws, institutions and international instruments that have evolved in response to context-specific challenges and conflicts.¹⁴ For instance, in the west of the United States, water management mechanisms were designed primarily to bring certainty to those who controlled newly tapped water resources through the “prior appropriation” doctrine.¹⁵ One or perhaps several institutions could oversee the extraction of groundwater for agricultural use, while another might be responsible for surface water, and another for flood control. The fact that these laws and institutions were so often purpose-built, has meant that they are ill-suited to responding to changes in the way that water is perceived and used, particularly under the spectre of greater scarcity due to climate change, or to the changing patterns of water use following the industrialisation of agricultural practices, as well as changes in diet. Indeed, in many countries that recognise the right to water and, perhaps, sanitation, the actual laws and institutional frameworks that govern water resources remain “dissociated from the human rights framework”.¹⁶

It is therefore necessary to define priorities for allocating resources, and a small-scale approach to this from Helvetas, Nepal, has been presented above. Integrated Water Resource Management (IWRM), also considers the entirety of the water system within a water catchment area and its uses from agriculture and industry to domestic and personal use, and considers all environmental and social needs in the design of new water delivery, management and treatment processes. Its goal is to provide an overarching framework to replace these disparate laws with an approach that provides greater coherence, efficiency and social justice in water management. IWRM’s social equity goal has been presented as follows: “to ensure equitable access to water, and to the benefits from water use, between women and men, rich people and poor, across different social and economic groups both within and across countries, which involves issues of entitlement, access and control”.¹⁷ However, there have been concerns that the IWRM tends not to pay sufficient attention to the social equity aspect, with more emphasis on efficiency to the detriment of the requirements for realising the rights to water and sanitation.



Open defecation free (ODF) in Ndiba, Senegal.

PHOTO: CATARINA DE ALBUQUERQUE



A toilet designed for disabled users in the public sanitation facility constructed by the Nanyuki Water and Sewerage Company, Nanyuki, Kenya.

PHOTO: EDWARD KUNG'U, WSTF ARCHITECT



Waterpoint for the homeless community in Harar, Ethiopia.

PHOTO: UN-HABITAT

Community-led planning and implementation is at the heart of the work of **Church World Service Cambodia**¹⁸ in rural areas. Using participatory rural assessments and wealth ranking, households rank themselves according to their ability to pay for the construction costs of water and sanitation installations, which then defines what each household pays for the service. This approach guarantees non-discrimination, affordability and a pro-poor orientation, as well as ownership of the decisions by the community.

Similarly, in **Malawi, Churches Action in Relief and Development (CARD)**¹⁹ addresses both water for food security and for domestic uses in their project, using a solar-powered gravity water supply scheme. The programme employs a rights-based approach that emphasises the inclusion of marginalised groups. Communities write their own byelaws on how they will enable the elderly, orphans, chronically ill and people with disabilities to access free water, and utilises taps specifically designed for these minority groups.

In **Armenia, the Inter-Church Charitable Round Table Foundation (ART)**²⁰ focuses on the rehabilitation of drinking water infrastructure (pipelines) in rural areas in order to ensure access to safe water. One key challenge in many areas is that politically, economically and socially privileged people and clans take the majority of available water, by installing larger pipes.

ART has used a number of techniques to ensure equitable access. In a project in the village of Dzoravank, each household has a separate distribution basin, filled each day with the same amount of water. This means that it is not possible for one household to use all or a disproportionately large amount of water. The private supplier, who is essentially responsible for delivering services in this area, but does not have the necessary funds to rehabilitate all the systems, supports the project by providing all the necessary equipment free of charge, as well as providing engineering advice.

Payment for water services is charged according to the number of livestock that the household owns. Ensuring water quality regulation at individual wells is time-consuming and expensive, so the rehabilitation of water systems offers a greater guarantee of safe water.

An important element of the project has been community empowerment through participation, with all stakeholders taking part from the development of the idea to the project's monitoring and evaluation.

3.2 Deprived urban areas

According to statistics, people living in urban areas are more likely to have better access to water and sanitation services than those living in rural areas.²¹ These statistics hide a huge differential in access to services, between those living in formally planned areas of the cities and small towns, who will probably get their services from a utility that is in some way regulated, and those living in informal settlements, who will generally access water from a variety of poor quality sources, and may well have no access to adequate sanitation at all. Furthermore, many living in informal settlements may not even be included in any statistics, due to the status of the settlements as “illegal”, or if they are living on the edge of cities (in “peri-urban” areas) may be counted as “rural”.

Research from a wide range of countries has shown that people living in slums have to pay more for their poor quality services than those living in formal settlements.²² For example, at the end of her country mission to Senegal, the Special Rapporteur stated 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. Equally, people using on-site sanitation, often those living in informal settlements in urban areas, pay a much higher sum for the emptying of the pit latrines and septic tanks compared to the price paid by those who benefit from the sewerage system.²³

As a result of this limited access to safe water and sanitation services, people living in urban slums are among those most vulnerable to extreme poverty and ill health, with this vulnerability exacerbated by high population densities. People living in informal settlements also tend to be excluded from many other formal services, including access to medical care and education.

The people living in informal urban settlements are likely to have lower social and economic status than those living in richer areas, and include women-headed households, refugees, immigrants or internal migrants from other areas of the country, and other groups often discriminated against. This is not to say that those living in informal settlements are not long-term residents – many informal settlements are inhabited by individuals and households that have been resident for decades – and have suffered discriminatory practices for the same length of time. The “illegal” status of the settlements can also be transferred to the people living within them, causing discrimination and stigmatisation, and often excluding the residents from accessing services.



Poor housing standards in Dhaka, Bangladesh, December 2009.

PHOTO: CATARINA DE ALBUQUERQUE



Limited access to water and sanitation within a Dalit community in Dhaka, Bangladesh, December 2009.

PHOTO: CATARINA DE ALBUQUERQUE

With rapid urbanisation taking place in most developing countries, and the majority of population growth occurring in cities and small towns, this problem will only worsen unless governments are able to be more effective in planning and supporting low-income settlements. Informal settlements often deliver low-cost housing close to areas of potential employment so that an emphasis on settlement upgrading can reduce sustainable livelihood opportunities for the poor. Ensuring access to safe, affordable water and sanitation is a public health and human rights requirement and must be delivered in such a way that livelihoods are not jeopardised.

There are technical reasons – often over-emphasised – which explain why these settlements lack formal access to water and sanitation services, such as poor planning, narrow streets or a hazardous environment, making the provision of services more complex. However, often the real reason why people living in informal settlements do not have access to water and sanitation is their insecure tenure status and a lack of acceptance of slums and recognition of the human rights of the people who live within them, that prevents services from being delivered effectively and affordably. Often households are not permitted by landlords or by the State to build their own latrines. National and municipal authorities do not want to accept the existence of informal settlements, and fear that allowing services to be delivered will legitimise settlements and encourage further settlements to be created.

There are civil society organisations doing their best to tackle the challenges of delivering services to slums, but unless the underlying political issues of exclusion are addressed, technical solutions will not bring about lasting change. This section will look at some of the approaches taken by organisations to attempt to improve access to water and sanitation services for those living in deprived urban areas.

The **Bangladeshi NGO Dushtha Shasthya Kendra (DSK)**²⁴ has been working in the slums of Dhaka since the 1980s, initially with the aim of improving health, but soon recognising that one of the key requirements for improved health is access to water and sanitation services. However, local authorities were concerned that the delivery of services would be taken as a tacit acceptance of the settlements, encouraging further settlements. Additionally, the service providers were not prepared to deliver services to households that they considered would either not be able or prepared to pay for their services. The NGO decided to carry out a pilot project to demonstrate that communities are both able and willing to pay for an improved service. Together with Dhaka City Corporation and the

Dhaka utility, Dhaka Water and Sewerage Authority (DWASA), DSK constructed water points with areas for washing and communal latrines to provide legal connections to those living in informal settlements, with the NGO giving financial guarantees in case the community failed to pay. The charges for the use of the water point and latrine cover not only the cost of the water, but also the cost of construction, so that the money can be used to construct new water points and latrines in other settlements. The success of this programme was integrated into the urban component of the large-scale DFID funded **Advancing Sustainable Environmental Health (ASEH)**²⁵ programme, and also implemented in other cities, with this approach becoming part of national policy and legislation. As a result of the successful repayment of construction costs by communities, the ASEH programme also ensured that communities themselves signed the contracts with the service providers, removing the need for NGO financial guarantees.

DSK has also successfully experimented with alternative technologies, such as the Vacutug, a small vehicle-driven exhauster for emptying public and private septic tanks, using long pipes to reach the latrines in the narrow lanes of the informal settlements.

A key aspect of DSK's work has been the cooperation between the local authorities, the communities and the NGOs.



Poor living conditions in Pikine, Dakar, Senegal, November 2011.

PHOTO: CATARINA DE ALBUQUERQUE

DISCUSSION BOX 3.5 Land tenure and the rights to water and sanitation

Stemming from the basic principle of human dignity, the rights to water and sanitation are human rights. They cannot be qualified or conditioned on the basis of where a person lives or whether they have a legal right to be there and neither can they be qualified by whether a settlement in which a person lives is “legal” – the “illegal” status of the settlement may not be visited upon the individual.

This discrimination of the individual based on where he or she lives is particularly pervasive in informal settlements, which can be home to hundreds of thousands of families, most if not all of whom cannot produce a legal title. Service providers and municipal authorities may use the ambiguous legal status of these settlements as an excuse to delay or even deny the provision of adequate water and sanitation services. Indeed, in some cases, they may be barred by law from servicing such areas. Likewise, indigenous communities in rural areas may find their traditional right to occupy a certain parcel of land subsumed to the rights of the legally recognised landowner. In many cases this leads to forced evictions and the loss of access to an important water source.²⁶ It is beyond the scope of this book to prescribe how States should confront their land tenure problems, but it is important to emphasise that they are not absolved of their obligation to progressively realise the rights to water and sanitation *for all people*, beginning with the marginalised and most vulnerable. Land tenure insecurity is generally easier to resolve where settlements are living on publicly owned land.

DSK's work, as explained above, is an example of developing a dialogue between communities, NGOs, the service providers and the local municipality to reach an understanding that access to water and sanitation are human rights, and finding a way of providing these services without formally recognising an informal settlement as legal. **Dushtha Shasthya Kendra (DSK)**, working in collaboration with **WaterAid Bangladesh** has effectively pioneered a gradual process of severing the right to access water and sanitation services from land tenure.²⁷ Although the legal status of the settlements remains largely unresolved, through dialogue and local capacity building, water users now have a direct line of communication with the utility and land tenure no longer acts as an impediment to the universal realisation of the rights. The construction of the water points and shared sanitation blocks does not protect the settlements from either the threat or the reality of eviction, but it does ensure that informal settlements now at least have access to water and sanitation services.

Another approach is to formalise slums and land tenure so that the residents of informal settlements are able to access services. This is the approach taken by **Rajiv Awas Yojana (RAY)**, an ambitious programme aiming to make **India** slum-free by 2014. One of the tenets of the programme is to integrate slums into the existing urban fabric, and address the conditions that lead to slum creation by making more land available for housing in urban areas.²⁸ Each state is required to provide plans of how this can be achieved, including provisions for providing services to existing slums.

In **Angola, the Luanda Urban Poverty Programme**, a coalition of four international and local NGOs, promotes a community management model of water supply in a city of 5 million people, 70 per cent of whom access water from private water vendors or poorly managed stand posts. The programme works with communities in cooperation with the water service provider and municipality to choose appropriate technologies and select the sites for stand posts. Each community elects a committee to manage the standpoint, including developing transparent management and accountability mechanisms. Users pay for the service at the standpoint.²⁹

Inpart Waterworks and Development Company (IWADCO),³⁰ a construction company based in **Manila, Philippines** also identified slums as being in crucial need of water services, despite Manila's contracts with large-scale water providers, Manila Water Company and Maynilad. IWADCO introduces the different options available to local communities through awareness-raising programmes and involves them in project design, construction and management. The company has experience in working with different technical options, designing water delivery options for blocks of flats as well as informal settlements. The delivery of services is run as a business, working for profit, and households can decide on the level of service, whether a household connection or collection of water from a standpipe, according to their affordability. Local community members, generally women and those who lack other income, are chosen to manage the water supply with support from IWADCO. The person responsible for managing the water supply on a daily basis, as well as the director of the company, are available to receive complaints. The interesting aspect of this service is that it is provided due to the perceived need for additional services beyond those available from the official service providers, who are not able or have chosen not to deliver services to the informal settlements, for the reasons given above in discussion box 3.5. This service is perhaps more expensive than the municipal service, and can be seen as an interim solution. The challenge for the authorities will be ensuring that the “interim” solution does not endure indefinitely.

A further significant issue that causes discrimination against poorer households is the problem of intermittent supply. In India, for example, very few of the utilities offer a continuous supply of water. The majority provide services for a portion of the day, in some cases only on particular days of the week, and informal settlements are likely to receive a less reliable supply of water than those living in richer areas. This has implications for water quality in general, as discussed in section 3.3, and

specifically for the poor, who will not have the same coping mechanisms that richer households can afford. These coping mechanisms include large water storage capacity and pumps to extract the water more efficiently when water is in the pipes, and political patronage to apply pressure on the utility to ensure that water is delivered to particular areas more often. Therefore one of the most significant provisions for ensuring access for those living in poverty is to provide continuous water services. This has been attempted through the **Karnataka Urban Water Sector Improvement Project (KUWASIP)** in specific areas of three cities in **Karnataka, India**,³¹ as a concerted effort to demonstrate that it is possible both to increase the water supply to 24 hours a day, seven days a week, while applying cost recovery principles, without increasing the amount of water produced. This was achieved through overhauling the network and removing leakages and illegal connections, thereby significantly reducing water that is unaccounted for and increasing billing and bill collection. Interestingly, while water points were initially made available for those who could not afford a household connection, all households in the area, including the poorest households, have opted for a household connection for all the benefits that this brings.



Providing water services to an apartment block in Punta, Sta. Ana, Manila, Philippines.

PHOTO: INPART WATERWORKS AND DEVELOPMENT COMPANY

DISCUSSION BOX 3.6 Urban Community Led Total Sanitation

CLTS is an approach originating in rural areas and extending the CLTS approach into urban areas has required consideration of some aspects of the methodology. Technically, the simpler solutions proposed in rural areas are not valid in densely populated urban areas. Politically, as slum communities tend not to have adequate land tenure, there needs to be revision of regulations to allow for the construction of latrines. Pilot projects in Kenya and India are providing some material for discussion. In Mathare, a slum in Nairobi, **Plan International** is working with **Community Cleaning Services (CCS)**, to implement **Urban Community Led Total Sanitation (UCLTS)**. Despite the difficulties mentioned above, there has been progress in changing attitudes to the environment that people live in and, despite the lack of adequate latrines, families are starting to collaborate by allowing families without access to their own toilet to use the facilities of those that do for a minimal fee, for example. One of the discussions has centred around whether it is worth engaging communities in understanding why open defecation should be eradicated if there is no opportunity to build the latrines that would resolve the problem. CCS has found that it is worth raising communities' awareness of the impact of a lack of latrines even without a solution in place, as this process inspires the community to find solutions.³²

Kalyani Municipality, Kolkata, India started an urban CLTS pilot project in 2005, following successes in rural India. While numerous sanitation projects have been implemented in this municipality, open defecation remains a problem, even for those with access to latrines. A new approach removed all subsidies, and placed the responsibility for creating a sanitary, open defecation free environment with the communities themselves. From the pilot in five slums, the project has been introduced in a further 52 slums, of which 44 are now open defecation free, with an accompanying significant reduction in gastrointestinal and worm disorders. Removing the expectation of a subsidy has been a challenge for the project, along with the fact that unauthorised slums do not have a legal governance structure, and therefore it is more difficult for residents to engage effectively with the authorities.³³

Sénégalaise des Eaux (SdE) in Dakar, Senegal is responsible for providing services to all residents of the city, regardless of where they live. Before being contracted to the private sector in 1996, service provision was inadequate, reaching only 58 per cent of the population with household taps, with poor water quality, unreliable supply and significant numbers of unpaid bills. **Sénégalaise des Eaux** was contracted by the Senegal government on a lease contract, initially for ten years, to deliver universal services to all residents of the city. The service has been extended to reach low-income settlements, with social tariffs available to ensure affordability, and users are now reportedly more willing to pay, as they receive a safe reliable service with good quality water. 87 per cent of the city's population now has a tap within their households, with 71 per cent of all new connections being "social" connections. Some informal settlements still have access via standpipes, but this has been reduced from 22 per cent of the population to 11 per cent. Detailed customer surveys and a complaints system are in place.³⁴

One challenge for Senegal is to ensure that investments in sanitation and water prioritise rural areas and that water quality is ensured. Furthermore, a task for **Sénégalaise des Eaux** and other utilities that are also providing bulk services to standpipes, is to ensure that the price paid per litre in an informal settlement is not higher than that of services received by a consumer connected to the piped network on the lowest social tariff. To allow for the costs of managing the selling on of water from the standpipe to the individual consumers, the tariff for the bulk supply will need to be lower than the social tariff, and this may be difficult to manage within the cost-recovery principle. Furthermore, the rules regarding the application of social tariffs have to be improved to ensure that larger households, or those who are sharing a connection, are entitled to a sufficient quantity of water for personal and domestic uses, without risking the social tariff threshold being exceeded.

While only a small minority of households receive sewerage services, all households with water connections must pay an additional fee towards sewerage – regardless of whether or not they have a connection. This is ostensibly to pay for expanding the sewerage system, but in reality, this is a subsidy from households without sewerage to those with a sewerage connection.

Cambodia's Phnom Penh Water Supply Authority (PPSWA) is the publicly owned water provider, responsible for delivering water services to the residents of the city of Phnom Penh. Along with **Uganda's National Water and Sewerage Corporation (NAWSCO)** PPSWA is known for turning around a failing water authority, and turning it into a successful, efficient and economically viable company, while keeping its status as a public company. This book will

concentrate on the PPSWA, as the approach has been particularly successful for the urban poor, while recognising that sanitation has not been addressed by PPSWA and efforts to address this in Phnom Penh are nascent.

Until 1993, Cambodia was still recovering from the Cambodia civil war, and water service delivery in Phnom Penh was limited, with only 25 per cent of households enjoying water connections, and 73 per cent of water produced unaccounted for. Following reform, PPSWA now provides 90 per cent of the population with water, with only 6 per cent of water unaccounted for. Subsidies have been reduced overall, but pro-poor approaches which include a ban on disconnections, and connection subsidies and payment plans for those individuals and households living in poverty, have increased. Despite this focus on the needs of poorer households, the company has been reporting profits beyond full cost recovery since 2006.³⁵

This transition was not smooth, and required rethinking in 1997/8, when it was found that the pro-poor aspects were not being effective. New pro-poor units were then introduced, along with more targeted efforts to reach the poorest households, including 100 per cent connection subsidies in some cases. The key to the success of this programme was the active seeking out of poor communities, as well as more concerted efforts to inform people of the subsidies available. Furthermore, the service itself is 25 times cheaper for poor households, with the same level of service provided.

As can be seen from the practices discussed here, the challenges of delivering water and sanitation services by utilities can be solved through improved targeting, accountability systems and good regulation, and these approaches work for private and public service provision alike. When it comes to delivering services to those who are excluded, one significant barrier other than affordability (discussed in chapter two) tends to be whether or not the individual or household has secure land tenure for the home, as well as the bureaucratic process for accessing a connection, including paperwork such as proof of residence, birth certificates and a deposit.

While IWADCO (Manila), PPSWA (Cambodia) and Sénégalaise des Eaux (Senegal) are able to make profits from water service delivery, including to low-income customers, the fact that they do not provide sanitation services probably reflects the reality that it is more difficult to ensure that these are financially viable. There are not only significant costs for constructing urban sanitation systems, but there are running costs, particularly for the disposal and treatment of wastes, which can be prohibitive without specific funding. Sanitation in slums, and densely populated or informally planned areas requires carefully designed and considered

solutions. In densely populated urban areas, on-site latrines are seldom possible due to a lack of space, but lack of adequate planning also often precludes household-level toilets connected to a sewerage system. The high volume of excreta produced in densely populated urban areas needs to be handled safely to ensure that water resources and the local environment are not contaminated. Lack of secure tenure reinforces these problems. Improvements, such as latrine construction, may not be allowed either due to regulations or landowners refusing permission to build; without secure tenure, households are unwilling to invest in sanitation hardware if they are under threat of eviction; and service providers may not be willing to extend services to low-income areas for fear of not being able to recoup costs. All too often, municipalities either do not have sufficient funds, or do not allocate funds for sanitation services for people living in informal settlements. **Sulabh International** in **India** has shown how household toilets can be constructed in low-income urban settlements, where space is limited, and has also demonstrated the viability (and limits to viability) of well-managed community pay per use toilets, described further below.

While the **Buenos Aires** utility **Aguas y Saneamientos Argentinos (AySA)**³⁶ is responsible for delivering services to the entire Greater Buenos Aires region, it has not been possible to extend the network as quickly as desired due to limited funds. As a result, the utility implements the **Plan Agua+Trabajo (Working for Water)** and **Plan Cloaca+Trabajo (Working for Toilets)** in poor urban areas, with the aim of extending the network to these settlements more affordably, while simultaneously extending the customer base. The utility works with local governments and local working cooperatives to construct the extension of the drinking water and sewerage network. The utility is responsible for the expansion projects, consulting with local governments, providing materials, and technical support and training the local workers' cooperatives and, after completion, ensures the provision and maintenance of drinking water and sanitation services. This is one way of helping to ensure the affordability of the services, as well as bringing down the cost of delivering the services, which is particularly relevant for sewerage services. Simultaneously, AySA is constructing new sewerage treatment plants to treat the increase in sewage as more households are connected.

Inadequate treatment of sewage from the sewerage systems can cause environmental problems that are often visited upon those who do not even have the benefit of the sewered system (see section 4.3 for the relevant court case in Argentina).

DISCUSSION BOX 3.7 Addressing the needs of informal settlements – conventional vs. low-cost alternatives

As discussed earlier, the price of services can be as much as 30 times higher in informal settlements than it is in areas provided with formal services. It cannot be stressed enough that the price that an individual or household pays is no indicator of the cost of delivering that service, but that cross-subsidisation, whereby richer households pay more for their services, can address this issue (see discussion boxes 2.2 and 2.3 on subsidies).

The assumption, therefore, that those living in informal settlements should receive a lower level of service to reduce the cost and, indirectly, the price that individuals and households pay for these services does not only contravene basic human rights principles, but is also factually incorrect. Almost certainly the most cost-effective way of delivering water services to densely populated areas is via a networked system. The economies of scale offered by this approach will generally outweigh the cost of installing the services, and will be cheaper for the users.

Small-scale local service providers may appear to be an appropriate low-cost solution to the failure of the networked supplier to deliver universal services. In view of the fact that their apparent low costs (low investments but higher operating costs) can impose unreasonably high charges on the poor, they should be seen as “transitional service providers”, not as a means to excuse the designated supplier from delivering on their universal service obligation. In some instances, there may be a need for an interim solution before the networked supply can be brought to informal settlements, but providing a low-cost technology may not be the most cost-effective in the long-term. There is a significant difference between a technology that is cheap to install, but expensive to maintain or which will shortly need to be replaced, and a long-term solution that has lower operation and maintenance costs associated with it.

For sanitation services, a centralised networked system may not be the most cost-efficient option, and decisions made on the design of the appropriate sanitation system will be context-specific.

While there are efforts to find innovative technical solutions for the lack of access to sanitation services, such as the work of the **Bill and Melinda Gates Foundation**, which has recently made a US\$3 million fund available to “reinvent the toilet” at an affordable price,³⁷ it is also crucial to focus on new approaches to management, changes in legislation (see chapter one) and improved planning to include informal settlements in city-wide planning.

One common solution is the construction of shared or public latrines to accommodate the needs of multiple households, but these have critical management implications. Badly managed sanitation facilities can be expensive, unhygienic and largely inaccessible, which is a particular problem for women and children who need a safe place to use, especially at night. To address this, public sanitation blocks must be well-managed and open 24 hours a day. The **Indian NGO SPARC**, together with the slum women’s network, **Mahila Milan**, and the **National Slum Dwellers Federation**, construct community toilets within slums, where the process of designing and constructing the community toilets starts with gathering community interest through community-led surveys of the socio-economic conditions (see chapter four). Using this information to collaborate with local government to identify and acquire the necessary land, the women themselves are empowered to build and manage the toilets to their own specifications, including the provision of community space for meetings, weddings or other community events. The financial model is then pay-per-use, on a for-profit basis with special provision for those who are too poor to pay and with free access for children.

Sulabh International, an **Indian NGO** focusing on sanitation, has developed a wide range of low-cost technologies and latrines, including very narrow household level systems with closed tanks underground for collecting waste. Sulabh also constructs and manages public latrines in slums and formal settlements for use by resident and visitor populations. Over 10 million people in India use Sulabh International sanitation facilities daily, and the organisation has also developed a university as well as a museum to assist in educating people about the importance of safe sanitation and how the lack of access to sanitation can be addressed.³⁸

DISCUSSION BOX 3.8 The centrality of community engagement

In the delivery of water and sanitation services, there is a tension between a fully human rights-compliant approach and attempts to deliver services at scale and at speed. Participatory processes demand significant amounts of time to be meaningful, to ensure that all stakeholders understand the implications of the decisions to be made, but if carried out carefully, the process should lead to solutions that are more acceptable and generally more sustainable in the long-term. Approaches that perhaps provide services more rapidly, may lead to rushed decisions and a failure to consult the key stakeholders.

The implementation of the human rights principles of participation, access to information and accountability give the space for communities to engage in the crucial work of building up a relationship and an understanding between local communities and local authorities, which in turn can lead to other essential improvements in the lives of the individual and the community as a whole.



Collecting water in Katatura, Windhoek, Namibia, July 2011.

PHOTO: CATARINA DE ALBUQUERQUE

Alternative solutions to conventional sewerage systems are increasingly being used, as they can be more appropriate in hard-to-reach settlements. One of these solutions is **simplified sewerage**, a more affordable alternative to standard sewers. By using small diameter pipes, a low gradient and shallower depth, and the shortest possible routes for laying the pipes, simplified sewerage systems are significantly cheaper than the conventional system, and also require less water, making them cheaper to maintain. Such systems can demand a higher level of household/user involvement to manage waste effectively and, as with conventional sewerage, require accurate planning to ensure that they are sustainable. While it is true that more regular maintenance is required, there are also advantages to this: as the pipes are smaller in diameter, users have to be more careful about what they throw down the toilets, as disposing of unsuitable materials down the toilet will result in a problem for the user, rather than being flushed elsewhere for a third party to deal with. Regular maintenance also means that those maintaining the sewers actually know where the sewers are. A problem with conventional systems can be that maintenance is carried out so seldom that knowledge of the whereabouts of the relevant sewers is lost. Finally, a blocked simplified sewer can generally be cleared by flushing with water – if a conventional sewer blocks, the problem is generally more significant, and flushing with water will not be sufficient. This option has been used extensively in many countries in Latin America, as in other countries such as South Africa, but is best known in **Brazil**, where it also forms part of the national sanitation strategy.³⁹

A similar settled sewerage system is also now being used in **Dakar, Senegal**, as part of the **National Sanitation Office (ONAS)** programme for Dakar. This World Bank-funded project is piloting eleven settled sewerage schemes initially targeted to serve about 127,000 people in the peri-urban districts of Dakar.⁴⁰

The practices for sanitation presented above have particularly focused on developing countries. However, there continue to be significant sanitation challenges in some of the richest countries of the world, particularly for those groups that are excluded from society, notably homeless people and specific minority groups such as travellers or Roma. In many countries, public toilets are not well kept, are poorly frequented and can be unsafe. In order to address this, the City of Paris (Marie de Paris), France has decided to make public toilets free, assisting tourists and the homeless alike. Significant funds have been made available to ensure that the toilets are kept in a good condition, and are accessible to those with disabilities.⁴¹

DISCUSSION BOX 3.9 Levels of service: Shared toilets

The rights to water and sanitation demand that services are available, affordable, accessible, acceptable and safe. As the standards do not specify that services be available directly in the home, there is often debate as to whether there is a “minimum” level of service that must be reached, and which particular types of services should be excluded.

The Joint Monitoring Programme (JMP), described earlier, responsible for monitoring the Millennium Development Goal target relating to access to safe drinking water and sanitation, has developed a list of technologies that count as “improved” services. Only those technologies that are included in this list count towards the target.

For sanitation, the JMP definitions for “improved” sanitation exclude open defecation, certain types of latrines, and all types of shared toilets, including public toilets and toilets that are shared between households.

Realisation of the rights to water and sanitation may be more nuanced, allowing for progressive realisation up to the maximum of available resources. Therefore, while agreeing that open defecation and technologies that do not allow for the safe hygienic use of a latrine should be excluded, shared and public toilets that are well maintained, safe and hygienic, may be accepted as short-term solutions in those conditions where the alternative is to provide no toilet at all.

In some situations, such as in slums or in peri-urban areas, where formal service provision is not yet possible, interim solutions, such as shared toilets or informal water vendors may be a necessary standard of service until longer-term plans can be executed. These can also be the most realistic affordable options for sanitation provision for those who do not have land tenure or space to build a household latrine. However, shared or public toilets may be contrary to human rights if they do not ensure safety and good hygiene or if they are not affordable. Access to a toilet in the home is preferable for reasons of dignity and privacy.

Access to safe drinking water and sanitation in slums is also a big concern for me.

In practice, many people in slums are unable to connect to the water and sewage network because they do not have tenure status [...] the rights of the people living in slums must be recognized – this is not a matter of charity, but a legal entitlement.

STATEMENT MADE AT A PRESS CONFERENCE, DHAKA, BANGLADESH, 10 DECEMBER 2009

3.3 Water quality

The most appropriate water source in terms of water quality, in almost all cases, is a household connection to a networked supply, as it is generally the simplest way to control and regulate water quality. Above we have already examined some good practices of countries where the piped water supply was significantly extended, particularly to poorer urban areas, which have proved to be crucial developments to ensure water quality. However, an intermittent networked water supply can be a cause of contamination, as the drop in pressure when the supply is turned off or reduced can cause other liquids that may be surrounding the pipe, including sewage, to be sucked into any holes in the pipe. The reliability and continuity of a service can be a good indicator of water quality.

Not all individuals and households are connected to a networked system, leaving many people to rely on ground and surface water sources, such as unprotected wells or rivers that are unsafe, polluted either by industrial or agricultural pollutants, or by faecal matter resulting from inadequate sanitation.

Even where people access their water from safe sources, problems with distribution or storage systems can lead to water becoming contaminated before use, perhaps due to poorly managed storage containers. Where individuals and households are reliant on sources that are potentially contaminated, household water treatment systems are required to ensure that collected and stored water is safe and affordable. Choosing the most appropriate household water treatment option for a particular household or location will depend on existing water and sanitation conditions, water quality, cultural acceptability, implementation feasibility and the availability of appropriate technologies.⁴² Water quality monitoring will be covered in chapter four, but it is also worth noting that perhaps the most valuable aspect of ensuring water quality is knowledge about the quality of the water and the risks of contamination. Daily household level water quality testing is generally not affordable, but spot-checks can be invaluable for keeping individuals informed of the quality of the water they are using.

Where individuals and households rely heavily on collecting water from a standpipe or other source and storing it, it is crucial that good hygiene practices are implemented for the storage and use of water, ensuring that all storage vessels are closed unless being used, and that dirty cups or jugs are not introduced into the storage vessel, which would contaminate the water.

The purification of water by boiling or chlorination can be expensive,

particularly where the necessary fuel or chlorine tablets are not readily available. A cheap alternative is solar disinfection, also known as **SODIS**, which uses the straightforward procedure of direct sunlight shining on water in plastic bottles for at least six hours, thereby killing the majority of the pathogens that cause diarrhoea. This technology is particularly useful in those climates where there is plentiful sunlight, having the advantage over more complex water filtering processes of being easy to understand and use, and not changing the taste of the water. The **Water School in Uganda** promotes SODIS, along with other simple technologies for sanitation and hygiene.⁴³ SODIS is also promoted in **Vietnam** by **Helvetas**, and has been certified by the Ministry of Health as an acceptable system of water treatment. It is now being used by households outside the original settlements to which it was introduced, suggesting that SODIS is a sustainable and transferrable technology.⁴⁴

Biosand filters have been promoted in **Afghanistan**, by **Tearfund** as part of their **Integrating Advocacy into water and sanitation emergency programmes** (discussed further under section 3.7 Emergencies). Through using local artisans to produce the filters, the price and the availability of the filters is improved and sustainable. Bio-sand filters are also an accepted technology in the new Afghan WASH policy.⁴⁵ The **Cameroonian NGO, Life and Water Development Group**, in partnership with **Thirst Relief International** works to install low-cost bio-sand filters in schools to purify the water supply for children, as well as working with households to build their own bio-sand filters for domestic use.⁴⁶

It must, however, be stressed that these technologies are only effective if they are used as instructed – and ensuring this can be problematic and resource intensive.



Solar disinfection (SODIS) in Bolivia.

PHOTO: HELVETAS

3.4 Hygiene promotion

Good hygiene is an essential aspect of acquiring the full health benefits of access to water and sanitation. Promoting hygiene is a key aspect of many programmes relating to access to water and sanitation, and is also increasingly important in developed countries recently hit by lethal viruses, best managed and prevented by good hygiene. However, in human rights terms, good practices of hygiene promotion particularly concern those groups and individuals who are marginalised and at risk or whose needs are not considered in the design of water points and latrines.

The needs of menstruating women, representing roughly 26 per cent of the global population, have been ignored by the water, sanitation and hygiene sectors in the design of latrines and products and facilities for practising good menstrual hygiene.⁴⁷ The burden of this neglect is borne by millions of women and girls who are denied their rights to gender equality, education, access to water and sanitation, health and a life of dignity.

During menstruation, women and girls require access to water, sanitation and hygiene services, including clean water for washing cloths used to absorb menstrual blood and a place to dry them, somewhere private to change cloths or disposable sanitary pads, facilities to dispose of used cloths and pads, and access to information to understand the menstrual cycle and how to manage menstruation hygienically. As well as addressing practical needs like this, it is also necessary to promote better awareness amongst women and men to overcome the embarrassment, cultural practices and taboos around menstruation that impact negatively on women's and girls' lives, and reinforce gender inequities and exclusion.

Development workers and community members alike have found this a difficult topic to discuss, due to its sensitive nature and the sometimes discriminatory practices that surround menstruation. However, it is a critical issue for women's health and their enjoyment of many human rights. A study of schoolgirls by **WaterAid Nepal** found that 89 per cent of respondents experienced some form of restriction or exclusion during menstruation. WaterAid Nepal has engaged artists and photographers to use images to address this taboo issue.⁴⁸

WaterAid Bangladesh and its partners carried out a baseline study in the slums of **Dhaka** in early 2005, to understand the beliefs and practices of menstrual hygiene and management. It found many unhygienic practices due to a lack of awareness and unwillingness to talk about menstruation, as well as a lack of

safe water facilities for washing and drying rags used during menstruation. The underlying culture of shame and inadequate attention may lead to serious reproductive and other health problems. As a result, WaterAid Bangladesh piloted different designs of women-friendly toilets and has developed educational and communication materials to build awareness.⁴⁹ **WaterAid India** is also researching the different approaches and coping mechanisms that women employ, and is exploring how best to support women and girls in the choices that they make, including considering the types of pads that are most appropriate and how to make these affordable. Organisations in countries across Africa and Asia, including **UNICEF**, **WaterAid** and **SNV** have piloted the manufacture of low cost sanitary towels by local women, as a more hygienic alternative to using rags and a livelihood opportunity. However, environmentally sustainable disposal remains an issue.⁵⁰

Assisting women and girls in managing menstrual hygiene is also an issue addressed by the **Tanzanian NGO Water and Environmental Sanitation** in a school sanitation project. The aim is to contribute to improving the ability of girls reaching puberty to effectively manage menstruation with dignity and confidence and hence remain in school. Sensitisation of teachers and lesson planning for supporting girls in menstrual hygiene management is available for use across Tanzania.⁵¹

Educational institutions often provide the ideal opportunity to promote good hygiene, with some countries including hygiene education in the primary school curriculum. This will often include child-to-child programmes, where older children engage younger children in activities to promote hygiene and sanitation use. This can also be effective in encouraging children to take the message home with them, so that children act as agents of change within their own family and community. There are many examples of this, but UNICEF is particularly well known, and has developed manuals and guidelines, including approaches for monitoring the sustainability of programmes.⁵² WSSCC has produced a useful guide to hygiene and sanitation software, providing an introduction to the many

different approaches used, and giving some assessment of their effectiveness.⁵³

DISCUSSION BOX 3.10 Human rights obligations with respect to hygiene

Good hygiene behaviour is essential to reap the full health (and therefore also social and economic) benefits of access to water and sanitation. Studies have shown that the impact of good hand washing behaviour is as important as ensuring access to safe water or to a latrine.⁵⁴

The rights to water and sanitation cover the majority of the needs of good hygiene. With respect to the water requirements of good hygiene, General Comment No. 15 states that access to sufficient water for domestic purposes includes access to water for hygiene purposes, the provision of appropriate storage facilities and hygiene in food preparation. With respect to the right to sanitation, the hygiene requirements are that the latrine should be easy to clean and should contain facilities for hand washing. The right to health also covers the underlying determinants of health, including access to water and sanitation.⁵⁵

The Special Rapporteur's 2009 sanitation report⁵⁶ specifies the importance of access to and affordability of soap, as well as the importance of hygiene promotion. While it is the responsibility of the individual to practise good hygiene to protect his or her own health and that of those around him or her, the State has responsibilities to facilitate this. Relevant issues include ensuring that the necessary materials (e.g. soap) are available and affordable, that people know how to practise good hygiene, particularly hand washing at critical moments, particularly after using the toilet and before preparing food.⁵⁷ This may require including the teaching of good hygiene practices in national school curricula, and special attention to the needs of marginalised and vulnerable groups. All programmes must give careful consideration to the needs of women and girls, particularly their needs for menstrual hygiene management. This may also include the sensitisation of men and boys to the specific needs of women and girls.

There are ever increasing demands for water: for agriculture, for industry, for recreation, as well as for the realization of the human right to water and sanitation. The effects of climate change exacerbate these competing demands. I call on [governments] to adopt clear legal standards to give priority to water for personal and domestic uses to enable the realization of the human right to water and sanitation for all.

CATARINA DE ALBUQUERQUE, STATEMENT AT A PRESS CONFERENCE, WASHINGTON DC, USA, 4 MARCH 2011

3.5 Non-discrimination

A central principle for the realisation of the rights to water and sanitation is non-discrimination. The rights to water and sanitation demand that discriminatory practices related to laws or policies that distinguish between groups on grounds such as race, ethnicity or religion, be eliminated immediately. Many discriminatory practices are covert, or entrenched within social interaction and not explicitly based on distinctions set out in law or policy, for example, against Roma or travellers in many countries in Europe or against particular castes or tribes in other parts of the world. These discriminatory practices, while not included in State frameworks and often even explicitly prohibited by law, still require urgent attention, including specific consideration of the situation of disadvantaged and marginalised individuals and groups within a society. Regardless of where one lives, the tribe that one belongs to or any other potential ground for discrimination, everyone has equal rights to access sufficient, safe, acceptable and affordable water and sanitation.

In **Tamil Nadu, India, the Department for Water Affairs**⁵⁸ is committed to addressing discriminatory practices due to caste, using access to water and sanitation as the entry point for discussing discrimination in a project called **Democratisation of Water Management**. Following long-term droughts and increasing water scarcity, the State realised that it was necessary to overhaul the water strategy, challenging the way that things had been done up to that time, particularly addressing the way that people had interacted, from the officials to the engineers responsible for water programmes and to the communities themselves. The programme implementers found that it was frequently not just policies and programmes that perpetuated discriminatory practices, but also the fact that local communities needed awareness – raising programmes to recognise that their own attitudes were discriminatory. One such example is that non-scheduled castes are sometimes not permitted to use the same water source as other castes. To address this, the programme introduced the concept of “citizenship” that emphasised the full inclusion of all in decision-making processes, challenging both engineers and civil society alike. This led to a change in the approach taken by officials for visiting communities, with three times as many trained officials visiting, taking note of and acting on the needs of women and Dalit communities. As a result, costs have been reduced through more civil society engagement in decision-making, leading to the rehabilitation of facilities, rather than the construction of new facilities. Furthermore, the accurate targeting of those populations that are in most need has improved dramatically, so that 65 per cent

of all projects are in villages where more than 50 per cent of the population are living below the poverty line.

UN-HABITAT has been working with the **Harar Water and Sanitation Authority and the Harar City municipality** to provide services for a homeless community in Harar, Ethiopia.⁵⁹ Around 85 households living in an abandoned army barrack, without access to water or sanitation, were targeted to receive services using participatory approaches. Using funds provided by UN-HABITAT as part of their **Water for Cities** programme, and the Harar Water and Sanitation Authority provided materials and technical assistance for the community to install a waterpoint at the entrance to the main building, and a public latrine and wash-house on adjacent land donated by the local authority. The community organised a Water and Sanitation Committee, which has managed the construction of the public facilities using local labour, as well as the on-going maintenance and operation of the services. The construction includes a tank to collect rainwater for use in the facilities, which has had the positive impact of ensuring that this community has better access to water than the rest of the town in times of drought. Access to the services is free for the homeless community, while members of the surrounding community pay a fee to ensure long-term economic sustainability.

One of the aims of the project was to reduce the community members’ negative self image, as well as to raise their status in the eyes of the surrounding community. Thanks to the ownership of these facilities and the positive impact on the health of the families living in the community, the beneficiaries of this project no longer perceive themselves as dependent on the assistance of others. There has also been a positive impact on the way the community is perceived, not just by other citizens, but also by the local authorities.

European countries are able to report near 100 per cent access to safe water and sanitation – and yet there are still parts of these populations who do not have access. Examining this reveals that discrimination is the primary cause of lack of access, and one group that is systematically discriminated against in Europe is the Roma or traveller population.

According to the 2010 JMP report, Slovenia’s sanitation coverage is 100 per cent⁶⁰ – however, during her visit to Roma settlements in that country, the Special Rapporteur found that these communities often lack access to water and sanitation. As either ownership or authorised occupation of a home is required to receive municipal service, the “illegal” status of a settlement can be a barrier to accessing water and sanitation services. In some areas, where integration with the majority population is greater, it is easier for Roma people to purchase land, and gain the necessary papers to get a connection to water and sanitation services. Furthermore,

the **Municipalities of Prekmurje** in the north-eastern part of **Slovenia** have waived the strict regulations on house ownership or legal occupation, which has resulted in all but three of the 38 Roma settlements gaining access to water and sanitation services.⁶¹

The **Municipality of Trebnje** is taking a different approach to addressing lack of legal tenure, by strengthening the tenure status of people living in the settlements through a programme called **Healthy Community**, which enables the investment in infrastructure such as water and sanitation, as well as electricity and roads. This is accompanied by social interventions such as schooling and informal educational opportunities. To date, while many households have invested the necessary funds to connect to the water network, it has proven more difficult for households to connect to the sewerage network, predominantly because of a lack of funds, but possibly also due to a lack of understanding of the value of the sewerage connection. The cost of water for these households is three per cent of their income on average. In cases where the cost of water consumption is high, the Centre for Social Work can provide financial assistance. Social aspects are essential for integration with the local community, and this is also being assisted through participatory consultation processes.⁶²



Catarina de Albuquerque discusses access to water with a woman from the Roma community in Slovenia, May 2010.

PHOTO: LUCINDA O'HANLON

DISCUSSION BOX 3.11 Non-discrimination: Equality versus equity

As with many human rights, the rights to water and sanitation are susceptible to a seemingly innocuous, but in reality quite dangerous, confusion of terms. It is fairly common to see States, international organisations and NGOs aspire to achieve equity rather than equality in access to water and sanitation. This is not a minor semantic detail. Equity is not a term that exists anywhere in human rights law. Equity is based on a sense of fairness or justice that is inherently subjective. Thus, there is a risk that aiming for “equitable access” to water and sanitation services may advantage one group over another while allowing a State to make specious claims about its compliance with human rights law. Equity is negotiable. Equality and human rights are not. In the political realm, equity is a term that has been accepted and misappropriated by politicians to sidestep their responsibilities.

Equality, however, should not be misinterpreted as being absolute; that is, that every person must have the same level of access to water and sanitation as every other person anywhere in the world. Such an understanding assumes that there is some fixed amount of water and sanitation that is both possible and acceptable for everyone. Equality is a much more adaptable concept, open to differentiation, which allows and requires different groups to access what they need in order to achieve the same substantive enjoyment of the rights. It does not necessarily describe the same level of access to water and sanitation, but rather the same legal status in relation to water and sanitation. For instance, the needs of a person with a disability, a woman who is menstruating or a person with HIV/AIDS, will be different to that of others. However, they must be able to make the same claim on their right to access those services and can expect the State to work to address their specific needs just as quickly and effectively as it would for a person with no disabilities.

Efforts to promote non-discrimination in access to water and sanitation must focus on each individual's ability to make a claim on their rights and to see that claim answered in a manner that provides what is necessary for them to enjoy those rights.

Equality and non-discrimination are therefore the most correct terms for describing the objective of ensuring access to water and sanitation for all according to the needs of each person and for gaining a better understanding of human rights.

Due to religious, cultural and social norms, women are often not able to participate fully in decision-making processes, and taboos surrounding latrine use are often stronger for women than for men. In **Nepal, the Rural Village Water Resources Management Project** promotes the inclusion of women and excluded individuals and groups in water and sanitation delivery processes using their **Gender Equity and Social Inclusion Strategy**.⁶³ This strategy promotes and supports the socio-economic empowerment of women, people living in poverty and those socially excluded, through capacity-building, equal access to resources, participation in decision-making, the promotion of income generation and advocating for social change, particularly in relation to discriminatory practices such as the isolation of women during menstruation.

For the elderly, children and people with disabilities, particular care has to be taken to ensure that facilities are appropriate, and that these individuals are involved in decisions taken about the service. **UNICEF Tanzania, the Comprehensive Community Based Rehabilitation in Tanzania** and the **Environmental Engineering Pollution Control Organisation** formed a partnership, bringing the disability and water and sanitation sectors together to support the Government in mainstreaming considerations relating to disability into national school water and sanitation guidelines.⁶⁴ Through better access to water, sanitation and hygiene in schools, the programme seeks to ensure the realisation of the right to education for all children. The involvement of disability organisations and persons with disabilities was central to improving the understanding of disability among the water and sanitation stakeholders. The guidelines promote solutions that are appropriate both to different levels of resource availability and to what is acceptable to different cultural groups. They also take into account the girls' menstrual management needs. Trials of different simple, low-cost latrines were undertaken in 2010, which has allowed children and adults with disabilities to identify the design features most appropriate to their needs. This has led to the development of the National School WASH guidelines and toolkits, to be used both by Government and non-state actors.

Children's needs with respect to water and sanitation are often the focus of **WASH in Schools** programmes – but these do not always respect their human rights and their particular status as children. In 2009, **WaterAid and Save the Children Finland** began a partnership to develop and implement a **Child Rights based WASH programme** in **Bangladesh, India and Nepal**. The initiative aimed to work with WASH from a child rights perspective to improve services and practices for realising children's rights to water and sanitation, survival and development. The key focus is to promote accountability whereby parents,

communities and other institutional duty bearers can be held to account for ensuring the WASH rights of children. In practice this means setting up mechanisms and building the capacity of communities so that they are able to provide WASH rights to children and, where necessary, claim them on behalf of children from the relevant duty bearers and service providers. This is one of the distinctive features of a child rights based approach as opposed to a child-focused one. Another key difference lies in the manner in which children are involved. In many WASH programmes children are seen as agents of change and, in the name of child participation, children may become overburdened with inappropriate responsibilities – for example the responsibility for cleaning latrines (sometimes at a very young age) without adequate support or hygiene measures. The child rights approach stresses the need for involving children based on their evolving capacities and developing mechanisms so that children's opinions are listened to and addressed. This also helps to ensure that facilities are child friendly and safe. According to an external review of the first phase, an interesting finding of this programme is that the focus on children's rights is less threatening to both duty bearers and the communities themselves than a broader human rights agenda might be, and also less easy to ignore.⁶⁵



Water for African Cities gender mainstreaming training in Ouagadougou, Burkina Faso.

PHOTO: UN-HABITAT

DISCUSSION BOX 3.12 Sanitation workers

In many countries around the world, latrines and septic tanks are still emptied manually, without precautions to ensure that the workers are protected from the faecal matter. In India, the job of “manual scavenging”, the term given to the prohibited practice of manually emptying simple household-level latrines, is carried out by men and women of a particular unscheduled caste. The degrading nature of this work is an extreme case and is very much tied up with the inequalities of a deeply ingrained caste system and the lack of choice in finding other types of work. Despite the ban on manual scavenging, the practice continues. In many settlements, the practice was so prevalent that even government offices inevitably employed manual scavengers in areas where there was no sewerage connection.

The manual emptying of pit latrines and septic tanks is also carried out by the “frogmen” of Tanzania, who empty pit latrines by hand, and the “sweepers” of Bangladesh, described by the Special Rapporteur in her 2010 mission report.⁶⁶ Beyond the stigma of carrying out a degrading job, manual emptying of pits can be physically risky, both from the risk of disease as well as from injury.

The Special Rapporteur’s 2009 report on sanitation recommends that States ensure the occupational health, safety and dignity of sanitation workers,⁶⁷ and this needs to be considered when planning sanitation services, particularly in those areas where pits and septic tanks need to be emptied before the faecal sludge has been reduced to a safe manure. One example of this is the Vacutug, which has been mentioned above (DSK, Bangladesh). Where there is no alternative to emptying pits or cleaning drains by hand, it is necessary to ensure that those who may come into contact with faecal matter wear protective clothing and are able to wash thoroughly afterwards. Furthermore, there may be benefits in addressing the societal aspects of discrimination against sanitation workers through awareness-raising programmes. NGOs such as **Safai Karmachari Andolan** in India work with manual scavengers and municipalities to find alternative forms of employment, which are less physically dangerous as well as more dignified, simultaneously proposing new types of latrines to ensure that manual scavenging is no longer required.⁶⁸



Former manual scavengers burning the baskets, which were tools used while scavenging, representing their liberation from the inhuman ‘occupation’.

PHOTO: SAFAI KARMACHARI ANDOLAN



Women cleaning dry latrines by hand in Lucknow, India.

PHOTOS: SAFAI KARMACHARI ANDOLAN

3.6 Emergency situations

Water and sanitation requirements are often among the most vital concerns in an emergency, with safe water resources often scarce and the lack of adequate sanitation facilities threatening wide-scale risk of disease. Emergencies, while sudden in the onset, can also leave individuals and families in a precarious situation for many years.

Several international organisations have addressed these immediate needs by publishing manuals and guidelines for the provision of water and/or sanitation in emergencies, such as the **UNHCR Water Manual** for refugee situations⁶⁹ and the Handbook for the Protection of Internally Displaced Persons by the Inter-Agency Standing Committee, containing an Action Sheet for the human rights to water and sanitation.⁷⁰

Action Contre la Faim and the **UNICEF WASH Cluster** identified a gap in knowledge about the relevance of human rights in emergencies, leading to a series of **regional practitioners' workshops**. This led to the development of a **handbook** explaining the rights to water and sanitation and clarifying how emergency workers can use this framework to improve access to water and sanitation.⁷¹

Tearfund's Afghanistan Disaster Management Team works predominantly in the recovery phase of an emergency, particularly with returnee communities and therefore attempts to take a longer view of emergencies, to ensure that approaches are sustainable and inclusive.⁷² To this end, Tearfund integrates advocacy into its emergencies work, encouraging communities to understand their role in ensuring the sustainability of projects, meanwhile creating the link of accountability between a Government and its citizens, and building government capacity to deliver services. As Community-Led Total Sanitation (CLTS) is central to this work, Tearfund has also developed guidelines for implementation in the specific conditions they experience in Afghanistan and Southern Sudan.⁷³

The practice moves the focus from the traditional hardware components in WASH emergencies to a number of software, or capacity building and advocacy aspects. Afghanistan has suffered on-going conflict for years, and many policies are not in place or are outdated. Tearfund Afghanistan has contributed to the revision of the **2010 Afghan National WASH Policy**, which includes CLTS approaches, laying the groundwork for long-term and sustainable change. Furthermore, the Ministry for Rural Development is taking the lead in developing a manual that will assist broader implementation.⁷⁴

The Sphere project,⁷⁵ initiated in 1997 by a group of humanitarian NGOs and the **Red Cross and Red Crescent Movement**, specifies standards for the provision and construction of water and sanitation infrastructure in emergencies. The recently updated **Sphere Handbook** points to the rights to water and sanitation, and demands that principles of non-discrimination, participation and access to information be upheld.

The Sphere Standards are widely used in times of emergency, one example being **Church World Service Pakistan/Afghanistan**, which uses the Sphere standards in their work to ensure that communities have at least minimum access to safe water and sanitation in the time immediately after a disaster. The initiative always incorporates hardware (hand-pumps and latrines), hygiene education (hand-washing and household water treatment) and the provision of hygiene materials such as soap. While water is initially provided for free in crisis situations, Church World Service works closely with the government to ensure that they can assume responsibility for the services upon project completion, thereby contributing to the long-term sustainability and affordability of the water supply.⁷⁶



Much too wet! A small girl is treated for skin disease in Goa, India.

PHOTO: LINDA PLEIS

3.7 Schools, health institutions, and other public buildings and places

Schools and other educational centres, as well as public places and buildings, including hospitals, prisons, places of detention and work places, require water and sanitation services. In some of these institutions, where people may reside for long periods, the obligation of the State to provide water and sanitation services is heightened because the people have no other option for an alternative source of water or sanitation facility. This is particularly true of people in hospital or in prisons. Realising the rights to water and sanitation demand therefore that water and sanitation facilities are available to be used in all educational or health institutions, prisons, places of detention and in the work place, without hindrance.



Girls and boys wait outside separate toilets in a private school in Kirtipur, Nepal.

PHOTO: WATERAID / ROCKY PRAJAPATI



Good practices: A little girl washes her hands with soap after using the toilet at a private school in Bhaktapur, Nepal.

PHOTO: WATERAID/ KABITA THAPA

DISCUSSION BOX 3.13 Access in all spheres of people's lives

In this book and elsewhere, much of the emphasis in realising the rights to water and sanitation is placed on household access. However, while the rights to water and sanitation are mainly concerned with personal and domestic use, it would be a mistake to assume that household access is the only concern. It is essential that water and sanitation facilities are also available in schools, hospitals, and anywhere where people carry out their public lives. The provision of such facilities not only supports criteria such as accessibility and availability, but also supports the more complete realisation of other rights, particularly the rights to health, to work and to housing.

For instance, one of the primary barriers preventing young girls from claiming their right to education is the absence of sanitation facilities at schools that accommodate their specific needs. The Special Rapporteur on the right to education has emphasised that school infrastructures must include “separate, private, safe sanitation for girls” and “establish efficient mechanisms for supplying sanitary towels...”⁷⁷ The absence of sex-segregated facilities or resources to support menstrual hygiene keeps girls away from school. Similarly, hospitals that do not have sufficient quantities of safe water or adequate sanitation and hygiene facilities undermine the right to the highest attainable standard of health. Furthermore, when schools do not provide access to safe water for drinking, this also becomes a cause of drop-out or of absence from school – due to water-related illness, for example.

More generally, the right to sanitation is inextricably linked to human dignity and physical security, principles that underpin all human rights, yet for many people the simple act of “relieving oneself” is a risky affair. Women and girls who are forced to defecate at night in order to achieve some level of privacy often do so at considerable risk to their physical integrity.⁷⁸ In some cases, for instance in prisons, inadequate sanitation facilities have been found to amount to inhuman or degrading treatment.⁷⁹

Hygiene is a central part of the human rights obligations related to water, sanitation and health, and we call upon all States to comply with these obligations. States should prioritise investment aimed at ensuring access to water and soap, in particular in schools.

CATARINA DE ALBUQUERQUE, GLOBAL HANDWASHING DAY, GENEVA, 15 OCTOBER 2009

It has been demonstrated that where segregated latrines are not available in schools, not only is it more difficult to employ teachers, it is also more difficult to ensure that girls attend school during menstruation. In recognition of this, **Nepal School Health and Nutrition Water and Sanitation Project in Kailali** has introduced a water and sanitation programme in 170 primary schools, with a special focus on increased access to safe drinking water and sanitation, and behaviour change, with the aim of encouraging children to attend school.⁸⁰

WHO has worked both directly in health care facilities on the ground and on the development of guidelines and standards to ensure access to safe water, sanitation and hygiene in health institutions.⁸¹ Water and sanitation installations in health care facilities are vital, not only because they assist in directly reducing disease, but also because they are used predominantly by the higher-risk populations using the health care facilities. These interventions are also useful in providing an educational opportunity for the promotion of both hygiene and the importance and convenience of safe water and sanitation facilities, perhaps contributing to better hygienic environments at home.

Access to safe sanitation facilities can be a particular problem in prisons and detention centres, with undignified unsanitary practices, such as “slopping out” of bucket latrines in prison cells. After visiting Portugal in 2008, the European Committee for the Prevention of Torture found the practice “of defecating in a bucket in a confined space used as a living area, to be degrading” and recommended immediate measures to put an end to its use.⁸² In 2011, on following up on the 2008 visit to Portugal, the Committee confirmed that the practice had been eliminated.⁸³



No toilets this way: The wall of this school shows the direction for the toilets. The arrows lead to the nearby jungle.

PHOTO: WATERAID / BIJAY GAJMER

3.8 Capacity building, advocacy and awareness raising

All stakeholders have the potential to play a role in raising awareness of, and lobbying for, the rights to water and sanitation. Governments can run public advertising campaigns, and can make access to information a central part of any strategy to improve access to water and sanitation, specifically focusing on those individuals and groups that are hard to reach. This will include providing information on specific subsidies or grants that are available for low-income individuals, households or communities using relevant media.

Civil society may need to take the lead in informing and educating people on human rights, and specifically the rights to water and sanitation, particularly in countries where governments are failing to promote human rights. These activities can have a significant impact in articulating community demands and pressuring official response in relation to inadequacies of access.

International, regional and local groups came together in the months preceding the 3rd **South Asian Conference on Sanitation (SACOSAN III)** to lobby the eight participating countries to recognise access to safe sanitation and drinking water as fundamental human rights in the conference declaration. The resulting **Delhi Declaration**, as it became known, has been used to lobby governments to meet their pledges made at the conference, including realising the right to sanitation and committing sufficient budget to achieve this. This practice was mentioned in chapter one.



Awareness raising in schools – a UNICEF project in Qena, Luxor, Egypt.

PHOTO: CATARINA DE ALBUQUERQUE

The **Freshwater Action Network (FAN) Advocates Handbook**⁸⁴ serves as a guide to adopting a human rights-based approach to advocacy for better water and sanitation service provision and regulation, and outlines the activities that communities can undertake to engage with government processes, whether to contribute to the development of new policies, to protest against unreasonable price rises, or more specific engagement in the design, construction and management of water and sanitation service delivery.

Since 2001, **Amnesty International (AI)** has been working on economic, social and cultural rights alongside their more traditional focus on civil and political rights. The rights to water and sanitation feature in its **Dignity Campaign**,⁸⁵ particularly in their advocacy work in slums. This has included reports on access to water in the occupied Palestinian territories; on women in Nairobi, Kenya, who cannot use public latrines for fear of violence, particularly, but not only, at night; on access to water in the Solomon Islands, where again women fear violence when collecting water; and on Romani communities in Slovenia, whose lack of access to water and sanitation highlights the discriminatory practices in that country.⁸⁶

Initiated around the South Africa 2010 Football World Cup, Germany-based **WASH United** engages sport stars like Didier Drogba, Arjen Robben and Haile Gebreselassie and political leaders, such as Desmond Tutu and African Ministers, to promote the recognition and realisation of the rights to water and sanitation, along with messages of sanitation use and good hygienic practices. Politicians find it attractive to be associated with a positive campaign, while passing on a serious message. In addition, WASH United implements school training programmes that use games to educate children in good hygiene practices. The success of WASH United's first campaign leading up to the 2010 World Cup has inspired the organisation to engage with other sports, such as cricket, which will be used as a tool to promote WASH in South Asia. WASH United works in eight countries in Africa, but also internationally.⁸⁷

The **Water Supply and Sanitation Collaborative Council (WSSCC)** also uses high-profile personalities to promote access to sanitation. At the **WSSCC Global Forum on Sanitation and Hygiene**⁸⁸ held in Mumbai in October 2011, **Shahrukh Khan**, a popular Bollywood star, announced that he would fight for the right to safe sanitation and good hygiene as a new Global WASH Ambassador. He particularly called on the government and individuals to help solve the sanitation crisis in India, expressing particular concern for the dignity of women and girls.⁸⁹ The rights to water and sanitation were promoted throughout this same Forum, advocating for equity through appropriate governance, monitoring and financing.⁹⁰

The **Special Rapporteur** herself is also committed to the advocacy and capacity building aspect of her mandate, and is involved in many discussions and debates, engaging with conferences and research institutions, to ensure that the rights to water and sanitation are understood and promoted. She has produced a leaflet on frequently asked questions relating to the rights, as well as a leaflet on the benefits of the rights to water and sanitation.⁹¹ To mark special days such as World Water Day and World Toilet Day, the Special Rapporteur issues **press releases** to raise awareness of particular challenges in the implementation of these rights. Furthermore, at the end of her country missions, she always organises a press conference to share her preliminary conclusions and recommendations with the press. The Special Rapporteur's **website** provides her reports presented to the Human Rights Council and the UN General Assembly, her mission reports from her country visits, leaflets and other publications, as well as videos explaining the content of these rights. In support of the Special Rapporteur's mandate, the **OHCHR** has made short films summarising her findings in the context of country missions and drafted stories about the rights to water and sanitation, which are all available on the Special Rapporteur's website.

The **Right to Water website**,⁹² managed by a group of interested NGOs, **WaterAid**, **Freshwater Action Network**, **WASH United**, **End Water Poverty** and **Rights and Humanity**, also provides crucial information relating to the rights to water and sanitation, and their realisation. Local organisations have also set up their own websites on the right to water, to provide a forum where complaints regarding poor quality water or other violations of the right to water can be registered. One such website is of the **Habi Center for Environmental Rights**, based in Egypt.⁹³

The **Emergency Water and Sanitation-Hygiene Group (EWASH)**⁹⁴, in the **occupied Palestinian territories (oPt)**, was founded in 2002 to coordinate work in the water, sanitation and hygiene sectors, including the coordination of emergency interventions, and to ensure a coherent response and advocacy messages on the rights to water and sanitation. EWASH, now comprising 30 organisations, has played an important role in highlighting the impact of the Israeli blockade on essential services in the occupied Palestinian territories. EWASH works closely with youth in the oPt to give them more information about water resources in the oPt and their rights as Palestinians, including a lecture series with the view to giving Palestinian students information on their water resources and rights so that they can campaign for improvements in access to water and sanitation and equity in allocations of water. In May 2011, the Jerusalem Youth Parliament, a group of young Palestinians from East Jerusalem

made an animated film as part of the **Thirsting for Justice** campaign⁹⁵ to illustrate difficulties in accessing water.⁹⁶ Part of this campaign is a presence on social media sites such as facebook and twitter, with the aim of achieving an increased online exposure for water and sanitation issues in the oPt and increased awareness, – particularly in Europe, – of the challenges and inequity Palestinians face in accessing water resources.

Regional, national and local networks of civil society organisations, organising around common issues, have effectively engaged with government authorities to achieve particular goals. In **Nepal**, the **NGO Forum for Urban Water and Sanitation** has increased political commitment to the rights to water and sanitation, with the rights included in the draft constitution (2010) and the finalisation of the Master Plan for Sanitation, with an accompanying budget.⁹⁷

The NGO Forum also attempts to tackle cultural taboos relating to water, sanitation and hygiene. Together with **WaterAid Nepal**, the NGO Forum commissioned ten artists to create work that **raises awareness of menstruation taboos**. This exhibition highlights the harsh reality of the stigma attached to menstruation in the Nepali cultural tradition.⁹⁸

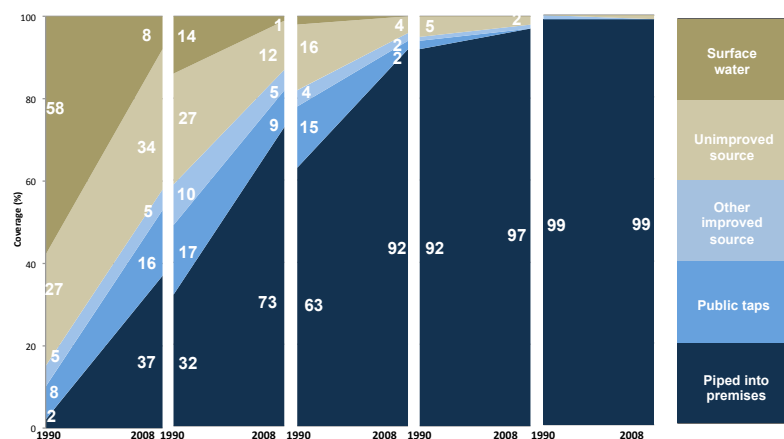
In **Uganda**, the **NGO Association for Professional Environmentalists, (NAPE)**,⁹⁹ produced a series of short briefing papers, available in local languages, clarifying existing legislation and policies on water and sanitation, as well as explaining the rights to water and sanitation, to assist local communities in understanding the roles and responsibilities of various stakeholders.

Working more directly with communities, particularly women and dalits, the **Centre of Rural Studies and Development (CRSD), Andra Pradesh, India**, a rights-based organisation established in 1991, raises people's awareness about their rights, specifically the rights to water and sanitation, developing strategies to engage with the Rural Water Supply and Sanitation Department to improve access to water and sanitation.¹⁰⁰ The role that women have played in this process has increased women's status in the community, so that men are more inclined to accept women's leadership and, furthermore, the local authorities appreciate the assistance that an organised community is able to offer in protecting water resources and delivering services. The CRSD arranges training sessions for the communities within the offices of the rural water supply and sanitation department, to provide an opportunity to interact with the officials and hold them to account for service delivery. CRSD is also part of the South Asian Freshwater Action Network (FANSA), and shares experiences and strategies with 170 other NGOs based in Andra Pradesh, also engaging with the Andra Pradesh water and sanitation officials to assist them in improving their strategies for delivering services to poor rural communities.

Appropriate training and capacity building, combined with regular monitoring and committed partnership between all stakeholders are also central aspects of the **Water for People** programme in **Chinda, Honduras**.¹⁰¹ Water for People is ambitiously modelling EVERYONE initiatives, which aim to ensure that all residents of a programme area are able to access water and sanitation services, including at schools and clinics. One of the issues that has had to be reviewed to achieve this is the capacity building programme. Previous attempts to train water user committees in managing and operating water systems were found to be ineffective – until it was realised that the trainings were not specific enough to the needs of each community within the municipality, and that the information that particular members of the water user committees received was not being communicated back to the villagers. Due to more focused training programmes, that took place in all villages with a wider range of interested parties, the municipality has now achieved 100 per cent coverage in both water and sanitation services. Regular and targeted monitoring is necessary to ensure that systems are correctly operated and managed, with water sources monitored for quality every eight months by the local water and sanitation department. The local schools have also benefitted from the programme, with school children and their teachers also trained in water management and good hygiene.

New Horizon, an **Egyptian NGO** has been working with people living in informal settlements to assist them in claiming their rights, by demonstrating community based models in which communities are assisted through capacity building and other approaches to pursue their objective of having access to water and sanitation services. This includes communities learning how to approach and communicate with authorities. Through this process, New Horizon achieves high impact on sustainability levels, as communities are able to organise themselves and claim their right to water and sanitation while, at the same time, mobilising and supporting other communities to follow their model.¹⁰²

Since 2007, the community-based organisation **Community Development Bethesda** in **Indonesia** has been facilitating the provision of primary health care services, particularly access to water and sanitation, using a participative rights-based approach that includes mobilising, advocating and networking with Government and NGO actors. Past decentralisation processes that were supposed to lead to better governance and poverty reduction had largely failed, and pro-poor budgeting and service provision by local government were far from adequate. CD Bethesda carried out an initial needs assessment, which helped the community to understand the importance of organising themselves in order to be able to speak out for their rights with a common voice.¹⁰³

Bolivia: The poorest are rapidly gaining better access but large inequities remain

Proportion of the population using piped drinking-water on premises, a public tap, another improved drinking-water source, surface water or another unimproved source, by wealth quintile, Bolivia, 1995 and 2008.

Source: Drinking Water, Equity, Safety, Sustainability, WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation (JMP), 2011, p. 27.

The community-based organisation, created as part of the project, has successfully lobbied the local government and other relevant government institutions based on their needs, identified in the assessment, including access to water and sanitation. They have also made the local authorities aware of the willingness and potential of the community to contribute to the improvement of their water and sanitation services.

Bolivia's 2009 constitution recognised water as a human right at a time when poor urban dwellers in La Paz were living in settlements lacking adequate basic services. The 2007 **La Paz Municipal Development Plan** includes a **Real Neighbourhood Programme (RNP) (Barrios de Verdad)**, which has been effective in ensuring access to water and sanitation services, providing household connections, sewerage networks and new sanitary modules. However, this infrastructure was initially poorly maintained, there was a limited sense of ownership by the community and there was an increasing problem with water stress in the city, as these new installations increased demand beyond capacity when water sources were affected by climate change in the Andean Region. **UN-HABITAT** has been working with civil society and the local authorities to strengthen the Real

Neighbourhood Programme by introducing a Strategy of Citizenship Culture to promote the appropriate use of water and raise awareness of the impact of climate change in the city. The aim of this strategy is both to empower communities in claiming their rights, as well as to educate them about their responsibilities. This includes increasing the sense of ownership of the infrastructure, so that it is better maintained, as well as tapping into the Andean culture of water as a living being, to encourage approaches that conserve water. This is supported through the engagement of women's groups, young leaders and children's groups at schools. Neighbourhood Monitoring Committees, formed from members of the community, carry out monitoring of the services.¹⁰⁴

Rangpur Dinajpur Rural Service (RDRS) Bangladesh has created a programme, **Enhancing Environmental Health by Community Organization (EEHCO)** to empower community-based organisations in poor rural communities to achieve sustainable improvements in their hygiene behaviour and a reduced exposure to health risks related to water and environmental sanitation.

Recognising that the creation of sustainable and safe access to water and sanitation has to go beyond the installation of tube wells and latrines, the practice lays great emphasis on building the capacity of civil society as well as local government institutions. This includes training on issues such as leadership, advocacy, management and negotiation skills to enhance their capacity to identify, manage and mobilise resources and has led to increased investment in water and environmental sanitation.¹⁰⁵

Many countries use "water mascots" as awareness building tools, including **Peru's La Gotita**, an animated drop of water that passes on important messages including handwashing and saving water.¹⁰⁶

Sanitation marketing, as discussed in chapter two in relation to household contributions, can also be a powerful tool to advocate for the construction and use of latrines. The **Cambodian** organisation, **IDE**, has created a simple system of latrine construction called the **Easy Latrine**, which is advertised in a positive manner to appeal to people's sense of dignity.¹⁰⁷ Equally, **WaterAid Madagascar** and **Water and Sanitation for the Urban Poor (WSUP)** have created a joyful video promoting the pleasures of having access to sanitation.¹⁰⁸

DISCUSSION BOX 3.14 Levels of participation

According to human rights standards, participation must be active, free and meaningful, and must provide people with real opportunities to make and influence decisions relating to their access to water and sanitation. Participation in decision-making may be interpreted differently depending on the type of involvement and the level at which decisions are being made.¹⁰⁹ Most development practitioners are familiar with participation in decisions regarding the siting and management of a public latrine or a waterpoint/protected well within a particular community. The value of community participation is also well understood in these situations, where the community, depending on its size, will have the best understanding of the local conditions and environment. However, even in these situations, it is important to ensure that those who tend to have less opportunity to voice their opinions and needs, such as women, children, the elderly, disabled, sick or those who have a lower social status, are also given an opportunity to voice their needs and wishes, and to have these taken into account in the decision-making process. The involvement of women is particularly important, given the central role of women in using, and often maintaining and managing, water resources and sanitation needs for personal and domestic use. Even this level of decision-making can be complex, to ensure that participation of all is full and meaningful, particularly where there are cultural taboos for the participation of women or particular individuals and groups, so the first step is to convince community leaders that the conventionally “voiceless” are allowed to speak and their voices reflected in decisions and investments.

At the other end of the scale are decisions made on national policy or budgeting, which also require the active, free and meaningful participation of all stakeholders. Here, processes must be devised that allow for the representation of all stakeholders, not through every individual having the opportunity to express his or her needs and opinions directly, but through democratic processes that gather information from the smallest of administrative structures to feed national decision-making and planning, whether for legislation reform or development, or policy. One example of where this has been effectively achieved is through the **Council of Cities**¹¹⁰ in **Brazil**, which has a system of representation from the very local community right up to national or state level. Communication proceeds in both directions, through well-defined channels, with focussed discussions on draft policies and legislation discussed at every level of government, and community representatives attending the final decision-making processes at parliamentary level. While it is perhaps not to be expected that the design or reform of legislation and policy will always be as participatory as that found through the Council of Cities in Brazil, a broad cross-section of society, including those who are marginalised and vulnerable, should be consulted to ensure that such reforms and processes are not discriminatory and will lead to improved services for those without access.

The planning of programmes and budgets that are targeted at particular groups or individuals, such as for informal settlements in densely populated urban areas, must include the participation of those groups that are expected to benefit. Without this key involvement, it is very easy for planners to misunderstand the barriers to access, as well as to fail to pinpoint how these barriers might be overcome.

As will be discussed in chapter four, participation in monitoring is essential for holding States and other actors to account in the delivery of water and sanitation services, including in the budgeting process, through budget monitoring. It also has a key role to play in challenging existing power structures that are weighted in favour of those who already have good access to water and sanitation services, or those who are benefiting unduly from the delivery of these services.

The need for advocacy on access to better information and increased participation in ensuring compliance with the rights to water and sanitation is not confined to developing countries. The **Berliner Wassertisch (Berlin Water Round Table)**, a coalition of concerned citizens and organisations, has played an important role in making documentation, including the contracts in the 1999 public private partnership process of the city’s utility, Berliner Wasser Betriebe, available for broader review. This has followed significant dissatisfaction with increasing service charges, and claims of significant profits for the public-private company.¹¹¹



Citizens protest the lack of access to safe water in San Joaquin Valley, California, USA, March 2011.

PHOTO: CATARINA DE ALBUQUERQUE

3.9 Research and Education

Although the rights to water and sanitation have only recently been formally recognised by the UN General Assembly and the Human Rights Council, for many years academic research and training for water and sanitation professionals have played a critical role in informing better policy and programming for universal access to safe and affordable water and sanitation. There are numerous initiatives in this regard, housed in universities, think tanks, NGOs and other institutions. The rights to water and sanitation are increasingly the specific focus of research and training, including research on the impact of recognising these rights and training on how to translate these rights into reality.

The new **Human Rights to Water and Sanitation Program**,¹¹² at the **Carr Center at Harvard University**, provides critical guidance on how the human rights to water and sanitation can influence law and policy through research and dialogue between practitioners, lawyers and academics, and governments and transnational corporations. Through interdisciplinary research and dialogue, the programme is examining issues that will help clarify ways of progressively realising these human rights. For example, researchers at the Carr Center are examining how Iraq's constitutional requirement to ensure the "just distribution" of water could be interpreted consistently with the human right to water and the Islamic "right of thirst". They are also researching the impact of a recent Israeli Supreme Court ruling in a case brought by representatives of unrecognised Bedouin villages that the right to water is a basic human right deserving protection by virtue of the right to human dignity. The Carr Center also promotes discourse on the human rights to water and sanitation by engaging with scholars in law, engineering, design, economics and other disciplines, and by hosting events such as the recent scholars' roundtable discussion with the Special Rapporteur and seminars throughout the year.

The **School of Civil Engineering at Leeds University**, England offers an **MSc. in Water, Sanitation and Health Engineering**, a cross-disciplinary course, focusing on sustainability, poverty reduction and equality in the delivery of services to people in developing countries.¹¹³ The course considers appropriate policies for particular environments, and explores life-cycle costing of water and sanitation technologies, including all costs related to a particular service, from construction to operation and maintenance costs, and from collection of faecal waste to its treatment and safe disposal. This then provides a clear picture of cost implications for governments as well as for households to assist in decision-making about appropriate technologies.

Conferences and workshops now include this focus on the rights to water and sanitation, and the **International Water Association**¹¹⁴ and **World Water Council**¹¹⁵ conferences in 2011 and 2012 have made the rights to water and sanitation a central theme. Likewise, more academic conferences, such as the **2010 and 2011 Water Policy and Health Conferences at the University of North Carolina** have included streams of discussions on the realisation of the rights to water and sanitation, and have hosted workshops co-organised by OHCHR and the Special Rapporteur.¹¹⁶

Swiss Development Cooperation (SDC) supports an annual workshop, **AguaSan**, which brings together members of the development community to discuss matters relating to water and sanitation. In 2011, the AguaSan workshop focussed on the rights to water and sanitation, which the Special Rapporteur addressed by video link, and a toolkit on the implementation of the rights is being developed to provide assistance to practitioners who are working to realise the rights.¹¹⁷

There are innumerable areas of research that could benefit from more study to improve our understanding not only of how the rights to water and sanitation can be implemented, but indeed why people lack access. Menstrual hygiene management is one of these areas that require more consideration. Given the



Catarina de Albuquerque addresses a scholars' round table discussion at the Carr Centre, Harvard University, October 2012.

PHOTO: ERIC JENKINS-SÄHLIN, CARR CENTER FOR HUMAN RIGHTS POLICY, HARVARD KENNEDY SCHOOL

taboos surrounding menstruation, and the perception that menstrual blood is dirtier or more contaminated than other blood, there is an opportunity to carry out more research and advocacy to address this. Other areas that require further research are the development of appropriate indicators for monitoring the rights to water and sanitation, so that better information reaches decision-makers, as well as approaches to combating corrupt practices using rights-based accountability mechanisms.



Menstruation is still a taboo and it is a topic that is talked about in hushed voices. Young girls still hesitate to share their problems with menstruation at Bhumimata High School in Tipchowk, Kavre, Nepal.

PHOTO: WATERAID/BIJAY GAJMER



Cbbaupadi Abba Ghar Vitra by Erina Tamrakar comments on the practice of forcing menstruating women to live in huts (Cbbaupadi). Installation and performance by visual artists on menstrual hygiene organised by WaterAid Nepal.

PHOTO: WATERAID

3.10 Third party responsibilities

The specific responsibilities of the private sector in terms of human rights is the subject of research undertaken by **the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises**,¹¹⁸ but there are also specific responsibilities related to the rights to water and sanitation, which are important to clarify.

As the responsibilities of water and sanitation utilities, whether private or public, have been discussed elsewhere in this book, this section will concentrate on the private sector companies that use water, or have an impact on its use by others. Private sector companies that use water, or have an impact on the water use of others, also have the responsibility to respect human rights related to this use. They should not infringe on human rights, and must exercise due diligence to inform themselves of their actual and potential human rights impacts. Third party impacts on the right to water might include over-extraction of water, contamination of water resources through polluting practices or limiting others' access to a source of water through appropriation. Litigation relating to these activities is discussed in chapter four.

The **CEO Water Mandate** is an initiative under the **UN Global Compact**, which has embarked on human rights discussions with companies, encouraging more responsible water use, although they have not specifically incorporated the rights to water and sanitation into their work.¹¹⁹

PepsiCo,¹²⁰ a member of the CEO Water Mandate, has adopted guidelines for the right to water that considers community requirements both before the construction of a new factory as well as during the life of the factory. PepsiCo is also exploring the use of human rights impact assessments in its activities.

The asset management company, **Northstar**,¹²¹ based in the **United States of America**, selects companies to include in its portfolio based on socially responsible investments and includes respect of the right to water in their considerations. As part of its engagement, it has worked with PepsiCo, Intel and Connecticut Water Services to develop specific policies on the right to water.

DISCUSSION BOX 3.15 Corporate Social Responsibility (CSR) and human rights

Many businesses undertake what are known as Corporate Social Responsibility (CSR) activities. On the surface, CSR is designed to provide a platform for companies to demonstrate the positive impact that their business activities can have. Critically, however, CSR is often designed to ensure that their reputation in the local and international community is enhanced, to safeguard their business from negative press or, in the most extreme cases, from the boycott of their products.

The Special Representative for Human Rights and Transnational Corporations and other Business Enterprises clarifies that “companies may undertake additional commitments voluntarily or as a matter of philanthropy. These are worthy endeavours that may contribute to the enjoyment of human rights. But what it is desirable for companies to do should not be confused with what is required of them. Nor do such desirable activities offset a company's failure to do what is required, particularly to respect human rights throughout its operations and relationships.”¹²²

CSR programmes may be employed to address the needs of local populations by delivering water and sanitation services to villages or slums in the vicinity, providing a dual benefit to themselves of a healthier potential workforce, as well as protecting their reputation within the local community. In other cases, businesses create a charity branch, delivering services to communities in countries where they do not otherwise have business activities in order to raise their profile. In neither of these cases are the companies necessarily addressing the human rights issues within their own core business activities.

The Special Rapporteur received submissions from companies that correspond to charitable CSR activities, but what the companies were doing to comply with their human rights responsibilities in their core business was not clear and, for this reason, the CSR examples have not been included in this book.

Conclusion

This chapter has presented a wide range of different practices, engaging all stakeholders in the implementation of the rights to water and sanitation. Some of the practices are ambitious, either geographically or in their ability to consider water and sanitation services sustainably. Others are more local in nature or focus on an immediate need. All share the understanding that in order for water and sanitation services to be available to all, there is a demand for a vision of services for all, achieved through participation and cooperation. Fulfilment of human rights requires a broad approach, beyond the simple construction of physical facilities, which includes social mobilisation, awareness-raising campaigns, education and training, challenging existing norms and discriminatory practices. As has been shown in this chapter, the most effective and sustainable approaches put the individual and the household at the centre of development, but link strongly with other partners, particularly the State, at local, regional and national levels, and also service providers, NGOs and other actors.

The final chapter looks at practices that demonstrate how States can be made accountable for the services that they deliver, or fail to deliver, again presenting a wide range of stakeholders.



Woman carrying water in Kaolack, Senegal, November 2011.

PHOTO: CATARINA DE ALBUQUERQUE

FOOTNOTES – CHAPTER 3

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Let's defend our water – successful litigant in an access to water case in Sardinal, Guanacaste, Costa Rica, March 2009.

PHOTO: CATARINA DE ALBUQUERQUE

In general terms, I believe that human rights have the potential to empower people, to challenge existing inequities and to transform power relations to bring about real and sustainable changes.

CATARINA DE ALBUQUERQUE AT UNSGAB MEETING, SOFIA, 26 MAY 2009

Introduction

Thus far, this book has presented practices that demonstrate how the rights to water and sanitation have been realised or are being realised. This final chapter examines how States and other actors can both be held accountable, and hold others accountable, for realising the rights to water and sanitation.

Part of the power of the human rights framework is that it is enforceable. The rights to water and sanitation move universal access to water and sanitation from being a “good idea” to being a legal entitlement. While ensuring the delivery of safe and affordable water and sanitation services is central to realising the rights to water and sanitation, it is equally essential that the various actors responsible for providing and monitoring those services are aware of their specific obligations under international and national law and are held accountable by users when they fail in their responsibilities. Accountability is how we describe the means by which individuals and communities take ownership of their rights and ensure that States as primary duty-bearers, respect, protect, and fulfil their international and national obligations. This is fundamental to the individual empowerment and personal dignity that lies at the heart of international human rights law.

Accountability has two main functions. In the most literal sense, it refers to the means by which an individual or group enforces their rights against the State or another private actor by demanding a remedy for past or on-going violations. Irrespective of whether the action or omission was committed by a public or private actor, States are legally obliged to provide equal access to competent and effective judicial bodies such as courts and tribunals.¹ The remedies these institutions provide may involve restitution or compensation, legally binding promises of corrective action, or possibly even criminal sanctions if the harm to society is particularly grave. Crucially, not all violations require immediate access to the judiciary. Holding States and other actors accountable for their actions or omissions is also possible through a variety of other mechanisms. In less serious cases, perhaps involving a dispute over tariffs or interrupted service, mechanisms such as an administrative hearing or complaints procedures adopted by a service provider or regulator, citizen consultation groups or informal, community-based justice systems may be

appropriate mechanisms for redressing grievances, provided that they are accessible, affordable, transparent and fair to all.

More than just seeking to correct past wrongs, accountability is also forward-looking, relying on transparency, good governance and accountable institutions. It seeks to influence State behaviour in the future, making it more responsive to the needs of those living within their borders. Several of the practices described in this chapter do not involve judicial or administrative redress mechanisms. Rather, they highlight tools designed to promote participation and transparency, which can then be translated into political action and, ideally, changes in policy that are more consistent with human rights standards. In this sense, accountability is a social and political, as well as a legal, exercise. This type of accountability can occur both formally and informally through a variety of mechanisms, ranging from parliamentary review committees and ombuds-institutions to action by civil society in the form of advocacy campaigns, political mobilisation, and the use of the press and other media.

Both forms of accountability play equally important and mutually supportive roles in influencing State behaviour and redressing past wrongs. Advocacy by civil society organisations, for instance, may generate the political pressure needed to achieve individual remedies. Alternatively, public interest litigation, though based on individual violations, can raise public awareness of systemic violations. Judicial and quasi-judicial mechanisms, such as national human rights institutions, as well as international mechanisms (e.g. UN treaty bodies, special procedures and regional human rights courts), regularly play a dual role, sometimes passing judgment on State actions and prescribing individual remedies, and other times acting as advocates and discourse-shapers.

The good practices presented here demonstrate this range of approaches. Interventions designed to improve human rights monitoring, strengthen institutions, enhance transparency, fight corruption and promote a broader culture of accountability may all constitute good practices. This chapter offers a sampling of strategies employed by a wide variety of actors at the local, national, regional, and international levels to promote accountability within the water and sanitation sectors. It will focus on such areas as: developing effective monitoring bodies and processes and crafting sound indicators for assessing progress toward achieving the normative content of the rights; creating and successfully utilising reliable, accessible and effective judicial and administrative complaints mechanisms that allow individuals to air and satisfactorily redress their grievances; and promoting good governance.

4.1 Monitoring

Accountability rarely begins in a courtroom or on the streets. Monitoring the realisation of human rights is crucial for laying the groundwork for future action. Generally speaking, monitoring involves collecting data on progress toward progressively achieving the universal realisation of the rights to water and sanitation, as well as examining the underlying structures such as policies and institutions. Monitoring is essential for understanding current levels of access to water and sanitation services by, for example, focussing on issues such as affordability and water quality, identifying barriers to access for un-served or under-served populations, and ensuring that participatory processes are inclusive. Effective human rights monitoring is only possible with sound indicators that allow monitoring bodies to consider a broader range of issues rather than simply the type of hardware, but the relevant data collection mechanisms can be limited. The **World Health Organisation (WHO)** and **UNICEF Joint Monitoring Programme (JMP)**, is responsible for monitoring progress toward the Millennium Development Goal (MDG) target² as discussed in the introduction, but does not currently measure access criteria crucial to the human rights perspective. Instead, JMP developed a proxy indicator, defined by whether a source or service is “improved”, such as a protected well or networked water supply, or “un-improved”, which includes rivers, unprotected wells and water provided by informal vendors, and for sanitation, whether a latrine is shared or at household level. Recently, JMP has undertaken research that allows it to periodically measure actual water quality at national, and thus eventually global level, through testing a water quality module alongside the two major international household surveys³ that provide most of the data used by JMP. Some initial results show that in some countries up to one third of the improved drinking water sources are microbiologically contaminated.⁴ Particular sources, such as protected wells were considerably less likely to be safe compared to piped water sources. Taking actual water quality into account rather than only the “improved” type of drinking water sources thus leads to a much lower estimate of access to safe drinking water for these countries. This illustrates that reflecting additional human rights criteria into a definition of access will provide more specificity about the fulfilment of the rights to water and sanitation. Since 2010, JMP has also been looking at improvements in access to water and sanitation across wealth quintiles, which has provided enlightening information about which countries are successfully targeting access for the lowest quintiles.⁵

In preparation of a post-2015 monitoring agenda, the JMP recently initiated a process to assess the feasibility of incorporating specific, rights-based indicators into their monitoring framework to determine whether access to water and sanitation services are safe, affordable and are delivered to all people without discrimination, concentrating first on those who are marginalised and vulnerable.

The Special Rapporteur has encountered similar gaps in water quality first-hand during country missions in both the developed and developing world. In one instance, she travelled to a peri-urban area in Warden (Cairo, Egypt) where nearly everyone had access to a supposedly “improved” water source, but its quality was so poor that it was effectively undrinkable. Hence the community had to boil and filter the tap water before drinking it or using it for cooking, or alternatively those who could afford it would buy bottled water. Elsewhere, for example in the north of Namibia, some of the “improved” water sources are so far from the home that householders use a more convenient “unimproved” source as their main source, which is shared with livestock and other animals, raising health concerns.⁶

In recognition of these failures to capture the reality of access for significant portions of the global population, as discussed in chapter one, JMP is considering incorporating specific, relevant rights-based indicators into their monitoring framework to focus more on whether access to water and sanitation services are safe, affordable and are delivered to all people without discrimination, concentrating primarily on those who are marginalised and vulnerable.⁷ Aligning indicators with human rights criteria can provide useful data on the reality of progress, assisting in improving measures to deliver universal access to services.

In addition to the JMP, the **UN-Water and WHO Global Analysis and Assessment of Sanitation and Drinking Water (GLAAS) Report**⁸ is one of the primary global mechanisms monitoring State, donor and UN agency efforts to ensure access to water and sanitation and is complementary to the JMP. The GLAAS Report focuses on financial and regulatory aspects of water and sanitation services, including examining policies and institutions. Using MDG Target 10 as a benchmark, the report scrutinises the policies, priorities and financing flows of States and international donors to determine whether they support the achievement of the MDG target. As a result of the General Assembly recognition of the right to safe drinking water and sanitation, and in collaboration with the Special Rapporteur on the human right to safe drinking water and sanitation, the most recent GLAAS questionnaire for the 2012 GLAAS report inquires about the existence, roles and responsibilities of national monitoring institutions; the existence of national targets for water and sanitation as well as an enabling regulatory framework; and national budgeting and expenditures. This question-

naire has been sent out to countries, international agencies and financial institutions, and it is hoped that this will also provide the 2012 GLAAS report with information related to issues such as national recognition and justiciability of the rights to water and sanitation as well as public participation and non-discrimination.⁹

With sound indicators in place, monitoring can be carried out by a variety of stakeholders, ranging from government entities (including regulators, see chapter one) to local civil society organisations. At the regional level, organisations like the **Association of Latin American Water and Sanitation Regulatory Entities (ADERASA)** – see chapter one) can help foster accountability between States by setting shared targets and benchmarks, and exchanging national data.¹⁰ The **African Ministers’ Council on Water (AMCOW)**¹¹ commissions regular **Country Status Overviews (CSOs)**, which consider the extent to which countries in Sub-Saharan Africa have the appropriate institutions, policies and budgets to enable, develop and sustain better water and sanitation service delivery. CSO reports provide an opportunity to discuss regional trends and challenges related to implementing water and sanitation services, while offering side-by-side comparisons of country progress. These can be useful in identifying which States are making progress toward universal access and which are lagging behind, but a general finding is that those countries that are stable, but low-income, have made the most significant progress.

The **International Benchmarking Network for Water and Sanitation Utilities (IB-Net)**¹² provides a global tool for monitoring and benchmarking urban utilities. IB-Net does not yet provide significant pro-poor indicators, other than limited information on affordability, and there is no clear definition of how service areas are defined, so that it is not obvious if all residents of a city are included in statistics. However it is already a valuable tool for citizens and consumers to understand how their water and, in limited cases, sewerage utility is performing.

Monitoring affordability continues to be a challenge and none of the above monitoring tools has yet managed to effectively address this issue, particularly for the poorest households. While some States, such as Kenya, have set affordability targets, they are not necessarily able to monitor accurately which households are spending above the level of these targets on water and sanitation services. The OECD calculates that the lowest income decile in **Poland**, for example spends nearly eight per cent of disposable income on water and sanitation services. But for this information to be useful, to address this lack of affordability, more disaggregated information would be required.¹³ **Kenya** has also set affordability

limits, which are checked periodically with average household income, with a low tariff available for those living in poverty, but has not yet succeeded in monitoring whether this approach is sufficient.¹⁴

National processes for monitoring State compliance with the rights to water and sanitation are also vital. In some countries, national human rights institutions (NHRIs), including ombuds-institutions play a vital role in monitoring access to water and sanitation services. For instance, the NHRIs of **Colombia**,¹⁵ **Ecuador**¹⁶ and **Peru**¹⁷ engage in a number of activities, including: approving and revising fee structures to ensure affordability; responding to citizen complaints; and initiating investigations for noncompliance with human rights. Frequently, the institutions supervise government bodies as well as service providers, and work closely with regulatory bodies, offering recommendations on how to improve access to and quality of water and sanitation services in a non-discriminatory manner.

Notably, **Colombia's Defensoría del Pueblo** published the country's first nationwide study on compliance with the rights to water and sanitation.¹⁸ The study includes detailed information gathered from each of the country's 32 departments, making it possible to assess progress toward achieving the normative criteria of the rights in nearly every municipality. The Defensoría then disseminated this information to community members, civil society organisations and local governments. 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 (see chapter three).¹⁹

Similar institutions in Peru and Ecuador have engaged in vigorous advocacy, in one case pressuring service providers to connect households to water and

sanitation services even when they cannot prove ownership of the land,²⁰ and in another working to improve the affordability of water tariffs.²¹ **Ecuador's Defensoría del Pueblo** recently filed a petition in the Second Court of Criminal Guarantees, requesting that it invoke precautionary measures against the director of a local water and sanitation utility and other actors. Among other requests, the Defensoría asked that charges to users be suspended until service can be regularised, particularly in under-served areas.²²

In **Ghana**, the **National Development Planning Commission**²³ carries out the **Participatory Monitoring & Evaluation survey**, which polls citizens on whether government policies and programmes are having the desired impact. Along with policies related to health care and education, the survey looks at water and sanitation. Disaggregating data by region, it measures, *inter alia*, the average monthly cost of drinking water services, the source of drinking water as well as suggestions from civil society on how to improve its quality, the type of toilet facility used by each household, the average distance (in minutes) from a toilet facility, how communities dispose of human waste and who is responsible for such disposal, and the general level of satisfaction with sanitation services.²⁴

There is also a **benchmarking and data book of water utilities in India**,²⁵ which provides comparative information on a range of indicators, including service coverage, tariff and continuity of supply. Furthermore, the **Indian Total Sanitation Campaign**, as discussed in chapter three has an **Online Progress Monitoring System**, where users can check the progress of the campaign in specific villages.²⁶

Monitoring is not the exclusive purview of national and international institutions. Civil society organisations are also well placed to assess both state and private compliance with the rights to water and sanitation. For instance, the **Observatório Cidadano de Serviços Públicos**²⁷ (Citizen Observatory of Public Services), based in **Guayaquil, Ecuador** has responded to a gap in accountability for violations of the rights to water and sanitation within the private sector. Citing instances of drinking water contamination and dramatic rises in tariffs as two of the principal threats to the rights to water and sanitation, the Observatory monitors whether the practices of private sector actors are in compliance with their contractual obligations as well as national and international law. In case of alleged violations, they file complaints in a variety of forums while simultaneously making the information publicly available.

One of the Observatório's principal struggles in recent years has been to hold Interagua, a private water utility in Guayaquil, accountable for cutting off access to water and sanitation services in poor neighbourhoods and generally failing to



The Boston Water and Sewer Commission has a “right of service” policy, aimed to avoid water shut-offs and assist low-income households to maintain water and sanitation services even during financial difficulties in Boston, Massachusetts, United States, March 2011.

FOTOGRAFÍA: CATARINA DE ALBUQUERQUE

honour the terms of its concession contract with the Government of Ecuador. In addition to several other actions, the Observatório filed a complaint with the **World Bank's Compliance Advisor Ombudsman (CAO)**.²⁸ Though some of the grievances listed in the complaint were nullified following a 2008 referendum to prohibit further water privatisations, the Observatório and another local NGO, the CAO, and the utility continued negotiations via a Conflict Resolution Table to resolve the 3,500 individual complaints filed by residents of Guayaquil. In July 2010, the parties reached an agreement whereby the utility agreed, inter alia, to seek out alternatives to a disconnection policy and establish a special fund to support users who could not afford to pay their bills, but who also did not qualify for subsidies. The Observatório asserts that this case demonstrates the effectiveness of user participation models to resolve complaints.²⁹

In **Nicaragua** the civil society organisations **La Culculmeca** and **ONGAWA, Ingeniería Para el Desarrollo Humano (formerly Ingeniería Sin Fronteras-ApD)**³⁰ have provided an excellent model for developing and implementing human rights based indicators within or alongside national monitoring processes. Previous nationwide surveys monitoring access to water and sanitation in Nicaragua have focused largely on the availability of infrastructure. In order to increase the visibility of deficiencies in the provision of water and sanitation as human rights, La Culculmeca and ISF completed a study entitled, *Diagnóstico sobre el Derecho Humano de Acceso al Agua Potable y Saneamiento en Nicaragua*. Over the course of 18 months they surveyed over 1,300 households in 91 rural communities across the country. In 66 communities, the survey was supplemented by a structured interview with Drinking Water and Sanitation Committees (CAPs), the primary service providers in rural communities.³¹

The survey considered a number of factors related to access, quality, acceptability, participation, and accountability such as user perceptions of the availability and quality of water and sanitation services; user perceptions of the role of CAPs; responsiveness of the CAPs to individual complaints; the presence of water-borne illnesses; the affordability of tariffs; and the populations most affected by discrimination as well as the reasons behind it. In addition to individual households, the survey also evaluated the enjoyment of water and sanitation services at local schools and health centres. The organisations hope that having this additional information will significantly improve the state of the realisation of the rights in Nicaragua by allowing various stakeholders to demand, plan and implement programmes to realise the rights and support the long-term sustainability of water and sanitation systems.³²

DISCUSSION BOX 4.1 Global, national and local monitoring

The practices presented in this chapter demonstrate that monitoring serves different purposes at local, national, and international levels, and that there can be tensions rising from the different needs for monitoring processes between the various levels. Incorporating human rights into monitoring mechanisms also poses its own unique challenges.

International monitoring tracks broad patterns in how States and international donors are tackling the challenge of realising the rights to water and sanitation, comparing between regions of the world, States as well as over time. This delivers a picture of which countries are progressing well, and can assist donors and international financial institutions in deciding where they will focus efforts and resources. GLAAS monitoring provides a snapshot of global spending priorities and can serve as the basis for greater advocacy. Including human rights principles in monitoring resources spent on water and sanitation provides useful information on the regions where resources should be targeted to reach un-served and under-served communities, in order to support States' immediate obligations to provide a minimal level of access. In the case of the JMP, the data is largely drawn from household surveys, and is generalised into urban and rural statistics, with no consideration of the different levels of access among different tribes, castes, religions or regions, or types of settlement. This analysis could potentially be refined, as the disaggregated data is to some extent available in the datasets available to JMP.

Monitoring at the national level is generally required to inform budget or planning decisions, as well as being a pre-requisite for implementing the rights to water and sanitation and understanding progress regarding the realisation of these rights. To be useful for human rights considerations, monitoring processes must ensure that discriminatory practices relating to access to water and sanitation are identified through disaggregated data, such as differences between the access that people from different ethnic groups or tribes, or different cities enjoy. Without this disaggregation, the data collected from monitoring is of limited use, and will not be able to assist in targeting those without access. Hence, in the context of her country missions, the Special Rapporteur has often requested that Governments disaggregate data (see mission reports from Slovenia and Egypt).³³

Local monitoring, carried out by and for individuals, households or communities helps in building an understanding of their own access to services, and can be used either for assisting in designing appropriate services or for lobbying purposes. One of the most relevant aspects of this type of data collection is to allow individuals and communities to identify their specific needs in terms of water and sanitation and then to engage the appropriate authorities through advocacy and dialogue to begin bringing about improvements.

International actors are increasingly recognising the importance of monitoring as a tool for advocacy. Looking closely at issues such as discrimination in access, particularly in urban areas, **UN-HABITAT** and **h2.0 Monitoring Services** have developed the **Urban Inequities Survey (UIS)**.³⁴ Working with national statistical bureaus, the UIS disaggregates data on the coverage of water and sanitation services by gender, socio-economic status and geographic location with a view to highlighting disparities in access and identifying specific infrastructure needs. So far UIS has been implemented in seventeen communities across East Africa.

Water quality monitoring

As outlined above, NHRIs and regulators play a crucial role in monitoring the realisation of the rights to water and sanitation in many countries. In some cases, their capacity to monitor every aspect of the rights to water and sanitation may be limited. Water quality monitoring, for instance, often requires scientific expertise, but is fundamental to ensure transparency and information so that the public has access to information regarding water quality standards. Effective monitoring of water quality can be problematic in rural, as well as peri-urban areas and informal settlements, where few institutions have the technical capacity needed to monitor water quality with regularity. Furthermore, there have been instances where governments have repressed relevant information on water quality to avoid the financial and reputational repercussions. The WHO/UNICEF Joint Monitoring Programme (discussed in chapter one) is piloting methods for monitoring water quality, in recognition of the centrality of water quality for understanding, and improving, statistics on access to water. Countries may have different requirements for water quality testing – for example Bangladesh is known for the problem of arsenic contamination in many of the country's water sources. The Government of Bangladesh is trying to address this problem through regular water quality testing, and the introduction of a “traffic light scheme” that shows the likelihood of contamination. However, this process is hampered by a lack of resources, particularly in informing communities of how to manage their access to water from potentially contaminated sources, particularly given that arsenic contamination cannot be seen or smelled.³⁵

In response to the challenge of water quality monitoring, the government of **Romania** has passed specific legislation requiring the Ministry of Health, in collaboration with local governments and service providers, to monitor water quality with an emphasis on rural areas and private water sources such as wells.

The Ministry is required to report cases to the relevant authorities, as well as to the public, where water quality falls below European Union standards.³⁶

Even if a serious threat to water quality is identified, action by local authorities is not guaranteed. To address this, **Women in Europe for a Common Future (WECF)**³⁷ works with local partners and schools in Romania, Armenia, Georgia and Moldova to create an educational package (Water Safety Plan toolkit) for schools to develop community-based Water Safety Plans for local small-scale water supply systems such as dug wells, boreholes and public taps. The toolkit guides communities, schools and other stakeholders through information gathering approaches for local health authorities and local authorities responsible for water sources and educates on the properties of drinking water and sources of pollution and related health risks.³⁸

Budget monitoring

Civil society has been pivotal in developing strategies and methods to improve budget monitoring, which is essential for ensuring that government funding in support of water and sanitation services is sufficient and appropriately targeted. It is also necessary to track expenditure, to determine whether the allocated budget has been utilised as projected. If the projected budget has not been spent, this can indicate capacity problems or corrupt practices. Under-expenditure can however be justified if it can be shown that the envisaged results have been achieved with fewer resources.

In 2009, **WaterAid Nepal** noted a gap between the Nepalese government's stated priorities and the amount of funding it actually devoted to the water and sanitation sectors. As the Nepalese budget process has become more transparent over the past decade, WaterAid Nepal has recognised an opportunity for greater civil society participation during its formulation, enactment, execution and auditing, to ensure that funding for water and sanitation remains a fiscal as well as a rhetorical priority. To that end, WaterAid has developed a **budget primer**³⁹ for use by civil society organisations, to assist communities in understanding and monitoring budgets for water, sanitation and hygiene. Such tools enable civil society to judge whether policies designed to support access to water and sanitation are supported by the necessary budget allocations.

Similarly, in **Tanzania**, **Norwegian Church Aid**,⁴⁰ in collaboration with several local partners, has responded to a need for communities to monitor how and where government resources are being spent. Through the **Public**

Expenditure Tracking System (PETS), they aim to help individuals and groups root out malfeasance and support more responsive and accountable governance of community water services. This system tracks whether funds allocated for public services, including water and sanitation, are spent as planned and on behalf of their intended beneficiaries. The process involves the election of PETS committees at the community level. Community members then identify a particular project or sector on which they would like the Committees to focus. After a brief training period, the Committees look for discrepancies between budget allocations and actual expenditures and, if they find any, request an explanation from the relevant government official.

In one instance, the PETS helped community members discover public money intended for a public water service was being used to fund a private drinking water service, which charged higher rates for the water and restricted access. Community members brought this to the attention of the local government, which subsequently fired the official in charge of the facility. The PETS has received the explicit support of the Tanzanian government, which has promulgated a series of national guidelines for other organisations that would like to participate.⁴¹



An example of an “improved water source” that delivers unsafe water in Warden, Egypt.

PHOTO: CATARINA DE ALBUQUERQUE

DISCUSSION BOX 4.2 Community engagement in monitoring

Ordinarily, monitoring mechanisms do not by themselves lead to greater accountability. Significant improvements in the realisation of the rights to water and sanitation will depend upon the extent to which individuals and communities, as well as governments themselves, can use data collected by monitoring bodies at international, national or local levels for political and social mobilisation. Making information accessible and ensuring its relevance to communities is crucial to bridging the gap between monitoring and citizen engagement. People must have a basic understanding of the current status of the rights to water and sanitation in their area. If possible, they should be directly involved in developing the monitoring mechanisms themselves, as was the case with the PETS Committees listed above, or as is described below with respect to the information gathering processes of Slum Dwellers International, known as “enumerations”. In cases where communities are collaborating with an NGO partner during an enumeration or water point mapping procedure for instance, there should be consistent dialogue between representatives and community members in order to explore what the data collected means and how it will be used. Equally important, individuals and civil society representatives must have some knowledge of the normative or legal frameworks upon which they are basing their appeal for better services. This could be the normative content of the rights for instance, but it could also be national legislation or policies. They must also know the roles and responsibilities of various actors in order to ensure that they are appealing to the appropriate authority.

WaterAid’s **Citizens’ Action**⁴² initiative has several success stories when it comes to transforming community level monitoring into community engagement. In the state of **Jharkhand, India**, for example, the organisation trained community members in how to use the Right to Information Act and other laws to gather information on budget allocations and expenditures for water and sanitation.⁴³ They then presented this data, along with testimonials on the difficulties in accessing water and sanitation services, during a public forum with local officials. In addition to yielding a plan of action agreed upon by a panel of community members, service providers and government officials, the forum has contributed to a more open line of communication between water users and the authorities.

Community-led monitoring

No matter whether it is budget monitoring or water point mapping, the above practices show that, from an advocacy standpoint, monitoring is more effective when the information collected is relevant to the needs of the community. All too often, data is collected by the national government or other agencies to be used for external purposes, and is not actively disseminated among local stakeholders. **Shack/Slum Dwellers International (SDI)**,⁴⁴ a global network of community-based organisations, has developed a flexible, community-driven process called enumeration, whereby data collection on access to water and sanitation and other relevant issues is conducted by community members, often in collaboration with local academics or professionals. The process involves both a qualitative and quantitative survey of the community and is designed to ensure that information accurately reflects the problems faced by those living in slums.

SDI-supported enumerations have been completed in slums and informal settlements across the globe, including South Africa, Namibia, Uganda and India. For instance, one carried out by **Ugandan SDI** partner **Act Together** in the Kikiramoya Settlement in Uganda⁴⁵ revealed that the vast majority of community members purchased their water from a public tap, but that the high cost was forcing many to begin using an open well. It also showed that only around 13% of community members used public toilets. No two slums are identical and thus disaggregated data can be extremely helpful to communities when negotiating with local officials for improved services, as it allows them to better pinpoint and articulate their needs. Likewise, the data can offer guidance to officials and policymakers when they set their spending priorities.

The **Community Land Information Programme (CLIP)**,⁴⁶ **Namibia**, a national initiative of the SDI members **Shack Dwellers Federation of Namibia (SDFN)** and the **Namibian Housing Action Group (NHAG)**⁴⁷ collects data on the living conditions, including relevant information relating to hygiene and access to sanitation, of those resident in informal settlements. This information will play an important role in implementing the Namibian National Sanitation Strategy (see discussion box 1.5), particularly in the development of Regional Sanitation and Hygiene Development Plans. The SDFN, which has a high female membership, provides an opportunity for communities to play an active role in collaboration with local, regional and national authorities, and is also an ideal forum for hygiene and sanitation education and project planning. CLIP pays particular attention to issues such as participation and affordability, to ensure that all people have the opportunity to improve their access to sanitation.⁴⁸

State governments are increasingly utilising enumeration processes in their own development plans. In **India**, for instance, state and municipal governments must develop slum-free action plans, including comprehensive slum mapping, in order to receive central government funding through the **Rajiv Awas Yojana** programme.⁴⁹ Likewise, as part of a broader package of water sector reforms in Kenya (see discussion box 1.6), the **Water Services Trust Fund** has initiated the **MajiData** programme to begin gathering more relevant and localised data on water and sanitation coverage, specifically in urban slum areas.⁵⁰ This information is then used to enable Water Services Providers (WSPs) to prepare realistic project proposals for the Water Services Trust Fund (WSTF) and to enable the WSTF to evaluate and prioritise proposals. Furthermore, the data is available to all water and sanitation stakeholders in Kenya, including the residents of the slums themselves, who are invited to update the data.

Beyond identifying community needs at the outset of an initiative, enumeration and similar strategies can help support sustained accountability between community members and service providers. **Citizen Report Cards** were pioneered in Bangalore to gauge community satisfaction with existing services, particularly with respect to cost and quality. These are now used extensively in other countries and regions. In **Uganda**, **Community Integrated Development Initiatives (CIDI)**⁵¹ has promoted the use of Citizen Report Cards as a way of promoting citizen engagement over the long term.⁵² CIDI consolidates the results into a single report, which they share with service providers and local government.

Likewise, in **Ghana** some communities make use of **Community Score Cards** that, along with a requested self-assessment on the part of the service provider, serve as the basis for discussions on potential reforms. These reforms can be effective in both directions, with local authorities and service providers becoming more responsive to the users, but also changing the behaviour and attitude of residents. In one case, this dialogue led the community to put an end to the practice of siphoning off part of the water supply for re-sale in other areas.⁵³

One drawback of the report card system is that it only works for those members of society who receive their services from the utility, and does not play any regulatory or monitoring role for informal service provision.

Some communities have also been successful in improving accountability through tracking the physical location of water and sanitation resources. As GIS and GPS mapping systems become more accessible, a range of approaches to **water point and sanitation mapping** have evolved. This type of mapping assists communities and local authorities in determining the existence, status, safety and

affordability of water points and latrines, and can be used to lobby governments for improved access in under-served areas. WaterAid has used water point mapping in several of its country programmes to track the location and functional status of improved water sources. For instance, in the Wagga Union of **Bangladesh**, community members trained in GIS mapping were able to use the data they collected on the accessibility as well as the management of water and sanitation facilities as the basis for consultations with community stakeholders, leading to an action plan for improving services.⁵⁴

4.2 Dispute resolution

Monitoring and community action play an important role in strengthening institutions, delineating the roles and responsibilities of various actors and promoting accountability. However, in the case of concrete violations, it is essential that individuals and groups have the opportunity to enforce their rights to water and sanitation through formal or informal adjudication. Formal adjudication will be discussed in the next section.

While violators of the rights to water and sanitation must be held accountable, not every dispute can be resolved through litigation, as has been discussed above. For transgressions on the rights to water and sanitation that occur on a smaller scale, for instance, with respect to fees or interrupted service, litigation is simply not a practicable, timely or affordable solution. Accordingly, it is important for States, service providers, monitoring bodies, communities and other stakeholders to develop alternative forums for managing disputes and promoting accountability.

Peru's Defensoría del Pueblo, for instance, has played an important role in promoting dialogue and mediating disputes between communities, service providers, and SUNASS, the national water and sanitation regulator. Following a comprehensive study of the water sector, which resulted in the 2005 report *Ciudadanos sin Agua: Análisis de un Derecho Vulnerado* (Citizens without Water: Analysis of a violated right),⁵⁵ the Defensoría convinced SUNASS to adopt resolutions obliging it to respond to all complaints regarding operations and business issues and to develop guidelines for a national administrative review tribunal (TRASS) to act as a body of second and last instance for resolving user complaints.⁵⁶ Although, the Defensoría reports that service providers are generally cooperative, many still lack an explicit process for filing and monitoring complaints from users. To that end, the Defensoría has proposed working with SUNASS and the service providers to develop a uniform complaints procedure.⁵⁷

In some countries, greater accountability in the water and sanitation sectors comes through consumer protection councils. The **Australian Utilities Act**, for example, has mandated the formation of a **Consumer Council**.⁵⁸ The Council is empowered to bar water and sanitation utilities from disconnecting a user for non-payment in cases of financial hardship, as well as to demand immediate re-connection.⁵⁹ It may also play a role in mediating unresolved disputes between users and service providers.

The **Consumer Council for Water (CCWater)**, a similar organisation that serves water users in **England and Wales**, responds to policy consultations on behalf of consumers; actively engages in the five-yearly price reviews; holds meetings in public where the water providers can be questioned on any and all aspects of service, and also acts on behalf of consumers in complaints resolution, where the responsible water provider has failed to solve the complaint with an aim to resolve 70 per cent of complaints within 20 working days.⁶⁰ In response to changes in the way that CCWater is managed, one of the smaller private water utilities, Cambridge Water, has decided to introduce its own local consumer council that they believe is more representative of the users in that city than the broader CCWater. Ofwat, the economic regulator, is now similarly requiring specific “company customer challenge groups” for the next price review.

As discussed above, accountability is often best served when consumers of water and sanitation services are capable of organising and acting independently. It is this principle that inspired **WASREB**, the **Kenyan water and sanitation regulator**, to begin forming **Water Action Groups (WAGs)** in 2010.⁶¹ Still in its pilot phase, the WAGs initiative is limited to the cities of Nairobi, Mombasa, Kisumu and Kakamega, but WASREB hopes to begin expanding to new areas of the country in the coming years. The original idea behind the WAGs initiative was to begin bridging the gap between consumers and institutions and to improve consumer confidence, in much the same way as the Consumer Councils in England and Wales operate, as described above. However, WASREB notes that the groups have also acted as a means of improving the responsiveness of service providers by conveying consumer grievances in a more constructive, detailed and collaborative fashion.

WAGs are mandated to hold public forums with service providers in order to improve consumer education as well as to identify and begin resolving problem areas. So far, they have held more than 50 public forums and 25 focus groups have been established across **Kenya**.⁶² Additionally, they work with consumers to resolve on-going disputes with service providers. WAGs facilitate this process by working with users to complete a detailed complaints form, which can assist in

identifying the source of the grievance with greater specificity and thus lead to a more satisfactory response. “One thing that has emerged very strongly with the WAGs initiative,” reports WASREB, “is the fact that consumers rarely make unfounded or frivolous complaints.” Since the initiative began, the groups have followed up on more than 400 cases. WASREB also credits the WAG in Kakamega as playing an instrumental role in improving access in that area to the point that water supply actually exceeds demand.⁶³

A similar programme is being implemented in **Zambia**, where the **National Water and Sanitation Council (NWASCO)**⁶⁴ is attempting to heighten its presence in low-income areas serviced by water utilities while promoting non-adversarial conflict resolution between consumers and service providers. To that end, it has created a number of **Water Watch Groups (WWGs)** throughout the country. Comprised of water users, WWGs are voluntary associations that monitor the effect of national policies at the local level, as well as water quality, interruption of service and billing on behalf of the Council. However, their primary function is to foster dialogue between consumers and service providers by following up on consumer complaints and even acting as arbitrators in on-going conflicts. In cases where the WWGs fail to resolve the dispute, they refer the matter to NWASCO, who assesses the complaint and, if necessary, either penalises the service provider or publicises the infraction. The WWGs succeeded in managing over 50,000 complaints between 2004 and 2005 alone, and reports indicate a much-improved relationship between service providers and consumers.⁶⁵

4.3 Formal adjudication

One way to enforce human rights is by litigating them through formal judicial mechanisms. Litigation can be costly and time-consuming and is thus frequently viewed as an option of last resort. However, when governments or private actors continuously fail to respect human rights, it can be a way of ensuring that individuals and communities receive appropriate remedies. The following cases represent some rulings that are most consistent with the rights to water and sanitation, and illustrate some of the ways that litigation can support their realisation. It also gives some examples of how accountability mechanisms at the international level can be used. As with all practices, this book only provides a sampling of much richer body of national and international jurisprudence on the rights to water and sanitation. The cases we present here are merely to demonstrate how litigation and quasi-judicial mechanisms at the international level can be an

effective tool to enforce the rights (e.g., by reinforcing State accountability for water quality or ensuring access to basic sanitation).

Cases brought to the courts deal with a variety of different issues, highlighting that implementing the rights to water and sanitation is about much more than just service provision, although this is of course particularly important for excluded individuals and groups. The cases presented here address lack of access to water and sanitation in informal settlements, indigenous communities, hospitals and other institutions.

In 2007, in *Asociación Civil por la Igualdad y la Justicia contra el Gobierno de Buenos Aires*,⁶⁶ residents of a shanty town known as Villa 31 bis sued the government of **Buenos Aires** after it ceased delivering water to the community in container trucks. Citing General Comment No. 15, as well as the principles of progressive realisation elaborated in General Comment No. 3, the Court recognised the right to water as a human right, arguing that it forms part of the rights to life, autonomy, human dignity, health, well-being and work. The court held that, “it has been demonstrated that the right to water is an operative right that must be complied with without delay...”⁶⁷ The Court ordered the city to continue providing the neighbourhood with water via container trucks, but also to begin work on expanding and improving the piped water network in that area. As of 2010, it was reported that the City had recently awarded a contract to begin constructing water infrastructure in the area.⁶⁸

Litigation can often lead to redress for individual victims while also bringing greater legal certainty to claims on the rights to water and sanitation. This is of particular importance in cases where water access may be tied to land ownership. For instance, in January 2011, the final judgement was delivered on a lawsuit brought by representatives of a group of the Basarwa indigenous community living in the Central Kalahari Game Reserve (CKGR) in **Botswana** under the country’s Water Act to enforce their right to water.

Members of the community had been living on or near the CKGR for several decades and throughout that period the Government of Botswana had provided the community with essential services. In 1986, the Basawra reached an agreement with the DeBeers Corporation to convert a prospecting well used for mineral exploration into a borehole that community members could use for domestic purposes. However, following a change in government policy toward human settlements in the CKGR, authorities forcibly removed the Basawra from the land and dismantled the borehole in 2002. However, a few years later several families returned to the Reserve after a court had ruled the relocation unlawful. They found themselves in the position of lawfully residing in the Reserve, but not

being allowed to make use of the existing borehole for their water needs. They suffered from the lack of access to water, not having sufficient water for personal hygiene and other personal and domestic uses, leading to serious consequences for their health.

They turned to the courts, and the final judgment was passed by the Appellate Court in January 2011. The Court noted that the correct interpretation of the Water Law allowed anyone occupying land to drill boreholes for domestic use without a specific water right. Additionally, informed by General Comment No. 15 of the Committee on Economic, Social, and Cultural Rights and the 2010 UN General Assembly resolution on the right to water and sanitation, the Court upheld the Basarwa's claim that deprivation of water can amount to degrading treatment under the country's Constitution.⁶⁹

In some cases, litigation has helped to emphasise the importance of having adequate water and sanitation services in public spaces, in addition to individual households. In *Santa Casa de Misericórdia de Santa Rosa do Viterbo Hospital v. Basic Sanitation Company of São Paulo State*, a 2007 case from **Brazil**, a local water utility discontinued water service to a hospital on grounds of non-payment.⁷⁰ In this case, the Court of Appeals ruled that disconnecting a service is never acceptable when it poses a risk to the public, for instance in public schools and nurseries, universities or hospitals (whether public or private). For the Court, the law provides other mechanisms for the utilities to recover the debts from these institutions and they should use them in these cases.

One of the primary ways in which litigation can play a supportive role in implementing the rights to water and sanitation is by creating a space for States to begin operationalising their international human rights obligations in a domestic legal context. For instance, in **Indonesia** in 2005, several NGOs brought a case before the Constitutional Court that challenged the constitutionality of several provisions of the country's Law on Water Resources over fears that it would limit access to drinking water through privatisation. The Court ultimately did not find the Law unconstitutional. However, it held that the State has an obligation to respect, protect and fulfil the right to water and that it must interpret it in a manner that supports that right. Citing numerous provisions of international human rights law, including article 25 of the Universal Declaration of Human Rights, article 12 of the ICESCR, article 24 of the CRC and CESCR General Comments 14 and 15, the Court ruled specifically that the domestic use of water must take priority. It also held that the State must develop distribution networks to ensure that water is accessible to everyone and that water prices should be developed in consultation with local communities.⁷¹

Litigation often plays a dual role as a tool for individual redress and a vehicle for advocacy. Even where it is ultimately unsuccessful, it can still have a positive impact when combined with civil society campaigns that exert pressure on policy makers and can sometimes lead to policy change. For example, in *Mazibuko v. City of Johannesburg*, residents of the Phiri community in Soweto, **South Africa** sued the City of Johannesburg, Johannesburg Water (Pty) Ltd. and the Department of Water Affairs and Forestry, alleging that the Free Basic Water Policy did not provide residents with sufficient water and that the installation of prepayment water meters was unlawful.⁷² The Constitutional Court ultimately ruled against the complainants, but the municipality nevertheless agreed to change its policy in order to provide larger amounts of free water each month to indigent households and to take measures aimed at dealing with some of the shortcomings attributed to the use of prepaid water meters.⁷³

Beyond the judicial orders for governments to uphold their human rights obligations, litigation may also be an effective way to enforce rights *vis à vis* a private actor, forcing States into action where advocacy alone cannot. For instance, in the case of *Menores Comunidad Paynemil*, in **Argentina**, an aquifer relied upon by a local indigenous community for drinking water became polluted with heavy metals as a result of oil extraction in the area.⁷⁴ In the subsequent legal action brought by the Children's Public Defender, the Court ruled that when the Argentine government fails to uphold its obligation to protect a community from the actions of a private actor, it has an obligation to fulfil the right itself. The Court ordered the government to provide the community with drinking water as a form of temporary relief.⁷⁵

Perumatty Grama Panchayat v. State of Kerala and Hindustan Coca-Cola Beverages (Pvt.) Ltd. is another high-profile case involving a dispute with a private actor.⁷⁶ There, a village council complained that overuse of groundwater resources by a local bottling plant was the major contributor to a severe drinking water shortage in the area. The council then cancelled the company's operating license, leading to a protracted legal dispute that is still on-going. While the issue of whether the excessive exploitation of groundwater is grounds for the revocation of a license is still pending before the **Indian** Supreme Court, the court of first instance in this case, the High Court of Kerala made several important rulings with respect to the right to water. For instance, it held that the constitutional provision enshrining the right to life, along with international norms related to environmental sustainability, imposed outer limits on the extraction of groundwater. Moreover, the Court ruled that State entities who fail to protect water resources from excessive exploitation have violated the right to life. While the judgment in the

2nd instance was not as favourable (reversing the decision of the High Court and allowing the company to extract groundwater under certain conditions), the bottling plant has been closed since 2004, also due to community advocacy. This highlights once again that combining litigation with other strategies for enforcing HR often proves most successful.

Formal adjudication in the form of litigation can also help to ensure that the rights are upheld in times of emergency. For instance, following the tsunami disaster of 2004, residents of the Andaman and Nicobar Islands in **India** experienced a drinking water shortage after their wells were contaminated. Initial efforts by the local authorities to provide compensation were sluggish and concentrated in the main towns. In *Kranti v. Union of India and Others*, several islanders petitioned the Supreme Court of **India** to order local authorities to begin taking more comprehensive steps to ensure access to drinking water for everyone. The Court accepted the petition and ordered the local governments to take immediate measures to develop infrastructures for collecting rainwater and to begin decontaminating and recharging wells.⁷⁷

While there is less jurisprudence that supports the right to basic sanitation, the body of case law is growing. As early as 1980, the Supreme Court of **India** recognised state obligations to provide adequate sanitation facilities. In *Municipal Council, Ratlam v. Shri Vardichand, et al.*, the Court ordered the municipality of Ratlam to provide sanitation facilities in order to curb a growing health crisis in a local slum.⁷⁸ While the Court did not explicitly reference a right to sanitation, it played an important role in framing sanitation as a social justice as well as a public health issue, observing evocatively that failing to provide access to sanitation “drives the miserable slumdweller to ease in the streets, on the sly for a time, and openly thereafter, because under Nature’s pressure, bashfulness becomes a luxury and dignity a difficult art.”

In a 2004 case brought before the Civil and Commercial Court of Córdoba in **Argentina**, residents of **Chacras de la Merced**, with the support of the **Centro de Derechos Humanos y el Ambiente (CEDHA)**, sought remedial action against the provincial government after it allowed a government-run sewage treatment plant to leak untreated wastewater into the community’s drinking water supply.⁷⁹ Referencing Argentine constitutional and environmental law as well as the CESCR’s General Comment No. 15, the Court ruled that the municipality had not acted to prevent the threat to public health posed by the contaminated water. It ordered the Municipality to rehabilitate, restore and improve the sewage treatment plant, and ordered the provincial government to provide the community with an alternative source of drinking water until the improvements

were completed. The provincial government completed work on a new drinking water system in 2008.⁸⁰

The Supreme Court of **Costa Rica** gave explicit recognition to the right to water in the 2003 case of *Ileana Vives Luque v. Public Services Company of Heredia*.⁸¹ In that case, the plaintiff, Ms. Luque, brought a law suit against the local water utility after it refused to connect her to the water network. The Court found in favour of Ms. Luque, noting that the right to water can be derived from several constitutional rights as well as international instruments such as CEDAW and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

More recently, in 2007, the Constitutional Chamber of **Costa Rica** held that poorly maintained sewerage systems in Villa Flores, which contributed to the flooding of households with wastewater, violated the constitutional right to health and ordered the municipality and various government entities to enact immediate remedial measures.⁸²

International and regional human rights bodies have also been active in strengthening international human rights norms related to water and sanitation. Some procedures such as the Universal Periodic Review (UPR) and Reporting Procedures to treaty bodies seek to assess general human rights compliance by States, while other procedures address specific instances of alleged human rights violations.

The UPR aims at a review of the general human rights performance of all States. Issues related to the right to water have repeatedly been taken up within this general procedure. For instance, the effects of mining projects and their impact on the enjoyment of the right to water were an issue taken up in Ghana’s review,⁸³ while unsanitary prison conditions were *inter alia* considered in the Zambian review.⁸⁴

Reporting to international treaty bodies such as the **Committee on Economic, Social, and Cultural Rights (CESCR)** can assist in drawing attention to specific issues that States must address to improve their human rights compliance. The CESCR, in particular, has been active in pressuring States to realise the rights to water and sanitation. For instance, in its Concluding Observations on Australia’s 2009 report, the Committee stressed the need for a stronger response to the effects of climate change on access to water and sanitation by indigenous communities.⁸⁵ When it recently reviewed its reporting guidelines addressed to States Parties to the ICESCR, the Committee included several questions related to the rights to water and sanitation.⁸⁶ Similarly, the Concluding Observations by the CRC regularly address the need for improving access to water and sanitation.

The Concluding Observations on Eritrea recommend improving school water and sanitation facilities, in particular in rural areas and among nomadic groups.⁸⁷ Moreover, the Human Rights Committee 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, *inter alia* expressing its concern about water shortages disproportionately affecting the Palestinian population.⁸⁸

Once the Optional Protocol to the ICESCR enters into force, individuals will also be able to address complaints to the CESCR. But already at present, individuals and organisations have a number of possibilities for lodging complaints with international and regional human rights bodies. Different bodies in regional systems have dealt with cases relating to the rights to water and sanitation. Moreover, Special Procedures have the opportunity to take up specific instances of alleged violations of the rights to water and sanitation in so-called “communications”.

In 1995, the **African Commission on Human and Peoples’ Rights** in the case *Free Legal Assistance Group and others v. Zaire* found that a State’s failure to provide basic services, including safe drinking water, constituted a violation of article 16 of the African Charter, which enshrines the right to the best attainable standard of physical and mental health.⁸⁹ Likewise, in 2005 the **Inter-American Court of Human Rights** recognised a right to water as part of the right to life in a case involving an indigenous community in Paraguay that had lost access to its ancestral lands and, thus, its primary source of water. Citing numerous provisions of the American Convention on Human Rights and the Protocol of San Salvador, the Court ordered the Government to provide the community with drinking water as well as sanitation services until the community’s land issues could be resolved.⁹⁰

Article 3 of the **European Convention on Human Rights (ECHR)** has been invoked in the UK with reference to the still prevalent practice of “slopping out” in prisons in that country. In recent court cases, judges have ruled that prisoners should be allowed to sue for compensation under the ECHR, as this amounts to “inhuman or degrading treatment or punishment”. Slopping out was formally abolished as a system in Britain in 1996, but is still used in some prisons.⁹¹ The ECHR itself in the case of *Melnik v. Ukraine*, found that the overcrowding of prison cells, inadequate medical care and unsatisfactory conditions of hygiene and sanitation, taken together with the duration of detention, amounted to degrading treatment.⁹²

Also at European level, but in the context of the **European Social Charter**, the **European Committee on Social Rights** found Portugal to be in violation of its obligations under the Charter in a case concerning housing rights of a Roma

community. The Committee held that, “the notion of an adequate house implies a dwelling which is safe from a sanitary and health point of view. [...] This means that dwellings must have access to natural and common resources, namely safe drinking water, electricity, sanitation facilities and waste disposal,”⁹³ as it had done in previous cases.

Apart from treaty bodies and regional human rights mechanisms, Special Procedures have also addressed alleged violations of the rights to water and sanitation. Since 2008, a total of 16 communications (including urgent appeals and allegation letters) have been submitted jointly by the Special Rapporteur and other mandates, including health, torture, adequate housing, food, toxic waste, education, minorities, independence of judges and lawyers, terrorism, freedom of expression, human rights defenders, violence against women, arbitrary detention, internally displaced persons and migrants. They have addressed issues as diverse as the rights of prisoners, mortality due to lack of access to water and the impact of the closure of hospitals due to a cholera outbreak.⁹⁴

4.4 Good governance and transparency

The practices described above outline specific strategies designed to promote accountability among service providers and relevant public and private entities. Ultimately, however, the long-term realisation of the rights to water and sanitation – as with all human rights – demands a broader culture of accountability, which can only flourish in a climate of good governance, strong democratic institutions and transparency. Mechanisms such as monitoring, community action or the use of formal and informal adjudication are only meaningful when they exist within an enabling political climate that is amenable to public participation. Unless States make a concerted effort to protect and uphold personal security, freedom of expression and association, due process of law and representative government, accountability for realisation of the rights to safe water and sanitation will not be possible.

High levels of corruption are symptomatic of a lack of accountability in the water and sanitation sectors at all levels. In some countries, households must often pay a bribe to access water, whether to gain a connection or as part of the regular water bill. Most prefer to pay this bribe rather than not have access to services. A **Transparency International** study in 2005 in Kenya, for instance, found that two-thirds of those polled reported that they had experienced corruption within the past year and that many felt compelled to pay their water bills regardless of accuracy for fear of losing the connection.⁹⁵ The Kenyan water

sector reform outlined in chapter one has changed this situation impressively, according to a GIZ-commissioned **Perception Survey Report** on the impact of Water Sector Reform, carried out in February 2011, which suggests that corruption only rates sixth in a list of failures of service provision, compared to the figure stated above for 2005.⁹⁶

Meanwhile, a lack of transparency in national budgeting for water and sanitation can also make it difficult for monitoring institutions or human rights advocates to determine whether Governments are allocating resources in a manner that is consistent with human rights principles of progressive realisation, non-retrogression and non-discrimination. Similarly, contractual processes between government entities and service providers or between providers and consumers, are often characterised by secretive bidding processes. Private contractors may sometimes intentionally underbid in order to win contracts, artificially lowering costs and securing more favourable terms in subsequent bilateral renegotiations of contracts, a practice which the Special Rapporteur has highlighted as contrary to human rights requirements.⁹⁷ All of these practices lead to higher costs for individual consumers of water and sanitation services, and thus conflict with the principle of affordability. By one estimate, corruption will increase the cost of achieving the water and sanitation target of Millennium Development Goals by 2015 by nearly US\$ 50 billion over the next decade.⁹⁸

There are several transnational initiatives designed to support good governance and reduce corruption. For instance, the **Urban Governance Index**,⁹⁹ developed by the **Global Campaign on Urban Governance**, the **Global Urban Observatory**, and **UN-HABITAT** is a self-assessment tool for local authorities, designed to promote dialogue with a range of governmental and non-governmental stakeholders on development priorities. The Index captures urban decision-making processes, as well as mechanisms and institutions, through which various stakeholders articulate their interests, exercise their rights, meet their obligations and mediate their differences. The indicators also focus on the quality of relationships between key stakeholders at the local level and consider factors such as the existence of a pro-poor pricing policy for water. The process of assessment prioritises participatory data collection to improve accuracy and ensure collective ownership of the results.

DISCUSSION BOX 4.3 How can human rights assist in combating corruption?

Combating corruption and realising human rights is mutually reinforcing. Eliminating corruption is essential for the full realisation of human rights, while applying human rights principles to water and sanitation projects can drastically reduce the space in which opportunity for corrupt practices may occur. Beyond simply providing a legal basis for accountability or providing an opportunity for community mobilisation, human rights principles can support the erosion of corrupt practices in the water and sanitation sectors in a number of ways. As the practice from Tanzania described earlier in this chapter illustrates, programmes that improve access to water and sanitation from a human rights perspective, with their attendant principles of transparency, participation and accountability, help ensure that they cannot be so easily hijacked by opportunists. Similarly, in Zambia, practices such as the National Water and Sanitation Council's growing use of water watch groups as well as the Water Board's utilisation of Public Inquiries, where users can comment on any application for water rights, appears to have made great strides in terms of bolstering the integrity of water service providers.¹⁰⁰

Although principles of accountability, participation and transparency are being incorporated into water and sanitation programmes, it is important to emphasise that these steps can only contribute to meaningful change when they take place within an enabling political climate that is open to public participation. Unless States uphold traditional civil and political rights that protect personal security, freedom of expression and association, due process of law and representative government, accountability for violations of the rights to safe water and sanitation will be sorely lacking.

In developing countries, corruption is estimated to raise the price for connecting a household to a water network by as much as 30 per cent. This inflates the overall costs for achieving the MDGs for water and sanitation, cornerstones for remedying the global water crisis by more than US 48 billion.

GLOBAL CORRUPTION REPORT 2008, CORRUPTION IN THE WATER SECTOR, TRANSPARENCY INTERNATIONAL, 2008, P. xxiv

Good governance, accountability and transparency are particularly important in monitoring the responsibilities of water and sanitation service providers. Encouraging government and utilities to accept binding legal agreements, whereby they commit to avoiding corrupt practices in the procurement of public contracts will have a positive impact on accountability. In support of such **Integrity Pacts**, **Transparency International (TI)** has published a reference manual, describing how to design and implement such agreements as well as how to ensure compliance.¹⁰¹ In 2003, for instance, **TI Pakistan** successfully assisted the Karachi Water and Sewerage Board in developing an integrity pact during the procurement process for the Greater Karachi Water Supply Scheme.¹⁰²

In addition to formal agreements to avoid corruption in the water and sanitation sector, it is crucial for stakeholders to be able to identify the primary areas where corrupt practices can occur as well as how they can be stopped. **UNDP** and the **Water Integrity Network** have recently launched a **Water Integrity Training Manual**, which specifically references the right to water and sanitation.¹⁰³ The Manual offers a variety of teaching modules along with detailed lesson plans that can assist local actors in identifying the various types and the drivers of corruption within the water and sanitation sectors. Emphasising a number of human rights principles such as accountability, transparency, participation and access to justice, it provides examples of practicable responses for civil society.

The 2009 **Uganda baseline water integrity survey**, commissioned by **WIN** identifies corrupt practices from the perspective of a variety of stakeholders, including rural and urban consumers, local governments and private contractors.¹⁰⁴ For instance, it found that 46 per cent of all respondents paid extra money for connections to water and sanitation services and that bribery was more common when the services were provided by a private operator than the National Water and Sewerage Corporation (NWSC).¹⁰⁵ The survey report recommends participatory processes such as civil society coalition building and awareness-raising to develop strategies for limiting opportunities for corruption, and highlighting the need for independent regulation and improved procurement and contract management processes.¹⁰⁶

As part of a broader initiative to increase rural access to commercial water services in **Kenya's** Bondo District, a partnership including **UNDP**, the **Kenya Water and Health Organisation (KWAHO)**,¹⁰⁷ the **Ministry of Water and Irrigation**,¹⁰⁸ the **Kenya National Human Rights Commission**¹⁰⁹ and the **Kenya Anti-Corruption Commission (KACC)**¹¹⁰ is working to shore up accountability at the local level. Citing a lack of information, overcharging, and bribery as some

of the primary obstacles, the organisations are working to educate communities on the rights to water and sanitation so that they can become more involved in the process while engaging with service providers on equal footing. Furthermore, in order to allow individuals to bypass traditional bureaucratic channels where their voices might not be heard, KACC has set up a dedicated telephone line for complaints and inquiries related to water issues.¹¹¹ **UNDP** reports that so far the project has resulted in a change in the attitude of water and sanitation consumers based on a newfound sense of empowerment and entitlement to the services. This has reportedly led to a better relationship between regulators, service providers, and community members.¹¹²

UNDP employed similar strategies during its **Water Sector Integrity Vulnerability Assessment in Tajikistan**, which aims to develop a Risk Mitigation Plan for the sector.¹¹³



Catarina de Albuquerque discusses the human right to water and how it intersects with the religious and cultural freedoms of the Winnemem Wintu Tribe, with the tribe's chief and spiritual leader, Caleen Sisk, California, USA, February 2011.

PHOTO: MARC DADIGAN

DISCUSSION BOX 4.4 Decentralisation

It is often the case that transparency and participation can be improved by bringing the control of water and sanitation services closer to the communities they serve.¹¹⁴ Decentralisation is an increasingly popular strategy among States looking to shore up local level accountability and participation. Decentralisation should not be confused with similar concepts such as de-concentration. The former implies the devolution of control over water and sanitation to the local level, while the latter describes a process whereby control remains with the central government, but the actors and institutions for managing it are distributed more widely throughout the country.

Despite its benefits, decentralisation can sometimes raise concerns from a human rights perspective. Local governments or other management bodies sometimes do not possess the authority or financial or technical capacity needed to fully address the accessibility, affordability or quality of water and sanitation services on their own.¹¹⁵ This was also noted by the Special Rapporteur on one of her country missions, as well as in her 2011 report on National Planning.¹¹⁶ Additionally, the centre of control over water and sanitation services is largely irrelevant unless all stakeholders are able to get involved in decision-making processes and can hold local authorities accountable. Communities must be engaged throughout the decentralisation process. Devolving power to the local elite without mechanisms to promote accountability and prevent discrimination is not consistent with human rights principles. Human rights law also requires that State efforts to progressively implement the rights are sustainable and do not lead to deliberate retrogression. Therefore, in cases where decentralisation is part of national water and sanitation strategies, States and international partners should play a supportive role in strengthening local capacity by sustaining the ability of local governments to finance projects independently and then delivering water and sanitation to users. This involves not only ensuring that local service providers have the resources they need, but also, *inter alia*, practical training in building creditworthiness, managing budgets, attracting investment, designing and implementing tariff and subsidy programmes, and operating and maintaining water and sanitation facilities. The obligation to monitor and set minimum standards remains with the national government.

Ghana has had considerable success in decentralising the management of water and sanitation services due, in large part, to the support of the **National Development Planning Commission**.¹¹⁷ The Commission manages planning between national and local governments and coordinates the activities of local governments across the country. By emphasising the use of local elections of representatives to engage in policy development, as well as regular public hearings, the Commission emphasises a “bottom up approach” designed to make planning more sensitive to local needs.¹¹⁸

Experiences from Uganda and Tajikistan as well as other countries show that these types of assessments can lead to open acknowledgement by policy makers that corruption is a problem for the water and sanitation sectors. Furthermore, the inclusive and participatory manner in which the assessments are carried out promotes public ownership of the findings. Yet, while integrity pacts and training manuals are important tools for identifying and rooting out corruption, the main thrust of a human rights approach should involve working toward a fully participatory climate in which communities are empowered, institutions are responsive and the risk of corruption is effectively neutralised. A key objective of this book has been to underscore that, while all of the practices listed here are “good” and consistent with human rights principles, no practice in isolation can fully achieve the realisation of the rights to water and sanitation. Their implementation cannot and should not be divorced from their broader context. The utility of toolkits and integrity pacts is greatly outweighed by State efforts to promote such an environment. For instance, in some countries such as **India**, the right to information legislation designed to facilitate access to central and state government records has also become a useful advocacy tool in the water and sanitation sector, as discussed earlier in the box on community engagement in monitoring. In this way, the principle of accountability holds the key to ensuring that all of the other human rights principles and standards contained within the rights to water and sanitation are upheld.

Conclusion

This chapter has provided a broad range of practices, showing how the principle of accountability can be realised. Holding States and other stakeholders to account for their actions and omissions can require significant effort on the part of the civil society, to ensure that policies and programmes do not discriminate against any individuals or groups, and that they are participatory and accountable. The norms and standards contained within the rights to water and sanitation provide a clear framework for individuals and groups to monitor not only their access to these rights, but also to examine how local authorities, service providers, and national policies, legislation and budgets are designed and managed, and make claims accordingly. Furthermore, where States are not complying with the rights to water and sanitation, this chapter has demonstrated how civil society can hold States accountable through complaints processes, as well as through litigation.

FOOTNOTES – CHAPTER 4

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CONCLUSION

After three years of seeking, collecting, compiling and assessing good practices, meeting with stakeholders from the five continents, visiting countries where some of these practices were being implemented and synthesising these practices, this book brings to a conclusion a cycle of my work as Special Rapporteur.

Since the inception of my mandate, I have been considering good practices in the implementation of the human rights to water and sanitation in every aspect of my work – from those activities specifically aimed at collecting good practices, to thematic research, country missions, casual encounters and meetings. This is the conclusion of three years, eight consultations with different stakeholder groups, over 220 practices submitted from all over the world and countless emails, phone conversations and debates. This journey has helped me to understand the range of different approaches, exploring what is possible in the realisation of the rights to water and sanitation. This collection aims to showcase how the human rights to water and sanitation are put into practice. These are not aspirational goals but real life practices, programmes, laws and policies that are currently changing peoples' lives by ensuring their access to water and sanitation. I hope that the reality of these practices will generate even more interest in the implementation of the rights.

These practices deserve commendation for their contribution to the realisation of the rights to water and sanitation, but beyond praise for these practices, I have taken away important lessons and reflections that I would like to share.

Human rights make a difference. Rights alone cannot provide services – but they provide a solid framework within which States, donors, civil society and service providers can plan and build a future that provides for everyone to have ready access to the necessary quantities of affordable, safe water and sanitation that will help them enjoy a better and healthier life. The rights framework also provides morally compelling and legally binding standards, by which we can insist on prioritisation of sanitation – still a neglected area, still taboo in too many places, and still one of the greatest crises facing the world today.

Human rights are everybody's business. The key to all of my work of the last three years has not just been to ensure that the rights to water and sanitation be adopted by the General Assembly and the Human Rights Council, nor to persuade States to recognise the rights to water and sanitation in their constitutions, legislation, policies and programmes, although there have been significant successes in this area. The particular strength that I feel I bring to my mandate is that of promoting and supporting the realisation of the rights, making them tangible for those who are most in need, for the marginalised, for those at risk and for all those who do not presently have access to water and sanitation. My mandate attempts to look beyond the rights on paper, or in reports, to see the reality on the ground. At this time of financial and economic crisis, when ever more people are struggling to satisfy even the most basic needs, and when the gap between rich and poor is expanding, it is important to be reminded that all people in the world have these same rights. The universality of human rights demands that the rights to water and sanitation must be prioritised even where resources may be limited. This is particularly relevant in the case of water, as there are often many competing demands on a sometimes scarce resource. The prioritisation of water for personal and domestic use, specifically for the realisation of the rights of water and sanitation, and for those who have no access, must be safeguarded against the interests of more powerful groups. The rights to water and sanitation can provide a framework for the future, to address increasing populations (particularly in urban areas), the impact on climate change (which is particularly significant for access to water) and increasing demand for water for purposes other than personal and domestic use. As pressure on existing water resources increases, it will become ever more vital that the needs and rights of those without power are protected.

This book has discussed the obligations of the State – but it has also touched upon the responsibilities of non-State actors, including service providers, and of course, the individual. These responsibilities of non-State actors still need to be better defined to ensure that water resources, as well as water and sanitation services, are used in a way which protects the wider society, as well as the environment. An individual's poor sanitary or hygiene behaviour can impact, not only on his or her own individual health and dignity, but also on the health of others. Equally, people in civil society must be informed of their rights, and encouraged to claim them in those situations where they do not have access to water and sanitation, working with others to realise their rights, and must use and maintain services in a hygienic manner to ensure full benefits. Judges, lawyers,

regulators and other monitoring and compliance bodies must be informed of and properly use the legal and regulatory implications of the rights to water and sanitation, to assist individuals and groups in enjoying their rights. Donors and international agencies must incorporate the principles and standards of the rights into their policies, so that their partners, including States and civil society, are able to implement the rights. The sustainability of and accountability for access to water and sanitation is weakened without a partnership between all stakeholders. This vital partnership between stakeholders takes people out of their comfort zones. It means we have to learn to speak another language to arrive at common understandings and articulate common objectives. It can involve new approaches and self-reflection or self-criticism, forcing us to question and challenge ourselves. It is in that process of partnership and constant re-appraisal of approaches that the human rights to water and sanitation will be realised.

Holistic approaches are more effective. Water and sanitation are closely related and must be considered holistically, even where sanitation services do not require water to function. Access to water, particularly in densely populated areas, becomes a health hazard if there are not adequate wastewater disposal mechanisms in place. Sanitation services must take account of not only the collection of faecal matter, but also its storage, transport, treatment and disposal and/or reuse. Where schools have built latrines without considering the management of the waste, including cleaning, maintaining and emptying the latrine, it becomes a point of infection that can be worse in terms of health outcomes than previous practices of open defecation. Latrines must be constructed, but they must also be used and maintained, and provision must be made for hygienic practices such as hand washing with soap or ash. Improving access to water, sanitation and hygiene separately does not produce the same health benefits as an integrated approach that addresses all three aspects together. This is why sanitation, particularly in urban slums, requires more attention. As has been shown in this book, access to sanitation systems is being ignored and under-resourced, even where States are focusing their attention on improving access to water for those living in urban slums. Good development outcomes also require that water and sanitation be considered in the realisation of other human rights, including the rights to education, health, housing, work and the environment.

Data collection is crucial. We need to know who does not have access to safe and affordable sanitation and why. Only then can we work towards improving access for the people who are left behind. Through the disaggregation of data,

we observe patterns of deprivation and discrimination. This is being achieved by local institutions and civil society groups, but States must also be prepared to be more thorough and radical in their approach to data collection, to ensure that those individuals and groups that are forgotten or ignored are included in monitoring processes. This gap between current national level monitoring and the detail that is required to achieve good legislation, policies and planning must be filled in order to realise the rights to water and sanitation. The importance of identifying populations lacking access is relevant globally. In almost every country of the world, and even the richest countries, there are people without basic access to water and sanitation. Some States do not disaggregate data on access to services according to religion or ethnicity for fear of engaging in discriminatory acts simply by requesting the information. The result is that some States cannot identify whether or not their policies or practices are discriminatory, regardless of whether that discrimination is intentional. It is only through analysis, which may include monitoring access according to race, tribe, gender, religion or other discriminatory categorisation, that this discrimination can be brought to light and acted upon.

At the global level, there appears to be consensus on the need for better ways to measure water quality and affordability. While such measurements may exist at the national level, it is difficult to compare methodologies across countries, which hampers international efforts to assess the state of affairs when it comes to peoples' access to safe and affordable water and sanitation. Ensuring that services are not only affordable to the general population, but also to those who have very low or no incomes, is difficult to ensure, and it is also complex to identify which populations have particular problems paying for services. Households invest significant amounts of resources in their sanitation needs, but how much and exactly what they are spending these resources on remains little understood or researched, and there is a significant opportunity for monitoring these investments to gain a better understanding of how households can be supported.

Money matters. Increasing the financing of the water and sanitation sectors, and particularly directing available resources to those who are most in need, requires more consideration and detail. The examples given in this book include specific funding mechanisms for sanitation, such as the Global Sanitation Fund, as well as approaches to ensure that poor households can afford to pay for access to water and sanitation services, but more could and needs to be done to specifically target those individuals and groups that do not have adequate access to services. For example, investments by States and external donors need to be led by participatory

processes to decide on the most appropriate way of spending financial resources, rather than allowing funds to be sunk in large-scale sewage treatment plants that are not truly appropriate to the context in which they are built. Pro-poor financing by international finance institutions must better target the poor, rather than reaching the not-so-poor, as has been the case to date.

Human rights focus on those who are excluded. One of the most basic tenets of human rights law is a focus on those who are marginalised, excluded or otherwise at risk. These individuals and groups often lack the means to claim their rights, and require our special attention to ensure that they are not excluded simply because of their membership of a particular group. In the practices presented in this book and the conversations that have ensued as a result of this collection, we have particularly considered the needs of diverse groups, such as children, homeless people and ethnic minorities – but I would like to particularly highlight the situation of specific groups of people who may suffer due to a lack of access to water and sanitation: people living in informal settlements, women and persons living with disabilities.

People living in informal settlements: Specific efforts are needed to address the special challenges of people living in informal settlements. All households in all settlements, regardless of their legal status, should be able to access formal services, which can be regulated. Where service provision does not comply with the standards set by the rights to water and sanitation, effective complaints mechanisms must be in place. However, for the short- to medium-term, before formal services can be universally provided, there needs to be further consideration of how informal provision can be regulated to enable informal service providers to provide better services at an affordable price, without stifling the provision of services altogether. This will probably require support from local or regional governments, such as ensuring the provision of bulk water at low prices, and options for the management of faecal wastes.

Women: As a result of systemic discrimination, women suffer lack of access to water and sanitation in distinct ways. The insecurity that they face when they walk long distances, or even short distances at night, to access water or sanitation facilities is well documented. The added burden they bear in terms of caring for those who become sick as a result of inadequate water and sanitation is also a well-known reality. Less talked about is the need for research and practice to improve conditions for women and girls, often suffering from stigmatisation as well as ill-health, due to a lack of adequate attention to menstrual hygiene management in water and sanitation facilities, particularly away from home, in schools, in health institutions

and at the work place. Ensuring women's access to water and sanitation, including their ability to manage their menstrual hygiene needs in a dignified manner, is fundamentally related to eliminating discrimination against women more broadly. Women's rights to water and sanitation will never be fully realised without tackling societal norms that accept gender-based violence as an "unfortunate" reality, without challenging gender roles that overwhelmingly assign women as carers, and without taking specific account of women's biological needs.

Persons living with disabilities: In too many places, water and sanitation facilities are inaccessible for people living with disabilities. In most cases, these facilities were built without these people in mind. People with disabilities are limited in the way they can participate in society without accessible facilities, particularly in public places. This has severe consequences for their enjoyment of a variety of rights, such as the rights to education, work, participation in public affairs and health.

Human rights are within reach. The rich examples displayed in this book clearly demonstrate that political will, a vision and commitment to new ways of thinking and acting are key to realising the rights to water and sanitation. Even though money matters, persistence and the prioritisation of universal access to water and sanitation services will assist in ensuring that those without access gain access. This book demonstrates that where ambitious targets are set, the necessary financial, technical and human resources will become available. The good practices presented here must inspire governments and decision makers around the world to consider how they can be adapted to their own contexts and countries. There is no justification for the unacceptable violations of the rights to water and sanitation that occur today or for the shockingly slow progress in this area that we see in the world.

Considering the future. At this time of financial and economic crisis, where many governments are using the negative economic climate to justify implementing cuts that impact on the enjoyment of social rights, including the rights to water and sanitation, leading to retrogression in the realisation of human rights, with drastic consequences for the lives of millions of people. Disinvestments will put many of the achievements reached in this area at risk, and might have negative impacts in other areas such as health, education, and housing, among others. Water and sanitation have to become an even greater political priority so that we do not lose what has been gained, and achievements made over the past decades must be nurtured and investments protected. The realisation of the rights to water and sanitation must be prioritised even where resources may be limited.

Global and local are closely related. This book has compiled some examples of the progress that has been made in recognising, understanding and implementing the rights to water and sanitation, and in putting the ideals of the Universal Declaration on Human Rights into practice. Gaining access or lacking access to safe and affordable water and sanitation is an inherently local problem. These services are required within the immediate vicinity of the household. But these local realities are reflected in the positive action taken by international agencies in incorporating the rights to water and sanitation in the work that they do, as well as in the funding and programmatic work of bilateral agencies. The UN Secretary General's Advisory Board on Water and Sanitation (UNSGAB) also increasingly emphasises the importance of the human rights to water and sanitation, and the discussions around the new post-2015 development agenda are more human rights aware.

However, the important work of realising the rights to water and sanitation cannot and does not happen only at the international level, and this book has presented national processes, demonstrating a trend towards including the rights to water and sanitation in constitutions and legislation, but more importantly integrating them into sector reform, national planning, and programmes in countries such as Kenya, South Africa, Bangladesh and Brazil.

These national processes are also being prodded and pushed by civil society activities, where individuals and communities are organising themselves not only to demand their rights, but are also showing how to access them, in partnership with local government and services providers. These local processes consider carefully why there are barriers to access to water and sanitation and how they can be overcome. Key is the context in which a practice takes place, the local capacity to construct and manage services, the availability of water, and the cultural attitudes to sanitation or to women's roles in managing water and sanitation services. Such forward-thinking organisations and institutions are leading the way to realising all aspects of these rights in all parts of the world. Importantly, these efforts rely on developments at the international level to give added weight to their cause.

In the introduction to this book, I noted that it is not always easy to clearly distinguish between a good practice that explicitly works towards the implementation of the rights to water and sanitation, and one that attempts to address poverty or discrimination, or to be participatory in more than name. This challenge of defining and specifying how the principles and standards contained within the human rights to water and sanitation can assist in improving water and sanitation services, and will continue to be an issue that I will explore in my work.

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Now that the rights to water and sanitation have been officially recognised by the United Nations, the time has come for all governments to fully realise them. This will require imagination, persistence, patience, flexibility and, above all, political commitment. It will be challenging, and partnerships must be forged between stakeholders which may hold opposing ideological views. This book offers some evidence of the way in which the rights to water and sanitation can be implemented in difficult environments to provide for a life lived in security and dignity.

The journey towards the full realisation of human rights is a long one, and although this specific endeavour to collect good practices comes to a close with these pages, more good practices will be implemented in the future, more experiences will be shared, and more will be done to improve access to water and sanitation for the billions who still lack access. I am confident that this book will help to convince policy makers and decision makers that the realisation of human rights actually enables better policies and results. I hope this book will serve as a source of inspiration for those who read these pages to implement human rights within their countries and communities. The publication of this book may help to light the road ahead but we still need more light and more torch-bearers to lead the way to full universal access to water and sanitation.



Catarina de Albuquerque with the participants in the civil society consultation on good practices, Geneva September 2010.

PHOTO: FRESHWATER ACTION NETWORK

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