

MANUAL ON THE RIGHT TO WATER AND SANITATION



A tool to assist policy makers and practitioners develop strategies for implementing the human right to water and sanitation

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Centre on Housing Rights and Evictions, 83 rue de Montbrillant,
1202 Geneva, Switzerland

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American Association for the Advancement of Science (AAAS) Science and Human Rights Programme
1200 New York Avenue, NW
Washington, DC 20005
Tel: (1) 2023266600, fax: (1) 2022894950
Email: shrp@aaas.org
Web: <http://shr.aaas.org>

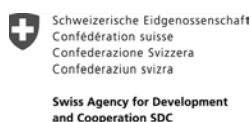
Centre on Housing Rights and Evictions, Right to Water Programme
83, Rue de Montbrillant,
1202 Geneva
Switzerland
Tel: (41) 22 734 1028, fax: (41)227338336
E-mail: water@cobre.org
Web: www.cobre.org/water

Swiss Agency for Development and Cooperation (SDC)
Thematic and Technical Resources
Freiburgstrasse 130
3003 Berne
Tel: 41 (31) 322 34 75
E-mail: catherine.favre@deza.admin.ch, francois.muenger@deza.admin.ch
Web: <http://www.sdc.admin.ch>

United Nations Human Settlements Programme (UN-HABITAT)
Water, Sanitation and Infrastructure Branch
P.O.Box 30030 , Nairobi , Kenya
Tel: 254 20 7625082
Fax: 254 20 7623588
E-mail: andre.dzikus@unhabitat.org
Web: www.unhabitat.org

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Foreword

Affordable access to a sufficient quantity of safe water is fundamental to the health and dignity of all. The International Year of Sanitation, which has just begun, calls for all nations to recognise that access to hygienic sanitation is equally important to ensure health and dignity. That over a billion of the world's people remains without access to safe drinking water and over twice that number are denied access to adequate sanitation continues to shock and appal. Millions of lives are at risk from preventable diseases and the futures of millions of the world's children are blighted by the multiple deprivations of poverty, lack of education and ill health that often accompany poor water and sanitation.

The international community has committed to meeting the Millennium Development Goal of halving, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation. This is a significant challenge. A human rights approach to water and sanitation, with its emphasis on accountability, access to information, non-discrimination, attention to vulnerable groups and participation is a crucial aspect of achieving this goal. It requires a focus on the most marginalised sectors of society, including over one billion people living in informal settlements the world over.

But water and sanitation are not just the subjects of one of the targets of the Millennium Development Goals; they have a part to play in the realisation of all the Millennium Development Goals. Access to water and sanitation is necessary for health, education, economic development and the environment.

This *Manual on the Right to Water and Sanitation* is a timely contribution to efforts to improve access to water and sanitation and will assist governments, policy makers and practitioners in implementing the human right to water and sanitation. National and local governments will find this Manual a useful resource and will be able to make excellent use of the practical, affordable and sustainable strategies, policies and solutions contained therein to address the problems they are facing in realising the right to water and sanitation. The Manual distinguishes between the challenges facing urban and rural areas, and proposes policy approaches for each that address their different circumstances.

I trust that this publication will bring a new perspective to the task ahead - ensuring that the human right to water and sanitation is realised for all.



Anna Kajumulo Tibaijuka
Executive Director, UN-HABITAT

Preface

Since its adoption in November 2002, *General Comment No. 15: The Right to Water* has provided an impetus for both practitioners and scholars to investigate the theoretical and practical dimensions of the recognition of this right. The overall positive receptions of General Comment No. 15 by States parties to the International Covenant on Economic Social and Cultural Rights (ICESCR), and even by a World Bank monograph, are very encouraging developments. The *Manual on the Right to Water and Sanitation* comes as a most welcome reminder of the challenges in addressing the right to water, based on articles 11 and 12 of the ICESCR. In addition, it takes an important step toward clarifying the implications of the right to sanitation, which has been the subject of important developments: most recently the report of the United Nations High Commissioner for Human Rights - requested by the UN Human Rights Council – on the topic of human rights obligations relating to equitable access to safe drinking water and sanitation.

This Manual starts out with a clear exposé of the contextual issues surrounding the water and sanitation crisis in many countries of the world, encompassing legal foundations, entitlements, responsibilities and questions of accountability. The Manual rightly accords a prominent place to considering the needs of marginalised and disadvantaged individuals and groups, in line with the practise of the Committee on Economic, Social and Cultural Rights (CESCR). Undoubtedly, the chapter focusing on the respective responsibilities of various actors, including the international obligations of States parties to the ICESCR, particularly in relation to development assistance and trade and investment, will also benefit readers greatly.

The Manual neatly addresses how legal obligations flowing from the right to water and sanitation may be realised, giving ample examples and always highlighting actual problems facing people on the ground. These chapters also offer incisive examples from national jurisdictions that enrich the description of the human right to water and sanitation. Scepticism about the human right to water and sanitation – as with all economic, social and cultural rights – will usually focus on questions of resource allocation. Therefore, the sober and very well presented chapter on affordability and financing will attract particular attention, especially from government officials. Boxed summaries are provided for quick reading throughout all chapters, frequently with illustrative case descriptions, facilitating effective work with the Manual.

The Manual will prove to be an excellent, indeed indispensable tool, supplementing General Comment No. 15 in assisting governments to implement their obligations under the ICESCR, and in drafting period State reports to the CESCR. At the same time, it will provide extremely useful and in-depth information to civil society organisations at the national and international levels in their advocacy. Furthermore, members of CESCR and academic researchers will also find the well-structured chapters of the Manual most useful. Without a doubt, however, the Manual's greatest value will be in raising and maintaining public awareness of the challenge of securing the right to water and sanitation for all, which can otherwise be easily forgotten, or reduced solely to policy considerations, and dealt with without adequate reference to human rights dimensions. In sum, the authors are to be congratulated on this timely, well-researched and practice-oriented Manual.

Eibe Riedel

Member, UN Committee on Economic, Social and Cultural Rights

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Project Leaders

1. Audrey Chapman, the Healey Professor of Medical Humanities and Ethics, University of Connecticut Health Center, former Director, AAAS-SHRP
2. Andre Dzikus, Chief, Water and Sanitation Section II, UN-HABITAT - WSIB
3. Catherine Favre, Governance and Human Rights Advisor, SDC
4. Ashfaq Khalfan, Coordinator, COHRE - RWP
5. Malcolm Langford, Visiting Fellow, Norwegian Centre on Human Rights, Consultant, COHRE
6. Francois Muenger, Senior Water Advisor, SDC

The publication was written by staff and consultants of the COHRE Right to Water Programme.

Authors

1. Ashfaq Khalfan
2. Virginia Roaf
3. Hilary Grimes
4. Malcolm Langford
5. Carolina Fairstein
6. Anna Russell
7. Thorsten Kiefer

Contributors

1. Sonkita Conteh
2. Kerubo Okioga
3. William James Smith (external contributor)

Advisory Committee

An external advisory committee composed of experts in key components of water and sanitation, including lawyers, economists, scientists and engineers, provided detailed review of the Manual. Advisory Committee members are thanked for their voluntary contribution of time and expertise. Members included:

1. Stefano Burchi, Chief, Development Law Service, Food and Agricultural Organization of the United Nations (FAO)
2. Andrei Jouravlev, Economic Affairs Officer, Natural Resources and Infrastructure Division, United Nations Economic Commission for Latin America and the Caribbean
3. Wambui Kimanthi, Commissioner, Kenya National Commission on Human Rights
4. Monika Lueke, Project officer, GTZ
5. Rolf Luyendik, Consultant, United Nations Children's Fund (UNICEF)
6. Bronwen Morgan, Professor of Socio-legal Studies, University of Bristol
7. Odindo Opiata, Executive Director, Hakijamii Trust

8. Isabelle Rae, Legal Officer, Right to Food Unit, FAO
9. Eibe Riedel, Member, UN Committee on Economic, Social and Cultural Rights
10. Barbara Schreiner, Former Deputy Director General, Policy and Regulation, Department of Water Affairs and Forestry, South Africa
11. Henri Smets, French Water Academy
12. William James Smith, Assistant Professor, Department of Environmental Studies, University of Nevada, Las Vegas
13. Margret Vidar, Human Rights Adviser, Right to Food Unit, FAO
14. Roland Werchota, Programme Manager, Water Sector Reforms Unit, GTZ - Kenya

Institutional details are provided for identification purposes only. Responsibility for the final version of the text rests with the authors.

Commentators

A draft of the Manual was reviewed in public review sessions at the Stockholm World Water Week 2007; by a group of practitioners in Nairobi and distributed for public review over the internet. Comments were provided by a wide variety of practitioners and academics.

Comments on the Manual were provided by: Jamie Bartram (World Health Organization); Katrien Beeckman (COHRE); Shaukat Chaudry (retired, Ministry of Agriculture, Saudi Arabia); Emanuele Fantini; Mayra Gomez (COHRE); Danielle Hirsch (Both Ends); Ann-Mari Karlsson (Swedish Water House); George Kent (University of Hawai'i); Kirsty Mclean (Ashira Consulting); Dr. Afzal Mullick; Pireh Otieno (UN-HABITAT); Luis Mario Padron (Agua Bonaerenses); Bea Parkes (UK Department for International Development, UK); Gérard Payen (Aquafed); Rosario Ponce de Leon; Birte Scholz (COHRE); Jacqueline Sims (World Health Organization); Håkan Tropp (UNDP Water Governance Facility); Derick du Toit (Association for Water and Rural Development); Robin Twite (Israel-Palestine Research Centre for Research and Information); Murray Wesson (University of Leeds); Duncan Wilson (Amnesty International) and Melvin Woodhouse.

Comments were received at the Stockholm Water Week from: Rolando Castro (Cedarena); Jenny Grönwall (Linköping University); Ceridwen Johnson (Freshwater Action Network); Tracey Keatman (Building Partners for Development); Joe Madiath (Gram Vikas); Owen McIntyre (University College Cork, Ireland); Ravi Narayanan (Asia-Pacific Water Forum); The Honourable Maria Mutagamba (Minister of State for Water, Uganda); David Obong (Ministry of Water and the Environment, Uganda); Hermann Plumm (GTZ); Arun Sharma; Kulwant Singh (UN HABITAT); Thomas van Waeyenberg (Aquafed).

Comments were received at the Nairobi review session from: Christabel Nyamweya (Institute for Law & Environmental Governance), Edward Odaba (Kenya Water for Health Organisation), Wanjiru Ndiba (Maji na Ufanisi), Dona Anyona Mokeira (Hakijamii) and Josiah Omotto (Umande Trust).

Technical Editing: Maria Katsabanis, *www.textmatters.com.au*

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Introduction

There is growing interest among water and sanitation policy makers and practitioners in the contributions of human rights approaches to efforts to extend access to water and sanitation to all. However, there is little practical information on how to achieve this. Many actors in the water and sanitation sectors are now aware of human rights-based approaches to development, but are unfamiliar with the precise content of human rights standards. Conversely, many human rights practitioners tend to be unfamiliar with the lessons learnt and the challenges involved in water and sanitation, and in some cases adopt an overly abstract approach.

The *Manual on the Right to Water and Sanitation* (the Manual) addresses this information gap. It offers insights into using human rights standards and principles as powerful tools with which to address practical difficulties such as:

- Resource constraints.
- The inability of low-income users to pay for water supply and sanitation services.
- Weak institutional capacity.
- The need to strengthen the political will to implement the right to water and sanitation.

The Manual demonstrates that implementing the right to water and sanitation is not limited to legal recognition or allocation of funds. Rather, it provides the basis for practical reforms in many areas of water supply and sanitation and in water resource management, which can help make the water and sanitation sector operate in a more pro-poor, accountable and inclusive manner.

This Manual aims to:

- Explain the key components of the right to water and sanitation and their implications for governments.
- Describe a range of practical policy measures that could be adopted by governments, in particular those in low-income countries, to achieve the right to water and sanitation in the shortest possible time.
- Illustrate examples of policy measures that have achieved particular components of the right to water and sanitation.
- Provide a checklist by which governments can assess their achievements in relation to the right to water and sanitation.
- Describe the roles of other actors, in particular, individuals and communities in contributing to the achievement of the right to water and sanitation.

The Manual **does not** aim to:

- Distinguish between legally binding obligations and good practice to implement the right to water and sanitation.¹
- Describe remedies to address non-implementation of the right.²
- Describe the technical solutions needed to ensure access to water and sanitation.³

This Manual is designed primarily for governments, including national and regional governments and local authorities, in their capacity as policy makers, budget-allocators, regulators and providers. It will also be of interest to:

- 1 This task is best carried out by applying international human rights standards to a particular case and context. These standards are described in detail in General Comment No. 15, the Sub-Commission Guidelines and the OHCHR Report. The most important portions of these documents have been quoted in the Manual. Other key sources include: Matthew C.R. Craven, *The International Covenant on Economic, Social, and Cultural Rights: a perspective on its development* (Oxford: Clarendon Press, 1995) and M. Sepúlveda, *The nature of the obligations under the International Covenant on Economic, Social and Cultural Rights*, (Antwerp: Intersentia, 2003).
- 2 This is addressed, for example, by FIAN and Bread for the World, *Identifying and Addressing Violations of the Human Right to Water*, available at: <http://www.menschen-recht-wasser.de/> (Click on 'English,' > 'Human Right to Water') and COHRE, *Resource Pack for Training: Advocacy for the Right to Water* (Geneva: COHRE, 2006), available at www.cohre.org/water.
- 3 There is extensive literature on water supply and sanitation and on water resources management. The select bibliography contains resources that are useful entry points for those whose background is not in water and sanitation.

- Civil society organisations, where they operate water and sanitation services, monitor government performance or engage in policy advocacy and advice.
- International development agencies.
- Private sector organisations dealing in water and sanitation.

The Manual should not be seen as a blueprint for implementation. Rather, it lists potential actions (and in several cases, a variety of options) that each country could consider and apply to its particular context, taking into account factors such as:

- Available financial resources.
- Level of development.
- Government capacity.
- Ability of users to pay.
- Levels of inequality in the country.
- Division of responsibilities between ministries/departments.
- Authority of local government.

The Manual is designed to be used in the following contexts:

- Institutional reforms of the water and sanitation sector.
- Budget allocations.
- Water and sanitation pricing and subsidy policies.
- Design of water resource management and water allocation systems.
- Land distribution and management policies where they relate to housing and access to water for domestic purposes.
- Development of housing standards as they relate to water and sanitation.
- Establishment of quality standards on water and sanitation.
- Training of water and sanitation sector professionals on human rights.

The Manual will assist governments to operationalise their legal obligations under international human rights treaties that they have ratified, in particular the International Covenant on Economic, Social and Cultural Rights, (ICESCR) currently ratified by 157 countries. Many governments also recognise the right to water and sanitation, or other human rights, such as the rights to health, housing and a healthy environment, which include access to water and sanitation. The Manual will also be useful as a tool to help achieve the Millennium Development Goals (MDGs) on water and sanitation. Human rights standards can help orient policy-making towards serving the needs of those without access to water and sanitation and requires participatory, inclusive and accountable processes that can facilitate significant increases in access to water and sanitation.

As a basis for defining the right to water and sanitation and its implications, the Manual relies on three documents:

- *General Comment No. 15: The Right to Water* (referred to as ‘General Comment No. 15’).
- *The Guidelines for the Realization of the Right to Drinking Water and Sanitation*, adopted in 2006 by the UN Sub-Commission on the Promotion and Protection of Human Rights (referred to as ‘Sub-Commission Guidelines’).
- The 2007 *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments* (referred to as ‘OHCHR Report’).

These documents are further described in Chapter 2: Overview of the human right to water and sanitation, and Chapter 3: Legal basis and institutional framework.

Feedback

This Manual is an early step towards understanding how best to implement the right to water and sanitation. Users of the Manual are strongly encouraged to suggest revisions and examples of good practise in implementing the right, which will be addressed in the next edition of the Manual. Comments can be sent to water@cobre.org.

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Key terms

Catchment Area: The area within which water drains to a particular water source such as a river, lake or reservoir and which may also recharge an aquifer.

Covenant/International Covenant on Economic, Social and Cultural Rights (ICESCR): A treaty that 157 countries have ratified as of October 2007, making it legally binding upon them in international law. The Covenant is the primary basis for the human right to water and sanitation and other economic, social and cultural rights.

Domestic uses of water: Water supply for each person that is sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.

General Comment No. 15: UN General Comment No. 15 on the Right to Water adopted in 2002 by the UN Committee on Economic, Social and Cultural Rights, a committee of experts elected by those States that have ratified the ICESCR. Although General Comment No. 15 is not legally binding, it is an authoritative interpretation of the provisions of the ICESCR. Available at: www.ohchr.org ('Human Rights Bodies' > 'CESCR' > 'General Comments').

Governments: All levels of government: national, regional and local. The distribution of powers and authority between these various levels varies between countries. The term 'government' in the Manual includes both the legislature (parliament/municipal council) and the executive (administrative) branch of government. The role of governments in all countries involve policy making, regulating, allocating resources and information gathering. The Manual distinguishes these roles from that of water and sanitation service provision by government, in order to address these functions more clearly. However, in many countries, there is no institutional separation between governments as regulator and as service provider.

Individuals and communities: Each person has the right to water and sanitation, irrespective of his or her legal status, and can secure these as an individual and/or as a member of a community. For the purpose of the Manual, 'community' refers to a group of people residing in a particular area having a common identity and/or shared interests.

Poverty: The term is used in the Manual to refer to the *"sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights."*⁴ It therefore is broader than income-poverty and includes lack of power and influence and social exclusion.

Sanitation: For the purposes of this Manual, access to sanitation refers to access to excreta disposal facilities which can effectively prevent human, animal and insect contact with excreta, and which ensure privacy and protect dignity. Such facilities may include a toilet connected to a sewer or septic tank system, a pour-flush latrine, a simple or ventilated improved pit latrine or similar facility. Depending on the type of facilities used, access to sanitation may also necessitate the provision of sewerage (or latrine exhaustion) and drainage channels to remove wastewater and excreta and to ensure its safe disposal or treatment. In order to reduce the scope of the Manual, solid waste management is not addressed.

Service Providers: This term includes utilities that operate water and sewerage networks, the vast majority of which are operated by national, regional or local government departments or by publicly owned companies. The term also includes small-scale water and sanitation services (such as wells, standpipes or public toilets) that entrepreneurs, civil society organisations or community organisations normally operate. It also includes government departments that provide information and assistance to small-scale providers and households on sanitation and hygiene.

⁴ UN Committee on Economic, Social and Cultural Rights, *Poverty and the International Covenant on Economic, Social and Cultural Rights*, (2001), UN Doc. E/C.12/2001/10, para. 8.

States: General Comment No. 15 refers to ‘States parties’. This term refers to countries whose parliaments have ratified the ICESCR, thus legally binding themselves to its provisions under international law for all their government bodies. Other instruments such as the Sub-Commission Guidelines are addressed to ‘States’ and refer to a variety of international human rights treaties and declarations (*See* Chapter 3: Legal basis and institutional framework).

Sub-Commission Guidelines: The Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation were adopted in 2006 by the UN Sub-Commission on the Promotion and Protection of Human Rights, an expert body that advises the UN Human Rights Council. These Guidelines do not legally define the right to water and sanitation, but rather provide guidance for its implementation. Available at: www.ohchr.org (‘Your Human Rights’ > ‘Human Rights Issues’ > ‘Stakeholder views’ below the Water heading).

Toilet: This refers to any facility for the disposal of human excreta including latrines, whether or not connected to a sewer system.

Water point: This is a generic term used to describe any point of access to water for domestic uses. This includes a household connection, stand-pipe, well, borehole, spring, rainwater harvesting unit, water kiosk or other point of transaction with a water vendor. The term is used to avoid any bias or confusion regarding certain types of access to water.

WHO Quality Guidelines: These refer to the WHO Guidelines for drinking-water quality, which provide guidance on good practices for ensuring that drinking water is adequate for human health. Available at: http://www.who.int/water_sanitation_health.

Vulnerable and marginalised groups: Vulnerable groups are those, such as children, who require special attention due to their physical conditions. Marginalised groups are those, such as those living in informal settlements, which require special attention due to their traditional and/or current exclusion from political power and resources. *See* Chapter 5: Non-discrimination and attention to vulnerable and marginalised groups, Box 5.2 for a wider definition.

Abbreviations and acronyms

| | |
|------------|--|
| CEDAW | Convention on the Elimination of all forms of Discrimination Against Women |
| CESCR | United Nations Committee on Economic Social and Cultural Rights |
| CRC | Convention on the Rights of the Child |
| CSO | Civil Society Organisation |
| GDP | Gross Domestic Product |
| GNP | Gross National Product |
| HDR | UNDP Human Development Report |
| HRBA | Human Rights Based Approach |
| IBT | Increasing Block Tariff |
| ICESCR | International Covenant on Economic Social and Cultural Rights |
| IWRM | Integrated Water Resource Management |
| JMP | WHO and UNICEF Joint Monitoring Programme |
| MDG | Millennium Development Goal |
| NGO | Non-Governmental Organisation |
| OHCHR | United Nations Office of the High Commissioner for Human Rights |
| UDHR | Universal Declaration of Human Rights |
| UNDP | United Nations Development Programme |
| UNICEF | United Nations Children's Fund |
| UN-HABITAT | United Nations Human Settlements Programme |
| WHO | World Health Organization |
| WSSD | World Summit on Sustainable Development |

Executive summary

Water is essential to the well-being of humankind, vital for economic development, and a basic requirement for the healthy functioning of all the world's ecosystems. Clean water, together with hygienic sanitation, is necessary to sustain human life and to ensure good health and human dignity. Yet more than 1 billion people do not have access to a safe water source and more than 2.6 billion people do not have adequate sanitation. The right to water and sanitation is a crucial aspect of the struggle to improve this situation.

Part I. FOUNDATIONS

Part I of the Manual outlines the foundations of the right to water and sanitation, discussing the challenge of lack of access to water and sanitation; describing the right to water and sanitation and how it may assist in meeting this challenge; and the legal basis and institutional framework that underpin and help implement the right.

Chapter 1: The water and sanitation challenge

Over 1.1 billion individuals lack access to a basic supply of water from a clean source likely to be safe and over 2.6 billion persons lack access to adequate sanitation facilities, a primary cause of water contamination and diseases linked to water. As these figures do not take into account a number of obstacles such as the inability to pay for access, the true figure for lack of access is much higher.

There is sufficient clean freshwater in the world for everyone's essential personal and domestic needs. However, lack of distribution networks and working systems to extract groundwater or harvest rainwater; exclusion from these services or facilities; inequitable allocation of water resources; and pollution limit people's access to sufficient clean water. In some cases excessive extraction and contamination of groundwater limit domestic use and threaten long-term use.

In rural areas, many people collect water of dubious quality from unprotected wells or surface water sources, often at a great distance from their homes, deterring them from collecting sufficient quantities. Toilets are often seen as unnecessary or unaffordable. In urban areas, low-income groups - particularly those living in informal settlements - often lack access to adequate water supply and sanitation. Piped water supplies and sewers seldom cover informal areas, which means that people living there access water from a variety of generally inadequate water supply options, such as wells built close to latrines or from small-scale water providers, such as door-to-door water vendors, whose water supplies may not be of good quality.

Sanitation in most countries is severely neglected by both governments and households. The number of toilets per inhabitant is generally inadequate, with no guarantee that they are hygienic to use. Because of the lack of sanitation at a household level (or, in many cases, at any level), many people will use plastic bags, streets or other unhygienic places for defecation.

The lack of access to water and sanitation has a severe effect on human health, exacerbates poverty and undermines economic development. It is estimated that at any one time nearly half the population of developing countries is suffering from health problems linked to inadequate water and sanitation. Approximately 4 billion cases of diarrhoea each year cause 2.2 million deaths, mostly among children under five – about 15 percent of all deaths of children under the age of five in developing countries. Lack of access to water and sanitation undermines economic and social development, due to the costs of disease, the unequal burden on women and children and the high costs of accessing water (in terms of time and money) that reduce people's ability to secure other essential goods. Water shortages and unreliable access to water can reduce crop production and livestock health and can undermine the viability of businesses run by poor women and men, including home-based activities. In addition, without sufficient water, the ecosystem, for example the proper growth of trees and other flora necessary to prevent soil erosion, cannot be supported.

The current water and sanitation crisis is caused by issues related to poverty, inequality and unequal power relationships. Water and sanitation policies and programmes all too often exclude marginalised groups and areas such as informal settlements and arid areas. Nationally and internationally, the allocation of resources to

water and sanitation is insufficient. The lack of access is exacerbated by a challenging social and environment context: accelerating urbanisation, increasing pollution and depletion of water resources and climate change. In addition, institutional changes, such as shifts in land ownership, decentralisation and delegation of responsibilities for public services are in some circumstances reducing the accessibility of water and sanitation.

Chapter 2: Overview of the human right to water and sanitation

This chapter describes the contents of the human right to water and sanitation, its contributions and its limitations. The General Comment No. 15 and the Sub-Commission Guidelines (*see* Key terms) taken together indicate that the right comprises the following:

Sufficient water: Water supply for each person that is sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. (*See* also Chapter 7: Water availability, allocation and sustainability.)

Clean water: Safe water that in particular, is free from hazardous substances that could endanger human health, and whose colour, odour and taste are acceptable to users. (*See* also Chapter 8: Water quality and hygiene.)

Accessible water and sanitation: Water and sanitation services and facilities are accessible within, or in the immediate vicinity, of each household, educational institution and workplace. Sanitation is safe, adequate and conducive to the protection of public health and the environment. (*See* also Chapter 9: Physical accessibility.)

Affordable water and sanitation: Water and sanitation can be secured without reducing any person's capacity to acquire other essential goods and services, including food, housing, health services and education. (*See* also Chapter 10: Affordability and financing.)

Non-discrimination and inclusion of vulnerable and marginalised groups: There is no distinction based on grounds such as race or colour which leads to unequal access to water and sanitation. Non-discrimination also includes proactive measures to ensure that the particular needs of vulnerable or marginalised groups are met (*See* also Chapter 5: Non-discrimination and attention to vulnerable and marginalised groups.)

Access to information and participation: All people have the right to participate in decision-making processes that may affect their rights. All people are given full and equal access to information concerning water, sanitation and the environment. (*See* also Chapter 6: Participation and access to information.)

Accountability: Persons or groups denied their right to water and sanitation have access to effective judicial or other appropriate remedies, for example courts, national ombudspersons or human right commissions. (*See* also Chapter 4: Roles of key actors, Section 4.4.)

International human rights standards indicate that available resources need to be utilised effectively in order to realise the right progressively within the shortest possible timeframe and that certain steps require immediate implementation, such as the obligation to take steps to realise the right and to avoid discrimination.

When implemented, the right to water and sanitation can make the following contributions:

- **Improved accountability:** It establishes access to water and sanitation as a legal entitlement, which provides a basis for individuals and groups to hold governments and other actors to account. It also provides a basis for actors within government to hold each other accountable to the objective of realising the right.
- **Focus on vulnerable and marginalised groups:** Focuses on the need to prioritise access to basic water and sanitation services to all, including those who are normally excluded.
- **Increased participation in decision-making:** Provides for genuine participation of communities in decision-making on water and sanitation.
- **Individual and community empowerment:** Strengthens individual and community struggles for access to basic services.

It is important, however, to have realistic expectations and to take account of the limitations of the right to water and sanitation:

- The right alone is not going to solve the water and sanitation crisis: The right needs to be used in conjunction with other development strategies.
- Limited justiciability: Not all judiciaries are willing to decide cases involving social rights. However, recourse to the courts is only one of several means to implement the right.
- Misunderstandings of the right: The right is often not well understood, and thus requires significant levels of training and education.

MISCONCEPTIONS REGARDING THE RIGHT TO WATER AND SANITATION

| Misconception | Clarification |
|--|--|
| The right entitles people to free water | Water and sanitation services need to be affordable for all. People are expected to contribute financially or otherwise to the extent that they can do so. |
| The right allows for unlimited use of water | The right entitles everyone to sufficient water for personal and domestic uses and is to be realised in a sustainable manner for present and future generations. |
| The right entitles everyone to a household connection | Water and sanitation facilities need to be within, or in the immediate vicinity of the household, and can comprise facilities such as wells and pit latrines. |
| The right to water entitles people to water resources in other countries. | People cannot claim water from other countries. However, international customary law on transboundary watercourses stipulates that such watercourses should be shared in an equitable and reasonable manner, with priority given to vital human needs. |
| A country is in violation of the right if not all its people have access to water and sanitation | The right requires that a State take steps to the maximum of available resources to progressively realise the right. |

Chapter 3: Legal basis and institutional framework for the right to water and sanitation

Chapter 3 describes the legal basis for the right to water and sanitation in international law, and its institutional framework. Human rights, and their underlying values of dignity, freedom and equality, emerged from a variety of sources (such as religious convictions, and concerns for social justice) and are rooted in historic global struggles, including the struggles for freedom, democracy and independence. Treating human beings with dignity and equality – universally shared values – requires that all people have access to water and sanitation. International human rights treaties, negotiated by State officials representing all cultures and civilizations, provide an authoritative definition of human rights and a tool to implement them.

The right to water and sanitation is implicit in the right to an adequate standard of living included in the International Covenant on Economic, Social and Cultural Rights, a treaty ratified by 157 States (as of October 2007). In 1994, at the International Cairo Conference on Population and Development, States stated that the right to an adequate standard of living included adequate water and sanitation. Entitlements to water and sanitation are also found in widely ratified treaties such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). A number of international political declarations by the Non-Aligned Movement, the Council of Europe and the UN General Assembly recognise the right to water.

Regional human rights treaties in Africa, the Americas and Europe explicitly or implicitly provide for the right to water and sanitation. National recognition of the right to water and sanitation is growing. At least twenty-four countries now recognise the right to water in their constitutions and laws (in four cases, these are in draft legislation). Six of these recognise the right to water and sanitation. Many countries recognise other human rights, such as the right to health, non-discrimination, life and to a healthy environment, which require provision of access to safe water and sanitation.

Chapter 3 surveys the institutional framework for implementing the right, of which national implementation is the first step. The United Nations and regional human rights systems can play a significant role in monitoring and supporting national implementation of human rights. At the political level, the United Nations Human Rights Council, made up of States elected by the UN General Assembly, along with its Advisory Committee and Special Procedures (made of independent experts) can help monitor State performance and promote development of international norms on human rights. The United Nations treaty monitoring bodies, made up of independent experts require reports of State performance of treaties at regular intervals, and give feedback on this performance, taking into account civil society input. In certain cases, the Human Rights Council and certain treaty bodies can hear individual and group complaints about alleged violations of the treaties. These political and expert monitoring functions are mirrored by mechanisms established under the auspices of the African Union (AU), the Organization of American States (OAS) and the Council of Europe (COE) to monitor performance of the regional human rights treaties. The regional systems also have established Courts that can hear complaints regarding some components of the right.

Part II. FRAMEWORK FOR IMPLEMENTATION

Part II expands on the **framework for implementation** by discussing systemic issues relevant to all aspects of policies and regulations relevant to the right.

Chapter 4: Roles of key actors

This chapter addresses the responsibilities of the various different actors, particularly governments but also other actors such as communities and civil society organisations. (*See Key terms.*)

National, regional and local governments (both the executive/administrative branch of government and legislative branches/municipal councils) are the key actors in setting up the conditions to ensure the right to water and sanitation services. Achieving this objective involves actions by governments at national, regional and local levels in the roles of policy maker and resources allocator and as a regulator of service provision. The Manual distinguishes these roles from that of water and sanitation service provision by governments, in order to address these functions more clearly. In many countries however, there is no institutional separation between governments as regulators and as service providers. These roles can be further described as follows:

4.1 Government as policy maker, allocator of resources, and regulator

- 4.1.1 Prioritising water and sanitation services within their budgeting and political processes.
- 4.1.2 Revising legislation and policies in order to recognise and implement the right to water and sanitation.
- 4.1.3 Developing a plan of action to implement the right, including developing standards and targets, and clarifying the division of responsibilities between stakeholders.
- 4.1.4 Ensuring co-ordination between relevant ministries and departments (including water, health, environment, finance, agriculture, land, housing, industry, energy), including between central, regional and local government.
- 4.1.5 Ensuring that all levels of government responsible for water and sanitation services have sufficient resources, authority and capacity to discharge these duties and ensure extension of service to those without access.
- 4.1.6 Protecting and promoting the right of individuals and groups to access information and participate in decision-making relating to water and sanitation.
- 4.1.7 Collecting and disseminating accurate information on access to water and sanitation services, including disaggregated information on levels of access by vulnerable and marginalised groups.
- 4.1.8 Minimising contamination of water resources.

- 4.1.9 Paying charges incurred for water and sanitation services.
- 4.1.10 Integrating the right to water and sanitation into their international co-operation processes relating to development, finance, trade, investment and environment.
- 4.1.11 Introducing measures to prevent corruption in government bodies.
- 4.1.12 Ensuring that water and sanitation service providers (public and private) comply with service delivery standards and that there is independent monitoring, there are penalties for non-compliance and genuine participation in decision-making by users.

Points 4.1.1-4.1.12 above relate to the overall framework for the role of government in policy making, regulation and resource allocation relating to the right to water and sanitation. Specific points pertaining to areas such as water resource management, water supply and sanitation services, land use policy, water quality and foreign policy form the basis of Chapters 5-11.

4.2 Government as service provider

Governments, in most cases local authorities or public companies, operate the vast majority of water and sanitation utility services, although some services are contracted out to private operators. In many developing countries, small-scale facilities such as kiosks, standpipes, wells, and public toilets operated by entrepreneurs and community groups are responsible for a significant proportion of service provision. Many countries consider basic sanitation and hygiene promotion a responsibility of public health services, although some responsibilities are borne by water and education agencies. In addition to complying with relevant legislation and policies, water, sanitation and health service providers can contribute by:

- 4.2.1 In the case of utilities, extending water and sewerage services to schools, health centres and other public centres where these are needed (with separate facilities for males and females) and to households, including those occupied by marginalised and vulnerable groups.
- 4.2.2 Improving affordability of water and sanitation services through increased efficiency and flexibility of services.
- 4.2.3 For water, sanitation and health agencies, carrying out sanitation and hygiene promotion and training and providing financial assistance to small-scale providers and households relying on small-scale provision.
- 4.2.4 Ensuring environmentally sound disposal of waste.

Some of the revenues necessary to carry out these duties can be raised through tariffs, including through cross-subsidies between high- and low-income users, or between industry and domestic use. However, it is likely that public finances will be required to ensure that providers meet the duties set out above and still remain financially solvent. Such public finances can be provided directly to the user or through the provider.

4.3 Private service providers

Private service providers include utilities managed by corporations and small-scale services managed by private entrepreneurs, civil society organisations and by communities of users. They have the following roles:

- 4.3.1 In the case of private corporations managing utilities, carrying out the roles of public service providers, as listed in section 4.2.
- 4.3.2 In the case of small-scale providers (private, civil society or community-based providers), providing services of adequate quality at an affordable cost.

4.4 Independent public monitoring bodies

An effective complaints mechanism is a key component of the right to water and sanitation. It is a useful tool for ensuring service delivery standards and targets are effectively implemented. A regulator may provide such mechanisms. However, whether or not a regulator has established such a mechanism, accountability can be enhanced if an independent branch of government – a human rights commission, an ombudsperson institution or the judiciary – monitors the performance of public institutions. Independent public monitoring bodies can support implementation of the right by:

- 4.4.1 Reviewing legislation, policy and programmes to ensure that they are consistent with the right to water and sanitation.
- 4.4.2 Investigating complaints by users and ensuring adequate redress for genuine complaints.
- 4.4.3 Monitoring compliance with national legislation on water and sanitation by government bodies and private parties.

Each of these types of bodies has distinct roles. Human rights commissions and ombudsperson institutions can carry out detailed and long-term reviews of government policy and can respond to complaints quickly, flexibly and cheaply. The judiciary operates in a slower fashion, and can generally only examine a particular factual scenario rather than a long-term series of actions. However, the judiciary can require public institutions to revise their programmes and actions and can impose criminal and civil penalties on public officials and private persons.

4.5 Individuals and communities

Each person has the right to water and sanitation, irrespective of his or her legal status, and can secure these as an individual and/or as a member of a community. For the purpose of the Manual, a ‘community’ refers to a group of people residing in a particular area who identify themselves as a community. Communities (including community-based organisations and residents’ associations) have the knowledge of their environment, their needs and the motivation to improve their situation. In many situations, predominantly in rural areas but also in urban areas in developing countries, communities manage small-scale water and sanitation services. Individuals and communities can play the following roles:

- 4.5.1 Identifying the needs and priorities of all members of the community, monitoring service provision, proposing appropriate water and sanitation policies to government bodies and participating in consideration of such policies.
- 4.5.2 Obtaining information about their rights under national and international law, disseminating it to their communities and advocating for implementation of their rights in partnership with other communities.
- 4.5.3 Contributing to the operational and financial sustainability of water and sanitation facilities and services through financial payment (with government assistance for the poorest to pay bills), or provision of labour where feasible (for example, in some rural areas and informal settlements). Households also have responsibility for constructing household toilets.
- 4.5.4 Avoiding contamination of water resources, using water and sanitation facilities responsibly and spreading knowledge within the community of good hygiene practices.
- 4.5.5 Assisting vulnerable and marginalised individuals and households within the community to secure access to water and sanitation.

4.6 Civil society organisations

Civil society organisations (CSOs) include non-governmental development and advocacy organisations, social movements, faith-based organisations, research and academic institutions, the media, professional bodies and other similar organisations. Community-based organisations are part of ‘civil society.’ However, the Manual addresses their roles under that of ‘communities’ above. CSOs have a variety of roles to play in implementing and/or promoting the right to water and sanitation, which can include, depending on their area of specialisation:

- 4.6.1 Supporting the work of governments and communities by providing information, facilitating community organisation and assisting communities with their advocacy processes.
- 4.6.2 Building community and government capacity and knowledge on water and sanitation issues, including on rights and responsibilities, management and technical information.
- 4.6.3 Striving to ensure that their activities are coordinated and that their work supports and does not duplicate work done by government, other civil society organisations or international organisations.
- 4.6.4 Monitoring government actions on water and sanitation and that of third parties.
- 4.6.5 Educating students and the broader public about the right to water and sanitation.
- 4.6.6 Carrying out research on ways to implement the right to water and sanitation, and sharing research outcomes with all stakeholders.
- 4.6.7 For international civil society organisations, supporting the development and growth of local and national civil society organisations and community-based organisations.

4.7 Industrial and agricultural water users

Industrial and agricultural bodies (including both private corporations and government-owned industries) are often major consumers of water and therefore have a social and environmental responsibility to ensure that their use of water does not curtail the essential domestic uses of water, either through over-abstraction or pollution of water sources. In addition to complying with national legislation, they have the following roles:

- 4.7.1 Minimising water use and promoting effective water conservation methods.
- 4.7.2 Minimising contamination of water resources.

4.8 International organisations

International organisations, including UN agencies, the World Bank, the International Monetary Fund and other such organisations have the following roles in supporting the implementation of the right to water and sanitation by:

- 4.8.1 Providing financial and/or technical assistance to governments, civil society organisations and communities.
- 4.8.2 Reviewing and revising their co-operation policies, operating procedures and policy advice to ensure that these are consistent with the right to water and sanitation.
- 4.8.3 Ensuring co-ordination and coherence as far as possible, in relation to government activities and amongst themselves.

Chapter 5: Non-discrimination and attention to vulnerable and marginalised groups

A crucial aspect of the human rights framework is that everybody is ensured access to water and sanitation, including the most vulnerable or marginalised groups, without discrimination. Non-discrimination means that there is no distinction, exclusion, restriction or preference, which is based on any ground (e.g. race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) that differentiates without legitimate reason. Non-discrimination includes more than avoidance of active discrimination against particular groups. It also includes proactive measures to ensure that government policies and programmes do not exclude particular groups by failing to address the particular needs of vulnerable or marginalised groups.

Vulnerable groups are those, such as children, that require special attention due to their developmental or physical limitations. Marginalised groups are those, for example women, that require special attention due to their traditional and/or current exclusion from political power.

In Chapter 5, the Manual outlines how governments can act to prevent discrimination and exclusion of vulnerable and marginalised groups. This can be achieved by:

- 5.1 Ensuring that a comprehensive anti-discrimination law is in place, with an institution to investigate and provide remedies for discrimination against individuals or groups.
- 5.2 Revising existing water and sanitation related laws, regulations, policies and operating procedures to ensure that they refrain from discrimination.
- 5.3 Reviewing public water and sanitation budgets to ensure that they address the needs of vulnerable and marginalised groups, including those living in informal settlements and arid and semi-arid areas.
- 5.4 Collecting data on access to water and sanitation that takes into account ethnicity, age, disability, gender, religion, income and other related grounds so as to identify discrepancies and set priorities for government assistance.
- 5.5 Establishing requirements for water and sanitation institutions to ensure that representatives of vulnerable and marginalised groups effectively participate and have a genuine influence on decision-making processes.
- 5.6 Ensuring that the needs of institutions utilised by vulnerable and marginalised groups are adequately addressed in policies relating to issues such as priorities for extension of services, tariffs and subsidy plans. Such institutions include schools, hospitals, prisons and refugee camps.
- 5.7 Reviewing all laws, policies and programmes to ensure that they adequately address the specific requirements of vulnerable and marginalised groups.

Groups that are potentially vulnerable or marginalised include:

- Women.
- Children.
- Inhabitants of rural and urban deprived areas.
- Indigenous peoples.
- Nomadic and traveller communities.
- Refugees, asylum seekers, internally displaced persons and returnees.
- Older persons, people with disabilities and people with serious or chronic illnesses.
- Victims of natural disasters and persons living in disaster-prone areas.
- People living in water scarce-regions (arid and semi-arid areas and some small islands) and persons under custody.

All people have the right to water and sanitation, regardless of whether or not they are a member of a vulnerable or marginalised group. Paying attention to the needs of vulnerable and marginalised groups is a means of ensuring that all persons have the right to water and sanitation.

Chapter 6: Participation and access to information

The right to water and sanitation, in common with all human rights, is linked to the right to participate in decision-making. Thus, it provides for all persons to be given a genuine opportunity to influence and enhance policy formulation and improvements in the water and sanitation sector.

Poor people and members of vulnerable or marginalised groups are frequently excluded from decision-making regarding water and sanitation, and hence their needs are seldom prioritised. This results in their inequitable access to water and sanitation facilities and services. Information regarding how to access water and sanitation services is often not publicly available in an easily understood format. Where services are provided, the lack of adequate participation can lead to inappropriate technical solutions, prohibitive financial costs or unrealistic payment options.

Chapter 6 considers how governments can act to ensure information is available and how individuals and groups can participate in their service provision, including through participating in policy formulation, setting of priorities for investments, development of plans and strategies, implementation of projects and regulation and monitoring of services. This can be achieved by:

- 6.1 Introducing mechanisms to facilitate public access to water and sanitation sector information for policy and decision-making, including use of communications media used by the poor (such as radio).
- 6.2 Ensuring public access to essential water quality and environmental health data.
- 6.3 Carrying out participatory processes in the development of water and sanitation policies and plans that ensure the genuine participation of representatives of vulnerable and marginalised groups (including by assisting them to acquire necessary information and expertise), aim to mitigate power imbalances between stakeholders and are not unduly time consuming.
- 6.4 Making provision for and enabling community development and management of small-scale water and sanitation facilities and services in appropriate circumstances.
- 6.5 Ensuring that users are able to participate in the regulation and monitoring of service providers.

It is important that plans to implement participatory processes take account of the financial and administrative resources that are required to fulfil them. Allocating resources to participatory processes is a necessary investment in ensuring effective development.

Part III. POLICIES FOR IMPLEMENTATION

Part III of the Manual discusses the key aspects of **implementation** necessary for the realisation of the right to water and sanitation, particularly water availability, water quality, physical accessibility of water and sanitation, affordability issues and the role of international co-operation.

Chapter 7: Water availability, allocation and sustainability

This chapter discusses steps to ensure the availability of sufficient and reliable sources of water for personal and domestic uses. (The establishment of infrastructure and facilities for accessing water and sanitation are dealt with in Chapter 9: Physical accessibility.) Ensuring availability of water in order to meet the right to water and sanitation requires greater prioritisation of essential domestic uses over other uses, significant improvements in water resource management, equitable allocation of water resources and assistance to vulnerable and marginalised communities.

Governments can act to ensure availability of water by:

- 7.1 Setting a standard for a minimum quantity of water sufficient for human dignity, life and health.
- 7.2 Prioritising the allocation of water resources for essential domestic uses over agricultural and industrial uses, and exempting water use for essential domestic and survival needs from licensing requirements.
- 7.3 Improving the sustainability of water resources, including by: regulating water abstraction, price incentives to reduce non-essential use, education of users on conservation of water, disseminating conservation techniques, re-use of water and restrictions on non-essential uses in times of scarcity.
- 7.4 Protecting water catchment areas by ensuring sustainable agricultural practices.
- 7.5 Ensuring sufficient and equal access to traditional sources of water, including by: protecting traditional sources of water against appropriation by any one group or individual, mediating conflict, ensuring that land ownership laws and practices do not interfere with access to water and respecting customary systems of water access, while ensuring that they do not impede equal access.
- 7.6 Assisting communities establish water capture and storage facilities, especially in water-scarce areas.
- 7.7 Ensuring that water rationing is carried out in an equitable manner, is widely publicised in advance and that essential needs for all are met.
- 7.8 Improving the efficiency of piped water delivery, including by improving information on existing systems, improving management processes, improving billing processes, fixing leakages (where feasible) and formalising illegal connections.

While it is important to prioritise the use of water for essential personal and domestic uses over agricultural and industrial uses, the next priority is to allocate water for essential agricultural uses, particularly subsistence agriculture and animal husbandry, as well as ensuring maintenance of ecological flows.

Chapter 8: Water quality and hygiene

Chapter 8 discusses steps to ensure that all users access safe water that, in particular, is free from hazardous substances that could endanger human health, and whose colour, odour and taste are acceptable to users. It also discusses the provision of information on hygiene practices, in order to ensure the prevention of disease linked to inadequately-stored water and inadequate sanitation.

Governments can act to ensure good water quality and hygiene practices by:

- 8.1 Formulating water quality standards designed to address the needs of all groups, as identified through participatory processes.
- 8.2 Formulating short- and medium-term targets to eliminate the pollutants with the most significant health effects, including on vulnerable groups.
- 8.3 Establishing regulations and mechanisms to control pollution of water resources, including provision of information, incentives for responsible practices and penalties for pollution.
- 8.4 Establishing regulations on water quality for service providers.

- 8.5 Putting in place mechanisms to monitor quality of water supply and ensure safety.
- 8.6 Raising hygiene awareness, among households and small-scale providers, including promoting the safe handling of water for domestic uses and promoting sanitation.
- 8.7 Providing information on, and facilitating monitoring of water quality, including considering the impact of pollution and how to alleviate this.

Chapter 9: Physical accessibility of water and sanitation

Chapter 9 discusses steps to ensure that water points and toilets are accessible within, or in the immediate vicinity, of each household, educational institution, health institution and workplace. It discusses how the concept of progressive realisation allows for the establishment of short-term, medium-term and long-term targets where resources are limited. A short-term target towards the full realisation of the right might include collection time for water of less than 30 minutes and access to a toilet within 50 metres. A final target would constitute water piped into the home and a toilet accessible in the home, connected to a sewer.

The chapter discusses human rights standards related to adequacy of water and sanitation. These standards state that services and facilities should be of sufficient quality, culturally acceptable, take into account gender and privacy requirements and be in a location that ensures physical security. Human rights standards also state that sanitation should be adequate, safe and conducive to the protection of public health and the environment. The latter criterion requires, first, that wastewater and excreta are transported away from human settlements and treated or disposed of in a manner that avoids threats to public health and damage to ecosystems and, second, that where pit latrines are used, they are constructed at a suitable distance from water sources and in a manner that prevents leeching into underground water.

Access to sanitation may need to be provided progressively in situations of limited resources (and limited space in densely populated urban areas). This might comprise: access to a shared toilet in the short-term, access to a toilet shared by up to 20 people (segregated by sex) in the medium-term and access to a household toilet in the long term. Where reliance is placed on shared toilets, it is necessary to take further steps to ensure physical security, particularly for women and girls. Governments can ensure access to sanitation through promotion of sanitation and hygiene, training, providing facilities and services for safe disposal of waste, and constructing public toilets where these are needed (normally in urban areas). Households play a critical role in constructing, maintaining and using household or community toilets.

Governments can act to ensure physical accessibility of water and sanitation services by:

- 9.1 Establishing national or regional targets to reduce distance to water points and toilets, including short and medium term targets and establishing standards on adequacy of water and sanitation facilities.
- 9.2 Establishing specific access targets per locality in line with national or regional targets and ensuring their implementation through monitoring, regulation and support to utilities and/or provision of funding and training for the establishment of small-scale facilities.
- 9.3 Facilitating small-scale provision by communities and entrepreneurs where adequate public services are not provided.
- 9.4 Addressing security concerns when selecting locations for water supply and sanitation facilities, illuminating such facilities at night and prioritising assistance for construction of household toilets in neighbourhoods with high levels of crime.
- 9.5 Ensuring that no individual or group currently accessing water and sanitation is subsequently deprived of access, for example, through forced evictions, demands for bribes or denial of access for partisan or discriminatory reasons.
- 9.6 Providing services to informal settlements and ensuring security of tenure.
- 9.7 Ensuring that users are given relevant information and can participate in decision making on the design and maintenance of public water and sanitation services and on land use relevant to these services.
- 9.8 Dedicating an adequate proportion of public resources and capacity to the maintenance and improvement water and sanitation facilities.
- 9.9 Requiring landlords to ensure that tenants have access to adequate water and sanitation services and requiring employers and operators of health and educational institutions to ensure accessible water and sanitation facilities at their institutions.
- 9.10 Ensuring that response systems are in place for the provision of basic water and sanitation services in emergencies.

Chapter 10: Affordability and financing of water and sanitation

Affordability of water and sanitation services is crucial to accessibility, but is all too often ignored, both in project implementation and in data collection on access to water and sanitation. Unless water and sanitation services are affordable to all, access to an adequate quantity of safe water and to safe toilets is threatened. In addition, human rights standards stipulate that the direct and indirect costs of securing water and sanitation should not reduce any person's capacity to acquire other essential goods and services, including food, housing, health services and education. This implies that 'ability to pay' will need to be considered in addition to 'willingness to pay' in designing water and sanitation tariffs.

Financing the extension of services and subsidies to ensure their affordability is critical for the realisation of the right to water and sanitation in developing countries. The chapter considers ways through which such finances from current water and sanitation budgets, national budgets and international assistance can be generated or allocated in a manner that targets the poor. Payment for services is necessary to ensure the financial sustainability of the system as well as to ensure incentives for sustainable use. However, it is necessary to establish mechanisms through which costs for essential levels of water and sanitation can be subsidised for those who are unable to pay.

The chapter assesses potential subsidy mechanisms for both network and small-scale provision and the challenge of identifying and targeting subsidies on those unable to pay. In relation to consumption subsidies, it compares the advantages and disadvantages of three forms of subsidy systems for water and sewerage (which can be utilised concurrently):

- Income supplements and subsidies based on income, geographic location or form of access.
- Increasing block tariffs.
- Free provision of the essential amount of water and of sewerage.

Governments can act to ensure affordability of water and sanitation services by:

- 10.1 Setting standards for water and sanitation pricing according to ability to pay in order to ensure that payment for water, including indirect costs, does not reduce a person's ability to buy other essential goods and services.
- 10.2 Designing, monitoring and controlling charges by water and sanitation utilities and small-scale service providers to households, schools, health institutions and workplaces.
- 10.3 Prioritising available public investment towards the construction and maintenance of water and sanitation infrastructure and facilities and subsidising these costs for low-income users.
- 10.4 Reducing costs of securing access by ensuring that a broad range of levels of services and facilities are available and ensuring the potential for progressive upgrading.
- 10.5 Establishing flexible payment terms, such as phased connection charges, removal of requirements for deposits, grace periods and contributions in kind, based on participation of users, in particular low-income users and vulnerable and marginalised groups.
- 10.6 Providing subsidies for water and sanitation services that target the lowest income, vulnerable and marginalised persons.
- 10.7 Increasing public financing for subsidy programmes for the poor through measures such as: cross-subsidies between higher and lower income groups, reducing high-cost interventions, eliminating subsidies that primarily benefit upper and middle income groups, ring-fencing of water and sanitation revenues, improving efficiency, increasing national budgetary allocations and better targeted and increased international assistance.
- 10.8 Reviewing laws, regulations and taxes that may raise costs beyond affordable levels, for example taxation of equipment required for service provision, in particular small-scale provision.
- 10.9 Integrating ability to pay considerations into disconnection policies and ensuring that where disconnections are carried out, they do not lead to denial of the minimum essential amount of water.

Chapter 11: International co-operation

The global crisis in access to water and sanitation is one of the central issues that the international community as a whole has pledged to address through the UN Millennium Declaration. Specifically, the Declaration undertook to halve, between 2000 and 2015, the proportion of people who are unable to reach or to afford safe drinking water. At the 2002 Johannesburg World Summit on Sustainable Development, all governments further committed to halving the proportion of people without access to basic sanitation by 2015.

However, providing all those unserved with access to basic water and sanitation services poses considerable financial and technical challenges, particularly as the vast majority of people that lack access to these essential services live in developing countries, many of which, in particular the least developed countries, do not have sufficient financial resources and administrative capacity to provide for the right to water and sanitation.

International co-operation is often seen as relevant only in regard to development assistance. However, the right to water and sanitation is dependant on a number of international dynamics that are beyond the control of any one government. These dynamics include international trade and investment, economic sanctions, pollution of shared resources such as the atmosphere and transboundary resources, the use of transboundary resources and international armed conflict. The full realisation of the right to water and sanitation globally is therefore not possible without international co-operation in these areas.

Governments can promote the right to water and sanitation in other countries by:

- 11.1. Increasing overall international development assistance for water and sanitation services that would benefit the poorest communities, and improving its predictability and effectiveness.
- 11.2. Focusing development co-operation on programmes and projects that particularly target low-income areas and groups.
- 11.3. Ensuring that their development co-operation does not lead to impediments for any person's access to water and sanitation, or other human rights.
- 11.4. Co-operating with countries sharing a watercourse to ensure that vital human needs are prioritised in water allocation and that basin-level action is taken to preserve water quality.
- 11.5. Co-operating with other countries to ensure that multilateral and bilateral trade and investment agreements are designed and applied in a manner that supports, and does not interfere with, the realisation of the right to water and sanitation.
- 11.6. Where trade or financial sanctions are imposed by any country on another, ensuring that these sanctions do not impede access to water and sanitation.
- 11.7. Ensuring that water and sanitation facilities are not attacked in times of armed conflict and that reasonable precautions are taken to prevent any damage.
- 11.8. Establishing limitations on the level of greenhouse gas emissions that take into account their impact on water availability and displacement, and providing international assistance to groups facing drought and displacement due to climate change.



PART I

FOUNDATIONS

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Chapter 1: The water and sanitation challenge

Water is essential to the well-being of humankind. It is vital for economic development, and is a basic requirement for the healthy functioning of the world's ecosystems. Clean water is necessary to sustain human life and, together with sanitation, is necessary to ensure good health and human dignity. Without adequate sanitation, the health effects of improved access to water are limited¹ and water quality is likely to be compromised.

1.1 Context of the water crisis

The world contains sufficient, clean freshwater for everyone's basic personal and domestic needs. Personal and domestic uses of water account for less than ten per cent of the total amount of water used in human activities,² although essential uses require a significantly lower percentage. However, water is not equally distributed, leading to insufficient access. Lack of distribution networks, working systems to extract groundwater or harvest rainwater and, in some cases, exclusion from these services or facilities, limit the extent of peoples access to sufficient water. In some cases, excessive extraction of groundwater, often for agricultural or industrial use, limits domestic use and threatens the long-term sustainability of such groundwater sources.

1 L. Fewtrell, R. Kaufmann, D. Kay, W. Enanoria, L. Haller, J. Colford, Jr, 'Water, sanitation, and hygiene interventions to reduce diarrhoea in less developed countries: a systematic review and meta-analysis', (2005) *The Lancet Infectious Diseases*, Volume 5, Issue 1, pp. 42-52.

2 UNDP, *Beyond Scarcity: Power, poverty and the global water crisis: UNDP Human Development Report 2006* (New York, 2006), p. 138. Available at <http://bdr.undp.org/bdr2006/>

Groundwater is also at increasing risk of contamination from untreated wastewater from agriculture, industry or households.

The 2006 UNDP Human Development Report stresses that issues related to poverty, inequality and unequal power relationships cause the current water and sanitation crisis.³ Over 1.1 billion individuals lack access to a basic supply of water from a clean source that is likely to be safe;⁴ of these, the majority are people living in rural areas, according to the WHO UNICEF Joint Monitoring Programme.⁵ Box 1.1 gives figures for access to water and sanitation services for different regions. The figure of 1.1 billion does not include the number of people who are unable to afford water, who face prohibitive waiting times for collecting water, who receive water at occasional intervals or have to collect water from dangerous areas (see Box 1.1).

In rural areas, many people collect water of dubious quality from unprotected wells or surface water sources, often at a great distance from their homes, deterring them from collecting sufficient quantities. This problem is significantly worse during the dry season, when the water table drops, and rivers and shallow wells dry up.

In urban areas, low-income groups, in particular those living in informal settlements, will often lack access to an adequate water supply and sanitation. Piped supplies seldom cover informal areas, meaning that people living there access water from a variety of generally inadequate water supply options, such as wells built close to latrines, water kiosks with water of dubious origin or from water vendors.

Due to a lack of adequate statistics, the number of people without access to water is often underestimated. As many of the informal settlements in urban areas are unrecognised by the local or national governments, the exact number of residents living in these settlements is often unknown, as is the status of water provision. Tenants may also be missing from the statistics where landlords do not declare them. Water can also be prohibitively expensive, so that even where water is available, people do not have access to a sufficient quantity for health and hygiene practices. As a result, there is considerable inequality in distribution of water and sanitation services in urban areas, with smaller urban centres particularly badly affected.⁶ Statistics for access to water and sanitation services in urban areas therefore tend to be uneven – as can be seen by comparing the tables in Boxes 1.1 and 1.3. Box 1.1 is taken from WHO and UNICEF statistics, while Box 1.3 is from the more urban-focused UN-HABITAT, which uses different criteria to measure access to water and sanitation in urban areas, including aspects such as affordability and whether or not a supply is constant. Further to this, while people may use safe sources of water for some of their purposes, such as for drinking, this source may be prohibitively expensive to use for all domestic uses, forcing people to use unsafe sources for washing or cooking. This is not reflected in the statistics of access to water supply.

3 Ibid., p. v.

4 Ibid., p. 5.

5 WHO and UNICEF, *Meeting the MDG drinking-water and sanitation target: the urban and rural challenge of the decade* (Geneva, New York: WHO, UNICEF, 2006). Available at <http://www.wssinfo.org>. See Box 1.1 in this Manual for a description of these terms.

6 UN-HABITAT, *Meeting Development Goals in Small Urban Centres: Water and Sanitation in the World's Cities* (Geneva, 2006) p.1.

BOX 1.1: WHO-UNICEF STATISTICS ON WATER SUPPLY AND SANITATION COVERAGE BY REGION, (2004)⁷

| Region | Percent without access to improved water | | | Percent without access to improved sanitation | | |
|----------------------------------|--|-------|-------|---|-------|-------|
| | Urban | Rural | Total | Urban | Rural | Total |
| Global | 5 | 27 | 17 | 20 | 61 | 41 |
| Developed world | 0 | 5 | 1 | 0 | 2 | 1 |
| Eurasia | 1 | 20 | 8 | 8 | 33 | 17 |
| Developing regions | 8 | 30 | 20 | 27 | 67 | 50 |
| Sub-Saharan Africa | 20 | 58 | 44 | 47 | 72 | 63 |
| Northern Africa | 4 | 14 | 9 | 9 | 38 | 23 |
| South Asia | 6 | 19 | 15 | 27 | 63 | 62 |
| Eastern Asia | 7 | 33 | 22 | 31 | 72 | 55 |
| South-Eastern Asia | 11 | 23 | 18 | 19 | 44 | 33 |
| West Asia | 3 | 21 | 19 | 4 | 51 | 16 |
| Latin American and the Caribbean | 4 | 27 | 9 | 14 | 51 | 23 |
| Oceania | 20 | 60 | 50 | 19 | 57 | 47 |

BOX 1.2: DEFINITIONS OF ACCESS IN WHO-UNICEF STATISTICS

‘Improved water sources’ refers to sources that are likely to be safe, such as household connections, boreholes or public standpipes. Sources such as rivers or ponds or vendor-provided water are assumed unsafe. A household is only determined to have access to an improved water source if the source is within 100 metres of the home. (See Chapter 7: Water availability, allocation and sustainability, Box 7.1, for the implications of this.)

‘Improved sanitation facilities’ refers to facilities that are likely to ensure privacy and hygienic use, such as a connection to a public sewer or a simple pit latrine. Sources such as public or shared latrines are assumed unsafe. (See Chapter 9: Physical accessibility, Section 9.1.2 on adequacy of facility.)

The definition of ‘improved water supply’ does not address certain aspects of the right to water and sanitation, for example, whether the cost of the water is affordable, whether the supply is continuous, how long it takes to collect water (including waiting time) and whether there are security concerns in collecting water. Therefore, the number of people with access to water short of the requirements in General Comment No. 15 (see Chapter 2: Overview of the right to water and sanitation) is certainly much higher than the number of people with access to ‘improved water supply.’

⁷ This table is drawn from WHO & UNICEF, *Meeting the MDG Drinking-Water and Sanitation Target*, see note 6, p. 28. The table in the WHO & UNICEF report also enumerates the percentage of people with piped water supply into their households. A detailed definition of improved water supply and sanitation is found at p.4 of the WHO & UNICEF report. This report provides more detailed information, including the percentage of people with household connections in each region.

BOX 1.3: ESTIMATES FOR THE PROPORTION OF PEOPLE WITHOUT ADEQUATE PROVISION (AS %) FOR WATER AND SANITATION IN URBAN AREAS

| Region | Estimated proportion of urban dwellers without adequate provision | | | |
|---------------------------------|---|------------------|------------|-----|
| | Water | | Sanitation | |
| | UN-HABITAT ⁸ | JMP ⁹ | UN-HABITAT | JMP |
| Africa | 35–50 | 16 | 50–60 | 38 |
| Asia | 35–50 | 7 | 45–60 | 28 |
| Latin America and the Caribbean | 20–30 | 4 | 25–40 | 14 |

1.2 Context of the sanitation crisis

Over 2.6 billion persons lack access to adequate sanitation facilities,¹⁰ a primary cause of water contamination and diseases linked to water. Sanitation is severely neglected in most countries, by governments and by households. In many countries, the number of toilets per inhabitant is generally inadequate, with no guarantee that they are hygienic to use. Because of the lack of sanitation at a household level (or, in many cases, at any level), many people use plastic bags, streets or other places for defecation that do not provide adequate privacy, dignity or hygiene. All sanitation facilities also require an adequate supply of safe water and soap for hand washing.

The WHO-UNICEF Joint Monitoring Programme (JMP) estimates that 80 percent of the world's urban population has access to adequate sanitation, compared to only 39 percent of the rural population.¹¹ However, again, the urban figures for lack of access calculated by UN-HABITAT are significantly higher than those calculated by JMP, although it is clear that the situation is generally worse in rural areas compared to urban areas. However, the health impact of lack of access to sanitation is far worse in urban areas than in rural areas, due to higher density of population.¹²

In many parts of the world, the absence of adequate sanitation has led to the widespread pollution of water sources that communities rely on for survival. Millions of children are left malnourished, physically stunted and mentally disabled by excreta-related diseases and intestinal worm infections.¹³ The safe disposal of excreta is one of the strongest determinants of child survival. Easy access to hygienic sanitation services is also crucial to promote and protect human dignity and privacy. Despite this, sanitation lacks the political commitment necessary to ensure that all people have access to adequate sanitation services.¹⁴

It is almost universally acknowledged that access to safe water is crucial in the prevention of disease. However, the importance of an accompanying wastewater disposal or drainage system is often not recognised. In areas where water is being delivered there needs to be a method of removing the wastewater to prevent stagnant water from gathering. In the absence of a sewerage system, low-cost drainage systems that prevent the accumulation of still-water are a solution to this problem. Solid waste management systems are also critical, as in their absence garbage is often deposited in drains, thus blocking them.

8 UN-HABITAT *Water and Sanitation in the World's Cities: Local Action for Global Goals*, (London: Earthscan, 2003), p.xx

9 Figures derived from data table in WHO & UNICEF, *Meeting the MDG Drinking-Water and Sanitation Target*, see note 5, p. 28.

10 *Beyond Scarcity*, see note 2, p. 5.

11 WHO & UNICEF, *Meeting the MDG Drinking-Water and Sanitation Target*, see note 5, p.19.

12 UN-HABITAT, *Meeting Development Goals in Small Urban Centres*, see note 6, p. 60.

13 WHO & UNICEF, *The Global Water Supply and Sanitation Assessment 2000*, (Geneva, New York: WHO, UNICEF, 2000), p.1.

14 *Beyond Scarcity*, see note 2, p. 13.

1.3 Effects of inadequate water and sanitation on human health

Nearly half the population of developing countries is suffering from diseases linked to inadequate water and sanitation.¹⁵ Drinking contaminated water transmits waterborne diseases such as cholera, typhoid, diarrhoea, viral hepatitis A, dysentery and dracunculiasis (guinea worm disease). Insufficient water for washing and personal hygiene leads to water-washed diseases, such as trachoma, and a lack of sanitation facilities can exacerbate water-based diseases such as schistosomiasis. Stagnant or still bodies of water can serve as a habitat for insects, such as the mosquitoes responsible for malaria, dengue fever and yellow fever.¹⁶

The effects are widespread:¹⁷

- Approximately 4 billion cases of diarrhoea each year cause 2.2 million deaths, mostly among children under five – about 15 percent of all child deaths under the age of five in developing countries.
- Intestinal worms infect about ten percent of the population of developing countries. Intestinal parasitic infections can lead to malnutrition, anaemia and retarded growth. They can be controlled through better sanitation, hygiene and water supply.
- Six million people are blind from trachoma. Five hundred million people are at risk from this waterborne disease.
- Two hundred million people are infected with schistosomiasis, with 20 million suffering severe consequences.
- At any one time, close to half of all people in developing countries are suffering from health problems caused by poor water and sanitation. It has been calculated that 443 million school days are lost each year to water-related illness.¹⁸
- Over 1.2 million people die of malaria each year, the majority of whom are children. Poor management of water and wastewater drainage is a contributing factor to the incidence of malaria in many countries.¹⁹

In addition, inadequate sanitation has a negative impact on the bladder and bowels, which are placed under undue pressure through insufficient access to sanitation facilities. The presence of a flushing toilet in the house can cut the risk of infant death by more than 30 percent.²⁰ Carrying heavy vessels of water long distances also damages children's growing bones and causes back pain.

The financial cost of treating such diseases goes far beyond the cost of ensuring access to water and sanitation services for all. While the diseases described above are not always life threatening, they can have negative life-long consequences, reducing a person's ability to learn effectively at school, continuing poverty into adulthood.²¹ The lack of adequate water and sanitation services also compound other illnesses or diseases - such as measles and pneumonia- and contributes to maternal mortality during childbirth. Poor water and sanitation services are a significant factor in high infant mortality rates.²²

15 Ibid., p.6.

16 For further information about diseases related to a lack of access to adequate water and sanitation facilities, see http://www.who.int/water_sanitation_health.

17 The first four points are drawn from WHO & UNICEF, *The Global Water Supply and Sanitation Assessment 2000*, see note 13, at p. 2.

18 *Beyond Scarcity*, see note 2, p. 6.

19 WHO, *Malaria control: the power of integrated action*, Health and Environment Linkages Policy Series, (WHO/UNEP, 2007), <http://www.who.int/beli/risks/vectors/malariacontrol/en/index.html>.

20 Ibid., p.6.

21 Ibid., p. 45.

22 UN HABITAT, *Water and Sanitation in the World's Cities*, see note 8, p.74.

1.4 Effects of inadequate water and sanitation on poverty and development

In many countries with an abundance of water and financial resources, communities living in poverty are denied sufficient water for drinking and other basic needs. Poor people are less able to cope with the negative health consequences of poor water and sanitation due to other factors such as malnutrition and poor educational standards. Lack of water also undermines people's ability to grow food and engage in income-generating activity. This lack of safe water and sanitation also has an impact on society as a whole in terms of health costs and loss of human potential and resources (discussed later in this chapter and also in Chapter 10: Affordability and financing).

There is a strong overlap between poverty and the lack of access to safe water and sanitation, with a lack of access to water contributing to levels of poverty, as well as poverty being a factor in why people do not have access to water.²³ The same is true regarding access to sanitation and levels of poverty.²⁴ The continuing unequal access to water exacerbates existing poverty in the following manner:

High costs reducing ability to purchase other essential goods

Often it is those who can least afford it that pay higher prices for drinking water. On average, those on low incomes spend a significantly greater proportion of their income on water than do the wealthy, thereby affecting their ability to provide for other basic needs such as food, shelter, clothing, housing, health and education. The absolute price they pay to water vendors can be ten times or more the price per litre supplied through the pipes.

Burden of disease

Disease caused by lack of safe water and sanitation leads to illness and death. It also burdens those with low, or no, income with high health care costs and loss of ability to work to secure one's livelihood. Disease also causes children to miss school and adults to miss work. Safe water is also essential for home-based care of the sick or those who are HIV positive.

Unequal burden on women and children

The lack of adequate access to water in the context of poverty affects women and children in particular. Women and girl children have the traditional role of collecting water, often from great distances, affecting their health, their access to education and ability to earn a livelihood.²⁵ They are in greatest physical contact in the domestic environment with contaminated water and human waste, exposing them to a host of biological pathogens and chemical hazards, including when disposing of their own family's waste. Constant carrying of heavy weights of up to 20 kilograms (the weight of 20 litres of water) can lead to back and joint problems as well as sprains and fractures from falls. In some countries, spending five hours per day collecting water to meet the family's needs is not unusual. Girls shoulder the burden of water-hauling in Asia and Africa. In Africa, forty billion working hours, or 25 percent of household time, are spent each year carrying water.²⁶ As the collection of water often has to take priority over other activities, it prevents women and girls from engaging in other productive activities, adult or basic education or other domestic responsibilities, rest and recreation.²⁷

Lack of adequate sanitation causes women in particular significant physical and social distress, and can lead to long-term damage to the bowels. Growing evidence suggests that inadequate water supply and sanitation facilities in schools lead to decreased attendance and drop-outs.²⁸ Better access to water increases school attendance by 15 percent in Tanzania, while 12 percent more girls stay in those Bangladeshi schools that offer the privacy of basic sanitation facilities.

23 *Beyond Scarcity*, see note 2, p. 48.

24 *Ibid.*, p. 49.

25 In addition, in rural areas, the longest journeys to collect water are in the dry season – which is the time when food stocks are lowest, the workload the highest and diseases most common. See *Water Aid, Women and Water: Development Issue*, June 2000, <http://www.wateraid.org.uk/>.

26 W. J. Cosgrove & F.R. Rijsberman, 'Creating A Vision For Water, Life And The Environment' in *Water Policy* Vol.1 1998, pp. 115-122.

27 M. Bassett, D. Sanders, C. Todd and S. Laver, *Rural water supply and sanitation sector review: A study of the health aspects*, Report prepared for the World Bank, Department of Community Medicine, University of Zimbabwe, Harare, 1992, quoted in *Water for All, Meeting basic water and sanitation needs*, June 2000, Commissioned by the Rural Development Services Network (RDSN).

28 WHO, UN OHCHR, COHRE, WaterAid and CESR, *The Right to Water*, (Geneva: WHO, 2003), p. 7.

Retarded productivity

Developing countries lose a significant percentage of GDP due to lack of productivity and other related costs from lack of access to adequate water and sanitation. The main burden rests with those living below the poverty line.²⁹

The international community has recognised the importance of alleviating these problems, reflected in the Millennium Development Goals. (See Box 1.4.)

BOX 1.4: THE MILLENNIUM DEVELOPMENT GOALS AND WATER AND SANITATION

The United Nations General Assembly Millennium Declaration resolved to halve the proportion of people who are unable to reach or to afford safe drinking water by 2015.³⁰

The Johannesburg Plan of Implementation of the World Summit on Sustainable Development (WSSD), 2002, reiterated this commitment, and added a similar target in relation to the proportion of people who do not have adequate access to basic sanitation.³¹

The Millennium Development Goals are a set of goals and indicators that operationalise the commitments in the Millennium Declaration and the sanitation target set at the WSSD.

Millennium Development Goal 7 on 'Ensuring Environmental Sustainability' is to *"halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation"* (Target 10).

There are also clear links between the other MDGs and access to water and sanitation, such as the importance of clean water for the eradication of extreme poverty and hunger, and adequate sanitation to achieve universal primary education and the reduction of child mortality.

The MDG targets are understood by the United Nations to apply globally and within each country. While some countries are on track to meet the target for water and sanitation, many, particularly in Sub-Saharan Africa, are not. Even if the MDG target is met, there will still be millions of people without access to safe and adequate water and sanitation services. It will be necessary to set a further target date for reaching the rest of the population currently without access to these essential services.

1.5 Access to water for non-domestic uses

While personal and domestic uses of water are primary, it is also essential for other uses, such as agriculture, industry (whether small- or large-scale), and to protect the environment. Water is also essential for food security and income-generating activities. Water shortages and unreliable access to water can reduce crop production and livestock health³² and can undermine the viability of businesses run by poor women and men, including home-based activities.

Ecosystems also require water to remain viable. Without sufficient water, the ecosystem, for example the proper growth of trees and other flora necessary to prevent soil erosion, cannot be supported. Chapter 7: Water availability, allocation and sustainability discusses trade-offs between these uses.

29 *Beyond Scarcity*, see note 2, p. 6.

30 UNGA Res 55/2 (Millennium Declaration) (8 September 2000) UN Doc A/55/L.2 para 19.

31 The Johannesburg Plan of Implementation of the World Summit on Sustainable Development, 2002, para 8, 25.

32 In developing countries, irrigated agriculture accounts for 40 percent of all crop production, and 60 percent of cereals.

1.6 Lack of access to water and sanitation: causes and changing contexts

A number of issues common to all countries explain current levels of lack of access to water and sanitation:

Exclusion of particular groups

- In planning and political terms, poor people are excluded from decision-making, and their needs are seldom prioritised.
- In many situations, resources are used to provide high quality services to a few or to fund prestigious large-scale projects, such as dam construction or river diversion, rather than low-cost alternatives, such as rainwater harvesting or sand dams. The latter would be more likely to reach the majority of people without access to water and sanitation services, who live in rural areas.
- In some situations, unpopular minorities are excluded from access to water and sanitation for political reasons.
- Deprived urban areas, remote rural areas, semi-arid and arid areas are frequently neglected or intentionally excluded from government programmes for infrastructure development and maintenance. This results in insufficient infrastructure and facilities for water and sanitation.
- There is a lack of culturally sensitive and pro-poor policies for the allocation of water resources between the different sectors of water use, and also within the different sectors (agriculture, education, health, water resources.)

Insufficient allocation of resources

- There is insufficient recognition by governments and international organisations that access to safe water and sanitation services has a positive impact on other development objectives, including economic objectives. Water, and sanitation in particular, generally do not receive the priority they deserve in national budgets and in allocations by international donors, despite well-documented evidence that the benefits outweigh the costs of delivering these basic services.³³ (See Chapter 10: Affordability and financing.) As a result, there is a lack of sufficient finances and capacity to maintain water delivery systems and sanitation services. Remote rural areas and informal urban areas are often particularly resource poor.
- Cost recovery for water services is increasingly being utilised to generate a significant part of the finances necessary for the construction and maintenance of water supply and sanitation infrastructure; and to conserve water. This principle of cost recovery is reflected in a series of international declarations and agreements, with the proviso that cost recovery should not become a barrier to access to safe water by poor people.³⁴ However, the latter consideration is often insufficiently addressed when it comes to setting tariff structures for water services. This results in tariff structures that are unfavourable to the poor. (See Chapter 10: Affordability and financing for further details.)

Changing social and environmental contexts

- Urbanisation is continuing at a significant rate, dramatically increasing the populations of urban informal settlements. Lack of access to water and sanitation services will increasingly become an urban problem, exacerbated by the insecure tenure of those living in informal settlements and the lack of planning for urban growth. This is often a symptom of the fact that informal settlements are frequently not politically accepted and the people who live there are not seen as a crucial part of the urban economy. (See Chapter 9: Physical accessibility.)
- Increasing levels of human and animal waste, agricultural run-off and industrial waste are polluting water sources in many countries. There is frequently little control over wastewater, with insufficient legislation, regulation and monitoring to ensure that wastes are properly treated.
- Levels of drought are being exacerbated by alterations in weather patterns due to climate change and by desertification due to poor farming practices. Climate change is causing increasingly extreme weather patterns, which will have an impact on water availability and accessibility. Developing countries are in the most vulnerable position, not just because they lack the necessary resources to deal with emergencies effectively, but also because people are more likely to be living in vulnerable areas in sub-standard housing. Often governments lack the necessary resources and human capacity to tap new sources of water.

33 *Beyond Scarcity*, see note 2, p. 8, Guy Hutton and Laurence Haller, *Evaluation of the costs and benefits of water and sanitation improvements at the global level*, (WHO, 2004), p.34.

34 Johannesburg Plan of Implementation, see note 31, para. 26 (b). See also the declarations listed in Chapter 10: Affordability, Section 10.2.

Changes in management and ownership of water supply and services

- Shifts in land use and ownership are reducing or limiting access to previously available water sources. This is particularly a problem as agricultural land on the edges of cities or towns is increasingly being used for housing or industrial purposes, often leading to contamination of existing wells or traditional water sources. Further to this, the inequalities in land ownership exacerbate inequalities in access to water.³⁵ Common problems relating to land ownership are the forced evictions of rural communities and communities in urban informal settlements, which relocate evictees to areas lacking adequate water and sanitation services.
- Management of water supply and sewerage services have been delegated to corporations in some countries, primarily in larger cities. In many cases, privatisation has been carried out without adequate regulation, leading to higher tariffs (in some cases to unaffordable levels for the poor) and a failure to extend services. The assumption that privatisation would be a source of investment for the water sector (which has not been borne out) may be linked to low levels of international assistance to the water sector. (See Chapter 11: International co-operation.)
- Decentralisation policies in many countries are transferring responsibilities for water and sanitation from the national to the regional, local or municipal level. The necessary capacity and finances are not transferred to the new responsible units, making it difficult to manage services adequately, and to extend them to the unserved. (See also Chapter 4: Roles of key actors, Section 4.1.5.)

35 *Beyond Scarcity*, see note 2, p. 18.



Chapter 2: Overview of the human right to water and sanitation

The right to water and sanitation is an entitlement held by all people, and which has a legal foundation. It therefore provides a strong basis for holding all relevant actors accountable. The treaties that recognise the right are surveyed in Chapter 3: Legal basis and institutional framework. This chapter describes the contents of the human right to water and sanitation, its contributions and its limitations.

2.1 The human right to water and sanitation

The primary basis for the right to water and sanitation and for economic, social and cultural rights in general is the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by 157 States as of October 2007.¹ The ICESCR has a committee of experts – the Committee on Economic Social and Cultural Rights (CESCR) – elected by States parties to the ICESCR to help monitor and interpret the ICESCR. In 2002, the CESCR adopted *General Comment No. 15: the right to water* (General Comment No. 15). In 2005, the UN Sub-Commission on the Promotion and Protection of Human Rights, an expert body that would advise the UN Human Rights Council, produced an analysis of the legal basis and implications of the right to water and

¹ Adopted by the UN General Assembly in resolution 2200A (XXI) in 1966 and entered into force in 1976. The full text and list of ratifying States is available at www.obchr.org ('Your Human Rights' > 'What Are Human Rights' > 'International Human Rights Law').

sanitation.² In 2006, it adopted *Draft Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation* (Sub-Commission Guidelines). The Sub-Commission Guidelines are consistent with General Comment No. 15, but include clearer statements defining sanitation as a right in conjunction with access to water, as well as its components. They also focus on short-term implementation rather than on a formal definition of the right.³

General Comment No. 15 and the Sub-Commission Guidelines, taken together, explain that the right to water and sanitation includes the following:

Sufficient water: Water supply for each person that is sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.⁴ (See also Chapter 7: Water availability, allocation and sustainability.)

Clean water: Safe water that, in particular, is free from hazardous substances that could endanger human health,⁵ and whose colour, odour and taste are acceptable to users.⁶ (See also Chapter 8: Water quality and hygiene.)

Accessible water and sanitation: Water and sanitation services and facilities that are accessible within, or in the immediate vicinity, of each household, educational institution and workplace, and which are in a secure location and address the needs of different groups, in particular threats to the physical security of women collecting water.⁷ The Sub-Commission Guidelines state that sanitation must be safe, adequate and conducive to the protection of public health and the environment.⁸ (See also Chapter 9: Physical accessibility.)

General Comment No. 15 and the Sub-Commission Guidelines do not define the term ‘sanitation’. However, the description of the relevant entitlements and State obligations implies that sanitation comprises at least, a toilet or latrine, along with associated services such as sewage or latrine exhaustion. The criterion of ‘conducive to the protection of public health and the environment’ in the Sub-Commission Guidelines indicates that wastewater drainage channels are required where piped water, but not sewage, is available in urban and peri-urban areas. It also implies that wastewater and excreta need to be treated or disposed of in a manner that avoids threats to public health and damage to ecosystems.

Affordable water and sanitation: Water and sanitation can be secured without reducing any person’s capacity to acquire other essential goods and services, including food, housing, health services and education.⁹ (See also Chapter 10: Affordability and financing.)

As outlined in General Comment No. 15 and the Sub-Commission Guidelines, the following are also particularly important components of the right to water and sanitation:

Non-discrimination and inclusion of vulnerable and marginalised groups: This means that access to water and sanitation is ensured for everybody, including vulnerable or marginalised groups, and without discrimination. Non-discrimination implies that there is no distinction, exclusion, restriction or preference - based on any ground (e.g. race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status) - which has the intention or effect of impairing the equal exercise of the right.¹⁰

2 Sub-Commission on the Promotion and Protection of Human Rights, *Final report of the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation*, 14 July 2004, E/CN.4/Sub.2/2004/20. The Sub-Commission was replaced in 2007 by the Human Rights Council Advisory Committee.

3 United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25.

4 General Comment No. 15, para. 12(a).

5 General Comment No. 15, para. 12(b), referring to the respective WHO Guidelines.

6 General Comment No. 15, para. 12(b).

7 General Comment No. 15, paras. 12(c)(i), 29, Sub-Commission Guidelines section. 1.3(a)-(c).

8 Sub-Commission Guidelines, section. 1.2.

9 General Comment No. 15, para 12(c)(ii); Sub-Commission Guidelines, section. 1.3(d).

10 ICESCR, Art. 2 (2), General Comment No. 15, paras. 12 (c)(iii), (13), (16); Sub-Commission Guidelines, section 3.

Non-discrimination also includes proactive measures to ensure that the particular needs of vulnerable or marginalised groups, such as women, persons with illnesses (e.g. HIV/AIDS), people living in informal settlements, and excluded minorities are met.¹¹ (See also Chapter 5: Non-discrimination and attention to vulnerable and marginalised groups.)

Access to information and participation: Each policy, programme or strategy concerning water and sanitation is to include, as an integral element, the right of all people to participate in decision-making processes that may affect their rights.¹² Special efforts are made by governments to ensure the equitable representation in decision-making of marginalised groups, in particular women. Communities have the right to determine what type of water and sanitation services they require and how to manage those services.¹³ All people will have full and equal access to information concerning water, sanitation and the environment.¹⁴ (See also Chapter 6: Participation and access to information.)

Accountability: Persons or groups denied their right to water and sanitation have access to effective judicial or other appropriate remedies, for example courts, national ombudspersons or human right commissions.¹⁵ (See also Chapter 4: Roles of key actors, Sections 4.4 and 4.1.12.)

General Comment No. 15 and the Sub-Commission Guidelines explain that the right includes only water needed for personal and domestic uses. However, General Comment No. 15 also notes that water is also required to realise other international human rights:

- Water is necessary to produce food, and is therefore necessary to realise the right to adequate food.¹⁶
- Water is necessary to ensure environmental hygiene, and is therefore a component of the right to health.¹⁷
- Water is essential for securing livelihoods, and is therefore an aspect of the right to gain a living by work.
- Water is required to enjoy certain cultural practices, and thus an element of the right to take part in cultural life.¹⁸

11 ICCPR, General Comment No. 18, para. 10.

12 General Comment No. 15, para. 48; Sub-Commission Guidelines, section 8.1.

13 Sub-Commission Guidelines, section 8.2.

14 General Comment No. 15, paras. 12(4), 48; Sub-Commission Guidelines, section. 8.3.

15 General Comment No. 15, para. 55; Sub-Commission Guidelines, section 9.

16 See also CESCR, *General Comment No. 12: The Right to Adequate Food*, UN ESCOR, 1999, UN Doc. E/C.12/1999/5.

17 See also CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, UN ESCOR, 2000, UN Doc. E/C.12/2000/4.

18 General Comment No. 15, para. 6.

BOX 2.1: MISCONCEPTIONS REGARDING THE RIGHT TO WATER AND SANITATION

| Misconception | Clarification |
|---|---|
| The right entitles people to free water. | Water and sanitation services need to be affordable for all. ¹⁹ People are expected to contribute financially or otherwise to the extent that they can do so. |
| The right allows for unlimited use of water. | The right entitles everyone to sufficient water for personal and domestic uses and is to be realised in a sustainable manner for present and future generations. ²⁰ |
| The right entitles everyone to a household connection. | Water and sanitation facilities need to be within, or in the immediate vicinity of the household, and can comprise facilities such as wells and pit latrines. ²¹ |
| The right to water entitles people to water resources in other countries. | People cannot claim water from other countries. However, international customary law on transboundary watercourses stipulates that such watercourses be shared in an equitable and reasonable manner. |
| A country is in violation of the right if not all its people have access to water and sanitation. | The right requires that a State takes steps - to the maximum of available resources - to progressively realise the right. |

2.2 Progressive realisation of the right

Economic, social, and cultural rights are addressed in a different manner than are civil and political rights, which require immediate realisation. Instead, State parties to the ICESCR are to take steps to progressively achieve the full realisation of economic, social and cultural rights, using their maximum available resources. All appropriate means, including particularly the adoption of legislative measures, are to be used.²²

According to the Committee on Economic, Social and Cultural Rights (CESCR), while the full realisation of the relevant rights may be achieved gradually, progressive realisation should not be misinterpreted as allowing governments not to act. Rather, it “*imposes an obligation to move as expeditiously and effectively as possible towards [a particular] goal*”.²³ Existing legislation and policies should be reviewed to ensure compatibility with obligations arising from the right to water. If they are inconsistent with the ICESCR, then they should be repealed or changed.²⁴ Furthermore, the duty to take steps imposes on State parties an obligation to adopt a national strategy or plan of action to expand access to water for all containing concrete targets, timelines and

19 See General Comment No. 15, para. 12(c)(ii) and Chapter 10: Affordability and financing for more details.

20 See General Comment No. 15, paras. 11 and 12(a).

21 See *ibid.*, para 12(c)(i). Sub-Commission Guidelines, section 1.3.

22 ICESCR art 2. According to the CESCR, other measures which may be considered ‘appropriate’ include, but are not limited to judicial remedies, administrative, financial, educational and social measures (General Comment No. 3, paras 5,7). The CESCR also notes that ‘maximum’ available resources refer to both resources existing within a State and those available from the international community through international cooperation and assistance (General Comment No. 3, para 13).

23 (emphasis added), CESCR, General Comment No. 3: *The Nature of States Parties’ Obligations*, UN ESCOR, 1990, UN Doc. E/1991/23, para. 9. General Comments can normally be accessed at www.ohchr.org (‘Human Rights Bodies’ > ‘CESCR’ > ‘General Comments’).

24 General Comment No. 15, para 46.

policies. The strategy or plan should also establish institutional responsibility for the process, identify and allocate resources, and establish accountability mechanisms to ensure the implementation of the strategy.²⁵

The CESCR indicates that a State party to the ICESCR that has taken “deliberately retrogressive measures” bears the burden of proving that those measures have been introduced after the most careful consideration of all alternatives; that they are justified by reference to the totality of the rights provided for in the Covenant; and that the maximum available resources have been used.²⁶

The CESCR also states that where available resources are demonstrably inadequate, the State party to the ICESCR must nonetheless, “*strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.*” Obligations to monitor the extent of the realisation or non-realisation of economic, social and cultural rights, and to devise strategies and programmes for the promotion, are not eliminated because of resource constraints.²⁷ Even in times of severe resource constraints, vulnerable members of society should be protected through relatively low-cost, targeted programmes.²⁸

The CESCR explains that it is important to distinguish a State’s inability from its unwillingness to comply with its obligations in relation to the right to water. “*A State which is unwilling to use the maximum of its available resources for the realization of the right to water is in violation of its obligations under the Covenant.*” If resource constraints make it impossible for a State to comply with its obligations in relation to the right to water, the State must justify that every effort has been made using all available resources.²⁹

The CESCR states that certain State obligations, by virtue of their nature, are to be realised immediately. These include, for example, the obligation to guarantee that such rights are exercised without discrimination. Deliberate, concrete and targeted steps must also be taken towards meeting the obligations recognised in the Covenant.³⁰

Note that while the obligations set out by the CESCR refer only to the right to water, the Sub-Commission Guidelines set out similar obligations concerning the right to water and sanitation.³¹

25 General Comment No. 15, para. 47.

26 General Comment No.15, para. 19, General Comment No. 3, para. 9. Many of the principles set out in this section are reflected in the Committee’s General Comments No. 12 (right to adequate food), 13 (right to education) 14 (right to the highest attainable standard of health) and 15 (right to water). Reference will be made to General Comment No. 15 given the particular relevance of this Comment to the Manual.

27 General Comment No. 3, para. 11.

28 General Comment No. 3, para. 12.

29 General Comment No. 3 para 41.

30 General Comment No. 3, paras. 1 and 2.

31 See Sub-Commission Guidelines, in particular section. 2.

2.3 Obligations to respect, protect, and fulfil the right

According to the CESCR, State parties to the ICESCR have obligations to respect, protect and fulfil economic, social and cultural rights, without discrimination, in regard to the people of their country.³²

BOX 2.2: OBLIGATIONS: RESPECT, PROTECT, FULFIL

Obligations to respect require that State parties refrain from interfering directly or indirectly with the enjoyment of a right. For example, General Comment No. 15 indicates that State parties should refrain from arbitrarily interfering with customary or traditional arrangements for water allocation, or from unlawfully diminishing or polluting water resources.³³

Obligations to protect require that State parties prevent third parties (including individuals, groups, corporations and other entities under their jurisdiction) from interfering with the enjoyment of a right. For example, General Comment No. 15 indicates that State parties should adopt effective legislative and other measures to prevent third parties from denying equal access to water or polluting or inequitably extracting from water sources.³⁴

Obligations to fulfil can be disaggregated into obligations to facilitate, promote and provide. The CESCR indicates that State parties are to *facilitate* a right by taking positive measures to assist individuals and communities to enjoy the right. State parties are to *promote* a right, for example, by ensuring that there is appropriate education concerning the hygienic use of water, the protection of water sources and methods to minimise wastage. State parties are obliged to *provide* a right when individuals or a group are unable, for reasons beyond their control, to realise that right themselves by the means at their disposal.³⁵

2.4 International co-operation obligations

Member States of the UN have pledged to take joint and separate action in co-operation with the United Nations in promoting development and universal respect for human rights and fundamental freedoms.³⁶ The ICESCR specifically obliges State parties through international assistance and co-operation - especially economic and technical - to take steps to realise progressively the rights recognised in the Covenant.³⁷ The CESCR has emphasised that international co-operation for development, and thus for the realisation of economic, social and cultural rights, is an obligation of all State parties to the ICESCR and is particularly incumbent upon governments that are in a position to assist others in this regard.³⁸ Therefore, State parties are obliged to respect the enjoyment of these rights, including the right to water and sanitation, in other countries. The CESCR states that economic, social and cultural rights should be given due attention in international agreements and State parties should consider developing further legal instruments. State parties, as members of international organisations, including international financial institutions, are to take due account of the right, and ensure that their policies and actions respect the right to water.³⁹ According to the Sub-Commission Guidelines, developed countries that have available resources should provide assistance to developing coun-

32 General Comment No. 15, paras. 21. In relation to implementation of the General Comment, see Ashfaq Khalfan, *Implementing General Comment No. 15 on the Right to Water in National and International Law and Policy*, Discussion Paper, Bread for the World Germany and Centre on Housing Rights and Evictions, March 2005, available at www.cobre.org/water. For further information on obligations to respect, protect and fulfil economic, social and cultural rights in general, see M. Craven, *The International Covenant on Economic, Social and Cultural Rights* (Oxford: Clarendon, 1994), pp. 107-111.

33 General Comment No. 15, para. 21.

34 General Comment No. 15, para. 23.

35 General Comment No. 15, para. 25.

36 United Nations Charter, 1945, arts. 55, 56.

37 ICESCR, 1966, art 2(1).

38 General Comment No. 3, para. 14.

39 General Comment No. 15, paras. 31, 33-36. See also Sub-commission Guidelines section 10.4.

tries with a view to ensuring everyone has access, as quickly as possible, to at least basic water and sanitation services.⁴⁰

2.5 Core obligations

The CESCR has stated that the ICESCR imposes a minimum core obligation on State parties to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. Any assessment as to whether a State party has met its minimum core obligations must also take into account its resource constraints:

*In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.*⁴¹

The core obligations, therefore, are particularly useful in guiding the allocation of resources and setting priorities for domestic and international action.⁴² It is important to note that that core obligations do not replace the full extent of the obligation to realise the right. General Comment No. 15 identifies a number of core obligations as detailed in Box 2.3:

⁴⁰ Sub-Commission Guidelines section 10.2.

⁴¹ General Comment No. 3, para. 10.

⁴² The application of core obligations with regard to most of the rights in the ICESCR is addressed in Audrey Chapman & Sage Russell (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Antwerp: Intersentia, 2002).

BOX 2.3: MINIMUM CORE OBLIGATIONS IN GENERAL COMMENT NO. 15

- (a) *To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease.*
- (b) *To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups.*
- (c) *To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household.*
- (d) *To ensure personal security is not threatened when having to physically access water.*
- (e) *To ensure equitable distribution of all available water facilities and services.*
- (f) *To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups.*
- (g) *To monitor the extent of the realization, or the non-realization, of the right to water.*
- (h) *To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups.*
- (i) *To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.⁴³*

2.6 Contributions of the right to water and sanitation

The right to water and sanitation is an entitlement held by all humans that is based on a legal foundation. It provides a strong basis for holding all relevant actors accountable. Its capacity to generate substantial reform in law, policy and practice is obviously governed by contextual factors and the extent to which marginalised groups and those serving their interests use it as a tool. The right can help generate the political will required to make the necessary reforms to policies, to raise resources, to utilise such resources in a manner that focuses on the needs and aspirations of the poor, and to monitor performance. The right to water and sanitation is particularly compelling since a variety of technical and institutional solutions for expanding access through cost-effective measures exist and are generally known, but are often not implemented consistently or with sufficient urgency.

A number of key features of the right to water and sanitation can make a significant contribution to current development efforts to improve universal access to water and sanitation:

Improved accountability: The right to water and sanitation establishes access to water and sanitation as a legal entitlement, with a corresponding government obligation, rather than only a moral priority. This legal entitlement provides a basis for individuals and groups to hold governments and other actors to account. It also provides a basis for actors within government to hold each other accountable to the objective of realising the right. National mechanisms, such as courts and human rights commissions, and international human rights mechanisms, such as treaty monitoring bodies, can serve to identify and adjudicate on deficiencies in the implementation of water policies, and recommend or require improvements. Communities and other organisations

43 General Comment No. 15, para. 37.

can also use the right to raise the political profile of the importance of access to water and sanitation services. They can lobby the government and even the international community for improvements.

Focus on vulnerable and marginalised groups: The right to water and sanitation focuses on the need to prioritise access to basic water and sanitation services for all, using available resources, with special efforts to include those who are normally excluded. This is in contrast to current general practice where significant amounts of public resources continue to be used for the construction of infrastructure and provision of subsidies that benefit upper and middle-income groups to the exclusion of the poor. The right to water and sanitation focuses attention on vulnerable and marginalised groups, including those traditionally discriminated against or historically neglected (e.g. informal settlements).

Increased participation in decision-making: The right to water and sanitation provides for genuine consultation and participation of communities affected in service delivery and the conservation of water resources. Although participation is now acknowledged as a development best practice, centralised planning processes remain prevalent, and can neglect the input of various users. In part, this is because the need to develop government capacity to engage in participatory processes has been under-estimated and not clearly understood. The right to water and sanitation can therefore enable individuals and communities to take part legitimately in decision-making processes.

Individual and community empowerment: Beyond participation in decision-making processes, the right to water and sanitation can empower and organise individuals and communities who do not have access to water and sanitation. The right to water and sanitation can strengthen individual and community struggles for access to basic services.

2.7 Limitations of the right to water and sanitation

Despite the many advantages the right to water and sanitation brings to the sector, it does have limitations:

The right to water and sanitation alone is not going to solve the water and sanitation crisis: It does not replace other development strategies but needs to be used in conjunction with them. The right to water and sanitation provides a clear set of principles and goals to guide policy development; it does not define a specific policy or framework for implementation. This needs to be developed by applying the right to the prevailing conditions in each country, as well as by taking into account technological and other solutions.

Justiciability of the right to water and sanitation: While there are numerous successful court cases protecting the right to water and sanitation,⁴⁴ in some countries courts are less comfortable deciding cases involving social rights and ordering specific remedies. Accordingly, invoking such rights before courts can be difficult in certain countries. The CESCR has noted, however, that the enjoyment of such rights will often be appropriately promoted, in part, through the provision of judicial or other effective remedies.⁴⁵ This limitation is not critical, as recourse to the courts is only one of several means to implement the right. These include mainstreaming in policy measures by governments, advocacy by civil society and communities and through national and international monitoring mechanisms.

Misunderstanding the right to water and sanitation: The right to water and sanitation, like other economic, social and cultural rights, is often misunderstood. Many actors in the water and sanitation sector are unfamiliar with international law and human rights standards. This Manual is intended to contribute to the learning required for both the development and human rights communities to effectively deal with the right to water and sanitation. The subsequent chapters in this Manual aim to clarify the implications of the right to water and sanitation.⁴⁶ There can sometimes be unrealistic aspirations about what recognition of the right can achieve. Recognition of the right to water and sanitation can help shape policy development and legitimise claims for access, but it does not automatically lead to implementation. Significant efforts are required to implement and advocate for the right.

44 See M. Langford, A. Khalfan, C. Fairstein and H. Jones, *Legal Resources for the Right to Water: International and National Standards* (Geneva: Centre on Housing Rights and Evictions COHRE, 2004), pp 110- 125. Available at www.cobre.org/water

45 General Comment No. 3, para. 5.

46 See also Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on a human rights-based approach to development cooperation* (Geneva: UNHCR, 2006), www.obcbr.org ('Publications' > 'Special Issues')



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Chapter 3: Legal basis and institutional framework for the right to water and sanitation

Human rights, and their underlying values of dignity, freedom and equality, emerged from a variety of sources, including religious convictions and concerns for social justice. They are rooted in historic global struggles, such as the struggles for freedom, democracy and independence. Treating human beings with dignity and equality – universally shared values – requires that all people have access to water and sanitation. International human rights treaties, negotiated by State officials representing all cultures and civilizations, provide an authoritative definition of human rights and a tool with which to implement them. The right to water and sanitation is founded in a number of international legal treaties and political declarations in the fields of human rights, environmental law and humanitarian law. It is also reflected in a number of national constitutions, legislation and cases.¹ This section briefly surveys some of the key relevant sources.

¹ A detailed compilation of such references is contained in: M. Langford, A. Khalfan, C. Fairstein and H. Jones, *Legal Resources for the Right to Water: International and National Standards* (Geneva: Centre on Housing Rights and Evictions COHRE, 2004), available at www.cobre.org/water. See also the Annex to the *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, (2007) UN Doc. A/HRC/6/3, available at: www.ohchr.org ('Your Human Rights' > 'Human Rights Issues' > 'Stakeholder views' below the Water heading). The United Nations human rights treaties referred to in this chapter, together with a list of ratifying States, are available from the UN High Commissioner for Human Rights website at www.ohchr.org ('Your Human Rights' > 'What Are Human Rights' > 'International Human Rights Law').

3.1 International and regional treaties

3.1.1 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) has been ratified by 157 States as of October 2007. (See Section 2.1 for a further explanation of the ICESCR.)

Article 11(1) of the ICESCR, regarding the right to an adequate standard of living, provides:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

Article 12(1) of the ICESCR, regarding the right to the highest attainable standard of health, provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Committee on Economic, Social and Cultural Rights (CESCR),² adopted *General Comment No. 15: The right to water* in 2002. Although General Comment No. 15 is not itself legally binding, it is an authoritative interpretation of the provisions of the ICESCR, which is legally binding on States that have ratified or acceded to it. General Comment No. 15 states:

Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living, including adequate food, clothing and housing. The use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1, (see General Comment No. 6 (1995)). The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1) and the rights to adequate housing and adequate food (art. 11, para. 1). The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.³

The right to water is therefore implicit within the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of health outlined in the ICESCR.⁴ There is not unanimity that the General Comment No. 15 is correct to state that there is a specific right to water contained in the ICESCR. However, according to the United Nations High Commissioner for Human Rights, “international law entails clear obligations in relation to access to safe drinking water” and that

Given the clarity of these obligations, the open debate as to whether the human right to access safe drinking water is a stand-alone right or is derived from other human rights should not impair the recognition of access to safe drinking water as a human right.⁵

2 The Committee on Economic, Social and Cultural Rights (CESCR) sought the authorisation of the United Nations Economic and Social Council (one of the primary UN organs made up of member States) to develop General Comments, and received encouragement from the Council to “continue using that mechanism to develop a fuller appreciation of the obligations of State parties under the Covenant.” Economic and Social Council Resolution 1990/45, para. 10.

3 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (2002), U.N. Doc. E/C.12/2002/11 (2003), para 3.

4 A useful analysis of General Comment No. 15 is provided in S. Salman and S. McNerney-Lankford, *The Human Right to Water: Legal and Policy Dimensions* (World Bank: Washington DC, 2004).

5 Report of the UN High Commissioner for Human Rights on water and sanitation, see note 1, paras. 47 and 49.

General Comment No. 15 appears to locate sanitation within the right to adequate housing and the right to health, where it states:

*In accordance with the rights to health and adequate housing (see General Comments No. 4 (1991) and 14 (2000)) States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.*⁶

The UN Sub-Commission on the Promotion and Protection of Human Rights has subsequently produced an analysis of the legal basis and implications of the right to water and sanitation. The report states that sanitation, along with water, is a component of the right to an adequate standard of living recognised in Article 11 (1) of the ICESCR and states: “*It is arguable that the right to adequate sanitation can be identified under international human rights law and this should be affirmed authoritatively by the international community*”.⁷ This argument has weight because at the International Conference on Population and Development in Cairo, a United Nations inter-governmental conference, States defined both water and sanitation as components of the right to an adequate standard of living.⁸ In 2006, the Sub-Commission adopted Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation (‘Sub-Commission Guidelines’), which aimed to “*highlight the main and most urgent components of the right to water and sanitation*”.⁹ In 2007, the United Nations Commissioner for Human Rights stated that, “*it was now time to consider access to safe drinking water and sanitation as a human right*.”¹⁰ However, it also stated that, “*the normative content of human rights obligations in relation to access to sanitation would need further elaboration*”.¹¹

3.1.2 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹²

There are currently 185 State parties to the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW). The Convention sets out an agenda to end discrimination against women, and explicitly references both water and sanitation within its text.

Article 14(2)(h) of CEDAW provides:

14(2) States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: ...

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.

3.1.3 The Convention on the Rights of the Child (CRC)¹³

The Convention on the Rights of the Child, 1989 (CRC) is the mostly widely ratified international human rights treaty, with only two countries in the world not having ratified the Convention.¹⁴ The text of the CRC explicitly mentions water, environmental sanitation and hygiene.

6 General Comment No. 15, para. 29.

7 Sub-Commission on the Promotion and Protection of Human Rights, *Final report of the Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation*, 14 July 2004, UN Doc. E/CN.4/Sub.2/2004/20, paras. 40-44. See Section 3.4.1 for a description of the Sub-Commission.

8 See Section 3.2. International and Regional Political Commitments

9 United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, (2006) UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, para. 3.

10 Report of the UN High Commissioner for Human Rights on water and sanitation, see note 1, para. 66.

11 Ibid., para. 49.

12 Adopted by the UN General Assembly in resolution 34/180 in 1979 and entered into force in 1981.

13 Convention on the Rights of the Child, adopted by the UN General Assembly in resolution 44/25 in 1989 and entered into force in 1990.

14 Only the United States and Somalia have not ratified the CRC.

Article 24(2)(c) and (e) of the CRC provide:

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health...

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ...

c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution; ...

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

3.1.4 Regional treaties

Specific human rights treaties in Africa, Europe and the Americas also explicitly or implicitly provide for the right to water and sanitation.¹⁵ In Africa, most States are party to the African Charter on the Rights and Welfare of the Child (AfCRC), 1990. This regional legal instrument, contains similar provisions to the CRC, and again explicitly references water.

Article 14(2)(c) of the AfCRC states:

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

2. State Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures: ...

(c) to ensure the provision of adequate nutrition and safe drinking water.

Although not explicitly referenced, the right to water and sanitation could also be inferred from the African (Banjul) Charter of Human and People's Rights, 1981, (ratified by almost all African countries) which recognises that every individual has, "*the right to enjoy the best attainable state of physical and mental health*" and that all peoples have "*the right to a general satisfactory environment favourable to their development.*"¹⁶

In the Americas, several States are party to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador", 1988. This regional legal instrument entitles everyone to, "*the right to live in a healthy environment and to have access to basic public services.*"¹⁷

In Europe, several States are party to the European Social Charter, 1961, which implicitly addresses the right to water and sanitation. The Charter includes in Article 11 the right to protection of health, where States ratifying the treaty commit to take appropriate measures:

15 See Langford et al, *Legal Resources for the Right to Water*, see note 1, pp. 39-45.

16 African (Banjul) Charter of Human and People's Rights, 1981, arts. 16, 24.

17 The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador", 1988, art 11.

1. *to remove as far as possible the causes of ill-health;*
2. *to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;*
3. *to prevent as far as possible epidemic, endemic and other diseases.*

The revised European Social Charter of 1996 also recognises the right to housing, whereby State parties to the treaty commit to promote access to housing of an adequate standard.

3.1.5 Other international legal treaties

Other key components of the right to water and sanitation, such as the obligation to refrain from reducing access to water to civilians in times of war, and the obligation to ensure the quality of drinking water sources, are also protected in various international treaties relating to armed conflict, criminal law, environmental and labour law.¹⁸

3.2 International and regional political commitments

While the aforementioned treaties are legally binding on States that have ratified or acceded to them, international declarations are normally only politically binding. Declarations may help interpret international treaties, as well as national constitutional and legislative provisions. Declarations are not legally binding unless they gain the force of customary law, which occurs when a declaration is treated by States to be a legally binding norm in a consistent and widespread manner.

All States have recognised the right to water and sanitation in at least one political declaration, this being the Programme of Action of the United Nations International Conference on Population and Development, 1994, which affirms that all individuals: “*have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation.*”¹⁹

Also at the international level, the Mar del Plata Declaration of the UN Water Conference, 1977, provides that, “*all peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs.*”²⁰ The UN General Assembly Resolution on the Right to Development, 2002, also recognised the right to clean water.²¹

In 2006, the Human Rights Council (see Section 3.4), took note of General Comment No. 15 and the Sub-Commission Guidelines.²²

The Non-Aligned Movement, which consisted of 116 countries at the time, recognised the right to water in 2006 as follows:

*The Heads of State or Government recalled what was agreed by the UN Committee on Economic, Social and Cultural Rights in November 2002, recognised the importance of water as a vital and finite natural resource, which has an economic, social and environmental function, and acknowledged the right to water for all.*²³

18 See Langford et al, *Legal Resources for the Right to Water*, see note 1, pp. 16-25.

19 Programme of Action of the International Conference on Population and Development, Programme of Action (1994), principle 2, available at: <http://www.un.org/popin/icpd/conference/offeng/poa.html>.

20 The UN Water Conference, Mar del Plata Declaration (1977), preamble.

21 General Assembly Resolution 54/175 (2000) para. 12(a) which states the “rights to food and clean water are fundamental human rights, and their promotion constitutes a moral imperative both for national Governments and for the international community.”

22 Human Rights Council Resolution A/HRC/2/L.3/Rev.1 Note also that from 2003-2005, the previous Human Rights Commission (the predecessor body to the UN Human Rights Council), in its omnibus resolution on economic, social and cultural rights, took note of General Comment No. 15.

23 14th Summit Conference of Heads of State or Government of the Non-Aligned Movement, Final Document, 16 September 2006, NAM 2006/doc.1/rev.3, para. 226.

In Europe, the Committee of Ministers to Member States on the European Charter of Water Resources, declared that: “*Everyone has the right to a sufficient quantity of water for his or her basic needs.*” This decision was made by representatives of Foreign Ministers of the 43 states that are members of the Council of Europe. The Ministers explained that the right to a minimum quantity of water of satisfactory quality is included within the right to be free from hunger and the right to an adequate standard of living.²⁴ In the Americas, reference to the right to water and sanitation can be inferred from the American Declaration of the Rights and Duties of Man, 1948, which provides for the preservation of, “*health through sanitary and social measures*”.²⁵

3.3 National constitutions and legislation

National recognition of the right to water and sanitation has significantly grown since the adoption of General Comment No. 15. In 2002, seven countries had recognised the right to water, including two that had recognised the right to water and sanitation. As of October 2007, at least 24 countries, as well as the Palestinian Water Authority, are known to have recognised the right to water in an adopted or draft constitution or law, including six that have recognised the right to water and sanitation. These countries are listed in Chapter 4: Roles of key actors, Section 4.1.2 on national legal recognition. Sample provisions are as follows:

South Africa, Water Services Act (Act 108 of 1997),

s. 3.1 Everyone has a right of access to basic water supply and basic sanitation.

3.3.2. Every water services institution must take reasonable measures to realise these rights.

Ecuador, Constitution, 1998

art 23(20) ... the State shall recognize and guarantee to the people the following ... the right to a quality of life that ensures health, feeding and nutrition, potable water, a clean environment ...

art 24 The state shall guarantee the right to health, its promotion and protection through ... the provision of potable water and basic sanitation.

A significant number of constitutions include provisions clearly outlining governments’ duties to ensure access to water and sanitation. For example, the Constitution of Colombia requires that public investment in social matters should be a State priority and that the State is obliged to find a solution for the unmet needs in terms of environmental protection and drinking water.²⁶ In addition, a wide range of national legislative provisions set out government duties to ensure provision of water and sanitation and entitlements of citizens to secure water access to water and sanitation.²⁷

Many countries recognise other human rights, such as the right to health, non-discrimination, life and to a healthy environment, which also require access to safe water and sanitation. For example, in the Argentinean case of *Menores Comunidad Paynemil s/accion de amparo*, an indigenous community’s rights to health and a safe environment were found to be violated when an oil company had polluted their water supply. As a result, a court ordered the provision of drinking water to the community and that the pollution be remedied.²⁸

24 Council of Europe, Recommendation of the Committee of Ministers to Member States on the European Charter on Water Resources, Recommendation 14 (2001) para. 5. The Ministers went on to provide specific recommendations, for example, on affordability and the prevention of arbitrary disconnections (paras 5, 19).

25 American Declaration of the Rights and Duties of Man, 1948, art XI.

26 Article 366; See also Higuera, Angélica Molina, *El Derecho Humano al Agua en La Constitución, la Jurisprudencia y los Instrumentos Internacionales*, (Defensoría del Pueblo – Colombia (2005), http://www.defensoria.org.co/pdf/publicaciones/derecho_al_agua.pdf

27 See Langford et al, *Legal Resources for the Right to Water*, see note 1, Chapter 5; and French Water Academy, ‘The Right to Water in National Legislations’ (2005), <http://www.academie-eau.org/>.

28 For more details on this case, see Chapter 8: Water quality and hygiene, Box 8.2.

3.4 Institutional mechanisms for protecting and promoting economic, social and cultural rights

3.4.1 International mechanisms

The United Nations (UN) human rights system can play a significant role in both monitoring and supporting the implementation of human rights at the national level.²⁹

The United Nations Human Rights Council and its advisory bodies

The UN Human Rights Council (the Council),³⁰ a body made up of 47 member states elected by the UN General Assembly, is the primary inter-governmental institution on human rights. It carries out norm-setting related to human rights, reviews country performance and can adopt resolutions on such topics. While the resolutions and decisions of the Council are not legally binding, they are politically and morally influential. The Council is a subsidiary organ of the UN General Assembly, and the UN General Assembly subsequently considers many of its resolutions. In November 2006, the Human Rights Council took note of both General Comment No. 15 and the Sub-Commission Guidelines and requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to conduct a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments.³¹ This study was submitted in September 2007 and is referred to in parts of this Manual.³² The OHCHR is a department of the United Nations Secretariat that provides administrative and research support to the Council, its treaty bodies and Special Procedures. It also works with governments, legislatures, courts, national institutions, civil society, regional and international organisations, and the United Nations system to develop and strengthen capacity for the protection of human rights.

The Council is also responsible for Special Procedures, made up of independent experts (often bearing the title of ‘Special Rapporteurs’) who are mandated by the Council to examine, monitor and publicly report on human rights situations in specific countries or territories (known as country mechanisms or mandates) or major phenomena of human rights issues of worldwide relevance (known as thematic mechanisms or mandates).

The Council has established, as of July 2007, a Universal Period Review (UPR) to examine the human rights performance of all UN members on a periodic basis. A complaints procedure, known as the ‘1503’ procedure, allows individuals and groups to bring complaints to the attention of the Council and to be confidentially addressed.

The Council is advised by a UN Human Rights Council Advisory Committee, which is made up of experts. This body replaces, as of July 2007, the Sub-Commission on the Protection and Promotion of Human Rights (Sub-Commission), which carried out studies and developed resolutions on various themes related to human rights that were then passed on to the Commission on Human Rights (and subsequently the Council) for further consideration. The Sub-Commission was the body responsible for the Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation (Sub-Commission Guidelines) which are referred to throughout this Manual. The Sub-Commission Guidelines, drafted to assist in the realisation of the right to water and sanitation, currently constitute important expert opinion. The Sub-Commission referred the Guidelines to the Human Rights Council for its consideration. If approved by the Council, they would gain greater political status.

29 The UN High Commissioner *Report on water and sanitation* provides a brief description of the treatment of water and sanitation by human rights treaty bodies, Special Procedures of the Human Rights Council, regional mechanisms, national courts, national human rights institutions and alternative dispute settlement mechanisms, see note 1, paras. 7-9 and 43. See also the website of the Office of the United Nations High Commissioner for Human Rights for a description of the bodies discussed in Section 3.4.1, www.ohchr.org (Click on ‘Human Rights Bodies’ as well as ‘About Us’).

30 The Council replaced the previous UN Human Rights Commission in 2006.

31 Human Rights Council Decision A/HRC/2/L.3/Rev.1. See also www.ohchr.org (‘Your Human Rights’ > ‘Human Rights Issues’ > ‘Stakeholder views’ below the Water heading).

32 See note 1.

The United Nations Treaty Monitoring Bodies

The implementation of international human rights treaties, including those listed in Sections 1.1 to 1.3 is monitored by a **committee of independent experts** elected by States that have ratified the treaty. States parties are required to submit a report on their implementation of each treaty at regular intervals (e.g. every five years for the ICESCR). The treaty-monitoring committees typically engage in a dialogue with representatives of States, take account of input from non-governmental organisations, and issue Concluding Observations evaluating the extent to which the country is implementing its obligations under the respective human rights treaty. The CESCR, in particular, has devoted attention to water and sanitation in many of its Concluding Observations.³³

Concluding Observations are not legally binding, but carry the authority of the United Nations. There is an expectation that by virtue of their ratification of the treaty and participation in the process, States will seriously consider the Committee's recommendations. In practice, implementation of the Concluding Observations varies. In some cases, they have led to revisions of laws, policy and practice and/or to increased public debate on the relevant issues at the national level. Whether the recommendations are taken up depends on whether there are national actors, either in government or in civil society, who follow up on the recommendations at the national level. Governments and civil society are universally improving their knowledge of international standards and mechanisms and as a result, Concluding Observations are becoming more influential.

The treaty bodies also release General Comments and Recommendations that provide authoritative interpretations of the relevant treaty, for example General Comment No. 15 of the CESCR. General Comments and Recommendations are not themselves legally binding, but are authoritative interpretation of treaties that are legally binding upon States that have ratified them.

Some human rights treaties, including CEDAW, have an Optional Protocol, which if specifically ratified by a State Party, permits individuals from that country to make complaints to the Committee regarding specific alleged infringements of the treaty.³⁴ A draft Optional Protocol to the ICESCR is undergoing negotiation between States at the UN Human Rights Council. The Committees will only consider complaints if the complainants have taken all reasonable steps to utilise available remedies at the national level before making a complaint to the relevant treaty monitoring committee. The Committees normally consider complaints based on written submissions by the complainant and the State concerned and issues its 'views' on the complaints. The 'views' have the same legal status as Concluding Observations. However, while the Concluding Observations tend to be framed in general terms, the views of the Committees on individual complaints provide very specific recommendations on particular cases, and therefore generally have a higher rate of implementation.

3.4.2 Regional mechanisms

There are human rights monitoring systems under the auspices of three regional organisations: the African Union (AU) – 53 members; the Organization of American States (OAS) – 35 members; and the Council of Europe (COE) – 47 members.

These systems monitor the regional human rights treaties listed in Section 3.1.4. Each system includes a commission or committee that monitors implementation of these treaties and addresses individual complaints (in the European case, this applies only to social rights issues). They can only do so where the State in question has ratified the regional human rights treaty. Each system also includes a court that is empowered to make legally binding decisions on individual complaints, if the State in question has ratified the relevant Protocol accepting the jurisdiction of the court about the regional human rights treaty.

³³ See Langford et al, *Legal Resources for the Right to Water*, see note 1 pp. 94-107.

³⁴ The other treaties are the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD). Note that in the latter two treaties, such an individual complaints mechanism is provided for in the text of the declaration, provided State parties have made the necessary declaration.

In Africa, the relevant institutions are the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.³⁵ In Europe, the relevant institutions are the European Committee on Social Rights³⁶ and the European Court of Human Rights. The latter institution can only address complaints relating to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which is on civil and political rights. The Court will therefore not directly deal with water and sanitation except where it relates to right that are included within the ECHR, such as the right to be free from discrimination or the right to life. In the Americas, the relevant institutions are the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights.³⁷ The Inter-American Court can only address the right to education, among social rights, as well as civil and political rights, including non-discrimination, contained in the Inter-American Convention on Human Rights (1969).

3.4.3 National mechanisms

Ideally, national mechanisms in each country form the primary institutional framework for the realisation of international human rights standards. This Manual is particularly designed to assist governments at this level. While economic, social and cultural rights have historically been neglected, it is now generally accepted that, "*All human rights are universal, indivisible and interdependent and interrelated*".³⁸ Increasingly, economic, social and cultural rights are being reflected in legislation, policy measures and political party manifestos. As an indicator, most constitutions in developing countries adopted after 1990 include such rights. Many other actors are relevant in monitoring implementation, including judiciaries, human rights commissions, ombudsperson institutions, civil society and users. (See Chapter 4: Roles of key actors, Section 4.4). Increasingly, such institutions are beginning to address economic, social and cultural rights, including the right to water and sanitation. Groundbreaking jurisprudence on this right is emerging from countries such as India, South Africa and Argentina.

35 See the African Court on Human and Peoples' Rights' website at: <http://www.achpr.org/>.

36 See http://www.coe.int/T/E/Human_Rights/Esc/. Information is available at <http://www.echr.coe.int/>.

37 See the website of the Inter-American Commission on Human Rights: <http://www.cidh.oas.org/what.htm>. Note, however, that while the Inter-American Commission can address complaints relating to water and sanitation, the Inter-American Court can only address the right to education, among social rights, as well as civil and political rights (including non-discrimination) contained in the Inter-American Convention on Human Rights, (1969).

38 'Vienna Declaration and Program of Action' World Conference on Human Rights (Vienna 14-25 June 1993) (12 July 1993) UN Doc A/CONF.157/23, para 5.



PART II

FRAMEWORK FOR IMPLEMENTATION



Chapter 4: Roles of key actors

This chapter surveys the role that each actor can play to ensure the implementation of the right to water and sanitation, focusing on the role of governments in implementing the right, and in monitoring, regulating, co-ordinating and assisting other actors to implement it. National governments have ultimate responsibility for ensuring the right to water and sanitation, including by assisting other levels of government to implement the right and ensuring that other actors respect the right. Also covered in this chapter are the roles of individuals and communities, civil society organisations, independent service providers, international organisations, and other water users. There is also an obligation for all actors to ensure that they do not interfere with the right of others to water and sanitation.

The International Covenant on Economic Social and Cultural Rights (ICESCR) is legally binding only on State parties. However, in order for the right to water and sanitation to be realised for all, all actors, including individuals, communities, corporations and international organisations need to play a role in the promotion, protection and fulfilment of the right and work in co-ordination to reach this goal. This is recognised in the Preamble of the ICESCR, which states that: “...*the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.*”¹ In addition, international law is developing in ways that hold trans-national corporations directly responsible for respecting human rights.²

¹ ICESCR, 1966, Preamble.

² U.N. *Sub-Commission on the Promotion and Protection of Human Rights, resolution 2003/16*, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

The main actors involved in the realisation of the right to water and sanitation are:

- Right to water and sanitation holders – all individuals: man, woman or child, whatever their residential status.
- Policy makers, regulators and allocators of resources – including national and local legislative and administrative authorities, catchment management bodies and officials who are responsible not only for water and sanitation provision but also for related services, such as social, health, development, information gathering and statistics, and budget issues.
- Water and sanitation services providers – ranging from public, private or cooperative large-scale network providers to small-scale water or sanitation providers composed of private, civil society or community efforts.
- Public institutions that promote, monitor and enforce human rights and those which are responsible for monitoring and regulating delivery of water and sanitation services – including human rights institutions, ombudsmen, judicial courts and regulators.
- Civil society organisations, such as non-governmental organisations, academic institutions, the media and professional bodies.
- Industrial and agricultural water users.
- International organisations.

HOW DIFFERENT STAKEHOLDERS CAN ACT TO IMPLEMENT THE RIGHT TO WATER AND SANITATION

National, regional and local governments (both the executive/administrative branch of government and legislative branches/municipal councils) are the key actors in setting up the conditions to ensure the right to water and sanitation services. Achieving this objective involves actions by governments at national, regional and local levels, in the roles of policy making, resource allocation, and service provision regulation. The Manual distinguishes these roles from that of water and sanitation service provision by governments, in order to address these functions more clearly. However, in many countries, there is no institutional separation between governments as regulator and as service provider, although there is a trend towards the establishment of an independent regulator. These roles can be further described as follows:

4.1 GOVERNMENT AS POLICY MAKER, REGULATOR AND ALLOCATOR OF RESOURCES

- 4.1.1 Prioritising water and sanitation services within their budgeting and political processes.
- 4.1.2 Revising legislation and policies in order to recognise and implement the right to water and sanitation.
- 4.1.3 Developing a plan of action to implement the right, including developing standards and targets, and clarifying the division of responsibilities between stakeholders.
- 4.1.4 Ensuring co-ordination between relevant ministries and departments (including water, health, environment, finance, agriculture, land, housing, energy and industry), including between central, regional and local government.
- 4.1.5 Ensuring that all levels of government responsible for water and sanitation services have sufficient resources, authority and capacity to discharge these duties and ensure extension of service to those without access.
- 4.1.6 Protecting and promoting the right of individuals and groups to access information and participate in decision-making relating to water and sanitation.
- 4.1.7 Collecting and disseminating accurate information on access to water and sanitation services, including disaggregated information on levels of access by vulnerable and marginalised groups.
- 4.1.8 Minimising contamination of water resources.
- 4.1.9 Paying charges incurred for water and sanitation services.
- 4.1.10 Integrating the right to water and sanitation into their international co-operation processes relating to development, finance, trade, investment and environment.
- 4.1.11 Introducing measures to prevent corruption in government bodies.
- 4.1.12 Ensuring that water and sanitation service providers (public and private) comply with service delivery standards and that there are independent monitoring, penalties for non-compliance and genuine participation in decision-making by users.

Points 4.1.1-4.1.12 relate to the overall framework for the role of government in policy making, regulation and resource allocation regarding the right to water and sanitation.

4.2 GOVERNMENT AS SERVICE PROVIDER

Governments, in most cases local authorities or public companies, operate the vast majority of water and sanitation utility services although some services are managed by public water companies or contracted out to private operators. In many developing countries, small-scale facilities such as kiosks, standpipes and wells and public toilets are operated by entrepreneurs, and community groups are responsible for a significant proportion of service provision. Often, basic sanitation and hygiene promotion is considered a responsibility of public health services, although some responsibilities are borne by water and education agencies. In addition to complying with relevant legislation and policies, water, sanitation and health service providers have the following roles:

- 4.2.1 In the case of utilities, extending water and sewerage services to schools, health centres and other public centres where these are needed (with separate facilities for males and females) and to households, including those occupied by marginalised and vulnerable groups.
- 4.2.2 Improving affordability of water and sanitation services through increased efficiency and flexibility of services.
- 4.2.3 For government bodies, carrying out sanitation and hygiene promotion and training and providing financial assistance to small-scale providers and households that rely on small-scale facilities.
- 4.2.4 Ensuring environmentally sound disposal of waste.

4.3 PRIVATE SERVICE PROVIDERS

Private service providers include utilities managed by corporations and small-scale services managed by private entrepreneurs, civil society organisations and by communities of users. They have the following roles:

- 4.3.1 In the case of private corporations managing utilities, carrying out the roles of public service providers, as listed in Section 4.2.
- 4.3.2 In the case of small-scale providers (private, civil society or community-based providers), providing services of adequate quality at an affordable cost.

4.4 INDEPENDENT PUBLIC MONITORING BODIES

An effective complaints mechanism is a key component of the right to water and sanitation and a useful tool to ensure effective implementation of service delivery standards and targets. Such mechanisms may be provided by a regulator. However, whether or not a regulator has established such a mechanism, accountability can be enhanced if an independent branch of government – a human rights commission, an ombudsperson institution or the judiciary – monitors the performance of public institutions. Independent public monitoring bodies can support implementation of the right by:

- 4.4.1 Reviewing legislation, policy and programmes to ensure that they are consistent with the right to water and sanitation.
- 4.4.2 Investigating complaints by users and ensuring adequate redress for genuine complaints.
- 4.4.3 Monitoring compliance with national legislation on water and sanitation by government bodies and private parties.

Each of these types of bodies has distinct roles. Human rights commissions and ombudsperson institutions can carry out detailed and long-term reviews of government policy and can respond to complaints quickly, flexibly and cheaply. The judiciary operates in a slower fashion, and can generally only examine a particular factual scenario rather than a long-term series of actions. However, the judiciary can require public institutions to revise their programmes and actions and can impose criminal and civil penalties on public officials and private persons.

4.5 INDIVIDUALS AND COMMUNITIES

Each person has the right to water and sanitation, irrespective of his or her legal status, which can be secured as an individual and/or as a member of a community. For the purpose of the Manual, a 'community' refers to a group of people residing in a particular area who identify as a community. Communities (including community-based organisations and residents' associations) have the knowledge of their environment and of their needs, and the motivation to improve their situation. In many situations, predominantly in rural areas but also in urban areas in developing countries, communities manage small-scale water and sanitation services. Individuals and communities can play the following roles:

- 4.5.1 Identifying the needs and priorities of all members of the community, monitoring service provision, proposing appropriate water and sanitation policies to government bodies and participating in consideration of such policies.
- 4.5.2 Obtaining information about their rights under national and international law, disseminating it to their communities and advocating for implementation of their rights in partnership with other communities.
- 4.5.3 Contributing to the operational and financial sustainability of water and sanitation facilities and services through financial payment (with government assistance for the poorest to pay bills), or provision of labour where feasible (for example, in some rural areas and informal settlements). Households also have responsibility for constructing household toilets.
- 4.5.4 Avoiding contamination of water resources, using water and sanitation facilities responsibly and spreading knowledge within the community of good hygiene practices.
- 4.5.5 Assisting vulnerable and marginalised individuals and households within the community to secure access to water and sanitation.

4.6 CIVIL SOCIETY ORGANISATIONS

Civil society organisations (CSOs) include non-governmental development and advocacy organisations, social movements, faith-based organisations, research and academic institutions, the media, professional bodies and other similar organisations. (While community-based organisations are part of civil society, the Manual addresses their roles under 'communities' in Section 4.5.) CSOs have a variety of roles to play in implementing and/or promoting the right to water and sanitation, which can include, depending on their area of specialisation:

- 4.6.1 Supporting the work of governments and communities by providing information, facilitating community organisation and assisting communities with their advocacy processes.
- 4.6.2 Building community and government capacity and knowledge on water and sanitation issues, including on rights and responsibilities, management and technical information.
- 4.6.3 Striving to ensure that their activities are coordinated and that their work supports and does not duplicate work done by government, other civil society organisations or international organisations.
- 4.6.4 Monitoring government actions on water and sanitation and that of third parties.
- 4.6.5 Educating students and the broader public about the right to water and sanitation.
- 4.6.6 Carrying out research on ways to implement the right to water and sanitation, and sharing research outcomes with all stakeholders.
- 4.6.7 For international civil society organisations, supporting the development and growth of local and national civil society organisations and community-based organisations.

4.7 INDUSTRIAL AND AGRICULTURAL WATER USERS

Industrial and agricultural bodies (including both private corporations and government-owned industries) are often major consumers of water. They therefore have a social responsibility to ensure that their use of water does not curtail essential domestic uses of water (as well as essential uses of water for other purposes), either through over-abstraction or pollution of water sources. In addition to complying with national legislation, they have the following roles in ensuring the right to water and sanitation:

- 4.7.1 Minimising water use and promoting effective water conservation methods.
- 4.7.2 Minimising contamination of water resources.

4.8 INTERNATIONAL ORGANISATIONS

International organisations, including UN agencies, the World Bank, International Monetary Fund and other such organisations have the following roles in supporting the implementation of the right to water and sanitation:

- 4.8.1 Providing financial and/or technical assistance to governments, civil society organisations and communities.
 - 4.8.2 Reviewing and revising their co-operation policies, operating procedures and policy advice to ensure that these are consistent with the right to water and sanitation.
 - 4.8.3 Ensuring co-ordination and coherence as far as possible, in relation to government activities and amongst themselves.
-

4.1 Government role as policy maker, allocator of resources and regulator

4.1.1 Prioritising water and sanitation services

Government commitment to access for all is the most crucial aspect of delivery of water and sanitation services. Without the recognition of the right of all people to gain access to safe, sustainable and sufficient, affordable water and sanitation services for domestic use, regardless of where they live, their social standing, or their citizenship, it will be almost impossible to deliver on the right to water and sanitation. This first step towards realising the right to water and sanitation relies on commitment from all levels of government and requires that water and sanitation is prioritised within national budgets and in relevant policy documents, such as Poverty Reduction Strategies.

According to the Sub-Commission Guidelines:

Each level of government in a State, including the national Government, regional governments and the local authorities, has a responsibility to move progressively and as expeditiously as possible towards the full realization of the right to water and sanitation for everyone, using practical and targeted measures and drawing, to the maximum extent possible, on all available resources.³

The Sub-Commission Guidelines also state that, “States should at all levels of government: ... Give priority in water and sanitation policies and programmes to the persons without any basic access”.⁴

In many countries however, water and sanitation services are still not sufficiently high on the national political agenda, despite the fact that at a local level, these essential services are routinely identified as a priority, in both urban and rural areas. Water is often seen as a ‘vote catcher’, where political candidates promise improved delivery of water services in return for votes. Thus, prioritising water services is not politically difficult.

However, sanitation is not perceived as a high priority of the public, and is also seen as difficult to deliver. Nevertheless, in view of the importance of sanitation for health and dignity, it is necessary to consider carefully the allocation of resources between water and sanitation services, to ensure that sanitation is adequately budgeted for and prioritised in relevant water and health sector policies. In particular, it is necessary to ensure that the focus is not limited to sewerage and drainage, but that sufficient capacity and funds are allocated to hygiene promotion and to training and capacity building for small scale providers or communities involved in sanitation provision.

4.1.2 Revising laws and regulations to recognise and implement the right

General Comment No. 15 states that: “Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to water, and should be repealed, amended or changed if inconsistent with Covenant requirements.”⁵ The Sub-Commission Guidelines also state that, “States should at all levels of government: ... Formally recognize the right to water and sanitation in relevant laws and regulations.”⁶ As the recognition of the right to water and sanitation is still relatively new, the majority of countries do not formally recognise the right in their national laws. In 2002, only seven States had done so. Belgium (specifically the jurisdictions of Wallonia, Flanders and Brussels), Burkina Faso, Angola, Uganda and Ukraine had included the right to water in their constitutions and/or laws.⁷ South Africa and Ecuador had included the right to water and sanitation.

3 United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005) UN Doc. E/CN.4/Sub.2/2005/25, section 2.1. [Sub-Commission Guidelines]

4 Sub-Commission Guidelines, section 2.3(a).

5 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003), para. 46.

6 Sub-Commission Guidelines, section. 2.3 (c).

7 In addition, the Palestinian Water Authority recognised the right to water in Water Law No. 3 (2002).

Since 2002, when the General Comment No. 15 was adopted, at least an additional seventeen countries have revised – or have taken steps to revise – their laws or constitutions to explicitly include the right to water. These include : the Democratic Republic of Congo (2006), Indonesia (2004), Mauritania (2005), Mozambique (2005), Namibia (2004), Nicaragua (2007), Uruguay (2004), Costa Rica (2004, draft), Honduras (2005, draft), Paraguay (2007), Peru (2005 environment law and 2007 draft water law), Venezuela (2007) and France (2006). Four of these countries notably recognised the right to water and sanitation in their constitutions or laws: Algeria (2005), Kenya (2005 draft Constitution), Guatemala (2005 draft water law) and Uruguay (2004). Several other States have established legal duties to provide access to water and sanitation.

However, recognition is only the first step towards ensuring that laws and policies do not interfere with fulfilment of this right, but incorporate steps to enable it. Effective implementation of the right requires an extensive review of national laws, regulations and policies. The criteria and potential reforms that could be incorporated in revised legislation and policies are addressed in Sections 4.1.3–4.1.12 of this chapter and in Chapters 5-11 which address substantive components of the right to water and sanitation relating to water availability and quality; physical accessibility and affordability of water and sanitation; non-discrimination and attention to vulnerable and marginalised groups; participation and access to information; and international co-operation.

4.1.3 Developing a plan of action and service delivery standards

Governments have an important role, working together with all stakeholders, to develop a national strategy or plan of action to realise the right to water and sanitation and to set targets for defined standards.

General Comment No. 15 states:

The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy or plan of action to realize the right to water. The strategy must:

- (a) be based upon human rights law and principles;*
- (b) cover all aspects of the right to water and the corresponding obligations of States parties;*
- (c) define clear objectives;*
- (d) set targets or goals to be achieved and the time-frame for their achievement;*
- (e) formulate adequate policies and corresponding benchmarks and indicators.*

The strategy should also establish institutional responsibility for the process; identify resources available to attain the objectives, targets and goals; allocate resources appropriately according to institutional responsibility; and establish accountability mechanisms to ensure the implementation of the strategy.⁸

This is best achieved through co-ordination with and participation of all relevant stakeholders, including representatives of vulnerable and marginalised groups;⁹ this issue is covered in greater detail in Chapter 6: Participation and access to information. Data and research into the existing legislative framework, regulatory process and policies will also be necessary (see Section 1.7).

⁸ General Comment No. 15, para. 47. See also Sub-Commission Guidelines, section. 2.3 (b).

⁹ General Comment No.15, para. 16, 48.

Standards for the delivery of water and sanitation services to realise the right to water and sanitation include:

- Minimum standards for quantity per person or household.¹⁰
- Minimum water quality standards.¹¹
- Standards on appropriate technology.
- Opening hours (for offices of utilities and for facilities such as kiosks where these are operated by or under contract to a utility).
- A mechanism for ensuring affordable tariffs.
- A time-frame for extension of services, with priority for minimum-standard access first.
- Minimum standards for latrines, sewerage systems and wastewater drainage and for the treatment or safe disposal of waste.

The specific contents of each of these standards are covered in Chapter 7: Water availability, allocation and sustainability; Chapter 8: Water quality and hygiene, Chapter 9: Physical accessibility; and Chapter 10: Affordability and financing. Where standards are set at the national or regional level, a process would be required for certain standards (such as time-frames for extension) to also be formulated for specific localities. Targets for reaching these standards for the short, medium and long term are particularly useful, in order to ensure realistic and immediately measurable targets. It is necessary, however, to ensure that the plan of action takes account of the differing technical and financial needs in urban and rural areas, as well as between formal and informal settlements, and to explicitly distinguish between targets for each of these areas. It will also be necessary to establish different targets, in the short-term, for small-scale provision (see Chapters 9: Physical accessibility and 10: Affordability and financing).

The plan of action would also need to include:

- Development of the appropriate institutional arrangements.
- Building of data collection capacities, including disaggregated data.
- Involvement of civil society in monitoring.

BOX 4.1: SOUTH AFRICAN SERVICE DELIVERY STANDARDS

Regulations issued in 2001 set out the prescribed minimum national standards:

The minimum standard for basic water supply services is –

- (a) the provision of appropriate education in respect of effective water use; and*
- (b) a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month*
 - (i) at a minimum flow rate of not less than 10 litres per minute;*
 - (ii) within 200 metres of a household; and*
 - (iii) with an effectiveness such that no consumer is without a supply for more than seven full days in any year.¹²*

According to the Minister of Water Affairs and Forestry, the government expects to reach the target of universal access to a basic water supply, as set out in the regulations, by 2008.¹³

10 This would include reference to water point density and flow rates.

11 This would include water pressure standards for pipe networks to ensure supply is free from contaminants.

12 *Regulations relating to compulsory national standards and measures to conserve water*, (2001), s. 3, <http://www.dwaf.gov.za>.

13 Policy Review Debate of the National Council of Provinces (NCOP), Speech by Ms BP Sonjica, MP, Minister of Water Affairs and Forestry, NCOP, Parliament, 31 May 2005, <http://www.dwaf.gov.za/Communications/MinisterSpeeches>. The government also has a target to ensure sanitation for the 16 million people without adequate sanitation by 2010.

4.1.4 Ensuring co-ordination between all relevant ministries and departments

General Comment 15 states: “Steps should be taken to ensure there is sufficient co-ordination between the national ministries, regional and local authorities in order to reconcile water-related policies.”¹⁴ When developing national and local plans of action for water and sanitation it is important to take into consideration the wide range of ministries and departments with responsibilities for water and sanitation. For example, sanitation falls within the responsibilities of agencies responsible for water, sanitation, health, local government, land use management, education, among others. As water is required for more than personal and domestic uses, its allocation involves agencies, those that are responsible for health, environment, finance, land, housing, energy, agriculture and industry, in addition to those involved in water and sanitation. Co-ordination between all relevant ministries and departments to ensure that there is no overlap of efforts or contradictory policies formed is crucial.¹⁵

In the area of water allocation, Integrated Water Resource Management (IWRM) is a useful, and increasingly common, approach, as is the establishment of an agency with overall responsibility for water resources management.¹⁶ This is discussed in detail in Chapter 7: Water availability, allocation and sustainability. Clear systems need to be in place to manage the competing demands and to prioritise essential water needs, including for marginalised and vulnerable populations. Increasingly, river basin or catchment management authorities play this role, and sometimes also have a mandate for conflict resolution. Measures to provide essential domestic water may clash with the economic advantages of providing water to industry or other users (as well as the potential cross-subsidies that can be raised from large users). For this reason, long-term financial resources and political commitment are needed to ensure sufficient water allocation for essential domestic use.

BOX 4.2: THE NEED FOR CO-ORDINATION IN NEPAL AND TANZANIA

Poor co-ordination and communication between the different groups involved in the sector compound lack of access to water and sanitation in Nepal. In 2001, WaterAid Nepal undertook a mapping exercise that showed that various water and sanitation sector agencies had carried out a series of studies within a year of each other, yet many of these agencies were unaware of what the others were doing. Information and knowledge is poorly shared within the sector and is not very accessible either to the service providers or the communities themselves. This results in a waste of financial and human resources, and hampers service delivery.¹⁷

A similar survey carried out in Tanzania also showed that there is little capacity to monitor services and few accurate data are available. The existing data are under-utilised and dissipated between a range of different institutions, with various data collection methods used and poor co-ordination between the relevant organisations, making it difficult to implement successful strategies.¹⁸

14 General Comment No. 15, para. 51.

15 WHO *Guidelines for Drinking Water Quality*, Third edition, (Geneva: WHO, 2004), pp. 11-12.

16 Integrated Water Resource Management (IWRM) is defined as “a process which promotes the co-ordinated development and management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems”. Integrated Water Resource Management, Global Water Partnership Technical Advisory Committee, Background Paper No. 4 (2000), p. 22.

17 Overview of Resource Centre Programme in Nepal, IRC, 2007, <http://www.irc.nl/content/view/full/395>.

18 S. Sugden, *Databases for the Water sector: research from Nepal and Tanzania*, (WaterAid Kyoto Database, 2003), <http://www.wateraid.org.uk>.

4.1.5 Ensuring all levels of government have sufficient resources and capacity to extend services to those without access

General Comment 15 states:

Where implementation of the right to water has been delegated to regional or local authorities, the State party still retains the responsibility to comply with its Covenant obligations, and therefore should ensure that these authorities have at their disposal sufficient resources to maintain and extend the necessary water services and facilities.¹⁹

This is reiterated in the Sub-Commission Guidelines which state that “National Governments should ensure that other levels of government have the necessary resources and skills to discharge their responsibilities.”²⁰ Chapter 10: Affordability and financing, discusses this issue in more detail.

The devolution of water and sanitation regulation and service provision to regional and local levels is increasingly common in developing countries. In some cases international finance institutions make it a condition of lending money. Important determinants of the ability of regional and government bodies to regulate and provide services are whether they have sufficient resources, authority and decision-making capacity. A major hindrance in delivering services to all is not only a lack of finances – although this is often a significant factor – but also a lack of trained personnel who are able to manage services, particularly in rural areas, where it can be difficult to employ well-qualified staff. In many cases, programmes at the national level provide money and support to municipalities for water and sanitation infrastructure services, but do not provide support for municipalities to increase their operational capacity and human resources, including the strengthening of public management. For many municipalities, there is a necessary balance in investment between hardware, technology and capacity building. Without adequate capacity building of institutions, organisations and individuals, investment in technology and hardware is potentially wasted.²¹ In addition, mechanisms to ensure transparency and accountability may not be sufficiently robust to address the expanded responsibilities at the local government level.

While the decentralisation or devolution process is seen as a positive step forward towards a more participative decision-making process, a report on Central America warned against a simple assumption that municipal or local is best:

It is striking that, in many countries of the region, the most effective arrangements for development of rural and peri-urban systems are in the hands of the national state water corporations. This raises an important issue in the context of sector reform, since often these corporations are slated for abolition or major restructuring, creating a risk that the best programs aimed at the poorest communities might become a casualty of the reform process.²²

19 General Comment No. 15, para. 51.

20 Sub-commission Guidelines, section. 2.2.

21 H. Wihuri, M. Snel & J. Wartiovaara (eds), E-conference on *Challenges of international goals in the Water Sector*, 20 October – 7 November 2003, Summary report, Organised by IRC on behalf of the Finnish Ministry for Foreign Affairs, available at <http://www.irc.nl/content/view/full/290>.

22 I. Walker and M. Velásquez, *Regional Analysis of Decentralization of Water Supply and Sanitation Services in Central America and the Dominican Republic*, (ESA Consultores, 1999), pp. 20-21.

In many rural districts or small towns, there are insufficient numbers of middle- or high-income residents to be able to cross-subsidise extension of services to new areas. In addition, decentralisation can lead to several other problems such as:

- Loss of economies of scale.
- A mismatch between the industrial structure of the sector and the jurisdictional level responsible for regulation.
- Reduced possibilities of cross-subsidies (where there are insufficient high-income and commercial users in a locality).
- Confusion of institutional roles.
- Lack of attention to rural areas.
- Obstacles to protecting water sources.
- Lack of incentives for the control of water pollution and lack of preparation for reforms.²³

Thus, although local level decision-making is appropriate in most cases, there are exceptions, and there are economies of scale that can be made by national or regional level bodies that may not be possible in smaller jurisdictions.

BOX 4.3: MUNICIPALITIES IN COLOMBIA

In the early 1990s, Bogotá faced the ‘seemingly impossible task’ of delivering water and sewerage services to a burgeoning population that was increasing by an average of 150 000 a year. Taking advantage of the law that granted mayors more authority and independence in the management of public services, the Mayor of Bogotá from 1998-2000 restructured the Water and Sewerage Company of Bogotá (EAAB). The mayor focused the reform on providing water and sanitation services to the city’s poorest neighbourhoods and provided subsidies for poor residents. In 1993, the homes of only 78 percent of Bogotá’s nearly 5 million residents were connected to water services and 71 percent to sewerage services. By 2001, the EAAB had raised the proportion of households connected to water services to 95 percent and those with sewerage services to 87 percent despite the fact that in this period, Bogotá’s population had grown to nearly 6.5 million.²⁴

4.1.6 Protecting and promoting the rights of participation and access to information

General Comment No. 15 states: *“The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water.”*²⁵ Governments have a responsibility, not only to promote and facilitate participation, but also to protect peoples’ right to participate in decisions that affect them. The General Comment goes on to say: *“Individuals and groups should be given full and equal access information concerning water, water services and the environment held by public authorities or third parties.”*²⁶ This is essential to enable informed participation as well as ensuring transparency.

23 A. Jouravlev, *Drinking water supply and sanitation services on the threshold of the 21st century*, Infrastructure of the Economic Commission for Latin America and the Caribbean (ECLAC), (Santiago, Chile, December 2004), p.34, <http://www.eclac.org/publicaciones/default.asp?idioma=IN>

24 S. Garland, *Keeping it Public in Bogotá*, NACLA Report on the Americas, Vol. 38, No. 1, July/August 2004, www.nacla.org/art_display.php/art=2456.

25 General Comment No. 15, para. 48.

26 Ibid.

The Sub-Commission Guidelines state: “Communities have the right to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose and manage their own services with assistance from the State.”²⁷ This right would necessarily vary according to context. In an urban setting, it may not be feasible for a particular neighbourhood to decide on the particular level of service, as such decisions may have to be made by the wider community (potentially at the level of the whole town, potentially via referenda for the most significant decisions). In a rural setting, there may be more scope for a particular area to choose its level of service. Similarly, community management of water services is generally feasible only where small-scale provision is the mode of service delivery used. These issues are dealt with in detail in Chapter 6: Participation and access to information.

4.1.7 Collecting and disseminating accurate disaggregated information

In order to develop an effective national water and sanitation policy and plan of action (see Section 4.1.3), it is important that governments have a thorough understanding of the current levels of access, the quantity of water resources available and the various demands placed upon these finite resources. This process requires:

- Periodically collecting information on levels of access to water and sanitation of the population in all different regions of the country, disaggregated according to vulnerable and marginalised groups.
- Undertaking a thorough, participatory evaluation of legislation, policy and institutional arrangements in place for the provision of water and sanitation, in order to assess their adequacy to implement the right to water and sanitation.
- Developing indicators and benchmarks and transparent and participatory mechanisms for implementation of service delivery standards.

The importance of disaggregation of data is discussed in Chapter 5: Non-discrimination and attention to marginalised and vulnerable groups, and the right of individuals to access information and the participation of communities in the gathering of data, is discussed in Chapter 6: Participation and access to information.

4.1.8 Minimising contamination of water resources

As with all users, government-owned enterprises and government-operated facilities, including public buildings and government offices have the responsibility to minimise their impact on the environment. Wastewater and industrial by-products need to be treated to minimise their harm to the environment and avoid damage to human health.

4.1.9 Paying water and sanitation charges

For effective management of water supply and sanitation services, it is important that the government pays for these services just as other households and businesses are expected to pay. It is important that government buildings have adequate facilities for staff and that good practice in terms of water conservation and hygiene is encouraged. This point is relevant to all levels of government (including service providers and independent public bodies).

27 Sub-commission Guidelines, section. 8.2.

4.1.10 Integrating the right to water and sanitation into their international co-operation processes

The right to water and sanitation cannot be realised by governments acting alone within their borders. The provision of financial and technical assistance by developed and middle-income developing countries (directly, or through international organisations) in accordance with human rights standards will be essential for developing countries. In all cases sharing of technical co-operation, including South-South co-operation, by all countries is also necessary. This point is recognised in the UN Millennium Declaration, the Monterrey Consensus on Financing for Development and in General Comment No. 15, which states: “*Depending on the availability of resources, States should facilitate realization of the right to water in other countries...*”²⁸ This point is dealt with in more detail in Chapter 11: International Co-operation, Section 11.1.

The management of international watercourses and of the shared environment, and trade and financial co-operation with other countries, are other areas of international co-operation relevant to the realisation of the right to water and sanitation. General Comment No. 15 states:

*States parties have to respect the enjoyment of the right in other countries. International co-operation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.*²⁹

Relevant activities by national governments can include actions taken individually, as a group (in negotiating international agreements) and through their membership of international organisations. The implications of the right to water and sanitation for international co-operation are addressed in Chapter 11: International co-operation.

4.1.11 Introducing measures to prevent corruption in service providers

In addition to ensuring that service providers meet service delivery standards, specific measures need to be put in place to prevent corruption - not only in service operation, but also during any tendering process for the provision of services or construction of facilities. Different measures will be necessary for the various circumstances, where services may be operated by a public body, private company or community-based entity.³⁰

Prevention of corruption is normally dealt with by establishing a particular investigative agency. However, anti-corruption measures often fail to bring about significant change because they do not take account of the specific country context. According to Shah: “*Policy makers too often use the ‘C’ word and focus directly on dealing with the symptoms of corruption while ignoring the broader disease of dysfunctional governance.*”³¹ Some of the broader measures that can help combat corruption include:

- Ensuring that the basics of good governance – such as establishing the rule of law; strengthening institutions of participation and accountability and defining basic legal rights; including access to defined public services standards; clarifying the roles of various branches of government; and ensuring performance-based accountability – are in place before taking specific measures to detect and punish corruption.
- Assessing service delivery performance, as an important means to detect corruption - one that is far more effective than are performance audits.
- Empowering citizens by supporting bottom-up reforms that can help enhance transparency, accountability and the rule of law.

28 General Comment No. 15, para. 34.

29 General Comment No.15, para. 31.

30 Further information is available from the Water Integrity Network, www.waterintegritynetwork.net. See also, M. Sohail and S. Cavill, *Partnering to Combat Corruption in Infrastructure Services: A Toolkit* (WEDC, 2007) <http://wedc.lboro.ac.uk/resources/resources.php>.

31 These are some of a number of policies suggested in A. Shah, ‘Tailoring the Fight against Corruption to Country Circumstances’ in A. Shah, ed. *Performance Accountability and Combating Corruption* (Washington, D.C.: The World Bank, 2007), <http://www.worldbank.org/wbi/governance/pubs> (click on Corruption), pp.249-250.

- Disseminating information, thus ensuring the public's right to know, and obliging public agencies to release timely, accurate and complete information about government operations. Such measures can constitute a powerful antidote to corruption.³²

These measures are discussed in further detail in Sections 4.1.3 Delivery standards, 4.1.6. Access to information as well as in Section 4.1.12.

4.1.12 Ensuring that service providers comply with service delivery standards

The Sub-Commission Guidelines indicate that:

*States should, at all levels of government, establish a regulatory system for private and public water and sanitation service providers that requires them to provide physical, affordable and equal access to safe acceptable and sufficient water and to appropriate sanitation and includes mechanisms to ensure genuine public participation, independent monitoring and compliance with regulations.*³³

Ensuring effective regulation

A regulatory body - both national basis and/or regional - may be an independent public agency or may be located within a ministry or municipal department. Governments are increasingly moving towards the former option, setting up regulators that function independently of the ministry or municipality and the service provider.

The regulatory body has the role of ensuring that service providers operate in a manner consistent with the right to water and sanitation and that there is a mechanism by which service providers can be held accountable by the users. While the relevant ministry or department establishes national or regional service delivery targets (See Section 4.3 in this chapter), the regulator is normally responsible for specifying detailed targets and benchmarks for service providers, and for approving tariff structures. Such targets, benchmarks and tariff structures would need to ensure that obligations imposed on service providers would not render them insolvent, and have the effect of creating incentives rather than disincentives for utilities to extend services to unserved areas. While a regulator can impose fairly onerous standards on utilities, particularly with regard to extension of services, it would be unrealistic to impose similar requirements on small-scale providers (see later in this section). The content of these standards is covered in greater detail in Chapter 7: Allocation and sustainability of water; Chapter 8: Water quality and hygiene; Chapter 9: Physical accessibility and Chapter 10: Affordability and financing.

It is also useful for a wide range of stakeholders, including community groups, to be represented on the regulatory body. This will allow for public participation in decision-making processes, and give effect to their right to participation.³⁴ In order to effectively monitor the service providers, the regulatory body needs to be empowered to receive complaints, to publicise its role and to establish an accessible complaints mechanism. Methods to ensure accessibility include: providing complaints boxes in the different areas service provider operates in, engaging in co-operation with communities of users (including through the establishment of 'water watch groups') and with civil society organisations.

Effective monitoring assesses the actual levels of service compared with service delivery standards required by regulation and the specific agreement between the relevant ministry and the service provider. It would be useful for the regulator to be given a mandate to ensure respect for the right to water and sanitation, including the ability to impose penalties that can create a disincentive against repeating violations and can cover the costs of compensation to any injured parties.

³² Ibid.

³³ Sub-Commission Guidelines section. 2.3 (e).

³⁴ General Comment No. 15, para. 48.

Contracting and regulation of private utilities

Approximately 10 percent of water and sanitation utilities are private corporations who operate government owned infrastructure on a long term basis. Ownership of such infrastructure by private bodies is relatively rare. In some cases, the service provider is a public body, but a private body is sub-contracted specific tasks, such as billing or connections. General Comment No. 15 states the following regarding private service provision:

Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.³⁵

As such, General Comment No. 15 indicates that private service providers operating or controlling water and sanitation services should fulfil similar services delivery standards as public service providers. According to the United Nations High Commissioner for Human Rights:

[P]rivatization of water and sanitation services should not take place in the absence of a clear and efficient regulatory framework that can maintain sustainable access to safe, sufficient, physically accessible and affordable water and sanitation. The role of individuals in decision-making on who supplies water and sanitation services, the type of services supplied and how these should be managed raises questions concerning regarding the right to take part in the conduct of public affairs and other rights, and is an important element to take into account when making decisions on private sector delivery.³⁶

In order for a government to determine whether private management of a network is consistent with the realisation of the right to water and sanitation, the following considerations would be relevant:

- Whether the individuals and communities in the proposed area to be covered by the private provider have been informed about the proposed private sector participation and its implications, and whether they have been in favour of the contract over alternative forms of provision, as indicated through a genuine and representative consultation.
- Whether the government has the regulatory capacity in place to prevent corruption of contractual negotiations and operation of the utility, and to ensure compliance with service delivery standards.³⁷
- Whether the private corporation is able to credibly commit a service extension and tariff package that is more conducive to the realisation of the right to water and sanitation than what could be achieved by a public provider.
- Whether the corporation is genuinely committed to the right to water and sanitation, as defined in international standards, has acted in conformity with the right in previous contracts elsewhere and is willing to agree to modifications to the contract agreement where needed in order to realise the right, taking into account the views of users.
- Whether the government would be able to maintain adequate water and sanitation services in the event the corporation decides to abandon the contract.

In addition to these considerations, further issues arise where transnational private corporations are being considered:

³⁵ General Comment No. 15, para. 24.

³⁶ *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, (2007) UN Doc. A/HRC/6/3, para. 53 available at: <http://www.ohchr.org> ('Your Human Rights' > 'Human Rights Issues' > 'Stakeholder views' below the Water heading).. The report notes that further elaboration is required on the types of regulatory systems regarding the relevant human rights requirements and the types of regulatory systems that must be put in place.

³⁷ See E. Gutierrez, B. Calaguas, J. Greene and V. Roaf, *New Rules, New Roles: Does PSP benefit the poor?* (WaterAid and Tearfund, 2003), <http://www.wateraid.org.uk>.

- Whether the relative bargaining power between the corporation and the government, or the relative negotiating capacity, would result in agreed standards undermining the realisation of the right to water and sanitation.
- Whether tariffs will be pegged to an international currency such as the US dollar. Such a system would impose the risks of currency devaluation on individuals and communities. (This problem can also arise when public or local private corporations borrow funds in foreign currency for major investments in infrastructure).
- Whether the corporation is willing to formally waive any right to bring claims to an international investment tribunal to challenge government regulations that may be necessary to implement the right to water and sanitation, and which may have the effect of reducing their expected profits (see also Chapter 11: International co-operation, Section 11.5 on trade and investment).

Detailed guidance and a toolkit for regulation of public-private partnerships are provided in the principles developed by the Swiss Agency for Development and Co-operation, Swiss Re and the Swiss State Secretariat for Economic Affairs. These principles do not provide guidance in situations where a government is deciding whether such partnerships are appropriate for a particular situation, but are relevant where countries have already decided to use public-private partnerships.³⁸

BOX 4.4: PRIVATE WATER SERVICES MANAGEMENT IN BUENOS AIRES

In Buenos Aires, Argentina, the Aguas Argentinas concession failed to fulfill the agreed investment in both the expansion of the existing supply network, and the improvement of water quality and pressure. The company did not meet its commitments regarding the construction of new pumping stations, underground mains and expansion of sewerage networks. Analysts explain that this failure may have been due to the lack of incentive for the company to expand or improve the service to low income and low populated areas.³⁹

When the Argentine Government rescinded the concession contract in March 2006, it claimed that the company had prioritised its own profits by providing services to profitable areas and leaving the most marginalised sectors of the population without access to water.⁴⁰

Furthermore, the mechanism to adjust water tariffs was linked to an average between the Producer Price Index - Industrial Commodities and the Consumer Price Index -Water & Sewerage Maintenance, both from the United States of America. This had serious implications for tariffs as the value of the dollar fluctuates significantly against the Argentinean peso. When the Argentine economy was in crisis after December 2001 and the peso was devalued by two-thirds, the Government passed an 'economic emergency law' which froze all utility rates. Arguing that the rate freeze violated its contract, Aguas Argentinas took the government of Argentina to the International Centre for Settlement of Investment Disputes (ICSID) claiming a breach of the Argentinean commitments under the Bilateral Investment Treaties signed between Argentina and France. The case is still under the tribunal's consideration.⁴¹ For more information on this arbitration, see Chapter 11: International co-operation, Box 11.3.

38 Swiss Agency for Development and Cooperation (SDC), Swiss State Secretariat for Economic Affairs (seco) and Swiss Re, *Policy Principles: Framework for Sustainable Partnerships* (2005), <http://www.partnershipsforwater.net>.

39 See for example Daniel Aspiazú, *Privatización del sistema de agua potable y saneamiento en el Área Metropolitana de Buenos Aires, Argentina. Debilidad institucional-regulatoria y enseñanzas*, (FLACSO: Argentina, 2003). Document prepared for the Global Water Partnership's South American Technical Advisory Committee (GWP SAMTAC) <http://www.eclac.org/samtac/noticias/documentosdetrabajo/6/23326/InAr00303.pdf>, and Maria B. Orodqui Urcelay, *Servicio de agua potable y alcantarillado en la ciudad de Buenos Aires: factores determinantes de la sustentabilidad y el desempeño*, (CEPAL, Serie Recursos Naturales e Infraestructura, Nro. 126, Santiago de Chile, Mayo 2007).

40 Presidential Decree 303/2006, enacted on 21 March 2006.

41 *Suez and Others v The Argentine Republic ICSID Case No ARB/03/19*.

Regulation of small-scale provision

Small-scale providers of water and sanitation are normally private entrepreneurs and community groups (as well as civil society organisations in some cases) who provide water in kiosks, door to door or provide access to wells and springs, operate toilets, shower facilities and latrine exhaustion services. These providers serve more than 50 percent of users in developing countries. Monopolies can exist in areas where there are a limited number of water sources or when vendors engage in cartel-like behaviour. Informal service providers frequently carry out sanitation services, such as latrine construction or the emptying of latrines.

Governments normally have no choice but to permit the operation of small-scale providers, at least in the short-term, given that these actors provide essential services that are not otherwise supplied. Small-scale independent provision can be rendered redundant when and where water and sewerage networks are extended. In some cases, governments can establish a government-owned system of small-scale water provision, in which providers serve as contractors or employees of the government (*see* Chapter 10: Affordability and financing, Box 10.7).

In all cases, the regulator will need to monitor and regulate small-scale providers, in partnership with other actors. The utility service provider can attempt to control prices where the utility serves as the source of water and sewerage used by small-scale providers. This is particularly possible where tariffs are clearly advertised, such as on the walls of kiosks. Community groups can be trained in identifying poor hygiene practices in small-scale provision. They can then notify the users on how to use alternative, more hygienic sources and apply pressure on providers to improve their practices. It is also necessary for governments to provide support, in particular technical advice to small-scale providers to increase the quality and affordability of their services. *See* also Chapter 10: Affordability and financing, Section 10.2, and Chapter 8: Water quality and hygiene, Section 8.6.

4.2 Government role as service provider

This section deals with the role of government as service provider. Governments, in many cases local authorities or publicly owned companies, operate the vast majority of water and sewerage utility services although some services are delegated to private corporations. Small-scale water and sanitation facilities play a crucial role in service provision in developing countries. They are mostly operated by entrepreneurs and community groups, and in some cases by other civil society organisations. In many cases, governments play a role in establishing such facilities and then turning them over to communities. Within each country, one or more public agency, normally a health agency, has the responsibility for providing of information on good hygiene practices and for assistance to households in the construction of latrines. Local authorities are normally responsible for establishing drainage channels for wastewater (where a sewerage network does not exist) and for providing or facilitating the provision of latrine exhaustion services and regulating such services.

Service providers are expected to fully comply with relevant regulations and laws and, in the case of utilities, the specific targets and benchmarks imposed on them by the government. In view of their public function and their importance in the realisation of the right to water and sanitation, providers have an important role in going beyond what is specifically legally required, and making the best contribution that they can to the realisation of the right. In addition, utility service providers often negotiate tariff structures, extension targets and other obligations with government, and can play a important role in proposing (or agreeing to accept) feasible commitments to significantly increase affordable access for marginalised and vulnerable areas and groups.

4.2.1 Extending services to marginalised and vulnerable areas and groups

Utility service providers can make a significant contribution to the right to water and sanitation in urban and peri-urban areas by extending water and sewerage networks to those who are currently unserved, the marginalised and the vulnerable, including by going beyond service delivery targets imposed by the regulator. Government bodies, such as local government, water and sanitation agencies and health agencies (depending on the allocation of responsibilities within a country) also have an important role in small-scale service provision. Government bodies can operate such facilities, but more feasibly can provide financial and technical

assistance to communities and/or entrepreneurs for establishment of small-scale facilities (including household or neighbourhood toilets) where necessary, or for the expansion of existing services. In situations where there are insufficient resources for extension of networks, such assistance may be the only way in which the right to water and sanitation of marginalised groups, such as those in remote rural areas, can be achieved in the short term.

4.2.2 Improving affordability of water and sanitation services

Service providers can improve the affordability of their services in a number of ways. The first priority is to improve the efficiency of the service provider wherever possible. Potential means for ensuring efficiency are discussed in Chapter 10: Affordability and financing, Section 10.7.1 and Chapter 7: Water availability, allocation and sustainability, Section 7.8. The second priority is to review tariff and connection charges to introduce reduced and more flexible tariffs and payment options, in particular for low-income groups or users in low-income areas, and by introducing a wider range of available service levels. Some of the revenues necessary to carry out these duties can be raised through tariffs, including through cross-subsidies between high- and low-income users, or between industry and domestic use. However, it is likely that public finances will be required to ensure that providers meet the duties set out above and still remain financially solvent. Such public finances can be provided direct to the user or through the provider. The various options are discussed in Chapter 10: Affordability and financing.

4.2.3 Providing hygienic facilities and promoting good hygiene practice

Government bodies have a key role in promoting hygiene practice. Normally, a health agency has the primary role in this regard. However, it is important that promotion of hygiene practice is carried out in conjunction with other relevant ministries and departments including: education (as schools are the most effective place to teach good hygiene practice), local government and water and sanitation utilities (which can disseminate messages to their customers). This point is discussed in detail in Chapter 8: Water quality and hygiene, Section 8.6.

Utilities managing public toilets will need to ensure that these facilities are constructed in a way that is conducive to hygienic use, and are maintained adequately, normally requiring a paid attendant and provision for regular cleaning and repairs when necessary. The same will apply to the construction of small-scale facilities by government bodies (or with their support), where one of the most common failures is to fail to provide for the maintenance of facilities. In both of these cases, ensuring a hygienic facility would normally require the promotion of hygienic practices among the users.

4.2.4 Ensuring environmentally sound disposal of waste

Utilities operating sewerage services will need to ensure wastewater and excreta are transported away from human settlements to locations where they can be treated or otherwise disposed of in a manner that avoids threats to public health and damage to ecosystems. They need to provide connections for the disposal of excreta collected by latrine exhausters where it is impractical to use such waste for agricultural purposes. Where sewerage networks are not present, which is the case in many parts of the developing world, including in urban areas, the responsible public authorities (normally local government) will need to ensure that wastewater transported through drainage channels is safely disposed of and that there are designated locations in which latrine exhausters can safely dispose of exhausted waste.

4.3 Private service providers

Private service providers include utilities managed by corporations, small-scale entrepreneurs and community-run water and sanitation schemes.

4.3.1 Utilities: Implementing public service provider responsibilities

The points listed in Section 4.2 for public utility providers⁴² apply equally to private utilities and public service providers. Private utilities should follow all regulations, targets and benchmarks applicable to them, and go beyond such regulations in order to help implement the right to water and sanitation. While private utilities are unlike public providers in that they expect to generate a profit, there is an expectation that they should act in a socially responsible manner,⁴³ including by assisting in implementation of the right to water and sanitation.

4.3.2 Small-scale providers: Providing services of adequate quality and at an affordable cost

Small-scale providers (whether run by community groups, entrepreneurs or other civil society organisations) are required to follow regulatory requirements and guidelines where they exist, including refraining from establishing illegal connections. In addition, it is necessary for such actors to ensure that water and sanitation services are of adequate quality. Small-scale providers have far less scope than utilities to ensure affordability. For example, they cannot cross-subsidise between users as their clients or members are often from low-income sectors of society not served by utilities, or located in discrete rural communities. However, such providers need to refrain from actions such as profiteering or price-fixing.

4.4 Independent public monitors

Public bodies such as human rights commissions, ombudsperson institutions and the judiciary play an important role in monitoring the actions of government. In order to fulfil this role, such bodies would need to integrate international standards on the right to water and sanitation into their work. It is also crucial for the separate institutions to have effective lines of communication, clear responsibilities and mechanisms to ensure co-ordination and non-duplication between themselves, and in regard to government regulatory bodies (discussed in Section 4.1.12). Independent public monitors also require the following in order to be effective:

- Independence and a clear mandate set out in a law.
- Sufficient financial and technical resources, guaranteed on a multi-year basis.
- A system by which key appointments are vetted by a variety of actors to ensure, as far as possible, the impartiality of their key members (i.e. commissioners, judges).
- In the case of a human rights commission/ombudsperson, co-operation with its regulatory body, which may need to address complaints in the first instance.
- Easily accessible complaints procedures.
- Free legal or paralegal assistance to the claimants where matters require recourse to the courts.

⁴² See Sections 4.2.1 Extending services to marginalised and vulnerable areas and groups; 4.2.2 Improving affordability of water and sanitation services; and 4.2.3 Providing hygienic facilities and promoting good hygiene practice.

⁴³ UN Millennium Project, *Investing in Development, A Practical Plan to Achieve the Millennium Development Goals*, (New York, 2005), p.18.

4.4.1 Reviewing legislation, policies and programmes to ensure that they are consistent with the right to water and sanitation

A national or regional human rights commission/ombudsperson institution can be mandated with the task of reviewing legislation against national human rights or consumer laws and international standards such as the ICESCR,⁴⁴ and advising government bodies. It can also systematically collect data on the extent of the realisation of the right to water and sanitation. The judiciary also can play a role in hearing claims brought by individuals, communities or civil society organisations alleging that particular laws, regulations or policies are inconsistent with national laws and/or international law.⁴⁵

4.4.2 Investigating complaints by users and ensuring adequate redress

Complaints by individuals and communities that are dissatisfied with services (or lack of service) are normally best addressed in the first instance by the complaints department of the service provider or regulator, where they exist. However, the judiciary, human rights commissions, ombudsperson, or other similar bodies can play an important role in addressing complaints that the regulator and the service provider have not been willing or able to resolve.

General Comment No. 15 states:

*Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels ... The Committee notes that the right has been constitutionally entrenched by a number of States and has been subject to litigation before national courts. All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.*⁴⁶

In many countries, human rights commissions and similar bodies tend to resolve complaints more cheaply and quickly than a claim before the courts.

However, where such bodies are not present, or where the issue is of a magnitude that requires the involvement of the judiciary (such as a change to legislation or the imposition of criminal or civil penalties) the provision of public legal aid for those who cannot afford to obtain legal assistance is necessary. Alternatively, a human rights commission/ombudsperson institution can be empowered to assist complainants make their claims before a court.

4.4.3 Monitoring compliance with national legislation on water and sanitation by government bodies and private parties

Human rights commissions, ombudsperson institutions and similar bodies can play a useful role in examining government and private parties on water and sanitation on their compliance with national legislation and international standards, and making recommendations. This role is particularly important for complex issues (such as the impact of a particular policy) that can not be easily be addressed on the basis of a particular complaint by one individual or group. In order to fulfil this role, these bodies require sufficient funding and the human resources to carry out detailed research and to monitor trends over the long term. There may also be a case for a sector-specific monitoring body where resources permit. Such bodies can also play an educa-

44 157 countries have ratified or acceded to the ICESCR. Where a country has not ratified the ICESCR, it is necessary to consider other treaties that explicitly or implicitly provide for the right. See Chapter 3: Legal basis and institutional framework.

45 Where an international treaty has not been reflected in national law, judiciaries have a wide range of approaches as to the applicability of international treaties in national courts. For example, certain countries permit claims on the basis of international treaties, while others will interpret national laws in accordance with international treaties, so long as there is no conflict between them.

46 General Comment No. 15, para. 55. This paragraph quotes Principle 10 of the Rio Declaration on Environment and Development, which states with respect to environmental issues that “effective access to judicial and administrative proceedings, including remedy and redress, shall be provided” as well as United Nations Committee on Economic, Social and Cultural Rights, *General comment No. 9: The domestic application of the Covenant* (1998) UN Doc. E/1999/22, para 4, available at www.ohchr.org (‘Human Rights Bodies’ > ‘CESCR’ > ‘General Comments’).

tional role within government and to the public in order to promote and support implementation of the right to water and sanitation.

4.5 Individuals and communities

Each person has the right to water and sanitation, irrespective of his or her legal status, and can secure these as an individual and/or as a member of a community. For the purpose of the Manual, a ‘community’ refers to a group of people residing in a particular area who identify themselves as a community. It may range from a small village in a rural area, on one end of the spectrum, to a residents’ association covering an urban neighbourhood.

Communities (including community-based organisations and residents’ associations) have the knowledge of their environment, their needs and the motivation to improve their situation. In many situations, predominantly in rural areas but also in urban areas in developing countries, communities manage small-scale water and sanitation services. Individuals and communities can play the following roles:

4.5.1 Identifying needs and priorities, monitoring service provision and proposing appropriate policies to government

Community groups can assist governments to identify which sectors of their communities do not have access to essential services, and how they can be most effectively delivered. Where communities participate in determining the levels of service, the priorities for service (for example, locations of sites for water points or toilets) there is a greater chance of success, sustainability and affordability of the programme. Government support to this process includes considering and discussing proposals from individuals and communities for appropriate policies for the delivery of water and sanitation services and including self-management as an option in small-scale water and sanitation strategies and projects.

Communities are also in a good position to monitor service provision and have an important role to play in informing the relevant authority of shortcomings and in notifying other community members of such shortcomings (for example, when water quality is poor) where the government has not effectively done so. This role is discussed further in Chapter 6: Participation and access to information.

4.5.2 Knowing their rights and advocating for implementation

Communities can help implement the right to water and sanitation by lobbying the relevant level of government to implement the right. In order to do so, they need to start by obtaining information about their rights under national and international law, disseminating it within their communities and organising as a group. Advocacy is most effective when people have accurate information about the relevant responsibilities of each government actor and when communities make practical and specific claims. Advocacy is particularly effective when communities can show that they are able to contribute to the service and identify the specific inputs that the government could provide. This role is discussed further in Chapter 6: Participation and access to information.

4.5.3 Contributing to water and sanitation services

Households need to be willing to contribute (in cash or in kind) for services or access to facilities. It will be necessary for those levying charges to ensure that the contributions required from households are affordable for them, taking into account their ability to secure other rights which require payment, including food, clothing, and housing, among others. Government assistance for the poorest to pay bills will normally be necessary. In some situations, households can be given the opportunity to provide labour as a contribution, rather than cash. Such a system may be feasible in some rural areas and informal settlements. Where labour is required as a contribution, it will be necessary to make provision for households that do not have able-bodied members able to make a labour contribution. Households also play a critical role in establishing their own household toilets, as it is generally not effective for government to construct these.

Where training can be provided, there is an opportunity for individuals or community groups to supply small scale services (particularly in rural areas), such as latrine building or well construction and maintenance, where appropriate. Where communities have a particularly positive experience of self-managing water and sanitation services, this can also be used as an advocacy tool to influence the development of government policy to allow for increased involvement and participation of communities in the delivery of essential services (including through incorporation into a formal system, for example, by operating publicly owned water points).

4.5.4 Using water and public facilities responsibly and spreading knowledge of good hygiene practices

Involving community groups and institutions such as water and sanitation committees and schools in the provision and maintenance of water and sanitation facilities can lead to improved water use and hygiene practices. Where inequitable use of water by different sectors of the community leads to a shortage of water for some, communities can play a role in pressuring high water users to reduce consumption. Community level action can also be usefully employed in ensuring that communal latrines and water points are used and maintained hygienically and that water is hygienically transported to and stored in the home.

4.5.5 Assisting vulnerable and marginalised individuals and households within the community

Every community will have particular households in a dire economic situation. In situations where there is no social security system, community solidarity is often the only immediate solution to the problem. Where communities manage water and sanitation facilities, they are in a position to identify households who may not be able to afford basic access and may be the only actor able to compensate for the lack of assistance provided by a government.

4.6 Civil society organisations

Civil society organisations (CSOs) are defined broadly in this Manual to include among others:

- Non-governmental development and advocacy organisations
- Social movements
- Faith-based organisations
- Research and academic institutions, including schools and universities
- Media organisations
- Professional bodies (such as associations of lawyers, health practitioners and engineers).

CSOs have a variety of roles to play in implementing and promoting the right to water and sanitation, which will vary depending on their area of specialisation and capacities. They have two broad functions, firstly, building capacity and providing financial and technical assistance and/or secondly, promoting human rights and improving communities' understanding of political processes. In both roles, CSOs can play a useful role in facilitating the organisation of communities, including by helping to develop the management capacity of community-based organisations.

4.6.1 Supporting the work of communities in promoting the right to water and sanitation

CSOs that focus on the delivery of water and sanitation and on human rights can work with national governments to develop their plan of action and legislative frameworks to promote the right to water and sanitation. Advocacy CSOs also have an important role to play in educating individuals and communities and the most appropriate approaches for accessing these rights. Such activities may necessarily include facilitating community organisation and developing structures that are accountable. It would also involve assisting community groups to lobby effectively with local or national authorities, using data collected by the communities to demonstrate where the authorities are failing to deliver on the right to water and sanitation, and making positive suggestions as to how this can be remedied. A further approach will include supporting litigation processes before national courts, which should normally occur only as a last resort when other methods of engagement have failed.

4.6.2 Building capacity and providing financial and technical assistance

'Delivery' CSOs work with communities and particularly community-based organisations to assist them in accessing water and sanitation services through capacity building and by providing financial and technical assistance in the construction and maintenance of services. In this capacity, CSOs can foster the capacities of communities by devolving responsibilities and working to strengthen skills and foster connections among social groups.⁴⁷

CSOs also have a key role in providing humanitarian assistance in times of emergencies. General Comment No. 15 states in relation to obligations of actors others than States: "*Priority in the provision of aid, distribution and management of water and water facilities should be given to the most vulnerable or marginalized groups of the population.*"⁴⁸

4.6.3 Striving for co-ordination and avoiding duplication

CSOs should ensure that their activities are co-ordinated amongst themselves and that their work supports and does not duplicate work by other CSOs (or work carried out by governments and international organisations). Where more than one CSO is working in the water and sanitation sector in a particular area or city, it is useful to create a forum to discuss where services offered overlap and where there are gaps that need to be filled. This is particularly important to ensure that coverage is even and that those communities that are most easily supported do not gain more benefits than those that are less accessible. There are cases of certain villages receiving a disproportionate number of facilities while neighbouring villages have no access to services, either due to political patronage or due to ease of delivering services.⁴⁹ Co-ordination meetings, including government officials and civil society, can help prevent this lack of equality.

4.6.4 Monitoring government action on water and sanitation, and actions of third parties

A vital role often played by CSOs is that of examining government and private sector action on water and sanitation. Civil society scrutiny, including media attention, can create greater accountability on the part of government and third parties. CSOs should work closely with community-based groups that are often in a good position to monitor service provision according to government standards, due to their close links with the communities in which they work.

47 S. Carter, G. Cliche, & B. Currie-Alder, *Water and Governance: Insight from Research in the Andes*, (International Development Research Centre, 2003), http://www.idrc.ca/en/ev-1-201-1-DO_TOPIC.html.

48 General Comment No. 15, para. 60.

49 S. Sugden, *Indicators for the Water Sector; examples from Malawi, Fieldwork Report*, (WaterAid, 2003), <http://www.wateraid.org/uk/>.

4.6.5 Educating students and the general public about the right to water and sanitation

Teaching and learning institutions also have a role to play through the dissemination of good practice and through raising awareness of the legal, policy and technical aspects of the right to water and sanitation amongst their students. The media also has a key role to play in disseminating information about these issues, often by relying on information provided by CSOs with expertise in these areas.

4.6.6 Carrying out and collaborating on research and sharing research outcomes with stakeholders

CSOs engaged in research (e.g. universities, research institutes, NGOs) have a key role to play in identifying and examining all aspects of the right to water and sanitation. This is best achieved through multi-disciplinary approaches using expertise of researchers, practitioners and academics in the areas of law, economics, social sciences, engineering and environmental management. Benefits from research are greatest when stakeholders are involved, using ‘action research’ methodologies to involve stakeholders in the research and the direction which it takes. The involvement of practitioners is essential if realistic and evidence-based research outcomes are to be obtained.

4.6.7 Support by international civil society organisations for the development and growth of local and national counterparts

The previous points listed in this section apply equally to national and international CSOs. In addition, international CSOs should carry out activities that complement the work of national governments, CSOs and community organisations, rather than compete with them. International CSOs may need to negotiate with and educate their own donors where the donors’ expectations are incompatible with this approach. The development of local and national civil society increases the sustainability and cost-efficiency of civil society work and the chance of empowering marginalised groups. Where international CSOs introduce lessons learned from programmes in other countries, collaboration with local CSOs is even more essential to ensure adaptation to context and culture.

4.7 Industrial and agricultural users

Industrial and agricultural users, including private corporations as well as government bodies (such as public corporations) are expected to fully comply, in a timely manner, with relevant regulations and laws, including those relating to water use licensing, water use charges and on safe disposal of wastewater and industrial waste (See Chapter 7: Water availability, allocation and sustainability, and Chapter 8: Water quality and hygiene). In order to help realise right to water and sanitation, industries and agricultural users need to go beyond what is legally required in regard to sustainability of water resources. Governments and societies (including consumers) are increasingly expecting private corporations to behave in a socially responsible manner. Some of the necessary actions, particularly those relating to water conservation, are also consistent with the user’s immediate interests. Other actions may have short-term costs but in the longer term would enhance the user’s reputation and ability to comply with tightening standards as well as lead to cost savings.

4.7.1 Using water efficiently and promoting effective water conservation methods

It is normally difficult for governments to set an adequate balance between allowing sufficient water for industry and conserving water resources. In many cases, water pricing does not reflect the cost of industrial and agricultural water use to the environment. However, industrial and agricultural users can take a lead in the efficient use of water, testing and implementing water conservations methods, and in sharing these methods with other users within industry and agriculture. Excessive “contingency” water storage by agricultural or hydropower users also will need to be avoided, so that water shortages for other users does not occur.

4.7.2 Ensuring environmentally responsible waste disposal

Industrial and agricultural users need to ensure that waste-water and industrial by-products are treated to minimise their harm to the environment and avoid damage to human health or to the livelihoods of others. Where national or regional standards are not in place, recourse to international guidelines would need to be used, such as the WHO Guidelines for the safe use of wastewater, excreta and grey water.⁵⁰ This is discussed further in Chapter 8: Water quality and hygiene.

4.8. International organisations

4.8.1 Providing financial and/or technical assistance

General Comment No. 15 states that:

United Nations agencies and other international organizations concerned with water, such as WHO [World Health Organization], FAO [Food and Agriculture Organization of the United Nations], UNICEF [United Nations Children's Fund], UNEP [United Nations Environment Programme], UN-Habitat [United Nations Human Settlements Programme], ILO, UNDP [United Nations Development Programme], the International Fund for Agricultural Development (IFAD), as well as international organizations concerned with trade such as the World Trade Organization (WTO), should cooperate effectively with States parties, building on their respective expertise, in relation to the implementation of the right to water at the national level.⁵¹

These organisations can play important roles in mobilising financial resources and technical expertise from governments and private sources, supporting governments to implement the right to water and sanitation, and supporting civil society organisations to assist in this capacity (see also Chapter 11: International co-operation, Section 11.1). Assistance from international financial institutions such as the World Bank Group, the regional banks such as the African Development Bank (ADB) and the International Monetary Fund is also necessary. In addition, technical assistance on the implementation of human rights standards, and best practices from other countries, could be provided by the Office of the United Nations High Commissioner for Human Rights, as well as the Special Procedures of the United Nations Human Rights Council (see Chapter 3: Legal basis and institutional framework). It is important that these various actors co-ordinate their assistance and their administrative systems and conditions so as to avoid an unnecessary burden for the national government.

4.8.2 Reviewing and revising co-operation policies, operating procedures and policy advice

General Comment No. 15 states:

The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects (see General Comment No. 2 (1990)), so that the enjoyment of the right to water is promoted.⁵²

The Sub-Commission Guidelines clarifies that this applies to all international organisations, stating:

International organizations, including United Nations specialized agencies, trade and financial institutions, and the States members of such bodies should ensure that their policies and actions respect the right to water and sanitation.⁵³

⁵⁰ WHO Guidelines for the safe use of wastewater, excreta and grey water, (WHO, 2006).

⁵¹ General Comment No. 15, para. 60. Where not included in the original quote, full names of the international organisations are included in square brackets.

⁵² General Comment No. 15, para. 60.

⁵³ Sub-Commission Guidelines, section. 10.4.

Several United Nations Agencies and Programmes have begun to integrate human rights standards into their operations. Most United Nations Agencies and Programmes were involved in defining a common approach to such integration of human rights standards (*see* Box 4.5). The World Bank has also begun to consider how to apply human rights approaches in its work.⁵⁴ Mainstreaming the right to water and sanitation will ensure that, at a minimum, the work of international organisations, will not undermine the realisation of the right, but assist in its implementation.

A number of international organisations host dispute-resolution bodies, composed of independent experts whose decisions can have an impact on the realisation of the right to water and sanitation. These include the World Trade Organization (WTO), the International Centre for the Settlement of Investment Disputes (ICSID) and the International Labour Organization (ILO). Integrating human rights law into the decision-making process will ensure that the outcomes of these decisions, which influence future arrangements relating to trade, investment and employment, are consistent with international human rights standards. It is similarly necessary for international and regional human rights treaty bodies that review State reports and hear complaints from individuals to consider the right to water and sanitation in their work (*see* Chapter 3: Legal basis and institutional framework).

4.8.3 Ensuring co-ordination and coherence

To ensure effective assistance, it is necessary for international organisations to collaborate closely, with each other and with governments, in order to avoid duplication and working at cross-purposes. The strengthening of UN-Water is an important way to advance this objective. It would be useful for international organisations to harmonise their approaches towards the right to water and sanitation.

54 R. Danino, 'The Legal Aspects of the World Bank's Work on Human Rights: Some Preliminary Thoughts' in P. Alston and M. Robinson, eds., *Human Rights and Development: Towards Mutual Reinforcement* (Oxford University Press, 2005).

BOX 4.5: UN COMMON UNDERSTANDING ON HUMAN RIGHTS BASED APPROACHES

The term ‘human rights based approach’ emerged primarily in the context of development co-operation. In 1997, the UN Programme of Reform was launched, with the Secretary General calling on all entities within the UN system to mainstream human rights into their various activities and programmes within the framework of their respective mandates. A number of UN agencies subsequently adopted a human rights based approach (HRBA) to development co-operation, but unfortunately each tended to have its own interpretation of such an approach and how it should be operationalised.

In 2003, various UN agencies met to develop a Common Understanding on HRBA to development co-operation.⁵⁵ It states:

1. *All programs of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments.*
2. *Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights, and other international human rights instruments guide all development co-operation and programming in all sectors and in all phases of the programming process.*
3. *Development co-operation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.*

Human rights principles that are to guide all development programming include:

Universality and inalienability: *Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her. As stated in Article 1 of the UDHR, “All human beings are born free and equal in dignity and rights.”*

Indivisibility: *Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.*

Interdependence and Inter-relatedness: *The realisation of one right often depends wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to information.*

Equality and Non-discrimination: *All individuals are equal as human beings and by virtue of the inherent dignity of each human person. 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.*

Participation and Inclusion: *Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural, and political development in which human rights and fundamental freedoms can be realized.*

Accountability and the Rule of Law: *States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.*

55 ‘Report: The Second Interagency Workshop on Implementing a Human Rights-based Approach in the Context of UN Reform, Attachment 1: The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies’ (Stamford 5-7 May 2003)



Chapter 5: Non-discrimination and attention to marginalised and vulnerable groups

Many of those who develop, influence and implement law and policy consider certain groups to be less valued members of society. Consequently, members of these groups lack access to basic entitlements. It is therefore necessary that water and sanitation policies prevent and remedy discriminatory political decisions and practices.

Human rights principles highlight the need to actively design water and sanitation policy that prioritises and addresses the needs of vulnerable and marginalised groups, rather than treating all persons as facing identical challenges in accessing safe water and improved sanitation. It is important for policy-makers and implementers to dedicate time and resources to reviewing whether vulnerable and marginalised groups are being included, and that their needs are being taken into account.

Vulnerable groups are those, such as children and the disabled, who require special attention due to their developmental or physical limitations. Marginalised groups, such as women and ethnic minorities, require special attention due to their historical and cultural discrimination, as well as from their general under-representation in political decision-making, which has led to the neglect of their needs in policy making.

Everybody, including the most vulnerable and marginalised, is entitled to have access to water and sanitation without discrimination. The principle of non-discrimination is a fundamental human right in itself and is included in all international human rights treaties. It prohibits any distinction, exclusion, restriction or preference, which is based on any ground - such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status - that differentiates without any legitimate reason.

HOW NATIONAL GOVERNMENTS CAN ACT TO PREVENT DISCRIMINATION AND EXCLUSION OF VULNERABLE AND MARGINALISED GROUPS

- 5.1. Ensuring that a comprehensive anti-discrimination law is in place, with an institution to investigate and provide remedies for discrimination against individuals or groups.
 - 5.2. Revising existing water and sanitation laws, regulations, policies and operating procedures to ensure that they refrain from discrimination.
 - 5.3. Reviewing public water and sanitation budgets to ensure that they address the needs of vulnerable and marginalised groups, including those living in informal settlements and arid and semi-arid areas.
 - 5.4. Collecting data on access to water and sanitation that takes into account ethnicity, age, disability, gender, religion, income and other related grounds so as to identify discrepancies and set priorities for government assistance.
 - 5.5. Establishing requirements for water and sanitation institutions to ensure that representatives of vulnerable and marginalised groups effectively participate in and have a genuine influence on decision-making processes.
 - 5.6. Ensuring that institutions utilised by vulnerable and marginalised groups are adequately addressed in policies relating to issues such as extension of services, tariffs and subsidy plans. Such institutions include schools, hospitals, prisons and refugee camps.
 - 5.7. Reviewing all laws, regulation, policies and operating procedures to ensure that they adequately address the specific requirements for vulnerable and marginalised groups.
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BOX 5.1: WHAT IS DISCRIMINATION?

General Comment No. 15 states that the ICESCR:

proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water.¹

The reference to ‘other status’ implies the inclusion of other grounds that lead to unequal access to the right. Thus, for example, discrimination on the basis of descent, such as caste, is also prohibited by the ICESCR. ‘Social status’ may include residence in remote rural areas and informal settlements, and also refer to people living in under-privileged areas, such as remote rural areas and informal settlements, which can constitute discrimination on the basis of social condition.

General Comment No. 15 further states that:

States parties should take steps to remove de facto discrimination on prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for achieving the right to water. States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society.²

De facto discrimination refers to a policy or practice that has the effect of putting members of such a group at a particular disadvantage compared to members of other groups.

General Comment No. 15 also states:

Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right...³

The principle of non-discrimination requires not only the avoidance of active discrimination against particular groups, but also that governments take pro-active measures to address the particular needs of vulnerable or marginalised groups, in order to reduce or eliminate the conditions that cause or help to perpetuate discrimination. In other words, non-discrimination does not necessarily entail treating everyone the same, as certain marginalised and vulnerable groups may require special attention to ensure that they are able to gain access to the same quality of service. Special attention for vulnerable and marginalised groups is not discriminatory if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose legitimate under the Covenant.⁴

It should be clarified that all people have the right to water and sanitation, regardless of whether or not they are a member of a vulnerable or marginalised group. Attention to the needs of vulnerable and marginalised groups is only a means to ensure that all persons have the right to water and sanitation.

1 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (2002), U.N. Doc. E/C.12/2002/11 (2003), paras. 13. See also ICESCR, Art. 2.2, United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation (2005)*, UN Doc. E/CN.4/Sub.2/2005/25, section 3.1 and UN Human Rights Committee, *General Comment No. 18: Non-discrimination*, para. 7.

2 General Comment No. 15, para. 14.

3 General Comment No. 15, para. 16. See also Sub-Commission Guidelines, section 3.2.

4 This point is made by the Human Rights Committee, which monitors the International Covenant on Civil and Political Rights, in *General Comment No. 18: Non-Discrimination*, paras. 10,13.

BOX 5.2: VULNERABLE AND MARGINALISED GROUPS

The terms vulnerable and marginalised are not interchangeable. Children are intrinsically vulnerable, but they are not always marginalised, while women (particularly women living in poverty) are often marginalised but seldom vulnerable. Some people, such as those belonging to particular ethnic groups, can be marginalised through social or cultural definition. Certain groups, such as people under custody, are both vulnerable and marginalised.

The following list encompasses both vulnerable and marginalised groups which include:

- Women.
- Children.
- Inhabitants of rural and urban deprived areas.
- Indigenous peoples.
- Nomadic and traveller communities.
- Refugees, asylum seekers, internally displaced persons and returnees.
- Older persons, persons with disabilities and people with serious or chronic illnesses.
- Victims of natural disasters and persons living in disaster-prone areas.
- People living in water scarce-regions (arid and semi-arid areas and some small islands).
- Persons under custody.

The specific water and sanitation requirements of vulnerable and marginalised groups, and how governments can address them, are addressed in the final section of this chapter.

5.1 Ensuring anti-discrimination laws and monitoring institutions are in place

In many cases, lack of equal access to water and sanitation is linked to larger patterns of discrimination against a particular group. In such cases, it will be the role of policy makers to press for anti-discrimination legislation. Addressing such issues is normally extremely political and divisive. However, most people will in principle agree on the right of every person to safe water and sanitation. This can serve as an entry point for decision-makers and society at large to confront issues of discrimination. It should be noted that discrimination raises human rights issues even where caused by a non-governmental actor. According to the Sub-Commission Guidelines, “*States should ensure that no persons or public or private organizations engage in discriminatory practices*”.⁵

Governments can identify existing discrimination, set priorities for state intervention and design adequate measures to guarantee non-discrimination by:

- Reviewing and modifying laws and practices and identify those that directly or indirectly cause discrimination.
- Carrying out empirical studies to assess whether discrimination occurs in practice.
- Evaluating the scope and efficacy of legislative measures designed to combat discrimination.
- Documenting and evaluating discrimination practices in the private and other sectors.
- Developing indicators to measure the extent to which different groups have access to water, taking into account all components of the right to water and sanitation and disaggregated by the prohibited grounds of discrimination.⁶

⁵ Sub-Commission Guidelines, section 3.1.

⁶ This specific point is called for in General Comment No. 15, para. 53.

Preventing discrimination requires a comprehensive anti-discrimination law and a review process that addresses all forms of discrimination. The latter objective can be best achieved by ensuring that an independent monitoring body, such as a human rights commission or ombudsperson institution, is in place to investigate and provide remedies for individual complaints or systemic discrimination affecting a group. Many countries have found that relying on the courts alone is insufficient to address discrimination. Each case requires significant time and often money from the applicant. Courts normally can only address the particular cases brought before them, and cannot address widespread systemic discrimination. They therefore cannot take a preventative approach to discrimination.

Independent public monitoring bodies need a mandate to address complaints on all grounds of possible discrimination in the water and sanitation sector.⁷ A number of other requirements are addressed in Chapter 4: Roles of key actors, Section 4.4.

Addressing discrimination can yield significant gains in increasing access to water and sanitation. This is because the obligation of non-discrimination is contained in more national legal frameworks than are economic, social and cultural rights such as the right to water and sanitation. Courts tend to be more familiar with non-discrimination and with providing redress to victims than with other economic, social and cultural rights.

5.2 Revising existing laws, regulations, policies and operating procedures to ensure that they refrain from discrimination

Establishing an institutional framework for non-discrimination that applies to the water and sanitation sector is only the first step. Ensuring non-discrimination requires that water and sanitation ministries or departments consciously integrate anti-discrimination principles, and attention to vulnerable and marginalised groups into their programming (*See Box 5.6 for an example*). A first step in prohibiting discrimination is to ensure that laws, regulations, policies and practices are free of discrimination.

Potential forms of discrimination in regard to the right to water and sanitation include:

- Denial of water and sanitation services on the basis of ethnicity or similar status.⁸
- Imposing more onerous conditions for the use of water and sanitation services for vulnerable and marginalised groups of the population.
- Charging a specific group more for access to water and sanitation, where this is not justified by higher costs of delivery or greater ability to pay.
- Allocating greater resources to a specific group in the population compared to others, where this group is not vulnerable or marginalised.
- Neglecting the provision or maintenance of water and sanitation facilities or imposing a higher burden of rationing to areas populated by certain groups.⁹
- The imposition of conditions that indirectly discriminate against a particular group's access to water and sanitation - such as restrictions against informal settlements.
- Denigrating practices and requirements imposed by officials.

Discrimination can also be caused by laws, policies and practices that indirectly create barriers to access to water and sanitation for vulnerable and marginalised groups. Examples include:

- Subsidy schemes that require applicants to provide written proof of tenancy or payment of taxes or identity document, thus excluding those in the informal sector and those who cannot afford the fee/bribe to obtain an identity document.
- Application forms for access to a subsidy that are not written in languages understandable to those entitled to the subsidy.
- Office hours that are incompatible with working obligations of applicants.

7 General Comment No. 15 sets out the need for such institutions to respond to complaints relating to the right to water, para. 55.

8 *See Box 5.1: What is discrimination?*

9 The exception to this may be where regulations are enacted to remove discriminatory practices in indigenous systems.

Equally important measures for prohibiting current discrimination are positive measures that redress patterns of historical discrimination or social inequity, thereby ensuring substantively equal treatment. The UN Human Rights Committee has stated that

*the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population.*¹⁰

This imperative requires the adoption of specific measures to overcome obstacles which, in certain situations, prevent particular persons or groups from enjoying their right to water and sanitation. Certain groups are disproportionately affected by lack of access to water and sanitation and by reductions in access to water and sanitation, for instance through drought, breakdown in facilities or price increases. For example, water tariff increases might have different impacts on men and women. Women heads of households in urban areas, who generally have lower incomes, might be excluded from basic water and sanitation services or forced to reduce certain water uses, for example domestic water use. The remainder of this chapter discusses how to address the needs of vulnerable and marginalised groups.

BOX 5.3: ENSURING ADEQUATE ATTENTION TO THE MOST VULNERABLE: THE GROOTBOOM JUDGEMENT IN SOUTH AFRICA¹¹

In the ‘Grootboom’ case in South Africa, the Constitutional Court reviewed the State’s housing policy for a particular area, based on an application brought by a group of people who had been evicted from their homes and were living in a sports field using plastic sheeting as shelter. The Court reviewed the implications of the right of access to adequate shelter for the housing programmes. The Court held that:

*[A] program must be balanced and flexible and make appropriate provision for attention to housing crises and to short, medium and long term needs. A program that excludes a significant segment of society cannot be said to be reasonable...Those whose needs are the most urgent and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realisation of the right.*¹²

The Court was not empowered to revise the government’s housing policy; however, it was able to compel the government to revise the policy in order to bring it into conformity with the Constitution. It directed the government to devise and implement a new programme that includes reasonable measures, “to provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations”.¹³

This ruling is relevant not only to housing but also to other rights such as access to water and sanitation.

10 Human Rights Committee, General Comment No. 18, para. 10.

11 *Government of the Republic of South Africa and others v. Grootboom and others*, 2001 (1) SA 46 (CC), South African Constitutional Court, <http://www.constitutionalcourt.org.za>. For an analysis of the practical outcomes of this case see the interviews of the plaintiffs and their lawyers at COHRE, *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies* (Geneva: COHRE, 2003) <http://www.cobre.org/litigation>.

12 Ibid., para. 43–44.

13 Ibid., para. 99.

5.3 Reviewing public budgets to ensure that they address the needs of vulnerable and marginalised groups

Addressing broad inequalities in access to safe and sufficient water and to sanitation services may best be achieved by developing a national policy and allocating budget resources to secure access by all the population to an essential level of water and sanitation. According to General Comment No. 15: “*States parties should ensure that ... investments in water, facilitate access to water for all members of society.*”¹⁴ In addition,

*Investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.*¹⁵

Reviewing approximate public spending per person between urban formal areas, urban informal areas and rural areas may highlight inequitable resource allocation. Where investments in water and sanitation services are being made, it will be necessary to prioritise available funding for programmes to improve access to those who currently have limited access,¹⁶ rather than improving services for those who already have adequate provision. In other words, the same budget allocation can be spent on low-cost programmes to increase the number of people who have access to basic services, rather than ‘high-tech’ or large-scale projects which improve existing services (see Chapter 10: Affordability and financing).

5.4 Collecting disaggregated data on access to water and sanitation

General Comment No. 15 states that: “*indicators should address the different components of adequate water, be disaggregated by the prohibited grounds of discrimination...*”¹⁷

Discrimination may not be overt, but rather covert in that the relevant authority does not openly discriminate and may not even recognise its own discriminatory practices. In order to identify ‘covert discrimination’, it is often necessary to compare the situation of one person or group with that of other persons or groups that are similarly situated in law but are treated differently on the basis of an impermissible ground. Statistical information, where good disaggregated data is available, can indicate systemic forms of discrimination where it exists. Where significant discrepancies in access to water and sanitation are found along ethnic, or similar lines, it is necessary to ascertain whether this is due to a discriminatory practice, and ensure that efforts are made to redress its continuing impacts.

Collecting data disaggregated according to gender, age, ethnicity and other grounds is also necessary in order to fully understand which groups or areas do not have adequate access to water and sanitation services.¹⁸ This is crucial in order to help identify causes of lack of access, to design the most effective and appropriate policies and programmes to remedy this¹⁹ and to monitor progress towards meeting the needs of vulnerable and marginalised groups. As the collection of disaggregated data can be a resource intensive process, it may be necessary to identify the most important factors for a particular country or region and concentrate initially on these issues. The UN Millennium Project report particularly suggests disaggregating data in order to promote gender equality.²⁰ Collaboration and co-ordination with international organisations, CSOs and com-

14 General Comment No. 15, para 14.

15 *ibid.*

16 See also Chapter 10: Affordability; B. Skinner, *Small-scale Water Supply: A review of technologies*, (Loughborough, WEDC, 2003), and J. Pickford, *Low-Cost Sanitation: A survey of practical experience* (Loughborough: WEDC, 1995).

17 General Comment No. 15, para. 53.

18 One good example of this is ‘water point mapping’ by WaterAid in Malawi and Tanzania. See S. Sugden, *Indicators for the Water Sector; examples from Malawi*, Fieldwork Report, (WaterAid, 2003), and K. Welle, *Learning for Advocacy and Good Practice – WaterAid Water Point Mapping, Report of findings based on country visits to Malawi and Tanzania*, (WaterAid/ODI, December 2005), http://www.wateraid.org/uk/what_we_do/documents_and_publications/default.asp.

19 V. Roaf, A. Khalfan, M. Langford, Global Issues Paper No. 14, *Monitoring Implementation of the right to water: A framework for developing indicators* (COHRE, Brot für die Welt, Heinrich Böll Stiftung, 2005), pp. 10-12, 18, <http://www.boell.de> and www.cohre.org/water.

20 *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals*, Millennium Project Report to the UN Secretary General, (New York, 2005), Overview, p.30.

munity organisations can also reduce the resource burden, as many of these organisations also collect similar data for a variety of purposes.²¹

Communities can also play a role in collecting and/or verifying data. This often has the benefit of ensuring that data is accurate, and may provide a different perspective to that which a government or other third party may bring to a survey. Whether or not the information is gathered by government, making the relevant data available to communities is a necessary step to helping communities to address any serious inequalities within their own society and how these can be redressed in access to water and sanitation. Community involvement in data collection, as well as people's right of access to information and right to participate, is discussed further in Chapter 6: Participation and access to information.

5.5 Ensuring effective participation of vulnerable and marginalised groups in decision making

Effective participation processes require particular attention to inclusion and empowerment of vulnerable and marginalised groups in decision-making. For example, water projects often favour men's use of irrigated water. This occurs because planners who fail to adequately consult women often only document women's domestic water needs and overlook women's other uses of water, such as for farming, raising animals and producing products for the market.²² Even where such uses are recognised, under-representation of women on decision-making bodies may distort decision-making.²³ This is particularly the case for women – whose need for water near the household is greater – and for groups that may not be able to commit the finances that would allow them to participate in a community project.²⁴

The issue of participation is covered in detail in Chapter 6: Participation and access to information; however, the following sections illustrate the specific needs of a number of marginalised and vulnerable groups. Meaningful participation of marginalised and vulnerable groups takes considerable effort, but when done effectively can empower such groups to mobilise and act independently in the longer term. In order for genuine participation to occur, it needs to be structured as a major goal of any programme or project, and requires the appropriate skills and the willingness of practitioners to invest time and resources into ensuring effective participation that includes all groups. Such participatory efforts generally need to be scheduled at times and dates suitable to a wide range of community members, and not take up more time than is necessary. This is most important for low-income women, who often have a multitude of domestic and work responsibilities.

5.6 Ensuring that institutions utilised by vulnerable and marginalised groups are adequately addressed

The Sub-Commission Guidelines state that: “*States should give priority to providing water and sanitation services to institutions serving vulnerable groups, such as schools, hospitals, prisons and refugee camps*”.²⁵ According to the United Nations Committee on Economic, Social and Cultural Rights, one aspect of the right to education is that educational institutions should be functional – which includes, among other factors, provision of safe drinking water and segregated sanitary facilities.²⁶

21 See Chapter 4: Roles of key actors, Sections 4.5, 4.6 & 4.8 for more details on potential roles for community groups, CSOs and international organisations respectively.

22 UN Development Programme, *Mainstreaming Gender in Water Management. A Practical Journey to Sustainability: A Resource Guide*, (UNDP, 2006), available at www.genderandwater.org.

23 M. Zwarteveen, 'Water: From Basic Need to Commodity: A Discussion on Gender and Water Rights in the Context of Irrigation' (1997) *World Development*, Vol. 25, No.8, 1335-1349.

24 C. Van Wijk-Sijbesma, *Gender in water resources management, water supply and sanitation – roles and realities revisited*, (IRC Technical Paper 33, 1998), <http://www.irc.nl/page/1893>.

25 Sub-Commission Guidelines, section 3.3.

26 Ibid., para. 6 (a).

The need to target vulnerable groups presents practical challenges for government programmes. One strategy is to prioritise services to institutions utilised by vulnerable and marginalised groups such as schools, health institutions, traditional nomadic halting sites and settlements in arid and semi-arid areas and disaster-prone areas.²⁷ (See Sections 5.7 for a detailed description of institutions utilised by vulnerable and marginalised groups.)

Such institutions can be prioritised in the following ways:

- Priority in the establishment of water and sanitation facilities.
- Subsidised tariffs, particularly where block tariffs are charged.
- Protection against disconnection where they are unable to pay. (See Chapter 10: Affordability, Box 10.11.).

BOX 5.4: WATER AND SANITATION IN SCHOOLS IN SENEGAL

A survey of 5 000 schools in Senegal showed that over half had no water supply and almost half had no sanitation facilities. Of those schools with sanitation, only half had separate facilities for boys and girls. The result was that girls chose not to utilise these facilities, either because they did not want to risk being seen to use the toilet, or because they were warned that these facilities were not private or clean enough. Not only was this painful, but also caused urinary and bladder problems. Girls also avoided drinking water at school to avoid urination, thereby becoming dehydrated and unable to concentrate. Where there were no facilities or no segregated facilities, girls – for fear of being seen – would go into the bush where they were at risk from snake-bites or even sexual attack. Girls would also stay away from school when menstruating.²⁸ This situation is a primary cause of the under-representation of females in schools.

According to UNICEF, in many developing countries, average access to water and sanitation within schools is lower than the average access of households to water and sanitation. Attending school therefore brings a risk of illness and even death. Schools without water and sanitation facilities are often unable to attract good teachers, thereby relying on poorly qualified teachers, coping with large classes, or even sending children home. Where there are no water and sanitation facilities, teachers may fall ill more often or miss school in order to collect water.²⁹

The under-provision of water and sanitation in schools is due to various factors. It is common for the education ministry, rather than the water ministry, to be responsible for building and maintaining water and sanitation facilities in school.³⁰ In addition, while communities often lobby for the construction of schools, there is less pressure for the more specific issue of provision of water and sanitation in schools. This situation can be resolved by better co-ordination between water and education ministries, and a clear commitment to making schools the first priority for water and sanitation services. Construction of toilets in schools, as discussed in Chapter 1: The water and sanitation challenge, increases particularly the attendance of girl children, which will assist in meeting Target 4 of the Millennium Development Goals on addressing gender disparity in primary and secondary education.³¹

The provision of safe and hygienic sanitation facilities also assists with educating children about good hygienic practices. This is valuable not only for their own lives but also for the wider community, as the children bring the ideas of good hygiene and latrine construction home with them.

27 This is suggested as a 'Quick Win' by the UN Millennium Project report. See note 20.

28 Water Aid, *Water and Sanitation: The Education Drain* (London: Water Aid, 2004), p. 14.

29 This point is drawn from Water Aid projects in India, Tanzania and Ghana. See *Looking Back: The Long-Term Impact of Water and Sanitation Projects*, (Water Aid, 2001) and Water Aid, *Education Drain*, see note 28.

30 *The Education Drain*, see note 28, p. 16.

31 Millennium Development Goal 3, Target 4: Eliminate gender disparity in primary and secondary education, preferably by 2005 and in all levels of education no later than 2015.

5.7 Reviewing all policies to consider whether the requirements of vulnerable and marginalised individuals and groups are addressed

When developing and reviewing water and sanitation policies, attention to vulnerable and marginalised groups requires considering the particular circumstances, needs and current or past discrimination faced by each group, based in participation of their representatives.³²

5.7.1 Women

According to General Comment No. 15:

*States parties should take steps to ensure that: ... Women are not excluded from decision-making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated.*³³

Women face pervasive challenges in public decision-making. They can be discouraged from speaking in public forums, particularly on intra-family issues such as ownership and distribution of workload. Women normally have less time to participate, due to a greater burden of work, which includes household work and childcare in addition to income generation or subsistence agriculture. Due to their inequitable upbringing, unequal access to education, and cultural and social attitudes, women often have less experience in putting forth their views confidently. Finally, women are often reluctant to invest time in participation, based on the all-too rational calculation that they have less to gain from participating, particularly where participatory practices are limited to token consultation.³⁴ (See also Chapter 6: Participation and access to information.)

In many cases, external interventions have accentuated such differences. The management roles of women have been ignored, along with the possibilities and need to bring women into more political discussions of water supply and sanitation. Practical examples of exclusion of women from participation include:

- Dealing only with community leaders or heads of households, normally mainly men.
- Assuming that women are dependents of men.
- Working only with people who have access to land rights, again often mainly men.
- Treating households and communities as undifferentiated units.
- Scheduling meetings at times when women cannot attend.

The result is that women's uses of water are often given less priority than men's. In addition, women have often had unequal access to training and credit schemes, such as for toilet construction and water point management. In spite of women's greater interest in such issues, development workers have assumed that they are less interested in, or suited to involvement in such work.³⁵ In addition, water and sanitation projects may not address the greater need of women for privacy at water points (particularly for bathing) and sanitation facilities.

In developing any legislation, policy or programme for improving access to water and sanitation services, it will be necessary to assess the implications for women and men of any planned action. The two sexes and different social classes do not have the same access to and control over resources and work, and benefits and impacts may be different for the various socio-gender groups.³⁶

32 General Comment No. 15, para. 16. See also the Convention on the Elimination of All Forms of Discrimination Against Women, in Chapter 3: Legal basis and institutional framework, Section 3.1.2.

33 Ibid., para. 16.(a).

34 UNDP, *Mainstreaming Gender*, see note 22, pp.13-14.

35 C. Hannan and I. Andersson, *Gender perspectives on water supply and sanitation: Towards a sustainable livelihoods and ecosystem-based approach to sanitation*, Proceeding of 97th Annual Meeting of the Association of American Geographers, New York, Feb 27–Mar 3 2001(UNDP 2001).
http://www.undp.org/water/docs/sum_aag_pre.doc.

36 UNDP, *Mainstreaming Gender*, see note 22, p. 16.

One key area in which women's needs are critical is in the location of toilets. As women and children (particularly girls) are generally more vulnerable to attack, whether from other people or from animals, water and sanitation facilities need to be safely located. This is addressed in Chapter 9: Physical accessibility, Section 9.4.

BOX 5.5: LESSONS FROM GENDER MAINSTREAMING IN WATER AND SANITATION PROGRAMMES

Previous efforts to mainstream gender in water and sanitation programmes have shown the need for the following:

- Development of skills for policy makers and implementers in gender-sensitive participatory processes.
 - Assessment of gender-differentiated systems for access to resources, labour, water uses, water rights and the distribution of benefits.
 - Focus on gender relations, not just on women, in order to work to reform power differentials between men and women.
 - Involvement in formulating and monitoring poverty reduction strategies and other policy reform processes, particularly at local government level.³⁷
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5.7.2 Children³⁸

To ensure that children can use water and sanitation facilities safely, children need to be consulted in their design. For example, children in India indicated their preference for more open, shallow latrines, as opposed to the latrines used by adults, which children often see as dark, enclosed spaces with deep pits into which one could fall.³⁹ It is also important to ensure that children are safe when using water and sanitation facilities, whether from attack from other people or from animals. As children, particularly girl children, are often responsible for collecting water for the family, access to the water source needs to be physically unchallenging, with pumps or taps set at an appropriate level.

Finally, children, in particular those in the first few years of their lives, have extremely weak immune systems which makes them particularly susceptible to disease.⁴⁰ As a result, it is necessary that water quality standards, and measures to implement them, consider this susceptibility. Access to water, sanitation and hygiene programmes should be prioritised to address the needs of young children. The issue of access to water and sanitation (including segregated facilities) in schools is covered in Section 5.6.

5.7.3 Inhabitants of rural and urban deprived areas

According to General Comment No. 15:

*States parties should take steps to ensure that: Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status.*⁴¹

³⁷ This is a suggested 'Quick Win' by the UN Millennium Project report, see note 20, p.26.

³⁸ See the Convention on the Rights of the Child, in Chapter 3: Legal basis and institutional framework, Section 3.1.3.

³⁹ *The Education Drain*, see note 28, p. 20.

⁴⁰ World Health Organization, *Emerging Issues in Water and Infectious Disease*, (Geneva: WHO, 2003) pp. 15-16.

⁴¹ General Comment No. 15, para. 16 (c).

Actions to implement these priorities are addressed in Chapter 7: Water availability, allocation and sustainability, Section 7.6, Chapter 8: Water quality and hygiene, Section 8.3 and Chapter 9: Physical accessibility, Section 9.5.

5.7.4 Indigenous peoples

General Comment No. 15 states that:

*States should take steps to ensure that ... Indigenous peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water.*⁴²

There is growing international recognition of the rights of indigenous peoples, by virtue of the need and desire of indigenous peoples to have the opportunity to maintain their way of life. In October 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples.⁴³ The Declaration sets out an extensive range of rights, in details, rights of indigenous peoples. Some of the most significant provisions relevant to water and sanitation include:

26.1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

29.1 Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

32.1 Indigenous people have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

32.2 States shall consult and co-operation in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Enacting new regulations on water resources, or the granting of authorisations for water use, which have the effect of rendering indigenous forms of water management impossible, can cause severe economic and cultural dislocations, thereby disadvantaging indigenous peoples. Protecting indigenous water management systems may require reforms to laws and policies relating to water resources, water supply and sanitation, in order to maintain indigenous water rights and management systems. Indigenous peoples can be granted a collective property or authority over their water resources in order to protect water appropriation and pollution by other actors. The recognition of these rights will then allow indigenous peoples the right to manage and use these water resources in a manner consistent with their customary traditions. However, autonomous management of water resources by indigenous peoples does not reduce government's responsibility to ensure the right to water and sanitation. As indicated by General Comment No. 15, this responsibility can be implemented through provision of resources to indigenous peoples to assist them manage their water resources and water and sanitation services.

⁴² General Comment No. 15, para. 16 (d).

⁴³ UN Doc. A/RES/61/295, available at: www.ohchr.org ('Your Human Rights' > 'Human Rights Issues' > IndigenousPeoples).

BOX 5.6: BOLIVIAN LAW ON TRADITIONAL WATER MANAGEMENT

The Bolivian Potable Water and Sanitation Service Law (2000) contains provisions guaranteeing access to water resources and respect for traditional water management for indigenous people and peasant communities.

This law mandates the Basic Drainage Superintendency to certify the existence of potable water services belonging to indigenous and original populations, indigenous and peasant communities, peasant associations or unions, and that they are managed according to uses and customs by the issuance of an administrative act called a 'registry.' The law establishes that this registry will be free of cost, will only be granted to collective entities and not to single individuals and will provide security for the registry holders during the useful lifetime of the service.⁴⁴

5.7.5 Nomadic and traveller communities

General Comment No. 15 indicates: “*States parties should take steps to ensure that... nomadic and traveller communities have access to adequate water at traditional and designated halting sites*”.⁴⁵ Nomadic communities across the world generally face challenges of drought and encroachment on traditional sources of water. Even where they have access to dedicated water sources, there can be tensions with local settled communities, particularly when the latter appropriate these water sources while the nomadic communities are absent.

Nomadic and traveller communities also face challenges in engaging with government officials and influencing policy. As a result, active efforts are necessary to ensure that their unique water needs are addressed. It is also important for the water sector to specifically consider how to meet the water and sanitation needs of pastoralists, particularly those who engage in regular migration, and how to carry out the design of services and facilities that serve pastoralists with the participation of representatives of such groups.

5.7.6 Refugees, asylum-seekers, internally displaced persons and returnees

General Comment No. 15 states that:

*States parties should take steps to ensure that... Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas. Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals.*⁴⁶

Ensuring the right to water and sanitation therefore means that access to water and sanitation services is not conditional upon on legal residence, nationality, formal rental contracts or other similar conditions.

⁴⁴ Articles 48 and 49 of Law 2066; Margarita Flores and Pablo Solon, *The Water War: Hydraulic Resources Strategy and Citizen Participation at the IDB in the Case of Bolivia*. For a discussion of the proposed laws, see Alurralde Tejada and Solón Orellana, *Water Legislation in Bolivia, Finding Common Ground*, <http://archive.idrc.ca/water/alurralde02.rtf>.

⁴⁵ General Comment No. 15, para. 16 (e).

⁴⁶ General Comment No. 15, para. 16 (f).

BOX 5.7: THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water; ...
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.⁴⁷

5.7.7 Older persons, people with disabilities and persons with serious or chronic illnesses

General Comment No. 15 states that: “States must take steps to ensure that ... Groups facing difficulties with physical access to water, such as older persons, persons with disabilities ... are provided with safe and sufficient water.”⁴⁸

The United Nations Principles for Older Persons, adopted by a resolution of the General Assembly in 1999:

Encourages Governments to incorporate the following principles into their national programmes whenever possible:

Independence

1. Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help.⁴⁹

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) states:

States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;⁵⁰

In designing water and sanitation services for older people or people with disabilities, it is necessary to establish standards that ensure the establishment of accessible facilities. For water points this may require taps set lower than the standard level or the installation of pumps that are light to use. For sanitation services, it may be necessary to build latrines with a seat rather than squat latrines.

47 *Guiding Principles on Internal Displacement*, (1998) UN Doc. E/CN.4/1998/53/Add.2, Principle 18. The Guidelines were prepared by the Representative of the UN Secretary General on the human rights of internally displaced persons. In 2004, the Commission on Human Rights Resolution adopted resolution E/CN.4/RES/2004/55, where it “...encourages all relevant actors to make use of the Guiding Principles when dealing with situations of internal displacement”, para. 6, available at: www.obchr.org (‘Your Human Rights’ > ‘Human Rights Issues’ > ‘Internal Displacement’ > ‘International Standards’).

48 General Comment No. 15, para. 16 (h).

49 <http://www.un.org/esa/socdev/iyop/iyoppop.htm#Principles>

50 Art 28.2 (a). The treaty was adopted by the United Nations General Assembly in December 2006. It is not yet in force as only 7 countries have ratified it as yet. However, 118 countries have signed the treaty indicating their intention to ratify the treaty. The treaty is available at: www.obchr.org (‘Your Human Rights’ > ‘Human Rights Issues’ > ‘Disabilities’).

General Comment No.15 does not specifically list persons with serious and chronic illnesses, such as HIV/AIDS, as a vulnerable group. However, due to their particular vulnerability and greater needs regarding water, it would be reasonable to consider them as vulnerable.

Persons with HIV/AIDS and other serious and chronic illnesses, as well as elderly persons, normally have weaker immune systems than the general population of adults. As with the vulnerability of young children, this will need to be taken into account in water quality standards and measures to protect water quality.

Older persons, those facing serious and chronic illnesses and those with disabilities are more likely to have difficulty with paying for water and sanitation services. It would be necessary for them to be exempted from programmes in which users contribute time and labour in return for access. It would be necessary for affordability standards to take into account the ability of such groups to pay for services, and for particular subsidy regimes and protections against disconnections to be put in place where possible. This is discussed in Chapter 10: Affordability and financing, Sections 10.1, 10. 6 and 10.9.

5.7.8 Victims of natural disasters and persons living in disaster-prone areas

General Comment No. 15 states that: “*States parties should take steps to ensure that: ... Groups facing difficulties with physical access to water, such as ... victims of natural disasters, persons living in disaster-prone areas ... are provided with safe and sufficient water.*”⁵¹

The practical measures and emergency preparedness required to ensure protection for this vulnerable group are addressed in Chapter 9: Physical accessibility, Section 9.10.

5.7.9 People living in water-scarce regions

General Comment No. 15 states that:

*States parties should take steps to ensure that: ... Groups facing difficulties with physical access to water, such as ... those living in arid and semi-arid areas or on small islands are provided with safe and sufficient water.*⁵²

Water-scarce regions require special attention in regard to water capture and storage, and technology and resources to tap groundwater. Addressing the right in water-scarce regions requires plan of action customised to such areas, which takes into account the likely lack of capacity of government bodies in such regions. Sufficient funding will need to be allocated, particularly given the low possibility of cost recovery for services and in regions where there is a low tax base. The special needs of groups living in such areas, such as pastoralists, may need special attention in national and regional policies, for example on water allocation. (See also Chapter 7: Water availability, allocation and sustainability Section 7.7 and Chapter 9: Physical accessibility, Section 9.2.)

51 General Comment No. 15, para. 16 (h).

52 General Comment No. 15, para. 16 (h).

5.7.10 Persons under custody

General Comment No. 15 states that:

*States parties should take steps to ensure that ... Prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners.*⁵³

The Standard Minimum Rules for the Treatment of Prisoners state:

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

*20. (2) Drinking water shall be available to every prisoner whenever he needs it.*⁵⁴

United Nations Rules for the Protection of Juveniles Deprived of their Liberty state:

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

*37. Clean drinking water should be available to every juvenile at any time.*⁵⁵

In addition to prisoners and detainees, persons under custody include those in psychiatric hospitals. As such people cannot secure their own access to water and sanitation, these services need to be provided free of charge. Where prison or psychiatric services are contracted out by the government, the obligations to ensure sufficient and safe water and adequate sanitation would need to be made an element of the contract. Due to their significant vulnerability, a complaints mechanism is necessary to permit persons under custody to make complaints about any inadequate treatment without fear of reprisals.

53 General Comment No. 15, para. 16 (g). The Comment notes that these rights are contained in arts. 20, 26, 29 and 46 of the third Geneva Convention of 12 August 1949; arts. 85, 89 and 127 of the fourth Geneva Convention of 12 August 1949 as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners, arts. 15 and 20, para. 2.

54 Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, available at www.obchr.org ('Your Human Rights' > 'What Are Human Rights' > 'International Human Rights Law' > 'Universal Human Rights Instruments').

55 Adopted by General Assembly resolution 45/113 of 14 December 1990, available at www.obchr.org ('Your Human Rights' > 'What Are Human Rights' > 'International Human Rights Law' > 'Universal Human Rights Instruments').

CHECKLIST FOR NON-DISCRIMINATION AND ATTENTION TO MARGINALISED AND VULNERABLE GROUPS

1. Does national or regional legislation explicitly prohibit discrimination? Is there an institution in place to investigate and provide remedies for discrimination?
2. Do water and sanitation related laws, regulations, policies and operating procedures include any discriminatory provisions?
3. What proportion of public water and sanitation budgets is allocated to vulnerable and marginalised groups, including those living in informal settlements and arid and semi-arid areas?
4. Is data on access to water and sanitation disaggregated to examine levels of access by vulnerable and marginalised groups?
5. Are institutions such as schools, hospitals, prisons and refugee camps given priority in access to water and sanitation (including extension of services, tariffs and subsidy plans)? What percentage of schools, hospitals, prisons and refugee camps have water and sanitation facilities, including hand-washing facilities and separate toilets for males and females? Are there targets for ensuring water supply and segregated sanitation facilities to such institutions?
6. Are specific national policies in place to address the water and sanitation needs of women; children; inhabitants of rural and urban deprived areas; water-scarce regions; indigenous peoples; older persons; people with disabilities; and people with serious or chronic illnesses?
7. Is the right of nomads and travellers to traditional water sources recognised and protected?
8. Is the right of prisoners and detainees to water and sanitation guaranteed?
9. Are refugees, asylum seekers, internally displaced persons and returnees able to enjoy their rights to water and sanitation and is this right protected?

See also the checklists for Chapter 6: Participation and access to information, Chapter 7: Water availability, allocation and sustainability, Chapter 8: Water quality and hygiene, Chapter 9: Physical accessibility, Chapter 10: Affordability and financing and Chapter 11: International co-operation.



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Chapter 6: Participation and access to information

The ICESCR states that: “*the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant*”.¹

Everyone has a responsibility to participate in the realisation of the right to water and sanitation. However, as members of vulnerable or marginalised groups are frequently excluded from decision-making regarding water and sanitation, their needs are seldom prioritised, resulting in inequitable access to water and sanitation facilities and services. Where services and facilities are provided, the lack of adequate participation can lead to inappropriate technical solutions, prohibitive financial costs or unrealistic payment options.

At the 2002 World Summit on Sustainable Development, States committed to “*Facilitate access to public information and participation, including by women, at all levels in support of policy and decision-making related to water resources management and project implementation*”.² However, ensuring effective participation and access to information is not straightforward; poverty can impair people’s capacity to access information. Illiteracy is another barrier to information access and some vulnerable or marginalised groups may also face physical or cultural restrictions to accessing information and actively participating in decision-making.

¹ ICESCR, (1976), Preamble.

² Johannesburg Plan of Implementation, para. 25 (b).

General Comment No. 15 states that: “*The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water.*”³

The Sub-Commission Guidelines provide further advice to States regarding participatory rights.⁴ They state that

*Communities have the right to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose and manage their own services with assistance from the State.*⁵

They indicate that “*Special efforts must be made to ensure the equitable representation in decision-making of vulnerable groups and sections of the population that have been traditionally marginalised, in particular women.*”⁶

General Comment No 15 includes access to information as one of the key factors that determines the adequacy of the right, stating that “*accessibility includes the right to seek, receive and impart information concerning water issues.*”⁷ In other words, the right to water and sanitation cannot be fulfilled completely without individuals gaining access to information with which to make informed decisions about the water and sanitation issues that affect them. General Comment No. 15 states that: “*Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.*”⁸ It is also useful to document and publish such information in order to prevent misunderstandings or incorrect criticism of government actions.

The right to water and sanitation, in common with all human rights, provides for all persons to be given a genuine opportunity to influence and enhance policy formulation and improvements in the water and sanitation sector. It also provides tools for both individuals and communities to advocate for necessary changes, and for governments to implement them, ensuring the realisation of the right to water and sanitation. As human rights focus on entitlements, rather than charity, this empowers individuals to hold governments, and other actors, to account for lack of access or for discriminatory policies. It also emphasises the need for transparent information sharing, and the involvement of all stakeholders in decision-making processes, monitoring and reporting.

Human rights standards require levels of commitment, information sharing and participation that can not always be immediately realised, given the lack of financial and institutional capacity of many governments of developing countries. Therefore it is important to note that the ICESCR envisages progressive realisation and it is not expected that all countries will be able to fulfil the most resource-intensive obligations immediately. It is important that plans to implement participatory processes take account of the financial and administrative resources required to fulfil them. Investing resources in participatory processes is an important aspect of ensuring effective development.

3 General Comment No. 15, para. 48.

4 United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation*, UN Doc. E/CN.4/Sub.2/2005/25, paras 8.1-8.3.

5 Sub-Commission Guidelines, section. 8.2.

6 Sub-Commission Guidelines, section. 8.1.

7 Information accessibility “... includes the right to seek, receive and impart information concerning water issues.” General Comment No. 15 para. 12(c)(iv).

8 General Comment No. 15 para. 48.

HOW GOVERNMENTS CAN ENSURE ACCESS TO INFORMATION AND PUBLIC PARTICIPATION

- 6.1 Introducing mechanisms to facilitate public access to water and sanitation sector information for policy and decision-making, including use of communications media used by the poor such as radio.
- 6.2 Ensuring public access to essential water quality, and to environmental health data.
- 6.3 Carrying out participatory processes in the development of water and sanitation policies and plans that ensure the genuine participation of representatives of marginalised and vulnerable groups (including by assisting them to acquire necessary information and expertise); aim to mitigate power imbalances between stakeholders; and are not time consuming.
- 6.4 Making provision for and enabling community development and management of small-scale water and sanitation facilities and services in appropriate circumstances.
- 6.5 Ensuring that users are able to participate in the regulation and monitoring of service providers.

6.1 Information on current and planned government policies and programmes

Relevant information includes:

- Policies, action plans or strategies relating to or affecting water and sanitation.
- Budgets, tariffs and tariff structures.
- Proposed changes to any of the above.

To ensure information is accessible to all users, it is necessary to consider aspects such as levels of literacy, different language groups, and the urgency of the information. It is also necessary to disseminate information using methods that are accessible to all sectors of society. For instance, in many countries, key draft policies and regulations are simply announced in one national newspaper, which the majority, or most vulnerable and marginalised groups might not read. It is therefore necessary to circulate information through methods that reach all sectors of society. These may include radio broadcasts, including via stations that vulnerable and marginalised groups listen to, or putting up posters - in the language spoken by such groups - close to community and religious centres. In some cases, it may only be necessary to broadcast details of how and where to access more detailed information. All people need to have equal access to this information to enable them to participate effectively in decisions that affect their right to water and sanitation.

It is often particularly difficult to find effective ways of sharing information with those living in rural areas. While community-based organisations can play an important role in ensuring that all persons have equal access to information, it will also be necessary for governments to provide support for organisation and networking.⁹

To develop an effective plan of action, it is important that the government has a thorough understanding of the current condition of water and sanitation services, including what water resources are currently being used and those available for use. An accurate assessment of the current situation is more likely where communities are involved in data collection and interpretation. This also empowers communities in their involvement in the accompanying decision-making process. Community mapping can be an effective tool for encouraging full engagement of individuals and groups, whereby community members, particularly women, identify the gaps in service provision by drawing maps and collecting data from all households in the area showing current provision.¹⁰ Community mapping is not an alternative to collection of data by professionals (which is also necessary), but is rather an important accompaniment. Community mapping may fill gaps in government capacity. It is important that data collection processes go beyond simply recording the presence of water and sanitation services, but also record more nuanced information, such as how often and where the water supply is available, whether the sanitation facilities are hygienically kept and what other (potentially unsafe) sources are used.

⁹ See for example Indonesia's Law 7/2004 on Water Resources (2004), art. 70.

¹⁰ V. Roaf, *Community mapping, A tool for community organising. Guidelines for WaterAid Programmes and Partners*. (WaterAid: London, 2005). Available at www.wateraid.org. Also see www.sparcindia.org and <http://www.sdinet.org> for detailed information and case studies on community mobilisation.

BOX 6.1: ACCESS TO INFORMATION IN SOUTH AFRICAN LAW

The South Africa Water Services Act (1997) requires a water services authority to take reasonable steps to bring its draft water services development plan to the notice of its consumers, potential consumers, industrial users and water services institutions within its area of jurisdiction and to invite public comment to be submitted within a reasonable time.¹¹ The Act states that an authority must consider all comments received by it before adopting a development plan and, on request, report on the extent to which a specific comment has been taken into account or, if a comment was not taken into account, provide reasons therefore.¹²

The Water Services Act also requires each water services authority to report on the implementation of its development plan during each financial year and publicise a summary of its report.¹³ The Minister is required to establish a national information system on water services that provides information in an accessible format, to which the public is entitled to reasonable access.¹⁴

6.2 Water quality and environmental health data

Users have a fundamental right to information on the safety of the water supplied to them for domestic purposes, and to information on environmental health. General Comment No 15 refers to the World Health Organisation's Guidelines on Drinking Water Quality¹⁵ that recommend

*the publication of information on public health aspects of drinking-water supplies, water quality and performance of service providers. Publication of such information can encourage service providers to follow good practices, mobilize public opinion and response, reduce the need for regulatory enforcement, which should be an option of last resort.*¹⁶

The WHO Guidelines recognise, however, that,

*in many communities, the simple right of access to information will not ensure that individuals are aware of the quality or safety of the water supplied to them. The agencies responsible for surveillance should develop strategies for disseminating and explaining the significance of results obtained.*¹⁷

Such interaction can occur through consumer associations or community based organisations, such as women's groups, religious groups and schools. Appropriately trained and informed, they can carry out surveillance where government authorities are not in a position to do so.¹⁸

11 Water Services Act, (Act 108 of 1997), s. 14, <http://www.dwaf.gov.za>

12 Ibid., section 15 (1-2).

13 Ibid., section 18 (1-3).

14 Ibid., section 67.

15 World Health Organization, *Guidelines for Drinking Water Quality*, 3rd ed. (Geneva: WHO, 2004), available at http://www.who.int/water_sanitation_health/dwq/gdwq3/en/. Referred to hereafter as "WHO Quality Guidelines."

16 WHO Quality Guidelines, p. 94.

17 WHO Quality Guidelines, p. 96.

18 WHO Quality Guidelines, p. 96.

BOX 6.2: ACCESS TO INFORMATION OBLIGATIONS IN UNITED STATES FEDERAL LAW

Under the U.S. Safe Drinking Water Act Amendments of 1996, large water systems are required to provide annual reports directly to their customers on water contaminants and related health effects. The Act stipulates that persons served by a public water system must be notified within 24 hours of any regulatory violations that could seriously harm human health as a result of short-term exposure. It further indicates that a State must send an annual report to the Federal Environmental Protection Agency Administrator on violations of national drinking water regulations by public water systems in the State and must make such report available to the public.¹⁹

6.3 Participation in decision-making and policy development

Development of national, regional and local water and sanitation strategies and plans of action requires the participation of all relevant stakeholders, such as general public and civil society organisations, including those representing communities with vulnerable and marginalised members.²⁰ (See Chapter 4: Roles of key actors, Section 4.5. for a definition of ‘community’.) As a government body cannot feasibly discuss its proposed policies with every single affected person, it is necessary that representatives of the various groups are involved. Such representatives need to report to the members of their groups and to be accountable to them.

It is necessary to ensure that government bodies build up expertise and capacity in running effective participation processes that attempt to mitigate power imbalances between stakeholders, including power imbalances within communities. This is also linked to the importance of ensuring that participation processes are not unduly time consuming for participants, and are structured to take into account levels of expertise and resources.

BOX 6.3: METHODS TO ENSURE REPRESENTATIVE PARTICIPATION

- Carrying out participation processes before making decisions, rather than after.
- Avoiding the use of jargon or highly technical terms in discussions.
- Providing two-way translation for local languages, including languages of immigrants or refugees where necessary.
- Taking steps to ensure that participants, especially those representing marginalised groups, are provided with the necessary information and skills in order to meaningfully participate (this can best occur in partnership with capacity-building institutions).
- Actively soliciting participation of marginalised groups, and ensuring that representatives of such groups articulate not only their concerns, but also their recommendations.
- Establishing separate channels of participation for certain vulnerable and marginalised groups (see Ecuador example in Box 6.7).
- Ensuring that facilitators and presenters avoid patronising behaviour.
- Ensuring equality amongst stakeholders, for example, ensuring that where international donors have regular meetings with government, that civil society organisations (including representatives of vulnerable and marginalised groups) also have this opportunity.
- Organising meetings in locations that can be easily accessed, holding consultations in the locality of those affected and ensuring that these locations can be easily accessed (for example, by public transport).

19 See ‘New Law Significantly Affects Small Rural Water Systems’ in Rural Conditions and Trends, Vol. 8, No. 1, p. 53.

20 General Comment No.15, paras. 16 and 47, Sub-Commission Guidelines, section. 2.3 (b). See for example the Indian National Water Policy (2002) para. 12

Community participation is a powerful process that is strengthened by a responsive government. Government support can also be extended to sharing information about good community-based practices, creating wider civil society/government partnerships.²¹

As indicated in the Sub-Commission Guidelines, inclusion of vulnerable and marginalised groups is necessary for the realisation of the right to water and sanitation. Besides its own substantive value, promoting participation of both relevant communities and local authorities contributes to identifying the most appropriate investments for a particular locality, and to developing consensus on pricing levels necessary to ensure sustainable and affordable services for all.²²

Government support to this process could include considering proposals from individuals and communities for appropriate policies for the delivery of water and sanitation services. An association of the different stakeholders in water and sanitation supply, including operators, legislators, politicians and users, can assist in developing alternative approaches, which may be better suited to the delivery processes than a single entity attempting to deliver efficient water and sanitation services.²³

Involvement of communities with and without access to water and sanitation services will bring crucial experience and ideas of how to provide effective and efficient services, allowing also for the consideration of alternative approaches, whether through self-management of services or through appropriate technologies. Where reforms to water and sanitation services are planned, it is necessary to consult the relevant communities so that they decide how services should be managed, as set out in the Sub-Commission Guidelines.²⁴ The level of consultation would necessarily vary according to the context. In an urban setting, it may not be feasible for a particular neighbourhood to decide on the particular level of service, as such decisions may have to be made by the wider community (potentially at the level of the whole town, including by referendum for the most significant decisions). In a rural setting, there may be more scope for a community in a particular area to choose its level of service. Where privatisation of services is being considered, it is important that this is fully disclosed and discussed in order to ensure that all residents and stakeholders, including the local and regional governments, understand the implications of the privatisation process. It is necessary to ensure that people's right to information trumps restrictions on accessing information considered 'commercial-in-confidence'.

It is essential that community participation is not used superficially - as a 'rubber stamp' - to secure agreement for what a third party wants to achieve. Particularly in areas where specific groups of users - such as women or disabled people - have historically been excluded from decision-making processes, building up effective community participation can be a slow process, requiring much time and effort to ensure that all views are heard and a common aim and purpose is found.²⁵ Using participatory processes to plan for development of water and sanitation services should ensure that sufficient time is allowed.²⁶ The tendency to exclude communities from decision-making can be prevented if their role is recognised within the legislative framework, if the standards for their participation are clear and if there is a process by which communities can complain about denial of participation.

It is important to clarify that participatory processes do not take away from the government's right to make the final decision on policy matters, and its responsibility to do so in the public interest. This is particularly important when vulnerable and marginalised group have not been able to influence participatory processes.

21 See for example Constitution of Argentina, Article 42(3) which provides for water user information and the creation of users' committees within water control bodies and Morocco Law no. 10-95, Article 101 where an administrative - user joint commission participates in the preparation of local authority plans and actions.

22 P. Deverill, et. al. *Designing water and sanitation projects to meet demand in rural and peri-urban communities. Book 3 - Ensuring the participation of the poor.* (WEDC, 2002).

23 WHO Quality Guidelines, p. 14.

24 Sub-Commission Guidelines, section 8.2.

25 General Comment No. 15, para. 48.

26 J. Ockelford, & R. Reed, *Participatory Planning for Integrated Rural Water Supply and Sanitation Programmes*, (Loughborough, WEDC: 2003).

BOX 6.4: LEVELS OF PARTICIPATION ²⁷

Passive involvement: Greatest dependence on outsiders
Information received but no opportunity to express views.

Information giving

Answer questions from outsiders but no opportunity to decide on questions or influence later decisions because the information gathered is not shared.

Consultation

Views are taken into account, but decisions are made by others.

Functional participation

Involvement in groups set up by outsiders to meet objectives set by outsiders.

Interactive participation

Involvement in planning, needs analysis and information gathering, and decision-making phases of the process. Outsider favours these viewpoints.

Self-mobilisation: Greatest control by people

People take the initiative in planning, needs assessment and information gathering, setting of objectives and collective action. Outsiders provide technical support and play a facilitating or catalytic role, rather than directing the activities or decisions made.

BOX 6.5: MULTI-STAKEHOLDER APPROACH TO POLICY DEVELOPMENT IN BOLIVIA

Following conflicts over water that culminated in a political crisis in the year 2000, the Government of Bolivia created the Consejo Interinstitucional del Agua (CONIAG – the Inter-institutional Water Council) to coordinate a proposal for a new water law. The Council has a directorate of members drawn from government, the private sector and civil society, and marks an important step in the evolution of water management law by explicitly adopting a multi-stakeholder approach to policy development. ²⁸

²⁷ Adapted from R. Jackson, 'Community Participation: Tools and Examples', taken from S. Worah, D. Svendsen and C. Ongleo, *Integrated Conservation and Development: A Trainer's Manual* (ICDP et al, 1999)

²⁸ *After the Water Wars: The Search for Common Ground*, International Development Research Centre, http://www.idrc.ca/uploads/user-S/11576619261waterwars_eng.pdf.

BOX 6.6: PARTICIPATORY BUDGETING IN PORTO ALEGRE, BRAZIL

The Water and Sewage Department of Porto Alegre, Brazil, Departamento Municipal de Água e Esgotos (DMAE), is a good example of a successful model of participatory decision-making. The DMAE is an autonomous entity, with its own budget, employees, income and administrative structure. However, it is required to undertake public consultations through two mechanisms. First, its major decisions, works plans, contract and tariffs are subject to the approval of a consultative council, which includes representatives from civil society organisations. This ensures that the public have some influence over the Department operations.

Second, DMAE's investments reflect the decisions held in the municipal process of participatory budgeting. The Orçamento Participativo (OP) consists of several public meetings, accessible to all citizens and organisations, some of them held in the presence of government representatives. The meetings are divided according to city regions and subjects. When the subject concerned is water and sanitation, DMAE's officers, who must provide the information necessary for decision-making, guide the meetings. The citizens choose, through direct elections, the priorities for the next year's municipal budget and investment plan. DMAE evaluates the technical feasibility of the proposals and drafts its investment plan based on these. The investment plan is submitted to the OP Council, a representative body, for approval. The population can also monitor the implementation of the plan by participating in specific commissions.

This decision-making process has led to a greater degree of transparency and accountability in the management of water and sanitation services in Porto Alegre. Above all, it has made it possible to identify the most urgent needs of the community, including the expansion of services to peripheral and shanty areas. As a result, from 1989 to 2001, the population with access to water supply rose considerably from 94.7 percent to 99.5 percent, and the access to sanitary sewerage collection rose from 73 percent to 84 percent. The participatory budgeting, combined with a strong cross-subsidies policy, have resulted in almost universal access to water and sanitation in the city.²⁹

Participatory budgeting has also been used in a range of other countries, including India in the state of Kerala.

BOX 6.7: TARGETING OF VULNERABLE GROUPS IN QUITO, ECUADOR

The city government used open meetings as the primary participatory planning mechanism. However it also held specifically-targeted 'Vulnerable Group Council Meetings' and created the Metropolitan Equity Council as a representative body for 'vulnerable' groups to have direct participation in decision-making on policies and programmes affecting them.

29 See Hélio Maltz, 'Porto Alegre's water: public and for all', *Reclaiming public water: achievements, struggles and visions from around the world* (Amsterdam: Transnational Institute and Corporate Europe Observatory, 2005), <http://www.tni.org/books/water-palegre.pdf>. Also Odete M. Viero, 'Water supply and sanitation in Porto Alegre/Brazil' (Mexico City: PRINWASS, 2003), <http://prinwass.ncl.ac.uk/PDFs/DMAE.PDF>

6.4 Participation in the development and management of water and sanitation services

The Sub-Commission Guidelines state that, “*Communities have the right to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose and manage their own services with assistance from the State.*”³⁰ This guideline is particularly relevant to small-scale services, including water distribution outlets (such as kiosks) and public toilets linked to piped networks. Normally, the operation of piped networks would need to be managed by, or on behalf of, a government body. However, there are many examples of communities managing their own small-scale water and sanitation facilities and services successfully, both in rural and urban areas.³¹ (See also Chapter 9: Physical accessibility, Box 9.6 on the Orangi Pilot Project, Karachi, Pakistan).

Community groups are often in a better position than governments to identify which groups within their community lack access to essential services and how they can be most effectively delivered. (See Chapter 4: Roles of key actors, Section 4.5. for a definition of ‘community’.) Enabling individuals and communities to be actively involved in designing and managing their water and sanitation services, with financial and/or technical assistance from government, can help to ensure that the services are more appropriate, sustainable and affordable.³² Community-managed facilities can be run either on a non-profit basis, or with profits used to extend services. This could also provide employment to individuals within the community, or depending on the technology, can provide other communal benefits, for example cooking fuel as provided by a biogas latrine.³³

Community schemes will need to ensure participation of the membership of the community in decisions relating to the:

- Required level of service
- Management of finances
- Appropriate sites for water points and toilets
- Contribution of labour or locally available materials in lieu of cash
- Maintenance and repair of facilities
- Monitoring of services.

Community-managed schemes can either run on a non-profit basis, or use profits to extend services. Every community will have particular households in a dire economic situation and will need to assist them. Where there is no social security system, governments can help address this situation by providing support to community groups on the condition that households unable to pay for water and sanitation are granted access to community-managed facilities.

Community management can complement water and sanitation services providers who may not have the relevant expertise for working in informal settlements or rural areas. It is particularly relevant for rural areas, where professional management and technical assistance can be hard to find. However, capacity building and training are essential elements for ensuring the sustainability of community-managed systems, and require an ongoing, rather than a one-off commitment. Combining capacity building or awareness-raising with the involvement of community groups, water and sanitation committees and schools in the provision and maintenance of water and sanitation can have a significant impact. Improvements to health through better hygiene practices, and reductions in water wastage due to better care of facilities are two such examples.

Powerful stakeholders within a community can be instrumental to the success or failure of a participatory approach, and they may need to be persuaded that improved water and sanitation for all will also be to their benefit, particularly from a health perspective. For example, influential members of a village who already have a latrine can use their influence to persuade others to build and use latrines, also bringing direct health benefits to their own households. They may determine how village projects are organised and whether they are successful.

30 Sub-Commission Guidelines, section. 8.2.

31 See, J. Abbot, *Sharing the City: Community participation in urban management*. (Earthscan: London, 1996) and P. Evans, & B. Appleton *Community Management Today – the role of communities in the management of improved water supply systems*, (IRC, June 1993)

32 See for example Peru’s Organic Law for the Sustainable Use of Natural Resources, Law No. 26821 (1997) art. 5.

33 Information provided by the Kenyan NGO Umande Trust based on its pilot project in Kibera, Nairobi, 2007.

Where communities have a particularly positive experience of self-managing water and sanitation services, this can also be used as an advocacy tool to influence the development of government policy to allow for increased involvement and participation of communities in the delivery of essential services, where such services need to be delivered through small-scale systems.

BOX 6.8: COMMUNITY MANAGEMENT IN ETHIOPIA

The Oromia Region in Ethiopia contains several large community-managed gravity-fed water supply schemes, some of which have been operating for over a decade. Government engineers designed the schemes in accordance with technical standards and the wishes of the communities served. The people contributed approximately 20 percent of the capital cost in the form of cash and labour, with the balance coming from the government or external support agencies. During the construction of each scheme, a project steering committee, comprising community members, central and local government staff and staff from the NGO WaterAid, was responsible for planning the overall project, supervising construction, monitoring activities against plans, and resolving problems. In all the cases, community-elected bodies now own and manage the infrastructure and in some cases, the profits made have been used to extend the schemes to further villages.³⁴

6.5 Participation in regulation and monitoring

Regulation

It is useful for the body responsible for regulation of service providers to have representation from a wide range of stakeholders, including representatives of vulnerable and marginalised groups, in order to allow for public participation in decision-making processes and thereby give effect to peoples' right to participation and adequate redress.³⁵ An important part of this process is an effective complaints mechanism; *see* Chapter 4: Roles of key actors, Section 4.1.12 addressing regulation of service providers and Section 4.4 on independent public monitoring bodies.

Monitoring

Individuals and communities are in a good position to monitor service provision according to government standards, such as quality, affordability and accessibility. Chapter 8: Water quality and hygiene, Section 8.7, discusses how communities can play a role in water quality monitoring.

Planning

Individuals and communities can play an important role by participating in the development of long-term infrastructural plans, in order to provide information on their situation. This is particularly important in the case of informal settlements where upgrading is under consideration. For this purpose, it is important to disseminate information on town plans/master plans.

³⁴ *Rural Piped Water Supplies in Ethiopia, Malawi and Kenya: Community Management and Sustainability*, World Bank, Water and Sanitation Program – Africa Region, Field Note 13. <http://www.wsp.org>

³⁵ General Comment No. 15, para. 48.

CHECKLIST FOR PARTICIPATION AND ACCESS TO INFORMATION

1. Are there mechanisms in place to provide information on existing and planned government policies and programmes in the water and sanitation sector? Does such information reach all sectors of society?
 2. Is there a legal requirement to make essential data on water quality and environmental health available to the public?
 3. Are participatory processes required for the development of water and sanitation policies? Are there mechanisms and programmes to ensure that representatives of vulnerable and marginalised groups genuinely influence such processes?
 4. Are there legal or policy provisions that permit community development and management of small-scale water and sanitation services in appropriate situations?
 5. Are users able to participate in the monitoring and regulation of their water and sanitation service providers?
-



PART III

POLICIES FOR IMPLEMENTATION



Chapter 7: Water availability, allocation and sustainability

In the delivery of water services, the availability of a sufficient quantity of safe water is an increasingly problematic issue. Of particular relevance is the sustainability of existing water sources, which are threatened by degradation of water catchment areas, over-use of water, and the contamination of water sources. These challenges lead to water scarcity, to utilities resorting to rationing, to people losing access to traditional water sources, and to falling water tables, resulting in hand pumps no longer functioning, thereby increasing the cost of water.¹

Notwithstanding the crisis in access to water, domestic uses of water comprise less than ten per cent² of total water use globally – industry and agriculture use the balance. Of the volume of water used for domestic purposes, only a small proportion is for essential domestic uses. Domestic water usage within and between countries varies enormously. In the United States, the average person uses over 500 litres per person per day³ – much of which cannot be described as ‘essential’. In some countries in Africa, such as Gambia, Mali, Somalia and Mozambique, the average person uses less than 10 litres per person per day.⁴

1 DFID policy paper: Water Action Plan, March 2004, <http://www.dfid.gov.uk>.

2 Igor Shiklomanov, *World Water Resources And Their Use a joint SHI/UNESCO Product*, 1999. <http://webworld.unesco.org/water/ibp/db/shiklomanov/>

3 UNDP, *Beyond Scarcity: Power poverty and the global water crisis: UNDP Human Development Report 2006* (New York, 2006) p.34 and Figure 1.2, available at: <http://hdr.undp.org/hdr2006/report.cfm2006>. See also, FAO AQUASTAT Database. Rome, July 2006. <http://www.fao.org/nr/water/aquastat/dbase/index.stm>

4 Peter Gleick, *Basic Water Requirements for Human Activities: Meeting Basic Needs*, (Water International, 1996)

Only in a few regions of a few countries would there be insufficient water resources for essential domestic purposes such as drinking, washing (clothes and personal hygiene), cooking and sanitation - if such domestic uses were prioritised over other uses. In practice, however, essential domestic water use competes with other uses, including essential uses necessary for agriculture and industry, which are related to other human rights, such as the right to food and work. In addition, they also compete with non-essential domestic, agricultural and industrial uses, which utilise large amounts of water and can have greater political priority. As a result, ensuring availability of water in order to meet the right to water and sanitation requires both the greater prioritisation of essential domestic uses and a significant improvement in water resource management.

HOW GOVERNMENTS CAN ACT TO ENSURE WATER AVAILABILITY

- 7.1 Setting a standard for a minimum quantity of water sufficient for human dignity, life and health.
 - 7.2 Prioritising the allocation of water resources for essential domestic uses over agricultural and industrial uses, and by exempting water use for essential domestic and survival needs from licensing requirements.
 - 7.3 Improving sustainability of water resources, including by:
 - regulating water abstraction
 - providing price incentives to reduce non-essential use
 - educating users on water conservation
 - disseminating conservation techniques
 - re-using water
 - restricting non-essential uses in times of scarcity.
 - 7.4 Protecting water catchment areas by ensuring sustainable agricultural practices.
 - 7.5 Ensuring sufficient and equal access to traditional sources of water, including by:
 - protecting traditional sources of water against appropriation by any one group or individual
 - mediating conflict
 - ensuring that land ownership laws and practices do not interfere with access to water
 - respecting customary systems of water access, while ensuring that they do not impede equal access.
 - 7.6 Assisting communities to establish water capture and storage facilities, especially in water-scarce areas.
 - 7.7 Ensuring that water rationing is carried out in an equitable manner, is widely publicised in advance and that essential needs for all are met.
 - 7.8 Improving the efficiency of piped water delivery, including by:
 - improving information on existing systems
 - improving management processes
 - improving billing processes
 - fixing leakages (where feasible)
 - formalising illegal connections.
-

7.1 Setting standards for a minimum quantity of water

General Comment No. 15 states:

*The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.*⁵

It defines the terms it uses as follows:

Continuous: The regularity of the water supply is sufficient for personal and domestic uses.

Drinking: Water for consumption through beverages and foodstuffs.

Personal sanitation: Disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted.

Food preparation: Food hygiene and preparation of food stuffs, whether water is incorporated into, or comes into contact with, food.

Personal and household hygiene: Personal cleanliness and hygiene of the household environment.⁶

General Comment No. 15 does not specify a quantity to be made available to all. However, it states that:

*The amount of water made available should conform to World Health Organisation (WHO) guidelines. Some individuals or groups may require additional amounts due to health, climate or work conditions.*⁷

Setting standards defining the quantity of water that needs to be available to all individuals, households or groups and for the continuity of services, is important for purposes such as water subsidies and pricing and for exemptions from licensing. This includes immediate or short-term targets, so that each person has access to an amount of water sufficient for human dignity, life and health.⁸ More advanced minimum targets can be established based on a country's capacity to fulfil them at its stage of development.

The WHO suggests a minimum of 20 litres per day per person, although the amount will be higher for some groups due to health, work or climatic conditions.⁹ It is important to note that access to a sufficient quantity of water is dependant on the physical accessibility of the source. Where a source is between 100-1 000 metres of a household, or where collection time is between 5-30 minutes (including time spent waiting in a queue), it is unlikely that collection of water will exceed 20 litres per person (see Box 7.1). In some (but not all) situations, this problem can be partially compensated for by using non-potable water within the home for household cleaning or by washing clothes away from the household.

A further target can be set at a quantity of approximately 50-100 litres a day per person, which is the amount at which most health needs are met.¹⁰ Accessing this amount will generally require an on-plot connection; otherwise it is unlikely, given the time and effort taken to collect water, that this target will be met. Thus, prioritising the improvement and extension of piped water and sewerage networks is an important means to ensure that this further target can be met. The actions necessary to achieve this are discussed in Chapter 9: Physical accessibility.

5 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003), para. 12 (a).

6 General Comment No. 15, footnotes 12 and 13.

7 General Comment No. 15, para. 12 (a), with reference in footnote of the General Comment 14 to an earlier version of the publication by Howard and Bartram cited in note 9 below.

8 Ibid., para. 11.

9 G.Howard and J.Bartram, *Domestic Water Quantity, Service Level and Health*, (World Health Organization, 2003), p.22.

10 Ibid.

A more advanced target would be to ensure 100 litres per person per day, which according to Bartram and Howard, would ensure that all health concerns are met. Providing this quantity would require a household connection within the home with multiple taps.¹¹

It is important that resources are allocated so that all people reach at least the minimum standard, rather than providing greater quantities for the better-off, and failing to secure access for the poor. Setting standards for water-poor regions, for example those that are arid or semi-arid, requires particular care to ensure that all inhabitants have adequate access.

BOX 7.1: SERVICE LEVEL DESCRIPTORS OF WATER IN RELATION TO HYGIENE¹²

| Service level description | Distance/time measure | Likely quantities collected (litres per person per day) | Level of health concern |
|----------------------------|---|--|---|
| No access | More than 1000 metres or 30 minutes collection time | Very low (often less than 5 litres per person daily) | Very high. Hygiene not assured and consumption need may be at risk. Quality difficult to assure, emphasis on effective use and water handling hygiene. |
| Basic access | Between 100 metres and 1 000 metres (5 to 30 minutes total collection time) | Low. Average is unlikely to exceed 20 litres per person daily; laundry and/or bathing may occur at water source with additional volumes of water | Medium. Not all requirements may be met. Quality difficult to assure. |
| Intermediate access | On-plot (e.g. single tap in house or yard) | Medium. Likely to be around 50 litres per person daily, higher volumes unlikely as energy/time requirements still significant | Low. Most basic hygiene and consumption needs met. Bathing and laundry possible on-site, which may increase frequency of laundering. Issues of effective use still important. Quality more readily assured. |
| Optimal access | Water is piped into the home through multiple taps | Varies significantly, but above 100 litres per person daily and may be up to 300 litres daily | Very low. All uses can be met, quality readily assured. |

¹¹ Ibid.

¹² Ibid.

7.2 Prioritising use of water resources for essential domestic purposes

General Comment No. 15 recognises that:

Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.¹³

General Comment No. 15 also refers to the Plan of Implementation of the World Summit on Sustainable Development, where States committed to:

Develop integrated water resources management and water efficiency plans by 2005, with support to developing countries, through actions at all levels to: ...

(c) Improve the efficient use of water resources and promote their allocation among competing uses in a way that gives priority to the satisfaction of basic human needs and balances the requirement of preserving or restoring ecosystems and their functions, in particular in fragile environments, with human domestic, industrial and agriculture needs, including safeguarding drinking water quality.¹⁴

These statements indicate that essential domestic uses are to be prioritised over other water uses. However, non-essential domestic uses are not to be given priority over essential needs such as the maintenance of ecological flows, subsistence agriculture and pastoralism. Many national laws reflect the need to prioritise water for essential domestic uses.¹⁵

Prioritisation of essential domestic uses in cases of water shortages is not always a simple matter. In rural areas, groups using water for agricultural purposes may resist it. Licensing certain water uses is one method of prioritising essential domestic use. Such systems normally do not require those using water for essential domestic uses, small quantities of water or non-piped mechanisms to apply for licenses, whereas those wishing to use water for industry and large-scale irrigation do require licenses (*see* Box 7.2). Exemptions of essential domestic use from licensing systems are essential as these systems might otherwise exclude low-income groups who may not be able to pay fees, or may be unable to easily apply for a license.¹⁶

13 General Comment No. 15, para. 6, referring in a footnote to the World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

14 Johannesburg Plan of Implementation of the 2002 World Summit in Sustainable Development <http://www.un.org/esa/sustdev/> (click on Plan of Implementation), para. 26 (c).

15 For example Chad Water Code, Law 016/PR (1999), art. 149, India National Water Policy (2002), para. 5, Benin Water Code (1987), art. 54, Morocco's Law no. 10-95 (1995), art. 86, states that in the case of water shortages due to overuse or exceptional events such as droughts, priority will be given to water supply for populations and drinking water for animals.

16 Veronica Giardina and Ilja Betlem, *Access to Water*, Discussion Draft, (FAO: 2003).

BOX 7.2: PERMISSIBLE USES OF WATER WITHOUT A LICENSE IN SOUTH AFRICA AND KENYA

Under South Africa's National Water Act (1998), any person may carry out the following acts without a licence:

- (a) take water for reasonable domestic use in that person's household, directly from any water resource to which that person has lawful access;
- (b) take water for use on land owned or occupied by that person, for
 - (i) reasonable domestic use;
 - (ii) small gardening not for commercial purposes; and
 - (iii) the watering of animals (excluding feedlots) which graze on that land within the grazing capacity of that land, from any water resource which is situated on or forms a boundary of that land, if the use is not excessive in relation to the capacity of the water resource and the needs of other users;
- (c) store and use run-off water from a roof;
- (d) in emergency situations, take water from any water resource for human consumption or fire fighting.

The Act also states that there may be general authorisation for certain uses or a responsible authority may dispense with a licence requirement.¹⁷

In Kenya, the National Water Resource Management Strategy states: "Water required to meet basic human needs and to maintain environmental sustainability will be guaranteed as a right, whilst water use for all other purposes will be subject to a system of administrative authorisations."¹⁸

While it is important to prioritise the use of water for personal and domestic uses over agricultural and industrial uses, the next priority is to allocate water for basic agricultural needs, and in particular ensure that vulnerable and marginalised groups are not excluded from an equitable share of available water resources. According to General Comment 15:

The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see General Comment No.12 (1999)). Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not "be deprived of its means of subsistence", States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.¹⁹

In order to ensure such access, it is necessary for licensing systems to ensure an equitable allocation for subsistence uses, and that these systems do not involve complex application criteria or user charges that might exclude low-income farmers and pastoralists.

17 Section 22 and Schedule 1; <http://www.dwaf.gov.za>.

18 Ministry of Water and Irrigation, Kenya. *The National Water Resources Management Strategy* (NWRMS) (2007-2009) 1st edition, section 2.

19 General Comment No. 15, para. 7.

7.3 Ensuring sustainable use of water

General Comment No. 15 states that: “*The manner of the realization of the right to water must be sustainable, so as to ensure that the right to water can be realised for present and future generations.*”²⁰ Further to this, General Comment No. 15 states: “*The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.*”²¹

The Sub-Commission Guidelines state that: “*States should ensure that everyone has a sufficient amount of safe water including by...combating the depletion of water resources due to unsustainable extraction, diversion and damming...*”²²

And that:

*States should adopt measures to prevent over-consumption and promote efficient water use, such as public education, dissemination of appropriate conservation technologies, and, as necessary, restrictions on water use beyond an acceptable consumption threshold, including through the imposition of charges.*²³

Improving water resource management is a first step to ensuring the sustainability of water. There are many possible approaches to achieving this goal,²⁴ including:

- Establishing a system of water abstraction licensing to avoid uncontrolled and excess water withdrawals.
- Improving efforts to recycle and reuse water where appropriate and cost-effective.
- Reducing unsustainable use by charging more per litre for uses which are not essential or, where there is sufficient water, using the charges from such uses to cross-subsidise the costs of essential uses by low-income groups (see Box 7.3).
- Educating all water users on the need to avoid over-use of water, and on the need to protect catchment areas. The latter is discussed in Section 7.5.
- Introducing and implementing conservation techniques and technologies.
- Carrying out an assessment of the most wasteful uses of water and restricting these where necessary.

In Niger, local authorities are empowered during severe drought to forbid activities that consume large amounts of water and are not directly destined for human consumption, notably watering pleasure gardens, filling and emptying swimming pools and washing cars.²⁵ Countries such as United Kingdom and Australia have introduced temporary bans on the use of sprinkler water systems for ornamental gardens or hosepipes for car washing during times of water shortages. Non-compliance with such restrictions leads to a stiff fine.

These measures are particularly important for people living in arid and semi-arid regions and for small islands, where water is often an extremely scarce resource.

20 General Comment No. 15, para. 11.

21 General Comment No. 15, para. 25.

22 Sub-Commission Guidelines, section 4.1.

23 Sub-Commission Guidelines, section. 4.2.

24 Sustainability is a key criterion of Integrated Water Resource Management (IWRM), and is defined as “*a process which promotes the co-ordinated development and management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems*”. Integrated Water Resource Management, Global Water Partnership Technical Advisory Committee, Background Paper No. 4, Stockholm, 2000, p. 22.

25 Niger law no. 98-041 governing water (1998), art. 9.

BOX 7.3: WATER CONSERVATION-ORIENTED RATES: IMPLICATIONS FOR HUMAN RIGHTS

Water conservation-oriented rates (WCORs) are designed to promote conservation through rate mechanisms such as excess surcharges, drought demand rates, increasing block rates, seasonal rates, and time-of-use rates. WCORs can support the human right to water in three primary ways: by addressing the gap between supply and demand; as a way to price water equitably while pursuing sustainable usage; and as a way to preserve ecosystems.

Where demand exceeds supply, a discrepancy will occur, creating a political and economic environment in which competition for the 'scarce' resource may cause those with the least influence to sacrifice disproportionately. Basic needs will not be met if there is not enough water to make relatively equitable sharing possible. Therefore, demand will need to be reduced to avoid such discrepancies.

Where 'economies of scale' logic determines rates, the more water that is consumed the lower the rate. This encourages waste and makes people pay more to meet only 'basic needs' than for levels of consumption often associated with discretionary uses. However, increasing block rates are designed to have the opposite effect to these declining block rates. The first block provides 'lifeline rates' that represent a 'basic needs' level of water at low or no cost. Subsequent blocks encourage conservation by altering price per unit in a way that corresponds to the importance of use. Because basic levels of water are a necessity, people's demand 'hardens', meaning that they cannot cut down on use, regardless of how they are penalised. Therefore, in designing WCORs it is essential to consider how to design rates to respect the right to an essential, affordable volume of water.

If humans use less water, people not only save money on infrastructure and have more to share amongst themselves – they also produce less treated water (which can result in chemical and thermal pollution), and they leave more 'unaffected' water in place for nature.

The information in this box is contributed William James Smith, Jr.²⁶ See also Chapter 10: Affordability and financing Section 10.7 for further information on tariff pricing, including block tariffs, and implications for sustainability and affordability.

7.4 Protecting water catchment areas

The destruction of forests, through methods such as slash-and-burn cultivation, can have serious, detrimental effects on the reliability of water resources. As a result it may be necessary to restrict certain forms of cultivation and logging in forest areas that form the catchment for water sources relied upon by local communities. Such measures require close co-operation between a wide range of government bodies, including those responsible for land use, agriculture, water resources management and environmental protection.

Such restrictions may undermine the livelihoods and food security of the affected people, and therefore the right to an adequate standard of living, housing and food. In addition, there are situations where communities may need to be re-located from a catchment area in order to maintain its protected status. Relocations can undermine the human rights to housing and the right to an adequate standard of living, and, where no public services are available to evictees, the right to water and sanitation, health and education. In such circumstances, General Comment 15 is relevant, stating that: "*Any national measures designed to realize the right to water should not interfere with the enjoyment of other human rights.*"²⁷ Thus, such circumstances call for the

²⁶ See also Young-Doo Wang, William J. Smith Jr., and John Byrne: *Water for People and Nature: Revenue-Neutral Water Conservation-Oriented Rates to Promote Equity for Low-Income Consumers and Minimum Flows for Ecosystems*, (Denver: American Water Works Association, 2005).

²⁷ General Comment No. 15, para. 45.

provision of alternative land for housing and agricultural purposes and for evictions (where absolutely necessary) to be carried out in accordance with international standards and alternative land provided.²⁸ (See Chapter 9: Physical Accessibility, Box 9.9.)

7.5 Ensuring sufficient and equitable access to traditional sources of water

Traditional sources of water, such as rivers, wells, springs and lakes constitute important sources of water for personal and domestic uses. Although many such sources require treatment prior to use for drinking purposes, they often constitute the only available source of water for many, particularly in rural areas. In this regard, General Comment No. 15 indicates: “*The obligation to protect requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water.*”²⁹ The Sub-Commission Guidelines further state: “*States should enact and implement legislation to protect access by persons to traditional water sources in rural areas.*”³⁰

Potential government actions to preserve and ensure access to traditional sources of water can include:

7.5.1 Protecting traditional sources of water against appropriation by any one group or individual and mediating conflict

Conflict can occur between settled and nomadic or traveller communities, where water points are appropriated by settled communities in the months when the nomads are away from a particular site. Such situations require mediation by the government and an arrangement to share access.

An important challenge for governments is to address water use in water-scarce arid regions where even use of water for pastoralism and subsistence agriculture may interfere with access to water for domestic use by others. In these situations, which can lead to conflict, formal licensing systems may be inappropriate or beyond the capacity of the relevant government bodies. In such circumstances, it is important to work with the relevant communities, to develop limitations on use to ensure equitable distribution and basic access for all, and mediate disputes where they exist.

7.5.2 Ensuring that land ownership laws and practices do not interfere with access to water

In many countries, property laws permit a landowner to exclude other people from traversing his or her land in order to collect water from a traditional water source. In countries that follow a ‘riparian water rights’ system, only those owning land adjoining a river or lake have the right to draw water from it.

Such laws can deny access to particular traditional sources or may increase the difficulty of collecting water by increasing the distance and collection time to the source. Revising laws and practices in order to guarantee physical access to traditional water sources, even in circumstances where this requires crossing another individual’s property, could help improve access to water. Such access could be limited to those using water for personal and domestic uses, and could have quantitative restrictions.

28 See United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 7, The right to adequate housing: forced evictions* (1997), U.N. Doc. E/1998/22, annex IV, available at: www.ohchr.org (‘Human Rights Bodies’ > ‘CESCR’ > ‘General Comments’) and United Nations Comprehensive Guidelines on Development-Based Displacement (1977), available at <http://www1.umn.edu/humanrts/instate/forcedevictions.htm>

29 General Comment No. 15, para. 23.

30 Sub-Commission Guidelines, section 3.4.

7.5.3 Respecting customary systems of water access, while ensuring that they that they do not impede equal access

General Comment No. 15 states: “*The obligation to respect requires that States parties refrain from ... arbitrarily interfering with customary or traditional arrangements for water allocation.*”³¹ It is necessary to emphasise the word ‘arbitrary’ in this quote, so as not to exclude appropriate reforms.

Customary laws/practices may exist to ensure that traditional sources are retained and these need to be protected.³² These systems, in many cases influenced by religious precepts, often govern systems of access to water, particularly in rural areas. In general, most customary systems treat access to water as a public good.³³ Such systems are generally understood and respected by the community, and are designed for local realities. They also include dispute resolution mechanisms that operate at a local level. For these reasons, arbitrarily displacing such systems is likely to have negative effects.

However, selective reform to customary laws, (occurring after adequate participation with the relevant groups in the reform process) may be required to ensure sufficient and equitable allocation of water to marginalised groups. Some examples are in situations when they discriminate against women or disadvantaged castes, where local customary arrangements are under the control of an individual, family, or group or where they do not address new situations not covered by customary law, for example where customary land title, which tends to be communal in nature is being sold into private ownership.³⁴

7.6 Assisting households to obtain water capture and storage facilities, especially in water-scarce areas

In areas where water supply is irregular or seasonal and with insufficient or difficult to access groundwater, households will need to capture and store water, including from rainwater and other sources such as rivers. Governments have an important role to play in providing information and training on effectively storing water, and may need to provide necessary materials. Storage facilities are important not only in rural areas, but also in urban areas that face rationing of water supplies (*see* Section 7.7).

Rainwater harvesting may be important even in non-water scarce regions as it can help reduce the time and financial burden of obtaining water.

7.7 Ensuring that water rationing is carried out in an equitable manner

Demand for all water uses (essential and non-essential) all too often exceeds supply in both urban and rural areas. This challenge is often met by cutting off supply in networks to specific areas (where this is technically feasible) or for specific portions of the day. It is common that rationing is carried out more often in low-income areas, with politically powerful neighbourhoods often guaranteed uninterrupted access. Where rationing is necessary, it is important that it be carried out in an equitable manner, ensuring first that all people have access to a basic minimum amount and rationing water in those areas where there is non-essential use. Water rationing has the greatest impact on low-income groups; firstly, because they are often not in a position to find alternative sources and secondly because they are less able to store a quantity of water that can last for more than a day.

31 General Comment No. 15, para. 21.

32 Ruth Meinzen-Dick and Leticia Nkonya, *Understanding legal pluralism in water rights: lessons from Africa and Asia*, presented at the international workshop on ‘African Water Laws: Plural Legislative Frameworks for Rural Water Management in Africa’, 26-28 January 2005, Johannesburg, South Africa, available at: <http://www.nri.org/waterlaw/AWLworkshop/papers.htm>

33 Veronica Giardina and Ilja Betlem, *Access to Water*, Discussion Draft, (FAO: 2003), p. 8. This document also includes a summary of Islamic, Hindu and African customary law traditions governing access to water.

34 Ibid., p. 8.

To minimise the impact of rationing, it needs to be publicised well in advance so that people can plan for it. In order to reach all users, publicity measures would need to be carried through measures such as vernacular radio, and through water kiosk operators, rather than only through newspapers.

The best approach to safeguard water for domestic purposes is to improve water resource management to the point that rationing is no longer necessary, as discussed in Section 7.3.

7.8 Improving efficiency of water delivery

The Sub-Commission Guidelines state that,

*States should ensure that everyone has a sufficient amount of water, including by adopting and implementing integrated water resource management programmes and water efficiency plans ...reducing water wastage during distribution...*³⁵

There have been many efforts to improve efficiency of water utilities, with varying degrees of success.³⁶ In order to improve efficiency of both water delivery and water use, accurate information is necessary to enable long-term management decision making. Such information would include:

- Types of local water resources, actual and potential.
- Available volumes.
- Present and future renewability of the resources.
- Vulnerability of the resources to degradation.
- Measures required to develop, manage and protect the resources, including, crucially, collecting information on the condition of existing pipes and the extent of illegal connections.

Acquiring this information requires the input of qualified professionals and the financial resources to carry out the necessary studies to provide this information.

In many cases, short- and medium-term management decisions are made without sufficient background information. For example, the rate of abstraction is increased or pumping is suspended in a given well, without considering the effect of this decision on neighbouring wells and the recharge from or discharge to nearby streams.

Management decisions require a comprehensive analysis of all aspects of the situation. Frequently, this is not done because of a lack of co-ordination between technical and management staff. The results of poor management decisions affect both the quantity and quality of the water, as well as the cost of operations.³⁷

Non-revenue water, that is, water that is produced but not paid for, due to loss through leakages, unpaid bills or illegal connections, is frequently unsustainably high. In order to improve the efficiency of a service, it is necessary to reduce the level of non-revenue water, which can amount to over 50 percent of all water produced and is seldom lower than 20 percent.

To reduce this, the following steps can be taken:

- Identify and fix leakages, where it is economically efficient to do so.
- Identify illegal and informal connections and formalise these connections.
- Improve billing processes, including imposing fines where bills are not being paid, in circumstances where non-payment of bills is not related to lack of affordability.

35 Sub-Commission Guidelines, section. 4.1. See note 24 for definition of Integrated Water Resource Management.

36 For example, see Belinda Calaguas & Vicky Cann, (eds) *Reforming public utilities to meet the Water and Sanitation MDG*, WaterAid/WDM, July 2006, and case studies in Kevin Sansom et al, *Contracting out water & sanitation services*, Vol. 2, (Loughborough, WEDC: 2003).

37 Danilo J. Anton, *Thirsty Cities, Urban Environments and Water Supply in Latin America*, (IDRC, 1993), available at http://web.idrc.ca/en/ev-9313-201-1-DO_TOPIC.html

CHECKLIST FOR WATER AVAILABILITY

1. Do national or regional standards stipulate a minimum amount of water for personal and domestic uses per person or household?
 2. Does the allocation of water resources prioritise water for essential domestic uses over agricultural and industrial uses? Is water use for essential domestic and survival needs exempted from licensing requirements?
 3. Are there policies, strategies and/or regulations to ensure sustainable use of water? What rules or strategies are / have been adopted?
 4. Are sustainable agricultural practices promoted in water catchment areas?
 5. Do land laws and policies protect sufficient and equal access to traditional water sources? Are customary laws protected? Are mechanisms in place to mediate conflict over water resources?
 6. Are there programmes to assist communities in water-scarce areas to establish water capture and storage facilities?
 7. Do water supply regulations and practices stipulate that rationing is spread equitably and is limited in duration? Is rationing normally announced in advance, and does such information reach all sectors of society?
 8. Have steps been taken to ensure that piped water delivery is as efficient as possible? Which particular steps have been taken?
-



Chapter 8: Water quality and hygiene

Access to unsafe water exposes users to significant health hazards and prevents individuals and families from achieving the standards of hygiene required to live healthy lives. The primary health risk is from pathogenic organisms,¹ which can normally be eliminated through simple measures, although chemical pollution from agricultural and industrial sources can also have a significant impact on health and the environment.

HOW GOVERNMENTS CAN ACT TO ENSURE GOOD WATER QUALITY AND HYGIENE PRACTICES

- 8.1 Formulating water quality standards designed to address the needs of all groups, as identified through participatory processes.
 - 8.2 Formulating short- and medium-term targets to eliminate the pollutants with the most significant health effects, including on vulnerable groups.
 - 8.3 Establishing regulations and mechanisms to control pollution of water resources, including provision of information, incentives for responsible practices and penalties for pollution.
 - 8.4 Establishing regulations on water quality for service providers.
 - 8.5 Putting in place mechanisms to monitor quality of water supply and ensure safety.
 - 8.6 Raising hygiene awareness, among households and small-scale providers, including promoting the safe handling of water for domestic uses and promoting sanitation.
 - 8.7 Providing information on, and facilitating monitoring of, water quality, including considering the impact of pollution and how to alleviate this.
-

1 See Box 8.1 for more detail.

8.1 Formulating water quality standards

General Comment No. 15 states that:

*The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.*²

It refers States parties to the World Health Organization Guidelines for Drinking Water Quality ('WHO Quality Guidelines') to define water quality. The WHO Quality Guidelines were developed to assist governments in establishing their own appropriate water quality standards and outline how these can be achieved. While the WHO Quality Guidelines set out reasonable minimum requirements of safe practise to protect health, they are not mandatory limits, and governments can adapt them to local or national environmental, social, economic and cultural conditions, evaluating the risks and benefits of each standard for the national or regional conditions.³

General Comment No. 15 also indicates that "*water should be of an acceptable colour, odour and taste for each personal or domestic use.*"⁴ Acceptability of water supply to users is important even where the water does not in itself constitute a threat to health. Many users will regard water that is highly turbid, highly coloured, or which has an objectionable taste or odour as unsafe and may, in extreme cases, prefer to use water that is more pleasant to taste, despite being potentially unsafe.⁵

With regard to the development of standards, General Comment No. 15 states that:

*The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water.*⁶

In the context of water quality, this is particularly important for water acceptability by users. Ideally, information yielded in consultations with users in the course of other activities (such as consultations at the local level prior to providing assistance to small-scale suppliers) can provide the necessary information to be fed into the development of national quality standards.

To ensure that water quality is safe for all, water quality standards would need to apply not only to piped water sources but also, modified where necessary, to all sources of water provision used in a country, such as tanker sources, vendor-provided water and wells.⁷

2 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003), para 12 (b).

3 World Health Organization, *Guidelines for Drinking Water Quality*, 3rd ed. (Geneva: WHO, 2004), p. 2, available at http://www.who.int/water_sanitation_health/dwq/gdwq3/en/. [WHO Quality Guidelines]

4 General Comment 15, para. 12 (b).

5 WHO Quality Guidelines, *see* note 3, p. 7.

6 General Comment No. 15, para. 48.

7 See for example, Mauritania's Water Code Law No. 2005-030 (2005) art. 34.

BOX 8.1: SUMMARY OF PRIMARY THREATS TO DRINKING WATER QUALITY⁸

The WHO Quality Guidelines identify the following as the general order of priority for water quality:

- a) Ensure an adequate supply of microbiologically safe water and maintain acceptability to discourage consumers from using potentially less microbiologically safe water;
- b) Manage key chemical contaminants known to cause adverse health effects; and
- c) Address other chemical contaminants.

Microbial agents (Pathogens)

These include harmful bacteria, viruses, protozoa and other biological organisms. The greatest microbial risks are associated with the ingestion of water contaminated with human or animal faeces. The overwhelming number of health concerns linked to water use relate to microbial agents. They can cause diseases after relatively brief periods of exposure.

Chemical agents

These agents normally cause adverse health effects after a long period of exposure, with the exception of massive accidental contamination of water supply. Many chemical agents, such as iron and manganese, can cause water to become undrinkable due to unacceptable, taste, odour and appearance.

Natural chemical agents known to cause widespread health concerns are fluoride and arsenic and, when present in excess, uranium and selenium. Nitrates, which may arise from excessive application of fertilizers in agriculture or from the leaching of organic waste or wastewater into surface water and groundwater, are also hazardous to human health. The use of lead pipes, fittings or solder, particularly in areas with aggressive or acidic waters, can lead to high lead levels in water, causing adverse health effects.

Radiological aspects

It is also important to consider naturally occurring radionuclides in drinking water. However, the contribution of drinking water towards overall exposure to radionuclides is normally very small.

8.2 Formulating short and medium term targets to eliminate pollutants

Since they necessitate the removal of all substances that threaten a person's health, the requirements of General Comment No. 15 on water quality may seem unattainable in many developing countries. However, General Comment No. 15 also specifies that the obligations are to be realised progressively to the maximum extent possible with the available resources and that the 'core obligation' relating to water quality is to ensure that water is sufficient and safe enough to prevent disease.⁹ This can be achieved by prioritising the removal of harmful microbial contamination and a small number of chemical contaminants of primary concern to health, as listed in Box 8.1.¹⁰

The WHO Quality Guidelines indicate how the most significant risks to human health may be controlled. Short-term and medium-term targets can be set in a manner that builds the foundations for long-term progress.¹¹ These targets can undergo periodic upgrading, involving periodic review to ensure that the norms

8 WHO Quality Guidelines, *see note 3*, pp. 3-7 and 34. *See also* A. Dufour et. al, *Assessing Microbial Safety of Drinking Water: Improving Approaches and Methods* (Geneva: WHO, 2003) and T. Thompson et al, *Chemical Safety of Drinking-water: Assessing Priorities for Risk Management* (Geneva: WHO, 2003).

9 General Comment 15, paras. 17, 18, 37 (a).

10 It should be noted that other human rights also have implications for water quality. The rights to food and an adequate standard of living require that water used for agriculture does not cause health risks. Information on this is provided in a document by the WHO, *Guidelines on the Use of Waste-water in Agriculture*.

11 WHO Quality Guidelines, *see note 3*, p. 32. *See also* the application of this general principle in the Grootboom decision of the South African Constitutional Court, in Chapter 9: Accessibility, Box 9.3.

and standards are appropriately updated.¹² Interim standards and the allowance of some changes from the standards for specific communities or for a defined period of time could become part of a national or regional policy.

It is not physically or economically feasible for governments to test for all possible pollutants of drinking water.¹³ The WHO Quality Guidelines warn against the danger of unnecessarily diverting scarce resources to the development of standards and monitoring of substances of relatively minor importance to public health.¹⁴ This consideration also applies in cases where drinking water is only a minor contributor to the overall intake of a particular chemical, where controlling the level of this chemical at considerable expense would have little impact on overall exposure.¹⁵

From a human rights perspective, the reconciliation of resource availability with health priorities is particularly important. If excessively high standards for all contaminants of water are set, this may result in a shortage of resources and capacity, leading to the neglect of urgent health concerns faced by marginalised communities, such as microbial contamination of water sources in remote rural communities. In setting priorities, it is necessary to take into account the needs of specific vulnerable groups in society with regard to water quality. The WHO Quality Guidelines specify the particular susceptibility of vulnerable groups of the population to certain chemical¹⁶ and microbial¹⁷ contaminants. For example, microbial contaminants such as cryptosporidiosis have only mild consequences for the population at large but have a high mortality rate among people who test positive for HIV.¹⁸ Priority setting relating to chemical contaminants would usefully be carried out after a systematic assessment based on consultations with all levels of government, as well as users and will be dependent on what the most commonly used chemical contaminants are, whether naturally occurring or used for agriculture or industry.

Although it is common for different ministries, or even different levels of government, to have responsibility for health care and water management, water quality improvement requires a coordinated approach to avoid duplicated testing. There may also be a case for compositing of samples to reduce costs.¹⁹ Ensuring access to safe water has been shown to be very cost-effective in comparison to the health care costs of treating conditions associated with contaminated water, as well as the costs to economic productivity.²⁰

8.3 Establishing regulations and systems to control pollution of water resources

The Sub-Commission Guidelines state that,

*States should devise regulations and policies to control pollution of water resources by all persons and organisations, both public and private, including surveillance, disincentives, pollutions penalties and assistance with compliance.*²¹

General Comment No. 15 indicates that the obligation to protect the right to water includes “adopting the necessary and effective legislative and other measures to restrain, for example, third parties from ... polluting and inequitably extracting from water resources”.²² It also indicates that:

12 Ibid., pp. 6, 33, 37–43.

13 Ibid., p. 23.

14 Ibid., p.2.

15 Ibid., p.36.

16 Ibid., p. 30.

17 Ibid., p. 45.

18 Ibid., p. 45.

19 Usha Natarajan and R. Rajagopal, ‘Economics of Screening for Pesticides’ in Ground Water, Journal of the American Water Resources Association, 30 (4) 1994, pp. 579–588.

20 See A.H. Havelaar and J.M. Melse, *Quantifying Public Health Risk in the WHO Guidelines for Drinking Water Quality: A Burden of Disease Approach* (Geneva: WHO, 2003).

21 United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, *Promotion of the realization of the right to drinking water and sanitation*, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, s. 7.3.

22 General Comment No. 15, para. 22.

*States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. Such strategies and programmes may include: ... (b) reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves...*²³

At the Johannesburg World Summit on Sustainable Development in 2002, States committed to a number of actions in this regard, one of which was to establish, at the national level, monitoring systems and effective legal frameworks.²⁴

The traditional approach to ensuring water quality for consumers has been to rely on chemical treatment of water before conveying it to users, particularly in the case of piped water systems. The WHO Quality Guidelines, however, recommend a 'multiple barrier approach' throughout the supply chain, from the water catchment area to the consumer. This approach aims not just to rely on water treatment to ensure water of good quality, but also promotes the protection of water sources and distribution systems from contamination. It emphasises preventing or reducing the entry of microbial agents into water sources and reducing reliance of treatment processes for removal of microbial agents.²⁵

Many aspects of drinking-water quality management are outside the direct control of the service provider and fall within the jurisdiction of several bodies; this is particularly the case with catchment protection. Collaboration between the various responsible agencies will be critical, including those responsible for sectors such as agriculture, land use, traffic, urban development and tourism, as well as local authorities and catchment management associations, to ensure that they all take into account the protection of drinking water.²⁶ Roles, accountabilities and responsibilities of the various agencies involved will need to be defined in order to coordinate their planning and management.²⁷ It will be necessary to ensure that the responsible authorities obtain sufficient resources and trained staff to effectively regulate and protect water sources. The cost of regulation can be fully or partially self-funded in a number of ways; for example licensing systems where certain potentially polluting activities require a licence, which in turn incurs a licence fee. In South Africa, disposing of waste or discharging water containing waste into a water resource, or in a manner that may have a detrimental impact on a water resource, is classified as a 'water use' and therefore requires a licence.²⁸

Appropriate education concerning protection of water resources is one of the most effective ways for governments to prevent pollution and is an important complement to regulatory systems.²⁹ Such education is particularly important to help ensure that water users take steps to protect water sources by, for example, putting up barriers to prevent animals from entering a water source and situating latrines at a suitable distance from water sources and protecting catchment areas.

Regulations on water pollution are more likely to be implemented if users have effective and efficient mechanisms to notify local authorities of pollution of their water source to stop the pollution and reverse it if possible. Box 8.2 gives an example of how an indigenous community in Argentina was able to ensure that pollution control measures were implemented by seeking the support of an independent government body known as the 'Children's Defender' which sought redress in court on behalf of the community. Chapter 4: Roles of key actors, Section 4.4 addresses such accountability mechanisms. In the field of water quality, it would be useful if the government body with responsibility and expertise in water quality management provided a first point of contact for complaints. In order to do this, it would be necessary to improve the capacity of such a government body to publicise its existence as a remedy mechanism and to deal with the levels of investigation required.

23 General Comment No. 15, para. 28.

24 Johannesburg Plan of Implementation of the 2002 World Summit in Sustainable Development Para. 25 (d), available at <http://www.un.org/esa/sustdev/> (click on Plan of Implementation)

25 WHO Quality Guidelines, see note 3, p.3.

26 WHO Quality Guidelines, see note 3, pp.8, 14.

27 General Comment No. 15, para. 51, WHO Quality Guidelines, p. 27.

28 Republic of South Africa, National Water Act, Act No. 36 of 1998, Ch. 4, pt.1, s.21 (f)-(h).

29 United Nations Children's Fund (UNICEF), *Towards Better Programming: A Water Handbook* (New York: UNICEF, 1999), p. 57.

BOX 8.2: ARGENTINE COURT DECISION TO REMEDY OIL POLLUTION OF WATER SOURCES³⁰

In the case of Menores Comunidad Paynemil s/accion de amparo, the Children's Public Defender in Neuquen Province, Argentina filed a case against the province in 1997 due to pollution of a water source.³¹ In October 1995, members of the Paynemil community discovered that an oil refinery was polluting the aquifers from which they were extracting their drinking water. Together with a university institute, they prepared studies showing that the extracted water was unsuitable for drinking, and complained to six different local authorities. In November 1996, local authorities ordered health studies to be carried out. These showed that many children in the community had high levels of either lead or mercury in their bodies. In December 1996, officials in the Provincial Ministry of Health communicated their concern to the Health Minister, stating that the water quality made it unfit for human consumption and that traditional disinfection methods could not neutralise the pollutants. They recommended that the Minister intervene in order to provide water for the community.

The Children's Public Defender launched the case in March 1997 against the government. It argued that the province had neglected to fulfil its obligation to protect and guarantee the good state of health of the population. In May 1997, the court accepted the Public Defender's arguments on the basis that the province had failed to take reasonable and timely measures to tackle the pollution problem that seriously affected the community, even though it was well informed about the situation. This violated the rights to health and a safe environment recognised in the province's constitution.

The court therefore ordered the province to:

- i) Provide, within two days notice of the decision, 250 litres of drinking water per inhabitant per day.
- ii) Ensure within 45 days the provision of drinking water to the affected people by any appropriate means.
- iii) Set up within 7 days a procedure to determine whether the health of the population had been damaged by the existence of heavy metals, and in such a case, to provide the necessary treatment.
- iv) Take steps to protect the environment from pollution.

The Provincial Court of Appeals upheld the court's decision. Following the decision, the provincial government provided free water to all the households every week, in drums for human consumption and in tanks for irrigation purposes. A drinking water plant has been built, but there is a dispute between the community and the government over the quality of the treated water, and a study on water quality is being carried out. The Children's Defender has alleged that other aspects of the judgement have not been implemented; as a result, the issue remains before the Argentinean courts.³²

30 More detailed excerpts from this cases can be found at M. Langford, A. Khalfan, C. Fairstein and H. Jones, *Legal Resources for the Right to Water: International and National Standards* (Geneva: Centre on Housing Rights and Evictions, 2004) sections 6.4 and 7, available at www.cobre.org/water.

31 Expte. 311-CA-1997. Sala II. Cámara de Apelaciones en lo Civil, Neuquen, 19 May, 1997.

32 Communication from Children's Public Defender.

8.4 Establishing regulations for service providers on water quality

Water quality also requires regulations for service providers. For utilities, these regulations could include:

- A requirement that safety management plans consistent with water quality standards are in place.
- An obligation to inform the health and water authorities and the public of any significant risks to the water supply,³³ including giving advice to boil water when necessary.³⁴
- Legal responsibility at all times for the quality of water supplied to the consumer.³⁵
- Participating in interagency water resource management activities, and using the resulting information to assess risks to drinking water supply and apply it in treatment processes.³⁶

It will normally be necessary to regulate small-scale providers in a different manner, as they cannot be held to the same standards as utilities. The most effective intervention is to provide information and education to small-scale providers and most importantly to their customers who would then be in a better position to hold them accountable.

Usually, service providers are not responsible for the quality of water after it has been delivered to a distribution point or household. It is therefore necessary to take measures to protect water at household level from contamination. These measures can include national minimum standards relating to domestic plumbing and regulations and guidelines for household water treatment and storage.

Designs of new plumbing systems will normally need to be approved prior to construction, and be inspected by an appropriate regulatory body.³⁷ Water quality can also be addressed by integrating plumbing standards into standards regarding housing construction and rental housing. Regulations are also necessary for technologies and treatment methods used at the household and community level as well as devices used in the household for collection and storage of water. These would normally require that a government body verify the claims of manufacturers or provides an assessment of the possible risks of contamination from a material or process.³⁸ The establishment of such standards are only a first step and one that is mostly relevant for formal housing and water provision. Water quality in informal housing, which normally relies on informal water provision, is mainly dealt with in Section 8.6 on sanitation and hygiene awareness.

8.5 Putting in place mechanisms to monitor the quality of water supply and ensure safety

Protecting water quality requires a body that can monitor the implementation of safety management plans by water suppliers, and investigate quality in small-scale provision. The development of such a body requires financial investment. In the Johannesburg Plan of Implementation of the World Summit on Sustainable Development, States committed to assisting developing countries establish monitoring networks for water quality.³⁹

An effective approach to protecting public health is one that differentiates the roles and responsibilities of service providers from those of the regulatory public health agencies, as this reduces conflict of interest between these two roles.⁴⁰

33 WHO Quality Guidelines, *see* note 3, pp. 9.

34 An alternative is to provide chlorine or iodine tablets, although these should be used with caution because of the risk of use of incorrect dosages when unsupervised.

35 WHO Quality Guidelines, *see* note 3, pp. 8-9, 31. *See also* R. Ainsworth, *Safe, Piped Water: Managing Microbial Water Quality in Piped Distribution Systems* (Geneva: WHO, 2004), E.G. Wagner and R.G. Pinheiro, *Upgrading Water Treatment Plants* (Geneva: WHO, 2001) and A. Davison et al., *Water Safety Plans* (Geneva: WHO, 2004).

36 WHO Quality Guidelines, *see* note 3, p. 14.

37 *Ibid.*, p. 16-18.

38 *Ibid.*, p. 16.

39 Johannesburg Plan of Implementation, *see* note 24, para. 27.

40 WHO Quality Guidelines, *see* note 3, p.8.

The WHO Quality Guidelines advise that such a monitoring or surveillance agency takes timely action to prevent problems and ensure the correction of faults, applying penalties as the last resort. This will assist in establishing a positive and supportive relationship with water and sanitation providers. This approach helps advance the objectives of water quality regulations, which are to ensure that users enjoy safe water, not to shut down deficient supplies.⁴¹ The WHO Quality Guidelines note that the objectives of prioritising the needs of disadvantaged groups will generally entail balancing water quality management and improvement, with the need to ensure access to reliable supplies of safe drinking-water in adequate quantities.⁴²

In situations where national minimum levels of a particular chemical substance are not upheld, it is necessary to take into account whether people are exposed to this chemical substance from sources other than drinking-water, the potential negative effects and whether it is possible to take remedial measures. Where there are no appropriate alternative supplies of water, the priority would be to maintain adequate quantities of water.⁴³

Penalties for poor water quality are often ineffective, and may even be counter-productive when applied to small-scale service providers and households. Many small-scale providers operate by necessity on a low margin of profit and may not be aware that storage or transport of water in inappropriate containers can lead to contamination. Many small communities can only rely on untrained and sometimes unpaid community members to administer and operate water services.⁴⁴ In these circumstances, government authorities can provide training and support. Monitoring remains necessary in order to determine the needs and priorities for government assistance and to derive lessons to be used in monitoring water safety for all community supplies.

The WHO Quality Guidelines recommend that surveillance activities take account of socio-economic status and vulnerability to water-related disease. In urban areas, it is particularly useful to zone areas on the basis of vulnerability and drinking-water supply arrangements in order to identify areas at greatest risk and direct resources to areas where the greatest benefits to public health will occur.⁴⁵

Contamination of water in the home, or in transport by individuals from the water sources, is a particularly common problem. It would be unrealistic for governments to monitor water in all households. The WHO Quality Guidelines recommend that a surveillance agency test a sample of households to determine whether contamination occurs primarily at the source or in the home in a particular area. This will help evaluate the need for investment in supply improvement or education on good hygiene practices for household treatment and safe storage.⁴⁶

Surveillance is best carried out with the partnership of communities who can provide local knowledge and experience to the relevant authorities, which can be used not only to improve water quality of individual water sources but also to inform policy. This is discussed further in Chapter 6: Participation and access to information.

8.6 Raising hygiene awareness and promoting sanitation

Government support to small-scale providers and to households will be critical in ensuring safe water and sanitation. General Comment No. 15 states that *“The obligation to promote [the right to water] obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water.”*⁴⁷ Hygiene promotion and education tends to get neglected in water and sanitation development projects and tends to be under-financed. It is therefore generally necessary to increase the level of effort on hygiene.

41 Ibid., p.31.

42 WHO Quality Guidelines, see note 3, p. 9-11.

43 Ibid., p. 30-31.

44 Ibid., p. 14.

45 Ibid., p. 88.

46 Ibid., p. 89.

47 General Comment No. 15, para. 25. For further details of specific interventions, see United Nations Children's Fund (UNICEF), *Towards Better Programming: A Manual on Hygiene Promotion* (New York: UNICEF, 1999), <http://www.unicef.org/wes/files/bman.pdf>.

Those without access to a clean water source often rely on water that is contaminated and insufficient in quantity. Where access to a reliable and safe drinking water supply has not been established, appropriate tools and education are needed to facilitate implementation of individual or household-level water treatment methods and safe storage.⁴⁸ These methods can be expensive for the users and time consuming and therefore they do not provide a sustainable solution. However, such short-term emergency needs will have to be addressed as a matter of priority, although the intervention would need to be designed with a view to progressive upgrading, wherever possible.

The WHO Quality Guidelines recommend that education and information programmes for households and for small-scale water and sanitation providers include:

- Hygiene awareness raising (including on safe water transport and storage of water).
- Basic technical training and technology transfer in drinking-water supply and management, which allow where possible, for communities to carry out basic sanitary inspections and testing of drinking-water quality.
- Consideration of and approaches to overcoming socio-cultural barriers to acceptance of water quality interventions.
- Motivation, mobilisation and social marketing activities, particularly for sanitation.
- A system of continued support, follow-up and dissemination of the water quality programme to achieve and maintain sustainability.⁴⁹

Hygiene promotion and other information and training activities need to be developed in close consultation with community representatives.⁵⁰ Education in hygiene can be included in school curricula at the national/regional curriculum for schools and in community outreach programmes.⁵¹ Programmes such as the Child-to-Child programmes promoted in Tanzania have been particularly successful in introducing good hygiene practices to children of a young age in a manner that they can easily understand and share with others, including other children and their families.⁵² However, no programme of hygiene promotion can be successful without access to sufficient quantities of safe, affordable water.

General Comment No. 15 also recognises the crucial role of sanitation in protecting water quality:

*Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources.*⁵³

Increasing the uptake of improved sanitation is as much a matter of hygiene promotion and education as it is a matter of construction of appropriate facilities.⁵⁴ Protection of public health and the environment requires safe and adequate sanitation. Community participation in determining the specific solutions to their sanitation needs is also essential for success, as the use or construction of sanitation facilities can often be dominated by cultural practices and taboos. (See also Chapter 6: Participation and access to information.) If these practices are ignored or overruled, the result will be that toilets constructed are simply not used. Programmes such as the Community-Led Total Sanitation Programme in Bangladesh increase users' understanding of the role hygienic sanitation facilities play in improving health, not just of the individual household, but of the whole community, and aim for 100 percent coverage within a village or settlement. See Chapter 9: Physical accessibility, Box 9.11 for further details. Chapter 9: Physical accessibility addresses the establishment of sanitation infrastructure and facilities.

48 WHO Quality Guidelines, see note 3, p. 11.

49 Ibid., p. 12, 89.

50 United Nations Children's Fund (UNICEF), *Towards Better Programming: A Water Handbook* (New York: UNICEF, 1999), p. 58.

51 See Ibid., Part II for more information on school sanitation and hygiene education.

52 For further information, refer to WaterAid: <http://www.wateraid.org/uk>.

53 General Comment No. 15, para. 29.

54 See United Nations Children's Fund (UNICEF), *Towards Better Programming: A Sanitation Handbook* (New York: UNICEF, 1997).

8.7 Providing information on, and facilitating monitoring of, water quality

Full and equal access to information is integral to all aspects of the right to water and sanitation and to other human rights in general. Individuals and groups need to have such access to information concerning water quality, water treatment processes and the possible impact of pollution.⁵⁵ This requires information to be provided in an appropriate format, discussed further in Chapter 6: Participation and access to information.

Communities are likely to be the first to notice problems in the drinking-water supply, particularly where some of their members are appropriately trained, and can report this to the relevant public authority.⁵⁶ Where community-based water quality monitoring systems are set up, people get direct knowledge of the quality of the water in their own sources, which can then be put to good use in negotiating with the relevant government departments for service improvements or for monitoring the work of contractors from the private sector. There have been significant advances in developing user-friendly, cheap and simple water quality test-kits that make it possible for communities to evaluate their own water sources and carry out evidence-based negotiations with the authorities.⁵⁷ This is also an opportunity for empowering communities to not only inform authorities of shortcomings, but also to notify other community members when water quality is poor and other steps need to be taken for household-level basic water treatment.

BOX 8.3: COMMUNITY WATER MONITORING IN ECUADOR ⁵⁸

Indigenous and some non-indigenous communities in Ecuador had been struggling with oil pollution for over a decade, but their efforts were stymied by a lack of scientific knowledge and institutional leverage. In 1993, the Centre for Economic and Social Rights helped to organise the network of settler communities to give them an organised voice on issues of oil and development. They were trained to do simple observation and recording and some very simple water tests to look for damage from oil. The communities and NGOs were then able quickly to draw attention to oil spills or emissions from oil companies.

55 General Comment No. 15, para. 48.

56 WHO Quality Guidelines, *see* note 3, p. 96.

57 United Nations Children's Fund (UNICEF), *Towards Better Programming: A Water Handbook* (New York: UNICEF, 1999), p. 61, http://www.unicef.org/wes/files/Wat_e.pdf.

58 Taken from interview with Chris Jochnick in M. Langford, *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies* (Geneva: COHRE, 2003), pp. 80-86.

CHECKLIST FOR WATER QUALITY AND HYGIENE

1. Are water quality standards in place? Do they address the needs of vulnerable groups? Did representatives of such groups participate in the development of the standards?
 2. Do water quality standards apply to all types of water sources used for domestic purposes, and are there short to medium-term targets for the elimination of the most harmful pollutants?
 3. Are there laws or regulations and mechanisms to control pollution of water resources? Do they include provisions for monitoring? Do they include appropriate incentives for pollution control and dis-incentives against pollution?
 4. Are there regulations in place requiring services providers to ensure adequate water quality? Are utilities obliged to establish water safety management plans? Is there a programme in place to provide technical assistance to small-scale providers on water quality and on hygiene awareness?
 5. What proportion of households who rely on small-scale facilities or non-improved water sources treats their water at household level? What percentage has received education on this issue? What percentage has access to suitable storage and treatment options?
 6. Is there a mechanism in place to monitor water quality in networks and in other water points?
 7. Are there programmes for hygiene awareness (including for safe storage of water) and sanitation promotion? What proportion of the population can be expected to be aware of good hygiene practices? Is sanitation and hygiene awareness contained in the educational curriculum? What percentage of primary schools teaches hygiene awareness?
 8. Is water quality and environmental health information available to the public? Are utilities obliged to publish data and inform the public of health risks?
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Chapter 9: Physical accessibility of water and sanitation

Availability of clean water within a country is not in itself sufficient to ensure that all sectors of the population can meet their water requirements.¹ Many people live in areas that lack a water point in or close to the household, or in areas where too many others compete for the same limited resource. In some cases, people are prevented from accessing available water sources or sanitation facilities because individuals or organisations have appropriated these for their own use. As a result, many have to use water sources of dubious quality or rely on small scale providers, whose high charges coupled with the difficulty of carrying water to the home, may limit the amount consumed.

Globally, access to improved forms of sanitation is even more limited than access to clean water,² and yet access to improved sanitation can have both direct and indirect impacts on health, through reducing direct transmission of disease and by reducing the pollution hazard for drinking water supplies. Sanitation facilities that are not easily accessible will not be used. Certain vulnerable groups, such as the elderly, the disabled or young children may not be physically able to access shared facilities that are too far from the home. Lack of a toilet in or next to the home can place people, in particular women and girls, at great physical risk when they need to leave the home at night. The lack of adequate sanitation can inhibit people's ability to enjoy other rights; studies have shown that children, particularly girls, are reluctant to attend school if sanitation facilities are not available.

1 UNDP, *Beyond Scarcity: Power poverty and the global water crisis: UNDP Human Development Report 2006* (New York, 2006) p.3. Available at <http://hdr.undp.org/hdr2006/>

2 1.1 billion people are without clean water compared to 2.6 billion without basic sanitation, Ibid., p5.

This chapter discusses the necessary standards, guidelines and targets for accessibility of water and sanitation services. It also discusses the approaches that governments can take to improve physical accessibility – such as by developing relevant regulations and a legislative framework to promote rather than hinder access for those without water and sanitation services.

HOW GOVERNMENTS CAN ACT TO ENSURE PHYSICAL ACCESSIBILITY OF WATER AND SANITATION SERVICES

- 9.1 Establishing or revising national or regional targets to reduce distance to water points and toilets, including short and medium term targets and establishing/revising standards on adequacy of water and sanitation facilities.
 - 9.2 Establishing specific access targets per locality in line with national or regional targets and ensuring their implementation through monitoring, regulation and support to utilities and/or provision of funding and training for the establishment of small-scale facilities.
 - 9.3 Facilitating small-scale provision by communities and entrepreneurs where adequate public services are not provided.
 - 9.4 Addressing security concerns when selecting locations for water supply and sanitation facilities, illuminating such facilities at night and prioritising assistance for construction of household toilets in neighbourhoods with high levels of crime.
 - 9.5 Ensuring that that no individual or group currently accessing water and sanitation is subsequently deprived of access, for example, through forced evictions, demands for bribes or denial of access for partisan or discriminatory reasons.
 - 9.6 Providing services to informal settlements and ensuring security of tenure.
 - 9.7 Ensuring that users are given relevant information and can participate in decision making on the design and maintenance of public water and sanitation services and on land use relevant to these services.
 - 9.8 Dedicating an adequate proportion of public resources and capacity to the maintenance and improvement of water and sanitation facilities.
 - 9.9 Requiring landlords to ensure that tenants have access to adequate water and sanitation services and requiring employers and operators of health and educational institutions to ensure accessible water and sanitation facilities at their institutions.
 - 9.10 Ensuring that response systems are in place for the provision of basic water and sanitation services in emergencies.
-

9.1 Establishing or revising standards and targets on proximity and adequacy of facility

9.1.1 Distance

According to General Comment No. 15,

*water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace.....Physical security should not be threatened during access to water facilities and services.*³

General Comment No. 15 also indicates that,

*States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.*⁴

The Sub-Commission Guidelines include a specific target on distance to sanitation, and also indicate that distance is relevant for health centres. They state:

*Everyone has the right to a water and sanitation service that is: (a) Physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution; ... (c) In a location where physical security can be guaranteed.*⁵

This standard therefore includes access to a water point (standpipe, well, kiosk or a piped network connection in the home or relevant institution), as well as a toilet⁶ within the immediate vicinity. Each house or institution needs to be served by sewerage (or latrine exhaustion) and drainage channels to remove wastewater and excreta and to ensure its safe disposal or treatment. In many developing countries, ensuring access to a water point and toilet in the immediate household vicinity will be a long-term venture and it is therefore necessary to consider short and medium term targets.

In the case of distance to a toilet, the Sphere Standards⁷ provide minimum standards for disaster response and can therefore provide guidance on a short-term target that can be progressively improved. According to the Sphere Standards, the minimum standard is that “people have adequate number of toilets, sufficiently close to their dwellings, to allow them rapid, safe and acceptable access at all times of the day and night”.⁸ The Sphere Standards recommend that each toilet is no more than 50 metres from the dwelling.

In the case of distance to a water point, a basis for setting short and medium-term targets is provided by ‘core obligations’ of the right to water on physical accessibility set out in General Comment No. 15:

To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease

and

3 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (2002), U.N. Doc. E/C.12/2002/11 (2003), para. 12 (c) (i). See also Namibia’s Water Resources Management Act, Act No. 24 (2004), Fundamental Principle 3.

4 Ibid., para. 29.

5 United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, *Promotion of the realization of the right to drinking water and sanitation*, (2006), UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, para. 1.3.

6 The term ‘toilets’ is a generic term for all facilities (including latrines) for the disposal of urine and excreta that are safe and which ensure dignity and privacy.

7 Humanitarian Charter and Minimum Standards in Disaster Response, The Sphere Project, <http://www.sphereproject.org/>. The Sphere Standards are not legally binding, but are important expert opinion.

8 Ibid., Watsan & Hygiene, Excreta Disposal Standard 1.

To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household.⁹

According to the World Health Organisation, where a water point is between 100-1000 metres of a household, or where collection time is between 5-30 minutes (including time spent waiting), it is unlikely that collection of water will exceed 20 litres per person.¹⁰ (See Box 9.1.) If collection times or distances are longer, people will normally consume much less water, often the very barest minimum, estimated at less than 5 litres per person per day. Measuring access in terms of collection time rather than distance is particularly important for urban areas; a water point may be near the home but serve a large number of users, resulting in long queues and excessive time spent waiting for water.¹¹ Another advantage of using a time measurement is that it takes account of households who use bicycles or animals to travel to a water source. It is also necessary to specify targets that are relevant to nomadic and traveller communities, whose main requirements would be for access to a water point at traditional halting sites.¹²

A secondary, longer-term, target is to progressively bring the services closer to the home – within either the house or yard, – significantly reducing the amount of time required to collect water. The saving in collection time from reducing distance of an improved water source reportedly results in more time for child care, including breast-feeding and better food preparation, as well as agricultural or income-generation activities, which can result in better family health.¹³ A number of studies indicate that where households were supplied with water on site, and a water-based sanitation system was present, diarrhoea prevalence was 40 percent lower than in households with an unimproved water supply and no sanitation.¹⁴ Non-water-based sanitation (for example, ecological sanitation), when provided in conjunction with a safe water supply, can bring similar improvements. Improvements in child nutritional status have also been associated with provision of water and sanitation in or next to the home.¹⁵

As with standards relating to water availability, (see Section 7.1) it is important to allocate resources to meet at least basic standards for all, as a matter of priority, rather than reaching high standards for the better-off and failing to address the needs of the poor.

9 General Comment No. 15, para. 37 (a) and (c).

10 Note that one member of a household, or normally only the female members of the household, collect water for the whole household, amounting to significantly more than 20 litres per day.

11 In some cases, water jerry cans may be left at kiosks for filling and collected at a later time. However, this is not the norm.

12 See also General Comment No. 15, para 16 (d).

13 WaterAid, *Women and Water*, (2007), available at <http://www.wateraid.org>.

14 Rural Development Services Network, *Water for All, Meeting Basic Water and Sanitation Needs*, (RDSN, June 2000),

15 Ibid.

BOX 9.1: SERVICE LEVEL DESCRIPTORS OF WATER IN RELATION TO HYGIENE¹⁶

| Service level description | Distance/time measure | Likely quantities collected (litres per person per day) | Level of health concern |
|--|--|--|---|
| No access | More than 1000 metres or 30 minutes collection time | Very low (often less than 5 litres per person daily) | Very high. Hygiene not assured and consumption need may be at risk. Quality difficult to assure, emphasis on effective use and water handling hygiene. |
| Basic access (Initial target) | Between 100 metres and 1000 metres (5 to 30 minutes total collection time) | Low. Average is unlikely to exceed 20 litres per person daily; laundry and/or bathing may occur at water source with additional volumes of water | Medium. Not all requirements may be met. Quality difficulty to assure. |
| Intermediate access (Further target) | On-plot (e.g. single tap in house or yard) | Medium. Likely to be around 50 litres per person daily, higher volumes unlikely as energy/time requirements still significant | Low. Most basic hygiene and consumption needs met. Bathing and laundry possible on-site, which may increase frequency of laundering. Issues of effective use still important. Quality more readily assured. |
| Optimal access (Final target) | Water is piped into the home through multiple taps | Varies significantly, but above 100 litres per person daily and may be up to 300 litres daily | Very low. All uses can be met, quality readily assured. |

BOX 9.2: SOUTH AFRICAN SERVICE ACCESSIBILITY STANDARDS

In South Africa, the following regulations are in place for water supply and sanitation services:

2. The minimum standard for basic sanitation services is -

- (a) the provision of appropriate health and hygiene education; and
- (b) a toilet which is safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against the weather, well ventilated, keeps smells to a minimum and prevents the entry and exit of flies and other disease-carrying pests.

The minimum standard for basic water supply services is -

- (a) the provision of appropriate education in respect of effective water use; and
- (b) a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month -
 - (i) at a minimum flow rate of not less than 10 litres per minute;
 - (ii) within 200 metres of a household; and
 - (iii) with an effectiveness such that no consumer is without a supply for more than seven full days in any year.¹⁷

16 G. Howard & J. Bartram, *Domestic Water Quantity, Service Level and Health*, (Geneva: WHO, 2003), p.22, referred to in WHO Quality Guidelines, p. 90. The text in italics has been added to the table.

17 Water Services Act, 1997, Regulations relating to compulsory national standards and measures to conserve water, s. 2-3, <http://www.dwaf.gov.za>.

9.1.2 Adequacy of facility

General Comment No. 15 states: “*All water facilities and services must be of sufficient quality, culturally appropriate, sensitive to gender, life-cycle and privacy requirements.*”¹⁸ The Sub-Commission Guidelines also state a number of criteria:

- *Everyone has the right to a water and sanitation service that is: ... of sufficient and culturally acceptable quality;*¹⁹
- *Everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.*²⁰
- *Water and sanitation facilities should be designed to take account of the needs of women and children.*²¹

Joint Monitoring Programme (JMP) of the WHO and UNICEF have defined the forms of access to water and sanitation which are likely to be safe and adequate, in terms of quality, privacy, ease of use and security. These are termed ‘improved’ while facilities that do not meet this criterion are termed ‘unimproved.’ The JMP classifies shared toilets as ‘unimproved sanitation’ on the basis that it is difficult to guarantee hygiene where latrines are shared between households.²² However, in densely populated areas, toilets/showers that are public or are shared by a group of households may be unavoidable as a medium-term step towards the full realisation of the right to water and sanitation.

BOX 9.3: WHO-UNICEF DEFINITIONS FOR WATER SOURCES AND SANITATION FACILITIES THAT ARE LIKELY TO BE SAFE²³

| | |
|--|---|
| Improved drinking water sources Household connection Public standpipe Borehole Protected dug well Protected spring Rainwater collection | Improved sanitation facilities Connection to a public sewer Connection to a septic system Pour-flush latrine Simple pit latrine** Ventilated improved pit latrine |
| Unimproved drinking water sources Unprotected well Unprotected spring Rivers or ponds Vendor-provided water Bottled water* Tanker truck water | Unimproved sanitation facilities Public or shared latrine Open pit latrine Bucket latrine |
| * Bottled water is not considered improved where it is the only source of water due to limitations in the potential quantity, not quality, of the water. ** Only a proportion of poorly defined categories of latrines are included in sanitation coverage estimates. | |

18 General Comment No. 15, para. 12 (c) (i).

19 Sub-Commission Guidelines, section. 1.3

20 Ibid., section 1.2.

21 Ibid., section 5.3.

22 Ibid.

23 WHO/UNICEF, *Meeting the MDG Drinking Water and Sanitation Target, A mid-term assessment*, (2004), p. 4.

The Sphere Standards, which provide minimum standards for disaster response, can be used to set the minimum 'floor' for standards on sanitation. They set out a minimum standard that each toilet serve a maximum of 20 people and that the use of toilets be arranged according to family group or segregated by sex, the latter being the most appropriate in public places such as markets and health centres. The minimum standard on adequacy of toilets is "*toilets sited, designed, constructed and maintained in such a way as to be comfortable, hygienic and safe to use*".²⁴

As water services and facilities are frequently tied to sanitation facilities, and are used for bathing and washing clothes, it is often necessary to locate a number of services so that privacy is maximised, and physical security not compromised. It is necessary to ensure that the design and operation of communal water points are culturally acceptable, that for example, they provide for separate washing and bathing areas for men and women, or can be used at different times by different groups.²⁵

Women will often have different requirements from men as to the siting and use of particular water and sanitation services. However, even though women normally have greater responsibility for water for domestic purposes, their needs often receive lower priority than men's, and their requirements are often not addressed. Participation of different categories of users is essential in the design and implementation of water and sanitation projects. (See Chapter 6: Participation and access to information.) In particular, it is necessary to ensure that women and minority groups with distinct needs fully participate and can have an influence in consultation processes, rather than allowing decisions to be made by policy makers on the basis of poorly informed assumptions.

The design of water and sanitation facilities needs to take account of the requirements of other vulnerable groups such as children and older or disabled persons. Options include building communal taps at a height that younger children can reach, and which do not require a great deal of strength to operate. It may be necessary to design latrines especially for use by small children and the elderly.²⁶ There are examples in India of latrines designed specifically for children, in order to encourage the proper and regular use of latrines without fear of falling in.²⁷ Elderly people often prefer to use seated toilets rather than squat toilets, because of less flexible joints. It is crucial to consider historical traditions, institutional and political arrangements within and between communities, as well as religious practices, in establishing water and sanitation facilities (without these leading to or perpetuating discrimination).²⁸

Human excreta, and to a lesser extent, domestic wastewater, are two of the most significant pollutants of water resources and of the human environment. To ensure that sanitation facilities are conducive to public health and the environment, the following conditions need to be met:

- That latrines are constructed at a suitable distance from water sources and in a manner that prevents leeching into underground water.
- That drainage channels or sewerage pipes are available to transport wastewater away from human settlements to locations where it is treated or otherwise disposed of in a manner that avoids threats to public health and damage to ecosystems. If this is not possible, a septic tank is necessary.
- That appropriate facilities, such as connections that safely dispose of latrine waste into sewerage mains, are available for the disposal of excreta collected by latrine exhausters, particularly in densely populated urban areas where it is impractical to store such waste for agricultural purposes or where cultural norms prevent such use. Such facilities need to be available close to human settlements, particularly where manual latrine exhaustion is normally carried out.²⁹

24 Sphere standards, see note 7.

25 P. Deverill, et al. *Designing water and sanitation projects to meet demand in rural and peri-urban communities*. Books 1 & 2. (WEDC, Loughborough, 2002).

26 R.A. Reed, *Sustainable sewerage: Guidelines for community schemes*. (WEDC, Loughborough, 1995).

27 Sheridan Bartlett, 'Children's experience of the physical environment in poor urban settlements and the implications for policy, planning and practice', *Environment and Urbanisation*, vol. 11 No.2, p. 66.

28 For further discussion of this point, see Veronica Giardina and Ilja Betlem, *Access to Water*, Discussion Draft, (FAO: 2003), p.15.

29 Manual exhaustion is normally carried out when residents cannot afford mechanised latrine exhaustion or where access roads are not wide enough to permit their use.

9.2 Establishing targets on access per locality and ensuring their implementation

General Comment No. 15 states that the obligation to fulfil the human right to water includes, “*adopting a national water strategy and plan of action to realize this right; ... and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas*”.³⁰

In order to ensure accountability for reaching targets set at a national or regional level, such targets will need to be broken down into local targets for each particular service area.³¹ The following ingredients are necessary to develop and realise these targets:

- Improving the institutional capacity of utility service providers to extend access. This can be done by extending networks, incorporating small-scale providers into provision (as operators of kiosks, public toilets and shower blocks linked to the network), and by providing financial transfers and technical training in order to ensure well-trained and reasonably compensated staff.
- Investing in the regulatory body’s monitoring capacity, in order to facilitate extension of services.
- Investing in data collection on access to water and sanitation, in order to ensure accurate baseline information and thereby set appropriate targets, permit monitoring, avoid duplication of effort, identify the least served and thereby equitably distributing resources and capacity. For more details on data collection, see also Chapter 6: Participation and access to information.
- Building appropriate incentives and performance targets, including requirements to provide services to low-income areas and associated time-frames, built into the regulatory instruments or contracts applicable to service providers.³²
- Where small-scale facilities operated by non-governmental bodies are required to extend access, assigning responsibility to ensure provision of services and a budget to a public body to provide necessary funding and training to small-scale providers. (See also Section 9.3.)

Specific requirements to ensure access to low-income areas are critical because utilities often lack incentives to provide water and sanitation services to low-income areas. This is often due to: perceptions of lower willingness and ability to pay in these areas; the low volume of consumption in such households; and in some cases, the remoteness of the locations requiring services. In the case of utilities, where there is a block tariff scheme (see Chapter 10: Affordability and financing, Section 10.7.2, for an explanation), services to high-income areas are generally more profitable as a higher volume of water is used, a higher average tariff paid, and therefore the utility obtains a higher return per litre. The regulation of service providers is discussed in detail in Chapter 4: Roles of key actors, Section 4.1.12.

Where sewerage networks are not present, it is very common for public authorities to neglect the need for construction of drainage channels for waste-water and facilities for the disposal of waste from latrines, leading to hazardous public health situations. It is not feasible for public authorities to charge for these services, particularly in informal settlements where land rates or taxes are not collected by public authorities. It is therefore necessary to ensure that a government body (local authority or public health agency) has clear responsibility and an adequate budget to provide such essential services. Governments also have a critical role in ensuring access to sanitation through promotion of sanitation and hygiene, as this will assist and encourage households to construct, maintain and use household or community toilets.

The cost of new investments to extend access in developing countries will often require government subsidies. The potential sources of financing to realise the right are addressed in Chapter 10: Affordability and financing Section 10.7.

³⁰ General Comment No. 15, para 26.

³¹ Different areas will have different needs and priorities based on the local context, such as service type, ability to pay, density and demographic of population.

³² For further details, see Chapter 4: Roles of key actors, Section 4.1.12.

BOX 9.4: WATER SERVICE AUTHORITY DUTIES TO EXTEND ACCESS TO WATER IN SOUTH AFRICA

In South Africa, the Water Services Act places a duty on water services authorities to take reasonable measures to realize the right of access to basic water supply and basic sanitation. The Act includes the following features:

- Every water services authority has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure efficient, affordable, economical and sustainable access to water services. This duty is subject, among other things, to availability of resources, equitable allocation of resources to all current or potential consumers, and the duty of consumers to pay reasonable charges.
- Charges for water must conform to norms and standards for tariffs set by the Minister.
- A water service authority is required to prioritise the supply of basic water and sanitation if it cannot meet the needs of all its existing consumers.
- A water services authority may not unreasonably fail to give access to water services to a consumer or potential consumer in its area of jurisdiction.
- Every water services authority is required to prepare and report on the implementation of a water services development plan, which must provide for measures to realise the right of access to basic water supply and basic sanitation.
- The development plan must indicate the number and location of people to whom services cannot be provided in the next five years, the reasons for this, and a time-frame by which basic water and sanitation will be provided to those persons.
- The water service authority is required to take reasonable steps to bring the draft plan to the attention of current and potential consumers and invite comment within a reasonable time.³³

In terms of priorities for extension of access and resource allocation, General Comment No. 15 states that:

*Inappropriate resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.*³⁴

The Sub-Commission Guidelines indicate in this regard that,

*Where available resources are not sufficient to guarantee the delivery of high-quality service, States should invest in services that give priority to the needs of those without basic access, normally through low-cost services that can be upgraded rather than through expensive services that would only benefit a small section of the population.*³⁵

In rural areas in low-income countries, it may not be economically feasible to establish extensive piped networks. In such cases, it may be possible to extend water and sanitation services by upgrading and improving traditional water sources, such as wells and springs. Many rural communities already have access to a number of water sources of varying quality and quantity and at different distances from the household. These sources are often used for different purposes, therefore using local knowledge is essential for developing cost-effective and sustainable solutions. The extension of sanitation services, normally through establishment of small-scale facilities, will also require the participation of the relevant communities, as increasing the use of improved sanitation involves a challenge of education and training rather than a challenge of constructing infrastructure.³⁶

33 Water Services Act, 1997 (Act 108 of 1997), ss. 3, 5, 11, 13, 14. See also note 17.

34 General Comment No. 15, para. 14. This point is also made, with reference to water and to sanitation by the Sub-Commission Guidelines, section 5.1.

35 Sub-Commission Guidelines, section 5.1. This point is also made in the *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, (2007) UN Doc. A/HRC/6/3, para. 41, available at: www.ohchr.org ('Your Human Rights' > 'Human Rights Issues' > 'Stakeholder views' below the Water heading).

36 See United Nations Children's Fund (UNICEF), *Towards Better Programming: A Sanitation Handbook* (New York: UNICEF, 1997).

In urban areas, the most effective ways of ensuring the physical accessibility (and affordability) of water is to extend the piped water and sewerage supply into all settlements – regardless of the legality or otherwise of the land tenure status – and establishing household connections or small-scale facilities such as kiosks/standpipes, public toilets/shower blocks. All other forms of accessing water and sanitation are more expensive in terms of money, time and/or danger to health. Therefore prioritising investments in extending networks to low-income areas is normally the most effective use of public resources.

In low-income countries, it may be most effective to serve domestic users by prioritising construction of low-cost services, in the short to medium term, which could include:

- Public standpoints
- Public toilets (including latrines) and shower blocks
- Reduced pressure and low volume connections
- Small bore sewerage connections.³⁷

Low-cost services can be established quickly and provide basic access to a large number of people. In contrast, providing household connections requires an upgrade to the infrastructure, an increase in wastewater treatment capacity, takes a long of time and requires significant financial resources. In addition, household connections need to be accompanied by subsidy policies to ensure that low-income people can afford connections. However, where small-scale facilities are used, they only serve as an interim step in the implementation of the right to water and sanitation. Household connections are the most appropriate outcome for access to water and sanitation in terms of cost, time and health. Longer-term plans will need to be in place to ensure household connections to all once government and/or users have necessary resources to construct the necessary infrastructure and facilities and to provide the necessary subsidies to the poor to assist them pay for the larger quantities of water likely to be consumed where there is a household connection

It may be necessary for governments to revise standards and regulations in order to ensure that they regulate low-cost services, while maintaining minimum standards. It is necessary to ensure that any choice to focus on small-scale/low-cost facilities is made in conjunction with the affected community, which is best placed to know what level of access is suitable, affordable and what contribution its members can make. An imposed solution may be inappropriate for the situation and would take away from the participation rights of users.

The issue of providing a range of services and facilities is discussed in Chapter 10: Affordability and financing, Section. 10.4.

37 See B. Skinner, *Small-scale Water Supply: A review of technologies* (WEDC, Loughborough, 2003), and J. Pickford, *Low-Cost Sanitation: A survey of practical experience* (WEDC, Loughborough, 1995).

BOX 9.5: THE PERFECT THE ENEMY OF THE GOOD? THE GROOTBOOM JUDGEMENT IN SOUTH AFRICA³⁸

The 'Grootboom' case in South Africa, (discussed in detail in Chapter 5: Non-discrimination and attention to vulnerable and marginalised groups, Box 5.3), which dealt with housing, provides an important lesson as to how human rights influences public resource allocation choices. In the housing sector – as in water and sanitation – governments are faced with a choice between providing good quality facilities to a few or providing minimal facilities to the many.

In this case, the Constitutional Court reviewed a particular housing policy that aimed to ensure quality housing for all over time, but did not provide for basic emergency housing for those who were homeless. The Court's assessment of the policy was:

[T]here is no express provision to facilitate access to temporary relief for people who have no access to land, no roof over their heads, for people who are living in intolerable conditions and for people who are in crisis because of natural disasters such as floods and fires, or because their homes are under threat of demolition. These are people in desperate need. Their immediate need can be met by relief short of housing which fulfils the requisite standards of durability, habitability and stability encompassed by the definition of housing development in the Act.³⁹

Although it may seem unusual for the Court to require, on the basis of human rights, provision of housing that did not necessarily fully fulfil housing standards, it is consistent with the concept of progressive realisation. Human rights standards require that resources be utilised equitably to ensure at least basic shelter for all as a first step, followed by progressive improvements, rather than to provide quality housing for a few while leaving the many with no provision at all.

9.3 Facilitating small-scale provision by communities and entrepreneurs where adequate public services are not provided

The Sub-Commission Guidelines indicate:

Communities have the right to determine what type of water and sanitation services they require and how those services should be managed and, where possible, to choose and manage their own services with assistance from the State.⁴⁰

Chapter 6: Participation and access to information, Section 6.4 discusses this point in detail. Community self-provision is not only a right, but also a practical necessity in countries with low levels of access to water and sanitation, where it can help fill the void between government capacity to establish water and sanitation facilities and services and the needs of the community. Service provision by entrepreneurs and civil society organisations is similarly a practical necessity to ensure accessibility. For sanitation services, small-scale service providers are particularly relevant for provision of toilets at the household level.

Facilitation of small-scale provision, whether by communities, entrepreneurs or other civil society organisations, can constitute a key element of a government programme to extend access to water and sanitation. It can be considered an intermediate step pending the extension of public services to all. Small-scale service provision can also take some of the pressure off the water and sanitation utility, which may not have the

38 *Government of the Republic of South Africa and others v. Grootboom and others*, 2001 (1) SA 46 (CC), South African Constitutional Court, <http://www.constitutionalcourt.org.za/site/home.htm>.

39 *Ibid.*, para. 52.

40 Sub-Commission Guidelines, section. 8.2.

relevant expertise of working in informal settlements. It is also particularly relevant for rural areas, where professional management and technical assistance can be hard to find. Where subsidies are provided, it would be necessary to identify credible and well-organised NGOs, community groups and entrepreneurs. Subsidies can be conditional upon compliance with tariff standards and regulations and ownership of the facility remaining with the government or community

Small scale service provision can be facilitated by:

- Ensuring that registration requirements are simple and expedited and that any fees are minimal and affordable.
- Allocating public land for the operation of small-scale facilities (which is particularly necessary in densely populated urban settlements).
- Ensuring that legal frameworks for water and sanitation permit and make allowance for small-scale provision (which in part, can help insulate providers from corrupt practices).
- Adopting standards for small-scale provision that are not unduly onerous, while ensuring that they do protect water quality.
- Providing capacity building and training (*see* Chapter 6: Participation and access to information, Section 6.4).
- Providing information on sanitation and hygiene (*see* Chapter 8: Water quality and hygiene, Section 8.6).
- Constructing or providing subsidies for the construction of facilities and for their operation, conditional upon the benefits being passed on to the user (*see* Chapter 10: Affordability and financing, Section 10.3 and 10.6).
- Encouraging, in appropriate circumstances, shop owners to sell water from a network to those who are not connected by charging them at a reduced tariff rate. This can be particularly useful where there too few users in a particular area to make an outlet solely devoted to water and sanitation financially viable to an operator.

BOX 9.6: COMMUNITY MANAGED SANITATION FACILITIES: ORANGI PILOT PROJECT, KARACHI, PAKISTAN

The Orangi Pilot Project found a way of resolving the issue of lack of sanitation in the settlement. It assisted a community to manage the sanitation services within the areas covered by their settlement and at the household level. The government was then expected to implement the secondary and primary (trunk) sewerage lines leading to the settlement and sewerage treatment plants. This has proven to be a very successful model and has been taken up by other towns and cities in Pakistan as a way of overcoming not only a shortage of funds but also a lack of understanding within the government of how best to manage smaller scale, low-technology systems.

Some of the ingredients of the success of the project included:

- The identification, support and training of activists (professionals and technicians from outside the community are not an alternative).
 - Matching of the project design to funds available (rather than the reverse, as funds rarely materialise).
 - Links to NGOs that can address city-level issues.⁴¹
-

41 A detailed description of the project, successful replications and replications that ‘fizzled out’, together with an analysis of the lessons learnt is found in A. Hassan, *Working with Communities* (Karachi: City Press, 2001), pp. 1-42, 159-166.

9.4 Ensuring physical security when accessing water and sanitation

General Comment No. 15 notes that physical security is an integral part of accessibility, stating that, “*Physical security should not be threatened during access to water facilities and services*”.⁴² The Sub-Commission Guidelines state: “*Everyone has the right to a water and sanitation service that is ... In a location where physical security can be guaranteed*”.⁴³

The location and design of water and sanitation facilities largely determine physical security. The primary method to ensure security is to bring toilets as close as possible to households, schools, workplaces or health institutions. Where this is not yet possible - due to resource or space limitations (such as in informal urban settlements) - or is in process of being carried out, the design of shared water and sanitation facilities can increase physical security by:

- Locating water points and public toilets/showers, and pathways to these services as far as possible where they are more likely to be safe.
- Providing night-time illumination at public toilets, and the pathways leading to them.
- Prioritising neighbourhoods with high levels of crime in government programmes to assist households construct their own toilets (or toilets shared by a small group of households).

In some contexts, having a female attendant may help to address situations where the presence of a male attendant can create, for women, conflict between security and the issues of dignity and privacy.

Such measures are not a substitute for the need for governments to improve overall measures relating to security. Rather, they are practical steps that water and sanitation sector institutions and service providers can take.

9.5 Ensuring that no individual or group currently accessing water and sanitation is deprived of access

General Comment No. 15 indicates, “*The obligation to respect [the right] requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water*”.⁴⁴ It further indicates: “*The obligation to protect [the right] requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water*”.⁴⁵

In certain circumstances, people who have access to clean water and to sanitation might find their access impeded arbitrarily or unnecessarily. This can be avoided by prohibiting the following practices:

- Exclusion from access caused by forced evictions (*see* Box. 9.9).
- Destruction of water and sanitation facilities in times of armed conflict (*see* Box 9.8).
- Denial of access to public services for partisan or discriminatory reasons, such as on the basis of political loyalty, ethnicity or citizenship status (for example, refugees) of an individual or community.⁴⁶
- Exclusion from access to publicly owned facility, a facility constructed by a public body on behalf of a locality or community or any facility that operates on a commercial basis.
- Demands for bribes in return for access to public water and sanitation services.

In addition to legal prohibition, such actions can be curtailed by ensuring that mechanisms are in place to monitor the relevant authorities and to take action on complaints. (*See also* Chapter 4: Roles of key actors, Sections 4.1.12 on regulation of service provision and Section 4.4 on independent public monitoring bodies.)

42 General Comment No. 15, para. 12 (c) (i).

43 Sub-Commission Guidelines, section 1.3.

44 General Comment No. 15, para. 21.

45 General Comment No. 15, para. 23. The Sub-Commission Guidelines set out similar obligations in regard to sanitation as well as water, s. 2.3 (d).

46 *See for example* Bolivia’s Law No. 2066 on Water and Sanitation Services (2000) art. 22.

There are circumstances in which it is necessary to restrict access to water or sanitation, for example due to repairs or where a water source is polluted (and there is an alternative affordable source). In these circumstances, General Comment No. 15 establishes certain procedural standards:

- (a) opportunity for genuine consultation with those affected;
- (b) timely and full disclosure of information on the proposed measures;
- (c) reasonable notice of proposed actions;
- (d) legal recourse and remedies for those affected; and
- (e) legal assistance for obtaining legal remedies...⁴⁷

General Comment No. 15 also states: “Under no circumstances shall an individual be deprived of the minimum essential level of water.”⁴⁸ The Sub-Commission Guidelines state:

*No one whose access to water and sanitation may be legally curtailed after the appropriate procedures have been followed should be deprived of the minimum essential amount of water or of minimum access to basic sanitation services.*⁴⁹

In circumstances where there are illegal water connections to a network or, in rarer cases, illegal connections to dispose of waste to a sewerage system, it is necessary to close such connections as they can lead to contamination of the network water supply, leakages and undermine the financial sustainability of the system. However, cutting off illegal connections can lead to people being deprived of the minimum essential level of water. The consequences can be particularly severe where the illegal connection has been made by a small-scale provider and may be providing water to a significant number of people. In order to ensure that no one is deprived of the minimum essential levels of water and sanitation, it would be necessary to quickly attempt to formalise the service provided. Securing an alternate source is also a matter of practicality – those whose illegal connection has been closed down, and whose needs remain unmet, may re-connect such a connection or find an alternative. Preventing illegal connections to a sewer may have a negative impact on public health, as the result of stopping users from disposing of waste following latrine exhaustion may be inappropriate disposal of this waste. Therefore, these connections will need to be formalised rather than closed.

The issue of disconnections due to non-payment is addressed in Chapter 10: Affordability and financing, Section 10.9. Rationing of water is addressed in Chapter 7: Water availability, allocation and sustainability, Section 7.3. Access to traditional sources of water is also discussed in Chapter 7: Water availability, allocation and sustainability, Section 7.5.

⁴⁷ General Comment No. 15, para. 56.

⁴⁸ General Comment No. 15, para. 56.

⁴⁹ Sub-Commission Guidelines, section 6.4.

BOX 9.7: CONDITIONS FOR LIMITATIONS OR DISCONNECTION OF WATER SERVICES IN SOUTH AFRICA**South Africa**

Under the Water Services Act (1997):

Procedures for the limitation or discontinuation of water services must-

- (a) be fair and equitable;*
- (b) provide for reasonable notice of intention to limit or discontinue water services and for an opportunity to make representations, unless-*
 - (i) other consumers would be prejudiced;*
 - (ii) there is an emergency situation; or*
 - (iii) the consumer has interfered with a limited or discontinued service; and*
- (c) not result in a person being denied access to basic water services for non-payment, where that person proves, to the satisfaction of the relevant water services authority, that he or she is unable to pay for basic services ...*⁵⁰

BOX 9.8: THE RIGHT TO WATER AND SANITATION IN TIMES OF ARMED CONFLICT

General Comment No. 15 states:

*The Committee notes that during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under international humanitarian law. This includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water.*⁵¹

Obligations relating to civil conflict are set out in the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977. The Protocol states:

*Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.*⁵²

International treaties relating to international armed conflict are addressed in Chapter 11: International co-operation, Section 11.7.

⁵⁰ Water Services Act, 1997 (Act 108 of 1997), s. 4 (3), *See* note 17.

⁵¹ General Comment No. 15, para. 22.

⁵² Art. 14, available at www.icrc.org ('Humanitarian Law' > 'Treaties and customary law').

BOX 9.9: GENERAL COMMENT NO. 7 ON FORCED EVICTIONS

Forced evictions are becoming increasingly common as communities are displaced in order to facilitate economic development, and in some cases, environmental protection. Evictees are normally not provided with alternative land, or where land is provided, water and sanitation services are lacking. As a result forced evictions normally lead to deprivations of access to water and sanitation.

In *General Comment No. 7, The right to adequate housing: forced evictions*, the UN Committee on Economic, Social and Cultural Rights interpreted the standards in the ICESCR, as they relate to forced evictions. It stated:

*States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.*⁵³

General Comment No. 7 also describes procedural protections to be applied in relation to forced evictions, as follows:

- (a) an opportunity for genuine consultation with those affected;
- (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- (e) all persons carrying out the eviction to be properly identified;
- (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- (g) provision of legal remedies; and
- (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.⁵⁴

Finally, General Comment No. 7 states:

*Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.*⁵⁵

53 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 7, The right to adequate housing: forced evictions* (1997), U.N. Doc. E/1998/22, annex IV, para. 13. The Committee's General Comments are available at www.ohchr.org ('Human Rights Bodies' > 'CESCR' > 'General Comments')

54 General Comment No. 7, para. 15.

55 General Comment No. 7, para. 16.

9.6 Providing services to informal settlements and ensuring security of tenure

One of the most significant barriers to access of water and sanitation services is the lack of land tenure in informal settlements. Often households or small-scale providers have to supply a ‘proof of residence’ or proof of tenure before utility service providers are willing to provide water and sewerage services in these areas. In some cases, this is due to the actual or perceived difficulty in billing households or small-scale service providers in such areas because of the lack of registration of residents and the buildings where they live, together with the assumption that the persons inhabiting these areas are unable or unwilling to pay.⁵⁶ In many situations, there is a general government policy of refusing service provision to informal settlements in order to avoid legitimising informal occupation.

General Comment No. 15 states that: “*Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status.*”⁵⁷ The Sub-Commission Guidelines supplement this point by stating that, “*Informal human settlements should be upgraded through the provision of water and sanitation services and through assistance with the construction of their own water and sanitation facilities*”.⁵⁸

The right to adequate housing is contained in the ICESR and other international human rights treaties. In this regard, the UN Committee on Economic, Social and Cultural Rights states in *General Comment No. 4: The Right to Adequate Housing*:

*Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.*⁵⁹

Many institutions in the water and sanitation or health sectors consider this issue to fall outside their mandate since they do not have responsibility for land and housing issues. However, access to water and sanitation in informal settlements cannot be ignored, and requires a solution. Solutions to land tenure issues normally need the leadership of land and housing bodies. Water and health sector institutions - because of the lack of water and sanitation caused by the exclusion of informal settlements from public services - can strongly encourage action to resolve land tenure issues. Addressing this issue would require inter-ministerial/inter-departmental co-ordination. Actions to resolve this problem are included in Box 9.10:

56 Florencia Almansi, Ana Hardoy, Gustavo Pandiella, Ricardo Schusterman and Gastón Urquiza. *Everyday water struggles in Buenos Aires*, (Water Aid, 2003)

57 General Comment No. 15, para. 16 (c).

58 Sub-Commission Guidelines, section. 5.4.

59 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 4, The right to adequate housing*, UN Doc. E/1992/23, para. 8 (a). See also *Sources No. 4: Legal Resources for Housing Rights: International and National Standards*, 2nd ed. (COHRE, 2000); <http://www.cobre.org> (Click on Housing Rights > Legal Resources on Housing Rights).

BOX 9.10: STEPS/STRATEGIES FOR OVERCOMING OBSTACLES TO ACCESS TO WATER AND SANITATION DUE TO LACK OF LAND TENURE

Providing services: Water and sanitation utilities can be required to provide services to informal settlements irrespective of land tenure, and to adapt, as necessary, their billing, metering and forms of infrastructure provided so that they can effectively serve such areas. In Dhaka, Bangladesh, local NGOs served as intermediaries between the Dhaka Water Supply and Sewerage Authority (DWASA) and communities in informal settlements, in order to supply essential services to people regardless of land tenure status. DWASA was willing to provide a connection to the NGOs because they were registered organisations.⁶⁰ This model could be utilised as a stepping-stone towards direct provision of services to informal settlements. While the Dhaka example was initiated by NGOs, it is equally possible for a service provider to contract NGOs, private entrepreneurs or community groups to act as intermediaries for the provision of water and sanitation services.

Guaranteeing security of tenure: Public bodies responsible for land use can provide a firm and credible public guarantee in writing that forced evictions will not be carried out in informal settlements, and that re-settlements, where necessary, will be negotiated with those affected. Such a guarantee can help give small-scale providers, landlords and households greater incentive to invest in water and sanitation facilities as they have an assurance their investments are not at risk of destruction.

Taking steps towards formalising legal status: Public bodies responsible for land use can take steps to formalise informal settlements through the issuance of individual or community title deeds. This can be facilitated by developing simple, inexpensive and accessible systems to recognise possession and title of land in informal settlements. In some situations, it may be more appropriate to re-settle all or part of the residents of a community to an adequate alternative area, decided upon in consultation with the relevant communities.⁶¹ (See Box 9.9 on international human rights standards on evictions.)

While tenure is often the primary obstacle to providing services to informal settlements, there can also be technical problems where settlements not aligned with the grid may require significant infrastructural work.

9.7 Ensuring participation in decision-making on design and maintenance of public services and on land use

The right to information and participation is relevant at the level of service provision where users will need to provide input on the:

- Choice of technology to be used.
- Siting of public water points and toilets/shower blocks.
- Location of water and sewerage networks, drainage channels and other infrastructure.
- Identity of the provider and rules binding them (for example, where public facilities are managed by an entrepreneur contracted by the utility provider).
- Infrastructure plans.

Participation is more likely to ensure greater accountability and draw on the knowledge of local community, enhancing the overall possibility of success (see also Chapter 6: Participation and access to information). Participation is crucial in the area of upgrading of informal settlements as such upgrading can have negative consequences if not designed in a manner appropriate to the needs of the affected community.⁶² The provision of government assistance to communities for small-scale sanitation systems in particular requires close consultation with communities in order to ensure appropriate government programmes (see Box. 9.6).

60 Syed Ishteaque Ali Jinnah, *Water Points for Urban Slum Dwellers*, (WaterAid, 2007), available from www.wateraid.org

61 For example, re-settlement of members of a community may be required in some cases, in order to construct water and sanitation facilities, drainage channels and access roads.

62 M. Langford, L. Quitzow and V. Roaf, *Human Rights and Slum Upgrading: General Introduction and Compilation of Case Studies* (COHRE, 2005) available at www.cobre.org (Click on Library > COHRE Reports> Special Reports).

BOX 9.11: COMMUNITY-LED TOTAL SANITATION AND THE ‘SANITATION LADDER’

Community-led total sanitation (CLTS) promotes collective action by a community to improve their own environmental sanitation conditions. It does so by facilitating a community’s analysis of their current situation, which prompts them to take action to improve conditions by building and using latrines.

This approach has two key strengths. Firstly, it is community-led and community financed. The design of the latrines is completely flexible, with the community deciding the type of model and construction materials to be used. Secondly, as the motivation for change comes from within the community, the approach uses no external subsidies.

The skills of the facilitator are critical to the process; it requires someone who is able to communicate well, facilitate collective analysis and encourage action:

As a facilitator, their role is to encourage people to talk about why they defecate in open spaces. The aim is to bring about a collective sense of disgust, strong enough to make people change their behaviour and collectively work to ensure that every member of the community has access to a latrine, however simple. When people see the health and practical benefits of using latrines – that they’re safer and more convenient for everyone (particularly women and girls) – the practice of defecation in open spaces tends to stop.⁶³

The CLTS approach highlights the importance placed upon prestige and practical need over health. It leads to a self-determined progression of households up the ‘sanitation ladder’, where people progressively make improvements to the quality of their latrine.⁶⁴ Communities will have to decide themselves what is the most appropriate lowest ‘rung’ of the ladder for example a simple pit latrine or a public toilet, depending on their context (for example whether they are in an urban or rural area and whether a network connection is available).

Importantly, the approach requires a significant shift in the attitudes, behaviours, policies and practices of the donor and delivery agencies:⁶⁵

- From teaching and educating to facilitating communities’ own analysis;
- From ‘we must subsidise the poor’ to ‘communities can do it’;
- From ‘we persuade and motivate’ to ‘it’s up to you, you decide’;
- From top-down standardisation to bottom-up diversity (they design);
- From bigger budgets and disbursement targets to lower budgets to allow more to be achieved;
- From spending on things (hardware) to spending on supporting people (facilitators) and processes.

CLTS was originally developed by WaterAid and the Village Education Resource Centre (VERC) in Bangladesh. Since it was introduced in 1999 the approach has been replicated in other countries, including India, Cambodia, Indonesia, Nepal, Uganda and Zambia.

63 Taken from: Kamal Kar and Katherine Pasteur, *Subsidy or self-respect? Community led total sanitation. An update on recent developments* (Including reprint of IDS Working Paper 184), IDS, November 2005.

64 T.R. Noor and S. Ashrafee, *People-centred approaches to water and environmental sanitation, an end to open defecation: process, cost, motivation and sustainability*, presented at 30th WEDC International Conference, Vientiane, Lao PDR, 2004.

65 *Subsidy or Self Respect*, see note 63, p.12.

9.8 Dedicating an adequate proportion of public resources and capacity to maintenance

All too frequently, funding is made available for new installations, whether for a well in a village or new pipes in an urban setting, without sufficient consideration of the often significant costs of maintaining the services. In a rural setting, these costs will often only become apparent after a few years, when certain components of pumps fail. In order to ensure that the source is sustainable, the availability of spare parts and the necessary skills to replace the parts need to be considered. For urban areas with piped networks, a major cost and cause of leakages, leading to inefficiency, is the long-term maintenance and up-grading that is necessary.

Damage to water pipes can reduce pressure, allowing contaminants to enter the water supply as well as increasing the water collection time. Likewise, damaged sewerage pipes can pollute the groundwater, and thereby contaminate wells used for water supply. Leaking water pipes reduce the total amount of water available to users relying on piped networks.

Many reasons explain this tendency to exclude maintenance resources/costs. For example:

- Assumptions that such costs are minor in comparison to the costs of construction.
- Prestige associated with the construction of a new project (for donors, politicians or bureaucrats associated with the project) as opposed to maintenance of an existing project.
- Over-reliance on community contributions to maintain such facilities.

The maintenance of infrastructure for water and sanitation services will therefore require advance planning and adequate budgeted resources. The cost of repairing damaged infrastructure, particularly piped networks, can often be prohibitively expensive for the service provider. There is therefore a need to ensure appropriate financial arrangements involving collaboration between all levels of government and in some cases international financial assistance. It is necessary that the cost and feasibility of repairs be considered when choosing the technology to be used, taking into account the likely impact on affordability of services for users.

It is therefore necessary to ensure that each utility allocates a reasonable portion of its budget and workforce to the maintenance of existing facilities. It is also necessary to ensure the existence of government programmes that can assist small-scale, and particularly community-managed facilities, with maintenance. Such programmes can draw on the experience, labour and finances of the relevant communities (particularly in rural areas). This approach needs to be included in the design of new water supply and sanitation facilities, with provision for the necessary training of those who will operate the facilities. In certain situations, users would need a commitment to assist by the service providers, for example, by providing spare parts or a trained mechanic for complicated repairs when necessary.

BOX 9.12: DECENTRALISATION AND HAND-PUMP MAINTENANCE IN RURAL AREAS

Under the Integrated Rural Water Supply and Sanitation Program in Zimbabwe, 15 000 new water points were created in the late 1980s to extend water services in rural areas. The system of maintenance for these mainly hand-pump operated water points was a top-down three-tier system. Under this arrangement, the District Development Fund (DDF), forming part of the Ministry of Energy and Water Resources and Development, carried out provision and maintenance of rural water supplies. The DDF would field District Maintenance Teams, with pump minders responsible for a number of community water points, and a caretaker would be at each point. When demand was fairly low, and funds were relatively available, the three-tier system worked. However, as the number of water points increased rapidly and funds dwindled, severe constraints emerged. Average allocations to the DDF for operation and maintenance of water points shrank from Z\$120 per water point in 1988-1989 to Z\$47 in 1994-1995.

As the numbers of water points increased and existing water points started to age, the system put in place for maintaining the pumps became inadequate. While it was intended that there be a pump minder employed by the DDF for each ward, this was not achieved, so that a single pump minder was responsible for the water points in as many as five wards. This has led to long periods during which water points are not functional.⁶⁶

Under this complex institutional decentralised scheme, case studies revealed that once the pump was broken, people often had to wait for long periods until repair. An interview with a woman in the area provided the following testimony:

It took up to four months for the borehole to be repaired by DDF once it was reported that it had broken down. As required, we gave the councillor and the pump minder the report of the breakdown, and they said, "we heard your case but we will wait for the monthly meeting in Chiredzi and then report the case to Council and DDF." After that it took four, and sometimes five months, for us to see the borehole repaired. It seems as if DDF needed to hold a series of meetings to understand that we wanted water, and then another monthly meeting to decide what was needed, another monthly meeting to buy the necessary equipment, and another monthly meeting to decide who will come and repair the borehole. Then another monthly meeting to get the person to Gudo and actually repair the borehole ... But here we need water on a daily basis.⁶⁷

9.9 Requiring landlords, employers and health and educational institutions to provide access

In situations where households rent their accommodation, implementing the right requires the imposition of obligations on landlords to provide water and sanitation. The two main challenges are: first, to impose an appropriate standard and second, to ensure it is enforced. High standards can lead to unaffordable housing and even lead to evictions of the tenants. Standards will need to take into account, first, the ability of residents to afford the charges for water and sanitation and, second, any subsidy that the relevant level of government is able to provide for the extension of services and for consumption. Thus, in low-income informal settlements, landlords may be required to provide a toilet for every group of households, whereas in formal housing, landlords may be required to provide toilets within each unit. Ensuring the enforcement of rental standards, particularly for informal settlements, requires co-operation from communities in the area who can provide necessary information for monitoring. It is also necessary that subsidies provided for water and sanitation are well publicised and transparent in order to prevent situations in which rents include the full price for the subsidy and the financial benefit accrues to the landlord.

⁶⁶ Sobona Mtisi & Alan Nicol, *Water Points and Water Policies: Decentralisation and Community Management in Sangwe Communal Area, Zimbabwe*, Research Paper 15, March 2003, Sustainable Livelihoods in Southern Africa Programme, (Institute of Development Studies, University of Sussex, 2003), p. 5.

⁶⁷ Ibid., p. 10.

In the case of employers, workplace standards need to ensure that employers provide employees with free access to safe and sufficient water and sanitation facilities within the immediate vicinity of the workplace (See Section 9.1 above for such relevant standards). Governments may need to provide assistance, particularly for the informal economy, for example in the form of land for toilet and washing facilities in markets. Similar principles apply to health and educational institutions, which need to provide workers and patients with access to water and sanitation. Government bodies may need to assist such institutions, particularly where they serve low-income communities, if they are not in a position to provide or afford adequate services (See Chapter 5, Section 5.6).

9.10 Establishing response systems for emergencies

General Comment No. 15 indicates the need for establishing “*response mechanisms for emergency situations*”.⁶⁸ Emergency situations are those caused by natural disasters, such as drought, hurricanes as well as situations caused by conflict, such as internal displacement.⁶⁹

Preparations for such situations could involve:

- Identifying potential emergency situations, and the appropriate contingency plans.
- Allocating clear responsibilities to government agencies for emergency provision of water and for construction of emergency water supply and toilet facilities.
- Ensuring that the responsible actors allocate a sufficient percentage of their budgets to emergencies.
- Considering, at an inter-ministerial/inter-departmental level, means to prevent emergencies.

In cases of emergency, the minimum amount of water to be provided may need to be lower than that which is generally required. Basic provisions for emergencies, as suggested by the Sphere Project⁷⁰, are presented in Box 9.13:

BOX 9.13: SIMPLIFIED TABLE OF INDIVIDUAL BASIC SURVIVAL NEEDS IN EMERGENCIES (SPHERE STANDARDS)

| | | |
|--|-------------------------|---|
| Survival needs: water intake (drinking and food) | 2.5 - 3 litres per day | Depends on: the climate and individual physiology |
| Basic hygiene practices | 2 - 6 litres per day | Depends on: social and cultural norms |
| Basic cooking needs | 3 - 6 litres per day | Depends on: food type, social as well as cultural norms |
| Total basic water needs | 7.5 - 15 litres per day | |

⁶⁸ General Comment No. 15, para. 44. (c).

⁶⁹ For further information, see Jan Davis and Robert Lambert, *Engineering in Emergencies - A Practical Guide for Relief Workers*, 2nd Edition (ITDG Publishing, 2002).

⁷⁰ Humanitarian Charter and Minimum Standards in Disaster Response, The Sphere Project, <http://www.sphereproject.org/>.

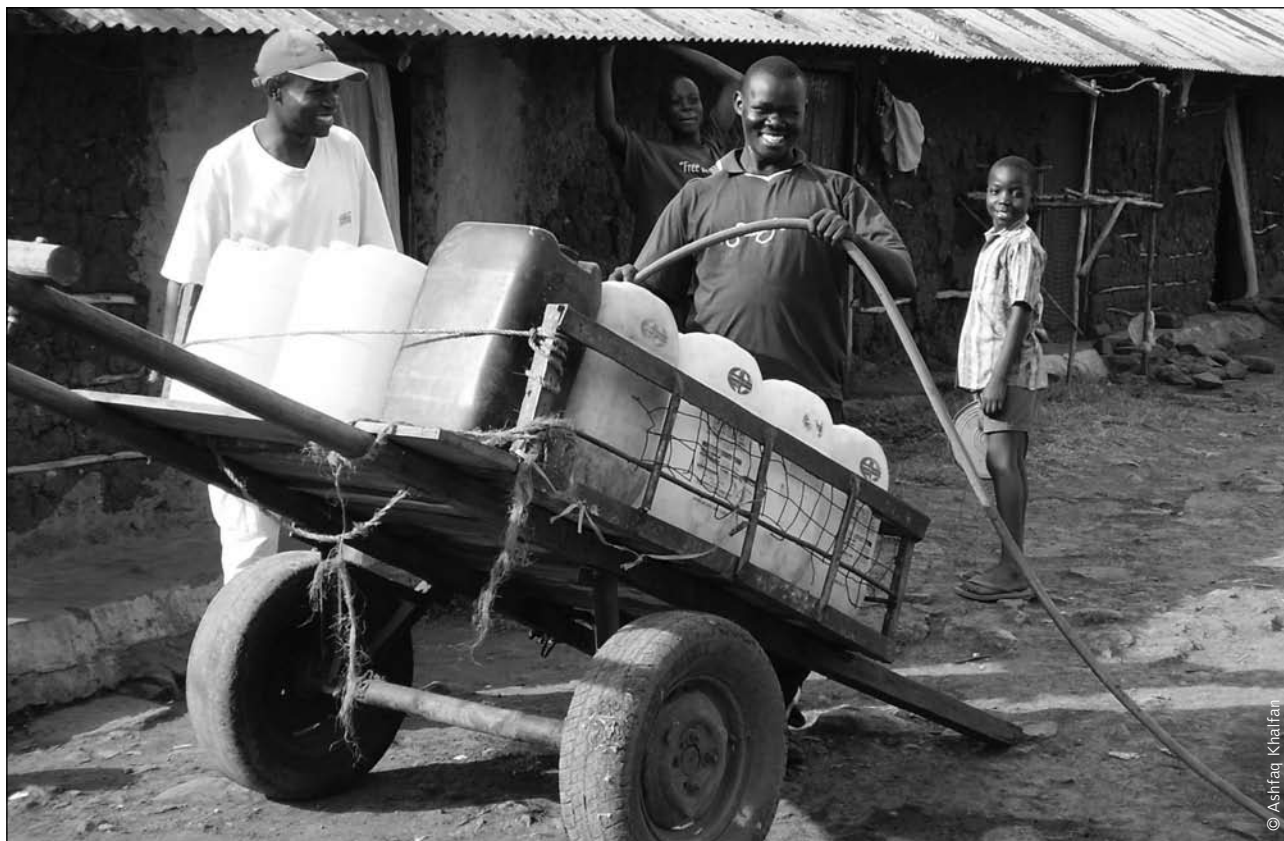
The South African Water Services Act includes a legislative provision that addresses such situations, stating that:

In emergency situations a water services authority must take reasonable steps to provide basic water supply and basic sanitation services to any person within its area of jurisdiction and may do so at the cost of that authority.⁷¹

CHECKLIST FOR PHYSICAL ACCESSIBILITY OF WATER AND SANITATION

1. Are there targets on minimum distance to a water point and toilet? Are there requirements on adequate forms of access? Are there any policy provisions or programmes to ensure physical security when accessing water and sanitation?
 2. What is the proportion of the population without access to improved drinking water and sanitation and what has been the decrease in this proportion in the last five years? Are there targets for the next five years?
 3. Are there targets for extension of access to water and sanitation services per locality? Are there particular targets for water-scarce regions and informal settlements? Are there regulations, monitoring mechanisms and programmes to ensure their implementation?
 4. Is there provision for people without basic access to water and sanitation to receive emergency assistance for this purpose? What is the proportion of the population in this situation?
 5. Do regulations facilitate the establishment and operation of small-scale services, where such provision is appropriate? Are there programmes to provide government assistance to small-scale providers?
 6. Are there procedural and substantive protections against exclusion from water and sanitation?
 7. Are services provided in informal settlements? Are there regulations and programmes in place to ensure secure tenure in informal settlements?
 8. What percentage of the water and sanitation budget is invested in operation and maintenance?
 9. Are there standards for rental housing that require provision of water and sanitation?
 10. Is there a disaster preparedness plan? Is there a disaster response plan? Do they provide for water and sanitation facilities and services in emergencies?
-

71 Water Services Act, 1997 (Act 108 Of 1997), s. 11 (5). See note 17.



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Chapter 10: Affordability and financing of water and sanitation

A common barrier to accessing a sufficient quantity of safe water and sanitation is the cost involved, in terms of both money and time, leading many to seek cheaper, if less safe, alternatives. The cost of obtaining water and sanitation often reduces the ability of individuals and communities to pay for other essential goods including food, housing, education and health.

In the rural areas of many countries, as the water table changes due to erosion or overuse, and ground and surface water becomes increasingly polluted, traditional sources no longer provide safe water. Deeper wells, involving expensive equipment and a specialised workforce are required to improve and maintain water supplies. In urban areas, large numbers of residents, (primarily those in informal settlements) are excluded from the piped network, forcing them to turn to alternative supplies of water delivered by small-scale providers that can be unreliable and unsafe – in some cases originating from shallow wells or surface water, which is likely to be polluted. This water generally costs more per litre than water provided by municipal water companies. This has led to inequitable access to resources, with the poor paying significantly more per litre for an inadequate service than their richer counterparts in serviced areas. Those who do not rely on small-scale providers rely either on wells or on surface waters that are likely to be contaminated, or they are forced to travel long distances to secure supplies from alternative piped sources. The affordability of sanitation is equally a challenge, primarily the high cost of connecting to a sewerage system or of constructing and maintaining a latrine.

Therefore, a critical policy choice for any government to ensure adequate access to domestic water and sanitation services is deciding how to finance their construction and maintenance, and subsequently how to structure pricing policies to finance their operation. While the right to water and sanitation does not dictate specific pricing levels, it is clear that some commonly utilised policies are more likely than others to ensure that water and sanitation are affordable to all.

In some countries, private entrepreneurs are expected to provide rural water and sanitation services, but often suitably experienced organisations or companies are not available to carry out this work or it is too expensive for communities to pay for. Governments will need to provide adequate technical and financial support.

Currently, there is increasing pressure on governments to recover a greater proportion of the costs of water and sanitation services, in order to ensure that water services pay for themselves and do not require significant input from the national budget. Cost recovery is an important mechanism to ensure reliability of financing for water and sanitation services, but when not accompanied by measures to ensure affordability, such developments can affect the realisation of the right to water and sanitation. Where coverage is still limited, full recovery of water service costs is generally not realistic, particularly in the short-term where there is a need for significant investments to extend services to those that lack them. It is increasingly being recognised that full cost recovery is also not realistic in the medium- or long-term for certain sectors of the population and that subsidies have to be provided and properly targeted at those who cannot afford to pay the full cost for essential services.¹

Cost recovery has also been motivated in many cases by an attempt to make water services attractive for private investors, raising significant concerns that profit-making from water services will undermine affordability.² Economic pressures and the positions of international financial institutions have increased the expectation that water providers price water at a level that reflects the actual costs of provision. These costs to an institution providing water include the costs of ensuring adequate treatment of water, and of extending and maintaining a water delivery infrastructure. In addition, there is growing pressure to price water in order to reduce unnecessary consumption – as a means to ration scarce water, to minimise overall costs, and to minimise the environmental consequences of procuring water and treating wastewater.

As indicated in Chapter 1: Water and sanitation challenge, the failure to ensure access to water and sanitation has significant costs that far outweigh the costs of providing water and sanitation. Beyond the recognised cost to health, there is also a reduced likelihood that children will be able to attend school, particularly girls, and the cost to the economy of poor health and education. These costs are transferred not only to the individuals who lack sufficient safe water and sanitation, but also onto the government and onto society, which suffers from the lack of productivity arising from a poorly educated and unhealthy population.³

The affordability criterion indicates that water and sanitation services cannot be funded entirely through cost recovery. Indeed, the vast majority of water and sewerage networks globally were financed through public investments, rather than through user charges. This chapter considers the manner in which water and sanitation services can be financed, particularly in countries with low levels of access, in a manner than can most effectively implement the right to water and sanitation and which is economically and environmentally sustainable.

1 UNDP, *Beyond Scarcity: Power poverty and the global water crisis: UNDP Human Development Report 2006* (New York, 2006). p. 97. Available at <http://bdr.undp.org/bdr2006/>

2 See Chapter 4: Roles of key actors, Section 4.3.

3 A. Jouravlev, *Drinking water supply and sanitation services on the threshold of the 21st century*, Natural Resources and Infrastructure Division of the Economic Commission for Latin America and the Caribbean (ECLAC), (Santiago, Chile, December 2004), pp. 18-24, <http://www.eclac.org/publicaciones/default.asp?idioma=IN>.

HOW GOVERNMENTS CAN ACT TO ENSURE AFFORDABILITY

- 10.1 Setting standards for water and sanitation pricing according to the ability to pay, to ensure that payment for water, including indirect costs, does not reduce a person's ability to buy other essential goods and services.
- 10.2 Designing, monitoring and controlling charges by water and sanitation utilities and small-scale service providers to households, schools, health institutions and workplaces.
- 10.3 Prioritising available public investment towards the construction and maintenance of water and sanitation infrastructure and facilities and subsidising these costs for low-income users.
- 10.4 Reducing costs of securing access by ensuring that a broad range of levels of services and facilities are available and ensuring the potential for progressive upgrading.
- 10.5 Establishing flexible payment terms, such as phased connection charges, removal of requirements for deposits, grace periods and contributions in kind, based on participation of users, in particular low-income users and vulnerable and marginalised groups.
- 10.6 Providing subsidies for water and sanitation services that targeted towards the lowest income, vulnerable and marginalised persons.
- 10.7 Increasing public financing for subsidy programmes for the poor through measures such as:
 - cross-subsidies between higher and lower income groups
 - reducing high-cost interventions
 - eliminating subsidies that primarily benefit upper and middle income groups
 - ring-fencing of water and sanitation revenues
 - improving efficiency
 - increasing national budgetary allocations
 - better targeted and increased international assistance.
- 10.8 Reviewing laws, regulations and taxes that may raise costs beyond affordable levels, for example taxation of equipment required for service provision, in particular small-scale provision.
- 10.9 Integrating ability to pay considerations into disconnection policies and ensuring that where disconnections are carried out, they do not lead to denial of the minimum essential amount of water.

10.1 Establishing a standard for affordability

General Comment No. 15 states:

*Water, and water facilities and services must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable and must not compromise or threaten the realization of other Covenant rights.*⁴

The Sub-Commission Guidelines indicate that sanitation services, as well as water services, “*should be supplied at a price that everyone can afford without compromising their ability to acquire other basic goods and services*”.⁵ The guidelines therefore indicate that the price of water and sanitation takes into account the ability to pay and that payment, including indirect costs, does not reduce a person's ability to buy other essential goods to which they have a human right, including food, housing, education and health.⁶ If a family has to choose between paying for water and paying for health care, then water costs (and probably health costs) are not affordable.

⁴ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003), para. 12(c)(ii).

⁵ United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, section. 1.3(d).

⁶ See for example Nicaragua's Decree No. 118-2003 Framework Law for the Drinking Water and Sanitation Sector (2003) art. 36.

BOX 10.1: WHAT ARE WATER AND SANITATION COSTS?

| What are water costs? | What are sanitation costs? |
|--|---|
| <p>Water costs include expenses of:</p> <ul style="list-style-type: none"> • Self-access: e.g. digging wells, buying storage containers • Access to a network: e.g. connection fees • Maintaining access: e.g. monthly fees/pump repair • Water tariffs for piped water/charges at kiosks. | <p>Sanitation costs include expenses of:</p> <ul style="list-style-type: none"> • Self-access – digging pit latrine, purchasing necessary hardware • Maintaining access • Paying for pit emptying services • Connecting to sewerage system • Sewerage tariffs. |

Affordability is not only a concern for households, but also for educational institutions and health institutions.⁷ Affordability of water and sanitation is often ignored in these contexts, as if it is available, it is normally provided free. However, the costs are also passed on to users indirectly, for example through education or hospital fees. It is necessary to ensure that education and health institutions can obtain on-site water supply and sanitation without onerously placing the burden on users. Payment for the establishment and operation of water and sanitation services at such institutions may therefore need to be charged at subsidised rates.

BOX 10.2: A RIGHT TO FREE WATER?

Does the human right to water and sanitation mean free provision of these services? Some advocates argue that since water is essential to human life it should be free for all, or at least for the poor. There is also a concern that the commoditisation of water will allow gradual increases in the cost of water over time. Some countries, such as Colombia have explicitly adopted a free water policy for certain geographical areas (see Box 10.9). In South Africa, the first six cubic metres per household per month are provided free of charge, in order to ensure that the most vulnerable have adequate access to a basic minimum amount of water.

However, General Comment No. 15 does not stipulate that water should be free, but rather that it is affordable. General Comment No. 15 does recognise that free water is one method by which a government may implement the right, stating that in order “to ensure that water is affordable, State parties must adopt the necessary measures that may include... appropriate pricing policies such as free or low-cost water”.⁸

⁷ General Comment No. 15 para. 12(c)(ii), Sub-Commission Guidelines, section. 1.3. (a).

⁸ General Comment No. 15, para. 27(b).

BOX 10.3: WATER PRICING: SOCIAL, ECONOMIC AND ENVIRONMENTAL SUSTAINABILITY

General Comment No. 15 states: “Water should be treated as a social and cultural good, and not primarily as an economic good”.⁹ General Comment No. 15 indicates that water should be priced so that all persons, including the poor, can afford an adequate supply of safe water. It also indicates that “The manner of the realisation of the right to water must be sustainable, so as to ensure that the right to water can be realised for present and future generations.”¹⁰ Charging for the use of water above the essential amount is one means of ensuring water services are also environmentally sustainable. This would suggest that it is necessary to price water in such a manner to discourage wasteful consumption. From an economic perspective, water services need to be paid for, either from user payments or from public funding. From a human rights perspective, public funds need to be directed towards extension of service for the poor and for ensuring that such service is affordable. This requires that those who can pay for the cost of water and sanitation do so. According to the United Nations High Commissioner for Human Rights,

*the affordability requirement is not incompatible with the principle of cost recovery for water and sanitation services, which is also recognized in several international declarations. However, it defines limits to cost recovery and highlights the fact that it should not become a barrier to access to safe drinking water and sanitation, notably by the poor.*¹¹

BOX 10.4: INTERNATIONAL STANDARDS ON AFFORDABILITY OF WATER

The principle of affordability is recognised in a number of political declarations by governments. In the Johannesburg Plan of Implementation (JPOI), concluded at the 2002 World Summit on Sustainable Development, governments agreed to develop water efficiency plans by 2005, with support to developing countries, through a number of actions. One of the listed actions was to:

Employ the full range of policy instruments, including regulation, monitoring, voluntary measures, market and information-based tools, land-use management and cost recovery of water services, without cost recovery objectives becoming a barrier to access to safe water by poor people... (para. 26 (b)).

In Agenda 21, concluded at the 1992 Rio Conference on Environment and Development, governments agreed that, “in developing and using water resources, priority has to be given to the satisfaction of basic needs and the safeguarding of ecosystems. Beyond these requirements, however, water users should be charged appropriately (para. 18.8).”

In addition to these political declarations, the Dublin Statement on Water and Sustainable Development was also an influential document. It was adopted in 1992 by a conference comprising government-designated experts and representatives of international and non-governmental organisations. The conference proposed:

Water has an economic value in all its competing uses and should be recognized as an economic good. Within this principle, it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price. Past failure to recognize the economic value of water has led to wasteful and environmentally damaging uses of the resource. Managing water as an economic good is an important way of achieving efficient and equitable use, and of encouraging conservation and protection of water resources.

9 General Comment No. 15, para. 11.

10 General Comment No. 15, para. 11.

11 *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, (2007) UN Doc. A/HRC/6/3, para. 28, available at: www.ohchr.org ('Your Human Rights' > 'Human Rights Issues' > 'Stakeholder views' below the Water heading).

Determining whether water and sanitation costs are affordable requires the use of suitable indicators and statistical or qualitative information. Rather than referring to the price of water and sanitation in the abstract, demonstrating that it is affordable requires a comparison to household expenditures in practice, which can be a complex exercise particularly in rural areas within a mixed cash / non-cash economy. Specific international standards for affordability have not however been defined – this is a difficult task due to national variations in the costs of essential goods. Affordability standards need to be considered at the national level while recognising regional differences. General Comment No. 15 provides that, “*right to water indicators should be identified in national water strategies or plans of action*”.¹² In the first instance, therefore, affordability standards for the implementation of the right to water and sanitation need to be determined at the national level. A range of figures has been suggested to determine affordability – between 1 percent and 5 percent.¹³ The 2006 Human Development Report suggests a limit of 3 percent.¹⁴ This level of expenditure may not be appropriate in all countries and needs to be agreed upon within each country. However, it is clear that the average of 10 percent of household income paid by the poorest 20 percent of households in Jamaica, El Salvador and Argentina is not affordable.¹⁵ (See Box 10.5: Affordability standards in the United Kingdom and Indonesia.) Affordability standards could also be usefully established within each region or locality based on tariff studies that take into account the socio-economic profile of the population. In rural areas and in most urban informal settlements, the cost of water will be further increased by the cost of collecting water in terms of time and health, and this would need to be reflected in the affordability standards for small-scale facilities such as stand-pipes.

An assessment of the ability of low-income groups to pay for water and sanitation services would need to take account of the following factors:

- All relevant water and sanitation costs, including connection charges.
- Costs of other essential goods and services.
- Inflationary increases in costs.
- Different income and debt levels (particularly poorer groups).
- Seasonal and changing/irregular income levels (such as for unemployed and agricultural and informal sector workers).
- Regional and local diversity in costs and incomes.
- Average levels of water use by members of vulnerable groups (such as those with medical conditions).
- Average family size.
- Any subsidies provided by the State, including subsidies to water and sanitation costs and social grants.

Once indicators are ascertained, standards and targets can be set to denote the affordability indicators to be achieved, whether immediately or over time. The most critical target will be to ensure affordability of the minimum amount of water sufficient for essential personal and domestic uses and to prevent disease.¹⁶ Targets for affordability for water and sanitation cannot be set in isolation, and will need to form part of an overall government strategy for determining targets for affordability for other rights, including food, housing, education and health.

While human rights standards focus on the ability to pay, it may be necessary for affordability standards to also take into account ‘willingness to pay’ where it is lower than the ability to pay. Unwillingness to pay may occur due to lack of awareness as to the benefit of water from high-quality sources, such as piped sources and on the benefits of adequate sanitation facilities. Lowering the threshold target for water and sanitation costs may be necessary to help induce willingness to pay, at least for basic access and in the short-term. Inducing ‘buy-in’ by users, can help expand public services and potentially achieve greater economies of scale. Ensuring that costs are at a level commensurate with willingness to pay also has positive public health and economic implications.

12 General Comment No. 15, para. 53.

13 See C. Sullivan et al, ‘Derivation and Testing of the Water Poverty Index’, Phase I Vol. I 2002, and Seminar on the Regulation of Public Utilities. “Water and Electricity”, Santiago, Chile, 18-19 October 2005. ECLAC.

14 *Beyond Scarcity*, see note 1, pp.11, 97.

15 Ibid., p. 51.

16 General Comment No. 15, para. 37 (a).

Affordability standards and targets can be applied to:

- Levels of contribution required from households for establishment of services (networks or small-scale).
- Water and sewerage tariff pricing.
- Designing interventions to reduce the operational costs of small-scale provision (for example through provision of subsidised water and sewerage costs to small scale providers conditional upon a set price being charged, or facilitating registration of small-scale providers).
- Setting minimum income levels or establishing social security safety nets/social grants (which would need to account for costs of securing all human rights).

BOX 10.5: AFFORDABILITY STANDARDS IN THE UNITED KINGDOM AND INDONESIA

United Kingdom

The Department for the Environment, Food and Rural Affairs determined that consumers should not spend more than three per cent of their income on water and that expenditure between one and a half percent and three percent of income was 'of concern'.

An independent research centre also arrived at this figure by examining British household expenditure surveys of poorer groups and individual cases. Using this figure they found one-sixth of households spent in excess of this amount.¹⁷

Indonesia

In 2006, Indonesia stipulated that tariffs in publicly-owned water companies would be affordable in comparison to the purchasing power of users have the same income as the minimum wage. The principle of affordability was met if the charge for the basic need for drinking water did not exceed four percent of the income of the users.¹⁸

Expenditure versus income

As many poor households do not have a regular income, calculating water and sanitation costs as a percentage of income can be extremely difficult. As a result, calculations of affordability measure the cost of water and sanitation services against household expenditure, which tends to be a more realistic and constant measure.

BOX 10.6: INDEXING OF TARIFFS TO THE US DOLLAR

In several cases, multinational private sector management of water services has been accompanied by indexing of tariffs to the US dollar rather than to the local currency in order to ensure stable revenues. This often occurs without taking into account local affordability, contributing to tariff increases. The same result may occur when a water and sanitation service provider contracts loans in a foreign currency. It is necessary to ensure that affordability is not made conditional upon the stability of the currency.

17 Fitch & Price, *Water Poverty in England and Wales*, (Centre for Utility Consumer Law, July 2002), <http://www.puaf.org.uk/docs/news/WaterPovertyFinaldraft.pdf>.

18 Indonesia Regulation No. 23/2006 on technical guidance and procedures for regulating tariff of drinking water in regional administration-owned drinking companies, stipulated on 3 July 2006, art. 3.

10.2 Designing, monitoring and controlling charges by service providers

The Sub-Commission Guidelines indicate:

States should at all levels of government ... Establish a regulatory system for private and public water and sanitation service providers that requires them to provide physical, affordable and equal access to safe, acceptable and sufficient water and to appropriate sanitation and includes mechanisms to ensure genuine public participation, independent monitoring and compliance with regulations.¹⁹

General Comment No. 15 states:

Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water.²⁰

Regulatory bodies normally have responsibility for approving tariffs charged by water and sewerage utilities. Such bodies have a key role in monitoring and controlling such charges so that they are consistent with affordability standards.

Designing the tariff system for piped water supply and sewerage is an important aspect of promoting equitable access to water and sanitation, and ensuring that services remain affordable to all. A range of tariff options is available, some of which are discussed in Box 10.8. There is a crucial caveat to this - these tariffs are clearly only applicable to those who have a connection to the piped water and sewerage system. A special system needs to be put in place for small-scale provisions utilised mainly by low-income residents in many urban and rural situations.

Once a tariff system has been designed, it is relatively straightforward to monitor it. However, in situations in which there are inflated bills, or charges for services not provided, there is a need for the regulator to consider complaints by users. Complaint mechanisms also need to be robust enough to ensure that they are acted upon. For further details, see Chapter 4: Roles of key actors, Section 4.1.12.

The prices that small-scale providers charge for water are invariably higher than the prices per litre charged by utilities serving household connections. This price primarily reflects the additional cost of maintaining a water point, as well as the cost in terms of time to the vendor or attendant. In some cases, however, the costs can be inflated due to cartel-like behaviour by small-scale providers or in times of drought or rationing, where prices charged can be increased significantly beyond the operating costs. Sanitation services provided by small-scale providers, in rural as in urban areas - such as latrine construction and exhaustion and pay-per-use (per month) toilets - are normally provided on a market basis with low profit margins. There may be a risk of profiteering by landlords who provide services in which costs are included within rents, or by public toilet owners engaging in cartel behaviour.

Addressing affordability in small-scale provision can involve the following:

- Facilitating the operations of small-scale sanitation providers (Chapter 9: Physical accessibility, Section 9.3), which will generally reduce costs, and therefore the price charged.
- Fixing a price for small-scale provision of water, taking into account the specific costs of small-scale provision (as well as available government subsidies) thus allowing the provider to meet the operational costs and make a reasonable profit.

¹⁹ Sub-Commission Guidelines, section. 2.3 (e). This point is also made in regard to private water service providers.

²⁰ General Comment No. 15, para. 24

- Setting a cheaper price for small-scale providers to purchase bulk water and sewerage tariffs from the public service providers. This would have to be accompanied by a condition that the service provider charges no more than a set price for water and access to a toilet/shower block to their customers, in order for the subsidy to benefit users rather than the profit margins of the provider. In addition, it would be necessary for the provider to be required to not sell subsidised water to those operating tanker services (where such services are used primarily by the non-poor).

Governments generally do not monitor the charges of small-scale providers of water and of paid toilets and shower blocks (and the charges imposed by landlords on tenants for a shared toilet). Such an activity is complicated due to the difficulty of monitoring and also the wide range in operating costs of small-scale providers, but is necessary in certain conditions. However, it may be possible for prices to be regulated, particularly in urban settings and in relation to kiosks and stand-pipes (as compared to mobile vendors), through a participatory process involving the relevant government bodies, community representatives and small-scale providers. There will need to be some form of registration of the providers in order to regulate them adequately. Where government-stipulated prices are transparent and widely advertised, it is more likely that users will be in a stronger position to refuse to pay higher prices to small-scale providers.

BOX 10.7: KIOSK SYSTEMS IN LUSAKA, ZAMBIA ²¹

In Lusaka, the government established water kiosks to distribute water into informal and low-income settlements. Attendants selected by the users residing next to each water point operated the kiosks. The tariff was fixed to ensure affordability and a reasonable profit margin for the vendor. The continuation of the contract between the kiosk attendant and the utility was dependant upon the attendant's compliance with a number of conditions, including:

- maintaining facilities in a hygienic state
 - refraining from charging more than the set tariff
 - prominently displaying these conditions on the wall of the kiosk.
-

10.3 Prioritising public investment on extension and maintenance of services and facilities, especially for low-income groups

General Comment No. 15 states that: “*States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society.*”²² Further to this, governments’ obligations include “*facilitating improved and sustainable access to water, particularly in rural and deprived urban areas*”²³ and “*States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.*”²⁴

The Sub-Commission Guidelines indicate that:

*States should subsidize water and sanitation services for low-income households and poor areas that lack the means to secure access to such services. Subsidies should normally be used for connection to distribution networks or for the construction and maintenance of small-scale water supply and sanitation facilities, such as wells, boreholes and latrines.*²⁵

(See also Chapter 5: Non-discrimination and attention to vulnerable and marginalised groups, Section 5.3.)

²¹ GTZ *Handbook for the provision of potable water in peri-urban areas* (2002).

²² General Comment No. 15, para. 14.

²³ General Comment No. 15, para. 26.

²⁴ Ibid., para. 29.

²⁵ Sub-Commission Guidelines, section 6.2.

The 2006 Human Development Report suggests that governments aim to spend a minimum of 1 percent of GDP on water and sanitation.²⁶ Extension of services requires the bulk of such available funding. Previous approaches aimed to cover all costs of operation, maintenance and new construction through service charges – known as ‘full cost-recovery’. There is now broad consensus that this not realistic, particularly in countries where coverage is still limited. In Mauritania and Mozambique, for example, it is estimated that poverty could increase by 7 percent if charges were increased to cover full cost-recovery.²⁷

Most subsidies for water are delivered through under-pricing of tariffs in piped water systems. However, these tend to exclude the poorest residents, who frequently do not have household level connections. As connection charges tend to be prohibitively high, connection subsidies will be the most appropriate way of improving access for people with low incomes. The connection subsidy would then cover the costs to the utility for supplying pipes, essential hardware and the labour costs involved. Where a small-scale service rather than a household connection is established, the subsidy could also include the construction of a small-scale water and sanitation facility, and the start-up costs of hiring/licensing an operator. (See also Chapter 9: Physical accessibility, Section 9.3 which deals with small-scale providers.)

It is generally necessary to ensure that the utility gains revenue from extending services. A policy that required utilities simply to reduce connection costs in order to increase affordability to poorer residents, would create a disincentive for the extension of networks to low income areas. The expectation of future returns is generally not a sufficient incentive for a utility to extend services, and it is necessary to consider subsidies, for example, per connection subsidies. However, it would normally be necessary to establish some criteria for this subsidy to target low-income persons. Targeting for income is not difficult for connection subsidies; criteria can be based on the value of the home to which a connection is being made, as a proxy indicator of income. (See also Section 10.6.1. on targeting the poorest.)

Measures that require affordable tariff pricing of water can, if not structured properly, create disincentives to extend water services. For example, regulations that require companies to charge on a sliding scale according to income or which require a certain amount of low-cost water are likely instead to lead to improved water services in more affluent areas. Similarly, block tariff pricing creates an incentive to provide supply to high-volume users that generate more revenue per drop. Therefore, counter-balancing measures are necessary to ensure the extension of services. One option is for the government to ensure that the contracts or mandates of service providers included specific targets for extension of access to low-income areas (accompanied by subsidies for such extension). In addition, permitting and/or requiring the use of cross-subsidies will also mitigate the incentive to serve high-income areas.

In rural areas, financing of water and sanitation services can rely even less on financial payments by users than in urban areas. Cross-subsidies may also not be realistic where there are not sufficient numbers of middle- or high-income inhabitants. It is particularly necessary to consider other forms of contribution, such as labour or skills, as an alternative to cash payment for the construction and maintenance costs of the facilities. In addition, general government budgets will need to provide significant resources to finance the provision of services in rural areas. (The different forms of technology for urban and rural areas are discussed in Chapter 9: Physical accessibility, Section 9.2.)

In both urban and rural areas, it is necessary to ensure that where new infrastructure and facilities are established, provision is made for adequate maintenance. This is addressed in Chapter 9: Physical accessibility, Section 9.8.

²⁶ *Beyond Scarcity*, see note 1, p.9.

²⁷ *Beyond Scarcity*, see note 1, p.97.

10.4 Reducing connection costs by providing a range of levels of service and facilities

The Sub-Commission Guidelines state: *“Where public resources cannot guarantee high-quality services for all, States should offer a range of services, including low-cost technology options, to promote affordable access for low-income households.”*²⁸

As discussed in Chapter 9: Physical accessibility, Section 9.2, an approach to extension of access focusing solely on household connections may be inappropriate in low-income countries as it would reach a limited number of users. In addition, connection and construction costs and requirements for a deposit tend to exclude low-income users from access to household connections. If these were the only options offered, the result would be to exclude the poorest. For this reason, it is necessary to make a range of services available to users, including access to small-scale facilities such as kiosks and public toilets.

Providing a range of options is only an interim solution, as in the medium and long-term, household/yard connections remain an important goal as they lead to increases in levels of health, decrease time taken to access water and sanitation. They also have important affordability implications, as costs per litre of water are higher for small-scale facilities than for household connections. For example, in Dakar, households using standpoints pay three times per litre than do people living in the same city with direct access to the utility.²⁹ Post construction, household toilets are cheaper per use than a public toilet, since it is not necessary to hire an attendant.

However, while a household connection will lead to a reduction in the cost of water per litre, total household costs of water use may remain constant or increase due to higher levels of consumption. Higher costs may be affordable to a household in view of the benefits in terms of health and time saved. However, in order to avoid disconnections, it is necessary to consider flexible payment systems (Section 10.5), targeted tariff subsidies (Section 10.6) as well as protections against disconnections (Section 10.9).

10.5 Establishing flexible payment terms

One of the problems for poor people accessing water is the lack of income available for making one-off payments, (such as a connection charge, or a contribution to capital costs) or for making monthly payments for water and sanitation services or towards maintenance costs. This is particularly the case where poor people are employed on a seasonal, daily or weekly basis or where income is unpredictable. There is also a problem, especially in rural areas where the local economy is largely a non-cash subsistence economy. In the case of utilities, reductions in connection charges (Section 10.3) and consumption subsidies (Section 10.6) can help mitigate this problem. However, as recognised by the Sub-Commission Guidelines, *“States should ensure that they have, appropriate water and sanitation pricing policies, including through flexible payment schemes and cross-subsidies from high-income users to low-income users”*.³⁰

Such financing arrangements could include some or all of the following options:

- Phasing-in of the connection charge over time.
- Removing requirements for a deposit for connection to a network (which could be substituted by requiring only indication of ability to pay).
- Accepting late payment.
- Allowing prepayment.
- Permitting payment of tariffs over time by lower income and irregularly employed users.
- Finding equitable ways of allowing payment on a daily or weekly basis.
- Making payment points more locally accessible, rather than having one central payment point, thus reducing the cost to the user (in terms of transport costs and time) of making payment.

28 Sub-Commission Guidelines, section 6.3. General Comment No. 15 indicates in this regard that: *“To ensure that water is affordable, States parties must adopt the necessary measures that may include, inter alia: (a) use of a range of appropriate low-cost techniques and technologies ...”*, para. 27.

29 *Beyond Scarcity*, see note 1, pp.10, 84.

30 Sub-Commission Guidelines, section 6.1.

- Allowing new customers a month's grace period to become accustomed to new charges and providing a bill to show the normal level of charging.
- Instigating consumption based charges rather than fixed charges.³¹

The latter option would require the installation of a meter, the cost of which can be a barrier to affordability unless borne by public resources. There is a strong public policy rationale for the cost of meters to be subsidised due to the water conservation benefits.

In rural areas, where the economy may be dominantly non-cash, or a combination of subsistence farming and seasonal income, conditions for contributions will need to take this into account. Alternative arrangements, such as payment in-kind by contributing labour or skills to the construction and maintenance of the facilities, are commonly used. Such water and sanitation schemes will need to make allowances for individuals or households within a community, such as child-headed households or the elderly, who may be unable to make significant contributions.

10.6 Provision of consumption subsidies

Many persons who are on a low-income are unable to afford water prices. As discussed in Section 10.3, it is normally necessary to provide subsidies for the extension and maintenance of water and sanitation services and facilities. This is the most appropriate form of subsidy for low-income households, as it will ensure more affordable regular charges for water and sanitation. However, a significant proportion of low-income households will not have sufficient income to bear the costs of recurrent charges for water and sanitation, particularly where these costs reflect a significant part of the cost of provision. This problem can only be expected to increase as economic and environmental sustainability imperatives increasingly require charging for a greater proportion of the cost of providing water and sanitation. The challenge will be to ensure that 'social sustainability,' in the form of affordable access, is given equal importance to measures that aim to secure economic and environmental sustainability.

Subsidies aiming to guarantee access to at least essential amounts of water for domestic consumption, are one way of addressing this problem, but they need to be well designed in order to reach their desired targets. Subsidies could apply to low-income households, to small-scale services likely to be used by low-income persons, to areas populated predominantly by low-income communities or to the general public – the latter assisting even those who can afford to pay the full cost for water and sanitation services.³²

Unfortunately, subsidies seldom reach the target population for a variety of reasons, some of which are politically motivated, and some due to a lack of understanding of how people live and how they access essential services. Some of the factors leading to mis-targeted subsidies are:

- Target groups are not informed of the availability of a subsidy.
- Consumption subsidies in most countries are provided only to people connected to networks, even though in many countries this population is in the minority and tends to be the better-off sector of the population. In some cases they are provided only to those with household connections, thus excluding those who rely on kiosks, standpipes or public toilets. Often, due to an increasing block tariff structure, consumption subsidies do not benefit multiple households sharing one water point.
- There is excessive paperwork or a requirement for specific pieces of documentation that low-income persons may not have.
- Subsidies are available only to those who have secure land tenure or who are registered at a fixed address, thus excluding those living outside the formal legal system and primarily benefiting middle-income residents who live in formal housing.
- Those who are responsible for allocating subsidies engage in corrupt practices.
- Lack of involvement of representatives of the target groups in the design of the subsidy.

31 UK, Water Service Act, 1999 (article 11): "In general, tenants have the same rights as any other consumers to choose the basis on which they are charged for water and sewerage services."

32 See for example Chile's National Resource Policy (1999) s. 3.4.

Those who are connected to water service, but not to sewerage networks are often disadvantaged by cross-subsidies between water and sanitation services. Such cross-subsidies are normally put in place due to the lower willingness of many persons to pay for sanitation, in comparison to water. This subsidy is appropriate where households have both a water and sewerage connection, but results in persons without a sewerage connection subsidising normally better-off people or households fortunate enough to have such a connection. It is therefore necessary to ensure that cross-subsidies are directed towards small-scale sanitation and not only to sewerage. This occurred in Burkina Faso where a sanitation tax charged on water services was directed exclusively towards on-site sanitation.

Connection subsidies, which remain the most important use of public resources in developing countries, are discussed in Section 10.3 of this chapter. In relation to water and sanitation tariffs, three options that could be consistent with the right to water and sanitation are listed in this section. **These options are not mutually exclusive and indeed, all three could be applied concurrently.** Each option includes a number of variations. Governments would need to choose among these pricing regulations in consultation with the relevant users in each locality, and with reference to the context in a particular country. Subsidy policies need to differentiate between water and sanitation provided through networks and water and sanitation provided through small-scale facilities.

In all cases, it is critical that subsidies are transparent, clearly explainable and widely advertised in order to ensure that those entitled to them claim them, and to reduce the scope for corruption in the allocation of subsidies. A general principle to subsidy policies, from the perspective of human rights, health and long-term economic development, is that a 'mistake of exclusion' is far more serious than a 'mistake of inclusion.'

10.6.1 Income supplements and subsidies based on income, geographic location and forms of access

Targeted subsidies can be provided at the household level based on income. In some cases, household income/expenditure data is not available. In such cases, other indicators such as the form of access (for example whether a small-scale facility is used or the number/size of pipe connections), property value or geographical location can be used to evaluate the economic capacity of users. It may be useful to utilise a mixture of mechanisms. For example, a comparison of subsidy schemes in Chile (based on household income) and in Colombia (based on geographical location), discussed in Box 10.9, suggests that it may be beneficial to provide subsidies automatically in low-income areas, but to permit people outside such areas to apply for subsidies on the basis of their low-income. Targeted subsidies could also be provided to particular forms of access to water and sanitation, such as small-scale facilities, conditional upon a regulated (and widely advertised) price being provided to the users of such facilities.

Advantages

- Where an income supplement or targeted subsidy is provided, households that are not connected to a network, including those living in rural areas, can easily use it.
- Targeting according to income is the only effective way to provide a subsidy to people who are not connected to a network.
- If targeting is precise, it may be possible to recover some of the costs through a cross-subsidy where upper income users are charged at a level above the cost of provision.

Disadvantages

- Targeting schemes that are based on levels of household income or expenditure are costly, requiring administratively labour-intensive surveys. Targeting is especially difficult where there is a large informal economy. (However, it is possible to avoid this disadvantage by providing a subsidy to a low-income area or to forms of access that are more likely to be used by the poor, such as kiosks, stand-pipes and public toilets).
- Targeting is often imprecise. Even sophisticated social security systems can exclude significant numbers of the poorest residents, particularly those living in rural areas, where it may be difficult to keep people informed of their entitlements (see Box 10.9 on Chile).

In rental housing, landlords may capture the benefit of a subsidy, rather than the intended beneficiary. Transparent and clearly advertised subsidies may help to prevent landlords from including the benefit of the subsidy in rental levels. However, where the supply of low-cost accommodation is scarce, rent restrictions may be required.

Subsidies based on form of access or geographical location, while being easier and cheaper to administer, have the drawback of not always being able to differentiate between the poor, who may be able to pay a small amount, and the very poor, who cannot afford to pay more than a nominal sum or anything at all. A number of options could be utilised to ensure access for the very poor:

- Community-rooted self-help programmes might be able to find adequate solutions for the poorest to offer essential levels of access to water and sanitation. Community groups in low-income areas could receive government support that is conditional on their providing such assistance.
- A basic system could be put in place to grant subsidies to easily identifiable vulnerable groups - for example, child-headed households, those suffering terminal illnesses, single parent households. A system of this nature would need to be discussed across government ministries and departments as it could be used for health, education, food and other rights. Such systems are in use in Brazil and South Africa.³³
- Hygiene education, discussed in Chapter 8: Water quality and hygiene, is also relevant. Communities that are fully aware of the health benefits for all of using improved sanitation may be more willing to assist neighbours secure access. *See* Chapter 9: Physical accessibility, Box 9.11 on 'Community-led total sanitation' pioneered in Bangladesh.

10.6.2 Increasing block tariffs (IBT)

Water costs are charged on a sliding scale, with the lowest block charged generally below cost, and successive block amounts of water priced at increasingly higher per unit rates.³⁴ Sewerage charges may be tied to the amount charged for water or are otherwise flat. Under this option, consumption of essential amounts of water is subsidised. If the tariff is well designed, it may also result in subsidies to the poor by middle and upper income users in circumstances where they use larger quantities of water than the poor.

Success of the IBT depends upon the accurate sizing of the initial subsidised blocks. If the quantity is too generous, too wide a segment of the population will benefit from the cheaper water, and many people who could afford to pay at least cost price will receive water at a lower rate. Conversely, care needs to be taken to ensure that poor households that may share a single connection or larger households have sufficient water and are not pushed into the next price bracket. It is also necessary to avoid charging the IBT to small-scale providers in circumstances where the providers can be expected to comply with a regulated maximum price, in order to ensure that their customers pay for water at the lowest possible price. In Mali, small-scale providers are charged at a wholesale rate for water, and required to charge their users the 'social' rate provided to household connections for the first block of consumption.³⁵

Advantages

- The subsidy is targeted directly to a smaller proportion of the population, and is therefore less costly to support.
- The pricing system encourages water conservation.

Disadvantages

- Its effective operation would require that exceptions be made for small-scale providers, large households, households that share a connection or who sub-let to others, hospitals and schools. It may be difficult to do this administratively and requires that shared household connections are separated, normally at the cost of the provider.
- In households where there is a wide variation in the number of people, the subsidy is difficult to design and manage.
- The IBT creates a strong incentive for utilities to prioritise provision of service high-volume users, who are normally upper-income groups, as this allows utilities to charge more per litre used. However, clear service delivery targets can mitigate this disadvantage.
- Does not reduce water and sanitation costs of those who do not have access to a network

33 A range of cross-country research on 'social protection' is available from the Overseas Development Institute: <http://www.odi.org.uk/portals/socialprotection/index.html>.

34 *See*, for example, Rwanda's Interministerial Decree 01 (1997) amending Interministerial Decree No.1 (1996) fixing the price for the sale of water, Art. 1.

35 Mali, Law no. 02-006 on water (2002), art. 54.

10.6.3 Free provision of the essential amount of water and of sanitation

Under this option, a small amount of water sufficient for essential domestic uses is provided free through a network. In South Africa, this amount is set at 200 litres per household using as a basis an estimation of eight persons per household. Sewerage, where available, is not charged for users who only utilise the essential amount of water. It would be necessary for the subsidy to take into account the actual number of persons per household based on information for the particular area in question. In network settings, this subsidy is relatively easy to administer. The subsidy can also be provided through public standpipes, where the amounts used are normally limited as the users are only able to carry limited amounts of water. However, monitoring is required to prevent vandalism (including from small-scale providers whose business is affected by free provision), wastage and mis-use (for example by persons using vehicles to transport water). Providing free public toilets can help ensure access to sanitation. However, few such facilities are properly maintained.

Advantages

- This system guarantees access to minimum essential levels of water and to sewerage to those with a household connection to a network. It might also assist those without access to a household connection through public water stand-pipes and toilets, where the government can adequately monitor and maintain these facilities.
- A blanket approach of this nature has low administrative costs and is easier to apply where governments cannot effectively assess or estimate income levels. As it is available to everyone, this approach limits corruption.

Disadvantages

- Many lower-income countries do not have public funds available for this untargeted subsidy, which would normally require significant funds provided from tax revenues.
- This is an untargeted subsidy that also benefits middle and upper income groups. Since the subsidy is provided to all households, most developing country governments can normally only afford to provide a very small quantity of water free of charge, which may be insufficient for health purposes, and may need to fund the subsidy by higher charges for water volumes that are low, but are above the free amount. There is therefore a possibility that such a subsidy would provide no net benefit to households, particularly larger households.
- It requires significant monitoring and/or maintenance.
- If not funded from other sources than revenue from water and sewerage charges, this system undermines the financial sustainability of water services and the ability to extend services.

BOX 10.8: A COMPARISON OF ALTERNATIVE TARIFF DESIGN OPTIONS FOR AFFORDABILITY AND SUSTAINABILITY³⁶

| | Key features | Affordability implication | Sustainability implication |
|--|--|--|--|
| Flat rate | Price does not alter with consumption | Simple to administer, but tends to reduce affordability for low-volume consumers. Does not require a meter (in contrast to all other options). | Does not encourage sustainable use |
| Uniform rate | Price per unit is constant as consumption increases | Straight forward to implement, but does not promote affordability. | Reduces average demand |
| Increasing block tariffs (IBTs) | Price per block increases as consumption increases | Allows for cross-subsidisation, making low-volume essential uses more affordable | Reduces average and peak demand |
| Declining block rates | Price per block decreases as consumption increases | Reflects economies of scale for utilities but makes low-volume use less affordable | Does not encourage sustainable use |
| Seasonal rates | Prices during season(s) of peak use are higher | Increases costs for essential use, often at a time when alternative supplies are not available. | Reduces seasonal peak demand |
| Excess-use rates | Prices are significantly higher for above-average use | Increases costs for non-essential use, but penalises larger households or connections serving many households | Reduces peak demand |
| Indoor/outdoor rates | Prices for indoor use are lower than those prices assigned to outdoor use | Penalises those without a connection inside the house. | Reduces seasonal peak demand associated with outdoor use, which is considered more price-elastic |
| Scarcity pricing | Cost of developing new supplies is funded directly from water revenues | Increases prices beyond levels of affordability when water is scarce | Reduces average use |
| Spatial pricing | Users pay for the actual cost of supplying water to their establishments | Penalises those without connections who wish to get a connection | Discourages new or difficult-to-serve connections |
| Penalties | Charges certain customers a pre-specified amount for exceeding allowable limits of water use | Could be used to target customers with non-domestic usage | Reduces peak demand and discourages wasteful water use |

36 Adapted from table contributed by William James Smith, Jr.

BOX 10.9: SUBSIDIES FOR WATER CONSUMPTION IN CHILE AND COLOMBIA

Chile's subsidy system for water and other utilities has been seen as a model for targeted subsidies towards low-income groups. The system is based on the assessed income of the household. Under the subsidy program, the government reimburses water service providers for the subsidies on the basis of the actual amount of water consumed by each beneficiary.

By law, the subsidy can cover 25-85 percent of a household's water and sewerage bill for up to 20 cubic metres per month, with the client paying the rest. All consumption above the limit is charged at the full price. Each year the Ministry of Planning determines, for each region, how many subsidies are to be granted and how they are to be applied, following several general principles. The subsidy is based on the ability to pay for water services among low-income households. Only households that would be unable to purchase what is considered to be a subsistence level of consumption are to benefit, and the subsidy aims to cover only the shortfall between actual charges and ability to pay.

As a crude approximation of ability to pay, the policy aims to ensure that no household pays more than five percent of its monthly income in water and sewerage charges. The subsidy scheme is funded entirely from the central government's budget. Using household survey information for each region and each company's published tariffs, the ministry responsible can determine how many households need a subsidy, and how large benefits need to be to meet the benchmark for each region. This approach can only be successful where all households have a connection to water and sanitation services, which is the case in Chile. However in a majority of developing countries, this is not the case and those without connections would not receive the subsidy, as it requires not only personal documents but also a bill from the service provider.

However, it has been shown that in Chile, 75 percent of the people who were in the lowest income - 20 percent of the population - did not benefit from these subsidies, due to a lack of documentation and because they are complicated to apply for (requiring an application in writing). However, a significant range of persons in middle-income groups successfully applied for subsidies, with 60 percent of subsidies going to households who were not within the lowest income - 30 percent of the population. These figures precede a reform of the targeting system introduced by Chile in 2002.

In Colombia, an alternative approach is to provide subsidies automatically based on geographic regions, which benefits almost all poor households. However, the subsidy provides some benefit to 90 percent of households, and therefore has a high cost. It has therefore been argued that an improvement in the targeting mechanism used in Colombia could lower costs without jeopardising benefits to lower income households. Colombia is also planning changes to its targeting scheme.³⁷

10.7 Increasing public financing for subsidy programmes

Normally, water and sanitation services are paid for from a variety of sources. This may be done through user charges, which may include cross-subsidies; or through a form of tax either specifically for water or an income tax; or by the international community in the form of loans or grants. The more sustainable and reliable the funds, the more sustainable and reliable the water supply and sanitation services are likely to be. It is possible for users to provide the bulk of necessary financing where residents have a reliable water supply and sewerage network rather than securing water and sanitation from the more expensive and time consuming small-scale facilities. However, until this outcome is reached, significant public financing will be required to fund subsidies (including extension programmes).

³⁷ Andrés Gómez-Lobo and Dante Contreras, *Water Subsidy Policies: A Comparison of the Chilean and Colombian Schemes*, (University of Chile, May 2003), p. 20.

This section will consider various options for generating increased funding, to ensure accessible and affordable water and sanitation services for all. Many of these options could be utilised concurrently. To ensure funds are spent effectively, attention needs to be given to building essential government capacity along side raising necessary funding. In addition, increasing targets for extension of service to those without access and ensuring that these targets are met will ensure that funding increases are directed towards ensuring greater access.

10.7.1 Current government water and sanitation budgets (at the national, regional and local level)

The following approaches could make better use of budgets already allocated for water and sanitation:

1. Re-allocating current public resources from high-cost interventions serving limited numbers of people to low-cost interventions, (wherever possible) may provide a lower level of service, but would assist more people, particularly those who most need assistance.³⁸ This has the impact of re-allocating resources to the poorest. This is discussed in Section 10.3 and also in Chapter 5: Non-discrimination and attention to vulnerable and marginalised groups.
2. Eliminating or reducing subsidies for water supplied to large-scale industry and agriculture and to upper income groups.
3. 'Ring-fencing' of the charges from water and sanitation ensure that they can only be used for the provision of water and sanitation rather than for other government programmes.
4. Introducing cross-subsidies between higher income and lower income users, where there are sufficient higher-income earners, can serve as a source of predictable financing that is maintained within the water and sanitation sector. Water and sanitation tend to be given less political weight than is required and is therefore less able to 'compete' with other items when budgetary appropriations are made. This is therefore one approach to ensuring that funds raised within the sector are 'ring-fenced.' One form of cross-subsidy is used in Cote d'Ivoire, where a Water Development Fund surtax is included in bills, with 40 percent of the proceeds being used to subsidise new connections.³⁹ However, cross-subsidies cannot be set at too high a level, as it is possible that high-income users will switch to non-network water sources.
5. Increasing efficiency and accountability through reforms such as:
 - Reducing bloated work-forces (including by eliminating 'ghost' workers)
 - Reducing leakages⁴⁰
 - Formalising illegal connections (*see* also Chapter 9: Physical accessibility, Section 9.5 and Chapter 7: Availability, Section 7.8.
 - Ensuring that policies and budgets are transparent and participatory, to ensure accountability.

38 This approach is mentioned in General Comment No. 15, para. 14.

39 *Beyond Scarcity*, *see* note 1, p.97. (However, it is unlikely that these connection subsidies reached those in most need living in informal settlements, as unauthorised settlements are not eligible for them). A cross-subsidy scheme also exists in Venezuela, Organic Law on the Provision of Potable Water and Sanitation Services, (2001), art. 102.

40 Normally this is only carried out where leaks are cost-effective to repair, however there are also environmental and scarcity considerations when choosing this approach. This is discussed in more detail in Chapter 7: Water availability, allocation and conservation.

BOX 10.10: THE RIGHT TO WORK VERSUS THE RIGHT TO WATER?

Increasing the efficiency of water services, and therefore facilitating the realisation of the right to water and sanitation, sometimes requires lay-offs from bloated work-forces. However, as the right to work is also an internationally recognised right, are these two rights in conflict?

In principle, the answer is no. The right to work as defined in General Comment 17 of the UN Committee on Economic, Social and Cultural Rights (UNCESR) does not constitute the right to a specific job, but rather to overall policies and measures that will result in as many people as possible securing work. The right to work can be realised more cost-effectively (and therefore for a greater number of people) by providing training, income security and stimulating job creation rather than paying a large wage bill for unnecessary work. However, other internationally recognised rights are also relevant during workforce restructuring, in particular the right to society security as well as international labour laws relating to the functioning of trade unions.

10.7.2 Overall government budgets (at the national, regional and local level)

Integrating human rights considerations into government budget-making processes, as well as related processes such as the Poverty Reduction Strategy, could ensure adequate emphasis to water and sanitation. In addition, highlighting health and economic benefits of improving water and sanitation supply and the Millennium Development Goals (MDGs) can also increase allocations towards water and sanitation. Present government spending on water and sanitation is generally well below what is necessary to meet the MDGs, even in those situations where there is political will. For example in Mauritania, despite political commitment and new management reforms, the budget available is only US\$ 5 million, while US \$65 million is required just to reach Target 10 of the MDGs.⁴¹

The following approaches could be taken to increase budgets available for water and sanitation services:

1. Tax revenues (collected through progressive taxation systems) could finance the expansion and maintenance of service infrastructure. Such taxes can be justified since most taxpayers paying income tax already benefit from existing water and sanitation networks that were (or are) heavily subsidised by government. The 2006 Human Development Report suggests that governments aim for a minimum of 1 percent of GDP for spending on water and sanitation.⁴² Inter-regional transfers or central government financing will be critical for poorer regions, particularly rural areas. In some countries, a set formula ensures that the most needy municipalities access such funds, rather than the best negotiators. For example, Brazil allocates financing for social programmes to regions on the basis of their score in the UNDP's Brazil Human Development Report.⁴³
2. Loan finance for water and sanitation services will indirectly pay for themselves after a short period. Provision of services improves economic activity, which leads to greater taxation revenue and reduces health costs, and therefore the burden on any publicly provided health care. The WHO has calculated that there is a significant financial benefit of between 3-34 dollars in increased economic activity per dollar spent on water and sanitation services.⁴⁴ The reality that governments cannot afford not to improve water and sanitation services
3. Bonds may be issued by municipalities as well as by governments and companies. The ability of local authorities to issue bonds, domestically or internationally, depends on the creditworthiness of the municipality, the guarantees available, either from government or from a bank, and the collateral offered.⁴⁵ Appropriate controls will be needed in order to avoid corruption. Water and sanitation service providers often have the advantage of a guaranteed source of income from user charges.

41 *Beyond Scarcity*, see note 1 p. 95.

42 *Beyond Scarcity*, see note 1 p.9.

43 'Social Policy in Brazil; Targeting the Poor,' Economist, April 14, 2003.

44 WHO, *The Costs and Benefits of Water*, (Geneva, 2004) p.34.

45 David Hall, Water in Public Hands, p. 25. Case of Indonesia quoted: Case Study 16: Indonesia, <http://www.worldbank.org/btml/jpd/urban/cmd/Indonesia.doc>.

4. Enlarging the area of water and sanitation regulation and provision may be an effective method of ensuring that regional and local authorities have a sufficient tax base in order to fund or subsidise water and sanitation services. This may also allow for economies of scale in network service provision. Such reforms can make regional and local authorities less dependant on the central government's budgetary process, and better able to make longer-term plans on the basis of reliable sources of revenue.

10.7.3 International assistance

As with national budgets, re-allocating current resources from high-cost interventions that deliver services to a few to lower-cost interventions that are more likely to improve access for those who are unserved or underserved will redirect available funds from the higher to the lower income communities.

Better targeting of international assistance can also ensure greater financing for those without basic access. As stated in the Sub-Commission Guidelines:

*Bilateral and multilateral assistance for the water and sanitation sector should be channelled, as a matter of priority, towards countries that are unable to realize the essential aspects of the right to water and sanitation for their people; such assistance should not interfere with the realization of human rights and should focus on bringing tangible benefits to those with no basic access to water and sanitation.*⁴⁶

Increased overall levels of financing towards water and sanitation will be necessary from developed countries in order to extend access. The Sub-Commission Guidelines states:

*Depending on the availability of resources, developed countries should provide sufficient financial and technical assistance to supplement the resources of developing countries with a view to ensuring that everyone has access, as promptly as possible, at least to basic water and sanitation services.*⁴⁷

The Sub-Commission Guidelines also state:

*Every developed country should undertake, at a minimum, to allocate a portion of its official development assistance proportional to its Gross National Product to achieving the goals set out in the United Nations Millennium Declaration and the Johannesburg Plan of Implementation adopted by the World Summit on Sustainable Development concerning access to water and sanitation.*⁴⁸

International assistance is addressed in more detail in Chapter 11: International co-operation, Sections 11.1 and 11.2.

⁴⁶ Sub-Commission Guidelines, Section 10.3. General Comment No. 15 also emphasises the necessity of assistance for the realisation of core obligations, para. 38.

⁴⁷ Sub-Commission Guidelines, section 10.2.

⁴⁸ *ibid.*, General Comment No. 15, para. 34.

10.8 Periodically reviewing laws, regulations and taxes that may raise costs beyond affordable levels

A number of laws, regulations and taxes can have the effect of increasing prices of water and sanitation above affordable levels, examples of which are the following:

- Taxes and charges on small-scale water and sanitation services.
- Excessive taxes and charges on water and sanitation facilities and equipment.
- Regulations that prevent small-scale provision, or which raise significant barriers to the provision of small-scale services.
- Restrictions on water or sanitation providers from providing services to certain categories of users, such as those without security of tenure or from charging cheaper rates to poorer consumers or those with a lower service standard.
- Disconnection of water supplies leading to users purchasing more expensive water or accessing unsafe water for essential uses.⁴⁹ (See Chapter 9: Physical accessibility, Section 9.5 and Section 10.9).
- Increase in the costs of other essential goods (where these are fixed by the state) that impinge on the ability of users to purchase water and sanitation.

In order to prevent such outcomes, governments could put mechanisms in place to periodically review laws, regulations and taxes. Independent public monitoring bodies as well as parliamentary committees can also play a strong role in monitoring laws, regulations and taxes for impact on affordability.

10.9 Integrating considerations of the ability to pay into disconnection policies and ensuring that where disconnections are carried out, they do not lead to denial of the minimum essential amount of water

Disconnection is one form of control that water utilities have for ensuring payment for water delivered. There are specific criteria in situations of disconnection due to non-payment. General Comment No. 15 states:

Before any action that interferes with an individual's right to water is carried out. ... based on a person's failure to pay for water their capacity to pay must be taken into account. Under no circumstances shall an individual be deprived of the minimum essential level of water.⁵⁰

The Sub-Commission Guidelines state that:

No one whose access to water and sanitation may be legally curtailed after the appropriate procedures have been followed should be deprived of the minimum essential amount of water or of minimum access to basic sanitation services.⁵¹

These standards have been interpreted by the United Nations High Commissioner for Human Rights as follows:

[T]he quantity of safe drinking water a person can access may be reduced, but full disconnection may only be permissible if there is access to an alternative source which can provide a minimum amount of safe drinking water to prevent disease. In this respect, there is a strong presumption that disconnections of institutions serving vulnerable groups, such as schools, hospitals and refugee camps are prohibited.⁵²

49 See Chapter 9: Physical accessibility, on disconnection of water supplies.

50 General Comment No. 15, para. 56.

51 Sub-Commission Guidelines, section 6.4.

52 Report of the UN High Commissioner for Human Rights on water and sanitation, note 11, para. 59.

This implies that the quantity of water may be reduced to the minimum essential level, but full disconnection may only be permissible if there is access to an alternative source that can provide a minimum amount of water.

Means to prevent disconnections can include:

- Procedural protections, such as notice, reminder of amounts due, and consultation (*see* Chapter 9: Physical Accessibility, Section 9.4).
- Flexible payment plans (*see* Section 10.4).
- Where a small-scale service provider is unable to pay bills, and is unlikely to be able to do so, identifying (with community input) and facilitating a new operator to manage the facility.
- Reviewing tariff and subsidy structures to examine whether they adequately address the situations of low-income users.

A number of measures that are sometimes used to limit consumption raise significant concerns. For example, reducing the level of water pressure in order to limit consumption has the drawback of significantly increasing the amount of time taken to use water (thus reducing time for other essential activities). In addition, low water pressure increases the risk of contamination entering pipes, which is likely if, as is the case in informal and low-income areas, there are holes in the pipes.

Installing pre-paid meters can also be seen as a possible tool to limit consumption. However, such meters have a number of drawbacks. First, by requiring pre-payment rather than post-payment, access is particularly limited for households that have very low cash reserves. Second, they deny use in emergencies where households do not have a pre-paid card on hand. Finally, there is the possibility that opening the door to pre-payment meters allows them to be imposed pre-emptively for low-income users with a household connection, even where bills are being paid without the consent of the user.

In the event that there is no alternative but to disconnect a household from water supply, it is necessary to ensure continued access to the minimum essential amount of water. This might be ensured by establishing stand-pipes or other water selling points within a reasonable distance of disconnected households (consumption subsidies may also be required, as discussed in Section 10.6.1). In such circumstances, it may be necessary as a last resort to consider the use of pre-paid meters that permit access to the minimum essential amount of water regardless of payment.

In regard to sewerage, disconnection is not a feasible option for non-payment due to the negative impact that it would have on public health, as waste is disposed of in an inappropriate manner. Most utilities can ensure an incentive to pay through the threat of disconnecting water. This may not be sufficient in situations in which a user or institution relies on a non-network source for water, such as a borehole, but disposes of waste through a sewer. Where the amount of wastewater disposed of is significant, means other than disconnection would need to be sought, such as the threat of fines.

BOX 10.11: RESTRICTIONS ON DISCONNECTIONS OF WATER SUPPLY IN THE UNITED KINGDOM

The Water Industry Act (1999) permit a service provider to disconnect water services for non-payment seven days after it has provided a notice to the user that the account is overdue. However, water supplies cannot be disconnected from sixteen types of premises, some of which are:

1. Any dwelling that is occupied by a person as his only or principal home.
2. Accommodation for the elderly in which a person has his only or principal home.
3. A hospital or premises used for the provision of medical or dental services by a registered practitioner.
4. A residential care home, nursing home or mental nursing home.
5. A children's home.
6. A school, premises used for further education or premises used for the provision of day care for children by a registered person.
7. A prison or detention centre.
8. Premises occupied for the purposes of a police force, a fire brigade or for the provision of an ambulance service.⁵³

In addition, the law states that a water provider may not restrict how water is supplied to any of the above premises in order to enforce payment of charges.⁵⁴ The approach taken in the United Kingdom may not be feasible to situations in developing countries, where it may be necessary to limit the quantity of water consumed to the basic minimum where payment is not being made.

53 <http://www.bmso.gov.uk/acts/acts1999/19990009.htm#2>, s. 61 and Schedule 4 A.

54 Ibid., s. 63 A.

BOX 10.12: JUDICIAL INTERVENTION ON DISCONNECTIONS FOR NON-PAYMENT IN ARGENTINA⁵⁵

A water service company disconnected the water supply of a group of 19 low income and indigent families in the City of Cordoba on the basis of failure to pay. The families sued the water service company under a special expedited procedure known as the ‘amparo’ action. They argued that the disconnection was illegal and that the company failed to comply with its regulatory obligation to provide 50 litres of water daily (which was to be supplied whether or not payment was made), and that this regulatory supply obligation was itself too low. They requested the court to require the company to provide at least 200 litres of water daily per family.

The Judge agreed to hear the case under the ‘amparo’ procedure on the basis that the provision of water is of vital importance and that its’ absence has significant implications for the health of the population, especially for the poor. The Judge held that the company had the right to restrict the supply of water on the grounds of non-payment. The Judge considered the terms of the concession contract, and concluded that from the profit-oriented character of that contract, there is an obligation on the consumers to pay the corresponding tariffs. There was no basis in the regulations to conclude that the provision of water should be free of charge.

However, the Judge noted that the Provincial Constitution stated water, soil and air are vital elements for human beings, and elements of special protection in the Province. She further noted that a provincial law established that, *“every person in the Province has the right to receive on a regular basis adequate public benefits and services of sufficient quality to meet their needs”*. The Judge therefore found that: *“the Provincial State is responsible for providing potable water services to all citizens because it is an essential service”*.

The Judge also held that the provision of 50 litres of water per household – the guaranteed amount established in the concession regulatory framework was not enough to meet the needs of a standard family because such a minimum amount cannot guarantee basic conditions of hygiene and health for the family members. Therefore the Judge ordered the company to guarantee the plaintiffs a minimum daily consumption of 200 litres of potable water per family. However, this did not preclude the possibility of the company reaching a compensatory agreement with the responsible government authorities to be compensated for the costs of meeting this obligation.

55 Quevedo Miguel Angel y otros c/Aguas Cordobesas S.A. Amparo Cordoba, City, Juez Sustituta de Primera Instancia y 51 Nominación en lo Civil y Comercial de la Ciudad de Córdoba (Civil and Commercial First Instance Court), April 8, 2002. For a longer summary of the case, see M. Langford, A. Khalfan, C. Fairstein and H. Jones, *Legal Resources for the Right to Water: International and National Standards* (Geneva: COHRE, 2004), pp.113-4, www.cobre.org/water.

CHECKLIST FOR AFFORDABILITY AND FINANCING OF WATER AND SANITATION

1. Are there standards and indicators for affordability of water and sanitation services? Do they take into account costs of other essential goods? Have these been developed in a process involving participation of representatives of vulnerable and marginalised groups?
 2. Is there a government process or institution to set, monitor and control charges by water and sanitation utilities and small-scale service providers?
 3. What percentage of the water and sanitation budget is directed towards expanding access to water and sanitation services to those who currently lack adequate access?
 4. Does the government policy or plan provide for a broad range of options for facilities and service levels, including low-cost options? Is community participation required for such decisions?
 5. Do regulations include a requirement for flexible payment options?
 6. Are subsidies for extension of services and for payment of tariffs provided to low-income communities? What percentage of the lowest 20 percent income groups receives recurrent or capital subsidies?
 7. What percentage of the government budget is spent on water and sanitation? Is this amount (together with international assistance) sufficient to meet service delivery targets and the MDGs on water and sanitation?
 8. Does any legislation or regulation raise the cost of water service provision to prohibitively high levels? (e.g. through high taxes on necessary equipment).
 9. Is there a legal prohibition on complete exclusion from a water source, for example by disconnection?
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Chapter 11: International co-operation

The global crisis in access to water and sanitation is one of the central issues that the international community has pledged to address through the UN Millennium Declaration. In the Millennium Declaration, all governments stated the following:

We recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to all the world's people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs.¹

The Declaration undertook to halve, between 2000 and 2015, the proportion of people who are unable to reach or to afford safe drinking water.² At the 2002 Johannesburg World Summit on Sustainable Development, all governments further committed themselves to halving the proportion of people without access to basic sanitation by 2015.³

However, providing all those unserved with access to basic water and sanitation services poses considerable financial and technical challenges, as the vast majority of people that lack access to these essential services live in developing countries. Many of these countries, particularly the least developed, do not have sufficient financial resources and administrative capacity to provide for the right to water and sanitation.

1 United Nations Millennium Declaration, U.N. Doc. A/RES/55/2, para. 2.

2 United Nations Millennium Declaration, para. 19.

3 The Johannesburg Plan of Implementation of the World Summit on Sustainable Development, 2002, para. 8. <http://www.un.org/esa/sustdev/>.

International co-operation is often seen as relevant only for development assistance. However, the right to water and sanitation is dependant on a number of international dynamics that are beyond the control of any one government.

These dynamics include:

- International trade and investment
- Economic sanctions
- Pollution of shared resources such as the atmosphere and transboundary resources
- Use of transboundary resources
- International armed conflict.

The full realisation of the right to water and sanitation globally is therefore not possible without international co-operation in these areas.

HOW GOVERNMENTS CAN PROMOTE THE RIGHT TO WATER AND SANITATION IN OTHER COUNTRIES THROUGH THEIR INTERNATIONAL CO-OPERATION

- 11.1. Increasing overall international development assistance for water and sanitation services that would benefit the poorest communities, and improving its predictability and effectiveness.
 - 11.2. Focusing development co-operation on programmes and projects that particularly target low-income areas and groups.
 - 11.3. Ensuring that their development co-operation does not lead to impediments for any person's access to water and sanitation, or other human rights.
 - 11.4. Co-operating with countries sharing a watercourse to ensure that vital human needs are prioritised in water allocation and that basin-level action is taken to preserve water quality.
 - 11.5. Co-operating with other countries to ensure that multilateral and bilateral trade and investment agreements are designed and applied in a manner that supports, and does not interfere with, the realisation of the right to water and sanitation.
 - 11.6. Where trade or financial sanctions are imposed by any country on another, ensuring that these sanctions do not impede access to water and sanitation.
 - 11.7. Ensuring that water and sanitation facilities are not attacked in times of armed conflict and that reasonable precautions are taken to prevent any damage.
 - 11.8. Establishing limitations on the level of greenhouse gas emissions that take into account their impact on water availability and displacement, and providing international assistance to groups facing drought and displacement due to climate change.
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11.1 Increasing and improving development assistance for water and sanitation

In order to fully realise the right to water and sanitation for their people, many developing countries – and the least developed countries in particular – will require financial and assistance from countries in a position to provide it.

General Comment No. 15 states:

*Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required... International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.*⁴

The Sub-Commission Guidelines further elaborate, stating:

*Depending on the availability of resources, developed countries should provide sufficient financial and technical assistance to supplement the resources of developing countries with a view to ensuring that everyone has access, as promptly as possible, at least to basic water and sanitation services. Every developed country should undertake, at a minimum, to allocate a portion of its official development assistance proportional to its gross National Product to achieving the goals set out in the United Nations Millennium Declaration and the Johannesburg Plan of Implementation adopted by the World Summit on Sustainable Development concerning access to water and sanitation.*⁵

Further guidance on overall necessary amounts of assistance was provided in the Monterrey Consensus on Financing for Development (2002) where all States:

*urge developed countries that have not done so to make concrete efforts towards the target of 0.7 per cent of GNP (Gross National Product) as ODA to developing countries and 0.15 to 0.20 per cent of GNP of to least developed countries.*⁶

These targets refer to overall assistance. Thus, it is necessary for governments to determine the appropriate proportion of this overall assistance to be dedicated to water and sanitation.⁷ International assistance to the water sector is generally not proportional to the need, nor is it proportional to amounts granted to other sectors such as health and education. In many cases, sanitation falls between the water and health sectors, and is even further marginalised. The UK Department for International Development (DFID) recognised in 2004 that its financial support “*has tended to focus more on public financial management and social sectors – such as health and education – than on water and sanitation.*” DFID declared that in future, when its main “*partner governments do not make water and sanitation a high priority in their PRSPs, despite high priority being attached to it by poor people, we will explore why this is the case and what plans the government has to redress it.*”⁸

4 United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (Twenty-ninth session, 2002), U.N. Doc. E/C.12/2002/11 (2003), para 34.

5 United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, Promotion of the realization of the right to drinking water and sanitation, 24 August 2006, UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, s. 10.2.

6 UN Doc. A/CONF.198.11, para. 42.

7 The least developed countries comprise 690 million, or 13.7 percent of the total population of developing countries, which is 5030 million (all in 2004 figures). If kept, the 0.15-0.2 percent target would ensure that the least developed countries received a share of ODA that is about one and half to times the amount commensurate to their population relative to other developing countries. See F. Clermont, *Official Development Assistance for Water from 1990 to 2004: Figures and Trends* (World Water Council: Marseilles, 2006), pp. 23-4.

8 Water Action Plan, A DFID policy paper, March 2004, <http://www2.dfid.gov.uk/>

International co-operation is not only a matter of human rights, but also one of enlightened self-interest of each country. According to the 2005 UNDP Human Development Report (2005 HDR):

Aid is sometimes thought of in rich countries as a one-way act of charity. That view is misplaced. In a world of interconnected threats and opportunities aid is an investment as well as a moral imperative – an investment in shared prosperity, collective security and a common future. Failure to invest on a sufficient scale today will generate costs tomorrow.⁹

According to the 2005 HDR, the investments needed to turn universal access to safe water into a reality are modest by the scale of wealth in the rich countries. In addition, it states

the \$7 billion needed annually over the next decade to provide 2.6 billion people with access to clean water is less than Europeans spend on perfume and Americans spend on elective corrective surgery. This is for an investment that would save an estimated 4,000 lives a day.¹⁰

The HDR 2005 recommends budget commitments to be set at a minimum level of 0.5 percent of GNP in order to bring the Millennium Development Goals within reach by 2015.¹¹ In addition to the need for international financial assistance, unsustainable debt remains a further challenge to many developing countries whose debt servicing obligations interfere with their ability to finance basic human development objectives, including measures aimed at the realisation of the right to water and sanitation.¹²

A problem facing developing countries is that the development assistance offered by donors can be unpredictable and generally time-limited, yet to be effective developing countries need to be able to plan their strategies (and consequently budgets) over longer time-frames. In this regard, the 2005 Paris Declaration on Aid Effectiveness, agreed to by over 100 countries, sets out principles of national ownership, alignment, mutual accountability and harmonisation which could lead to more stable and predictable aid flows from donors, leading to more effective planning by developing countries.¹³

International assistance to the water and sanitation sectors therefore requires effective co-operation between governments providing aid and those receiving it.¹⁴ Co-operation between donors and governments can be increased through meetings of all stakeholders working on water and sanitation issues within a country (including representatives of vulnerable and marginalised groups) to reach general agreement about goals and how they are to be met, to limit duplication of efforts and ensure there are no gaps in delivery of services for those living below the poverty line. This approach requires investment in administrative capacity.

One important consideration in international assistance is the need to promote national ownership of development policy as a matter of democracy and good governance.¹⁵ National ownership requires that donors avoid stipulating conditions not directly related to the effective implementation of the policies and programmes they support. National ownership is not well defined, but from a human rights perspective, it included ownership of policy by governments as well as that of civil society, including representatives of communities.

11.2 Focusing on pro-poor development co-operation

Increasing the level of financing to water and sanitation would enhance the prospects for securing the right to water and sanitation. However, it does not guarantee it. International assistance may be focused primarily on large mega-projects or projects that improve the access of those who already have access, and ignore the needs of the unserved. In order to help developing countries implement the right, international assistance would need to focus on programmes and projects that target low-income areas or groups, for example

9 UNDP, *Human Development Report 2005: International co-operation at a crossroads: aid, trade and security in an unequal world*, (New York, 2005), p. 7.

10 Ibid., p. 8.

11 Ibid., p.9.

12 Ibid.

13 <http://www.oecd.org/dataoecd/11/41/34428351.pdf>

14 For more information, see <http://www.unwater.org/>

15 Monterrey Consensus, paras. 40-46.

projects that aim at regularising small-scale provision in informal settlements or projects that aim to build capacity of communities to manage water and sanitation facilities in rural areas. Multilateral or bilateral donor agencies may not have the capacity to efficiently support projects that support the poor, which normally involve small outlays per project and therefore a significant percentage of funding is required for administration. In addition, it is more desirable to support national capacity to achieve these goals. Thus, long-term and institutional financial support and capacity development for government agencies and national civil society organisations will be a critical element of fostering pro-poor development co-operation.

Focusing on pro-poor development aid may require greater use of grants and limited use of loans. This can cause difficulties for development agencies that rely on loan repayments to finance further assistance and may lead to a lower amount of overall assistance. This is justifiable if it ensures that assistance is better targeted to those who need it most. However, such 'costs' should be expected and planned for, to ensure the continued implementation of a human rights based approach.

An important component of pro-poor development co-operation is to provide financial and technical support to building capacity within government (both implementing bodies and independent agencies such as human rights commissions,) within independent civil society monitoring groups, and grassroots groups who can then promote or monitor the realisation of the right to water and sanitation.

11.3 Ensuring that their development co-operation does not impede any person's access to water and sanitation or other human rights

The first principle for any external intervention is to first do no harm – whether intentional or unintentional. According to General Comment No. 15:

To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International co-operation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction¹⁶

Human rights standards are a yardstick for evaluating development co-operation, both in terms of selecting which programmes and projects to support and in determining what types of conditions are consistent with the right to water and sanitation.

Potential programmes and projects (as well as donor-specified conditions requiring such programmes and projects) inconsistent with human rights standards could include the following:

- Raising tariffs or eliminating subsidies, without putting structures in place to ensure affordability.
- Privatising the management of water services, without regulations being put in place to ensure extension of access and affordability or without participation from users in the decisions regarding such reforms.
- Carrying out water storage projects that lead to disproportionate levels of relocation, or where such relocation is not carried out in conformity with international standards on forced evictions.

11.4 Engaging in transboundary water co-operation

Transboundary waters extend hydrological interdependence, linking different kinds of uses and users in different countries within one shared system.¹⁷ Over 260 rivers in the world either cross or demarcate international political boundaries.¹⁸ These international basins include parts of the territory of as many as 145

¹⁶ General Comment No. 15, para. 31, Sub-Commission Guidelines, section. 10.1.

¹⁷ UNDP, *Beyond Scarcity: Power poverty and the global water crisis: UNDP Human Development Report 2006* (New York, 2006). p. 203 Available at <http://hdr.undp.org/hdr2006/>

¹⁸ See UNEP, *Atlas of International Freshwater Agreements* (Nairobi, 2002), p.1.

different countries,¹⁹ affect approximately 40 percent of the world population and account for an estimated 60 percent of total global river flow.²⁰ National boundaries and river catchments are not coincident, and many countries rely to some degree on river flows from countries upstream. Indeed, approximately 15 percent of all countries receive more than half their available water from upstream countries.²¹

Co-operation between all countries sharing a watercourse is necessary in order to reconcile the different and possibly conflicting interests and needs for water of all riparian states. Although there is international customary law and international guidelines on transboundary water co-operation,²² 158 of the 263 international basins still lack any legal framework for the cooperative management of the shared resource.²³

General Comment No. 15 is relevant to this issue where it states that: “*Any activities undertaken within the State party’s jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.*”²⁴ Excessive pollution of a transboundary watercourse in one country can affect the realisation of the right to water and sanitation in other countries that share the resource. In addition, there are circumstances where one country permits a high level of abstraction within its borders of water from a transboundary watercourse, with the result that there is an insufficient quantity remaining for other countries bordering this watercourse. Such excessive abstraction is not likely to lead to insufficient water for domestic uses in other countries since domestic uses form less than 10 per cent of overall water use. However, it may have a significant impact on the availability of water for irrigated agriculture in other countries, as agriculture normally takes approximately three-quarters of total water use. In this regard, the UN CESCR’s General Comment No. 12 on the right to food states: “*States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.*”²⁵

Human rights standards, such as General Comment No. 12 and No. 15 only set out broad principles on transboundary watercourses, and do not describe how access to such resources should be allocated between countries. These issues are addressed in detail in international customary law on transboundary watercourses,²⁶ now codified in the 1997 UN Convention on the Non-Navigational Uses of International Watercourses.

The principle of equitable and reasonable utilisation of transboundary water, which is generally accepted as having become part of international customary law, is the central substantive rule in this field of law. It prescribes, in essence, the equitable and reasonable uses of an international watercourse taking into account the relevant circumstances regarding its utilisation.²⁷ An emerging principle of customary law is that priority is to be given to ‘vital human needs’, which includes sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation.²⁸ International customary law also prescribes that all States bordering an international watercourse are under a general procedural obliga-

19 Ibid., p.2.

20 Ibid., p.2.

21 *Addressing the Water Crisis: healthier and more productive lives for poor people*, (DFID, 2001), <http://www2.dfid.gov.uk/pubs/files/tspwater.pdf>.

22 1966 Helsinki Rules by International Law Association, and the 1997 UN Convention on the Non-navigational Uses of International watercourses.

23 UNEP, *Atlas of International Freshwater Agreements*, see note 18, p.7.

24 General Comment No. 15, para. 31.

25 *General Comment No. 12, The Right to Adequate Food* (1999), UN Doc. E/C.12/1999/5, para. 36.

26 International customary law is established by the general and consistent practise of States, demonstrating their views as to what is legally binding.

27 See, in particular Dellapena, ‘The customary international law of transboundary fresh waters,’ *International Journal of Global Environmental Issues* (2001), p.270; McCaffrey & Sinjela, ‘The 1997 United Nations convention on international watercourses,’ *American Journal of International Law* (1998), p.106; *Gab ikovo-Nagymaros case (Case concerning the Gab ikovo-Nagymaros Project)* (Hungary v. Slovakia), Judgement of 25/9/1997, 1997 International Court of Justice Reports 39. See also the UN Convention on the Law of the Non-Navigational Uses of International Watercourses, arts. 5 and 6, U.N.G.A. Res. 51/229 annex, U.N. Doc. A/Res/51/869 (1997). This Convention, referred to in this section as the ‘Watercourses Convention’, was adopted by the UN General Assembly. It has not yet entered into force, but is widely considered to represent the current state of international customary law on transboundary watercourses.

28 Article 10 (2) of the Watercourses Convention, and the accompanying ‘Statement of Understanding.’ See also the International Law Association, Berlin Rules on Water Resources, art. 14 and commentary, available at: http://www.ila-hq.org/btml/layout_committee.htm. The Rules are a persuasive statement of international customary law prepared by the leading international legal experts in this field.

tion to cooperate and negotiate in good faith in the utilisation of transboundary watercourses.²⁹ International customary law is therefore broadly consistent with human rights principles and can be used to realise the right to water and sanitation.

In areas served by transboundary watercourses, governments can take a number of steps toward building upon principles in current and emerging customary international law, to help realise the right to water and sanitation and the right to food:³⁰

- Ensuring priority for ‘vital human needs’ in water allocation.³¹
- Exchanging information on water quality, water volumes, ecosystem protection and dependency on the watercourse for domestic, agricultural and industrial uses.
- Co-operating on transfer of technology, capacity building, access to policy-relevant, knowledge and tools on water management.
- Developing of institutional frameworks for continuous dialogue and concerted action.
- Ensuring participation of representatives of users in decisions regarding basin-level management.³²

BOX 11.1: THE NILE BASIN INITIATIVE

The Nile Basin Initiative (NBI) is a regional partnership under which the countries of the Nile basin are engaging in co-operation on the sustainable development and management of the waters of the Nile. Launched in Dar-es-Salaam in February 1999, the NBI responded to the need for a joint discourse on the Nile to go beyond the previous 1959 Nile Waters Agreement. The NBI is a transitional arrangement until a permanent legal framework is established. The NBI has established a Strategic Action Programme to promote the shared vision, “to achieve sustainable socio-economic development through the equitable utilisation of, and benefit from, the common Nile Basin water resources.”³³

11.5 Ensuring coherence between trade and investment agreements and human rights

General Comment No. 15 indicates:

*States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of further legal instruments. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to water. Agreements concerning trade liberalisation should not curtail or inhibit a country's capacity to ensure the full realization of the right to water.*³⁴

29 Watercourses Convention, art. 8. The vital importance of co-operation was highlighted by the International Court of Justice in *Case concerning the Gab ikovo-Nagymaros Project* (Hungary v. Slovakia) 1997 I.C.J. Reports 39 particularly para 17.

30 The ILA Berlin Rules, which are relied upon for some of these bullet points include both settled and emerging customary international law. See the ‘Usage Note’ in the Preface to the Rules.

31 In this regard, it is of interest that the Senegal River Water Charter specifically mentions the respect for right to water as an objective of the treaty, Article 4. Charte des Eaux du Fleuve Sénégal, concluded between Senegal, Mali and Mauritania on 28/5/2002, http://www.lexana.org/traites/omvs_200205.pdf.

32 See Berlin Rules art. 4.

33 Nile Basin Secretariat, Entebbe <http://www.nilebasin.org/>.

34 General Comment No 15, para. 35.

It further adds: “*States parties should ensure that their actions as members of international organizations, notably the International Monetary Fund, the World Bank, and regional development banks, take due account of the right to water.*”³⁵ General Comment No. 15 also states: “*Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries.*”³⁶

Investment agreements provide for the protection of one country’s corporations when they invest in another country. An investor is guaranteed that it will be treated by the country in which it operates on the same basis as national corporations from that country and international corporations from third countries. Investors are typically guaranteed protection from expropriations and from performance requirements such as requirements to hire a certain percentage of local managers. Most investment agreements are bilateral, typically between a developed and a developing country.³⁷ Many investment agreements stipulate a recourse by which investors can seek legally binding arbitration to protect their rights under the agreements. Many such arbitrations are carried out under the auspices of the World Bank’s International Centre for the Settlement of Investment Disputes (ICSID).

Trade in services agreements also require that governments offer ‘national treatment’ to foreign service providers, i.e. they are under an obligation not to discriminate against foreign service providers in favour of a national service provider, or between foreign service providers on the basis of nationality. These requirements do not normally limit the ability of a national government to regulate service providers as long as the regulations did not constitute disguised restrictions on international trade. The most significant multilateral services agreement is the General Agreement on Trade in Services (GATS) under the World Trade Organization. The WTO has a dispute settlement process between States. Currently, GATS does not apply to water and sanitation service provision.

Trade and investment agreements are intended to create a secure climate for investment and as such can have important economic benefits. They therefore impose restrictions on the ability of government to carry out certain actions relating to water and sanitation. A number of government actions may constitute infringements of trade or investment agreements, depending on the terms of a particular agreement and its interpretation:

- Provision of subsidies or training only to national service providers.
- Provision of preferential treatment to community management of service provision.
- Preferences in contracting, subsidies or training to members of vulnerable and marginalised groups in a country.
- Unilateral cancellation or modification of contracts with multinational corporations managing water and sewerage utilities.
- Revision of regulatory standards, for example on pollution, in a manner that has a disproportionate effect on foreign investors.

Some trade and investment agreements include exceptions to their application, for example for the protection of public morals, public health or, in the case of GATS, for services normally carried out under the exercise of government authorities. However, these exceptions are framed in broad language and it is not clear whether they will fully incorporate actions necessary to fully implement the right to water and sanitation. Dispute settlement bodies established under trade and investment agreement may consider international human rights law in their interpretation of trade and investment agreements. However, it is not clear whether such bodies will give human rights standards equivalent or greater importance than obligations contained in trade and investment agreements. It is possible that important measures to implement the right to water and sanitation may be avoided by governments, due to concern that these could lead to disputes with investors, leading to costly arbitration and decisions against them.

It would be prudent for governments to carry out measures that would help ensure that international trade and investment agreements are formulated and applied in a manner that supports the right to water and sanitation. Four categories of measures are detailed in Box 11.2.

35 Ibid., para. 36.

36 Ibid., para 33, emphasis added. See also Sub-Commission Guidelines, section 10.1.

37 The North American Free Trade Agreement (NAFTA), which includes investment, is an exception as a trilateral agreement.

BOX 11.2: MEASURES TO SUPPORT THE RIGHT TO WATER AND SANITATION IN TRADE AND INVESTMENT GOVERNANCE.

1. Human rights impact assessments

Human rights impact assessments can consider the impact of trade and investment agreements, and in particular the implications for vulnerable and marginalised groups. They are designed to be informed by sound empirical information drawn from public, transparent and independent assessments. Such impact assessments are necessary prior to the conclusion of a trade or investment agreement in order to ensure that these are formulated in a manner consistent with human rights. Impact assessments are also necessary after an agreement is in place as they can take account of unexpected developments and can guide decision-making relating to the implementation of an agreement and in dispute settlement.

2. Human rights exemptions and modifications

New trade and investment agreements could include exceptions for situations where a particular course of action is necessary to effectively implement human rights, including the right to water and sanitation. Current trade and investment agreements can be modified or interpreted to achieve this objective. Exceptions could also apply in cases where governments have accepted particular commitments at one time, but subsequently have good reasons to revise that decision. Achieving the appropriate balance between investor's rights and a country's responsibility to promote human rights takes time and the appropriate balance may vary over time.³⁸

3. Human rights capacity building for trade policy makers and negotiators

Most policy actors in the fields of trade, investment and human rights are not trained in addressing the linkages between these fields. It is necessary for such actors to receive sufficient information and develop expertise in order to adequately address these concerns. Trade departments in developing countries may require assistance, including on means to develop and apply human rights impact assessment methodology.

Trade and investment negotiators who are briefed on the linkages between human rights and trade will be able to raise human rights issues in negotiations.³⁹ If Secretariats of trade and investment in international organisations develop an ability to assess human rights impacts of liberalisation, they will be able to draw the attention of governments to aspects of a proposed agreement that are potentially inconsistent with their human rights obligations.

Negotiators from least-developed countries are often represented in insufficient numbers and are under-equipped to negotiate trade liberalisation in the best interests of their countries – which may undermine the realisation of human rights in these countries. It is important for international organisations to provide long-term assistance to such trade ministries in developing their capacity, based on a jointly agreed plan of work.

4. Addressing human rights in trade and investment dispute settlement

Trade and investment dispute settlement bodies have generally not considered human rights standards in the context of disputes over trade and investment agreements. (See Box 11.3 for a promising exception to this situation.) In order to ensure that other trade and investment dispute settlement address human rights, it may be necessary to develop guidelines for adjudicators hearing disputes, to add human rights experts to the roster of adjudicators, and to provide adjudicators with training on the relevance of human rights law to trade and investment agreements.

38 Report of the United Nations High Commissioner for Human Rights, *Economic, Social and Cultural Rights: Human Rights, Trade and Investment*, (2003).

39 For example, Mauritius raised the question of implications of liberalisation of agricultural trade on its obligations under the ICESCR relating to the right to food. C. Dommen, 'Raising Human Rights Concerns in the WTO' Human Rights Quarterly (2002).

BOX 11.3: ICSID DECISION PERMITTING CIVIL SOCIETY PARTICIPATION

The International Centre for the Settlement of Investment Disputes (ICSID) panel heard the dispute between Argentina and Aguas Argentinas, a consortium that was managing the water and sewerage system in Buenos Aires until 2005.⁴⁰ (See Chapter 4: Roles of key actors, Box 4.4). The dispute related to a tariff freeze imposed by the government after the devaluation of the peso.

A coalition of NGOs applied for permission to submit an *amicus curiae* (i.e. a third party submission) brief to the panel arguing that “by virtue of fundamental democratic principles that lead to the enjoyment of human rights, the public decisions that affect millions of people cannot be adopted in secrecy nor exclude the opinion of the affected population.”⁴¹

The panel recognised that: “the dispute centres around the water distribution and sewerage systems of a large metropolitan area, and as a result may raise a variety of complex public and international law questions, including human rights considerations.” On this basis the tribunal allowed the NGO coalition to submit the *amicus* brief in spite of the opposition of the claimants.⁴²

Although the above decision is positive, panel decisions do not establish precedent for future decision, and it remains unclear to what degree ‘human rights considerations’ will influence the substance of decisions.

In April 2006, ICSID amended its arbitration rules to allow arbitration tribunals to accept written submissions from interested third parties that might assist the tribunals in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties.⁴³

11.6 Ensuring that economic sanctions do not undermine the right to water and sanitation

General Comment No. 15 states:

*States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure.*⁴⁴

In *General Comment No. 8: The relationship between economic sanctions and respect for economic, social and cultural rights*, the UN Committee on Economic, Social and Cultural Rights pointed out that sanctions regimes have tended to have significant negative impact on economic, social and cultural rights, including on water and sanitation. While multilateral sanctions have included humanitarian exemptions, such exemptions have been very limited in scope (for example, by not providing for repairs to water supply infrastructure, have been ambiguous and interpreted arbitrarily and inconsistently thus causing delays, confusion and the denial of requests to import essential supplies.⁴⁵

40 *Aguas Argentinas, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. vs. the Argentine Republic*, ICSID Case No. ARB/03/19.

41 Submitted on January 28, 2005 by Asociación Civil por la Igualdad y la Justicia (ACIJ), Centro de Estudios Legales y Sociales (CELS), Center for International Environmental Law (CIEL), Consumidores Libres Cooperativa Ltda. de Provisión de Servicios de Acción Comunitaria and Unión de Usuarios y Consumidores. See www.cels.org.ar.

42 *Suez, Sociedad General de Aguas de Barcelona S.A. and Interagua Servicios Integrales de Agua S.A. v. Argentine Republic*, Case No. ARB/03/17, Order in Response to a Petition for Transparency and Participation as *Amicus Curiae* of May 19, 2005 and Order in Response to a Petition by Five Non-Governmental Organizations for Permission to make an *Amicus Curiae* Submission of February 12, 2007 at <http://www.worldbank.org/icsid/cases/pending.htm>

43 See Arbitration Rules, Rule 37 2.a., <http://www.worldbank.org/icsid/basicdoc/basicdoc.htm>

44 General Comment No. 15, para 32. Footnote in quotation omitted. See also Sub-Commission Guidelines, section 10.1

45 General Comment No. 8, (1997) UN Doc. E/1998/22, paras. 3-5.

General Comment No. 8 sets out three sets of obligations relating to economic, social and cultural rights:

First, these rights must be taken fully into account when designing an appropriate sanctions regime. Second, effective monitoring, which is always required under the terms of the Covenant, should be undertaken throughout the period that sanctions are in force. When an external party takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population. Third, the external entity has an obligation “to take steps, individually and through international assistance and co-operation, especially economic and technical” in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country.⁴⁶

General Comment No. 8 notes practical steps that have been proposed to reduce the impacts of sanctions, for example, transparent sets of agreed principles and procedures based on respect for human rights, identification of a wider range of exempt goods and services and the introduction of greater overall flexibility. It also notes that steps can be taken to protect vulnerable groups without jeopardising the policy aim of sanctions.⁴⁷

11.7 Protecting water and sanitation facilities in times of international armed conflict

Responsibilities regarding the right to water and sanitation during times of international armed conflict are clearly defined in human rights law, and in international law on armed conflict (also known as international humanitarian law). General Comment No. 15 states that:

The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, ... limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.⁴⁸

General Comment No. 15 adds that

during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under international humanitarian law. This includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water.⁴⁹

The Geneva Conventions and their Additional Protocols list a number of objects and installations that are to be protected in times of armed conflict:

It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.⁵⁰

⁴⁶ Ibid., paras. 12-14.

⁴⁷ Ibid., paras. 12, 15.

⁴⁸ General Comment No. 15, para. 21.

⁴⁹ General Comment No. 15, para. 22.

⁵⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), art. 54 (2). See also art. 56.

The Geneva Conventions also provide for access to water and sanitation for prisoners of war, and interned civilians.⁵¹ For standards for provision of humanitarian assistance in times of emergencies, *see* Chapter 9: Physical accessibility, Section 9.10.

11.8 Establishing impact on water availability as a criterion for limits on greenhouse gas emissions and assisting groups facing drought

General Comment No. 15 states: “*The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water.*”⁵² This point is relevant to the issue of climate change. Climate change will significantly undermine the right to water and sanitation by causing significant levels of drought, especially in Africa, disrupting rainfall patterns and causing significant displacements due to an increase in natural disasters, such as floods and coastal storms.

The negative impacts of climate change and accompanying environmental degradation will tend to affect the poor more than the rich, due both to the unpredictability of climate change and the limited ability of poor people and developing countries to manage change.⁵³

Governments are currently considering limits to emissions of greenhouse gases with a view to negotiating an instrument for global emissions limitations, for the post-Kyoto Protocol period. The right to water and sanitation is relevant in this discussion as it indicates that targets for reduction of emissions will need to be set at a level where they do not cause significant drought and displacement.

In addition to mitigating emissions, many vulnerable and marginalised groups living in arid areas are already facing droughts and desertification that is likely caused or exacerbated by climate change.⁵⁴ It is therefore necessary to provide international assistance that helps address the needs of such groups, helping them to cope with water shortages and assisting them to secure new sources of clean water. Assistance will also be needed to assist governments in developing countries develop disaster preparedness and measures to deal with emergencies (*see* Chapter 9: Physical accessibility, Section 9.10).

51 Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949, arts. 20, 46. Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949, arts. 89, 127. Common article 3 of the Geneva Conventions of 12 August 1949.

52 *Ibid.*, para. 21.

53 *Beyond Scarcity*, *see* note 17, pp.159-170.

54 See Rachel Roach, Dried up, drowned out: voices from the developing world on a changing climate, (Tearfund, UK, June 2005), <http://tilz.tearfund.org/Research/Climate+change+and+disasters+policy/>

CHECKLIST FOR INTERNATIONAL CO-OPERATION

1. What proportion of GNP is spent on providing international development assistance to the water and sanitation sector?
 2. Is international development assistance provided in a predictable (medium- or long-term) manner?
 3. Do any conditions accompanying development assistance impede people's access to water and sanitation, or other human rights?
 4. What proportion of financial assistance on water and sanitation is targeted towards those who currently have no access to improved water and sanitation facilities?
 5. Where watercourses cross international boundaries, are there mechanisms to engage in basin-level co-operation with other countries bordering such watercourses? Have steps been put in place to cooperation on water quality? Are basic needs prioritised in are allocation of water resources?
 6. Are there mechanisms in place to ensure that trade and investment agreements do not impede government measures to implement the right to water and sanitation?
 7. Where economic sanctions are imposed, are there safeguards to ensure that they do not negatively affect/influence the right to water and sanitation?
 8. Do rules of engagement for armed conflict prohibit attacks on water and sanitation related facilities?
 9. Do measures and proposals to limit greenhouse gas emissions take into account the impact of climate change on water availability and on displacement? Are sufficient measures being taken to assist vulnerable and marginalised groups cope with drought and displacement caused by climate change?
-

Details of partners

The Centre on Housing Rights and Evictions (COHRE) is an independent, international, non-governmental human rights organisation. The Right to Water Programme (RWP) was established in 2002. It promotes reforms in international, national and local governance to achieve the right to water and sanitation for all, based on research, training and advocacy. COHRE works at the national level in cooperation with national and local groups. At the international level, COHRE aims to catalyse and support action by governments, international agencies and NGOs through publications, training and advocacy for stronger international standards. Further information is available at www.cohre.org and www.cohre.org/water.

The American Association for the Advancement of Science (AAAS) is an international non-profit organisation dedicated to advancing science around the world by serving as an educator, leader, spokesperson and professional association. The AAAS Science and Human Rights Program brings scientists to the important work of human rights organisations, marshals scientific tools and technologies to enhance the impact of human rights work, promotes the human right to benefit from scientific progress (Article 15, ICESCR), and brings human rights norms to the conduct of science. Further information is available at: <http://www.aaas.org> and <http://shr.aaas.org/>

The Swiss Agency for Development and Cooperation (SDC) is Switzerland's international cooperation agency within the Federal Department of Foreign Affairs (FDFA). SDC is responsible for the overall coordination of development activities and cooperation with priority countries in Latin America, Africa and Asia and Eastern Europe, as well as for humanitarian aid. SDC puts the access to water in the centre of its interventions for the human beings and their food security. The Swiss Agency works at the intersection of three interdependent fields: the environment, the economy and the society, in order to fulfil its main goal: the fight for poverty reduction and sustainable development. Further information is available at: <http://www.sdc.admin.ch>.

The United Nations Human Settlements Programme, UN-HABITAT, is the United Nations agency for human settlements. It is mandated by the UN General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all. UN-HABITAT's Water, Sanitation and Infrastructure branch works with governments, local authorities and other partners to build capacity for effective and efficient provision and delivery of water, sanitation and infrastructure. Further information is available at: <http://www.unhabitat.org>.

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The *Manual on the Right to Water and Sanitation* is designed to assist policy makers and practitioners in implementing the right to water and sanitation.

This essential publication, written in non-legal language, addresses the vital need to clarify how human rights can be practically realised in the water and sanitation sector. The Manual demonstrates that implementing the right to water and sanitation is not limited to legal recognition or allocation of funds. Rather, it provides the basis for practical reforms in many areas of water supply and sanitation and in water resource management that can help make the water and sanitation sector operate in a manner that is more pro-poor, accountable and inclusive.

The Manual will assist governments to operationalise their legal obligations under the international human rights treaties that they have ratified. The Manual is also useful as a tool to help achieve the Millennium Development Goals (MDGs) on water and sanitation. Human rights standards can help orient policy-making towards serving the needs of those without access to water and sanitation and require participatory, inclusive and accountable processes that can facilitate significant increases in access to water and sanitation.

The Manual will be useful for practical implementation as it:

- Explains the key components of the right to water and sanitation and their implications for governments.
- Describes a range of practical policy measures that could be adopted by governments, in particular those in low-income countries, to achieve the right to water and sanitation in the shortest possible time.
- Illustrates examples of policy measures that have been taken to achieve particular components of the right to water and sanitation.
- Provides a checklist by which governments can assess their achievements in relation to the right to water and sanitation.
- Describes the roles of other actors, in particular, individuals and communities in contributing to the achievement of the right to water and sanitation.

