

Manual on the Right to Water and Sanitation

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INTRODUCTION TO THE MANUAL

There is growing interest in the contributions of human rights to efforts to extend access to water and sanitation, but little practical information is available at present on how this can be achieved. The purpose of this Manual is to address this information gap, and to offer insights into measures to address practical difficulties such as resource constraints, on the inability of low-income users to pay for water, weak institutional capacity and the need to strengthen the political will to implement the right to water.

The objectives of the Manual are as follows:

- Explain the key aspects of the right to water and sanitation and clarifying 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 been taken to achieve particular components of the right to water and sanitation.
- Provide a check-list by which governments can assess their achievements in relation to the right to water and sanitation.

The Manual **does not** aim to accomplish the following:

- Provide a detailed analysis of the legally binding obligations of governments.¹
- Explain how the right to water and sanitation can be used by civil society in advocacy.²
- Describe the specific technical solutions needed to ensure access to water and sanitation.

The Manual has been designed primarily for governments, including national and regional governments and local authorities, in their capacity as policy makers, budget allocators, regulators and providers. The Manual should not be seen as a blueprint for implementation, but rather lists potential implementation actions that could be considered by each country and applied to their particular context, taking into account factors such as available financial resources, government capacity, ability of users to pay, division of responsibilities between ministries, authority of local government, etc.

The Manual will also be useful to international organisations and civil society where they operate water and sanitation services, monitor government performance or engage in policy advocacy and advice. It is designed to be used in the following contexts:

¹ For this task, it is necessary to apply the General Comment on the Right to Water to a particular situation. 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. Magdalena Sepúlveda, *The nature of the obligations under the International Covenant on Economic, Social and Cultural Rights*, Antwerp : Intersentia, 2003.

² See 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').

- 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 relates to housing and access to water for domestic purposes.
- Development of housing standards as they related to water and sanitation.
- Establishment of quality standards on water and sanitation.
- Training of water and sanitation sector professionals on rights-based approaches.

As a basis for defining the right to water, the Manual relies on General Comment No. 15: The Right to Water (‘referred to as General Comment No. 15’) adopted by the United Nations Committee on Economic, Social and Cultural Rights in 2002. General Comment No. 15 is an authoritative interpretation of the International Covenant on Economic, Social and Cultural Rights, a human rights treaty ratified by 156 States as of July 2007.

For the definition of the right to sanitation, and as a complement to General Comment No. 15, the Manual also takes into account 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, an official expert body that advises the UN Human Rights Council.

The Manual is also guided by the 2000 Millennium Declaration and the 2002 Johannesburg Plan of Implementation, which form the basis for the Millennium Development Goals (MDGs) relating to water and sanitation. The MDGs are an important political commitment made by all States. The MDGs supplement human rights standards by providing quantitative and time-bound targets. Conversely, human rights standards themselves provide an important road map for the achievement of the MDGs.

The following organisations have partnered on the development of this publication:

- Centre on Housing Rights and Evictions (COHRE) Right to Water Programme,
- United Nations Human Settlements Programme (UN-HABITAT) Water, Sanitation and Infrastructure Branch (WSIB),
- American Association for the Advancement of Science (AAAS) Science and Human Rights Programme, and
- Swiss Agency for Development and Cooperation (SDC).

Please note that the draft of the Manual has not undergone the publication review processes of the partner organisations. At the present time, the draft – prepared by COHRE’s Right to Water Programme – remains a work in progress. The contents of the publication remain open for discussion.

The project has received financial support towards production costs from the partners listed above as well as the Norwegian Agency for Development Cooperation (NORAD) and the World Health Organization (WHO).

The partners are very interested in the comments of potential users as to which issues and case studies should be addressed in this manual. Those interested in providing comment or review of draft chapters are invited to send these to: water@cohre.org.

The Manual brings together writers and organisations with expertise in human rights law, water management, engineering urban governance, housing and economics. An Advisory Committee, composed of experts in key components of water law policy, has been established to provide detailed review of the manual.

KEY TERMS IN THE MANUAL

Covenant/International Covenant on Economic, Social and Cultural Rights (ICESCR): A treaty that 156 countries have ratified as of July 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.

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.

Sub-Commission Guidelines: 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 created to advise the UN Human Rights Council. These Guidelines do not legally define the right to water and sanitation, but rather provide guidance for its implementation.

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 (or parliament) which adopts laws and the executive which implements them. The role of governments in all countries involve policy making, regulating and allocating resources. The Manual distinguishes these roles from that of water and sanitation service provision, in order to address these functions more clearly. However, it must be noted that in many countries, there is no institutional separation between governments as regulator and as service provider.

States: The General Comment on the Right to Water refers to ‘States parties’. This term refers to States whose parliaments have ratified the ICESCR, thus making it legally binding under international law for all their government bodies.

Service Providers: This term refers to water and sanitation services providers. Almost ninety per cent of water and sanitation utilities (which operate networks) are managed by national, regional or local government departments or by publicly-owned companies. Small-scale water and sanitation services (such as standpipes) are normally operated by entrepreneurs or by community organisations.

WHO 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.

Vulnerable and marginalised groups: Vulnerable groups, such as children, require special attention due to their physical conditions. Marginalised groups, for example women, require special attention due to their traditional and/or current exclusion from political power and resources required to ensure their human rights, including water and sanitation.

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. ‘Community’ refers to a group of people in a particular location who consider themselves to have shared interests.

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 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.³ The right to water and sanitation is a crucial aspect of the struggle to improve this situation.

Part I of the manual outlines the **foundations** of the right to water and sanitation. Chapter 1 surveys the challenge of lack of access to water and sanitation. Chapter 2 describes the contents of the human right to water and sanitation, its contributions and its limitations. The right to water and sanitation comprises the following: Every person is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses in or near their homes, workplace or educational institution. Equally, every person is entitled to access to adequate and affordable sanitation in or near their homes, workplace or educational institution. As with all human rights, the right to water and sanitation is guided by a set of common principles that are grounded in widely ratified human rights treaties, namely, non-discrimination, inclusion of vulnerable and marginalised groups, access to information and participation, and transparency and accountability. The right to water and sanitation is to be realised progressively, taking into account available resources. Chapter 3 describes the legal basis for the right to water and sanitation in international law and its institutional framework.

Part II expands on the **framework for implementation**. In Chapter 4: Roles of Key Actors, the responsibilities of the various different actors, particularly governments but also communities, NGOs and the wider international community to realise the right to water and sanitation are discussed. (See the Introduction for an explanation of key terms used in the manual).

Governments

Governments 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, as a regulator of service provision as well as service and information provider and lastly as a monitor of service provision. These roles can be further explored as follows:

Government as policy maker, resources allocator and regulator

- Prioritising water and sanitation services within budgeting and political processes.
- Revising legislation and policies in order to recognise and implement the right to water and sanitation.
- Developing a plan of action to implement the right, including developing standards and targets and clarifying the division of responsibilities between stakeholders.
- Ensuring coordination between ministries and departments, including between central, regional and local governments.
- Ensuring that all levels of government responsible for water and sanitation services have sufficient resources, authority and capacity.

³ Chapter 1 provides further information on the figures for lack of access, and the assumptions underlying them.

- Ensuring that individuals and groups are given full and equal access to information on water and sanitation.
- Protecting and promoting the right of individuals and groups to participate in all decision-making processes affecting their access to water and sanitation.
- Encouraging and providing opportunities to communities to be involved in water and sanitation service provision.
- Collecting and disseminating accurate information on access to water and sanitation services, including disaggregated information on levels of access by vulnerable and marginalised groups.
- Integrating the right to water and sanitation into international cooperation processes relating to development, finance, trade, investment and environment.
- Paying water and sanitation charges for government's use of water and sanitation services.
- Ensuring that water and sanitation service providers (public and private) comply with service delivery standards and that there is independent monitoring, penalties for non-compliance and genuine participation by users.
- Monitoring water quality.

Government as service provider

The vast majority of water and sanitation utility services are operated by governments, in most cases by local authorities, although some services are contracted out to private operators. In many developing countries, small-scale facilities such as kiosks, standpipes and wells, operated by entrepreneurs and community groups are responsible for a significant proportion of service provision. In many countries, basic sanitation and hygiene promotion is considered as 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 contributions to make:

- Extending services to marginalised and vulnerable groups.
- Improving operational efficiency of utilities through reducing costs and leakages and improving billing processes.
- Establishing the lowest possible charge for services to low-income areas and households.
- Providing sufficient and safe water and sanitation facilities.
- Promoting hygiene awareness and providing information to households and small-scale providers on safe water storage and water quality monitoring.

Government as independent monitor

Accountability and effective implementation can be enhanced if an independent branch of government monitors the performance of public institutions. Responses to complaints and detailed review of implementation of government policy can normally be addressed effectively by a body that can act quickly, flexibly and cheaply, such as an official human rights commission or ombudsman institution. Such bodies can refer issues to the judiciary where criminal or civil penalties need to be imposed or where issues of interpretation of laws need to be considered. Independent bodies monitoring bodies can support implement of the right by:

- Reviewing legislation, policies and programmes to ensure that they are consistent with the right to water and sanitation.
- Investigating complaints by users and ensuring adequate redress for genuine complaints.

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

Individuals and Communities

Communities of users (including community-based organisations) have the knowledge of their environment and their needs, the motivation to improve their situation, and in many situations, especially in rural areas, communities have greater capacity to manage services than the responsible government body. Individuals and communities can play the following roles:

- Identifying the needs and priorities of all members of the community, monitoring service provision and proposing appropriate water and sanitation policies to government bodies.
- Obtaining information about their rights under national and international law and policies, disseminating it within their communities and advocating for implementation of their rights, in partnership with other communities.
- Paying for water and sanitation services, according to the capacity of each household.
- Using water and sanitation facilities responsibly and spreading knowledge within the community of good hygienic practices.
- Assisting vulnerable and marginalised individuals and households within the community secure access to water and sanitation.

Non-governmental organisations

Non-governmental organisations (NGOs), including international, national or local NGOs, can implement and promote the right to water and sanitation by:

- Supporting the work of communities by providing them with information, facilitate community organisation and development of accountable structures and assisting communities to articulate and advocate for their rights.
- Building capacity among government, communities and other NGOs on water and sanitation issues, including on rights and responsibilities, management and technical information.
- Ensuring that NGO activities are coordinated and that their work supports and does not duplicate work done by government, other NGOs or international organisations.
- For international NGOs, supporting the development and growth of local and national NGOs and community-based organisations.

Industrial and Agricultural Water Users

Industrial and agricultural bodies 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:

- Making efficient use of water and promoting effective water conservation methods
- Disposing of waste in an environmentally responsible manner

International Organisations

International organisations with a mandate to work on water and sanitation can support the implementation of the right to water and sanitation by:

- Providing financial and technical assistance to governments, NGOs and communities.
- Reviewing and revising their cooperation policies, operating procedures and policy advice to ensure that these are consistent with the right to water and sanitation.

Discrimination and Attention to Vulnerable and Marginalised Groups

In Chapter 5, the manual outlines how national governments can act to prevent discrimination and exclusion of vulnerable and marginalised groups, a crucial aspect of a human rights framework. Vulnerable groups, such as children, require special attention due to their physical conditions. Marginalised groups, for example women, require special attention due to their traditional and/or current exclusion from political power. This can be achieved by:

- Ensuring that a comprehensive anti-discrimination law is in place, with an institution to investigate and provide remedies for discrimination against individuals or communities.
- Revising existing laws, regulations, policies and operating procedures to ensure that they prohibit discrimination.
- Reviewing government water and sanitation budgets to ensure that they do not exclude those living in poverty, in particular vulnerable and marginalised groups and that the bulk of public subsidies are directed towards such groups.
- Ensuring that data collection on access to water and sanitation takes into account ethnicity, age, disability, gender, region, income and other related grounds so as to identify discrepancies and set priorities for government assistance.
- Establishing requirements for water and sanitation institutions to ensure that vulnerable and marginalised groups are represented in public participation processes and their views are seriously addressed.
- Ensuring that institutions utilised by marginalised and vulnerable groups, such as schools, hospitals, prisons and refugee camps are given special attention in government policies, including those relating to relating to water allocation, tariffs, investment and subsidies.
- Reviewing all water and sanitation-related legislation, policies and programmes to ensure that they adequately address the requirements of specific marginalised and vulnerable groups.

Participation and Access to Information

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, budget considerations, development of plans and strategies, implementation of projects and regulation and monitoring of services. This can be achieved by:

- Introducing mechanisms to facilitate access to water and sanitation sector information for policy and decision-making.
- Ensuring public access to essential water quality and environmental health data.
- Undertaking multi-stakeholder dialogues in the development of water and sanitation legislation, policies and programmes, including representatives of marginalised and vulnerable groups.

- Making provision for community development and management of water and sanitation facilities and services in appropriate situations.

Part III of the manual discusses the key aspects of **implementation** necessary for the realisation of the right to water, looking particularly at availability of water sources, water quality, physical accessibility of water and sanitation, affordability issues and how governments and other international bodies can cooperate to ensure safe and adequate water and sanitation services for all.

Water Availability and Allocation

Chapter 7 considers how governments can act to ensure availability of water by:

- Setting a standard for a minimum quantity of water sufficient for human dignity, life and health, where necessary limiting water used for other purposes.
- Prioritising allocation of water resources for essential domestic uses
- Ensuring that water rationing is carried out in an equitable manner
- Improving sustainability of water resources
- Protecting water catchment areas
- Improving the efficiency of piped water delivery

Water Quality and Hygiene

Chapter 8 considers how governments can act to ensure good water quality and hygiene practices by:

- Formulating water quality standards designed to address the needs of all groups, as expressed by such groups in participatory processes.
- Formulating short-term and medium term targets to eliminate the pollutants with the most significant health effects, including effects on vulnerable groups.
- Establishing regulations and mechanisms to control pollution of water resources and ensuring effective disincentives and penalties for pollution.
- Establishing regulations on water quality for service providers.
- Putting in place mechanisms to monitor quality of water supply and ensure safety.
- Promoting hygiene awareness and providing information and training to households and small-scale providers on safe water storage and water quality monitoring.
- Making all information related to water quality held by public authorities or third parties available to the public.

Accessibility of Water and Sanitation

Chapter 9 discusses how governments can act to ensure physical accessibility of water and sanitation services by:

- Establishing or revising national/regional minimum standards and targets on proximity to water source and sanitary facilities and adequacy of facility, including short and medium term targets.
- Establishing specific access targets for each provider in line with national/regional targets and ensuring their implementation through monitoring, regulation and provision of necessary funding and training.

- Addressing security concerns when selecting locations for water and sanitation facilities, deciding on levels of lighting and priorities for assistance programmes.
- Ensuring that no individual currently accessing water and sanitation is deprived of access
- Revising regulations on land tenure to facilitate access in to informal settlements.
- Ensuring that users are given relevant information and can participate in decision making on the design and maintenance of public water and sanitation services.
- Dedicating an adequate proportion of public resources and capacity to the maintenance and improvement of existing water and sanitation facilities.
- Requiring landlords to ensure that tenants have access to adequate water and sanitation services
- Ensuring that response systems are in place for the provision of basic water and sanitation services in emergencies
- Preserving access to traditional sources of water.

Affordability of Water and Sanitation

Affordability of water and sanitation services is a crucial aspect of accessibility that 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 good quality water is threatened. Chapter 10 considers how governments can act to ensure affordability of water and sanitation services by:

- 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.
- Monitoring and controlling charges by water and sanitation utilities and small-scale service providers to households, schools, health facilities and workplaces.
- Prioritising available public investment towards the construction of water and sanitation services and facilities that reduce water costs, and subsidising the costs for low-income users.
- Reducing costs by ensuring that a broad range of levels of service and facilities are available, with the potential for progressive upgrading so that low-income and irregularly employed persons can purchase forms of access of their choice.
- Facilitating organised user groups to manage their own water and sanitation facilities, where possible, potentially reducing costs.
- Establishing flexible payment terms based on consultations with users, for example, phased payment of connection charges.
- Providing subsidies for water and sanitation services targeted towards the lowest income and vulnerable persons.
- Increasing public financing for subsidy programmes for the poor through: cross-subsidies between higher and lower income groups, reducing high-cost interventions, reduction of subsidies benefiting upper and middle income groups, ring-fencing of water and sanitation revenues, improving efficiency, larger national budgetary allocations and better targeting and increasing international assistance.
- 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.
- Integrating ability to pay considerations into disconnection policies and prohibiting total disconnection from water.

International Cooperation

Chapter 11 covers international cooperation and how governments can promote the right to water and sanitation in other countries by:

- Increasing overall international development assistance for water and sanitation services that would benefit the poorest communities, and improving its predictability by providing multi-year support.
- Focusing development cooperation on programmes and projects that particularly target low-income areas and groups.
- Ensuring that their development cooperation does not lead to impediments for any person's access to water and sanitation, or other human rights.
- Cooperating 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.
- Cooperating 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.
- Where trade or financial sanctions are imposed by any country on another, ensuring that these sanctions do not impede access to water and sanitation.
- Ensuring that in the context of military conflict, water and sanitation facilities are not attacked and that reasonable precautions are taken to prevent any damage.
- Establishing the impact on water availability as a criterion for setting limits on emissions of greenhouse gases, and providing international assistance to groups facing drought caused by climate change.

CHAPTER 1: THE WATER AND SANITATION CHALLENGE

1. The water and sanitation challenge

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 is necessary to sustain human life and to ensure good health and human dignity.

1.1 Context of the water crisis

There is sufficient clean freshwater in the world for everyone's basic personal and domestic needs. Personal and domestic uses of water, for example, normally take up only 12% of the total amount of water used in human activities. However, water is not equally distributed, either between countries or between individuals living in the same country, leading to issues of lack of access or inequality of access to water for its various uses. Lack of distribution networks or working systems to extract groundwater or harvest rainwater and, in some cases, exclusion from these services, limits the extent to which people have sufficient water. In some cases, there is excessive extraction from groundwater, often for industrial use, limiting both domestic use and perhaps long-term use. Groundwater is also at increasing risk from contamination, again from industry failing to properly treat wastewater before discharging it or from a lack of adequate sewerage treatment.

Over 1.1 billion individuals lack access to a basic supply of water from a clean source likely to be safe. According to the WHO UNICEF Joint Monitoring Programme in their study in 2004,⁴ in urban centres, 95% of residents have adequate water supply and 73% of rural residents. Box 1.1 gives figures for the different regions.

In rural areas, many people collect water from unsafe wells or surface water sources, often at a great distance from their homes, deterring them from collecting sufficient quantities.

In urban areas, 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, it is frequently unknown how many residents there are living in these settlements. 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 hygienic practices. As a result there is considerable inequality of distribution of water and sanitation services in urban areas, with smaller urban areas being particularly badly affected.⁵

⁴ WHO and UNICEF, *Meeting the MDG Drinking-Water and Sanitation Target: A Mid-Term Assessment of Progress* (Geneva, New York: WHO, UNICEF, 2004), p. 4, 21 and 31. See Box 1.1 for a description of these terms.

⁵ UN-HABITAT – Meeting Development Goals in Small Urban Centres: Water and Sanitation in the World's Cities 2006.

Box 1.1: Water Supply and Sanitation Coverage by Region, (2002) ⁶						
Region	Percent Without access to Improved Water			Percent Without Access to Improved Sanitation		
	Urban	Rural	Total	Urban	Rural	Total
Global	5	28	17	19	63	42
Developed World	0	6	2	0	8	2
Eurasia	1	18	7	8	35	17
Developing Regions	8	30	21	27	69	51
Sub-Saharan Africa	16	55	42	45	74	64
Northern Africa	4	16	10	11	43	27
South Asia	6	25	19	22	69	52
Eastern Asia	7	32	22	31	70	55
South-Eastern Asia	9	30	21	21	51	39
West Asia	5	26	12	5	51	21
Latin American and the Caribbean	5	31	11	16	56	25
Oceania	9	60	48	16	54	45

The term ‘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 to be unsafe. A household is only determined to have access to an improved water source if the time taken to collect water is short enough (i.e. 30 minutes or less) to allow collection of at least 20 litres of safe water per person a day. This amount is nominally the minimum required to meet basic personal and domestic needs – see Chapter 6 on Availability, Box 6.1.

The term ‘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 to be unsafe.

The definition of improved water supply does not address certain aspects of the right to water, for example, whether the cost of the water is unaffordable, whether the supply is continuous and whether there are security concerns in collecting water. Therefore, the number of people with access to water short of the requirements in the UN General Comment on the Right to Water (see Chapter 2) is certainly much higher than the number of people with access to ‘improved water supply.’

⁶ This table is drawn from WHO and UNICEF, *Meeting the MDG Drinking-Water and Sanitation Target: A Mid-Term Assessment of Progress*, see note 1 above, p. 31. 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. More detailed information, including the percentage of people with household connections in each region can be found in this report.

Box 1.2: Estimates for the proportion of people without adequate provision for water and sanitation in urban areas⁷		
Region	Number and proportion of urban dwellers without adequate provision	
	Water	Sanitation
Africa	100–150 million (c. 35–50 %)	150–180 million (c. 50-60 %)
Asia	500–700 million (c. 35–50 %)	600–800 million (c. 45–60 %)
Latin America and the Caribbean	80–120 million (c. 20–30 %)	100–150 million (c. 25–40 %)

1.2. Sanitation

Over 2.6 billion persons lack access to adequate sanitation facilities, a primary cause of water contamination and diseases linked to water. The absence of adequate sanitation systems in many parts of the world has led to widespread pollution of water sources that communities rely upon for survival. Millions of children are left malnourished, physically stunted and mentally disabled as a result of excreta-related diseases and intestinal worm infections. Sanitation is also important to promote and protect human dignity and privacy.

1.3 Effects on human health

It is estimated that nearly half the population of developing countries are suffering from diseases linked to inadequate water and sanitation.⁸ Drinking contaminated water transmits waterborne diseases such as cholera, typhoid, diarrhoea, viral hepatitis A, dysentery and dracunculiasis (guinea worm disease). Insufficient quantities of water for washing and personal hygiene, as well as a lack of sanitation facilities leads to water-washed disease, such as trachoma. The effects are widespread, as set out below:

- Approximately 4 billion cases of diarrhoea each year cause 2.2 million deaths, mostly among children under five – about 15% of all child deaths under the age of 5 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, with 500 million people at risk from this waterborne disease.
- Two hundred million people are infected with schistosomiasis, with 20 million suffering severe consequences.⁹

The lack of adequate sanitation also has a negative impact on the bladder and bowels, which are placed under undue pressure through irregular .

⁷ UN-Habitat Water and Sanitation in the World's Cities: Local Action for Global Goals, Earthscan, London, 2003

⁸ UNDP Human Development Report 2006 p.6.

⁹ These are drawn from WHO/UNICEF Assessment, see note 1 above, p. 2.

1.4 Effects on poverty and development

The poor and other marginalised groups usually bear the brunt of a lack of access to water and sanitation. 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 the ability of the poor to grow food and engage in income-generating activity. This lack of safe water and sanitation also however impacts on society as a whole in terms of health costs and loss of human potential and resources.

The continuing contamination, depletion and unequal distribution of water exacerbates existing poverty in the following manners:

The poor often pay higher prices for drinking water. Poor people spend a significantly greater proportion of their income on water than do the rich, 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.

Disease caused by lack of safe water leads to illness and death. It also burdens the poor with high health care costs and loss of ability to work to secure one's livelihood. Disease also causes children to miss school and causes adults to miss work. Safe water is also essential for home-based care of the sick or those who are HIV positive.

Women and 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.¹⁰ 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.¹¹ 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.¹²

Lack of adequate sanitation causes particularly women significant distress both physically and socially and can lead to long-term damage to the bowels. There is growing evidence to suggest that inadequate water supply and sanitation facilities in schools leads to decreased attendance and

¹⁰ 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.

¹¹ W. J. Cosgrove & F.R. Rijsberman, "Creating A Vision For Water, Life And The Environment" in *Water Policy* Vol.1 1998, p. 115-122.

¹² 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).

drop-outs.¹³ Better access to water increases school attendance by 15 % in Tanzania, while 12 % more girls stay in those Bangladeshi schools that offer the privacy of basic sanitation facilities.

The importance of alleviating these problems has been recognised by the international community, reflected in the Millennium Declaration and the Millennium Development Goals.

Box 1.3: The MDGs on Water and Sanitation

The UN Millennium Declaration resolves to halve the proportion of people who are unable to reach or to afford safe drinking water by 2015 (UNGA Res 55/2 (Millennium Declaration) (8 September 2000) UN Doc A/55/L.2 para 19).

The Johannesburg Plan of Implementation of the World Summit on Sustainable Development, 2002, re-iterated this commitment, as well as added a similar target in relation to the proportion of people who do not have adequate access to basic sanitation (para 8, 25).

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

1.5 Access to water for non-domestic uses

While personal and domestic uses are the primary requirements, water is essential for other uses, such as agriculture, production, whether small- or large-scale and the environment. Priority should be given as a rule to domestic uses, but in times of severe water scarcity leading to starvation and disease, limiting domestic consumption to the minimum amount necessary in order to make water available for use for medical treatment and agriculture will be required.

Water is also essential for food security and income-generating activities. Water shortages and unreliable access to water can reduce crop production and livestock health¹⁴ and can also 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 will not support the proper growth of trees and other flora which are necessary to prevent soil erosion.

Chapter 6: Availability will discuss trade-offs between these areas.

1.6 Waste-water disposal

While water delivery is clearly a priority for all, the importance of an accompanying waste water disposal or drainage systems is often not recognised for the prevention of disease. Where there is water delivered, there needs to be a method of removing the wastewater to prevent stagnant water from gathering. Stagnant or still bodies of water can serve as a habitat for insects, such as the malarial mosquito. Low-cost drainage systems that prevent the accumulation of still water are one solution to this problem.

¹³ WHO, UN OHCHR, COHRE, Water Aid and CESR, *The Right to Water*, (Geneva: WHO, 2003), p. 7.

¹⁴ In developing countries, irrigated agriculture accounts for 40% of all crop production, and 60% of cereals.

Natural water resources need to be protected from contamination by harmful substances and pathogenic microbes, for example from human or animal faeces, so that water bodies do not provide a habitat for vectors of diseases.

2. Factors shaping lack of access to water and sanitation and the changing contexts

A number of common factors explain current levels of lack of access to water and sanitation in developing countries:

- In planning and political terms, poor people are excluded from decision-making and the needs of the poor are seldom prioritised. In many situations, resources are used to provide expensive services to a few rather than low-cost alternatives that would provide water services for a greater number of people.
- There is insufficient recognition that access to safe water and sanitation services has a positive impact on other development objectives, including economic objectives. Water, and particularly sanitation, generally does not receive the priority it deserves in national budgets and in allocations by international donors.
- Deprived urban areas and rural areas are frequently neglected or totally ignored in infrastructure development and maintenance. There is insufficient water infrastructure to carry water to locations inside or close to households, which has a negative impact on health. It has been shown that the closer a water source is to a household in terms of time taken to collect water, the more water is used.¹⁵
- There are technical and management problems in water and sanitation delivery systems to remote and rural locations both in developed and developing countries
- There is a lack of finances and capacity to maintain water delivery systems and sanitation services. Remote rural areas and informal urban areas are often particularly resource poor.
- Changing land use and ownership is reducing or limiting access to previously available water sources. This is a particular problem as agricultural land on the edges of cities or towns is being increasingly used for housing or industrial use, which often leads to contamination of existing wells or traditional water sources.
- Human and animal waste, agricultural run-off and industrial waste are polluting water sources, having a negative impact on health. There is frequently little control over waste water, with insufficient legislation, regulation and monitoring to ensure that wastes are properly treated.
- Inefficient supply systems, lack of finances to tap new sources of water and the alterations in weather patterns due to climate change, desertification due to excessive logging and salt water seepage in coastal areas are compounding the problem of insufficient water due to drought and population growth.
- Water supply and sanitation services have been privatised in some countries, normally involving the management of water supply infrastructure by a private corporation. While only a small number have been privatised, this process has often led to higher tariffs (in some cases to unaffordable levels for the poor) and has been carried out before appropriate monitoring and regulatory structures are in place, with the focus on delivery on economic gain rather than

¹⁵ Howard & Bartram , *ibid*, p. 22.

social needs. Privatisation has been seen since the 1990s by many actors in the field as a source of investment for the water sector. However, while this promise has not borne out, this expectation appears to have led to lower international assistance to the water sector (See Chapter 8: Accessibility). In addition, the significant conflict and debates on the issue of privatisation may have diverted the focus away from the key issue of access to water and sanitation services for all.

- Cost recovery for water services is generally seen as necessary in order to generate finances for the construction and maintenance of water supply 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.¹⁶ However, the latter consideration is often insufficiently understood when it comes to setting tariff structures for water services resulting in tariff structures which are unfavourable to the poor.
- 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, one which is exacerbated by the insecure tenure of those living in informal settlements and due to a lack of planning for urban growth, a symptom of the fact that informal settlements are frequently not politically acceptable and the people who live there are not seen as an crucial part of the urban economy. (See Chapter 6 on Accessibility).

¹⁶ Johannesburg Plan of Implementation of the 2002 World Summit in Sustainable Development, para. 26 (b). See also the declarations listed in Chapter 6, Section 2.

CHAPTER 2: OVERVIEW OF THE HUMAN RIGHT TO WATER AND SANITATION

Economic, social and cultural rights, including implicit or explicit references to water, are contained in the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women, (CEDAW), the Convention on the Rights of the Child (CRC), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Every UN member state has ratified at least one of these four treaties.

1. The human right to water and sanitation

In regard to the ICESCR, 156 States are now a party to this international treaty. The ICESCR has a committee of experts elected by States parties to the ICESCR to help monitor and interpret the ICESCR known as the Committee on Economic, Social and Cultural Rights (CESCR). In 2002, CESCR adopted General Comment No. 15: The Right to Water. General Comment No. 15 states that “[t]he human right to water entitles everyone to sufficient, safe, acceptable physically accessible and affordable water for personal and domestic uses.”¹⁷ Furthermore, it states that everyone is entitled to have “access to adequate sanitation.”¹⁸ The CESCR emphasises that the right to water and sanitation must be realised in a sustainable way, for present and future generations.¹⁹ General Comment No. 15 states that “[t]he elements of the right to water must be *adequate* for human dignity, life and health.”²⁰

In addition, the right has also been addressed by the UN Sub-Commission on the Promotion and Protection of Human Rights, an expert body that advises the UN Human Rights Council. The Sub-Commission has produced an analysis of the legal basis and implications of the right to water and sanitation.²¹ In 2006, it adopted 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 water, and its components. They are also more focused on short-term implementation rather than on a formal definition of the right.²²

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.²³ (See also chapter 7).

¹⁷ 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 2. See also Chapter 3: Legal Basis.

¹⁸ General Comment No. 15, para. 29.

¹⁹ General Comment No. 15, para. 11.

²⁰ General Comment No. 15, para. 11.

²¹ 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.

²² 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.

²³ General Comment No. 15, para. 12(a).

Clean water: Safe water that, in particular, is free from hazardous substances which could endanger human health,²⁴ and whose colour, odour and taste that is acceptable to users.²⁵ (See also chapter 8).

Accessible water and sanitation: Water and water and sanitation services 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.²⁶ According to the Sub-Commission Guidelines, sanitation must be safe, adequate and conducive to the protection of public health and the environment.²⁷ (See also chapter 9).

Affordable water and sanitation: The costs of securing water and sanitation do not reduce any person's capacity to acquire other essential goods and services, including food, housing, health services and education.²⁸ (See also chapter 10).

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

Non-Discrimination and inclusion of vulnerable and marginalised groups: Everybody is ensured access to water and sanitation, including the most vulnerable or marginalised groups, and without discrimination.²⁹ 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) which differentiates without legitimate reason.³⁰ Not is active discrimination against particular groups avoided, governments pro-actively take measures to address the particular needs of vulnerable or marginalised groups, such as women, persons with illnesses (eg HIV/AIDS), poor people living in informal settlements, and excluded minorities.³¹ (See also chapter 5).

Access to information and participation: Each policy, programme or strategy concerning water and sanitation includes, as an integral element, the right of all people to participate in decision-making processes that may affect their rights.³² Special efforts are made 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 those services should be managed.³³ All people are given full and equal access to information concerning water, sanitation and the environment.³⁴ (See also chapter 6.)

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

²⁴ General Comment No. 15, para. 12(b), referring to the respective WHO Guidelines.

²⁵ General Comment No. 15, para. 12(b).

²⁶ General Comment No. 15, paras. 12(c)(i), 29, Sub-Commission Guidelines s. 1.3(a)-(c).

²⁷ Sub-Commission Guidelines s. 1.2.

²⁸ General Comment No. 15, para 12(c)(ii); Sub-Commission Guidelines, s. 1.3(d).

²⁹ ICESCR, Art. 2 (2), General Comment No. 15, paras. 12 (c)(iii), (13), (16); Sub-Commission Guidelines, s. 3.

³⁰ ICCPR General Comment No. 18, para. 6 (f); ICERD art 1; CEDAW art 1.

³¹ ICCPR General Comment No. 18, para. 10.

³² General Comment No. 15, para. 48; Sub-Commission Guidelines, s. 8.1.

³³ Sub-Commission Guidelines, s. 8.2.

³⁴ General Comment No. 15, paras. 12(4), 48; Sub-Commission Guidelines, s. 8.3.

- Water is necessary to produce food, and is therefore necessary to realise the right to adequate food;³⁵
- Water is necessary to ensure environmental hygiene, and is therefore a component of the right to health;³⁶
- Water is essential for securing livelihoods, and therefore an aspect of the right to gain a living by work; and
- Water is required to enjoy certain cultural practices, and thus an element of the right to take part in cultural life.³⁷

Accountability: Persons or groups denied their right to water and sanitation have access to effective judicial or other appropriate remedies, for example national ombudsmen or human right commissions.³⁸ (See also chapter 4, section 1.17).

2. Progressive realisation of the right

Economic, social and cultural rights are addressed in a different manner than civil and political rights. Rather than requiring immediate realisation, State parties to the ICESCR are to take steps to progressively achieve the full realization 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.³⁹

According to the 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.”⁴⁰

The CESCR further 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 and 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.⁴¹

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 realisation or non-realisation of economic, social and cultural rights, and to devise strategies and

³⁵ See also CESCR, General Comment No. 12: *The Right to Adequate Food*, UN ESCOR, 1999, UN Doc. E/C.12/1999/5.

³⁶ 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.

³⁷ General Comment No. 15, para. 6.

³⁸ General Comment No. 15, para. 55; Sub-Commission Guidelines, s. 9.

³⁹ ICESCR art 2.

⁴⁰ (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 from the text of the respective treaty at: <http://www.unhchr.ch/html/intlinst.htm>.

⁴¹ General Comment No. 15, para. 19, General Comment No. 3, para. 9. Many of the principles set out below 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.

programmes for the promotion, are not eliminated as a result of resource constraints.⁴² In regard to the right to water, according to the CESCR, State parties should develop a national strategy or plan of action to expand access to water for all that contains concrete targets, timelines and 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.⁴³ CESCR also states that even in times of severe resource constraints, vulnerable members of society should be protected through relatively low-cost targeted programmes.⁴⁴

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 recognized in the Covenant.⁴⁵

3. Obligations to respect, protect, and fulfil the right

According to the CESCR, States 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.⁴⁶

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 States parties should refrain from arbitrarily interfering with customary or traditional arrangements for water allocation, or from unlawfully diminishing or polluting water resources.⁴⁷

Obligations to protect require that State parties prevent third parties (including individuals, groups, corporations and other entities under their authority) do not interfere with the enjoyment of a right. For example, General Comment No. 15 indicates that States 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.⁴⁸

Obligations to fulfil can be disaggregated into obligations to facilitate, promote and provide. 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 minimize wastage. State parties are obliged to *provide* a right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.⁴⁹

⁴² General Comment No. 3, para. 11.

⁴³ General Comment No. 15, para. 47.

⁴⁴ General Comment No. 3, para. 12.

⁴⁵ General Comment No. 3, paras. 1 and 2.

⁴⁶ 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.cohre.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) at 107-111.

⁴⁷ General Comment No. 15, para. 21.

⁴⁸ General Comment No. 15, para. 23.

⁴⁹ General Comment No. 15, para. 25.

4. International cooperation obligations

According to CESCR, international cooperation for development, and thus for the realization 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.⁵⁰ Therefore, State parties are obliged to respect the enjoyment of these rights, including the right to water and sanitation, in other countries. 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 in this regard. 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 and sanitation.⁵¹ According to the Sub-Commission Guidelines, developed countries that have available resources should provide assistance to assist development countries with a view to ensuring everyone has access, as quickly as possible, to at least basic water and sanitation services.⁵²

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. It further states: “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.”⁵³ The core obligations, therefore, are particularly useful in guiding the allocation of resources and setting priorities for domestic and international action.⁵⁴

General Comment No. 15 identifies a number of core obligations:

Box 2.1: 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

⁵⁰ General Comment No. 3, para. 14.

⁵¹ General Comment No. 15, paras. 31, 33-36.

⁵² Sub-Commission Guidelines s 10.2.

⁵³ General Comment No. 3, para. 10.

⁵⁴ 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).

- (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 sanitation⁵⁵

6. Contributions of the right to water and sanitation

The right to water and sanitation is based on a universal entitlement held by all humans that is based on a legal foundation. It provides a strong basis to hold relevant actors accountable. Its capacity to generate substantial reform in law, policy and practice is obviously governed by contextual factors, but 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 the technical solutions of expanding access through cost-effective measures exist and are generally known, but are often not being consistently implemented or with any degree of urgency.

There are a number of key features of the right to water and sanitation that 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 means that water and sanitation is viewed as a legal entitlement, rather than only a moral priority. This legal entitlement provides a basis for individuals and groups to hold governments and other actors to account. 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 organizations 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 to all, using available resources, in a pro-poor manner. This is in contrast to the 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).

⁵⁵ General Comment No. 15, para 37.

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 help empower and enable communities to organise themselves and legitimately seek to take part in decision-making processes.

7. Limitations of the right to water and sanitation

Despite the many advantages the right to water and sanitation brings to the sector, limitations in both its existence and use exist:

Needs to be used in conjunction with other development strategies: The human right to water and sanitation is not meant to replace other development strategies, but rather be seen as an additional tool. The right to water and sanitation alone is not going to solve the water crisis. While introducing important guidance for developing policy, the right to water and sanitation, does not necessarily define the most appropriate policy or framework for implementation. This needs to be developed according to conditions in each country.

Misinterpretation and misuse: Not uncommonly, the right to water and sanitation are misinterpreted and/or misused. For example, the right to water does **not** mean the right to free water or an unlimited quantity of water. Neither does the right to water equate with piped water to one's home where it is not economically feasible for the government to do so. Finally, a right to water does not equate with a right to actual water resources contained within the borders of other countries. Many actors in the water and sanitation are unfamiliar with international law and only have an intuitive or partial understanding of human rights concepts. Conversely, many human rights experts tend not to be familiar with the circumstances involved in provision of water and sanitation, and in some cases can adopt an overly prescriptive and abstract approach. 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.

CHAPTER 3: LEGAL BASIS AND INSTITUTIONAL FRAMEWORK FOR THE RIGHT TO WATER AND SANITATION

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. This section briefly surveys these sources.⁵⁶

1. International and regional legal commitments

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

The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) is currently ratified by 156 States. Countries whose Parliaments have ratified or acceded to the Covenant are known as ‘State parties’ to the ICESCR. The treaty binds all levels of government.

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

The State 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 State 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 of independent experts responsible for monitoring implementation of the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR),⁵⁷ adopted **General Comment No. 15** 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 it. General Comment No. 15 states:

⁵⁶ A compilation of references to the right to water, and of international and national legal standards that apply the right to water, is contained in: M. Langford, A. Khalafan, 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). This document is available at www.cohre.org/water, and a updates will be added from the end of 2007. An important source is French Water Academy, *The Right to Water in National Legislations* (2005), www.academie-eau.org. The United Nations human rights treaties referred to in this chapter are available, together with General Comments interpreting them, at <http://www.ohchr.org> (Click on ‘International Law’).

⁵⁷ The Committee on Economic, Social and Cultural Rights (CESCR) sought the authorisation of the United Nations Economic and Social Council (one of 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.

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.⁵⁸

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.⁵⁹ It should be noted that there is not unanimity that the General Comment No. 15 was correct to state that there is a self-standing right to water contained in the ICESCR. However, there is little doubt that the realisation of explicitly stated rights in the ICESCR, including housing and health, is dependent on States parties progressively ensuring access to safe, affordable and accessible water and sanitation.

In addition, the right has also been addressed by the UN Sub-Commission on the Promotion and Protection of Human Rights, an expert body that advises the UN Human Rights Council (Section 4 below in this chapter). The Sub-Commission has produced an analysis of the legal basis and implications of the right to water and sanitation.⁶⁰ In 2006, it adopted 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 water, and its components.⁶¹

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

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:

⁵⁸ 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 3.

⁵⁹ A useful analysis of General Comment No. 15 is provided in Salman S., and McInerney-Lankford, S., *The Human Right to Water: Legal and Policy Dimensions* (World Bank, Washington DC, 2004).

⁶⁰ 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.

⁶¹ 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.

14(2) State 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 women the right: ...

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

1.3 The Convention on the Rights of the Child (CRC)

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.⁶² Water is explicitly mentioned within the text of the CRC.

Article 24(2)(c) of the CRC provides:

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. State 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; ...

1.4 Regional legal commitments

Specific human rights treaties in Africa, Europe and the Americas also explicitly or implicitly provide for the right to water and sanitation.⁶³ 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 implied from the African (Banjul) Charter of Human and People's Rights, 1981, (ratified by almost all African countries) which recognizes 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."⁶⁴

⁶² Only the United States and Somalia have not ratified the CRC.

⁶³ See *Legal Resources for the Right to Water: International and National Standards* (COHRE, 2004), p. 39-45.

⁶⁴ African (Banjul) Charter of Human and People's Rights, 1981, arts. 16, 24.

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.”⁶⁵

In Europe, several States are party to the European Social Charter, 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 to: “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 States ratifying the treaty commit to to promote access to housing of an adequate standard.

1.5 Other international legal commitments

General Comment No. 15 explicitly states that the right to water is included within the right to an adequate standard of living and inextricably related to the right to health of the ICESCR. General Comment No. 15 on the right to water therefore focuses on personal and domestic uses of water, which is the focus of this manual. At this stage, however, it is important to note, that water is also required for other purposes, and in order to realize other international human rights:

- Water is necessary to produce food, and is therefore necessary to realize the right to adequate food;⁶⁶
- Water is necessary to ensure environmental hygiene, and is therefore a component of the right to health;⁶⁷
- Water is essential for securing livelihoods, and therefore an aspect of the right to gain a living by work; and
- Water is required to enjoy certain cultural practices, and thus an element of the right to take part in cultural life.⁶⁸

Accordingly, many of the substantive components of the right to water and sanitation are contained within other internationally recognized human rights.

Other key components of the right to water, such as the obligation to refrain from reducing access to water to civilians in times of war, as well as 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.⁶⁹

⁶⁵ 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.

⁶⁶ See also CESCR, General Comment No. 12: *The Right to Adequate Food*, UN ESCOR, 1999, UN Doc. E/C.12/1999/5.

⁶⁷ 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.

⁶⁸ General Comment No. 15, para. 6.

⁶⁹ See *Legal Resources for the Right to Water: International and National Standards* (COHRE, 2004), p. 16-25.

2. International and regional political commitments

While the aforementioned treaties are legally binding on States that have ratified them, international declarations are normally only politically binding. Declarations may be used to 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 consistently treated by States to be a legally binding norm in a consistent and widespread manner.

All States have recognized the right to water and sanitation in at least one political declaration, this being the Programme of Action of the United Nations (UN) Conference on Population and Development, 1994, which affirms that all people “have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation.”⁷⁰

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”.⁷¹ The UN General Assembly Resolution on the Right to Development, 2002, also recognized the right to clean water.⁷²

In 2006, the Human Rights Council, took note of General Comment No. 15 and the Sub-Commission Guidelines. There were no objections in the adoption of the Human Rights Council Resolution.⁷³

The Non-Aligned Movement, which consists of 116 countries, has also recently recognised the right to water.⁷⁴ In Europe, the Committee of Ministers to Member States on the European Charter of Water Resources, declared that “[e]veryone has the right to a sufficient quantity of water for his or her basic needs.” 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.⁷⁵ In the Americas, reference to the right to water and sanitation can be implied from the American Declaration of the Rights and Duties of Man, 1948, which provides for the preservation of “health through sanitary and social measures.”⁷⁶

⁷⁰ The UN Conference on Population and Development, Programme of Action (1994), principle 2.

⁷¹ The UN Water Conference, Mar del Plata Declaration (1977), preamble.

⁷² 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.”

⁷³ 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 on the right to water.

⁷⁴ The Non-Aligned Movement acknowledged the right to water in September 2006: “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” (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).

⁷⁵ Council of Europe, Recommendation of the Committee of Ministers to Member States on the European Charter on Water Resources, Recommendation 14 (2001) paras 5. The Ministers went on to provide specific recommendations, for example, on affordability and the prevention of arbitrary disconnections (paras 5, 19). This decision was made by representatives of Foreign Ministers of the 43 states that are members of the Council of Europe.

⁷⁶ American Declaration of the Rights and Duties of Man, 1948, art XI.

3. National laws and policies

National recognition of the right to water and sanitation is growing. The right to water (and in most cases, also to sanitation) is recognized in a number of constitutions, including those of South Africa, Uganda, Ecuador, Uruguay and the draft constitution of Kenya. Sample constitutional provisions are as follows:

South Africa, 1996

s. 27(1)(b) Everyone has the right to have access to sufficient food and water.

Ecuador, 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. For example, the Constitution of Columbia 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.⁷⁷ In addition, a wide range of national legislative provisions set out government duties to provide water and entitlements of citizens to secure water access.⁷⁸

It is important to re-iterate that many countries recognize other social and economic rights, such as the right to health, which may also be used to address situations of lack of access to safe water. For example, in the Argentinean case of *Menores Comunidad Paynemil s/accion de amparo* an indigenous community's rights to health and safe environment were found to be violated when their water supply had been polluted by oil company. As a result, a court ordered the provision of drinking water to the community and that the pollution be remedied.⁷⁹

Institutional Framework for Economic, Social and Cultural Rights

4.1. National Implementation

National mechanisms in each country ideally 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, they are increasingly 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, Ombudsman institutions, civil society and users. (See Chapter 4: Actors). Such institutions are increasingly beginning to address economic, social and

⁷⁷ 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), available at: http://www.defensoria.org.co/pdf/publicaciones/derecho_al_agua.pdf

⁷⁸ See *Legal Resources for the Right to Water: International and National Standards* (COHRE), chapter 5 and French Water Academy, *The Right to Water in National Legislations*.

⁷⁹ For more details on this case, See Chapter 8: Water Quality and Hygiene, Box 8.2.

cultural rights, including the right to water and sanitation and ground-breaking jurisprudence on this right is emerging from countries such as India, South Africa, Argentina.

4.2. United Nations human rights institutions

The United Nations human rights system can play a significant role in supporting national implementation of human rights.

4.2.1 United National Human Rights Council

The Human Rights Council (the Council),⁸⁰ 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 and review of country performance and can adopt resolutions on such topics. The resolutions and decisions of the Council are not legally binding, but are politically and morally influential. The Human Rights Council is a subordinate body of the UN General Assembly, and many of its resolutions are subsequently considered by the UN General Assembly. In November 2006, the Human Rights Council took note of General Comment No. 15 and the Sub-Commission Guidelines and decided to request the Office of the United Nations High Commissioner for Human Rights to conduct a detailed study, to be submitted by September 2007, 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.⁸¹

The Council is responsible for Special Procedures, made up of independent experts (often bearing the title of ‘Special Rapporteurs’) mandated by the Council to examine, monitor and publicly report either on human rights situations in specific countries or territories (known as country mechanisms or mandates) or on major phenomena of human rights issues of worldwide relevance (known as thematic mechanisms or mandates). In addition, 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, made up of experts who shall advise the Council. 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 extensively in this Manual. The Sub-Commission Guidelines currently constitute important expert opinion. The Guidelines were referred by the Sub-Commission to the Human Rights Council for its consideration. If approved by the Council, they would gain greater political status.

4.2.2 United Nations Treaty Monitoring Bodies

The implementation of international human rights treaties, including all those listed in Section 1 above, is monitored by a committee of independent experts elected by States that have ratified

⁸⁰ The Council replaced the previous UN Human Rights Commission in 2006.

⁸¹ Human Rights Council Resolution A/HRC/2/L.3/Rev.1. See also www.ohchr.org (Click on: Issues > Water).

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 engage in a dialogue with representatives of States, take account of input from civil society 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 most of its Concluding Observations.⁸²

The Concluding Observations are not legally binding, but carry the authority of the United Nations and 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 practise, implementation of the Observations varies. In some cases, they have led to revisions of laws, policy and practise and/or to increased public debate on the relevant issues at the national level. In other cases, their impact has been negligible. Whether the recommendations are taken up depends on whether there are national actors, either in government or 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 beginning to become 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.

Several human rights treaties, including the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) include an Optional Protocol, which if specifically ratified by a State Party, permit persons from that country to make complaints to the Committee regarding specific alleged infringements of the treaty.⁸³ 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 UN. The Committees normally consider complaints on the basis of 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 have a higher rate of implementation.

4.3 Regional human rights institutions

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 above in Section 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

⁸² See *Legal Resources for the Right to Water: International and National Standards* (COHRE, 2004), p. 94-107.

⁸³ The others are the International Covenant on Civil and Political Rights, the Convention Against Torture, the Convention on the Elimination of All Forms of Racial Discrimination.

individual complaints, if the State in question has ratified the relevant Protocol accepting the jurisdiction of the court in regard to the regional human rights treaty.

In Africa, the relevant institutions are the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.⁸⁴ In Europe, the relevant institution is the European Committee on Social Rights.⁸⁵ In the Americas, the relevant institutions are the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights.⁸⁶

⁸⁴ See: <http://www.achpr.org/>.

⁸⁵ See http://www.coe.int/T/E/Human_Rights/Esc/. The European Court of Human Rights only addresses complaints relating to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is on civil and political rights. The Court will therefore not directly deal with the right to housing and health, except where such issues relate to issues that are included within the ECHR, such as the right to be free from discrimination or the right to life. Information is available at <http://www.echr.coe.int/>

⁸⁶ See the web-site 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).

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. The focus of the chapter is primarily on the role of governments in both implementing the right to water and sanitation, and in regulating, coordinating and assisting other actors in their actions. National governments have the ultimate responsibility for ensuring access to essential water and sanitation services to all persons residing within the state borders. Also covered in this chapter are the potential roles for individuals and communities, non-governmental organisations, international organisations, and other water users.

The main actors involved in the implementation of the right to water are:

- Right to water holders (this refers to all individuals and communities - from those that have access to good quality water and sanitation services in their houses delivered through piped network systems to those without access to any services or facilities);
- Policy makers and resource allocators (this includes national and local legislative and administrative authorities and officials 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 water vendors, kiosk operators, or privately or community-managed wells);
- Public institutions which promote, monitor and enforce human rights and those which are responsible for monitoring and regulating delivery of water and sanitation services (in general national human rights institutions, ombudsmen, judicial courts and regulators);
- Civil society organizations;
- Non-governmental organisations;
- Industrial and agricultural water users and
- International organizations, including financial institutions and donors.

The International Covenant on Economic Social and Cultural Rights (ICESCR) is legally binding only on States. 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 and protection of the right and must work in coordination to reach this goal. This is recognised in the Preamble of the ICESCR: "...[T]he 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."⁸⁷ In addition, international law is developing to hold transnational corporations directly responsible for respecting human rights.

⁸⁷ ICESCR, Preamble, 1976, http://www.unhchr.ch/html/menu3/b/a_cescr.htm

How different stakeholders can act to regulate, facilitate and coordinate delivery of water and sanitation services

1. Governments

Governments 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, as a regulator of service provision as well as service and information provider and lastly as a monitor of service provision. These roles can be further explored as follows:

Government as policy maker, resource allocator and regulator

- 1.1 Prioritising water and sanitation services within their budgeting and political processes.
- 1.2 Revising legislation and policies in order to recognise and implement the right to water and sanitation.
- 1.3 Developing a plan of action to implement the right, including developing standards and targets, and clarifying the division of responsibilities between stakeholders.
- 1.4 Ensuring coordination between ministries and departments, including between central, regional and local government.
- 1.5 Ensuring that all levels of government responsible for water and sanitation services have sufficient resources, authority and capacity to discharge these duties.
- 1.6 Ensuring that individuals and groups are given full and equal access to information concerning water, sanitation and the environment.
- 1.7 Protecting and promoting the right of individuals and groups to participate in transparent decision-making processes that may affect their access to water and sanitation.
- 1.8 Encouraging and providing opportunities to communities to be involved in water and sanitation service provision.
- 1.9 Collecting and disseminating accurate information on access to water and sanitation services, including disaggregated information on levels of access by vulnerable and marginalised groups.
- 1.10 Integrating the right to water and sanitation into international cooperation processes relating to development, finance, trade, investment and environment.
- 1.11 Ensuring that water and sanitation service providers (public and private) comply with service delivery standards and that there is independent monitoring, penalties for non-compliance and genuine participation by users.

Government as service provider

The vast majority of water and sanitation utility services are operated by governments, in most cases by local authorities, although some services are contracted out to private operators. In many developing countries, small-scale facilities such as kiosks, standpipes and wells, operated by entrepreneurs and community groups are responsible for a significant proportion of service provision. In many countries, basic sanitation and hygiene promotion is considered as 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 contributions to make:

- 1.12 Extending services to marginalised and vulnerable groups.
- 1.13 Improving operational efficiency of utilities through reducing costs and leakage and improving billing processes.
- 1.14 Establishing the lowest possible charge for services to low-income areas and households.
- 1.15 Providing sufficient, safe water and sanitation facilities and promoting hygiene

Government as independent monitor

The function of ‘independent monitor’ is best carried out by a body such as a human rights commission or ombudsman institution, and by the judiciary. This body will be responsible for:

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

2. Individuals and Communities

Communities of users (including community-based organisations) have the knowledge of their environment and their needs, a motivation to improve their situation, and in many situations, especially in rural areas, communities have greater capacity to manage services that the responsible government body. Individuals and communities can play the following roles:

- 2.1 Identifying the needs and priorities of all members of the community, monitoring service provision and proposing appropriate water and sanitation policies to government bodies.
- 2.2 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.
- 2.3 Paying for water and sanitation services, according to the capacity of each household.
- 2.4 Using water and sanitation facilities responsibly and spreading knowledge within the community of good hygiene practices.
- 2.5 Assisting vulnerable and marginalised individuals and households within the community to secure access to water and sanitation.

3. Non-governmental organisations

Non-governmental organisations, whether international, national or local have a role to play in implementing and promoting the right to water and sanitation:

- 3.1 Supporting the work of communities by providing information, facilitating community organisation and assisting communities with their advocacy processes.
- 3.2 Building community and government capacity and knowledge on water and sanitation issues, including on rights and responsibilities, management and technical information.
- 3.3 Ensuring that NGO activities are coordinated and that their work supports and does not duplicate work done by government, other NGOs or international

- organisations.
- 3.4 For international NGOs, supporting the development and growth of local and national NGOs and community-based organisations.

4. Industrial and Agricultural Water Users

Industrial and agricultural bodies are often major consumers of water and therefore have a responsibility to ensure that their use of water does not curtail the domestic use of water, 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:

- 4.1 Minimising water use and promoting effective water conservation methods
- 4.2 Disposing of waste in an environmentally sound manner

5. International Organisations

International organisations, whether financial or developmental, have the following roles:

- 5.1 Providing financial and technical assistance to governments, NGOs and communities.
- 5.2 Reviewing and revising their cooperation policies, operating procedures and policy advice to ensure that these are consistent with the right to water and sanitation.

1. Governments

Government role as policy maker, resource allocator and regulator

1.1 Prioritising water and sanitation services

The most crucial aspect of delivery of water and sanitation services is government commitment to access for all. Without the recognition of the right of all residents to gain access to safe, sustainable, 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 at all levels of government and requires that budgeting for water and sanitation services for domestic use are prioritised above other needs for water.

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 realisation 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.”⁸⁸

⁸⁸ 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

The Guidelines also state that, “States should at all levels of government ... [g]ive priority in water and sanitation policies and programmes to the persons without any basic access.”⁸⁹

The World Bank’s Poverty Reduction Strategy Process (PRSP), which is being used in many developing countries to assist in budget planning processes, will also work towards identifying and prioritising issues such as water and sanitation services. 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. Furthermore, the technical and financial needs in urban and rural areas differ and require appropriate programming and financing models, including flexibility on the part of financial institutions.⁹⁰

Resources need to be allocated according to need, rather than on a political basis. Water is often seen as a ‘vote catcher’, where political candidates promise improved delivery of water services in return for votes. While it is encouraging that water services are thus prioritised (provided the successful candidate delivers on his or her promises) through the political processes, this raises the possibility that water investments would be allocated in a manner that privileges influential groups. On the other hand, it can often be particularly difficult to budget for sanitation services, as this is often perceived to be problematic to deliver and does not have the same political clout as delivering the more politically influential water services. Therefore governments need to consider carefully the allocation of resources between water and sanitation services to ensure that sanitation is included in poverty reduction strategies and other development action plans and to allocate funds for hygiene promotion, training and capacity building for small scale providers or communities involved in sanitation provision.

1.2 Recognising the right to water and sanitation in laws and regulations

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.”⁹¹ As General Comment No. 15 is still a relatively new addition to the work of the Committee on Economic, Social and Cultural Rights, in the majority of countries the right to water has not been included in laws and regulations. Since 2002, when the General Comment No. 15 was adopted, at least six additional countries are known to have revised their laws or constitutions to include the right to water, including Algeria (2005), Democratic Republic of Congo (2006), Indonesia (2005), Mauritania (2005), Nicaragua (2003), Uruguay (2004). Costa Rica, Guatemala and Kenya have included recognition of the right to water in their draft water laws or constitutions. Prior to 2002, Belgium (specifically the jurisdictions of Wallonia, Flanders and Brussels), Burkina Faso, Ecuador, South Africa, Uganda and Ukraine had included the right to water in their constitutions and/or laws. The Sub-Commission Guidelines also state that, “States should at all levels of government...[f]ormally recognise the right to water and sanitation in relevant laws and regulations”.⁹²

In order to be effective, this legislation would need to:

- (i) **recognize the right to water and sanitation** as a legal right,
- (ii) **include the rights and obligations** of the different actors and stakeholders,

⁸⁹ Sub-Commission Guidelines, s. 2.3(a)

⁹⁰ *ibid.*

⁹¹ [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](#)

⁹² Sub-Commission Guidelines, s. 2.3 (c).

- (iii) **establish criteria and guidelines** for the allocation of resources and for the collaboration and coordination among different actors as well as stakeholders,
- (iv) **introduce institutional responsibilities**, levels of accountability, monitoring and enforcing mechanisms and procedures for granting both administrative and judicial remedies.⁹³

1.3 Developing a plan of action and service delivery standards

Governments have an important role to play in working together with all stakeholders to develop a national strategy or plan of action to realise the right to water and sanitation and to reach the targets set for reaching the defined standards. This plan of action should focus on vulnerable and deprived groups and include the development of standards, clear objectives, targets, and goals, disaggregate water and sanitation indicators with time frames to their expeditious fulfilment, identify resources to attain the fulfilment of the goals and identify and divide responsibilities between the various actors. General Comment No. 15 states, “[the obligation to fulfil] includes... ..adopting a national water strategy and plan of action”.⁹⁴ This is best achieved through coordination with and participation of all relevant stakeholders,⁹⁵ and this is covered in greater detail in Chapter 6. Data information and research into the existing legislative framework, regulatory process and policies will also be necessary (see section 1.9).

Standards for the delivery of water and sanitation services so as to realise the right to water and sanitation would, as a minimum, include:

- Minimum standards for quantity per person or household.⁹⁶
- Minimum water quality standards.⁹⁷
- A mechanism for ensuring affordable tariffs, including a maximum.
- A time-frame for extension of services, with priority for minimum-standard access first.
- Minimum standards for latrines and sewerage systems.

The specific contents of each these standards are covered in later chapters on Availability, Quality, Physical Accessibility and Affordability. Where standards are set at the national or regional level, a process would be required for such standards to be revised (either higher or lower, within limits) for specific towns, cities or localities. Targets for reaching these standards for the short, medium and long term are always useful.

Different standards for tariffs may be necessary in the short-term for different types of service, for example small-scale service providers may struggle to provide water for the same tariffs offered by piped water service providers. Governments may need to consider financial support in this instance.

The plan of action should also include the development of the appropriate institutional arrangements, the building of data collection capacities, including disaggregated data, the involvement of civil society in monitoring, clear and effective regulations.

⁹³ General Comment No. 15, para. 50

⁹⁴ [General Comment No. 15, para. 47](#). See also [Sub-Commission Guidelines, s. 2.3 \(b\)](#)

⁹⁵ [General Comment No.15](#), para. 16

⁹⁶ This would include reference to water-point density and flow rates.

⁹⁷ This would include water pressure standards for pipe networks to ensure supply is free from contaminants.

Box 4.2: 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.⁹⁸

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 2008.⁹⁹

1.4 Ensuring coordination between ministries and departments

When developing a national programme on the right to water and sanitation it is important to take into consideration that water is required for a range of different purposes, besides personal and domestic uses (such as for example agriculture, mining, industry, hydroelectricity). Co-ordination between all relevant ministries and departments to ensure that there is no overlap of efforts or contradictory policies formed is crucial. Relevant departments include those concerned with public health, water resources management and land-use management.¹⁰⁰ Water for domestic purposes should take precedence over agriculture or industry, so effective water resources management is vital for a shared, sustainable resource.

Conflicts may arise where rivers and aquifers are not well managed, including where there is no system for ensuring that the ‘polluter pays’. Industry or agriculture should be discouraged from polluting water resources that are used for domestic purposes, through fines, incentives for good performance or other mechanisms. Clear systems need to be in place to manage the competing demands and to prioritise water and sanitation needs for all, including for marginalised and vulnerable populations. Measures to provide essential domestic water and sanitation for all, may clash with the economic advantages of providing water to industry or other users over and therefore long-term financial resources and political commitment are needed to counteract this.

Box 4.3: The need for coordination in Nepal and Tanzania

Poor co-ordination and communication between the different groups involved in the sector compounds lack of access to water and sanitation in Nepal. WaterAid Nepal carried out a mapping exercise in 2001 that showed that a series of studies were carried out by various sector agencies around water and sanitation within a year of each other, and yet many of these agencies were unaware of what the others were doing.

⁹⁸ *Regulations relating to compulsory national standards and measures to conserve water*, s. 3, available at: <http://www.dwaf.gov.za/Documents/Default.asp?Notices>.

⁹⁹ 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, available at: <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.

¹⁰⁰ WHO Guidelines for Drinking Water Quality, Third edition, Geneva 2004, p.11-12.

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. Newah, a local NGO focussing on water and sanitation services in both rural and urban areas is attempting to improve this situation through the development of a Resource Centre, which can coordinate the sector.¹⁰¹

A similar survey was carried out in Tanzania, which also showed that there is little capacity to monitor services and little accurate data available. The existing data is under-utilised and dissipated between a range of different institutions, with various data collection methods used and poor coordination between the relevant organisations, making it difficult to implement successful strategies.¹⁰²

1.5 Ensuring sufficient resources and capacity to deliver services

General Comment 15 states that “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”.¹⁰³ This is reiterated in the Guidelines for the right to water and sanitation, which states that, ‘National governments should ensure that other levels of government have the necessary resources and skills to discharge their responsibilities.’¹⁰⁴ (See also Chapter 10: Affordability)

This process of transferring responsibility for service provision is increasingly common in developing countries, particularly as this is often a condition of loans being made by international finance institutions. Whether a country is following a devolution, deconcentration or decentralisation process will determine the degree of responsibility and decision-making capacity that is being transferred from the national to the regional or local level, with a corresponding impact on the amount of resources that are available. Transferring the responsibility without the means to make decisions and raise adequate resources will have a negative effect on the delivery of water and sanitation services.

A major hindrance in delivering services to all will not only be 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 districts, 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. For many municipalities, there is a necessary balance in investment between hardware, technology and capacity building. Without adequate capacity building of institutions, organizations and individuals, investment in technology and hardware is potentially wasted.¹⁰⁵

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

¹⁰¹ <http://www.irc.nl/content/view/full/395>

¹⁰² Steven Sugden, Databases for the Water sector: research from Nepal and Tanzania, WaterAid Kyoto Database, 2003 www.wateraid.org.uk

¹⁰³ General Comment No. 15 para. 51

¹⁰⁴ Subcommission Guidelines, s. 2.2

¹⁰⁵ Give full citation for document, followed by web-page. <http://www.irc.nl/content/view/full/290>

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."¹⁰⁶

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 level bodies that may not be managed by smaller concerns.

Box 4.4: 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% of Bogotá's nearly five million residents were connected to water services and 71% to sewerage services. By 2001, the EAAB had raised the proportion of households connected to water services to 95% and those with sewerage services to 87% despite the fact that in this period, Bogotá's population had grown to nearly 6.5 million.¹⁰⁷

1.6 Ensuring that individuals and groups are given full access to information

General Comment 15 states that, "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". This issue is dealt with in greater detail in Chapter 6 on Participation and Access to Information.

1.7 Protecting and promote the right to participate in decision making processes.

The right to participate is included in the General Comment, which 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."¹⁰⁸ Governments have a responsibility, not only to promote and facilitate participation, but also to protect peoples' right to participate in decisions that affect them. This is discussed further in Chapter 6 on Participation and Access to Information.

¹⁰⁶ Hall, David, Water in Public Hands, PSIRU, Public Services International, June 2001

http://www.waterobservatory.org/library/uploadedfiles/Water_in_Public_Hands.doc

¹⁰⁷ Sarah 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

¹⁰⁸ General Comment No. 15, para. 48.

1.8 Encouraging and provide opportunities for community involvement in water and sanitation service provision

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.”¹⁰⁹ Further information on this area is covered within Chapter 6 on Participation and Access to Information.

1.9 Collecting and disseminating accurate disaggregated information

In order to develop an effective national water policy and plan of action, the government needs to have a thorough understanding of the current status of water and sanitation provision, the quantity and quality of water resources available and the various demands placed upon these finite resources. This process will require:

- a) producing information about the situation of access to water and sanitation of the population in all different regions of the country and ensuring that water and sanitation data are built into national systems of data collection
- b) 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 the human right to water
- c) developing a national programme/plan to implement the right to water including indicators and benchmarks, time frames and transparent and participatory mechanisms for monitoring fulfilment.

Water indicators disaggregated by the prohibited grounds of discrimination and monitoring mechanisms need to be monitored and reviewed periodically, in order to identify factors impeding implementation of the right to water and sanitation.¹¹⁰

The right of individuals to access information and the participation of communities in the gathering of data, is discussed in Chapter 6 on Participation and Access to Information.

1.10 Integrating the right to water and sanitation into international cooperation processes

The right to water and sanitation cannot be realised by government acting alone within their borders. The provision of financial and technical assistance by developed and middle-income developing countries (directly, or through international organizations) in accordance with human rights standards will be essential for developing countries. In all cases sharing of technical cooperation, including South-South cooperation, by all countries is also necessary. This point is recognised UN Millennium Declaration, the Monterrey Consensus on Financing for Development and in General Comment No. 15, which states that, “Depending on the availability of resources, States should facilitate realization of the right to water in other countries...”¹¹¹ This point is dealt with in more detail in Chapter 11: International Cooperation, Section 1.

¹⁰⁹ Subcommission Guidelines, s. 8.2

¹¹⁰ General Comment No. 15, paras. 37 and 53

¹¹¹ General Comment No. 15, para. 34.

A number of other areas of international cooperation also are relevant to the realisation of the right to water and sanitation, including the management of international watercourses, management of the shared environment and trade and financial cooperation with other countries. In respect to these areas, the following statement in General Comment No. 15 is relevant: “States parties have to respect the enjoyment of the right in other countries. International cooperation 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.”¹¹² 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 cooperation are addressed in Chapter 11: International Cooperation.

1.11 Ensuring that service providers comply with service delivery standards

The Sub-Commission Guidelines indicates 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.”¹¹³

It is necessary to establish a regulatory body, either on a national basis or in each region, in order to ensure 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 1.3 above in this chapter), the regulator is normally responsible for specifying detailed targets and benchmarks for service providers. Such standards would need to ensure that obligations imposed on service providers would not render them insolvent. 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. However, small-scale providers can be required to meet minimum requirements in regard to water quality standards and pricing.

A regulatory body will ideally be empowered to carry out its mission independently of both the government and the service provider. A regulatory body should normally have clear terms of reference, enshrined in law or regulation, which would stipulate that it would be provided adequate operating finances and capacity.

It is also useful for the regulatory body to have representation from a wide range of stakeholders, including community groups, in order to allow for public participation in decision-making processes, in order to give effect to their right to participation.¹¹⁴ In order to effectively monitor service providers, the regulatory body needs to be empowered to receive complaints, to publicise its role and to establish an accessible complaints mechanism, including by establishing offices in the different areas where the service provider operates.

Monitoring should assess 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

¹¹² General Comment No.15, para. 31.

¹¹³ Subcommission Guidelines s. 2.3 (e).

¹¹⁴ General Comment No. 15, para. 48.

right to water and sanitation. Where the service provider is a government body, disciplinary action, including termination of employment, could be taken against any staff responsible for intentional violations of delivery standards. Alternatively, financial penalties may be imposed on service providers, whether public or private. In order to create a disincentive against repetition, penalties would have to be fixed at a level at least equivalent to any profits gained by the service provider from the violation, and cover the costs of compensation and reasonable restitution (restoring the damage).

Approximately 10% 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 in regard to 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.¹¹⁵

As such, General Comment No. 15 indicates that private service providers operating or controlling water and sanitation services should fulfil similar service delivery standards as public service providers.

Additional guidance is provided by principles developed by the Swiss Agency for Development and Cooperation and partners, which apply where countries are relying on public-private partnerships. These principles do not seek to provide guidance on whether these partnerships are appropriate for any situation, but are relevant where countries have decided to use them.¹¹⁶

In order for a government to determine whether the realisation of the right to water and sanitation would be possible where private corporations operate piped water networks, the following considerations would be relevant:

- Whether the individuals and communities in the proposed concession area have been informed about the proposed concession and its implications and whether they have been in favour of the concession, as indicated through a genuine and representative consultation, over other alternatives, such as public provision or community-run delivery systems
- Whether the government has the regulatory capacity in place to prevent corruption in the process of concession negotiation and to ensure compliance with service delivery standards¹¹⁷
- 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 General Comment No. 15, has acted in conformity with the right in previous concessions elsewhere and is willing to allow the concession agreement to allow the government to make revisions where necessary in order to realise the right to water

¹¹⁵ General Comment No. 15, para. 24.

¹¹⁶ Policy Principles, Framework for Sustainable Partnerships, Swiss Agency for Development and Cooperation,

¹¹⁷ See Gutierrez et al, *New Rules, New Roles: Does PSP benefit the poor?* WaterAid London 2003

- Whether the government would be able to maintain adequate water and sanitation services in the event the corporation decides to abandon the concession

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

- Whether the relative bargaining power between the transnational 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 the corporation requires tariffs to be pegged to international currency such as dollars or the euro. Such a system would impose the risks of a devaluation on individuals and communities, and is therefore inconsistent with a pricing plan that aims to ensure affordability of services
- Whether international companies are able to bring claims to international investments tribunals to challenge government regulations that expropriate their assets or otherwise reduce their expected profits (see also Chapter 10, International Cooperation).

Box 4.9: Private Water Services Management in Buenos Aires

In Buenos Aires, Argentina, the Aguas Argentinas concession took into account only revenues rather than health necessities and water deprivation of the population. Investment to extend water and sanitation services to marginal/poor populations (with great need of the service because of contamination of natural water sources), or to populations located far away from the main pipes were left for the very end of the concession contract, primarily because it was assumed that the poorer areas would not bring in sufficient revenue. Further to this, the concession contract was linked to US dollars, rather than to the local currency, Argentinean Pesos, which has had implications for tariffs as the value of the dollar fluctuates against the peso. In March 2006, the government cancelled the concession. A case before the International Centre for the Settlement of Investment Disputes on this matter continues.

Small-scale providers of water and sanitation (i.e. those who provide water and sanitation other than through pipe networks) are normally private entrepreneurs and community groups who provide water in kiosks, door to door or from wells and springs. These providers serve more than 50% of users in developing countries. Monopolies can exist in circumstances where there are a limited number of water sources. Informal service providers frequently carry out sanitation services, such as latrine construction or the emptying of latrines.

In contrast to large-scale private operators, 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. In urban areas, small-scale provision can be rendered redundant as water and sanitation 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 Box 10.6: Kiosk Systems in Lusaka).

In all cases, the regulator will need to monitor and regulate small-scale providers as well as provide support to informal service providers so as to increase the quality and affordability of their services. (See also Chapter 9, Affordability, Section 2 on prices charged by small-scale providers)

Government role as service provider

This section deals with the role of service providers, whether they are public or private, utility or small-scale, rural or urban. Governments, in most cases by local authorities, operate the vast majority of water and sanitation utility services although some services are delegated to private corporations. Small-scale providers, including entrepreneurs and community associations, also carry out the role of service provider in many developing countries.

Service providers should 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 should, where possible, go beyond what is legally required, and make the best contribution that they can to the realisation of the right, including ensuring that resources are equitably distributed, so that all individuals and households have access to water and sanitation services. Utilities often have better capacity and resources to make such a contribution.

1.12 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 networks to those who are currently unserved, the marginalised and the vulnerable, including by going beyond service delivery targets imposed by the regulator. Small-scale providers may be restricted in their expansion of services because their clients are often from the poorer sectors of society not served by utilities, or located in discrete rural communities.

Governments can play a role in this by ensuring that tariff structures provide incentives rather than disincentives for utilities to extend services, and by facilitating small-scale providers to expand their operations or build facilities in new areas.

1.13 Improving operational efficiency of utilities

The majority of municipal utilities suffer from significant inefficiencies such as over-staffing, leakages from pipes and illegal connections, which can lead to levels of unaccounted-for water¹¹⁸ as high as 40%. Corruption at the point of payment is also an issue for many utilities. These issues can be addressed by restructuring utilities (see Chapter 10 on Affordability). In many cases, restructuring will involve the retrenchment of staff as well as other measures such as simplifying payment processes to reduce petty forms of corruption.

Restructuring is frequently politically difficult, particularly where retrenchment is necessary, and so must be carefully researched and implemented to ensure that the majority, including the marginalised and vulnerable benefit from any proposed changes.

1.14 Establishing the lowest possible charge for services to low-income areas and groups

In addition to respecting tariff regulations, utilities can also promote the right to water by striving to provide the cheapest possible services for low-income households and areas. This can be achieved by providing a cross-subsidy to such groups from revenue generated from upper-

¹¹⁸ Unaccounted for water is defined as the deficit between the amount of water pumped into the system and that provided to customers.

income customers and industry. Such assistance can be publicised by utilities as an indication of social responsibility (see Chapter 10 on Affordability).

Small-scale providers have less scope for cross-subsidies, but a similar system could be established within community-managed schemes. Small-scale urban providers can also play an important role by providing a small amount of subsidised or free water to the most vulnerable and marginalised persons in their area of operation, if supported by government authorities to do so.

1.15 Providing hygienic facilities and promoting good hygiene behaviour

Where sanitation service providers are providing public latrines, these must meet the necessary standards not just in their construction but also in terms of their maintenance. This can be achieved through a public, private or community managed body. Any charge to the users to cover these costs, should be affordable, or could be waived in the case of those who cannot afford to pay for these services.

Improving hygiene behaviour is an essential component of realising the right to water, but is a complex process, for which there are various methodologies and practices. Ideally, good hygiene behaviour is learnt while people are still young and have not yet developed poor practices. For example, ‘child to child’ training in schools has been shown to be successful and can be supported by the government by promoting this within the national curriculum for primary schools.

Government role as independent monitor

The function of ‘independent monitor’ is best carried out by a body such as a human rights commission or Ombudsman institution, and by the judiciary. In order to fulfil this role, such bodies would need to integrate international standards on the right to water and sanitation into their work.

1.16 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 can be mandated with the task of reviewing legislation against international standards such as the Covenant, and advising government bodies. They can also collect data on the extent of the realisation of the right to water and sanitation in a systematic manner. National or regional human rights commissions, established by governments, are most effective when their independence is guaranteed by law. The judiciary also can play a role in hearing claims brought by individuals, communities or NGOs alleging that particular laws, regulations or policies are inconsistent with the ICESCR.

1.17 Investigating complaints by users and ensure adequate redress

Complaints by individuals and communities that are dissatisfied with services (or lack of service) are normally best addressed by the complaints department of the regulator. However, the judiciary, human rights commissions, ombudsmen, 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.”¹¹⁹

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 cannot afford to obtain legal assistance is particularly necessary. Alternatively, an Ombudsman or human rights commission can be empowered to assist complainants secure access to a competent tribunal.

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

Human rights commissions, ombudsman institutions and similar bodies can play a useful role in examining government and private sector action on water and sanitation, in particular by monitoring compliance with legislation and investigating and proposing recommendations on complex issues that could not be easily be addressed on the basis of a particular complaint. In order to fulfil this role, such bodies require sufficient funding and human capacity required to carry out detailed research and to monitor trends over the long term. Such bodies can also play an educational role within government and to the public in order to promote implementation.

2. Individuals and Communities

Communities of users (including community-based organisations) have the knowledge of their environment and their needs, a motivation to improve their situation, and in many situations, especially in rural areas, communities have greater capacity to manage services than the responsible government body. Individuals and communities can play the following roles:

2.1 Identifying needs and priorities, monitor service provision and propose appropriate policies to government

Community groups or local organisations are often in a better position than governments to identify which sectors of society do not have access to essential services and how they are most effectively delivered. Where communities are able to determine the level of services and manage these services themselves, there is a greater chance of success, sustainability and affordability of the programme. Community participation can include contributing labour, identifying appropriate sites for a well or public latrines and carrying out maintenance.

¹¹⁹ 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 General Comment No. 9, para 4.

Government support to this process would include considering proposals from individuals and communities for appropriate policies for the delivery of water and sanitation services and including self-management as an option in water and sanitation strategies and projects.

Communities and groups are also in a good position to monitor service provision according to government standards, such as quality, affordability and accessibility. There is also an opportunity then for communities to be empowered to inform not only the authorities of shortcomings, but also to notify other community members when water quality is poor and other steps need to be taken for purification of water.

2.2 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 as outlined above and identify the specific inputs that the government could provide.

2.3 Contributing to water and sanitation services to the extent possible

Households should be willing to pay for services or access to facilities, to the extent that it is affordable for them, taking into account their ability to secure other rights, including food, clothing, housing, among others.

A lack of technical capacity in terms of human resources in rural areas in many developing countries has led to a lack of adequate services. Where training can be provided, there is an opportunity for individuals or community groups to fill this gap and supply small scale services, 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.

2.4 Using water and public facilities responsibly and spread 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 water use and hygiene practices. Where there is inequitable use of water by different sectors of the community, leading to a shortage of water for some, this needs to be addressed at the community level. Community level action can also be usefully employed in ensuring that communal latrines and water points are used and maintained hygienically. A successful approach to promoting latrine construction and use has been to elevate latrine ownership as a symbol of status, rather than simply for health reasons.

2.5 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 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.

3. Non-governmental organisations

Non-governmental organisations can play two broad functions, firstly, building capacity and providing financial and technical assistance and secondly, promoting human rights and improving communities' understanding of political processes. In both roles, NGOs can play a useful role in facilitating the organisation of communities, including by helping to develop the management capacity of community-based organisations.

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

NGOs that focus on the delivery of water and sanitation and on human rights can work together with national governments to develop their plan of action and legislative frameworks in order to promote the right to water and sanitation. Advocacy NGOs also have an important role to play in educating rights' holders of their rights and the most appropriate approaches for accessing these rights. This may include facilitating community organisation and developing accountable structures. It will 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 making positive suggestions as to how this can be remedied. A further approach will include supporting litigation processes, but this would generally be costly in both time and money and should only be used when other methods have failed.

3.2 Building capacity and provide financial and technical assistance.

'Delivery' NGOs 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, NGOs can foster the capacities of communities by quickly devolving responsibilities and working to strengthen skills and foster connections among social groups.¹²⁰

NGOs also have a key role in providing humanitarian assistance in times of emergencies. General Comment No. 15 states in relation to NGOs and international organizations that: "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."¹²¹

¹²⁰ Water and Governance: Insight from Research in the Andes, International Development Research Centre, http://web.idrc.ca/en/ev-45715-201-1-DO_TOPIC.html

¹²¹ General Comment No. 15, para. 60.

3.3 Ensuring coordination and avoiding duplication

NGOs should ensure that their activities are coordinated amongst themselves and that their work supports and does not duplicate work by other NGOs (or work carried out by governments and international organisations). Where more than one NGO 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 ease of delivering services. A forum can help in preventing this lack of equality. Such a forum can usefully include government officials.

3.4 International NGO support for the development and growth of local and national NGOs and CBOs

The points listed in sections 3.1-3.3 above apply equally to national and international NGOs. In addition, international NGOs should carry out activities that complement the work of national governments, NGOs and community organisations, rather than compete with them, as the latter is both counter-productive and leads to confusion of purpose. The development of local and national civil society is critical in order to ensure sustainability and cost-efficiency of NGO work and the work also has a better chance of empowering marginalised groups. Where international NGOs introduce lessons learned from programmes in other countries, collaboration with local NGOs and CBOs is even more essential to ensure adaptation to context and culture.

4. Industrial and Agricultural Users

Industrial and agricultural users should 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 waste-water and industrial waste (See Chapter 7, Availability and Chapter 8, Water Quality and Hygiene). Industries and agricultural users, including transnational corporations, should go beyond what is legally required and take a lead in activities that promote and protect the right to water and sanitation. Some of these actions, particularly those relating to water conservation are also consistent with the corporations immediate interests. Other actions may have short-term costs but in the longer term will enhance the company's reputation and ability to comply with tightening standards as well as lead to cost savings. In addition, governments and consumers are increasingly expecting corporations to behave in a socially responsible manner.

4.1 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 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.

4.2 Disposing of waste in an environmentally responsible manner

Industrial and agricultural users should ensure that waste-water and industrial by-products are treated to minimise their harm to the environment and avoid damage to human health. Where

national or regional standards are not in place, recourse to international guidelines should be used, such as the WHO Guidelines for the safe use of wastewater, excreta and greywater.¹²² In all cases, waste that would damage human health or undermine the livelihoods of others should be disposed of in a manner preventing contamination of water resources.

5. International Organisations

5.1 Providing financial and technical assistance

General Comment No. 15 states: “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.”¹²³

These organizations have an important role to play in mobilizing financial resources and technical expertise from governments and private sources, and in providing support to governments to implement the right to water and sanitation, and support to NGOs and CBOs to assist in this capacity (See also Chapter 11, International Cooperation, Section 1). The provision of assistance is also necessary from international financial institutions such as the World Bank Group, the regional banks such as the African Development Bank (ADB) and International Monetary Fund. In addition, technical assistance on the implementation of human rights standards, and best practices from other countries, can 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 International Framework for the Right to Water and Sanitation)

5.2 Reviewing and revising cooperation 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.”¹²⁴ The Sub-Commission Guidelines clarifies that this applies to all international organisations: “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.”¹²⁵

United Nations Agencies and Programmes have begun consideration of how to integrate human rights standards into their operations, while the World Bank has also considered how human

¹²² WHO Guidelines for the safe use of wastewater, excreta and greywater, WHO, 2006

¹²³ General Comment No. 15, para. 60. Where not included in the original quote, full names of the international organisations are included in square brackets.

¹²⁴ General Comment No. 15, para. 60

¹²⁵ Sub-Commission Guidelines, s. 10.4.

rights apply in its work. Mainstreaming of the right to water and sanitation will ensure that the work of international organizations, as a minimum, does not undermine the realisation of the right and assist in its implementation.

A number of international organizations host dispute-resolution bodies, composed of independent experts, whose decisions can have an impact on 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 International Framework for the Right to Water and Sanitation).

Box 4.10: UN Common Understanding on Human Rights Based Approaches

A human rights based approach emerged primarily in the context of development cooperation.

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. Since that time, a number of UN agencies adopted a human rights based approach (HRBA) to development cooperation, but unfortunately each tended to have its own interpretation of such an approach and how it should be operationalised.

In 2003, various UN entities met to develop a Common Understanding to HRBA to development cooperation. It states:

1. All programs of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights 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 cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation 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 which 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 realization 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.

(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

One of the primary insights of human rights is that, in many cases, access to basic needs or participation in development is denied because those who develop, influence and implement laws and policies treat certain individuals or groups as less valued members of society. The need to prevent and remedy discriminatory political decisions therefore must be addressed in water policy.

Human rights also highlight the need to actively design water policy that takes into account the needs of vulnerable groups as a matter of priority, rather than treating all persons as having identical challenges in accessing safe water. It is important for policy-makers and implementers to dedicate time and resources to review whether vulnerable groups are being excluded or if their needs are not being taken into account.

Everybody is entitled to have access to safe water and improved sanitation, including the most vulnerable and marginalised groups, 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

Ensuring that a comprehensive anti-discrimination law is in place, with an institution to investigate and provide remedies for discrimination against individuals or communities.

Revising existing water and sanitation laws, regulations, policies and operating procedures to ensure that they prohibit discrimination and address the specific needs of vulnerable and marginalised groups.

Reviewing government water and sanitation budgets to ensure that they do not exclude those living in poverty, in particular vulnerable and marginalised groups, and that the bulk of development spending is directed towards such groups.

Collecting data on access to water and sanitation that takes into account ethnicity, age, disability, gender, region, income and other related grounds so as to identify discrepancies and set priorities for State assistance.

Establishing requirements for water and sanitation institutions to ensure the effective participation of vulnerable and marginalised groups in public participation processes.

Ensuring that institutions utilised by vulnerable and marginalised groups are adequately addressed in policies relating to water allocation, tariffs and subsidy plans, such as schools, hospitals, prisons and refugee camps.

Reviewing all laws, policies and programmes to ensure that they adequately address the specific requirements for vulnerable and marginalised groups

What is Discrimination?

National governments are obliged to prevent any discrimination in the availability, accessibility, affordability and quality aspects of water and sanitation programmes and services – on the basis of a ‘prohibited ground of discrimination’¹²⁶ – that adversely affects specific groups. Discrimination does not refer only to direct exclusion of any group, but also to any policy or practice that has the effect of putting members of such a group at a particular disadvantage compared to members of other groups.

The ‘prohibited grounds of discrimination’ are listed in the International Covenant on Economic, Social and Cultural Rights (ICESCR): race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.¹²⁷ This is reiterated by the Sub-Commission Guidelines, which state that, “States should ensure that no persons or public or private organizations engage in discriminatory practices which limit access to water and sanitation on the grounds of sex, age, ethnic origin, language, religion, political or other opinion, national or social origin, disability, health status or other status”.¹²⁸

¹²⁶ 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), paras. 13-15.

¹²⁷ ICESCR, Art. 2.2.

¹²⁸ 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.

By use of the term ‘other status’, the ICESCR indicates that grounds listed above are not comprehensive and that other similar grounds of discrimination may also be unlawful, such as sexual orientation, civil, political or social status,¹²⁹ physical or mental disability or health status (including people with HIV/AIDS).¹³⁰

Caste discrimination involves, for example, restriction of certain castes to inferior sources of water, and in some cases exclusion from the only water-point in an area.

The principle of non-discrimination does not only require the avoidance of active discrimination against particular groups. It also requires governments to pro-actively take 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. 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.¹³¹

¹²⁹ The Committee on the Elimination of Racial Discrimination, which monitors the International Convention on the Elimination of Racial Discrimination, has also noted that discrimination against people on the basis of ‘descent’ – which includes caste and analogous systems of inherited status - violates the treaty

¹³⁰ General Comment No. 15, para. 13.

¹³¹ 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 5.1: Vulnerable and Marginalised Groups

The Sub-Commission Guidelines state that, “States should give particular attention to the needs of individuals or groups who are vulnerable or who have traditionally faced difficulties in exercising their right to water and sanitation.”¹³²

The terms vulnerable and marginalised groups are not interchangeable. While children are intrinsically vulnerable, they are not always marginalised (although they frequently are), while women are often marginalised but are 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 the most common vulnerable and marginalised groups. How to ensure access to water and sanitation services for these groups will be discussed in the final section of this chapter.

1. women
2. children
3. inhabitants of rural and urban deprived areas
4. indigenous peoples
5. nomadic and traveller communities
6. refugees, asylum seekers, internally displaced persons and returnees
7. groups facing difficulties with physical access to water
8. people under custody
9. older persons and persons with disabilities
10. victims of natural disasters, persons living in disaster-prone areas and internally displaced people
11. people living in water scarce-regions (arid and semi-arid areas and some small islands)

1. Ensuring anti-discrimination laws and monitoring institutions are in place

To prevent discrimination, national governments need to ensure that there is a comprehensive anti-discrimination law and a review process that addresses all forms of discrimination. This objective can be best achieved by establishing an institution to investigate and provide remedies for individual complaints of systemic discrimination.

In many cases, lack of equal access to safe water and improved sanitation services 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 the need for anti-discrimination legislation. Addressing such issues is normally extremely political and divisive. However, as most societies will normally be able to agree on the right of every person to have access to safe water, pointing to discrimination as a cause of restricted access to water can provide a useful entry point for decision-makers and society at large to confront issues of discrimination.

¹³² Sub-Commission Guidelines, section 3.2.

In order to identify existing discrimination, to set priorities for state intervention and to design adequate measures to guarantee non-discrimination, it is necessary for national governments to:

- Review and modify laws and practices and identify those that directly or indirectly cause discrimination,
- Carry out empirical studies to assess ‘de facto’ discrimination,
- Evaluate the scope and efficacy of legislative measures designed to combat discrimination,
- Document and evaluate discrimination practices in the private and other sectors,
- Develop indicators to measure the extent to which different groups have access to water, taking into account all components of the right to water and disaggregated by the prohibited grounds of discrimination.¹³³

Establishing a special institution – such as a human rights commission or ombudsman – will facilitate the investigation of individual complaints or systemic discrimination and will provide a remedy. Many national governments that have human rights laws in place 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.

Where such institutions already exist, ideally, they should be given a mandate to address complaints on all grounds of possible discrimination in the water sector.¹³⁴ They will need to be provided with the necessary financial and technical resources and with the assistance of the ministry or department responsible for water. In order for any anti-discrimination legislation to work effectively, victims of discrimination and their representatives need to have the opportunity to genuinely access remedies through procedures that are both easily accessible and effective. Therefore, it is necessary for claims reception offices to be broadly distributed within the country, especially near the residences of potential victims of discrimination. It is also important to provide free legal or paralegal assistance to the claimants. Where necessary, there should be mechanisms to guarantee the protection of claimant’s identity.

General Comment No. 15 further notes that victims of discrimination should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition.¹³⁵

Establishing an institutional framework for anti-discrimination law that applies to the water sector is only the first step. Water ministries or departments must self-consciously integrate anti-discrimination principles and pay attention to vulnerable groups in their programming (See Box 5.3 for an example).

Box 5.1: Non-Discrimination, Complaints Bodies and Access to Water

¹³³ This specific point is called for in General Comment No. 15, para. 53.

¹³⁴ General Comment No. 15 sets out the need for such institutions to respond to complaints relating to the right to water, para. 56.

¹³⁵ General Comment No. 15, para. 55.

Addressing discrimination can yield significant gains in increasing access to water and sanitation. This is because the obligation of non-discrimination is contained in many national legal frameworks and is widely accepted in international jurisprudence. Traditionally, many judges and lawyers have argued that economic, social and cultural rights are not justiciable. This claim is becoming less defensible as more courts begin to grapple with economic and social rights claims. However, courts have generally been quite comfortable with providing redress to claims of discrimination, even where this had required the national government to carry out significant policy changes. For example, on the basis of the constitutional right to equal protection of the law, the Supreme Court of the United States ordered the government to end the segregation of public schools on the basis of race, as this situation had led to unequal access to quality education for minority children.¹³⁶

2. Revising existing laws, regulations, policies and operating procedures to ensure that they prohibit discrimination.

Vulnerable and marginalised groups include those identified by the ‘prohibited grounds of discrimination’ criterion, such as women, ethnic minorities and the disabled. The vulnerability of such groups flows from historic and cultural discrimination, as well as from their general under-representation in political decision-making, leading to the neglect of their needs in policy making. Vulnerable or marginalised groups also include those whose situation leads to lesser access to water, such as the poor and people in informal settlements or deprived rural areas.

In order to prohibit discrimination, national governments need to ensure not only that laws, regulations, policies and practices are free of discrimination, but also that they adopt positive measures to redress patterns of historic discrimination or social inequity, and thereby ensure substantively equal treatment. The UN Human Rights Committee has stressed 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.”¹³⁷

This imperative requires the adoption of specific measures to address the obstacles that, under certain situations, particular persons or groups face to enjoy their right to water and sanitation. Such groups have lesser access to safe water and sanitation services and be disproportionately affected by reductions in access to water and sanitation, such as through drought, breakdown in facilities or price increases. For example, water consumption measurements and price 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 for hygiene practices.

One way of addressing existing inequalities is to establish targeted programmes to ensure that vulnerable and marginalised groups have access to sufficient, safe and affordable water and sanitation. Such programmes can be implemented at relatively low cost if there is a lack of available resources. The Committee on Economic, Social and Cultural Rights emphasises that the addressing inequality is important even in times of severe resource constraints and recessions.¹³⁸

¹³⁶ *Brown v. Bd. of Education* (1954) 347 U.S. 483; <http://www.nationalcenter.org/brown.html>.

¹³⁷ Human Rights Committee, General Comment No. 18, para. 10.

¹³⁸ General Comment No. 3: The nature of States parties’ obligations, para. 12.

Conditions that can create indirect barriers also must be removed in order to address the needs of vulnerable and marginalised groups. For example, a subsidy scheme that requires applicants to provide written proof of tenancy or payment of taxes or an identity document could exclude people who do not rent or own accommodation in the formal sector, who don't pay taxes, or who cannot afford the fee to obtain identity document. Application forms must be written in languages understandable to beneficiaries, office hours have to be compatible with working obligations of applicants and denigrating practices and requirements must be prohibited.

Finally, it may be argued that neglecting people in under-privileged areas, such as rural areas and informal settlements, can constitute discrimination on the basis of social condition. While governments may genuinely not be in a position to provide access at the same level to these areas as to formal urban settlements, there may be cases where a government department inadvertently gives more active attention to the needs of one area than others. Potential forms of discrimination in regard to the right to water include:

- Denial of water and sanitation services on the basis of ethnicity or similar status.
- Imposing more onerous conditions or higher prices for the use of water and sanitation services for certain 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 under-privileged.
- Neglecting the provision or maintenance of water and sanitation facilities or providing lower quality water to areas populated by certain groups.
- Denial of access to water and sanitation to some which is accorded to others, such as the denial of water and sanitation to prisoners, illegal residents and refugees.
- Enactment of regulations on water resources, or the granting of authorizations for water exploitation, which, intentionally or unintentionally, have the effect of rendering indigenous forms of water management impossible.
- The imposition of conditions for access to water and sanitation that indirectly discriminates against a particular group - such as restrictions against informal settlements.

Box 5.2: Ensuring Adequate Attention to the Most Vulnerable: The Grootboom Judgement in South Africa¹³⁹

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:

¹³⁹ *Government of the Republic of South Africa and others v. Grootboom and others*, 2001 (1) SA 46 (CC), South African Constitutional Court, <http://www.concourt.gov.za>, in particular paras. 43-44, 99. 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), www.cohre.org/litigation.

“[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”.

The Court was not empowered to revise the government’s housing policy, however, it required 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”.

3. Reviewing government budgets and resource allocations to ensure that they do not exclude vulnerable and marginalised groups.

Addressing broad inequalities between the wealthy and the poor in access to safe and sufficient water and sanitation services may best be achieved by developing a national policy and allocating budget resources to secure access by all the population to a basic amount of water for domestic consumption. According to General Comment No. 15, ensuring non-discrimination and equality demands that, “the allocation of water resources, and investments in water, facilitate access to water for all members of society”.¹⁴⁰ 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”.¹⁴¹

Reviewing approximate public spending per person between urban formal areas, urban informal areas and rural areas may highlight inequitable resource allocation. In addition, it may be possible to consider failure to provide equal access to water and sanitation services to informal settlements as discrimination on the basis of ‘property status.’ Failure to make equitable provision for deprived areas is inconsistent with the right to water and an inequitable allocation of resources will effectively lead to unequal access to water and sanitation.

Where investments in water and sanitation services are being made, it will be necessary for available funding to be spent on low-cost programmes to improve access to those who have poor access over large-scale interventions, such as upgraded sewerage facilities, designed to further improve water and sanitation services for those who already have adequate provision (see chapter 10: Affordability, section 3).

¹⁴⁰ General Comment No. 15, para 14.

¹⁴¹ General Comment No. 15, para. 13.

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...”¹⁴²

Discrimination is often not overt, but rather covert in that the relevant authority does not openly discriminate and may not recognise their 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. Often, statistical information, where good disaggregated data is available will indicate systemic forms of discrimination. Many human rights organisations are developing techniques to identify and remedy ‘covert’ discrimination. Where significant discrepancies in access to water and sanitation can be found along ethnic, or similar lines, the onus is on the national government to demonstrate, first, that the discrepancy is not due to a practise currently in force and, second, that concrete and targeted efforts are being carried out to remedy unequal access to the right to water and sanitation.

An important aspect of the right to water and sanitation is therefore to ensure that data collected on access to water and sanitation is disaggregated according to gender, age, ethnicity etc, in order to fully understand which groups or areas do not have adequate access to water and sanitation services. This is crucial both to understand who does not have access to services, but also to design the most effective and appropriate policies and programmes to remedy this.¹⁴³ As the collection of disaggregated data can be a resource intensive process, it may be necessary to identify initially the most important factors for a particular country or region and concentrate initially on these issues. Collaboration and coordination with international organisations, NGOs and community organisations can also reduce the resource burden, as many of these organisations also collect similar data to support their own programme design and monitoring.

Data can also be effectively collected by communities themselves and this often has the benefit of ensuring that data is accurate, or at least has a different perspective to that which a government or other third party may bring to a survey. Whether the information is gathered by communities or by a third party, making the relevant data available to communities is a necessary step to informing individuals and groups of the status of water and sanitation services, which in turn can lead to the development of the most appropriate ways of improving this access. 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. Ensuring effective participation of vulnerable and marginalised groups in decision making

From a right to water perspective, communities should have the opportunity to make their own decisions with regard to the management of water resources affecting them, such as the extent of their own investment in water and sanitation services and the type of technologies used. Moreover, such decisions must take account of the needs of all relevant groups. This is particularly the case for women – whose need for water near the household is greater – and for

¹⁴² General Comment No. 15, para. 53.

¹⁴³ Roaf, Virginia, Ashfaq Khalfan, Malcolm Langford, Global Issues Paper No. 14, Monitoring Implementation of the right to water: A framework for human rights indicators, COHRE, Brot für die Welt, Heinrich Böll Stiftung March 2005, pp. 10-12, 18. Available at www.boell.de

groups that may not be able to commit the finances that would allow them to participate in a community project.

Exclusion of vulnerable and marginalised groups in decision-making has negative consequences for the realisation of the right to water and sanitation. 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.¹⁴⁴ Even where such uses are recognised, under-representation of women on decision-making bodies may distort decision-making. For example, in Alto Piura, Peru, an irrigators' committee composed of men gave preferential treatment to male farmers. Female farmers were unable to negotiate irrigation turns during the day, and were only therefore able to irrigate at night.¹⁴⁵

The issue of participation is covered in greater detail in Chapter 6: Participation and Access to Information. The following sections will illustrate the specific needs of a number of marginalised and vulnerable groups. Meaningful participation of marginalised and vulnerable groups takes considerable effort. It is important that participation be structured as a major goal of a project, requiring the appropriate skills and the willingness of state and development practitioners to invest time and resources in ensuring effective participation that includes all groups. Such participatory efforts should be scheduled at times and dates suitable to a wide range of the community members, and should 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.¹⁴⁶

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."¹⁴⁷

The need to target vulnerable groups presents practical challenges for government programmes. A number of potential approaches are discussed in this sub-section. One strategy is to prioritise services to institutions utilised by vulnerable groups, such as, schools, health institutions, traditional nomadic halting sites and settlements in arid and semi-arid areas and disaster-prone areas.

Such institutions should receive priority in the extension of water and sanitation services and, in order not to jeopardize the function of the institution, they should be able to receive subsidised water or special rates where limited payment is possible. Where block tariffs are used, these should be revised for educational, health institutions, refugee camps, prisons etc. These institutions should also receive preferential protection against disconnection where they are unable to pay. The United Kingdom's Water Industry Act disallows disconnections of

¹⁴⁴ UN Development Programme, *Mainstreaming Gender in Water Management. A Practical Journey to Sustainability: A Resource Guide*, (UNDP, 2003), p.49; www.undp.org/water/genderguide.

¹⁴⁵ 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.

¹⁴⁶ C. Hannan and I. Andersson, *Gender perspectives on water supply and sanitation: Towards a sustainable livelihoods and ecosystem-based approach to sanitation*, (UNDP), http://www.undp.org/water/docs/sum_aag_pre.doc.

¹⁴⁷ Sub-Commission Guidelines, section 3.3.

institutions such as schools, hospitals, prisons and homes occupied by the elderly (See Chapter 10: Affordability, Box 10.11).

In the tariff proposals for Lake Victoria North in Kenya, special rates for schools and hospitals have been set. Likewise, in the Brussels Capital Region in Belgium, schools receive a free allocation of water (one litre per day per pupil).

Box 5.3: 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 these, only half of the schools had separate facilities for boys and girls. The result was that girls chose not to utilise these facilities rather than risk being seen to use the toilet, or because they were warned that these facilities were not private or clean enough. In addition to being painful, such actions can lead to urinary and bladder problems. Girls were also avoiding drinking water at school to avoid urination, thereby becoming dehydrated and being unable to concentrate. Where there are no segregated facilities or no facilities, girls would go into the bush for fear of being seen, where they were at risk from snake-bites or even sexual attack. Girls would also stay away from school when menstruating.¹⁴⁸ This situation is one primary cause of the under-representation of females in schools. The failure to redress this situation is in direct contradiction to one of the Millennium Development Goals – to eliminate gender disparities in primary and secondary education, preferably by 2005.

Safe and hygienic sanitation facilities are also an important approach for educating children about good hygienic practices that are 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.

The under-provision of water and sanitation in schools is due to a variety of factors. It is common for the education ministry, rather than the water ministry, to be responsible for building and maintaining latrines, and in some cases for water points.¹⁴⁹ 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 coordination between Water and Education Ministries, and a clear commitment to making schools the first priority for water and sanitation services.

Prisons, refugee and internally displaced persons camps also require special consideration regarding tariffs for water and sanitation services, particularly as the residents of these institutions will generally not be in a position to pay for the services themselves. This is further covered in section 7.8 below.

It is also advisable to ensure that relief strategies for disaster response include the provision of water and sanitation services to all marginalised and vulnerable groups, as these groups are always particularly badly effected by disaster.

¹⁴⁸ Water Aid, *Water and Sanitation: The Education Drain* (London: Water Aid, 2004) at p. 14.

¹⁴⁹ *Ibid.*, p. 16.

7. Reviewing all policies relating to the specific requirements of marginalised and vulnerable individuals and groups

When developing and reviewing water and sanitation policies, individuals and groups who have traditionally faced difficulty in gaining access to water and sanitation require special attention. Such groups include women, children, minority groups, indigenous peoples, refugees and asylum seekers, internally displaced persons, migrant workers, prisoners and detainees.¹⁵⁰ While the right to water applies to everyone, certain groups by virtue of a certain characteristic face differential treatment, or have distinct needs that should be addressed in order to ensure substantively equal access to water and sanitation.

7.1 Women

According to the General Comment No. 15, “States must 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.”¹⁵¹

Women face pervasive challenges in community 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 include household work and childcare in addition to income generation or subsistence agriculture. Due to differential 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 more akin to ‘consultation’¹⁵² (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 as well as the possibilities and need for bringing women into more political discussions of community water supply and sanitation. Practical examples of exclusion 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 latrine 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

¹⁵⁰ General Comment No. 15, para. 16.

¹⁵¹ Ibid, para. 16. (a).

¹⁵² UN Development Programme, *Mainstreaming Gender in Water Management. A Practical Journey to Sustainability: A Resource Guide*, (UNDP, 2003), p.13-14; www.undp.org/water/genderguide.

such work.¹⁵³ 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 policy for improving access to water and sanitation services, it will be necessary to assess the implications for women and men of any planned action, including legislation, policies and programmes, in any area and at all levels. The two sexes and different social classes do not have the same access to and control over resources and work, benefits and impacts may be different for the various socio-gender groups.¹⁵⁴

Therefore, it is necessary that water and sanitation projects explicitly ensure that there are no implicit exclusions of particular groups, and that they address the particular needs of women. For example, as women and children (particularly girls) are generally more vulnerable to attack, whether from other people or from animals, water and sanitation facilities must be situated in safe locations. In rural areas, this will generally demand that latrines are built within the house or yard. In urban areas, where space in informal settlements tends to be more restricted and latrines are in danger of polluting water sources, it may be necessary to have a latrine shared by several households or indeed by a neighbourhood. There are various ways of ensuring improved security, but adequate lighting at the latrine or toilet and on the route to the latrine is critical. At larger public latrines, used by many households, the attendant who collects any fees for using the latrine and keeps the latrine clean will also have a role in ensuring the safety of the users. This may help to address the difficult cultural issue regarding women being seen to be going to use a latrine, which can create conflict between security and the issues of dignity and privacy.

Key lessons from efforts to mainstream gender in water and sanitation programmes include 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;

7.2 Children

National governments will need to take deliberate steps if they are to ensure that children are not prevented from enjoying their human rights due to the lack of adequate water and sanitation services in educational institutions and households or through the burden of collecting water. Provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency.¹⁵⁵ One aspect of the right to education is that the educational institutions should be functional – which includes, among other factors, provision of safe drinking water and segregated sanitary facilities.¹⁵⁶

¹⁵³ C. Hannan and I. Andersson, Gender perspectives on water supply and sanitation: Towards a sustainable livelihoods and ecosystem-based approach to sanitation, (UNDP), http://www.undp.org/water/docs/sum_aag_pre.doc.

¹⁵⁴ UNDP, Mainstreaming Gender, p. 16.

¹⁵⁵ Ibid, para. 16. (b).

¹⁵⁶ UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education, para. 6 (a).

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 schools 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.¹⁵⁷

It is essential that children are consulted in the design of water and sanitation facilities, in all situations, in order to ensure that they are able to actually use such facilities without danger to themselves. For example, children in India indicated their preference for more open, shallow latrines, as opposed to the latrines used by adults, which are often seen by children as dark, enclosed spaces with often deep pits that you could fall into.¹⁵⁸ 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 to disease.¹⁵⁹ As a result, it is necessary that water quality standards, and measures to implement them, take account of such needs. Access to water, sanitation and hygiene programmes should be prioritised to address the needs of young children.

7.3 Inhabitants of rural and urban deprived areas

It is important that national governments take steps to ensure that rural and deprived urban areas have access to properly maintained water and sanitation facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution.¹⁶⁰

According to General Comment No. 15, “States should take steps to ensure 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.”¹⁶¹ This requires more than simply permitting connection of urban informal settlements to water and sanitation services – it often requires new infrastructure development. For example, in Argentina, although the regulatory agency stated that land title is not necessary to gain access to the water system, it also acknowledged that technical problems, such as settlements not aligned with the grid, could lead to a restriction in access. This implies that the municipality’s failure to regularise the situation of the informal settlements could lead to restriction of water access (See Chapter 9: Accessibility for further details).

7.4 Indigenous peoples

General Comment No. 15 states that, “States should take steps to ensure that ... [i]ndigenous 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”.¹⁶² Further to this, the Sub-Commission Guidelines state that,

¹⁵⁷ This point is drawn from Water Aid projects in India, Tanzania and Ghana. See Water Aid, *Looking Back; The Long-Term Impact of Water and Sanitation Projects*, 2001 and Water Aid, Education Drain, above.

¹⁵⁸ Ibid., p. 20.

¹⁵⁹ World Health Organization, *Emerging Issues in Water and Infectious Disease*, (Geneva: WHO, 2003) p. 15-16.

¹⁶⁰ General Comment No. 15, para. 16 (c).

¹⁶¹ General Comment No. 15, para. 16 (c).

¹⁶² General Comment No. 15, para. 16 (d).

“States should enact and implement legislation to protect access by persons to traditional water sources in rural areas”.¹⁶³

Denying indigenous peoples the ability to control their own water resources normally causes severe economic and cultural dislocations, thereby disadvantaging members of these communities. Also, there is growing recognition of the autonomy and cultural rights of indigenous peoples, by virtue of the need and desire of such peoples to have the opportunity to maintain their way of life. Therefore, laws regulating water resources and water and sanitation provision should not unduly infringe on the ability of indigenous peoples to maintain customary indigenous water rights and management systems. This can be done by ensuring that legislative and policy design does not allow actions by private or public actors, including water appropriation and pollution, that would affect the right to water of indigenous peoples.

It is generally necessary for water laws to be reformed to address the needs and circumstances of indigenous peoples, based on consultation with these groups. For example, water rights of indigenous peoples may need to be recognised as collective goods, rather than as resources to be owned by individuals. The recognition of these rights will then allow communities the right to manage and use these water resources in a manner consistent with their customary traditions. States can provide financial and technical assistance to communities to manage water resources, based on consultations with them.

Permitting autonomy for indigenous peoples does not reduce the State’s responsibility for ensuring that there is equitable access to water services.

Box 5.4: 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.¹⁶⁴

7.5 Nomadic and traveller communities

General Comment No. 15 states that, “States should take steps to ensure that... [n]omadic and traveller communities have access to adequate water at traditional and designated halting sites”.¹⁶⁵ Nomadic communities across the world generally face challenges of drought and encroachment

¹⁶³ Sub-Commission Guidelines, section 3.4.

¹⁶⁴ 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>).

¹⁶⁵ General Comment No. 15, para. 16 (e).

on traditional sources of water. Even where they have access to dedicated water sources, there can be tensions with local settled communities appropriating 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, it is necessary for active efforts to be made to ensure that their unique water needs are addressed. It is also necessary for the water sector to specifically consider how the water and sanitation needs of pastoralists can be met, in particular those who engage in regular migration. It is necessary to ensure that services and facilities serving pastoralists are designed in consultation with them.

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

General Comment No. 15 states that, “States should take steps to ensure that... [r]efugees, 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.”¹⁶⁶ Access to water and sanitation services cannot be dependent on legal residence, nationality, formal renting contracts or other similar conditions.

7.7 Groups facing difficulties with physical access to water and sanitation

General Comment No. 15 states that, “States must take steps to ensure that ... [g]roups facing difficulties with physical access to water, such as older persons, persons with disabilities, victims of natural disasters, persons living in disaster-prone areas, and those living in arid and semi-arid areas, or on small islands are provided with safe and sufficient water.”¹⁶⁷

In designing water and sanitation services for older people or people with disabilities, policies and projects need to ensure that the services are accessible. For water points this may require taps set lower than standard 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. Many community-managed projects will make special provision for those who cannot afford to pay due to age or disability and service providers can support this by making a certain percentage of water available for free. Governments may need to provide a subsidy to cover these costs.

For victims of natural disasters, persons living in disaster-prone areas and internally displaced people, emergency provision of water and reconstruction may be needed and should be planned for.

For those living in water-scarce regions, for example arid and semi-arid areas or small islands, it is necessary to develop a plan to provide water and sanitation services, and governments may need to allocate a reasonable percentage of financial and human resources to work towards alleviating this water scarcity.

7.8 Persons under custody

General Comment No. 15 states that, “States must take steps to ensure that ... [p]risoners and detainees are provided with sufficient and safe water for their daily individual requirements,

¹⁶⁶ General Comment No. 15, para. 16 (f).

¹⁶⁷ General Comment No. 15, para. 16 (h).

taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners”¹⁶⁸.

Persons under custody may also include those in psychiatric hospitals in addition to prisoners and detainees. As such people cannot secure their own access to water and sanitation, these services should be provided free. If government contracts out prison or psychiatric services, there must be specific rules governing the contract which establish the obligation to provide sufficient and safe water without restriction. Prisoners and detainees must also have to have a mechanism to make complaints about their treatment without fear of reprisals.

The list above is not comprehensive, as other groups with related vulnerabilities may be identified. Persons with disabilities or chronic illnesses (such as HIV) and elderly persons normally have weaker immune systems than the general population of adults. As with young children, such vulnerability should be taken into account in water quality standards and in the development of programmes to secure access to water, sanitation and hygiene. In addition, if water quantity is restricted due to non-payment, such restrictions must allow such persons to use the increased quantities of water necessary due to their age or disability.

Checklist for Discrimination and Attention to Vulnerable and Marginalised Groups

1. Does national legislation explicitly prohibit discrimination and are there policies and institutions to address discrimination?
2. Are specific national policies and strategies in place to address the water and sanitation needs of marginalised and vulnerable groups?
3. Are there sufficient budgeted resources and disaggregated data available to provide the basis for appropriate policies and strategies?
4. Is there a disaster response strategy addressing water and sanitation needs?
5. Is the right of nomads and travellers to traditional water sources recognised and protected?
6. Is the right of prisoners and detainees to water guaranteed?
7. Are refugees and internally displaced persons able to enjoy their rights to water and sanitation and is this right protected?

¹⁶⁸ 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.

CHAPTER 6: PARTICIPATION AND ACCESS TO INFORMATION

According to the ICESCR: “[T]he 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.”¹⁶⁹

Everyone has a responsibility to participate in the realisation of the right to water and sanitation. Often communities have the knowledge, motivation and capacity to plan and manage services or facilities better than the local authority. However, poor people and members of other vulnerable or marginalised groups are frequently excluded from decision-making regarding water and sanitation, and hence their needs are seldom prioritised, resulting in inequitable access to water and sanitation facilities and services. Where services 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 vulnerable and marginalised groups, at all levels in support of policy and decision-making related to water resources management and project implementation.¹⁷⁰ However, ensuring effective participation and access to information is not straightforward; poverty can impair peoples’ capacity to access information, particularly in terms of literacy, and some vulnerable groups may also face physical or cultural restrictions to accessing information and actively participating in decision-making.

As discussed in chapter 1, the right to water and sanitation, in common with all human rights, includes a number of principles, including that of participation and inclusion,¹⁷¹ which provides all persons with a genuine capacity to influence and enhance policy formulation and improvements in the water and sanitation sector. It also provides tools both for individuals and communities to advocate for necessary changes and for governments to implement such changes in order to ensure the realisation of the right to water and sanitation. Human rights focus on entitlements, rather than charity or commoditisation, which empowers individuals to hold governments, and other actors, to account for lack of access or for discriminatory policies, and places the emphasis on the need for the transparent sharing of information and involvement of all stakeholders in decision-making processes, monitoring and reporting.

Human rights includes levels of commitment, information sharing and participation that are not always immediately realisable 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 all their obligations immediately. It is important that plans to implement participatory processes take account of the necessary financial and administrative resources that are required.

¹⁶⁹ ICESCR, Preamble, 1976, http://www.unhcr.ch/html/menu3/b/a_ceschr.htm.

¹⁷⁰ Johannesburg Plan of Implementation, para. 25 (b).

¹⁷¹ 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. 48 refers to these rights, see section 6.2.

How governments can ensure access to information and public participation

1. Introduce mechanisms to facilitate access to water and sanitation sector information for policy and decision-making.
2. Ensure public access to essential water quality and environmental health data.
3. Undertake multi-stakeholder dialogues in the development of water and sanitation policies and plans.
4. Make provision for community development and management of water and sanitation facilities and services.

6.1 Access to information

Access to information is included in General Comment No 15 as one of the key factors that determines the adequacy of the right.¹⁷² In other words, the right to water cannot be fulfilled completely without individuals gaining access to information to make informed decisions over 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.” It is also in a government’s own interest to document and publish data so as to protect themselves against unwarranted political or legal claims.

The types of information that should be accessible include: policies, action plans or strategies relating to or affecting water and sanitation; budgets, tariffs and tariff structures; and proposed changes to any of the above. Water quality and environmental health data should also be made available, particularly that which relates to the safety of water supplies and potential risk of contamination; this is discussed in more detail below.

Information for policy and decision-making

Information should be made available in a manner that is appropriate for each context, taking into account aspects such as levels of literacy and different language groups and the urgency of the information, and should be broadcast using both modern and traditional methods of communication. In some cases, it may only be necessary to broadcast details of how and where to access more detailed information. However, it is necessary for all people to have equal access to this information in order to enable them to participate effectively in decisions that affect their right to water and sanitation.

In order to develop an effective plan of action, the government needs to have a thorough understanding of the current condition of water and sanitation services, including what water resources are currently being used and what is available to be exploited. Where communities themselves are involved in data collection and interpretation, there is more likely to be an accurate assessment of the current situation. This also empowers communities in their involvement in the accompanying decision-making process.

¹⁷² “Information accessibility... includes the right to seek, receive and impart information concerning water issues.” General Comment No. 15 para. 12(c)(iv).

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.¹⁷³ 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.¹⁷⁴

Each water services authority must report on the implementation of its development plan during each financial year and publicise a summary of its report.¹⁷⁵ 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.¹⁷⁶

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 as outlined above and identify the specific inputs that the government should provide.

Water quality and environmental health data

The right of consumers to information on the safety of the water supplied to them for domestic purposes is fundamental. General Comment No 15 refers to the World Health Organisation's Guidelines on Drinking Water Quality¹⁷⁷ which emphasise that recommend the publication of information on public health aspects of drinking-water supplies, water quality and performance of suppliers. Publication of such information can have the following benefits:

- encourages suppliers to follow good practices,
- mobilises public opinion and response, and
- reduces the need for regulatory enforcement, which should be an option of last resort.¹⁷⁸

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.”¹⁷⁹ Such interaction can occur through consumer associations or community based organisations, such as women's groups, religious groups and schools. Appropriately trained and informed communities are in the best

¹⁷³ *Water Services Act*, (Act 108 of 1997), s. 14. <http://www.dwaf.pwv.gov.za>.

¹⁷⁴ *Ibid.*, s. 15 (1-2).

¹⁷⁵ *Ibid.*, s. 18 (1-3).

¹⁷⁶ *Ibid.*, s. 67.

¹⁷⁷ 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 Guidelines”.

¹⁷⁸ WHO Quality Guidelines, p. 94.

¹⁷⁹ WHO Quality Guidelines, p. 96.

position to carry out forms of surveillance that government authorities cannot, as has been previously discussed.¹⁸⁰

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. 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. 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.¹⁸¹

6.2 Participation

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”.¹⁸²

The Sub-Commission Guidelines provide further advice to states regarding participatory rights¹⁸³ in two specific areas. The first is public participation in decision-making and policy development; the second relates to public participation in the implementation of the right to water through the development and management of water and sanitation facilities or services.

Participation in decision-making and policy development

Development of a national water strategy and plan of action¹⁸⁴ is best achieved through coordination with and participation of all relevant stakeholders, including the general public and civil society organisations, particularly those representing communities with vulnerable and marginalised members.¹⁸⁵ Ultimate responsibility for the realisation of the right to water rests with central government. Therefore, even when implementation has been delegated to local authorities, there must be sufficient resources (financial and human resources and staff capacity) for adequate participation.¹⁸⁶

Paying particular attention to all disadvantaged or marginalized groups is reiterated in the Sub-Commission Guidelines, which state that, “Special efforts must be made to ensure the equitable representation in decision-making of vulnerable groups and sections of the population that have

¹⁸⁰ WHO Quality Guidelines, p. 96.

¹⁸¹ See “New Law Significantly Affects Small Rural Water Systems” Rural Conditions and Trends, Vol. 8, No. 1, p. 53.

¹⁸² General Comment No. 15, para. 48.

¹⁸³ 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, paras 8.1-8.3.

¹⁸⁴ General Comment No. 15, para. 47. See also Sub-Commission Guidelines, para. 2.3 (b).

¹⁸⁵ General Comment No.15, para. 16.

¹⁸⁶ General Comment No. 15, para. 51 “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”.

been traditionally marginalised, in particular women”¹⁸⁷ Exclusion of vulnerable and marginalised groups from decision-making has negative consequences 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 develop consensus on pricing levels necessary to ensure that the services are both sustainable and affordable to all.

Government support to this process would include considering proposals from individuals and communities for appropriate policies for the delivery of water and sanitation services and including self-management as an option in water and sanitation strategies and projects. 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.¹⁸⁸

Involvement of communities with and without access to water and sanitation services will bring crucial experience and ideas of how services can be most effectively and efficiently provided, allowing also for the development of alternative approaches, whether through self-management of services or through appropriate technologies. Where privatisation of services is being considered, this needs to be 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.

Box 6.3: Levels of participation¹⁸⁹

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.

¹⁸⁷ Sub-Commission Guidelines, section. 8.1.

¹⁸⁸ WHO Guidelines on Drinking Water Quality, p. 14.

¹⁸⁹ Adapted from R. Jackson, 'Community Participation: Tools and Examples', taken from S. Worah, D. Svendsen and C. Ongelo, 'Integrated Conservation and Development: A Trainer's Manual' (ICDP et al, 1999)

It is essential that community participation is not used superficially - as a 'rubber stamp' - to secure agreement to achieve what a third party wants to achieve. Particularly where specific groups of users have historically been excluded from decision-making processes, such as women or disabled people, 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.¹⁹⁰ 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.

Box 6.4: New water law 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.¹⁹¹

Box 6.5: Participatory Budgeting in Porto Alegre, Brazil

The Water Company of Porto Alegre, Brazil, Departamento Municipal do Agua e Esgoto (DMAE), provides a good example of a successful model of participatory decision-making. A council of local civil society representatives control the daily work of the utility and DMAE's operations and investment decision are subject to a participatory budgeting process. The population directly decides the budget priorities of their water company. Through a process of public meetings, every citizen can have a say in which new investments should be made first. This participatory model is one of the reasons that poor communities in Porto Alegre have gained dramatically improved access to clean water: their needs are prioritised because they participate directly in deciding new projects.¹⁹²

Participation in the development and management of water and sanitation

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".¹⁹³

There are many examples of communities managing their own water and sanitation facilities and services successfully, both in rural and urban areas. Community groups or local organisations are often in a better position than governments to identify which sectors of society do not have access to essential services and how they are most effectively delivered. Enabling individuals and communities to be actively involved in designing and managing their water and sanitation services will help to ensure that the services are more appropriate, sustainable and affordable.

¹⁹⁰ General Comment No. 15, para. 48.

¹⁹¹ 'After the Water Wars: The Search for Common Ground' International Development Research Centre http://www.idrc.ca/uploads/user-S/11576619261waterwars_eng.pdf

¹⁹² Brid Brennan, Bernhard Hack et. Al, *Reclaiming Public Water, Participatory alternatives to privatization*, October 2004, Transnational Institute, Corporate Europe Observatory, www.corporateeurope.org/reclaimingpublicwater.pdf

¹⁹³ Sub-Commission Guidelines, section. 8.2.

Participation of the community can include a whole range of activities; from identifying appropriate sites for wells or latrines, contributing labour or locally available materials, carrying out maintenance and repair of facilities, to monitoring services. In most cases, communities will also need to contribute financially to the capital or operational costs of their water and sanitation services. Community-managed schemes may either run on a non-profit basis, or with profits used to extend services. Households should be willing to give financial contributions, either in the form of service tariffs or maintenance fees and such like, to the extent that it is affordable for them, taking into account their ability to secure other rights such as food, clothing and housing.

Relevant legislation should be in place to authorise communities to develop and manage their own services, and it may be necessary to allow lower standards of delivery, at least in the short to medium term, to ensure that access is affordable to all.

Community management can complement services from other 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, it requires significant amounts of capacity building and training to members of the community to be sustainable and effective.

A lack of technical capacity, especially in rural areas, in many developing countries has led to a lack of adequate services. Capacity building is an essential element to ensure the sustainability of community-managed systems, and should be considered an ongoing, rather than one-off commitment. A significant impact can be made when capacity building or awareness-raising is combined with the involvement of community groups, water and sanitation committees and schools in the provision and maintenance of water and sanitation. Improvements to health through better hygiene practices, and reductions in water wastage due to better care of facilities are two such examples. Where there is inequitable use of water by different sectors of the community, leading to a shortage of water for some, this is best addressed at the community level.

Powerful stakeholders 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 of to benefit those who already have adequate access to services, particularly from a health perspective. An example of this may be where the head of the village is in the minority in already having a latrine. Using their influence to persuade others to build and use latrines also brings direct health benefits for their own household and may determine how village projects are organised and whether they are successful. A successful approach to promoting latrine construction and use has been to elevate latrine ownership as a symbol of status, rather than simply for health reasons.

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 solution to the problem. Where communities manage water and sanitation facilities, they are in a position 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.

Box 6.6: Community management in Ethiopia

The Oromia Region in Ethiopia contains several large community-managed gravity-fed water supply schemes, some of which have been in operation over a decade. The government engineers designed the schemes in accordance with technical standards and the wishes of the communities

served. The people contributed approximately 20% 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 was responsible for planning the overall project, supervising construction, monitoring activities against plans, and resolving problems, comprising community members, central and local government staff and staff from the NGO WaterAid. 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.¹⁹⁴

See also Box 10.8 on the Orangi Pilot Project, Karachi Pakistan.

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.

Other areas of participation

Regulation

It is useful for the regulatory body to have representation from a wide range of stakeholders, including community groups, in order to allow for public participation in decision-making processes and thereby give effect to peoples' right to participation and adequate redress.¹⁹⁵ An important part of this process is an effective complaints mechanism; refer to Chapter 4: Roles of Key Actors, Section 1.17 for more information on this issue.

Monitoring

Communities and groups are in a good position to monitor service provision according to government standards, such as quality, affordability and accessibility. 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.¹⁹⁶ 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 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.¹⁹⁷ There is also an opportunity then for communities to be empowered to inform not only the authorities of shortcomings, but also to notify other community members when water quality is poor and other steps need to be taken for purification of water.

¹⁹⁴ 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>

¹⁹⁵ General Comment No. 15, para. 48.

¹⁹⁶ WHO Guidelines, p. 96. This reflects the principle in General Comment No. 15, para. 48.

¹⁹⁷ 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.

Checklist for Participation and Access to Information

1. Are there mechanisms in place to facilitate access to water and sanitation sector information for policy and decision-making?
2. Is there a (legal) requirement for essential water quality and environmental health data to be made available to the public?
3. Is multi-stakeholder participation an integral part of the water and sanitation policy-development process?
4. Are there legal or policy provisions for community development and management of water and sanitation facilities and services?

CHAPTER 7: WATER AVAILABILITY AND ALLOCATION

The availability of a sufficient quantity of safe water is becoming an increasingly problematic issue in the delivery of water and sanitation services. One issue of particular relevance is the sustainability of existing water sources, especially the lack of concern regarding environmental degradation, over-use of water, and the contamination of water sources by industry, agriculture and, where there is inadequate sanitation or drainage facilities, domestic users.

While significant numbers of people do not have access to adequate water and sanitation services, this is generally due to inequitable distribution of resources rather than a scarcity of water resources. Only in a very few regions of a few countries is scarcity of water resources responsible for preventing residents from accessing sufficient water for essential domestic purposes such as drinking, washing (clothes and personal hygiene) cooking and sanitation.

It is therefore necessary to prioritise not only domestic uses over other uses, such as agriculture and industry, and but also to prioritise essential use by all residents over supplying water for hotels and the middle or upper income households where water may be being used unsparingly for swimming pools, watering lawns or other non-essential purposes.

In spite of a crisis in access to water, it should be noted that domestic uses of water comprise only 12% of the total water use globally – the balance is used in industry and agriculture. Of this, only a small proportion is used for essential domestic uses. There is a huge variation in domestic water usage within countries and between countries. In the USA, the average person uses 500 litres per person per day - much of which cannot be described as 'essential'. In some countries in Africa (Gambia, Mali, Somalia, Mozambique), the average person uses less than 10 litres per person per day.

How governments can act to ensure availability of water

1. Setting a standard for a minimum quantity of water sufficient for human dignity, life and health, where necessary limiting water used for other purposes.
2. Prioritising allocation of water resources for essential domestic uses
3. Ensuring that water rationing is carried out in an equitable manner
4. Improving sustainability of water resources
5. Protecting water catchment areas
6. Improving the efficiency of piped water delivery

1. Setting standards for a minimum quantity of water

General Comment No. 15 does not specify a particular volumetric quantity that should be 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.”¹⁹⁸

Setting standards for quantity of water available to all individuals, households or groups and for the continuity of services is important to ensure the availability of water for all. This can include short-term targets such that each person has access to an amount of water sufficient for human dignity, life and health.¹⁹⁹ 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 climate conditions.²⁰⁰

Longer term targets for sufficient and continuous water provision for personal and domestic uses, including drinking, personal sanitation, washing of clothes, food preparation and personal hygiene would be approximately 50-100 litres a day per person.²⁰¹ Accessing this amount will generally require an on-plot connection or it is unlikely given the time and effort taken to collect water that this longer-term target will be met.

Access to sufficient quantity of water is tied to physical accessibility. In order to be able to collect 20 litres a day, a source should normally be within 1000m of the household, with less than 30 minutes of collection time, including time spent waiting in a queue (see Box 7.1 below). This is covered in more detail in chapter 9: Physical Accessibility.

General Comment No. 15 refers to WHO guidelines on water quantity, which are as follows:

Box 7.1 Service Level Descriptors of Water in Relation to Hygiene²⁰²			
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 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	On-plot (e.g. single tap in house or yard)	Medium. Likely to be around 50 litres per person daily, higher volumes unlikely as	Low. Most basic hygiene and consumption needs met. Bathing and laundry possible on-site, which may increase frequency of

¹⁹⁸ 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).

¹⁹⁹ *ibid.*, para. 11.

²⁰⁰ Guy Howard and Jamie Bartram, Domestic Water Quantity, Service Level and Health (World Health Organization, 2003).

²⁰¹ According to Bartram and Howard, *ibid.*, this is the level at which there is only a low possibility of inability to meet health needs.

²⁰² *ibid.*, p.22.

		energy/time requirements still significant	laundrying. 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.

This table suggests that it requires at least 100 litres to ensure that all health concerns are met. It would be appropriate for those countries that have the resources to provide 100 litres or more to do so.

2. Prioritising water resources for domestic purposes

General Comment No. 15 states that, “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”.²⁰³

This needs to be prioritised above other uses and may require restricting the use of water for purposes other than essential domestic purposes. This is reiterated in the Sub-Commission Guidelines, which state that, “The priority in water distribution shall be for essential personal and domestic uses for all”.²⁰⁴

Prioritising improving and extending piped water and sanitation services to those urban and peri-urban areas that currently lack access will greatly enhance the ability of residents of illegal or informal settlements in urban areas to gain access to a sustainable and adequate quantity of safe water.

In rural areas where there is a scarcity of water there are often competing uses of water, for example watering animals or agriculture or water for domestic purposes. This competition is further complicated by the fact that men, who are more likely to be decision-makers in many rural societies, may be requiring water for agricultural or husbandry purposes, while women will be more likely to be collecting water for domestic purposes and small gardens. Prioritisation for domestic purposes may be socially problematic, but needs to be considered if all members of society are going to access sufficient quantities of safe water for domestic purposes.

Licensing is one method of prioritising uses; requirements should generally prioritise personal and domestic uses over other uses of water, and should also make provision for priorities in periods of natural disasters, droughts and emergencies.

However, depending on its design and manner of implementation, a licensing system may deny a person access to the only reasonable water source close to their home. This concern applies in particular to low-income persons who cannot afford to pay for an alternative source. There is a risk that the better organised, or the more economically powerful users would gain superior access to the licensing system compared with poor and disadvantaged users. Therefore, it is necessary to avoid any system that may be inaccessible or hinder access to water. Creating

²⁰³ General Comment No. 15, para 12 (a).

²⁰⁴ 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 4.3.

blanket exceptions for uses of communal water sources for personal and domestic uses, as well as for small amounts of water used for subsistence farming will simplify this. In fact, water-related laws do make such provision, as in the example of South Africa (See Box 7.2).²⁰⁵

Box 7.2: Permissible Uses of Water Without a License in South Africa

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.²⁰⁶

While it is important to prioritise the use of water for personal and domestic uses over agricultural and industrial uses, there is one major exception to this principle. This is that in circumstances of severe water scarcity or lack of accessibility, it may be necessary to limit domestic water use to the minimum necessary amount, and provide the remaining amounts for minimal operating amounts for activities related to other basic human rights, such as subsistence agricultural production necessary for the right to food and the right to work. (See Chapter 2: Overview of the Human Right to Water and Sanitation) This is supported by the Sub-Commission Guidelines, which state, “in order to realize the right to adequate nutrition and the right to earn a living through work, marginalized or disadvantaged farmers and other vulnerable groups should be given priority in access to water resources for their basic needs”.²⁰⁷

Marginalised or disadvantaged farmers and pastoralists, including women, should be given equitable access to water for productive purposes.²⁰⁸ This requires a licensing system that does not involve complex application criteria and which ensures that low-income farmers and pastoralists are not excluded.

²⁰⁵ DFID Africa Study on Water Law, Giardina and Betlem (FAO), supra.

²⁰⁶ Section 22 and Schedule 1; http://www.dwaf.gov.za/Documents/Legislature/nw_act/NWA.pdf.

²⁰⁷ Sub-Commission Guidelines, section. 4.3

²⁰⁸ General Comment No. 15 (n. 4 above), para. 7.

3. 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 to specific areas (where this is technically feasible) or for specific portions of the day. If this is necessary, it is important that any rationing is 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. It should be noted that water rationing has the greatest impact on the poor, firstly because the poor are in the worst condition to cope with finding alternative sources at short notice and secondly because they are less able to store water that can last for more than a day. As residents of low-income areas generally use small amounts of water, rationing in these areas is not necessarily of great assistance.

Any rationing that is planned should be publicised well in advance so that people can plan for it. This could include announcement in the newspaper and other media, such as vernacular radio, and through water kiosk operators.

The best approach to safeguard water for domestic purposes is to improve water resource management to such a point that rationing is no longer necessary. Approaches for increasing sustainability are discussed below in section 4.

4. Improving sustainability of water resources

General Comment No. 15 states 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”.²⁰⁹ Further to this, General Comment No. 15 states that governments have an, “obligation to promote: education regarding protection of water sources and methods to minimize water wastage.”²¹⁰ The Sub-Commission Guidelines state 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”.²¹¹

Improving water resource management is a first step to improving sustainability, for which there are many relevant possible approaches, including:

- Establishing a system of water abstraction licensing to avoid uncontrolled and excess water withdrawals. Water abstraction licenses for domestic use can be charged differently than those for industrial use.
- Reducing unaccounted-for water and improving efforts to recycle and reuse water where appropriate.
- Ensuring that industries that use water clean it before returning it to the aquifer. There is a role for governments in monitoring proposed developments that could have such an effect and in imposing charges for those industries that do not comply

²⁰⁹ General Comment No. 15, para. 11.

²¹⁰ General Comment No. 15, para. 25.

²¹¹ Sub-Commission Guidelines, section. 4.2.

- Reducing unsustainable use by charging more per litre for uses which are not essential, for example by charging hotels and private residences more to fill a swimming pool to ensure that the cost of supplying this non-essential water at least cross-subsidises essential uses (see Box 7.3)
- Educating all water users on the need to protect water sources from pollution or over-use, including by siting latrines at a suitable distance from water sources.
- Implementing conservation techniques and technologies.
- Improving storage of water at both a community and household level, particularly where supplies are not continuous. Where rainwater harvesting is a possibility, it is crucial that this is maximised through sufficient and appropriate storage capacity. To avoid contamination, water containers, whether for community or household use, need to be closed.
- Carrying out an assessment of the most wasteful uses of water. In certain countries, such as United Kingdom and Australia, bans on the use of sprinkler water systems for ornamental gardens or hosepipes for car washing have been introduced. Non-compliance with such restrictions leads to a stiff fine.

Licensing systems are sometimes established by governments under which collection of all water from a common source requires a permit in advance from the relevant government. Such systems may be necessary in order to ensure the availability of a sufficient quantity of water for the maximum number of users without over-abstraction occurring.

A number of laws make exceptions not by purpose of water use, but by the means by which it is collected from the source (for example, where it is collected by non-mechanical means) or they specify the quantity of water that can be taken.²¹²

Customary laws may exist to ensure that traditional sources are retained and these need to be protected. However, there may be problems with some customary laws, which protect the status quo and men's access to water over the needs of women and domestic use.²¹³

²¹² Giardina and Betlem, *supra.*, p.6.

²¹³ Veronica Giardina and Ilja Betlem (FAO), Access to Water.

Box 7.3: Water conservation-oriented rates: Implications for the human right to water

Water conservation-oriented rates (WCORs) are designed to promote conservation through rate mechanisms such as excess surcharges, drought demand rates, inclining 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.

If supply is exceeded by demand 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. Demand must be reduced to avoid such discrepancies.

In the case 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, inclining block rates are designed to have the opposite effect to these declining block rates. The first block provides for “lifeline rates” that represent a basic needs level of water at low or no cost, whereas 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,” and thus, they cannot cut down on use, regardless of how there are penalized. 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.

Source: Contribution by William James Smith, Jr., Asst. Professor, Department of Environmental Studies, Greenspun College of Urban Affairs, University of Nevada, Las Vegas.²¹⁴

The Sub-Commission Guidelines state that, “States should ensure that everyone has a sufficient amount of safe water by...combating the depletion of water resources from unsustainable extraction, diversion or damming by industry or agriculture”.²¹⁵ There are a number of negative examples of this, which are outlined in the following boxes:

²¹⁴ 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” 2004.

²¹⁵ Sub-Commission Guidelines, section 4.1.

Box 7.4: Coca Cola in India

There has been a well-publicised dispute between a Coca-cola plant in Plachimada in Palaghat district, where the local community have been sitting in protest against Coca-Cola, claiming that the company has drained their aquifers dry. This is a particularly poignant case, where the disconnect between the needs of industry, manufacturing soft drinks for the well-to-do is seemingly threatening the needs of the local population to access essential supplies of water for domestic use. There have been reports of wells having dried up, with the water table dropping from 10 ft. to 100 ft. It takes 9 litres of potable water to produce 1 litre of coke.

Part of the problem has been simply a poor rainfall, but the plant drawing more than one million litres a day from one place has exacerbated this.

Following an investigation instigated by the High Court of Kerala, there are recommendations that the amount of water extracted by the Coca Cola company be monitored, particularly in years of drought, to ensure priority of use for domestic and agriculture. It remains to be seen if this is sufficient to ensure water supplies for the domestic needs of the local population.²¹⁶

Since March 2004, the Coca cola plant has remained closed.

Box 7.5: Cochabamba

“In Cochabamba, Bolivia, the concession contract granted to Aguas del Tunari awarded exclusive rights over the entire province of Cercado, without knowing that there were already small potable water systems constructed long ago by neighbours and communities”. “The contract allowed it to dispose of the water sources necessary to meet the contract without proposing any protection mechanism to the water sources of other organizations”.²¹⁷

The above problems have also been recognised by DFID in their Water Action Plan, which states that where government ministries or departments do not resolve their conflicting demands for water, “water tables can drop below that which can be reached with hand pumps”, significantly increasing the cost of accessing water for domestic uses.²¹⁸

5. Protecting water catchment areas

General Comment No. 15 clarifies, “the right to be free from interference, such as the right to be free from....contamination of water supplies”.²¹⁹

Where residents have access to water, governments need to ensure that this water supply is not compromised, either by their own actions or the actions of others. A crucial aspect of this is the protection of water catchment areas. Where significant changes to a water source are proposed, for example changing river flows or draining lakes, there need to be alternative sources available.

²¹⁶ Investigations on the Extraction of Groundwater by M/s Hindustan Coca-cola beverages private limited at Plachimada, Interim report, filed before the Honourable High Court of Kerala, 11th May 2004

²¹⁷ Flores, Margarita, Solon Pablo, The Water War: Hydraulic Resources Strategy and Citizen Participation at the IDB In the Case of Bolivia.

²¹⁸ DFID policy paper: Water Action Plan, March 2004, <http://www.dfid.gov.uk> .

²¹⁹ General Comment No. 15, para 10.

Upstream villagers should not curtail water accessibility to downstream populations (for example by diverting river flows).

If there are situations in which high levels of abstraction are required, it is necessary to provide some remedy for the communities that are negatively affected by assisting such communities to secure alternative systems.

Where communities need to be relocated from catchment areas in order to protect that area, it is important that these relocations are carried out in conformity with UN standards on evictions, and alternative land provided.²²⁰

6. Improving efficiency of piped 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...”²²¹

In order to improve efficiency of both water delivery and the use of water, accurate information must be available to enable long-term management decisions to be made. Such information should include, but is not limited to:

- Types of local water resources, actual and potential;
- Available volumes;
- Present and future renewability of the resources;
- Vulnerability of the resources to degradation; and
- Measures required to develop, manage, and protect the resources, including, crucially, 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, pumping is increased or 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, and this is frequently not done due to a lack of coordination 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.²²²

²²⁰ See Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing, (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997), available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument); and United Nations Comprehensive Guidelines on Development-Based Displacement (1977), available at <http://www1.umn.edu/humanrts/instreet/forcedevictions.htm>

²²¹ Sub-Commission Guidelines, section. 4.1.

²²² Danilo J. Anton, *Thirsty Cities, Urban Environments and Water Supply in Latin America*, IDRC 1993 (http://web.idrc.ca/en/ev-9313-201-1-DO_TOPIC.html)

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 unacceptably high. In order to improve the efficiency of a service, it is necessary to reduce the level non-revenue water, which can be as high as 50% of all water produced and is seldom lower than 20%.

To reduce this, the following steps can be taken:

- Identify and fix leakages, where is it economically efficient to fix leakages.
- 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.

Box 7.6: World Summit on Sustainable Development

In the Plan of Implementation of the World Summit on Sustainable Development, paragraph 26, also cited in General Comment No. 15, governments agreed 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.²²³

It is necessary therefore to design and implement a strategy to increase efficiency of water delivery and use, including through reducing water loss in distribution systems, particularly where this loss is a primary source of the lack of availability of water for all residents.

Box 7.7: Leakage targets in the UK

Following the Water Summit in 1997, the Office of Water Services (Ofwat) has set water companies leakage targets to reduce leakage to its economic level. This is the level at which it costs more to reduce leakage further than to produce that water from an alternative source. This approach has delivered significant reductions in leakage since its peak in 1995. The Tripartite Leakage Study was published in March 2003. It was commissioned by Ofwat, the Environment Agency and the Department for Environment Food and Rural Affairs to establish the most suitable future approach to leakage management once water companies had reached their economic levels of leakages.²²⁴

²²³ Plan of Implementation of the World Summit on Sustainable Development: <http://www.un.org>

²²⁴ Tripartite Group, Leakage target setting for water companies in England and Wales, March 2002, <http://www.ofwat.gov.uk> .

Check List for Water Availability

1. Is a basic minimum amount of water for personal and domestic uses per person or household stipulated in the country' standards and regulations?
2. Does national legislation and policy ensure that water resource allocation decisions are equitable and prioritise the provision of essential amounts of water for personal and domestic uses?
3. Does national legislation and policy ensure that budget allocation decisions prioritise basic water and sanitation service levels for all?
4. Does the national plan of action include strategies and monitoring mechanisms to improve the sustainability and efficiency of water supply systems?
5. Is there a system in place to ensure the protection of catchment areas for water supplies?

CHAPTER 8: WATER QUALITY AND HYGIENE

More than a billion people rely on unsafe or insufficient quantities of drinking water, exposing them to significant health hazards. Most of the affected people live in rural areas or in informal settlements in urban areas. The primary health risk is microbial agents,²²⁵ 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

1. Formulating water quality standards designed to address the needs of all groups, as expressed by such groups in participatory processes.
2. Formulating short-term and medium term targets to eliminate the pollutants with the most significant health effects, including effects on vulnerable groups.
3. Establishing regulations and mechanisms to control pollution of water resources and ensuring effective disincentives and penalties for pollution.
4. Establishing regulations on water quality for service providers.
5. Putting in place mechanisms to monitor quality of water supply and ensure safety.
6. Promoting hygiene awareness and providing information and training to households and small-scale providers on safe water storage and water quality monitoring.
7. Making all information related to water quality held by public authorities or third parties available to the public.

1. Formulating Water Quality Standards

General Comment No. 15 on the Right to Water uses the World Health Organization Guidelines for Drinking Water Quality (“WHO Guidelines”) to define water quality and 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”.²²⁶ The WHO Guidelines were developed to assist governments in establishing their own appropriate water quality standards and outline how these can be achieved. While the WHO Guidelines set out reasonable minimum requirements of safe practise to protect health, they are not mandatory limits, and governments can adapt them in the context of local or national environmental, social, economic and cultural conditions, evaluating the risks and benefits of each standard for the national or regional conditions.^{227,228}

²²⁵ See Box 8.1 for more detail.

²²⁶ 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).

²²⁷ 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/.

²²⁸ WHO Guidelines, p. 2.

General Comment No. 15 also indicates that water should be of an acceptable colour, odour and taste for personal and domestic uses.²²⁹ 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.²³⁰

As will all standards development, General Comment No. 15 is relevant with regard to process, by stating: “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”.²³¹ In the context of water quality, this is particularly important with regard to acceptability. Ideally, information yielded in consultations with users in the course of other activities (such as consultations by local authorities prior to providing assistance to small-scale suppliers) can provide the necessary information that can be fed into the development of national quality standards.

In order 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, which could include, for example, tanker sources, vendor-provided water and wells.

Box 8.1: Summary of Primary Threats to Drinking Water Quality²³²

The WHO Guidelines identify the following as the general order of priority for water quality:

- ensure an adequate supply of microbiologically safe water and maintain acceptability to discourage consumers from using potentially less microbiologically safe water;
- manage key chemical contaminants known to cause adverse health effects; and
- address other chemical contaminants.

Microbial Agents

These include harmful bacteria, viruses, protozoa and other biological organisations. 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.

²²⁹ Ibid.

²³⁰ WHO Guidelines, p. 7.

²³¹ General Comment No. 15, para 48.

²³² WHO Quality Guidelines, p. 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).

Natural chemical agents known to cause widespread health concerns are fluoride and arsenic and, when present in excess, uranium and selenium. Nitrates may arise either from excessive application of fertilizers in agriculture or from the leaching of wastewater or other organic wastes into surface water and groundwater. 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 neurological effects.

Radiological Aspects

Naturally occurring radionuclides in drinking water should also be taken into consideration. However the contribution of drinking water towards overall exposure to radionuclides is normally very small.

2. Formulating short and medium term targets to eliminate pollutants

The requirements of General Comment No. 15 on water quality may seem unattainable in many developing countries since they require the removal of all substances that threaten a person's health. 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.²³³ 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 8.1.²³⁴

The WHO 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.²³⁵ These targets can undergo periodic upgrading, involving periodic review to ensure that the norms and standards are appropriately updated.²³⁶ 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.²³⁷ The WHO 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.²³⁸ 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.²³⁹

²³³ General Comment 15, paras. 17, 18, 37 (a).

²³⁴ 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*.

²³⁵ WHO Quality Guidelines, 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 8.3.

²³⁶ WHO Quality Guidelines, pp. 6, 33, 37-43.

²³⁷ WHO Quality Guidelines, p. 23.

²³⁸ WHO Quality Guidelines, p.2.

²³⁹ WHO Quality Guidelines, p.36.

Reconciling resource availability and health priorities is particularly important from a human rights perspective. 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 facing 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 Guidelines specify the particular susceptibility of vulnerable groups of the population to certain chemical²⁴⁰ and microbial²⁴¹ 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.²⁴² 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 should be seen as a joint priority. 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.²⁴³

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.”²⁴⁴ 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.”²⁴⁵ It also indicates that: “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.”²⁴⁶ At the Johannesburg World Summit on Sustainable Development, governments 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.²⁴⁷

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.

²⁴⁰ WHO Quality Guidelines, p. 30.

²⁴¹ WHO Quality Guidelines, p. 45.

²⁴² WHO Quality Guidelines, p. 45.

²⁴³ 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).

²⁴⁴ 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.

²⁴⁵ General Comment No. 15, para.16 (c) and (d).

²⁴⁶ General Comment No. 15, para. 28.

²⁴⁷ Johannesburg Plan of Implementation Para. 25 (d). This document can be found at: <http://www.un.org/esa/sustdev/documents/docs.htm>

The WHO Guidelines, however, recommend a ‘multiple barrier approach’ throughout the supply chain, from the water catchment area to the consumer.²⁴⁸ 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. The primary emphasis should be on preventing or reducing the entry of microbial agents into water sources and reducing reliance of treatment processes for removal of microbial agents.²⁴⁹

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.²⁵⁰ Roles, accountabilities and responsibilities of the various agencies involved will need to be defined in order to coordinate their planning and management.²⁵¹ It will be necessary to ensure that the responsible authorities obtain sufficient resources and trained staff in order to effectively regulate and protect water sources.

Appropriate education concerning protection of water resources is the most effective way for governments to prevent pollution and is an important complement to regulatory systems. Such education is particularly important at the community level, as contamination of a water source by children or animals can be difficult for a local authority to regulate.²⁵² Education is dealt with in Section 6 of this chapter.

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 in order 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 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: Actors, Section 1.17 addresses accountability measures. In the field of water quality, it would be useful if a first point of contact for complaints is provided by the government body with responsibility and expertise in water quality management. In order to do this, it would be necessary to improve the capacity of such government body to publicise its existence as a remedy mechanism and to deal with the levels of investigation required.

Box 8.2: Argentinean Court Decision to Remedy Oil Pollution of Water Sources²⁵³

In the case of *Menores Comunidad Paynemil s/accion de amparo*, the Children’s Public

²⁴⁸ See Chapter 3, Availability, for a definition of ‘catchment area.’

²⁴⁹ WHO Quality Guidelines, p.3.

²⁵⁰ WHO Quality Guidelines, p.8, 14.

²⁵¹ General Comment No. 15, para. 51, WHO Quality Guidelines, p. 27.

²⁵² United Nations Children’s Fund (UNICEF), *Towards Better Programming: A Water Handbook* (New York: UNICEF, 1999), p. 57.

²⁵³ A 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.cohre.org/water).

Defender in Neuquen Province, Argentina filed a case against the province in 1997 due to pollution of a water source.²⁵⁴ 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 water being extracted 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; and
- 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 the 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 and as a result, the issue remains before the Argentinean courts.²⁵⁵

4. Establishing regulations for service providers on water quality

Water quality also requires regulations for service providers. For utilities, these could include the following:

- A requirement that safety management plans consistent with water quality standards are in place;

²⁵⁴ Expte. 311-CA-1997. Sala II. Cámara de Apelaciones en lo Civil, Neuquen, 19 May, 1997.

²⁵⁵ Communication from Children's Public Defender.

- An obligation to inform the health and water authorities and the public of any significant risks to the water supply,²⁵⁶ including giving advice to boil water when necessary;
- Legal responsible at all times for the quality supplied to the consumer;²⁵⁷
- 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.²⁵⁸

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 them accountable.

Usually, water suppliers 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 inspected by an appropriate regulatory body.²⁵⁹ Water quality can also be addressed by integrating plumbing standards into standards relating to 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 requires that a government body verify the claims of manufacturers or provides an assessment of the possible risks of contamination from a material or process.²⁶⁰ 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 6, which deals with education and information.

5. Putting in place mechanisms to monitor quality of water supply and ensure safety

Monitoring 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 and 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.²⁶¹

In order to protect public health, an approach that differentiates the roles and responsibilities of service providers from those of the regulatory public health agencies has proven to be effective by reducing conflict of interest between these two roles.²⁶²

²⁵⁶ WHO Quality Guidelines, p. 9.

²⁵⁷ WHO Quality Guidelines, 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).

²⁵⁸ WHO Quality Guidelines, p. 14.

²⁵⁹ WHO Quality Guidelines, p. 16-18.

²⁶⁰ WHO Quality Guidelines, p. 16.

²⁶¹ Johannesburg Plan of Implementation, para. 27.

²⁶² WHO Quality Guidelines, p.8.

The WHO Guidelines advise that a monitoring or surveillance agency take 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.²⁶³ The WHO Guidelines note that the objectives of prioritising the needs of disadvantaged groups will generally entail balancing water quality management and improvement, on the one hand, with the need to ensure access to reliable supplies of safe drinking-water in adequate quantities, on the other.²⁶⁴

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 not appropriate alternative supplies of water, the priority would be to maintain adequate quantities of water.²⁶⁵

Penalties for poor water quality are often ineffective, and even may be counter-productive when applied to small-scale suppliers and households. It should be noted that many small-scale vendors 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.²⁶⁶ 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 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 direct resources to areas where the greatest benefits to public health will occur.²⁶⁷

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 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.²⁶⁸

Surveillance is useful 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 on Participation and Access to Information.

²⁶³ WHO Quality Guidelines, p.31.

²⁶⁴ WHO Quality Guidelines, p. 9-11.

²⁶⁵ WHO Quality Guidelines, p. 30-31.

²⁶⁶ WHO Quality Guidelines, p. 14.

²⁶⁷ WHO Quality Guidelines, p. 88.

²⁶⁸ WHO Quality Guidelines, p. 89.

6. Promoting hygiene awareness and providing information and training on safe water storage and water quality monitoring

Government support to small-scale providers and to households will be critical in ensuring safe water and sanitation. General Comment No. 15 states that governments should take steps to ensure that there is appropriate education concerning the hygienic use of water.²⁶⁹ Hygiene 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.

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.²⁷⁰ 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 if possible need to be designed with a view to progressive upgrading.

Communities are likely to first 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.²⁷¹ 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.²⁷²

The WHO Guidelines recommend that education and information programmes for households and for small-scale providers such as vendors include:

- hygiene awareness raising (including on safe water transport and storage);
- basic technical training and technology transfer in drinking-water supply and management; which allow where possible, for communities to carry out 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; and
- a system of continued support, follow-up and dissemination of the water quality programme to achieve and maintain sustainability.²⁷³

²⁶⁹ General Comment No. 15, para. 25. See also United Nations Children's Fund (UNICEF), *Towards Better Programming: A Manual on Hygiene Promotion* (New York: UNICEF, 1999), <http://www.unicef.org/wes/files/hman.pdf>.

²⁷⁰ WHO Quality Guidelines, p. 11.

²⁷¹ WHO Guidelines, p. 96. This reflects the principle in General Comment No. 15, para. 48.

²⁷² 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.

²⁷³ WHO Quality Guidelines, p. 12, 89.

Hygiene promotion and other information and training activities necessarily need to be developed in close consultation with community representatives.²⁷⁴ Education in hygiene can be included in school curricula at the national/regional curriculum for schools and in community outreach programmes.

8. Access to information and education on water quality

As with other aspects of the right to water and other rights in general, individuals and groups need to have full and equal access to information concerning water quality, water treatment processes and the possible impact of pollution.²⁷⁵ This is discussed further in Chapter 6: Participation and Access to Information.

²⁷⁴ United Nations Children's Fund (UNICEF), *Towards Better Programming: A Water Handbook* (New York: UNICEF, 1999), p. 58.

²⁷⁵ General Comment No. 15, para. 48.

Checklist for Water Quality and Hygiene

1. Does the government have national standards on drinking water? Were these developed through participation and with reference to the WHO Guidelines?
2. Do these standards apply to all types of water sources, and are there short to medium-term targets for the elimination of the most harmful pollutants?
3. Is there a policy and institution for controlling pollution? Does this include the monitoring and appropriate incentives and dis-incentives to reduce or avoid pollution?
4. Are water service providers obliged to establish water safety management plans and is there an institution that can monitor their implementation and provide technical assistance to small-scale providers where necessary?
5. What proportion of households who rely on non-improved water sources treats their water at household level? What percentage has received education on this issue? What percentage has access to the right products for treatment?
6. Is there a national programme for hygiene awareness and what proportion of the population is aware of good hygiene practices? Is hygiene awareness contained in the national educational curriculum and what percentage of primary schools teaches hygiene awareness?
7. Is water quality and environmental health information available to the public? Are providers obliged to publish data and inform the public of health risks?

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. Many people live in areas where there is no piped water system or where other sources of water, such as boreholes, wells and springs are polluted, provide an insufficient quantity of water or have been appropriated by individuals or organisations. They therefore have to use water of dubious quality or rely on private water vendors, whose high charges may limit the amount that is consumed and who sell water that is not necessarily of good quality.

Access to improved forms of 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. As with availability of water, sanitation facilities which are inaccessible will not be used. Certain vulnerable groups, such as the elderly, the disabled or the very young may not be physically able to access shared facilities that are at too far a distance from the home and physical security may also be a consideration, particularly for women. The lack of adequate sanitation can also inhibit people's ability to enjoy other rights; studies have shown that children, particularly girls, are reluctant to attend school if there is a lack of sanitation facilities available.

This chapter discusses necessary standards, guidelines and targets for accessibility and the approaches that governments can implement to improve physical accessibility, for example 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

1. Establishing or revising national or regional minimum standards and targets on proximity to water source and sanitary facilities and adequacy of facility, including short and medium term targets.
2. Establishing specific access targets for each provider in line with national or regional targets and ensuring their implementation through monitoring, regulation and provision of necessary funding and training.
3. Addressing security concerns when selecting locations for water and sanitation facilities, deciding on levels of lighting and priorities for assistance programmes.
4. Ensuring that that no individual currently accessing water and sanitation is deprived of access
5. Revising regulations on land tenure to facilitate access in to informal settlements.
6. Ensuring that users are given relevant information and can participate in decision making on the design and maintenance of public water and sanitation services.
7. Dedicating an adequate proportion of public resources and capacity to the maintenance and improvement of existing water and sanitation facilities.
8. Requiring landlords to ensure that tenants have access to adequate water and sanitation services
9. Ensuring that response systems are in place for the provision of basic water and sanitation services in emergencies
10. Preserving access to traditional sources of water.

1. Establishing or revising standards and targets on proximity and adequacy of facility

1.1 Proximity

According to General Comment No. 15,²⁷⁶ national governments are obliged to ensure that sufficient clean water is safely accessible within, or in the immediate vicinity of, each household educational institution or workplace.²⁷⁷

This standard therefore includes household connections, as well as standpipes or kiosks where these are within the immediate vicinity. Ensuring access at this level will be a long-term venture in many developing countries. General Comment No. 15 sets out ‘core obligations’ on physical accessibility which provide a basis for setting short and medium-term targets. The core obligations include:

“To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease” and

²⁷⁶ 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)

²⁷⁷ General Comment No. 15 para. 12 (c) (i).

“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;”²⁷⁸

According to the World Health Organisation, a water source with capacity to provide sufficient, safe and regular water will normally be within less than 1000 m of the household and collection time not exceed 30 minutes in order for around 20 litres a day of water to be collected (See Box 9.1 below). If collection times or distances are longer, people will normally consume less, often the very barest minimum estimated at less than 5 litres a 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.²⁷⁹ 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. This is particularly relevant to nomadic and traveller communities and the target will need to be flexible enough to address the needs of such communities, whose main requirements may be at traditional halting sites.²⁸⁰

A secondary, longer-term, target is to bring the services progressively closer to the home, either within the house or yard, which will significantly reduce the amount of time required to collect water. The saving in collection time due to proximity of an improved water source has been reported to lead to more time for child care, including breast-feeding and better food preparation, as well as agricultural or income-generation activities which could result in better family health. 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.²⁸¹ Improvements in child nutritional status have also been associated with such improvements in water and sanitation.²⁸²

Box 9.1 Service Level Descriptors of Water in Relation to Hygiene²⁸³

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 <i>(Initial target)</i>	Between 100 metres and 1000 metres (5 to 30 minutes total)	Low. Average is unlikely to exceed 20 litres per person daily; laundry and/or bathing	Medium. Not all requirements may be met. Quality difficulty to assure.

²⁷⁸ General Comment No. 15, para. 37 (a) and (c).

²⁷⁹ 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.

²⁸⁰ See also General Comment No. 15, para 16 (d).

²⁸¹ Water for All, Meeting Basic Water and Sanitation Needs, June 2000, Rural Development Services Network (RDSN).

²⁸² Id

²⁸³ G. Howard & J. Bartram, Domestic Water Quantity, Service Level and Health, Geneva, WHO, 2003, p.22, referred to in WHO Guidelines on Drinking Water Quality, p. 90. Italics in the table are added.

	collection time)	may occur at water source with additional volumes of water	
Intermediate Access <i>(Further target)</i>	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 <i>(Final target)</i>	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: National Water Service Accessibility Standards

In South Africa the minimum standards for basic water supply services includes the following accessibility standard: a minimum quantity of drinking water of 25 litres per person per day or six kilolitres per household per month must be available:

- i) At a minimum flow rate of not less than ten litres per minute;
- ii) Within 200 metres of a household; and
- iii) With an effectiveness such that no consumer is without supply for more than seven full days in any year.²⁸⁴

Although neither the General Comment No. 15 nor the Sub-Commission Guidelines give any guidance on the proximity or accessibility of sanitary facilities, there are other guidelines and standards that can be used for setting targets. The Sphere Standards²⁸⁵ provide minimum standards for disaster response and can therefore be seen as a short-term target which can be improved upon progressively. According to the Sphere Standards: “People [should] 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.”²⁸⁶ The word “toilets” is used here as a generic term for improved sanitation in the form of toilets or latrines. The Sphere Standards recommend that each toilet is no more than 50 metres from the dwelling, and give further guidance which is discussed under the next section on adequacy of the facility.

Box 9.3: The Perfect the Enemy of the Good? The Grootboom Judgement in South Africa²⁸⁷

In the ‘Grootboom’ case in South Africa, discussed in detail in Chapter 5 on Discrimination, Box 2.3, the Constitutional Court reviewed a particular housing policy that aimed to ensure quality

²⁸⁴ Regulation 3 to the *Water Services Act*, 1997 (Act 108 of 1997), <http://www-waf.pwv.gov.za/Documents/Legislature/wsa97.PDF>.

²⁸⁵ Humanitarian Charter and Minimum Standards in Disaster Response, The Sphere Project, <http://www.sphereproject.org/>

²⁸⁶ Ibid, Watsan & Hygiene, Excreta disposal standard 1.

²⁸⁷ *Government of the Republic of South Africa and others v. Grootboom and others*, 2001 (1) SA 46 (CC), South African Constitutional Court, <http://www.concourt.gov.za>, in particular para. 52.

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” (para. 52).

Although it may seem unusual for the Court to require the State to provide housing that did not necessarily fully fulfil housing standards, it is consistent with the concept of progressive realisation. A human rights approach requires 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. In essence, the Court was saying that in some cases, the ‘perfect can be the enemy of the good’ – a principle applicable to many aspects of water policy.

1.2 Adequacy of Facility

The General Comment No. 15 considers accessibility to mean that water and sanitation facilities are “of sufficient quality, culturally appropriate, sensitive to gender, life-cycle and privacy requirements.”²⁸⁸ The Sub-Commission Guidelines for the Right to Water also states that, “water and sanitation facilities should be designed to take account of the needs of women and children”.²⁸⁹

Box 9.4: JMP Definitions for Water Sources and Sanitation Facilities²⁹⁰

Improved drinking water sources	Improved sanitation facilities
Household connection	Connection to a public sewer
Public standpipe	Connection to a septic system
Borehole	Pour-flush latrine
Protected dug well	Simple pit latrine**
Protected spring	Ventilated improved pit latrine
Rainwater collection	

²⁸⁸ General Comment No. 15, para. 12 (c) (i).

²⁸⁹ 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., para. 5.3.

²⁹⁰ WHO/UNICEF, Meeting the MDG Drinking Water and Sanitation Target, A mid-term assessment, 2004, p. 4

<p>Unimproved drinking water sources</p> <p>Unprotected well Unprotected spring Rivers or ponds Vendor-provided water Bottled water* Tanker truck water</p>	<p>Unimproved sanitation facilities</p> <p>Public or shared latrine Open pit latrine Bucket latrine</p>
<p>*Bottled water is not considered improved due to limitations in the potential quantity, not quality, of the water. **Only a portion of poorly defined categories of latrines are included in sanitation coverage estimates.</p>	

The Joint Monitoring Programme (JMP) of the WHO and UNICEF have defined the forms of access to water and sanitation which are likely, or not likely to be safe and adequate, in terms of quality, privacy, ease of use and security. The JMP classifies shared toilets as ‘unimproved sanitation’ on the basis that where latrines are shared between households, hygiene is difficult to guarantee.²⁹¹ However, in densely populated areas, toilets/showers that are public or that 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.

The Sphere Minimum Standards in Disaster Response suggest that each toilet serves a maximum of 20 people and that the use of toilets is arranged according to family group or segregated by sex, the latter being the most appropriate in public places such as markets and health centres.²⁹² The Standards also suggest that “Toilets [should be] sited, designed, constructed and maintained in such a way as to be comfortable, hygienic and safe to use.”

As water services and facilities are also often tied to sanitation facilities, and are also used for bathing and washing clothes, it is often necessary to locate a number of services in a manner that maximises privacy, while avoiding as far as possible, compromising physical security. In most circumstances, it is necessary to ensure that communal water points provide for separate washing and bathing areas for men and women, or a system by which they can be used at different times.

Women will often have different requirements from men as to the siting and use of particular water services. However, even though women normally have greater responsibility for water for domestic purposes, their needs often receive lower priority than men and their requirements may not be addressed. Participation of different categories of users is essential in the design and implementation of water and sanitation projects.²⁹³ Women and minority groups with distinct needs in particular must be involved in consultation processes, rather than decisions being made on the basis of assumptions by policy makers.

It is necessary to also design water and sanitation facilities in a manner that takes account of the needs of other vulnerable groups such as children and older or disabled persons. For example, communal taps should be built at a height accessible by younger children and should not require a great deal of strength to operate. Latrines need to be designed such that they are usable by small children and the elderly. 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.

²⁹¹ Ibid

²⁹² Ibid

²⁹³ See Chapter 6 on Participation and Access to Information.

It is crucial that historical traditions, institutional and political arrangements within and between communities and religious practices are considered (although these should be applied in a manner consistent with human rights standards relating to discrimination).²⁹⁴ Questions such as whether members of different ethnic or community origins, or men and women, can safely collect and use water from the same source should be taken into account in developing water and sanitation services.

2. Establishing targets on access per service area 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.”²⁹⁵

In terms of priorities for extension of access and resource allocation, General Comment No. 15 states: “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.”²⁹⁶

The Sub-Commission Guidelines indicate in this regard: “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.”²⁹⁷

In low-income countries, the right to water and sanitation can therefore be realised by aiming to spread public resources more widely to meet the primary target of basic access, through infrastructure such as kiosks, standpipes, boreholes and shared toilets, rather than through household connections for a small number of people. (Low-cost technologies are further discussed in Chapter 10: Affordability, s. 4). Progressive realisation of the right beyond basic access can be achieved by designing facilities in a manner that permits their upgrading once the users and the government have greater resources available.

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.²⁹⁸ The following ingredients are necessary to develop and realise these targets:

- Investing in the institutional capacity of service providers to extend access (including by extending networks, incorporating small-scale providers and providing assistance to communities to manage services), by providing financial transfers and technical training in order to ensure well-trained and reasonably compensated staff.

²⁹⁴ For further discussion of this point, see Veronica Giardina and Ilja Betlem, *Access to Water*, Discussion Draft, (FAO: 2003), p.15

²⁹⁵ General Comment No. 15, para 26.

²⁹⁶ General Comment No. 15, para. 14. This point is also made, with reference to water and to sanitation by the Sub-Commission Guidelines, s. 5.1.

²⁹⁷ Sub-Commission Guidelines, s.5.1

²⁹⁸ 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.

- Investment in local authority administrative capacity and in the regulatory body's administrative and legal 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.
- 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.²⁹⁹

Specific requirements to provide access to low-income areas is critical because service providers often lack incentives to provide water and sanitation services to low-income areas due to perceptions of lower willingness and ability to pay, 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, s. 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 cost of new investments to extend access in developing countries will often require some form of government subsidies. The potential sources of financing to realise the right are addressed in Chapter 10 on Affordability.

²⁹⁹ For further details, see Chapter 4: on Actors.

Box 9.5: Legislative 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 must 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 must 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 must take reasonable steps to bring the draft plan to the attention of current and potential consumers and invite comment within a reasonable time.³⁰⁰

3. Ensuring physical security when accessing water and sanitation

The 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.”³⁰¹

Physical security is closely tied to location and design of water and sanitation facilities. In some cases there can be a trade-off between proximity of service and security. Physical security can be increased in the design of water and sanitation facilities by:

- Locating kiosks and standpipes and public toilets/showers, or pathways to these services as far as possible are in locations that are more likely to be safe
- Illuminating public latrines and pathways leading to them at night
- Prioritising crime-ridden neighbourhoods in government programmes to assist households construct their own latrines (or latrines shared by a small group of households)

Such measures are not a substitute for the need for governments to improve overall measures relating to security, but rather are practical steps that can be taken by water and sanitation sector institutions.

³⁰⁰*Water Services Act, 1997* (Act 108 of 1997), ss. 3, 5, 11, 13, 14.

<http://www.dwaf.pwv.gov.za>.

³⁰¹ General Comment No. 15, para. 12 (c) (i).

4. Ensuring that that no individual 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.”³⁰² 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.”³⁰³

In certain circumstances, people who have access to clean water and to sanitation might see their access impeded arbitrarily or unnecessarily. It is necessary, therefore, to ensure that the following practices are prohibited:

- Exclusion from access caused by forced eviction (See Box. 9.7).
- Destruction of water and sanitation facilities in times of armed conflict (see Box 9.6)
- Denial of access to public services for partisan or discriminatory reasons, for example on the basis of political loyalty, ethnicity or citizenship status (for example, refugees) of an individual or community
- Exclusion from a publicly owned facility (or a facility constructed by a public body on behalf of a locality or community)
- 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 monitoring mechanisms are in place to monitor the relevant authorities and to take action on complaints. (See also Chapter 4: Actors, Section 1.17).

There are circumstances when 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, or the government will provide affordable water). 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...”³⁰⁴

General Comment No. 15 also states: “Under no circumstances shall an individual be deprived of the minimum essential level of water.”³⁰⁵ 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.”³⁰⁶

³⁰² General Comment No. 15, para. 21.

³⁰³ General Comment No. 15, para. 23.

³⁰⁴ General Comment No. 15, para. 56.

³⁰⁵ General Comment No. 15, para. 56.

³⁰⁶ Sub-Commission Guidelines, section 6.4

See also: Exclusion from services due to non-payment, addressed in Chapter 9: Affordability. Rationing of water is addressed in Chapter 7: Water Availability. Access to traditional sources of water: Section 7 in this chapter.

Box 9.6: 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 ...³⁰⁷

Box 9.7: The right to water and sanitation in times of armed conflict

General Comment No. 15 states:

“...[T]he 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.”³⁰⁸

The Geneva Conventions and their Additional Protocols list a number of objects and installations that must 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**

³⁰⁷ *Water Services Act, 1997* (Act 108 of 1997), s. 4 (3), <http://www-dwaf.pwv.gov.za>.

³⁰⁸ General Comment No. 15, para. 22 (footnotes omitted). See arts. 54 and 56, Additional Protocol I to the Geneva Conventions (1977), art. 54, Additional Protocol II (1977), arts. 20 and 46 of the third Geneva Convention of 12 August 1949, and common article 3 of the Geneva Conventions of 12 August 1949.

³⁰⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1) Article 54.-Protection of objects indispensable to the survival of the civilian population, para. 2.

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.”³⁰⁹ [emphasis added]

5. Revising regulations on land tenure to facilitate access in informal settlements

One of the most significant barriers to access to water and sanitation services is the lack of land tenure in informal settlements. Often individuals or households 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 informal 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.³¹⁰ In many situations, there is a general policy to refuse to provide services to informal settlements due to a view that such settlements should not be supported.

General Comment No. 15 states: “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.”³¹¹ The Sub-Commission Guidelines supplement this point by stating: “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.”³¹²

Many institutions in the water and sanitation or health sector consider this issue to fall outside their mandate since they do not have responsibility for land issues. However, access to water and sanitation in informal settlements cannot be ignored and requires a solution, which could include the following three sequential steps:

1. Stipulating that services will be provided to informal settlements irrespective of land tenure and to require utility service providers to provide services in these areas.
2. Provide a firm and credible written guarantee that forced evictions will not be carried out. This guarantee can help give small-scale providers, renters and households themselves greater incentive to invest in improvements, such as kiosks, boreholes and toilets as they can have an assurance their investments are not at risk of destruction.
3. Moving towards formalising informal settlements through the issuance of individual or community title deeds or through re-settlement to a more appropriate location (See Box 9.7 on international human rights standards on evictions). Solutions to the land tenure issues normally need the leadership of land and housing bodies. Water and health sector institutions can however encourage action to resolve land tenure issues on the basis of the impact of unregularised settlements on access to water and sanitation.

The right to adequate housing is contained in the ICESCR and other treaties. In this regard, General Comment No. 4 (The Right to Adequate Housing) states: “Notwithstanding the type of

³¹⁰ Almansi, *Everyday water struggles in Buenos Aires*, Water Aid, 2003.

³¹¹ General Comment No. 15, para. 16 (c).

³¹² Sub-Commission Guidelines, s. 5.4

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.”³¹³ Governments can carry out such actions by developing simple, inexpensive and accessible systems to recognise possession and title of land in informal settlements or regularise rental agreements in order to confer tenure.³¹⁴ In some situations, it may be more appropriate to re-settle communities to an adequate alternative area, decided upon in consultation with the relevant communities.

Box 9.8 General Comment No. 7 on Forced Evictions

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

³¹³ Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The right to adequate housing*, UN Doc. E/1992/23, para. 8 (a).

³¹⁴ See also *Sources No. 4: Legal Resources for Housing Rights: International and National Standards*, 2nd ed. (Geneva, COHRE, 2000); <http://www.cohre.org> (Click on Housing Rights > Legal Resources on Housing Rights)

³¹⁵ General Comment No. 7, para. 13.

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.”³¹⁵

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.”³¹⁶

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.”³¹⁷

6. Ensuring participation in decision-making on design and maintenance of public services

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 used, the siting of water points, the identity of the provider (for example, where public water kiosks are managed by entrepreneur contracted by the utility provider). 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).

7. Dedicating an adequate proportion of public resources and capacity to maintenance

The maintenance of water and sanitation services infrastructure is as important as the initial construction and needs adequate budgeted resources. Damage to water pipes can reduce pressure and allow contaminants to enter the water supply as well as increasing the collection time for

³¹⁶ General Comment No. 7, para. 15.

³¹⁷ General Comment No. 7, para. 16.

water. 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. In far too many situations, central or local authorities build water and sanitation services infrastructure, but afterwards disregard or neglect the provision of funding and human resources for operation and maintenance.

The cost of repairing damaged infrastructure, particularly piped networks, can often be prohibitively expensive for the service provider, particularly those operated by local government. 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 considering the choice of technology to be used, including their impact on the affordability of services for users.

Box 9.9: Decentralisation and Hand-Pump Maintenance

In Zimbabwe, under the Integrated Rural Water Supply and Sanitation Program, 15 000 new water points were created in the late 1980s. The system of maintenance for these mainly hand-pump operated water-points was a top-down three-tier system. Under this arrangement, provision and maintenance of rural water supplies was carried out by the District Development Fund (DDF) forming part of the Ministry of Energy and Water Resources and Development. The DDF would field District Maintenance Teams, with pump minders responsible for a number of community water points, and, at each point, would exist a caretaker. The three-tier system worked when there was fairly low demand and relative availability of funds. However, as the number of water point increased rapidly and funds dwindled, severe constraints emerged. Average allocations to the DDF for operation and maintenance of water points shrank from 120 Zimbabwean dollars (Z\$120) per water point in 1988-1989 to Z\$47 in 1994-1995.

The rapid expansion in numbers of water points and the ageing of existing pumps left many areas unable to meet simple maintenance requirements. One of the key problems lay in the role played by the pump minder, nominal employees of the DDF. Originally envisaged to have one per ward, as few as one per five wards in fact worked in many districts, leading to long down times.³¹⁸

Under this complex institutional decentralised scheme, cases studies revealed that once the pump is broken, people often had to wait for long periods of time 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.³¹⁹

³¹⁸ 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, p. 5

³¹⁹ Ibid. p. 10.

Many reasons explain this tendency, for example, assumptions that the costs of maintenance are minor in comparison to the costs of construction, the prestige associated with the construction of a new project – for donors, politicians or bureaucrats associated with the project or over-reliance on community contributions to maintain such facilities.

It is therefore necessary to ensure that a reasonable portion of its budget and workforce is allocated to the maintenance of existing facilities. Sustainable and low-cost programmes to monitor and maintain facilities, drawing on the experience, labour and finances of the relevant communities (particularly in rural areas) can be introduced. This approach needs to be included in the design of new water supply and sanitation facilities, with provision made 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.

8. Requiring landlords to provide tenants with access to adequate services

The right to water and sanitation for tenants will normally require regulation of landlord-tenant relationships, including through the regularisation of rental agreements. It is frequently the poorest people who rent accommodation in informal settlements as well as in more formal settlements. There would also be a need to monitor and control rental agreements, which could be an expensive undertaking.

9. Establishing response systems for emergencies

General Comment No. 15 indicates states the need establishing “response mechanisms for emergency situations”.³²⁰ Emergency situations are those caused by natural disasters, such as drought, hurricanes as well as situations caused by conflict, such as internal displacement. Preparations for such situations could involve:

- Identifying potential emergency situations, and the appropriate responses
- Identifying responsibilities for emergency provision of water and construction of emergency water supply and toilet facilities
- Ensuring that a percentage of the budgets of the responsible actors is allocated to emergencies
- Considering, at an inter-ministerial level, means to prevent emergencies

In cases of emergency, the minimum amount of water to be provided is lower than that which is generally required. The Sphere Handbook for emergencies suggests the following basic provision:³²¹

Box 9.10: Simplified table of basic survival needs

Survival needs: water intake (drinking and food)	2.5 - 3 litres per day	Depends on: the climate and individual physiology
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³²⁰ General Comment No. 15, para. 44. (c).

³²¹ <http://www.sphereproject.org>

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	

The South African Water Services Act includes a legislative provision that addresses such situations: “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.”³²²

10. Preserving 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 accessible 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.”

Potential government actions to preserve and ensure access to traditional sources of water can include:

10.1 Protecting traditional sources of water against appropriation by any one group or individual

One example of such situations is conflict between settled and nomadic or traveller communities in Tanzania, where as 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.

10.2 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 abstract water from it.

Such laws can hinder 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 quantitative restrictions.

10.3 Respecting and customary systems of water access, while ensuring that they ensure equal access

³²² Water Services Act, 1997 (Act 108 Of 1997), s. 11 (5).

General Comment No. 15 states: “The obligation to *respect* requires that States parties refrain ... arbitrarily interfering with customary or traditional arrangements for water allocation.”³²³

Customary or traditional 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.³²⁴ Such systems are generally understood and respected by the community, and are designed to local realities. They also include dispute resolution mechanisms that operate at a local level. For these reasons, arbitrary displacing such systems is likely to have negative effects.

However, there may be circumstances in which customary arrangements require revisions. For example, where they are under the control of a certain patriarch or family, privilege the wealthy or traditional upper class or discriminate on the basis of gender. Reforms may be needed when customary arrangements 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.³²⁵

Traditional sources of water can also be threatened by over-abstraction of water for industry or agriculture. This issue is addressed in Chapter 7: Water Availability and Allocation.

³²³ General Comment No. 15, para. 21.

³²⁴ Giardina and Betlem, p. 8. This document also includes a summary of Islamic, Hindu and African customary law traditions governing access to water.

³²⁵ Giardina and Betlem, p. 8

Checklist for Physical Accessibility of Water and Sanitation

1. What is the proportion of the population without access to improved drinking water and sanitation services and what is the decrease in this proportion in the last five years? Are there targets for the next five years?
2. Is there a national policy to extend water services, particularly to deprived urban and rural areas, including strategies to overcome obstacles such as land tenure? Does this policy include targets for particular areas?
3. What percentage of the national, regional or local government water and sanitation budget is directed towards expanding access to water and sanitation services to those who currently lack adequate access?
4. What percentage of the water and sanitation budget is invested in operation and maintenance?
5. What is the percentage of schools and clinics with water and sanitation facilities, including hand-washing facilities, separated sanitation facilities for males and females? Is there a national (or local) action plan for providing water supply and sanitation facilities to schools and clinics, including targets?
6. Is there a recognisable profile of those who do not have access to improved water and sanitation services, and if so, how does this inform water policy and strategies?
7. Do national policies provide for secure access to water and sanitation facilities, particularly for women and girls?
8. Is there provision for people without access to improved drinking water to receive emergency assistance to improved water? What is the proportion of the population in this situation?
9. Is access to traditional water sources protected?
10. Is there a disaster response plan which includes provision for water and sanitation facilities?

CHAPTER 10: AFFORDABILITY OF WATER AND SANITATION

A common barrier to accessing a sufficient quantity of safe water is lack of affordability. Where safe water sources are available they are often prohibitively expensive, leading people to seek cheaper, if less safe alternatives.

There are also considerable costs associated with not receiving a sufficient quantity of safe water. 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. Likewise, a lack of decent sanitation facilities also has costs in terms of health and education, again particularly for girls. These costs are transferred not only to the individuals who lack sufficient safe water and sanitation, but also onto the government and society at large that suffers from the lack of productivity arising from a poorly educated and unhealthy population.

Despite this, access to a sufficient quantity of affordable and safe water, in rural areas as in urban areas has not received sufficient priority and the costs to users for accessing water and sanitation services is increasing. 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 are no longer providing 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 water vendors that are often 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 that which is 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 water vendors rely on wells or surface waters that are likely to be contaminated or they are forced to travel long distances to secure supplies from alternative piped sources. There is therefore a considerable cost to having a poor water supply – in health, in time spent collecting water as well as in financial terms.

Many urban areas that are connected to the piped networks often face poor water quality and water shortages requiring them to also rely on water vendors.

The situation for sanitation is equally unsatisfactory in both rural and urban areas. The gold standard for sanitation is a household level latrine or a toilet connected to a sewerage pipe. As discussed in the previous chapter, this is frequently unavailable due to a lack of space and/or lack of a local sewerage system. An additional obstacle is the cost of connecting to a sewerage system or constructing and maintaining a latrine. As a result, residents are paying high costs for sanitation not simply out of their pockets, but with their health, their dignity and their privacy, as well as a poor living environment.

A critical policy choice for any government to ensure adequate access to water is therefore an affordable strategy for pricing the construction and maintenance of domestic water and sanitation services. While the right to water does not dictate the appropriate pricing levels, it is clear that some commonly utilised policies are more likely than others to ensure that water and sanitation is affordable to all.

Commercialisation of water services and cost recovery

There is currently an increasing pressure on governments to ‘commercialise’ water and sanitation services, in order to ensure that water services pay for themselves and do not require significant input from the national budget. Such developments can affect the realisation of the right to water when not accompanied by measures to ensure affordability. Full recovery of water service costs is generally not realistic in the short-term due to the need for sufficient investments to extend services to those that lack them. Commercialisation 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.³²⁶

Two elements of a commercialisation process can be beneficial for affordability, where the process is well managed and takes into account right to water standards. First, income raised from the services is then used exclusively for water and sanitation and not for other government purposes (a process known as ‘ring-fencing’). Secondly, there is generally scope for significant efficiency improvements in municipal water and sanitation services, both in terms of the work force, which is often overstaffed, and improvements to the pipes to reduce high leakage rates and illegal connections.

Economic pressures, the positions of international financial institutions and environmental sustainability concerns have increased the expectation that water providers price water at a level that reflects the actual costs of provision, including ecological impacts (See Box 6.3). 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.

Decentralisation Policies

A further political development is that of decentralisation, transferring responsibilities for services such as water and sanitation from the national level to the regional, local or municipal level. While this is beneficial for decision-making processes on levels of service and the inclusion and participation of residents in the provision of essential services, there is frequently a problem with the transfer of resources to pay for these services. Ideally, the district or municipality would be able to finance water and sanitation services from the revenue made from supplying these services. However, where the services are either not available or are badly run down, there is seldom the capital available to invest in extending the services to areas which are badly in need. In many rural districts or small towns, there are not sufficient numbers of middle- or high-income residents to be able to cross-subsidise extension of services to new areas. Consequently, if services are to be affordable to the poor, there needs to be transfer of funds as well as transfer of responsibilities from the national level government to the local government.

This chapter reviews a range of management, pricing and financing policy options from a human rights perspective to ensure affordability as well as sustainability.

³²⁶ See Chapter 4: Roles of Key Actors.

How governments can act to ensure affordability

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.
2. Designing, monitoring and controlling charges by water and sanitation utilities and small-scale service providers to households, schools, health facilities and workplaces.
3. Prioritising available public investment towards the construction of water and sanitation services and facilities that reduce water costs, and subsidising the costs for low-income users.
4. Reducing costs by ensuring that a broad range of levels of service and facilities are available, with the potential for progressive upgrading so that low-income and irregularly employed persons can purchase forms of access of their choice.
5. Facilitating organised user groups to manage their own water and sanitation facilities where possible, potentially reducing costs.
6. Establishing flexible payment terms based on consultations with users, for example, phased payment of connection charges.
7. Providing subsidies for water and sanitation services targeted towards the lowest income and vulnerable persons.
8. Increasing public financing for subsidy programmes for the poor through: cross-subsidies between higher and lower income groups, reducing high-cost interventions, reduction of subsidies benefiting upper and middle income groups, ring-fencing of water and sanitation revenues, improving efficiency, larger national budgetary allocations and better targeting and increasing international assistance.
9. 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. Integrating ability to pay considerations into disconnection policies and prohibiting total disconnection from water.

1. Establishing a Standard for Affordability

General Comment No. 15 states that, “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 realisation of the other Covenant rights.”³²⁷ This indicates that the price of water must take into account the ability to pay and that payment for water, including indirect costs, should not reduce a person's ability to buy other essential goods to which they have a human right, including food, housing, education and health. If a

³²⁷ 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).

family has to choose between paying for water and paying for health care, then water costs (and probably health costs) are not affordable. 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”.³²⁸

What are water costs?

Water costs include expenses of:

- Self-access: e.g. digging wells, buying storage containers.
- Access to existing system: e.g. connection fees.
- Maintaining access: e.g. monthly fees/pump repair.
- Water tariffs for piped water.

What are sanitation costs?

Sanitation costs include expenses of:

- Self-access – digging pit latrine, purchasing necessary hardware
- Maintaining access
- Paying for pit emptying services
- Connecting to sewerage system
- Sewerage tariffs

General Comment No. 15 indicates that, “sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace”.³²⁹ The Sub-Commission Guidelines indicate that access is also required in health institutions.³³⁰ The affordability of water is often ignored in these contexts, since if water is provided to users of these facilities it is nominally free. However, 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 without onerously placing the burden on users. Payment for water and sanitation services at such institutions may therefore need to be guaranteed and budgeted for by the national government.

Box 10.1: A right to free water?

Does the human right to water mean it should be provided free? 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

³²⁸ 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).

³²⁹ General Comment No. 15 para. 12(c)(ii)[0]

³³⁰ Sub-Commission Guidelines, section. 1.3. (a).

over time. Some countries, such as Colombia have explicitly adopted a free water policy for certain geographical areas in order to implement the right to water (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”.³³¹ From a right to water perspective, charging those who can afford to pay the full cost of water and sanitation is an important means by which scarce public resources can be directed towards ensuring affordability for the poor.

Box 10.2: International Standards on Affordability

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, an influential document was the Dublin Statement on Water and Sustainable Development, adopted in 1992 by a conference comprising government-designated experts from a hundred countries and representatives of eighty international, intergovernmental and non-governmental organizations. 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.”

³³¹ General Comment No. 15, para. 27(b)

Box 10.3: Theoretical Arguments on Pricing

Economic: Water should be charged at a price that reflects the full costs of supply. This will ensure that water supplies are sustainable and can be expanded to meet demand. If water is charged at less than the price that reflects the full costs of supply, a loss will be made and the services cannot be expanded. There is a further, although less commonly held economic argument that water should be priced according to supply and demand like any other commodity, so that those who are prepared to pay more per litre for their water supply would receive priority over those who are less able or willing to pay the higher price.

Environmental: Water should be sufficiently priced to discourage wasteful consumption and the environmental costs of supply, such as the extraction of water and the consequent discharge of polluted water.

Social: Water is essential to life and social participation, therefore water must be priced such that all citizens, including the poor, can afford an adequate supply of safe water.

Human Rights: General Comment No. 15 states that, “Water should be treated as a social and cultural good, and not primarily as an economic good” (para. 11). Thus, the right to affordable water places priority on the social argument, but can be reconciled to environmental approaches, and even to an economic approach if there is sufficient support available in terms of cross-subsidies between higher and lower income groups or between commercial and domestic uses. Since the right must be sustainable, charging those who can afford to pay for the full cost of service is one means of ensuring water services are also sustainable. There is also an important trade off between ensuring affordability and the standard of service, and thus a reduced standard of service may be necessary in the short to medium term for those who cannot afford the full cost of a high standard of supply (such as networked access).

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 in the abstract, demonstrating that water is affordable requires a comparison to household expenditures in practice. 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”³³² In the first instance, therefore, affordability standards for the implementation of the right to water need to be determined at the national level. WHO has set a standard for affordability of 3-5% of an individual’s income,³³³ while the Pan American Health Organisation stipulates a standard of five percent. This level of expenditure may not be appropriate in all countries and needs to be agreed upon at a national level.

An assessment of the ability of low-income groups to pay for water and sanitation services would aim to take account of the following factors:

- All relevant water and sanitation costs.

³³² General Comment No. 15, para. 53.

³³³ Sullivan C. et al, Derivation and Testing of the Water Poverty Index, Phase I Vol. I 2002.

- 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.
- Levels of water use by members of vulnerable groups (such as those with medical conditions).
- The consideration of family size.
- Any subsidies provided by the State, including subsidies to water and sanitation costs.

Once indicators are ascertained, standards and targets can be set to denote affordability indicators to be achieved, immediately or over time. The common approach of experts is to specify water costs as a percentage of income, or increasingly, household expenditure. (See Box 10.4). This can only be done after a thorough examination of the above factors. To comply with the right to water, affordability means looking at what people actually pay and can actually afford to purchase (rather than the price of water supply and a percentage of average income).

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. According to General Comment No. 15, this level of access constitutes a core obligation (see Chapter 2: Overview of the Right to Water and Sanitation for more on core obligations).³³⁴

If the minimum wage/social security entitlement/normal minimum income is lower than the basket of essential goods and services required by a typical family, then it is necessary for the government to provide general subsidies to those at this income level, either through transfers or differentiated tariffs for some services. In addition, it is necessary to ensure that water and sanitation costs are taken into account where public institutions set or regulate income levels or prices, for example, setting minimum income, social security levels. Independent institutions, such as parliamentary committees, human rights commissions or an Ombudsman can also ensure that affordability standards continue to be appropriate where they are empowered to review the accuracy of indicators and standards on affordability.

Considerable numbers of residents of informal settlements in the cities and towns of developing countries do not have access to water and sanitation services from utilities, but buy water from water vendors. While this is not recognised by WHO as an improved source of water, without significant amounts of investment in the water sector, it is likely that this will continue to be a significant source of water at least in the short to medium term. The prices that water vendors charge for their water is generally higher than the prices per litre paid by residents benefiting from a household connection to the municipal water supply. As these water vendors tend to operate with a small profit margin, these higher prices are unavoidable. Thus, it may not be possible to impose affordability standards designed for piped networks to individual households to vendors, unless measures are taken to reduce the operating costs of the vendors. Removing unnecessary obstacles to the operation of water vendors (discussed in Chapter 9: Physical Accessibility) will generally reduce their costs, and therefore the price charged. Governments

³³⁴ General Comment No. 15, para. 37 (a).

could consider making special provision for water vendors to be able to buy bulk water at a cheaper price, so that they can on-sell the water at a more affordable price. Normally, such subsidies can be provided on the condition that a lower tariff is charged to the vendor's clients, thus ensuring that the subsidy benefits users rather than the profit margins of the vendors.

Regulations need to be put in place to ensure that water vendors, or those operating water kiosks are not able to 'profit' unduly from a water shortage, by putting their prices up while their own costs remain constant. In times of drought, alternative (although probably unsafe) water sources will become less available, forcing all residents to use water vendors or kiosks.

Far fewer people are connected to sewerage services than for water services. They rely on their own facilities, such as pit latrines, public latrines or finding alternatives such as open defecation. This last, while apparently free of cost, clearly has its own costs in terms of health, lack of privacy and dignity and the environment. Many of the public toilets or latrines require a pay per use. Those who do not have this system are unlikely to be sustainable and in too many cases are not hygienic. Also, for various health reasons, including creating long-term problems for bowels by not having easy access to sanitation, public toilets are not ideal.

Sanitation services provided by small-scale providers, such as latrine construction and exhaustion and pay-per-use toilets, are normally provided on a market basis with low profit margins. There may be a risk of profiteering for services that are provided by a landlord in which costs are included within rents or if public toilet owners engage in cartel behaviour. Thus, it is necessary to ensure that rent regulation standards do not permit excessive charges for sanitation and to stipulate maximum charges for sanitation. Permitted charges should be set at a level that does allow the provider to meet the operational costs and make a reasonable profit. As with water services, affordability standards designed for network sewerage cannot be applied to small-scale sanitation systems. The best route to ensure affordable sanitation as a short-term measure is facilitation of the operations of small-scale sanitation providers, and even the provision of subsidies (conditional on the benefits being passed to the users).

Those who are connected to water service, but not to sewerage networks are often disadvantaged by cross-subsidies between water and sanitation. 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 eliminate the cross-subsidy in water tariffs charged for households without sewerage connection.

Box 10.4: Affordability Standards in UK and Nepal

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.³³⁵

Nepal

The NGO Forum in Kathmandu proposed a two-tiered tariff standard for poorer households. The first six cubic metres per household per month must be delivered at a cost of three per cent of the mean income of poor households (US\$ 2.40) Thereafter, water could be charged at cost.³³⁶

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 10.5: Dollarisation and Affordability

Multinational private sector management of water services has in many cases been accompanied by ‘dollarisation’, whereby the concession contract indexes the price of water and/or services to the US dollar rather than to the local currency in order to ensure a stable profit for the providers. This invariably happens without taking into account local affordability and has led to significant problems in Manila, Philippines and other countries where devaluations led to significant tariff increases in order to protect the service providers’ profit margins.

2. Designing, monitoring and controlling charges by public and private water suppliers

Municipalities or independent water regulators normally have responsibility for approving tariffs charged by water suppliers. Such bodies therefore have a key role to play in monitoring and controlling such charges so that they are consistent with affordability standards.

Designing the tariff system for piped water provision and sewerage is an important aspect of promoting equitable access to water and sanitation and ensuring that services remain affordable to all. There is a range of tariff options available, some of which are briefly discussed in Box 10.6. There is a crucial caveat to this, which is that these tariffs are clearly only applicable to those who

³³⁵ Fitch & Price, Water Poverty in England and Wales, Centre for Utility Consumer Law, www.cieh-cymruwales.ciehnet.org

³³⁶ E. Gutierrez, B. Calaguas, J. Green & V. Roaf, New Rules, New Roles: Does PSP Benefit the Poor? A Synthesis Report, WaterAid and TearFund 2003: www.wateraid.org

have a connection to the piped water and sewerage system, limiting their relevance to the majority of low-income residents in many urban and rural situations.

The Sub-Commission Guidelines indicate that governments at all levels should, “[e]stablish 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”.³³⁷ Further to this, General Comment No. 15 stresses the importance of an effective regulatory system for cases, “where water services... are operated or controlled by third parties”, in order to, “prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water”.³³⁸

Once a tariff system has been designed, it is relatively straight-forward to monitor this. However, in situations in which there are inflated bills, or charges for services not provided, there is a need for an independent regulator to consider complaints by users. Complaints mechanisms need to be simplified as far as possible, for example, by permitting of oral complaints (recorded by the regulator) and by having staff able to investigate complaints, rather than placing the burden of proving the complaint on the user. In addition, ‘report cards’, whereby consumers are given the opportunity of commenting on the positive and negative aspects of the service can help ensure compliance with standards and the reduction of corruption.

Box 10.6: A comparison of alternative tariff design options³³⁹

	Key features	Affordability argument	Conservation argument
Flat Rate	Price does not alter with consumption	Simple to administer	Does not encourage conservation
Uniform Rate	Price per unit is constant as consumption increases	Straight forward to implement, although requires a meter, which can be expensive	Reduces average demand
Increasing Block Tariffs	Price per block increases as consumption increases	Allows for cross-subsidisation, making low-volume essential more affordable	Reduces average and peak demand
Declining Block Rates	Price per block decreases as consumption increases	Reflects economies of scale for utilities	Does not encourage conservation
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	Penalises those without a connection inside the	Reduces seasonal peak demand associated

³³⁷ Sub-Commission Guidelines, section. 2.3 (e). This point is also made in regard to private water service providers.

³³⁸ General Comment No. 15, para. 24

³³⁹ Adapted from table contributed by William James Smith, Jr.

	assigned to outdoor use	house.	with outdoor use, which is considered more price-elastic
Scarcity Pricing	Cost of developing new supplies is funded directly from water revenues		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

Complaint mechanisms also need to be robust enough to ensure that they are acted upon. This will generally require the intervention or involvement of a regulator with the power to require the provider to remedy any breach of affordability standards. In cases of refusal to comply with such decisions, the regulator should be empowered to enforce compliance, without need for recourse to the courts. The regulator should be able to impose penalties, such as the power to recommend the replacement of senior personnel in the service provider or to levy fines that would constitute a tangible economic disincentive against such actions company. Unfortunately, in many countries, the regulator often lacks the necessary powers to control either political intervention into pricing by politicians or economic interventions by the water companies. The mandate of the utility service provider should clearly require compliance with affordability standards and government-set charges.

Small-scale water vendors and sanitation service providers serving communities unconnected to the piped water system, as well as civil society managed facilities, are normally not monitored by any public body, due to the lack of standards governing such provision, and the amount of time it would require to collect information about such prices. The price charged by small-scale water and sanitation providers is normally determined by market mechanisms. However, in cases where profiteering occurs or a cartel is formed by a water vendor association, group of renters or owners of public toilets, some price controls may be required by the government. The provision of water to vendors by a utility supplier can be conditional on the vendor not exceeding a maximum tariff. In addition, the provision of a subsidy to a small-scale water and sanitation service provider can be conditional on a corresponding reduction in prices charged to users.

Box 10.7: Kiosk Systems in Lusaka, Zambia

In Lusaka, the government established water kiosks to distribute water into informal and low-income settlements. Vendors selected by the users residing next to each waterpoint operated the kiosks. The tariff was fixed in order to ensure affordability and a reasonable profit margin for the vendor. The continuation of the contract between the vendor and the municipality was dependant upon the vendor's complying with a number of conditions including: maintaining facilities in a hygienic state, refraining from charging more than the set tariff and prominently displaying these conditions on the wall of the kiosk.

3. Prioritising public investment on extension of services and facilities

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.”³⁴⁰

In urban areas, the most effective way of ensuring the affordability of water is to extend the piped water supply into all settlements, regardless of the legality or otherwise of the land tenure status. All other forms of accessing water are more expensive and are less likely to be safe. Therefore prioritising investments in extending water services is normally the most effective use of public resources. As poorer communities are paying considerably more per litre than those with a connection to the piped water supply, it is obviously in the interest of all to extend the piped supply to the poor areas as to the middle class areas, making water access more equitable and prices affordable for all.

In this regard, General Comment No. 15 states that governments’ obligations include “facilitating improved and sustainable access to water, particularly in rural and deprived urban areas”³⁴¹ and 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”.³⁴² Further to this, 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.”³⁴³

Most subsidies for water are delivered through under-pricing of tariffs in piped water systems. However, these tend to exclude the poorest residents, as they tend not to have household level connections, which is where most subsidies are effective and costs are lower. A more effective use of public resources is to invest in extension of services, thereby providing a connection subsidy. In urban areas, the most effective connection subsidy is for the extension of piped water and sanitation services, and a reduction of connection charges that are often prohibitively high. The connection subsidy would then cover the costs to the service provider for supplying pipes and essential hardware. It would normally be necessary to ensure that the service provider does gain revenue from extending services. A policy that required service providers to simply reduce connection costs in the expectation of future returns would create a disincentive for the extension to networks to low income areas.

Once a connection has been made to the piped supply, generally the amount that the household pays for water per litre will drop significantly, enabling the household to access the daily minimum at an affordable rate. In rural areas in most developing areas, available resources may not permit the extension of piped networks. In such cases, public resources can be invested in the subsidised construction of small-scale services such as wells and boreholes in a location close to households. Where large numbers of people are not connected to networks, connection subsidies will be the most appropriate way of improving access for people with low incomes. However, it would normally be necessary to establish some criteria for this subsidy to exclude upper-income and middle-income persons. Targeting for income is not difficult for connection

³⁴⁰ General Comment No. 15 para. 14

³⁴¹ General Comment No. 15, para. 26.

³⁴² *Ibid.*, para. 29.

³⁴³ Sub-Commission Guidelines, section 6.2.

subsidies as criteria can be based on the value of the house to which a connection is being made, as a proxy indicator for income. (See also Section 7 below on targeting the poorest).

Box 10.8: Prices paid by Slum-Dwellers

In the slums of Nairobi, Kenya, potable water can only be purchased from vendors at prices up to 10 times higher than the rate charged to households by the local service provider. This is a trend echoed in many informal settlements around the world, particularly for those without access to piped supplies.

4. Reducing costs through developing a range of levels of service and facilities

The Sub-Commission Guidelines state that, “[w]here 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.”³⁴⁴ Relevant forms of low-cost service could include, particularly in the short to medium term:

- public standpoints
- reduced pressure and low volume connections
- small bore sewerage connections and/or
- public latrines

General Comment No. 15 also states that, “[i]nappropriate 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.

Where low-cost technologies are used, it would be important to design such facilities in manner that permits progressive upgrading in the near-term once more public resources become available and incomes of users rise (which can reasonably be expected because access to water services boosts economic productivity). It may be necessary for governments to revise standards and regulations in order to permit the provision of services below the normal standard, while maintaining absolute minimum standards (such as those corresponding to ‘improved water and sanitation’).³⁴⁵ However, it is necessary to maintain a safeguard against arbitrary or unnecessary reduction of standards and to ensure that such steps take account of the participation rights of the affected individuals and groups. One approach to achieve this aim would be to state in the relevant regulations that any reduction in standards would require the approval of the affected individual user or - for facilities benefiting a group of users - the majority of people in the relevant community.

³⁴⁴ Sub-Commission Guidelines, section 6.3. General Comment No. 15 indicates in this regard: “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.

³⁴⁵ For the definition of ‘improved water and sanitation,’ as set out by the UN Joint Monitoring Programme, see Chapter 8: Water Quality and Hygiene.

5. Facilitating self-management of water and sanitation services by organised user groups

Alternative approaches to management of the services can be considered as a means to increase affordability. These could be community-managed processes that are either run on a non-profit basis, or with profits used to extend services. This could also provide employment to the community, or depending on the technology, can provide other communal benefits, for example cooking fuel as provided by a biogas latrine.

Community management can also take some of the pressure off the water and sanitation services provider, which may not have the relevant expertise of working in informal settlements. It is particularly relevant for rural areas, where professional management and technical assistance can be hard to find. However, it requires significant amounts of capacity building and training to members of the community to be sustainable and effective. This is discussed further in chapter 6: Participation and Access to Information.

Box 10.9: 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 by assisting 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 of how best to manage smaller scale, low-technology systems within the government.

6. Establishing flexible payment terms

One of the problems for poor people accessing water is the lack of disposable income available for making one-off payments such as a connection charge, or for making monthly payments for water and sanitation services, particularly where they are employed on a seasonal, daily or weekly basis or where income is unpredictable. Reduction in connection charges (section 3 above) and consumption subsidies (section 7 below) 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”.³⁴⁶ Such financing arrangements could include some or all of the following options:

- phase-in of the connection charge over time,
- acceptance of 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,

³⁴⁶ Sub-Commission Guidelines, section 6.1.

- 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,
- allowing new customers a month's grace period to become accustomed to new charges,
- instigating consumption based charges rather than fixed charges.³⁴⁷

The latter option would require the installation of a meter, the cost of which can be a barrier to implementation and would generally need to be borne by public resources. However, the long-term goal of universal metering can increase affordability, and the cost of the meter can be justified by the water conservation benefits.

7. Provision of consumption subsidies

Many persons who are on a low-income are unable to afford water prices. As discussed in Section 3, it is normally necessary to provide subsidies for the extension and maintenance of piped networks or of small-scale water and sanitation facilities. This is the most appropriate form of subsidy for low-income households as such subsidies will ensure that regular charges for water and sanitation are affordable for most households. 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 the full cost of provision. This problem can only be expected to increase as economic and environmental sustainability imperatives are increasingly require charging for the full cost of water and sanitation. The challenge will be to ensure that 'social sustainability,' in the form of affordable access, is given equal importance and integrated within measures aimed at securing economic and environmental sustainability.

Subsidies are one way of addressing this problem, but they need to be well designed in order to reach their desired targets. Subsidies should aim to guarantee access to at least a basic amount of water for domestic consumption, and could apply to low-income households, to areas populated predominantly by low-income communities or - where feasible and necessary - to the general public.

Unfortunately, subsidies seldom reach the target population for a variety of reasons, some of which are politically motivated and some are 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 as follows:

- Target groups are not being formally registered or not informed of the availability of a subsidy.
- Consumption subsidies are provided only to people connected the piped supply (the norm in most countries). In some cases they are provided only to those with household connections, thus excluding those who rely on vendors and standpipes.
- There is excessive paperwork, 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 numbered address, thus excluding those living outside the formal legal system and primarily benefiting middle-income residents who live in formal housing.

³⁴⁷ 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."

- Those who are responsible for distributing subsidies engage in corrupt practices, such as giving preferential treatment to particular groups for political or financial gain.

In addition, the costs for sanitation are also often cross-subsidised through the price of water, as it is often politically difficult to charge full cost price for sanitation. This means that those who receive water but have no connection to the sewerage service are effectively subsidising those who do.

Connection pricing and subsidies, which remain the most important use of public resources in developing countries, are discussed in section 3 of this chapter. In relation to water and sanitation pricing and subsidies, three options that could be consistent with the right to water are listed below. These options are not mutually exclusive and could be applied at the same time. Each option includes within it a number of variations. The choice made among these pricing regulations would need to be determined by governments, in consultation with the relevant users in each locality, and with reference to the context in a particular country. Subsidy policies should differentiate between water and sanitation provided through networks systems and water and sanitation provided through small-scale facilities.

7.1 Income supplements/targeted water subsidies

Income supplements provided for low-income households can take into account the rising cost of water.³⁴⁸ Targeted water subsidies can be provided at the household level, as in Chile, or for households in low-income areas, as in Colombia (see Box 10.10). As indicated in that example, it may be beneficial to use both mechanisms, whereby subsidies are provided automatically in low-income areas, but all individuals who do not thereby benefit are permitted to apply for subsidies on the basis of their low-income.

Advantages

- Were an income supplement is provided, it can be easily used by households who are not connected to a network.
- Targeting according to income is the only effective way to provide a subsidy for non-sewerage sanitation.
- If targeting is precise, it may be possible to obtain some or most 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 and stand-pipes).

³⁴⁸ According to Ian Walker, et. al., “Multilateral development banks in Central America have promoted in recent years a policy shift from government financing tariffs set below the cost of the service, towards tariffs which reflect system costs, coupled with the introduction of targeted and transparent demand subsidies, in place of the global supply subsidies implicit in generalized under pricing.” (See Pricing, Subsidies and the poor, Demand for Improved Water Services in Central America. Ian Walker, Fidel Ordonez, Pedro Serrano and Jonathan Halpern).

- Targeting is often imprecise. Even sophisticated social security systems can exclude significant numbers of the poorest residents (see Box 10.10 on Chile).

In rental housing, landlords may capture the benefit of a subsidy delivered through sliding scale pricing, rather than the intended beneficiary. Thus, this form of subsidy requires rent restrictions to ensure that rental levels are not permitted to rise, and that where water charges are normally included in rent, that the rent is lowered corresponding to the subsidy.

Pricing regulations on providers would be self-defeating if they created disincentives to water provision. 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 to instead lead to improved water services in more affluent areas. Supplementary measures are necessary. One option is for the government to require water providers to provide water to specific low-income areas.³⁴⁹ As with connection subsidies (see Section 3 above), subsidies could be made available for this from the government to make sure that service providers can afford to do this, potentially funded from cross-subsidies from upper income groups.

A further refinement of this approach to counteract the high prices charged by water vendors providing essential services to people without access to a piped supply, might be to make water more cheaply available to water vendors coupled with a requirement to restrict tariffs to a range of amounts stipulated by the government that would thereby pass the subsidy to the users.

In cases where the government does not have the capacity to assess levels of income, a subsidy based on the form of access (e.g. kiosks) or geographical location is the only feasible alternative. However, such subsidies cannot differentiate between the poor, who may be able to pay a small amount, and the very poor, who simply cannot afford to pay anything. As a result, it is necessary to consider a range of measures that can be used to assist the poorest groups. The following approaches could be considered:

- Community-rooted self-help programmes might be able to find adequate solutions for the poorest to offer an essential amount of clean water of an acceptable quality. Community groups in low-income areas could receive government support for these efforts, including a small budget for such situations.
- A basic system could be put in place to grant subsidies to vulnerable groups that are easily identified, 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 as it could be used for health, food and other rights. Such systems are in use in Brazil and South Africa.
- Hygiene education, discussed in chapter 8: Water Quality and Hygiene, is also relevant in this regard. Communities that are fully aware of the health consequences for all of using unclean water may be more willing to assist neighbours secure access.

7.2. Increasing block tariffs (IBT)

Water costs are charged on a sliding scale, as successive block amounts of water are priced higher. Under this option, consumption of essential amounts of water is partially subsidised by the government. If the tariff is well designed, it may also result in partial subsidies to the poor by

³⁴⁹ Where the service provider is a private entity, this could be a condition for working in upper-income areas.

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 block. 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 vendors and community providers, as their customers would then be paying a higher tariff than necessary for essential amounts of water.

Advantages

- The subsidy is targeted directly to a smaller proportion of the population, and therefore less costly to support.
- The pricing system encourages water conservation.

Disadvantages

- The IBT may penalise large households as well as small-scale vendors and small businesses in the informal sector, who would pass on the costs to their customers
- The subsidy is difficult to design in a situation where there is wide variation in the number of people in households
- The IBT creates an incentive for utilities to prioritise high-volume users, who are normally upper-income groups, as this allows utilities to charge more per litre used. The IBT therefore requires strong government regulation to ensure that utilities provide services to low-volume users.

7.3. Free provision of the essential amount of water

A small amount of water sufficient for the personal, domestic and other needs of a household is provided without charge. It would be necessary for the subsidy to take into account the actual number of persons living in the household (or area) or generously assumes the number of persons in the household or area, based on concrete disaggregated data. In piped network settings, this subsidy is relatively easy to administer. In other settings, the subsidy could be provided through public standpipes (where the amounts used are normally limited as the users are only able to carry limited amounts of water).

Advantages

- This system ensures the provision of minimum essential amount to those with a direct connection to a piped supply
- A blanket approach of this nature has low administrative costs and is easier to apply where governments cannot effectively assess income levels. As it is available to everyone, this approach limits corruption
- The free water system can be used to assist those not connected to the network, for example, through public standpipes.

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.
- 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 risks being insufficient for health purposes, and may even fund the subsidy by higher charges for water above the free amount. There is therefore a possibility that such a subsidy would provide no net benefit to households, particularly larger households.
- It is difficult to apply to vendor managed or community schemes as governments would need to monitor whether the subsidy is being passed on to the users.
- Where water is distributed through public standpipes, monitoring is required to prevent mis-use by persons possessing carts or vehicles, to prevent potential sabotage by vendors and to prevent wastage of water.
- This is an untargeted subsidy that also benefits middle and upper income groups. Funding this amount would require significant government resources or higher costs levied on higher levels of water use.
- There is a risk that service providers will fail to deliver services to poorer areas as it is more difficult to generate revenue where the majority of residents receive free water, even if the government is reimbursing the service provider for the water provided free.
- If not funded, this system undermines the economic sustainability of water services as well as environmental sustainability.

Box 10.10: 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% of a household's water and sewerage bill for up to 20 cubic metres a 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 should benefit, and the subsidy should cover only the shortfall between actual charges and ability to pay.

As a crude approximation of ability to pay, the benchmark set by the Pan-American Health Organization is used – that no household should pay 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.

However, it has been shown that 70% of the people who were in the lowest income 20% of the population did not benefit from these subsidies, due to a lack of documentation and because it is complicated to apply for. However, a significant range of persons in middle-income groups successfully applied for subsidies, with 60% of subsidies going to households who were not within the lowest income 30% of the population. This indicated failure to appropriately target the subsidies to those who most needed them. Subsidies provided automatically based on geographic regions in Colombia provided subsidies to a greater proportion of the poorest 20% of the population, but also provides some benefit to almost all households, leading to a high cost of the scheme.³⁵⁰

The Chilean approach can only be successful where the household has a connection to the water and sanitation services. This has a greater chance of working in Chile, as there is almost-universal coverage of water and sewerage services. However in a majority of developing countries, this is not the case and those without connections would lose out on the receiving the subsidy, as it requires not only personal documents but also a bill from the service provider. Finally, 20 cubic metres per month is significantly above the amount necessary for basic needs, as defined by the WHO, so many households are receiving large amounts of water which would perhaps be better conserved, or at least paid for at cost price.

8. Increasing public financing for subsidy programmes

Normally, water and sanitation services must be paid for by a combination of users. This may be 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

³⁵⁰ Andrés Gómez-Lobo and Dante Contreras, *Water Subsidy Policies: A Comparison of the Chilean and Colombian Schemes*, University of Chile, May 2003.

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 supply from a piped water supply rather than sourcing their water from the more expensive and time consuming supply from water vendors or a standpoint (or for rural residents, from a communal well). Both health benefits and affordability are enhanced where latrines connected to a sewerage pipe are available rather than using communal latrines, which can be expensive to visit, or household latrines which can be expensive to empty. However, until the target of universal coverage is reached, it is likely that government assistance will be needed to ensure that the poor are not penalised, financially and with their health, for living in areas without access to the municipal water supply and sanitation services (or appropriate service in rural areas).

This section will consider various options through which increased financing can be generated in order to ensure accessible and affordable water and sanitation services for all. It will normally be necessary to use a significant number of these options concurrently.

8.1. Current Government Water and Sanitation Budgets (at the national, regional and local level)

1. Re-allocating current public resources from high-cost interventions to low-cost interventions, wherever possible, may provide a lower level of service, but would assist more people, particularly those who most need assistance.³⁵¹ This approach not only increases the ability of more people contribute to the costs of water and sanitation, but also provides an opportunity for those who wish for a higher level of service to pay for it themselves. It would therefore have the impact of re-allocating resources to the poorest. This is discussed in section 3 above and also in chapter 5: Discrimination.

2. 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 tends 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.’

5. Increasing efficiency through reforms such as:

- reducing bloated work-forces (including by eliminating ghost workers),
- reducing leakages³⁵² and

³⁵¹ This approach is mentioned in General Comment No. 15, para. 14.

³⁵² 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.

- either cutting or formalising illegal connections (depending on whether for an essential domestic supply or for other uses).

This is discussed in more detail in chapter 7: Water Availability.

Box 10.11: The right to work verses the right to water?

Increasing the efficiency of water services, and therefore facilitating the realisation of the right to water, sometimes requires lay-offs of 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 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 also come into play during workforce restructuring, in particular the right to society security as well as international labour laws relating to the functioning of trade unions.

8.2 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 Process, could ensure adequate emphasis to water and sanitation. In addition, highlighting health and economic benefits of improving water and sanitation supply and the fact that water and sanitation are included in the Millennium Development Goals can also increase allocations towards water and sanitation.

The following approaches could be taken to increase budgets available for water and sanitation services:

- 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.
- Loan finance for essential services will pay for themselves after a short period. Provision of services improves economic activity and reduces health costs. 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.³⁵³ The reality is, however, that the majority of governments cannot afford not to improve water and sanitation services
- Cross-subsidies involve charging low-income residences at below-average rates. Industrial, commercial and upper-income users can be charged at above average rates in order to make up the difference. If income data is not available, indicators such as

³⁵³ WHO, The Costs and Benefits of Water, 2004, p.34.

property value, home facilities, number of pipe connections, household location, etc, are usually used to evaluate the economic capacity of users.³⁵⁴

- 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.³⁵⁵ Water service providers often have the advantage of a guaranteed source of income from user charges.
- Inter-regional transfers or central government financing to local authorities and municipalities is provided in many countries for some, or all, of the finance for investment in water infrastructure. It will be critical for poorer regions and municipalities. Central government finance may be provided in the form of grants or loans to local authorities, or through special funds. 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.³⁵⁶
- Altering jurisdiction for water and sanitation responsibilities may prove an effective method of ensuring that local authorities have a sufficient tax base in order to fund or subsidise water services. Over the long-term, a potentially sustainable solution is to move responsibility for water provision upwards to multi-jurisdictional units covering both high and low income areas, where the necessary resources exist for expansion of access. Under this system, the local authority would be 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.

8.3 International Assistance

As with national budgets, re-allocating current resources from high-cost interventions to low-cost interventions 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, '[b]ilateral 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.'³⁵⁷ This approach requires investment in administrative capacity to reach the poorest.³⁵⁸

The governments of donor countries are expected to increase their overall level of assistance at least to the UN target of 0.7% of GDP, and target an adequate portion of this to the water and

³⁵⁴ According to 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," s. 6.1.

³⁵⁵ Hall, David, *Water in Public Hands*, p. 25. Case of Indonesia quoted: Case Study 16: Indonesia, www.worldbank.org/html/fpd/urban/cmd/Indonesia.doc

³⁵⁶ 'Social Policy in Brazil; Targeting the Poor' *Economist*, April 14, 2003.

³⁵⁷ Sub-Commission Guidelines, Section 10.3. General Comment No. 15 also emphasises the necessity of assistance for the realisation of core obligations, para. 38

³⁵⁸ See Chapter 10: International Cooperation.

sanitation sector. The Sub-Commission Guidelines states that, “[d]epending 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”.³⁵⁹ The Sub-Commission Guidelines also states that, “[e]very 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.”³⁶⁰

International assistance is addressed in more detail in Chapter 11: International Cooperation.

9. 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:

- Excessive taxes and charges on small-scale water and sanitation services, including user-managed schemes.
- Excessive taxes and charges on water and sanitation facilities and equipment.
- Preventing consumers from switching to a cheaper water provider when possible.
- Regulations that preventing users, small-scale providers and utilities from implementing cheaper methods of water and sanitation service provision (that are of adequate quality).
- 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.
- Disconnection of water supplies leading to users purchasing more expensive water for essential uses.³⁶¹
- 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.

In order to prevent such outcomes, governments could put mechanisms in place to periodically review laws, regulations and taxes. Independent institutions including parliamentary committees, ombudsmen and independent commissions can also play a strong role in monitoring laws, regulations and taxes for impact on affordability.

10. Integrating ability to pay considerations into disconnection policies and prohibiting total disconnection from water

Disconnection is one form of control that water utilities have for ensuring payment for water delivered. However, General Comment No. 15 states that, “[b]efore any action that interferes

³⁵⁹ Sub-Commission Guidelines, section 10.2

³⁶⁰ *ibid.* General Comment No. 15, para. 34.

³⁶¹ See Chapter 8: Physical Accessibility, on disconnection of water supplies.

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."³⁶² This implies that the quantity of water may be reduced (but not below necessary levels of use where a household is unable to pay), but that full disconnection may only be permissible if there is access to an alternative source that can provide a minimum amount of water.

Box 10.12: Disconnections of Water Supply for Inability to pay in United Kingdom

The Water Industry Act (1999) permit a water 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 listed below:

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.³⁶³

In addition, a water provider cannot restrict how water is supplied to any of the above premises in order to enforce payment of charges.³⁶⁴ The approach taken in the United Kingdom may not be feasible to situations in lesser-developed countries, where it may be necessary to limit the quantity of water consumed to the basic minimum where payment is not being made.

Box 10.13: Judicial intervention on disconnections for non-payment in Argentina³⁶⁵

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

³⁶² General Comment No. 15, para. 56.

³⁶³ <http://www.hms0.gov.uk/acts/acts1999/19990009.htm#2> and <http://www.hms0.gov.uk/acts/en/99en09-b.htm>, s. 61 and Schedule 4 A.

³⁶⁴ Ibid., s. 63 A.

³⁶⁵ *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 Legal Resources for the Right to Water: International and National Standards (Geneva: COHRE, 2004), p.113-4 www.cohre.org/water.

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: “[T]he 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 State authorities to be compensated for the costs of meeting this obligation.

Checklist for Affordability of Water and Sanitation

1. Are there national standards and indicators for affordability of water and sanitation services? Have these been developed in consultation with vulnerable and marginalised groups?
2. Is there a government process or institution to review policies, regulations and monitor tariffs of all service providers?
3. Do regulations include the requirement for flexible payment options and the power to prevent third parties from raising tariffs to an unaffordable level?
4. Is there a legal prohibition on complete exclusion from a water source, for example by disconnection?
5. Does the national policy or plan prioritise investment in the most efficient and affordable services and facilities in order to keep operational costs, and therefore tariffs, low?
6. Does any legislation raise the cost of water service provision to prohibitively high levels? (e.g. through high taxes on equipment required by small-scale providers)
7. Does the national policy or plan provide for a broad range of options for facilities and service levels, including the option of progressive upgrading, thereby allowing communities to decide what is the most appropriate and affordable option in their context?
8. Have positive steps been taken to improve affordability for vulnerable and marginalised groups, such as facilitating self-management of water and sanitation facilities?
9. Does the government subsidise water and sanitation service provision, and if so, have subsidies been reviewed to ensure they benefit low-income groups rather than middle or high-income groups?
10. Are capital or recurrent subsidies provided to low-income communities? What percentage of the lowest 20% income groups receives recurrent or capital subsidies?

CHAPTER 11: INTERNATIONAL COOPERATION

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. 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 belongs³⁶⁶.

The Declaration undertook to halve, between 2000 and 2015, the proportion of people “unable to reach or to afford safe drinking water.”³⁶⁷ 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 2015.³⁶⁸

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 cooperation 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. Such dynamics include international trade and investment, pollution of shared resources such as the atmosphere and transboundary resources, the use of transboundary resources and armed conflict. The full realisation of the right to water and sanitation is therefore not possible without international cooperation in these areas.

³⁶⁶ United Nations Millennium Declaration, U.N. Doc. A/RES/55/2, para. 2.

³⁶⁷ United Nations Millennium Declaration, para. 19

³⁶⁸ Plan of Implementation of the World Summit on Sustainable Development, para. 8. Available at: www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf

How governments can promote the right to water and sanitation in other countries through their international cooperation

1. Increasing overall international development assistance for water and sanitation services that would benefit the poorest communities, and improving its predictability by providing multi-year support.
2. Focusing development cooperation on programmes and projects that particularly target low-income areas and groups.
3. Ensuring that their development cooperation does not lead to impediments for any person's access to water and sanitation, or other human rights.
4. Cooperating 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.
5. Cooperating 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.
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.
7. Ensuring that in the context of military conflict, water and sanitation facilities are not attacked and that reasonable precautions are taken to prevent any damage.
8. Establishing the impact on water availability as a criterion for setting limits on emissions of greenhouse gases, and providing international assistance to groups facing drought caused by climate change.

1. Increasing development assistance for water and sanitation

In many cases, developing countries – and the least developed countries in particular - will require, and should be provided with by those countries in a position to give, financial and technical assistance in order to accomplish the full realisation of the right to water and sanitation.

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.³⁶⁹

The Sub-Commission Guidelines further elaborate on the above, 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.³⁷⁰

International cooperation 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.³⁷¹

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 “[t]he \$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.”³⁷² The HDR 2005 recommends budget commitments to be set at a minimum level of 0.5 % for 2010 to bring

³⁶⁹ 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.

³⁷⁰ 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.

³⁷¹ UNDP, *Human Development Report 2005: International cooperation at a crossroads: aid, trade and security in an unequal world*, New York, 2005, p. 7.

³⁷² *Ibid.* p. 8.

the Millennium Development Goals within reach by 2015.³⁷³ 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.³⁷⁴

One of the problems facing developing countries is that the development assistance offered by donors can be unpredictable and generally time-limited, while developing countries need to be able to plan their strategies (and consequently budgets) over longer time-frames in order to be effective. Building on the principles set out in the 2005 Paris Declaration on Aid Effectiveness, more stable and predictable aid flows from donors would lead to more effective planning by developing countries.

A related concern is that international assistance to the water sector is not proportional to the need, and is also not proportional to amounts granted to other sectors such as health and education. Sanitation is even further marginalised in this regard, in many cases falling in between the water and health sectors. 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.”³⁷⁵ Increasing focus of international assistance to the water and sanitation therefore requires cooperation between governments providing aid and those receiving it.

2. Focusing on pro-poor development cooperation

Increasing the level of financing to water and sanitation will enhance the prospects for securing the right to water and sanitation. However, it does not guarantee it. International assistance may be focused 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 of groups, for example projects that aim at regularising small-scale provision in informal settlements or projects that aim to build capacity of communities to manage sanitation facilities in rural areas. Multilateral or bilateral donor agencies may not have the capacity to efficiently support projects which support the poor, which normally involve small outlays per project and therefore require a significant amount of 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 NGOs, will be a critical element of fostering pro-poor development cooperation.

Focusing on pro-poor development aid may require greater use of grants and less use of loans, which can cause difficulties for 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 in order to ensure its continued implementation of an approach based on human rights.

³⁷³ Ibid. p.9.

³⁷⁴ Ibid.

³⁷⁵ Water Action Plan, A DFID policy paper, March 2004, <http://www2.dfid.gov.uk/>

An important component of pro-poor development cooperation is to provide financial and technical support to building capacity within government (both implementing bodies and independent agencies such as human rights commissions) and independent civil society monitoring groups who can then promote or monitor the realisation of the right to water and sanitation.

3. Ensuring that their development cooperation does not lead to impediments to 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: "International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries."³⁷⁶ Human rights standards are a yardstick for evaluating development cooperation, 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, that would be inconsistent with human rights standards could include the the following:

- Raising tariffs or eliminate subsidies, without structures put 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 support for privatisation from users
- Construction of water storage projects which lead to disproportionate levels of relocation, or where such relocation is not carried out in conformity with international standards on forced evictions.

One important consideration is the need to promote national ownership of development policy as a matter of democracy and good governance, and as an important means of ensuring the right of individuals and groups to participate in decision-making. This is because citizens are generally more able (and should be more able) to hold their own governments accountable than donor governments. National ownership indicates the need for great care in stipulating conditions that are not directly related to the effective implementation of policies and programmes supported by a particular donor.

4. Engaging in transboundary water cooperation

Transboundary waters extend hydrological interdependence, linking different kinds of uses and users in different countries within one shared system.³⁷⁷ There are over 260 rivers in the world that either cross or demarcate international political boundaries.³⁷⁸ These international basins include parts of the territory of as many as 145 different countries,³⁷⁹ affect approximately 40% of the world population and account for an estimated 60% of total global river flow.³⁸⁰ National boundaries and river catchments are not coincident, and many countries rely to some degree on

³⁷⁶ General Comment No. 15, para. 31, Sub-Commission Guidelines, s. 10.1.

³⁷⁷ UNDP, *Human Development Report 2006*, p. 203.

³⁷⁸ See UNEP, *Atlas of International Freshwater Agreements* Nairobi, 2002, p.1.

³⁷⁹ *Ibid.* p.2.

³⁸⁰ *Ibid.* p.2.

river flows from countries upstream. Indeed, approximately 15% of all countries receive more than half their available water from upstream countries.³⁸¹

Cooperation between all countries sharing a watercourse is necessary in order to reconcile the different and possibly conflicting interests and needs for water and to find solutions and compromises answering to the right to water needs of all riparian states. Although there are international guidelines for transboundary water cooperation,³⁸² 158 of the 263 international basins still lack any legal framework for the cooperative management of the shared resource.³⁸³

General Comment No. 15 states that: “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 cooperation 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”.³⁸⁴

General Comment No. 15 provides only general guidance, more specific guidance are contained in international customary law (international law established by the general and consistent practise of governments, demonstrating their views as to what is legally binding). Many customary law principles are contained in the 1997 Convention on the Non-navigational Uses of International Watercourses. Other international guidelines are provided in the 1966 Helsinki Rules, or those established in the. These guidelines provide mechanisms by which states can co-operate and negotiate an equitable and reasonable sharing of transboundary water resources whilst prioritising vital human needs.³⁸⁵

A number of obligations in customary international law and guidance in the Helsinki rules would help realise the right to water in areas served by transboundary watercourses. Some of them included:

- Giving priority for basic human needs in water allocation
- Commitment to full cooperation at basin level involving all countries bordering a watercourse
- Exchange of information on water quality, water volumes, ecosystem protection and dependency on the watercourse for domestic, agricultural and industrial uses
- Transfer of technology, capacity building, access to policy-relevant, knowledge and tools on water management
- Developing institutional frameworks for continuous dialogue and concerted action

³⁸¹ Addressing the Water Crisis, healthier and more productive lives for poor people, DFID, 2001, <http://www2.dfid.gov.uk/pubs/files/tspwater.pdf>

³⁸² 1966 Helsinki Rules by International Law Association, and the 1997 UN Convention on the Non-navigational Uses of International watercourses.

³⁸³ UNEP, *Atlas of International Freshwater Agreements*, p.7.

³⁸⁴ General Comment No.15, para 31.

³⁸⁵ 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

- Ensuring participation of representatives of users, including vulnerable and marginalised groups, in decisions regarding basin-level management

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.”³⁸⁶

5. Ensuring coherence between trade and investment agreements and human rights

General Comment No. 15 notes that “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 liberalization should not curtail or inhibit a country’s capacity to ensure the full realization of the right to water.”³⁸⁷ It further adds that “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.”³⁸⁸ General Comment No. 15 also states that “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.”³⁸⁹

Most investment agreement are bilateral, typically between a developed and a developing country.³⁹⁰ They provide for the protection of a country’s corporations when they invest in another country. An investor is guaranteed that they will be treated by the country in which they operate on the same basis as national corporations and international corporations from other countries. Investors are typically guaranteed protection from expropriations and from performance requirements such as requirements to hire a certain percentage of local managers. 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

³⁸⁶ Nile Basin Secretariat, Entebbe <http://www.nilebasin.org/NileBasinStructure.htm>

³⁸⁷ General Comment No 15, para. 35.

³⁸⁸ Ibid. para. 36.

³⁸⁹ Ibid., para 33, emphasis added. See also Sub-Commission Guidelines, para 10.1.

³⁹⁰ The North American Free Trade Agreement (NAFTA), which includes investment, is an exception as a trilateral agreement.

providers in favour of a national service provider, or between foreign service providers on the basis of nationality. These requirements would 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 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. At the present time, 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. In certain circumstances, the restraints that they impose on government's policy options may interfere with the realisation of the right to water. There is significant legal debate as to whether such actions would constitute infringements of trade and investment agreements:

- Provision of subsidies or training to medium-size local service providers
- Provision of preferential treatment to community management of service provision
- Preferences in contracting, subsidies or training to members of a disadvantaged groups in a country
- Cancellation or modification of contracts with multinational corporations managing water and sewerage utilities
- Applying regulatory standards, for example on pollution, in a manner that have a disproportionately 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. In addition, dispute settlement bodies may also consider human rights law in their interpretation of trade and investment agreements. However, the exceptions are framed in vague language, leading to considerable uncertainty. The decisions of investor-State dispute settlement processes will shed light in the future as to whether such actions would be seen to infringe trade and investment agreements and in what circumstances.

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 the State. Thus, it would be prudent to carry out measures that would help ensure that international trade and investment agreements are formulated and applied in a manner that is mutually supportive to the right to water and sanitation:

5.1 Human rights impact assessments

Human rights impact assessments would consider the impact of trade and investment agreements, and in particular consider the implications for marginalised or vulnerable groups. They are designed to be informed by sound empirical information drawn from public, transparent and independent assessments and can be carried out either before trade and investments agreements have been formulated, or after their implementation has commenced. Impact assessments can guide decision-making in trade negotiations and in dispute settlement.

5.2 Human rights exemptions and modifications

New trade and investment agreements could include exceptions for situations where a particular course of action is necessary in order to effectively implement the right to water and sanitation. Current trade and investment agreements can be modified to achieve this objective. Exceptions should also apply in cases where governments have accepted particular commitments at one time, but then have good reasons to revise that decision. Getting 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.³⁹¹

5.3 Capacity building for trade policy makers and negotiators

Most policy actors in the fields of trade and human rights are not trained in addressing the linkages between these two 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 need assistance in obtaining financial and technical expertise at their request, including on means to develop and apply human rights impact assessment methodology.

Negotiators who are briefed on the linkages between human rights and trade will be able to raise human rights issues in negotiations.³⁹² If Secretariats of trade bodies develop an ability to assess human rights impacts of liberalisation, they would be able to draw to the attention of parties to aspects of an 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 developed countries to provide long-term assistance to such trade ministries in developing their capacity, based on a jointly agreed plan of work.

5.4 Dispute Settlement

Trade and investment dispute settlement bodies have not thus far considered human rights standards in the context of disputes over trade and investment agreements. One exception is the International Centre for the Settlement of Investment Disputes (ICSID) panel which is hearing the dispute between Argentina and Aguas Argentinas, a consortium that was managing the water and sewerage system in Buenos Aires until 2005. The dispute related to a tariff freeze imposed by the government after the devaluation of the peso. The panel recognised that the dispute raised human rights concerns and, in part on this basis, permitted civil society organisations to gain access to documentation of the case and to make submissions.

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 principles to trade and investment.

³⁹¹ Report of the High Commissioner for Human Rights, *Economic, Social and Cultural Rights: Human Rights, Trade and Investment*, 2003.

³⁹² 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).

6. Ensuring that economic sanctions do not undermine the right to water and sanitation

General Comment No. 15 is self-explanatory with respect to sanctions and states that, “States parties should never impose embargos 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. Water should never be used as an instrument of political and economic pressure. In this regard, the Committee recalls its position, stated in its General Comment No. 8 (1997), on the relationship between economic sanctions and respect for economic, social and cultural rights.”³⁹³

7. Protecting water and sanitation facilities in times of armed conflict

Responsibilities regarding the right to water and sanitation during times of armed conflict are clearly defined. General Comment No. 15 states that, “[t]he 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.”³⁹⁴

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.”³⁹⁵

8. Establishing impact on water availability as a criterion for limits on greenhouse gas emissions assisting groups facing drought

General Comment No. 15 states that, “[t]he obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water.”³⁹⁶ 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 as well as by 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 poorer nations to manage change.³⁹⁷

³⁹³ General Comment No. 15, para 32. Footnote in quotation omitted. In General Comment No. 8 (1997), the Committee mentions the disruptive effect of sanctions upon sanitation supplies and clean drinking water, and that sanctions regimes should provide for repairs to infrastructure essential to provide clean water, U.N. Doc. E/C.12/1997/8 (1997), para. 3.

³⁹⁴ Ibid., para. 21.

³⁹⁵ Ibid., para. 22. Footnote in quotation omitted.

³⁹⁶ Ibid., para. 21.

³⁹⁷ UNDP HDR 2006 pp.159-170

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 establishes one criterion for determining the targets for reduction of emissions.

In addition to addressing emissions, many vulnerable groups living in arid areas are already facing droughts and desertification that is likely caused or exacerbated by climate change. It is therefore necessary to ensure that international assistance adequately addresses the needs of such groups, helping them to cope with water shortages and assisting them to secure new sources of clean water.

Checklist for International Cooperation

1. What proportion of GNP is spent on international financial assistance to the water and sanitation sector?
2. Is international financial assistance provided in a predictable (medium- or long-term) manner and do any accompanying conditions in any way impede people's access to water and sanitation, or other human rights?
3. What proportion of financial assistance on water and sanitation is targeted towards marginalised and vulnerable groups? What proportion is directed to those who currently have no access to improved water and sanitation facilities?
4. Where a neighbouring country shares transboundary water resources, are there laws or policies that inhibit the neighbouring country from accessing sufficient water from the shared water resources to meet essential needs?
5. Are there plans in place for emergency sharing of water to neighbouring countries which regularly or seasonally suffer a lack of safe water supplies for essential needs?
6. Is the right to water protected from interference from multi-lateral and bilateral trade and investment agreements?
7. Is the right to water and sanitation integrated into policies to limit greenhouse gas emissions? Are sufficient measures being taken to assist vulnerable groups cope with drought?