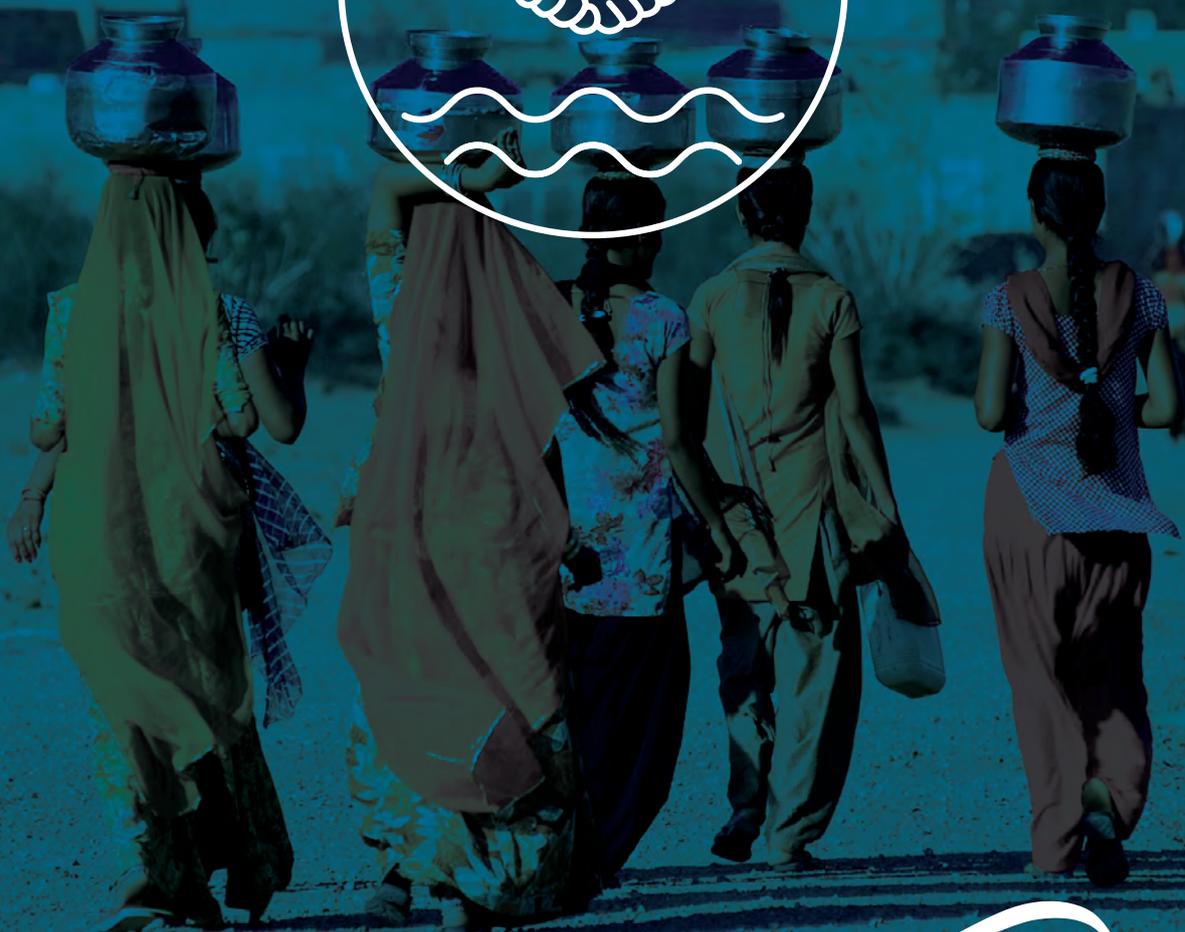


# Eliminating discrimination and inequalities **in access** **to water and sanitation**



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## Introduction / abstract

Patterns of marginalisation and exclusion are present all over the world, with stark and persisting inequalities in access to water and sanitation. Progress made in the water and sanitation sector does not always benefit those who are most in need of these services, in particular the poorest, people living in informal settlements and/or people marginalised on the basis of gender and other grounds.

International human rights law demands that the fundamental human rights principles of non-discrimination and equality must be respected by specific focus on those individuals, groups or communities who do not enjoy their rights fully in order to close existing gaps in the enjoyment of rights. To this end, duty-bearers and development assistance must aim at realising the rights for all, with a focus on the most marginalised and excluded. Mechanisms for conflict resolution, accountability and access to remedy must be in place, as well as free, active and meaningful participation. The human rights to water and sanitation – including the human rights principles of non-discrimination and equality – must be carefully implemented at the national level, and strong monitoring frameworks must track progress in realising these rights.

This policy brief aims to provide guidance on non-discrimination and equality in the context of access to drinking water and sanitation, with a particular focus on women and girls. It also informs readers on the duty of States and responsibilities of non-State actors in this regard.

## The content of the human rights to water and sanitation<sup>1</sup>

**The human right to water** entitles everyone without discrimination to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use; which includes water for drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene.

**The human right to sanitation** entitles everyone without discrimination to physical and affordable access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, which provides for privacy and ensures dignity.

## The concept of discrimination

**Non-discrimination and equality** are indivisible principles under human rights law and cannot be understood in isolation. Discrimination in international human rights law is defined as 'any distinction, exclusion, or restriction which has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'<sup>2</sup> The Universal Declaration of Human Rights (UDHR) states in Article 1 that 'All human beings are born free and equal in dignity and rights' and Article 2 sets out the **prohibited grounds of discrimination**: **'Everyone is entitled to all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [...].'**

Human rights law recognises – by adding 'other status' to the list of prohibited grounds – that grounds may change over time, and no list of prohibited grounds can be exhaustive. The principles of non-

<sup>1</sup> Up to now, resolutions adopted by the United Nations General Assembly and Human Rights Council use the terminology "human right to safe drinking water and sanitation". In these resolutions, the term 'safe drinking water' refers to water for the purpose of drinking, cooking and personal hygiene. Since 'drinking water' is commonly understood to cover water solely for the purpose of drinking, the term can be misleading. In this publication therefore, the term 'human rights to water and sanitation' is used instead.

Furthermore, these resolutions refer to water and sanitation in singular. However, the Committee on Economic, Social and Cultural rights and the mandate of the Special Rapporteur on water believe that because of their distinct features which warrant separate treatment, water and sanitation should be treated as distinct human rights with equal status within the human right to an adequate standard of living. (See for instance CESCR, Statement on the Right to Sanitation, E/C.12/2010/1; Report of the Special Rapporteur on Human Rights Obligations related to Access to Sanitation (A/HRC/12/24) and Realising the human rights to water and sanitation: A handbook, available at <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>). This distinction has also concrete and programmatic consequences by allowing governments, civil society and other stakeholders to create standards specifically for the human right to sanitation and for its realisation, and to understand the distinct responsibilities, obligations and roles implicit in the realisation of both water and sanitation and develop policies and programmes in order to achieve these goals. This publication will therefore refer to the human rights to water and sanitation in the plural, except when directly quoting from the language contained in official documents adopted by the United Nations.

<sup>2</sup> See Article 1 (1) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 2 Convention on the Rights of Persons with Disabilities (CRPD).



discrimination and equality are enshrined in all major human rights treaties adopted since the UDHR.<sup>3</sup>

Discrimination may happen in various ways. **Direct discrimination** occurs when individuals are discriminated against in laws, policies or practices that intentionally exclude people from service provision or equal treatment. Direct discrimination takes place when an individual or group is treated less favourably compared to others in a similar situation for reasons related to a prohibited ground as described above. Discrimination however also manifests in more indirect ways. Discrimination *in practice* – **indirect discrimination** – occurs when laws, regulations, policies or practices seem neutral at face value, but in practice have the effect of exclusion from the provision of basic services. For instance, requiring a municipal registration certificate to subscribe to the local water provider may seem neutral, but may in fact discriminate against persons that live in informal settlements.

**Equality** does not imply treating what is unequal equally. As explained by the UN Human Rights Committee, the equal enjoyment of rights does not mean identical or the same treatment in every instance.<sup>4</sup> The principle of equality demands that everyone benefits from *adequate* services as defined by the content of the human rights to water and sanitation. For example: equality allows different tariff systems among households *as long as services are affordable to all*. Likewise, pit latrines might be acceptable in a rural settlement, but inappropriate for a densely populated urban area due to the risk of groundwater contamination.<sup>5</sup>

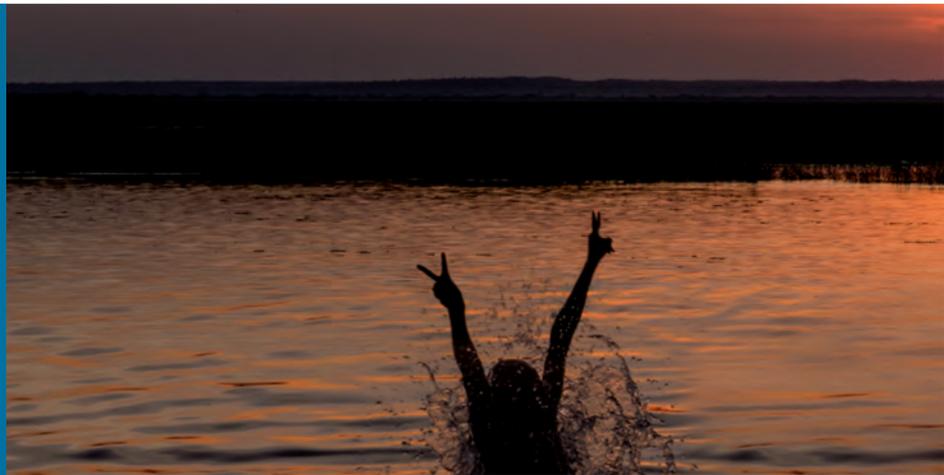
<sup>3</sup> Treaties with provisions on non-discrimination and equality include: Art. 2(2), 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Art. 2(1), 3 of the International Covenant on Civil and Political Rights (ICCPR); Art. 1, 2, 3 of the CEDAW; Art. 1, 2 of the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD); Art 2(1)(2) of the Convention on the Rights of the Child; and Art. 1 of the CRPD.

<sup>4</sup> Human Rights Committee, General Comment 18, HRI/GEN/1/Rev. 1 at 26, 1994, para. 8.

<sup>5</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook*, 'Services', 2014, p. 24.

## Equality versus Equity

Non-discrimination and equality are fundamental principles of human rights law. The terms 'equity' and 'equality' are sometimes used interchangeably, yet there is an important difference: Equality is a legally defined term and a binding principle of human rights law, while equity is a moral imperative that is open to diverse interpretations. As explained by Catarina de Albuquerque, the former Special Rapporteur on the human right to safe drinking water and sanitation, this lack of legal clarity can dilute rights claims.<sup>6</sup> Moving from moral imperatives to legally bound concepts has a direct impact on accountability as well as sustainability of programmes and policies. There is a push from civil society and a positive trend in the water, sanitation and hygiene (WASH) sector towards using the term equality instead of equity, as it underscores the legal obligation of progressively realising the rights for all.<sup>7</sup>



Under international law, States have both 'progressive' and immediate obligations to realise human rights (see Obligations of both State and non-State actors below). The prohibition to discriminate is of immediate effect; meaning that the State must immediately outlaw discrimination in laws, policies and programmes. However, ensuring equality is a progressive obligation; it may require positive measures, resource allocation and strategies over time to overcome inequalities.<sup>8</sup>

Equality complements the principle of non-discrimination: Equality demands a specific focus on those individuals, groups or communities who do not enjoy their rights fully, in order to close existing gaps in the enjoyment of rights (often referred to using the term "equity" - see Box above). Therefore, in order to reach **substantive equality**, special focus must be placed on the 'levelling up' of the situation of those who live with inadequate or no services by understanding the particular needs of each group, particularly from a gender perspective.<sup>9</sup> This is only possible when the root causes and the *de facto* discriminatory practices are identified and when positive measures like **affirmative action** are put in place. The International Convention on the Elimination of All Forms of Discrimination against Women (ICEDAW) requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results; it's therefore not enough to guarantee women treatment that is identical to that of men.<sup>10</sup> The ICEDAW states in its Article 4 that;

'Adoption by States Parties of **temporary special measures** aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall

<sup>6</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, *Integrating non-discrimination and equality into the post-2015 development agenda for water, sanitation and hygiene*, 2012, A/67/270, para. 29.

<sup>7</sup> The change in language can for example be seen in the WHO/UNICEF Joint Monitoring Programme (JMP) reports: it highlights inequalities in its 2014 report while it used equity in previous reports. See also: <http://www.rural-water-supply.net/en/equity-and-inclusion>

<sup>8</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, *Common violations of the human rights to water and sanitation*, 2014, A/HRC/27/55, para. 55

<sup>9</sup> See: C. de Albuquerque, *The future is now – eliminating inequalities in sanitation, water and hygiene*, Global Thematic Consultation, October 2012. P.5.

<sup>10</sup> General recommendation No. 25 of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, 2004, para. 8.

*In the case of City Council of Pretoria v. Walker white residents had argued that they were unfairly discriminated against on the basis of race because they paid meter-based tariffs for water and electricity whereas black residents were charged a lower, flat rate per household. The Constitutional Court concluded that the discrimination was not unfair because facilities in the townships were vastly inferior compared to 'white Pretoria' and because white residents had not been victims of past patterns of discrimination. Consequently, the adoption of a differential tariff scheme as an interim measure was not deemed unfair.<sup>13</sup>*

in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.'

The CEDAW has adopted a General Recommendation on 'temporary special measures' explaining that these measures are part of a necessary strategy by States parties directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their rights.<sup>11</sup> The duration of a temporary special measure should be determined by functional result in response to a problem rather than by a predetermined passage of time.<sup>12</sup>

The Committee on Economic Social and Cultural Rights (CESCR) has also found that 'discrimination against some groups is pervasive and persistent and deeply entrenched in social behaviour and organisation'.<sup>14</sup> Catarina de Albuquerque, as Special Rapporteur on the human right to safe drinking water and sanitation, explained the particular impact of **stigma** on systemic discrimination.<sup>15</sup> She defined stigma as a deeply entrenched sociocultural phenomenon, which lies at the root of human rights violations and allows those violations to be perceived as 'acceptable' by society.<sup>16</sup> Targets of stigma are always persons who do not fit the 'social norm'. This may include homosexuals, homeless persons, people with HIV/AIDS, or persons from a specific caste or race.<sup>17</sup> Caste systems also cause stigma and are deeply rooted in segregation - lending traditional 'legitimacy' to discrimination.<sup>18</sup> People who belong to particular tiers of the caste system are often considered 'untouchable' and are systematically excluded from all aspects of society.<sup>19</sup>

<sup>11</sup> *Ibid.* Para. 18

<sup>12</sup> *Ibid.* Para. 20

<sup>13</sup> Constitutional Court (1998) *City Council of Pretoria v. Walker*, Constitutional Court of South Africa, Case CCT 8/97 (1998). Para. 5, 119. Available at: <http://www.saflii.org/za/cases/ZACC/1998/1.html>

<sup>14</sup> Committee on Economic Social and Cultural Rights, General Comment No. 20, E/C.12/GC/20, 2009, para. 12.

<sup>15</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, *Stigma and the realisation of the rights to water and sanitation*, 2012, A/HRC/21/42, para.4.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*, para. 13.

<sup>18</sup> *Ibid.*, para. 32.

<sup>19</sup> *Ibid.*, para. 33.

*During a mission to Slovenia, the former Special Rapporteur on the human right to safe drinking water and sanitation described how Roma communities suffer from pervasive negative stereotyping, social exclusion and denial of fundamental human rights.<sup>20</sup> Many Roma communities lack water and sanitation facilities causing significant problems for daily life. Women indicated that they were ashamed of the conditions in which they had to practice menstrual hygiene; and children did not want to go to school because they were teased by other students for being “smelly”.<sup>21</sup> The Special Rapporteur argues that stigma has a self-fulfilling and circular nature: Roma are stereotyped as being dirty, smelly and unclean while being denied access to water and sanitation.<sup>22</sup> Moreover, well-meant interventions can sometimes even reinforce stigmatization. Some municipalities in Eastern Europe have implemented shower programmes in schools, encouraging Roma children to take a shower before entering the classroom – with the unintended effect of identifying them as being too dirty to attend school- and as such further entrenching their stigmatization.<sup>23</sup>*

## Discrimination towards specific groups and individuals

Patterns of marginalisation and exclusion are present all over the world. Some grounds of discrimination – such as gender or disability – appear in almost every country, while additional grounds may also exist in other countries.<sup>24</sup>

### **Groups and individuals particularly disadvantaged in access to water, sanitation and hygiene**

Examples of groups and individuals who commonly suffer disadvantages with regard to WASH are outlined below – they are grouped according to the prohibited grounds of discrimination as set out above. This is however not an exhaustive overview of discrimination or marginalisation of specific groups or individuals.

#### **Sex and gender**

Women and girls experience discrimination and inequalities in the enjoyment of the human rights to water and sanitation in various ways. In many parts of the world, women and girls bear the primary responsibility for domestic tasks based on assigned gender roles.

<sup>20</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, mission to Slovenia, July 2011, A/HRC/18/33/Add.2, paras. 33-36.

<sup>21</sup> Ibid.

<sup>22</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Stigma and the realization of the human rights to water and sanitation, July 2012, A/HRC/21/42, para. 31.

<sup>23</sup> Ibid.

<sup>24</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, Realising the human rights to water and sanitation: A Handbook, 'Principles', 2014, p. 21.

<sup>25</sup> WHO/UNICEF, Progress on drinking water and sanitation, update 2012, p. 31.



Studies indicate that in sub-Saharan Africa 71% of the burden of collecting water falls on women and girls.<sup>25</sup> Women are more vulnerable to severe consequences from water and sanitation related diseases when they are pregnant while at the same time safe water and hygiene are key to preventing neonatal deaths.<sup>26</sup> Women and girls are also predominantly responsible for caring for relatives who have become ill including as a result of unsafe water and sanitation. Girls are known to drop out of school due to their caring and domestic tasks, as well as when sanitation and menstrual hygiene facilities are not available at schools.<sup>27</sup> In this regard, the consequent lack of schooling and educational opportunities, as well as the burden of unpaid care work, are factors that discriminate against women in the labour market. Women and girls are also at risk of physical, mental and sexual violence when they travel long distances to fetch water<sup>28</sup>, visit public toilet blocks or go out at night for open defecation.<sup>29</sup> In a research study conducted by Amnesty International, women and girls reportedly suffered rape and other forms of sexual violence while attempting to use toilets mostly at night but sometimes even during the day.<sup>30</sup>

## Gender-based violence in India

*In May 2014, the media reported an incident of rape and hanging of two teenage girls from a disadvantaged caste in Uttar Pradesh, India, while on their way to defecate in the open.<sup>31</sup>*

*Women living in urban slums of Delhi reported specific incidents of girls under 10 «being raped while on their way to use a public toilet» in a 2011 study.<sup>32</sup>*

*In one slum they reported that when they went out in the open to defecate, local boys stared at them, made threats, threw bricks and even stabbed them. Others said they faced «lewd remarks, physical gestures and rape when they relieved themselves in the bushes».<sup>33</sup>*

*Women without toilets at home are clearly vulnerable to sexual violence when travelling to and from public facilities or open fields; risks can be reduced at the very least when women and girls have access to toilets closer to their home.*

<sup>26</sup> Simavi, *Getting it Right: Improving maternal health through water, sanitation and hygiene*, 2012. P.2. available at: [http://www.simavi.nl/assets/Uploads/Simavi-Publicatie\\_Getting-It-Right.pdf](http://www.simavi.nl/assets/Uploads/Simavi-Publicatie_Getting-It-Right.pdf)

<sup>27</sup> OHCHR/WHO/Un-Habitat, *Fact Sheet on the right to water*, 2010, p. 13.

<sup>28</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, *Report on the mission to Egypt*, A/HRC/15/31/Add.3, 2010, para. 22.

<sup>29</sup> See for instance, *Sanitation and Hygiene Applied Research for Equity (Share), Violence, gender and WASH practitioners toolkit*, available at: [www.sharesearch.org/Page/Detail/Equity#WASH](http://www.sharesearch.org/Page/Detail/Equity#WASH)

<sup>30</sup> Amnesty International had conducted an investigation in Kibera, an informal settlement in Nairobi. Amnesty International, *Insecurity and indignity: Women's experiences in the Slums of Nairobi, Kenya*, 2010. P. 21

<sup>31</sup> See for example BBC news, 30 May 2014, 'Why India's sanitation crisis kills women.' <http://www.bbc.com/news/world-asia-india-27635363>

<sup>32</sup> See "Sanitation and Hygiene Applied Research for Equity (SHARE)" available at: [http://www.sharesearch.org/LocalResources/VAW\\_India.pdf](http://www.sharesearch.org/LocalResources/VAW_India.pdf)

<sup>33</sup> Ibid. P. 5



*States should “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”.*

*Committee on Economic, Social and Cultural Rights, General Comment n°15*

Women's sanitation needs are often not considered, particularly with regard to menstrual hygiene management where taboos deter women from voicing their needs and prohibit their active involvement in decision-making and planning processes (see section on Participation). The taboo and stigma surrounding menstruation contributes to the lack of attention to this natural function.

On average, a woman menstruates 3,500 days of her life, yet little attention is given to her menstrual hygiene needs.<sup>34</sup> Many girls are forced to use unhygienic sanitary methods, such as rags, dirt, ashes or newspaper to collect menstrual fluid as other methods are unaffordable, unavailable or unknown due to stigma and taboo. Many traditional practices or beliefs consider menstruation as unclean or impure.<sup>35</sup> In Nepal the traditional practice of *chaupadi* dictates that women from some communities in the mid-west are confined in secluded huts for the duration of their menstruation.<sup>36</sup> When households share facilities, women and girls may be required by social norms of privacy to use toilets only after dark, thus risking their safety. In other instances, it might not be socially acceptable for them to venture out after dark, limiting their access to sanitation facilities.<sup>37</sup>

Such practices also affect women's economic activities. The lack of adequate sanitation facilities in markets and workplaces often leads women to avoid them during menstruation, to the detriment of their economic participation.

It is important to note that taboos and stigmas surrounding menstruation are common globally. In an experiment in the USA, participants were exposed to a woman who ostensibly accidentally dropped either a tampon or hair clip from her handbag. Dropping the tampon led to lower evaluations of her competence, decreased liking for her and a tendency to avoid sitting close to her.<sup>38</sup>

<sup>34</sup> WSSCC, *Highlights Report - Celebrating Womanhood: Menstrual Hygiene Management*, March 2013.

Available at: [http://www.wsscc.org/sites/default/files/content/Research\\_article\\_files/mhm\\_8\\_march\\_highlights\\_report.pdf](http://www.wsscc.org/sites/default/files/content/Research_article_files/mhm_8_march_highlights_report.pdf)

<sup>35</sup> See for an overview of religious practices and beliefs related to menstruation: [http://www.wateraid.org/~media/Files/Global/MHM%20files/Module1\\_HR.pdf](http://www.wateraid.org/~media/Files/Global/MHM%20files/Module1_HR.pdf)

<sup>36</sup> UN Resident and Humanitarian Coordinator's Office, *Field Bulletin, Chaupadi in the Far-West*, available at: [www.ohchr.org/Documents/Issues/Water/ContributionsStigma/others/field\\_bulletin\\_-\\_issue1\\_april\\_2011\\_-\\_chaupadi\\_in\\_far-west.pdf](http://www.ohchr.org/Documents/Issues/Water/ContributionsStigma/others/field_bulletin_-_issue1_april_2011_-_chaupadi_in_far-west.pdf)

<sup>37</sup> I.T. Winkler, M. L. Satterthwaite, C. de Albuquerque, *Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector*, New York University School of Law, Working paper No. 14-48, September 2014. P. 43

<sup>38</sup> T. Roberts, J. L. Goldenberg, C. Power, T. Pyszczynski, 'Feminine protection': *The effects of menstruation on attitudes towards women*, *Psychology of Women Quarterly*, 26 (2002), p. 131–139.



Equality of women and men in law does not automatically lead to a change on the ground, as inequalities are often deeply rooted in social structures. There is little recognition of the burden women bear as water managers and cleaners, and this gendered work is unremunerated.<sup>39</sup> A deeper analysis of women's differential circumstances is required in order to design programmes and policies that not only respond to women and girls' lack of access to water and sanitation, but also contribute towards transforming discriminatory norms and social structures which perpetuate women and girls' inequalities and denial of rights in all spheres, including water and sanitation.<sup>40</sup>

#### **Race, ethnicity, religion, national origin, birth, caste, language, and nationality**

In some countries, indigenous peoples, pastoralists and/or nomadic communities lack access to safe water and sanitation in disproportionate numbers.<sup>41</sup> In Nepal data revealed inequalities faced by a religious minority: 37% of the majority Hindu population practiced open defecation as against 70% of the Muslim population.<sup>42</sup>

Migrant workers or asylum seekers often face difficulties in accessing water and sanitation, as host States do not make such facilities available to them.<sup>43</sup> Migrants in irregular situations – such as those residing in a country without a required permit – are in a persistently vulnerable position, for fear of approaching public authorities. Deep- rooted caste discrimination may result in a lack of options but to engage in degrading jobs, such as manual scavenging.<sup>44</sup>

#### **Disability, age and health status**

People with disabilities are disproportionately represented among those that do not enjoy their rights to water and sanitation, as public water and sanitation facilities are often not designed to meet their needs.<sup>45</sup> Accessibility problems also apply to children, (chronically) ill and older people as facilities may not be within easy and safe reach.<sup>46</sup> Chronically ill people maybe neglected or excluded on account of stigma – that sharing latrines can transmit diseases such as HIV/AIDS.<sup>47</sup>

<sup>39</sup> UN Women, *2011-2012 Progress of the World's Women, in pursuit of justice*, p. 36. Available at: <http://progress.unwomen.org>

<sup>40</sup> *Ibid.* p. 25.

<sup>41</sup> UN independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, *Report on the mission to Costa Rica*, A/HRC/12/24/Add.1, 2009, para. 48 & UN Special Rapporteur on the human right to safe drinking water and sanitation, *Mission to USA*, A/HRC/18/33/Add.4, 2011, para.61-69

<sup>42</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, 'Principles'*, 2014, p. 22.

<sup>43</sup> European Federation of National Organisations Working with the Homeless, *Child Homelessness in Europe - an Overview of Emerging Trends*, June 2007, p. 13. & IOM, WHO, OHCHR, *International Migration, Health and Human Rights*, 2013. p. 24.

<sup>44</sup> Human Rights Watch, *cleaning Human Waste, Manual Scavenging, Caste and Discrimination in India*, 2014, available at: <http://www.hrw.org/node/128150>

<sup>45</sup> UN independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, *Joint Report on the mission to Bangladesh*, A/HRC/15/55, 2010, para 21.

<sup>46</sup> See for more information on how disability and ageing issues can be incorporated into WASH programmes in a study by WaterAid, WEDC and SHARE: «Mainstreaming disability and ageing in water, sanitation and hygiene programmes. Available at: <http://www.wateraid.org/news/news/mainstreaming-disability-and-ageing-in-water-and-sanitation-programmes>

<sup>47</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, 'Principles'*, 2014, p. 23.



### Property, tenure, residence, economic and social status

Global monitoring shows a stark discrepancy between persons living in rural and urban areas. In 2012, 3.6% of the urban population lacked access to an improved water source against 18.8% of the rural population. In urban areas 20.4% of the population lacked access to an improved sanitation facility, against 52% in rural areas.<sup>48</sup>

The number of people lacking access to safe water and sanitation in urban areas is increasing due to rapid urbanisation that is outpacing public services.<sup>49</sup> There is a stark discrepancy between service provision in formal and informal areas in cities. Persons in informal settlements often lack access to safe WASH services or pay disproportionate amounts of their income on bottled water. Governments often refuse to provide services to these areas for fear of appearing to formalise and legalise informal settlements.<sup>50</sup> Persons in informal settlements in turn can be reluctant to claim water and sanitation services: fearing eviction, they rather avoid interference of the government. There is a need for more accurate data on informal settlements in order to reveal the precise scope of existing inequalities in urban areas.<sup>51</sup>

Homeless people initially lack affordable public facilities. Public urination and defecation is often criminalised and regulations that aim to keep cities clean may discriminate against homeless people who have no other option than to relieve themselves in public spaces.<sup>52</sup>

As highlighted by the Special Rapporteur on extreme poverty and human rights, people living in poverty are seriously affected by limited access to WASH services, as they are disproportionately affected by diarrhoeal diseases. The poor are restricted in the enjoyment of many other human rights as they often live in informal settlements without adequate service provision and suffer most from poor resource management, contamination and climate change.<sup>53</sup> Poverty often correlates with other grounds of discrimination: the examples of groups and individuals above are often paired with a life in poverty.

<sup>48</sup> WHO/UNICEF Joint Monitoring Programme, *Progress on Drinking Water and Sanitation Update 2014*. Available at: [http://www.who.int/water\\_sanitation\\_health/publications/2014/jmp-report/en/](http://www.who.int/water_sanitation_health/publications/2014/jmp-report/en/)

<sup>49</sup> See: <http://www.aquafed.org/page-5-121.html>

<sup>50</sup> *Ibid.*

<sup>51</sup> I.T. Winkler, M. L. Satterthwaite, C. de Albuquerque, *Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector*, New York University School of Law, Working paper No. 14-48, September 2014. P. 38-39

<sup>52</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, *Mission to USA*, A/HRC/18/33/Add.4, 2011, p. 13

<sup>53</sup> *Final draft of the guiding principles on extreme poverty and human rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, 8 July 2012, A/HRC/21/39, para 77.

<sup>54</sup> CESCR, *General Comment No. 15*, (E/C.12/2002/11), para. 20



### Other grounds

There are multiple prohibited grounds of discrimination that may have an impact on access to water and sanitation. These include, for example, political or other opinion, marital and family status or, as mentioned above, sexual orientation and gender identity.<sup>54</sup> Also, persons in vulnerable situations or those who rely exclusively on amenities provided by the State must be given special attention. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated, for example, that in many countries, “authorities simply do not regard it as their responsibility to provide detainees with the most basic services necessary for survival, let alone for a dignified existence or [...] an ‘adequate standard of living’.”<sup>55</sup> States should provide water and sanitation services for people placed in institutions such as prisons, refugee camps, hospitals, care centres and schools.<sup>56</sup>

### Discrimination on multiple grounds

Individuals or groups often face discrimination on more than one prohibited ground, which has an accumulative effect. For example, a girl who lives in an informal settlement may face multiple discriminations in access to water and sanitation, because of both tenure status and gender. She may not attend school because there are no menstrual hygiene facilities available, and she lives in informal housing, for which no regular service provision is arranged. She is therefore exposed to a risk of assault if she needs to find a secluded spot for open defecation or walk to a community toilet at dark.<sup>57</sup> Such cases of multiple discriminations need to be analysed through an intersectionality lens.

<sup>55</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, M. Nowak, A/64/215, 3 August 2009, para. 43

<sup>56</sup> Report of the Special Rapporteur El Hadji Guisse, E/CN.4/Sub.2/2005/25, 11 July 2005, para. 3.3.

<sup>57</sup> Sanitation and Hygiene Applied Research for Equity (Share), Violence, gender and WASH practitioners toolkit, available at: [www.sharesearch.org/Page/Detail/Equity#WASH](http://www.sharesearch.org/Page/Detail/Equity#WASH)



## Realising the human rights to water and sanitation

The United Nations (UN) and its Member States have recognised the human rights to water and sanitation, through the ratifications of international instruments and by supporting one or more international documents, such as resolutions or declarations.<sup>58</sup>

Realising the human rights to water and sanitation for all on a non-discriminatory and equal basis includes specific obligations and responsibilities for all actors involved.

<sup>58</sup> The human rights to water and sanitation are derived from the right to an adequate standard of living and the right to health, guaranteed under Art. 11 and 12 of the ICESCR. States recognised these rights *inter alia* in General Assembly (GA) Resolution A/RES/64/292 of 2010, Human Rights Council (HRC) Resolution A/HRC/RES/15/9 of 2010, GA Resolution A/RES/68/157 and HRC Resolution A/HRC/RES/24/18 of 2013. For more international standards on the rights to water and sanitation, please visit: <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/InternationalStandards.aspx>. There are also numerous regional instruments in which States have recognised and committed to fulfil the human rights to water and sanitation. See for example: Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1999.



### Obligations of States

Human rights define individuals as rights-holders entitled to water and sanitation, and States, as duty-bearers, must guarantee access to water, sanitation and hygiene (WASH) to all on an equal and non-discriminatory basis. According to the CESCR, State parties to the ICESCR have obligations to respect, protect and fulfil economic, social and cultural rights.<sup>59</sup>

**Respect:** States are required to refrain from action that will unjustifiably interfere with the rights to water and sanitation and principles of non-discrimination and equality. The obligation to respect also implies that the State may not endorse, perpetuate and reinforce discriminatory and stigmatising practises. Examples include the criminalisation of the homeless in accessing public facilities for water and sanitation or continuation of the outlawed practice of manual scavenging.<sup>60</sup>

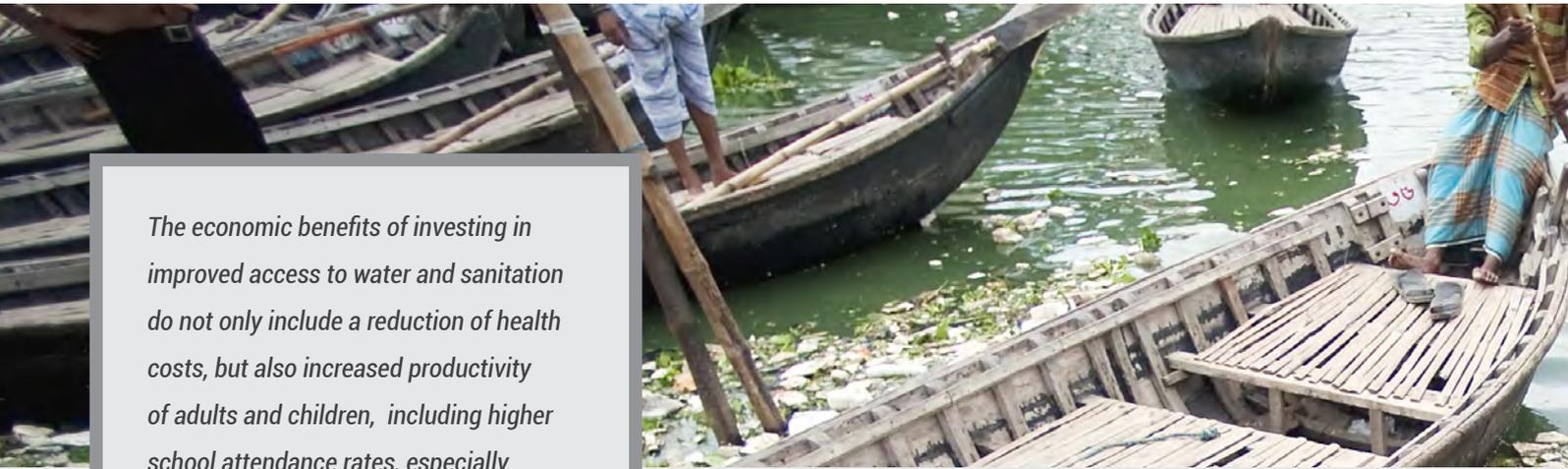
**Protect:** The obligation to protect requires State action to prevent and remedy infringements to the rights to water and sanitation by third parties. Private actors may affect those rights in different ways, including in their role as service providers whereby they are required to provide services in a non-discriminatory and equal manner. This applies to corporations, but also to other non-State actors, such as NGOs or international agencies that are involved in service provision.

**Fulfil:** States are responsible for ensuring that conditions are in place for the enjoyment of the human rights to water and sanitation on an equal basis. States must progressively realise the human rights to water and sanitation, which means that they must take deliberate, concrete and targeted steps – individually and through international assistance and cooperation – towards fully realising the rights guaranteed under the ICESCR. States must do so as expeditiously and effectively as possible and using the maximum of their available resources.<sup>61</sup>

<sup>59</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 15, para. 21

<sup>60</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, Common violations of the human rights to water and sanitation, 2014, A/HRC/27/55, para. 60.

<sup>61</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), on the nature of States parties' obligations, para. 2.



*The economic benefits of investing in improved access to water and sanitation do not only include a reduction of health costs, but also increased productivity of adults and children, including higher school attendance rates, especially for women and girls. The World Health Organisation estimates that the global economic return on sanitation spending is US\$ 5.5 per US dollar invested, and on water US\$ 2.0 per US dollar invested.<sup>67</sup> Likewise, focusing on non-discrimination and equality will also benefit the society as a whole, as inequalities hinder efforts in poverty reduction and economic growth. In fact, the 2012 World Economic Forum cited inequality as one of the top global risks.<sup>68</sup>*

#### **Progressively eliminating inequalities in access to water and sanitation**

The ICESCR recognises in Article 2 that rights cannot be realised for everyone from one day to the other – but nonetheless requires States to work progressively to fully realise these rights for everyone. Human rights law gives a choice of means, but not a choice on whether to take action or not. The principle of progressive realisation as outlined above implies that States must take steps to work towards an outcome whereby everyone will have access to adequate water and sanitation. This is only possible if those with the least adequate access and service levels are targeted first – and when all barriers to service provision are lifted.<sup>62</sup> States are therefore required to use affirmative action, and to create and implement strategies that close the gaps between the 'haves' and 'have-nots'.

States must ensure levels of basic access for all before moving to higher levels of service in areas that already have access to basic services.<sup>63</sup> In addition, States must promote non-discrimination in their programmes and policies, and aim at eliminating existing inequalities (See Legislation, strategies, target setting and budgeting below).

This also applies to the future development framework. There is no doubt that the Post-2015 framework will influence fundamental decisions on policy-making, priority setting and budgeting, and will therefore have a considerable impact on the realisation of the human rights to water and sanitation.<sup>64</sup> A lesson learned from the Millennium Development Goals (MDGs) framework is that inequalities have been

<sup>62</sup> H. Neumeyer, L. van de Lande, *The importance of words: Why equality should be key in water and sanitation service provision*, *Waterlines* vol. 33, October 2014, p. 2.

<sup>63</sup> *Ibid.*

<sup>64</sup> I. T. Winkler, M. L. Satterthwaite, C. de Albuquerque, *Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector*, New York University School of Law, Working paper No. 14-48, September 2014, p. 3

<sup>65</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, *Integrating non-discrimination and equality into the post-2015 development agenda for water, sanitation and hygiene*, 2012, A/67/270.

<sup>66</sup> United Nations Development Group, *A Million Voices: The World We Want - a sustainable future with dignity for all*, 2013, p. 142.

Available at: [www.ohchr.org/Documents/Issues/MDGs/UNDGAMillionVoices.pdf](http://www.ohchr.org/Documents/Issues/MDGs/UNDGAMillionVoices.pdf) & I. T. Winkler, M. L. Satterthwaite, C. de Albuquerque, *Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector*, New York University School of Law, Working paper No. 14-48, September 2014, P.3



masked by averages. States are required to reach certain targets, without the requirement to specifically focus on those individuals and areas that are currently worst off.<sup>65</sup> In reaching targets, States often focus on those that are easiest to meet – leaving behind the ones most in need and thereby widening the inequality gap. The new development agenda will advance significantly when equality and non-discrimination become central and the choice of goals, targets and indicators is ‘filtered through human rights law’.<sup>66</sup>

#### Identification of discrimination and inequalities

If discriminatory processes are not identified and understood, it is impossible to develop effective policies and programs to address them. From a human rights perspective, data needs to be disaggregated along specific criteria to reveal existing inequalities. In their reporting guidelines, general comments and concluding observations, treaty bodies repeatedly require that data and information be disaggregated by States. There are also UN guidelines regarding the form and content of reports to be submitted by States parties explaining that reports should provide relevant statistical data, disaggregated by sex, age, and population groups.<sup>69</sup> Inequalities are typically not only revealed in income groups but also rural – urban populations, formal and informal areas in cities, disparities based on gender and other grounds and the de facto exclusion of marginalised groups.<sup>70</sup> Disaggregated data is essential in order to fully understand the root causes of inequalities, including why, where and how discrimination occurs.

<sup>67</sup> WHO, *Global costs and benefits of drinking-water supply and sanitation interventions to reach MDG target and universal coverage*, WHO/HSE/WSH/12.01, 2012.

<sup>68</sup> *ibid.* & World Economic Forum, *Global Risks Report*, 7th edition, 2012. P. 19.

<sup>69</sup> *Report of the Secretary-General, Compilation of Guidelines on the Form and Content of Reports to be submitted by States parties to the International Human Rights Treaties*, HRI/GEN/2/Rev.6, 3 June 2009.

<sup>70</sup> JMP Working Group on Equity and Non-Discrimination Final Report, 2012, p. 1.

<sup>71</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, ‘Monitoring’*, 2014, p. 11.

## Outlawing manual scavenging in India – a lack of both identification and implementation

*In the Indian Supreme Court case Safai Karmachari Andolan & Others v. Union of India & Others of March 2014<sup>73</sup> civil society organizations together with affected individuals had filed a writ petition stating that the practice of manual scavenging is continuing, although illegal. The Court had previously directed the State to identify affected individuals. The subsequent survey conducted by the State only revealed a minuscule proportion of the number of people engaged in manual scavenging. The Court noticed this failure and noted that the petitioners, with their limited resources, had managed to identify 1098 persons in manual scavenging in the State of Bihar, while the State claimed to have identified only 136.<sup>74</sup> It stated that ‘the aforesaid data collected by the petitioners makes it abundantly clear that the practice of manual scavenging continues unabated’.<sup>75</sup>*

*The Indian Government has passed laws and adopted policies aimed at ending caste discrimination - including its most recent Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (2013 Act).*

*However, according to some NGOs, the Indian Government needs to do more to implement the recent measures, including the 2013 Act.<sup>77</sup>*



There is currently a lack of data on discriminatory practices, which is not accidental, as neglect often goes hand in hand with a low political profile.<sup>71</sup> In many countries data on access to services in informal settlements do not appear in official statistics, even when they represent a high proportion of the population.<sup>72</sup> In the process of identifying groups and individuals who are disadvantaged, it is important to survey the population and further investigate as soon as discrimination against certain groups or individuals is revealed.

#### Legislation, strategies, target setting and budgeting

A strong legal framework must guarantee that all persons enjoy the right to water and sanitation on the basis of non-discrimination and equality. Both the constitution and laws should contain provisions on non-discrimination and equality, preferably with the inclusion of the duty to work towards substantive equality. Such laws should aim at eliminating both formal and substantive discrimination and take into view both public and private actors.<sup>78</sup>

*As indicated by the Global Annual Assessment for Water and Sanitation (GLAAS) 2014 report, two thirds of the 94 countries recognize both drinking water and sanitation as a human right in national legislations.<sup>79</sup> National policies for drinking water and sanitation are largely in place with over 80% of countries having approved national policies.<sup>80</sup> The report however also indicates a large gap between aspirations and reality: Less than one quarter of the 94 countries reported having universal access targets for sanitation and less than one third of countries had universal access targets for drinking-water.<sup>81</sup> Important to note too is that less than 25% of the countries reported that they have national plans in sanitation which are being fully implemented, funded and regularly reviewed.<sup>82</sup> See the section on Monitoring below.*

<sup>72</sup> Ibid

<sup>73</sup> *Safai Karmachari Andolan & Ors. v. Union of India & Ors., Supreme Court of India, Writ Petition (Civil) No 583 of 2003, judgment, March 27, 2014.* Available at: <http://indiankanoon.org/doc/6155772/>

<sup>74</sup> Ibid. para. 10.

<sup>75</sup> Ibid. Para. 15

<sup>77</sup> Human Rights Watch, *cleaning Human Waste, Manual Scavenging, Caste and Discrimination in India*, 2014, available at: <http://www.hrw.org/node/128150> P. 13

<sup>78</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 20, E/C.12/GC/20, 2009, para.37.

<sup>79</sup> World Health Organization, *UN-Water, UN-water global analysis and assessment of sanitation and drinking-water (GLAAS) 2014 – report, Investing in water and sanitation: increasing access, reducing inequalities*, p. 14. Available at: [http://www.who.int/water\\_sanitation\\_health/publications/glaas\\_report\\_2014/en/](http://www.who.int/water_sanitation_health/publications/glaas_report_2014/en/)

<sup>80</sup> Ibid. p. 15

<sup>81</sup> Ibid. p. 66



Regulations should contain affirmative action for marginalised groups and individuals. States must map existing legislation, policies and strategies, and assess the composition of the beneficiaries as well as the extent of the benefits. Based on this review corresponding adjustments should be planned and implemented.<sup>83</sup>

Targets must be set to first achieve basic service levels for all with subsequent improvements to be made over time. Targets must be ambitious, but realistic. The ultimate goal of universal coverage should be broken down into more specific time-bound targets. (See section on monitoring).

National strategies should accordingly be developed, and guide the development of, policies and corresponding allocation of budgets. One of the major causes of systemic violations of the rights to water and sanitation relates to the failure of the State to raise, allocate and use necessary resources; for example to direct resources to meeting the needs of vulnerable or marginalized communities.<sup>84</sup>

Recent assessments show that the obligation to focus on eliminating inequalities is often not met. Some states fail to allocate resources towards particularly low-income communities that lack even basic access. Measures to reduce disparities between the rich and poor are not being consistently applied. Only 15% of low and middle-income countries apply financial measures that are targeted towards reducing inequalities in access to sanitation for the poor.<sup>85</sup>

Water and sanitation budgets may not reflect a State's maximum available resources. In the Blue Moonlight case, the South African Constitutional Court found that "it is not good enough for the City to state that it has not budgeted for something, if it should indeed have planned and budgeted for it in the fulfilment of its obligations."<sup>86</sup>

**Root causes** must be identified and tackled – otherwise laws and policies will not be effective: For instance, outlawing manual scavenging will not automatically stop this practice and address the discrimination against individuals. Likewise, making menstrual hygiene facilities available to women and girls alone does not tackle the taboo.

<sup>82</sup> Ibid. p. 16 - 22

<sup>83</sup> UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water - Tracking national financial flows into sanitation, hygiene and drinking-water, WHO/HSE/WSH/12.05, July 2012, p. 3.

<sup>84</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, Common violations of the human rights to water and sanitation, 2014, A/HRC/27/55, para. 41-42.

<sup>85</sup> Investing in water and sanitation: Increasing access, reducing inequalities - Special Report for the Sanitation and Water for All (SWA) High-Level Meeting (HLM) 2014, p.3.

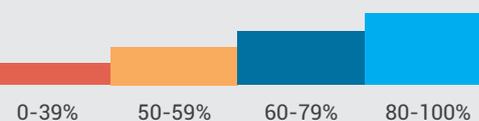
<sup>86</sup> Constitutional Court of South Africa, City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties et al., Case CCT 37/11, [2011] ZACC 33.

**Table 1**

Measures of inequality for those living in poverty

	World Bank country classification by income	Number of countries	GOVERNANCE Universal access policy specifically includes measures for the poor	MONITORING Monitoring system tracks progress in extending services for the poor	FINANCE Finance measures to reduce disparity between the rich and poor are consistently applied
SANITATION	Low income	30	80%	40%	13%
	Lower middle income	24	83%	54%	12%
	Upper middle income	24	71%	29%	21%
WATER	Low income	30	80%	43%	23%
	Lower middle income	24	83%	58%	21%
	Upper middle income	24	71%	42%	25%

Percentage of countries in the category with equity measure in place:





### Service provision

Informal service provision

In many cases, the State does not provide nor delegate service provision. In such cases, the population relies entirely on informal solutions. The majority of people living in informal settlements rely on unprotected sources or informal service provision. Therefore the poorest and most marginalised groups and individuals are most likely to lack access to safe and affordable water and sanitation.

Where there is no formal water and sanitation supply, people rely on unprotected water sources and on informal service provision through local entrepreneurs for on-site sanitation, water trucks, jerry cans and water kiosks.<sup>87</sup> Not only is informal service provision often unreliable and unsafe – services often costs more than formal, regulated services. Water bought from informal vendors can be ten to twenty times more expensive than water from the formal public utility.<sup>88</sup> In Colombia for example, the water price was measured to be \$0.55 per cubic meter from the public utility and \$5.50 from tanker trucks.<sup>89</sup>

## Affordability

*One of the greatest barriers in accessing WASH service provision is the cost involved – in terms of both money and time – for the user. When WASH services are not 'affordable', it means that not enough money is available for water, sanitation and other basic needs, including for food, healthcare, education and housing.*

*The burden of costs is much higher for people who already live in poverty. In the UK regulatory authorities define any expenditure on water above 3% of the household spending as an indicator of hardship.<sup>90</sup> Studies in Africa and Asia show that the poorest 20% of the population spend between 3 to 11% of their household income on water. This calculation does not include the cost of the time women spend on collecting water and managing water and sanitation facilities.<sup>91</sup>*

<sup>87</sup> C. de Albuquerque and V. Roaf, *On the Right Track – Good practices in realising the rights to water and sanitation*, 2012, p. 58.

<sup>88</sup> UNDP Development Report 2006, p. 83.

<sup>89</sup> *Ibid.*

<sup>90</sup> Human Development Report 2006, p. 37, 38, 51.

<sup>91</sup> *Ibid.*



Informal service provision is extremely problematic for tracking accountability in terms of fixing responsibility and relevant complaint mechanisms.

Although informal small-scale providers often offer poor quality services for exorbitant prices, many people would be far worse off without these services.<sup>92</sup> Prohibition of informal services is therefore not always the best solution unless the State is able to instantly step in. The Special Rapporteur on the human right to safe drinking water and sanitation noted that human rights law does not prescribe the choice of policy and approach to service provision – the State can work towards solutions in several ways.<sup>93</sup> Steps must be taken to ultimately ensure that all people are able to enjoy service provision that is fully human rights compliant. States can choose regulation, informal services, or formal provision.<sup>94</sup>

#### Formal service provision

Networked supply of water and sanitation requires significant investments including recovery of funds from tariffs.<sup>95</sup> Direct full cost

recovery may render services unaffordable for many households, especially the poorest. While the aim of recouping investment costs and running service provision effectively is important for ensuring the sustainability of the system, it must never lead to situations where services become unaffordable. Adequate regulation, special safeguards and supplementary social policies to ensure inclusiveness, such as safety nets and subsidies, are therefore necessary.<sup>96</sup> Disconnection policies often disproportionately impact marginalized persons on the basis of race, class and gender. A study by Massachusetts Global Action in the USA examined the racial impact of the water pricing and disconnection policies of the Boston Water and Sewer Commission, and found that for every 1% increase in the city ward's percentage of people of colour, the number of threatened cut-offs increases by 4%.<sup>97</sup>

The inability to pay must never result in the disconnection of water and sanitation services. States must therefore put adequate procedural safeguards in place in cases of non-payment so that prior to any disconnection, the reason for non-payment is established. Users must then be given the chance to pay arrears or – if they are unable to pay – must receive services free of charge.<sup>98</sup>

<sup>92</sup> Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Non-State service provision, A/HRC/15/31, 2010, para. 53.

<sup>93</sup> C. de Albuquerque and V. Roaf, *On the Right Track – Good practices in realising the rights to water and sanitation*, 2012, p. 58

<sup>94</sup> Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Non-State service provision, A/HRC/15/31, 2010, para. 53.

<sup>95</sup> C. de Albuquerque and V. Roaf, *On the Right Track – Good practices in realising the rights to water and sanitation*, 2012, p. 79.

<sup>96</sup> Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Non-State service provision, A/HRC/15/31, 2010, para. 55.

<sup>97</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, Mission to USA, A/HRC/18/33/Add.4, 2011, para. 50 & Suren Moodliar and Kimberly Foltz, Massachusetts Global Action, "Human Right to Water in the United States," letter to the independent expert, 22 September 2009.

<sup>98</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, 'Frameworks'*, 2014, p. 29.

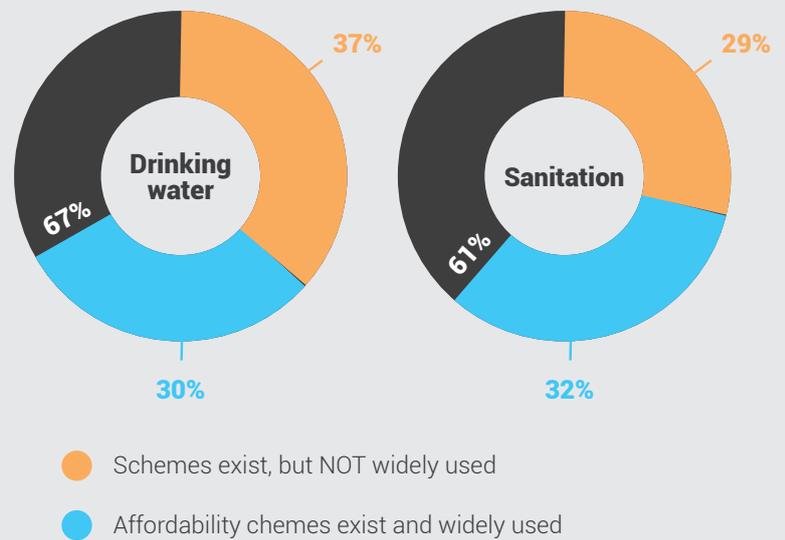


This also applies to service provision provided by private entities.

States must therefore set standards to regulate and monitor performance of service providers. With regard to the affordability of services, it is important that standards on tariffs and connection costs are combined with subsidy structures, payment waivers and other mechanisms such as in kind contributions, so that services are affordable for everyone, including those living in extreme poverty. Contracts that allow third parties to deliver services need to include clauses on affordability of services. States should ensure expansion to areas not yet served; a way to do this is by contractual agreements with service providers.

As indicated by GLAAS 2014, most of the reviewed countries reported that they have developed measures to reduce inequalities by making services more affordable to the poor, by means of inter alia increasing block tariffs, reducing connection fees and establishing free water allocations. However, only half of the 88 responding countries report widespread use of such measures: 17% of the countries consistently apply financial measures to reduce disparities in access to sanitation for the poor, compared to 23% for drinking water.<sup>99</sup>

Per cent of countries (%)\*



Over 60% of countries indicate that affordability schemes exist for drinking-water and sanitation services, however, only half of these schemes are widely used.

<sup>99</sup> GLAAS, *Investing in water and sanitation: Increasing access, reducing inequalities - 2014 Report*, p. 15.

\* Source: *Investing in water and sanitation: Increasing access, reducing inequalities - Special Report for the Sanitation and Water for All (SWA) High-Level Meeting (HLM), GLAAS 2014*

## Selecting technologies – Rwanda

The Rwanda National Water Supply and Sanitation Policy and Strategic Plan of 2010 promotes prioritization of basic services, whereby each person and community has equal right to access basic water services. Priority will be given to “some for all” rather than “all for some.”<sup>101</sup>

Beneficiaries of large systems often only include middle and upper class households, which can reinforce disparities between rich and poor.<sup>102</sup> In Rwanda, prioritizing basic services has helped to eliminate open defecation and increase access to improved sanitation, especially in rural areas.<sup>103</sup> In the allocation of budgets States should therefore – in close consultation with all stakeholders – carefully consider the type of WASH services and the areas to prioritise.



The principle of **non-retrogression** envisages that resources must contribute to the long-term sustainability of measures towards equality in service provision. A retrogressive measure is one that leads to a backward slide in the enjoyment of the human rights to water and sanitation, which may include disconnections or deterioration of service provision. As stated by the CESCR, ‘the burden of proof rests with the State to show that the adoption of any retrogressive measures was based on the most careful consideration of alternatives, full use of available resources, prioritization of disadvantaged groups and by reference to the totality of the rights.’<sup>100</sup>

### Responsibilities of non- State actors

States have the main responsibility to protect individuals and communities against infringements by non-State actors. Nevertheless, non-State actors also have human rights responsibilities and may be held accountable for infringement to human rights.<sup>104</sup>

### Corporate responsibilities

The United Nations Guiding Principles on Business and Human Rights set out a framework to protect and respect human rights and remedy violations. The Human Rights Council welcomed this framework by consensus in its resolution 8/7 in 2008, and in resolution 17/4 of 16 June 2011 the Council unanimously endorsed that the Guiding Principles provide a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

<sup>100</sup> Letter to States parties by the Chairperson of the Committee on Economic, Social and Cultural Rights, 16 May 2012, E/C.12/2007/1, para. 9.

<sup>101</sup> Republic of Rwanda (2010) National Policy and Strategy for Water Supply and Sanitation Services. Ministry of Infrastructure, Kigali, Republic of Rwanda. Available at: [http://www.rura.rw/fileadmin/docs/Board\\_Decisions/WATSAN\\_Policy\\_Strategy.pdf](http://www.rura.rw/fileadmin/docs/Board_Decisions/WATSAN_Policy_Strategy.pdf).

<sup>102</sup> Ibid.

<sup>103</sup> UN Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS), Investing in water and sanitation: Increasing access, reducing inequalities, Special Report for the Sanitation and Water for All (SWA) High Level Meeting (HLM) 2014, p. 12.

<sup>104</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, Common violations of the human rights to water and sanitation, 2014, A/HRC/27/55, para. 32.

<sup>105</sup> The term “responsibility” rather than “duty” is meant to indicate that respecting rights is not currently an obligation that international human rights law generally imposes directly on companies, although elements of it may be reflected in domestic laws. It is a global standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility. See: The UN «Protect, Respect and Remedy» Framework for Business and Human Rights, 2010, available at: <http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-protect-respect-remedy-framework.pdf>



The corporate responsibility<sup>105</sup> to respect human rights means that corporations should act with *due diligence* to avoid infringing on the human rights of others, and to identify, prevent and address any harms that do occur.<sup>106</sup> Corporations should have in place policy commitments to respect rights and to assess human rights impacts, integrate respect for human rights across the corporation internally, and track as well as communicate their performance. The process of due diligence aims to create more openness on whether the many companies that say they meet human rights standards actually meet this responsibility in practice.<sup>107</sup> The responsibility to respect also includes seeking to avoid indirect involvement in human rights abuses conducted by others, including the State.<sup>108</sup> The 'General Principles' of the Guiding Principles on Business and Human Rights state that: *'These Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men'*.<sup>109</sup>

#### **Non –State actors other than business**

Non-State actors Including NGOs and international organisations are taking on an important role in service provision. In such cases, questions arise on ensuring substantive equality, accountability in service provision.<sup>110</sup>

*In 2003, United Nations agencies, in a common understanding, affirmed that:*<sup>114</sup>

- 1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights*
- 2. Human rights standards guide all development cooperation and programming in all sectors and in all phases of the programming process*
- 3. Programmes of development cooperation contribute to the development of the capacities of duty-bearers to meet their obligations and of 'rights-holders' to claim their rights*

<sup>105</sup> OHCHR, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" (2011), p. 13.

<sup>107</sup> The UN «Protect, Respect and Remedy» Framework for Business and Human Rights, 2010, available at: <http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-protect-respect-remedy-framework.pdf>

<sup>108</sup> Ibid.

<sup>109</sup> OHCHR, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" (2011), p. 1. See also: CEO Water Mandate, Guidance for Companies on Respecting the Human Rights to Water and Sanitation: Bringing a Human Rights Lens to Corporate Water Stewardship, 2015. Available at: <http://ceowatermandate.org/files/business-hrws-guidance.pdf>

<sup>110</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, financing for the realisation of the rights to water and sanitation, A/66/255, para 12.

## UNECE - The Equitable Access Score-card

The Score-card is an analytical tool developed by UNECE/WHO that can help Governments and other stakeholders establish a comprehensive overview of the situation of equality in access to water and sanitation. The Score-card lists policy options, and the user is expected to provide and justify a score that summarizes the degree to which a number of selected policy options are being used. It assists Governments to establish a baseline, discuss further actions to be taken, and evaluate progress in equal and non-discriminatory access to water and sanitation.<sup>121</sup>

UNECE, WHO, *The Equitable Access Score-card - supporting policy processes to achieve the human right to water and sanitation, 2013*



International organizations, such as United Nations specialized agencies, and trade and financial institutions, must ensure that their policies and actions respect human rights.<sup>111</sup> Organisations increasingly use a Human Rights Based Approach in their development work instead of a 'needs-based approach': International organisations no longer act purely as providers of services, but instead provide services while supporting the leadership role of governments in their role as duty-bearers, and also strengthen the role of individuals as rights-holders.<sup>112</sup> The human rights based approach constitutes a framework based on international human rights principles, directed towards promoting and protecting these principles.

In practice this means that international organisations should ensure that the assistance they offer is channelled towards countries or regions least able to realise the rights to water and sanitation. Assessments show that aid continues to benefit the relatively well-off rather than low-income communities that lack basic access. At the international level, only half of development assistance directed towards sanitation and drinking water is targeted at regions where 70% of the global unserved live.<sup>115</sup>

A human rights based approach should also include strengthening the capacity of rights-holders to claim their right to WASH. This may include supporting communities to engage in ongoing dialogue and negotiations with their governments in order to realise their rights and strengthen accountability.

<sup>111</sup> Sub-Commissions Guidelines, Report of the Special Rapporteur, El Hadji Guissé, E/CN.4/Sub.2/2005/25, 11 July 2005, section 10.4.

<sup>112</sup> L. Gosling, *Developing a Rights-based approach at WaterAid*, in: *Waterlines*, Vol. 33 No. 4, October 2014. For information on a human rights based approach to water resource management refer to: UNDP, *Water Governance Facility, SIWI, Human Rights-Based Approaches and Managing Water Resources, 2012*. Available at: <http://www.watgovernance.org/documents/WGF/Reports/Human-rights-based-approaches-WGF-report-1-new.pdf>

<sup>114</sup> *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*, see more at: <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>

<sup>115</sup> UN Water *Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS), The challenge of extending and sustaining services, 2012, p. 5*



When resources are insufficient, States must request external or international assistance.<sup>116</sup> Financial institutions may not impose conditions upon assistance for measures that are not human rights compliant; for example, providing loans only if States agree to manage water and sanitation services with 'full-cost recovery', leading to unaffordable service provision.<sup>117</sup>

Promotion of national ownership of development is crucial for the long-term sustainability and accountability of projects sponsored with international support.<sup>118</sup> To ensure effective assistance, it is crucial that international organisations closely collaborate, both with each other and with governments.<sup>119</sup> Development partners can support existing national action plans to reduce disparities in access to water and sanitation and build the capacities of duty-bearers to meet their obligations.<sup>120</sup>

If the government fails to focus on the most marginalised organisations, international organisations can play an important role to strengthen the capacity of communities and civil society to claim rights, support monitoring sensitive to inequalities (see: *Actors involved in monitoring*) or support strategic litigation (see: *conflict resolution, justiciability and access to a remedy*).

The State is ultimately the only entity with the jurisdiction to progressively realise the human rights to water and sanitation for all on an equal basis, and the ultimate obligation to respect, protect and fulfil human rights lies with the Government.<sup>122</sup>

*"United Nations agencies and other international organizations concerned with water, such as WHO, FAO, UNICEF, UNEP, UN-Habitat, ILO, UNDP, 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."*  
*Committee on Economic, Social and Cultural Rights, General Comment No. 15, para. 60.*

<sup>116</sup> *Committee on Economic, Social and Cultural Rights, General Comment No. 3, E/1991/23, para 13.*

<sup>117</sup> *UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, Realising the human rights to water and sanitation: A Handbook, 'Financing', 2014, p. 25*

<sup>118</sup> *UN independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Joint Report on the mission to Bangladesh, A/HRC/15/55, 2010, para. 47*

<sup>119</sup> *For example, in the 2005 Paris Declaration on Aid Effectiveness, donors made commitments to ensure the coherence of their aid programmes.*

<sup>120</sup> *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Planning for realising the rights to water and sanitation, A/HRC/18/33, para. 62.*

<sup>121</sup> *For more information, see: UNECE, WHO, The Equitable Access Score-card - supporting policy processes to achieve the human right to water and sanitation, 2013. Available at: [http://www.unecce.org/fileadmin/DAM/env/water/publications/PWH\\_equitable\\_access/1324456\\_ECE\\_MP\\_WP\\_8\\_Web\\_Interactive\\_ENG.pdf](http://www.unecce.org/fileadmin/DAM/env/water/publications/PWH_equitable_access/1324456_ECE_MP_WP_8_Web_Interactive_ENG.pdf)*

<sup>122</sup> *Ibid.*



## Monitoring progress and efficiency of programs and policies

Monitoring is essential to assess progress in implementation of the human right to safe drinking water and sanitation. Only by implementing strong monitoring mechanisms can governments keep track of the effectiveness of allocated budgets, strategies and policies. Monitoring is therefore an indispensable albeit complex process.

### **International monitoring**

At the international level there is increasing awareness of the need to develop and use disaggregated data in order to reveal and track existing inequalities. The 2014 JMP report demonstrates that this type of disaggregation exposes some of the most common inequalities, namely based on wealth, ethnicity, language and religion, gender, education, and urban vs. rural setting. In addition, the Global Annual Assessment for Water and Sanitation (GLAAS) not only monitors how much funding is committed to water and sanitation by each State and external support agencies, it also reveals whether national frameworks incorporate the human rights to water and sanitation with a focus on disadvantaged groups, monitoring and accountability.



The Millennium Development Goal (MDG) framework remained silent on discrimination and inequalities.<sup>123</sup> UN-Women pointed out that the MDG framework fails to sufficiently address the structural causes of gender-based discrimination.<sup>124</sup> It emphasised that the post-2015 framework must be explicitly designed to reveal who remains invisible and excluded. Goals, targets and indicators must be framed in a way to reduce inequalities and target the most disadvantaged.<sup>125</sup> It is critical that the future development agenda be fully consistent with international human rights law and focus on overcoming inequalities.

Various UN mechanisms monitor the implementation of the human rights to water and sanitation at the international level.<sup>126</sup> These monitoring mechanisms can give precious indications on areas where states, donors, international organizations and other actors need to focus their attention. Treaty bodies, the Universal Periodic Review and Special Procedures are the main mechanisms through which to monitor human rights. (See Annex 2 to this paper).

These mechanisms can be complemented by civil society and NHRIs, who can advocate for the effective implementation of these authoritative conclusions as they reveal information and recommendations that can be used for advocacy at national level.

### National human rights based monitoring

Human rights based monitoring examines water and sanitation in a holistic manner. Indicators must be developed that not only track the provision of water and sanitation on the basis of their normative content, but also monitor the legislative, policy, regulatory and budgeting frameworks required to ensure the realisation of these rights. Moreover, human rights monitoring intends to track whether these frameworks indeed eliminate discrimination and inequalities, are participatory and transparent, and provide for access to information and accountability.<sup>127</sup> States must ensure that data are adequately collected, organised and stored, and made public in a timely, accurate, accessible and useful form.<sup>128</sup> However, disaggregated data alone does not automatically

<sup>123</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, *Integrating non-discrimination and equality into the post-2015 development agenda for water, sanitation and hygiene*, 2012, A/67/270, para. 31.

<sup>124</sup> See: UN Women Position on the Post-2015 Development Agenda - Available at: <http://www.unwomen.org/en/what-we-do/post-2015/un-women-position#sthash.TUww08Cb.dpuf>

<sup>125</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, *Integrating non-discrimination and equality into the post-2015 development agenda for water, sanitation and hygiene*, 2012, A/67/270, para. 44.

<sup>126</sup> Next to the UN mechanisms described in Annex 2 to this paper, there are several other treaties and protocols that have corresponding monitoring mechanisms. For example, a Committee established to the UNECE/WHO-Europe Protocol on Water and Health (1999) may examine compliance issues and make recommendations or take measures if and as appropriate. For more information see: [http://www.unece.org/env/water/pwh\\_bodies/cc.html](http://www.unece.org/env/water/pwh_bodies/cc.html)



result in reduction of inequalities: policy makers need to act on the information that is revealed.<sup>129</sup>

Less than 25% of the countries reviewed by GLAAS 2014 have national plans in sanitation that are being fully implemented, funded and regularly reviewed.<sup>130</sup> Most decisions by governments on water and sanitation are not evidence-based due to a widespread lack of capacity for monitoring. When plans exist for reducing inequalities in access by targeting disadvantaged groups, the outcomes are left unmonitored. Less than half of countries reviewed by GLAAS 2014 track progress in extending water and sanitation services to the poor.<sup>131</sup>

### Development of indicators and benchmarks

As indicated by the Office of the High Commissioner for Human Rights (OHCHR)<sup>132</sup>, monitoring must include the commitments made by the state, the efforts taken to fulfil these commitments and the results achieved. Therefore, structural, process and outcome indicators must be used.

**Structural indicators** monitor the commitments made by States, the legislative and policy framework on non-discrimination and equality and corresponding affirmative action clauses that aim to address inequality in access to water and sanitation. Even when policies are in place to reach vulnerable groups, monitoring the actual progress made in access to service provision on WASH is carried out in less than half of the countries in a 2014 review by GLAAS.<sup>133</sup> **Progress**

**indicators** are therefore needed to monitor the commitments and milestones that ultimately lead to human rights outcomes.<sup>134</sup> Progress indicators must track whether affirmative measures are used to specifically target those excluded and most in need.

**Outcome indicators** serve to monitor whether targets have been achieved: are informal settlements in area X provided with basic water and sanitation that is sufficient, safe, accessible, acceptable and affordable? Has the percentage of girls and women practicing open defecation, especially at night, decreased? Has the gap (in percentage point) or ratio between the rates of coverage of sustainable access to safe drinking water source and sanitation facilities for the best-off group(s) and the worst-off group(s) decreased?

The CESCR recommends that States Parties develop and use indicators and benchmarks, under the different components of the rights, to support the implementation and monitoring of targeted, evidence-based and time-bound policies and programmes. The OHCHR, in collaboration with the Special Rapporteur on the human right to drinking water and sanitation, identified an illustrative list of structural, process and outcome indicators.

The process of determining indicators should allow for flexibility and context-specificity. For example, wealth inequality correlates in many countries to inequalities in access to adequate water and sanitation. Using this indicator exclusively however fails to address the root causes of exclusion. Winkler, Satterthwaite and de Albuquerque

<sup>127</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, 'Monitoring'*, 2014.

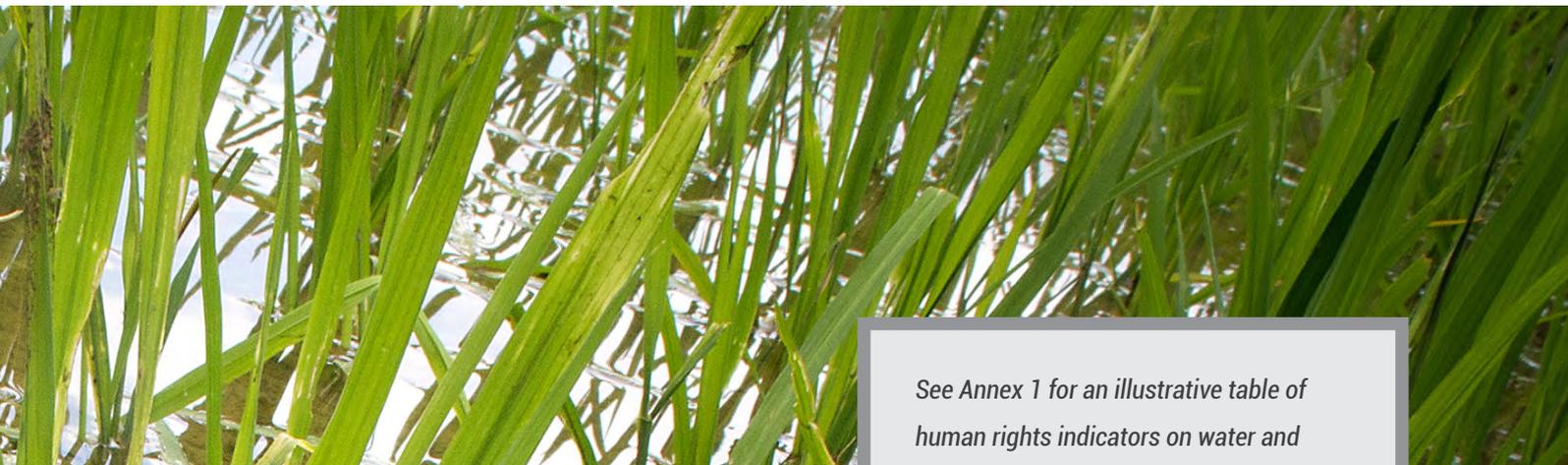
<sup>128</sup> *Ibid.* p. 8

<sup>129</sup> I.T. Winkler, M. L. Satterthwaite, C. de Albuquerque, *Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector*, New York University School of Law, Working paper No. 14-48, September 2014. P. 51

<sup>130</sup> World Health Organization, *UN-Water, UN-water global analysis and assessment of sanitation and drinking-water (GLAAS) 2014 – report, Investing in water and sanitation: increasing access, reducing inequalities*. P. 16-22. Available at: [http://www.who.int/water\\_sanitation\\_health/publications/glaas\\_report\\_2014/en/](http://www.who.int/water_sanitation_health/publications/glaas_report_2014/en/)

<sup>131</sup> *Ibid.* p. ix, 16-22

<sup>132</sup> *The OHCHR framework provides a standardized approach to develop human rights indicators, facilitating and giving structure to the translation of internationally agreed human rights standards into contextually relevant and robust indicators at country level. The framework allows any stakeholder (State authorities at central or local level, civil society organizations, communities, donors, development agencies, national institutions, etc.) to develop indicators to monitor the progress in the realization of civil, economic, political, social and cultural right in countries. It offers a powerful tool to assess the impact of laws, policies and programmes, and puts emphasis on the disaggregation of data. This framework is currently used by States, national institutions, civil society organizations, etc. For more on this methodology, see Human Rights Indicators, a Guide to Measurement and Implementation, 2012, New York and Geneva available at <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>*



*See Annex 1 for an illustrative table of human rights indicators on water and sanitation*

explain that 'a person with a disability and a person of an ethnic minority might be both poor and lacking access to water and/or sanitation, but the reasons for their lack of access will differ, and the necessary policy response to guarantee them access should therefore be distinct'.<sup>135</sup> Root causes of inequalities and discrimination are highly context- and location-specific – and revealing those can help to design appropriate policy responses.<sup>136</sup>

The obligation of States to use their maximum available resources is not easy to monitor. One should measure to what extent budgets and expenditures target those most in need – and what amounts have been made available to overcome inequalities in the total budgets for water and sanitation. In order to scrutinise the adequateness of budget allocation, comparison between resources made available in human rights areas with areas of spending that do not support human rights (e.g. military spending), or the comparison between spending on realisation of rights between similar countries can provide for a standard.

Participation is of crucial importance in the development of indicators, especially in relation to data on ethnic and minority groups. In addition to collection of data by means of household surveys and service providers and regulators, new technologies linked to mobile phones and GPS can help to expand data-gathering to enhance monitoring in a participatory and transparent manner.<sup>139</sup>

<sup>133</sup> *UN Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS), Investing in water and sanitation: Increasing access, reducing inequalities, Special Report for the Sanitation and Water for All (SWA) High Level Meeting (HLM) 2014, p. 3.*

<sup>134</sup> *Office of the United Nations High Commissioner for Human Rights, Human Rights Indicators, a Guide to Measurement and Implementation, 2012, New York and Geneva*

<sup>135</sup> *I.T. Winkler, M. L. Satterthwaite, C. de Albuquerque, Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector, New York University School of Law, Working paper No. 14-48, September 2014, P. 29*

<sup>136</sup> *JMP Working Group on Equity and Non-Discrimination Final Report, 2012, P. 7 & UN Special Rapporteur on the human right to safe drinking water and sanitation, Integrating non-discrimination and equality into the post-2015 development agenda for water, sanitation and hygiene, 2012, A/67/270, para.37.*

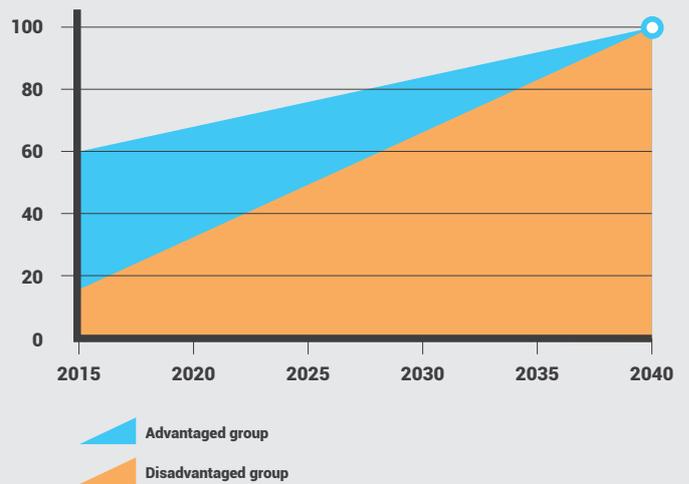


*One particular area where individual inequalities are strongly apparent is menstrual hygiene management (MHM). Due to the taboos and stigmas surrounding this natural bodily function, the human rights of countless women and girls are affected. Since MHM has such a strong impact on gender equality, it could be used as a proxy for information about discrimination against women and girls with regards to sanitation and hygiene.<sup>137</sup>*

**Winkler, Satterthwaite and de Albuquerque, September 2014<sup>138</sup>**

The WHO and UNICEF Joint Monitoring Programme have established an Equity and Non-discrimination (END) Working Group that was responsible for proposing equity targets and indicators for global monitoring of development after 2015. This JMP END Working Group has devised a comprehensible metric for monitoring progressive elimination of inequalities<sup>140</sup>:

Proposal for measuring the elimination of inequalities\*



<sup>137</sup> I.T. Winkler, M. L. Satterthwaite, C. de Albuquerque, *Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector*, New York University School of Law, Working paper No. 14-48, September 2014. P. 46

<sup>138</sup> Ibid.

<sup>139</sup> I.T. Winkler, M. L. Satterthwaite, C. de Albuquerque, *Measuring What We Treasure and Treasuring What We Measure: Post-2015 Monitoring for the Promotion of Equality in the Water, Sanitation, and Hygiene Sector*, New York University School of Law, Working paper No. 14-48, September 2014. P. 39

<sup>140</sup> JMP, WHO, UNICEF, *Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Ending inequalities - a cornerstone of the post-2015 development agenda*, available at: [www.wssinfo.org/fileadmin/user\\_upload/resources/Ending-Inequalities-EN-LowRes.pdf](http://www.wssinfo.org/fileadmin/user_upload/resources/Ending-Inequalities-EN-LowRes.pdf)



Data will be disaggregated by four population groups: rich and poor; urban and rural; slums and formal urban settlements; disadvantaged groups and the general population.

1. Determine the necessary rate of progress for both worst-off and better-off groups in order to meet each target.
2. Compare the percentage of the worst-off population that has access to the relevant service (e.g. basic sanitation) with the percentage of the better-off population, to establish the disparity.
3. If the progress of the both the worst-off and better-off groups follows or exceeds the set rate of progress, and if the disparity between the two population groups narrows accordingly, the country is considered 'on-track'.
4. In addition, a 'traffic lights' approach will allow overall assessment of the progressive reduction of inequalities. So, green means 'on-track', yellow shows that there is some progress, but that it is insufficient, and red means 'off-track'.

The matrix can be applied to different population groups. These should include people living in poverty and rich people; people living in rural and urban areas; people living in formal and informal settlements; and the specific disadvantaged groups identified in each country, compared to the general population<sup>141</sup>.

### Actors involved in monitoring

Monitoring non-discrimination and equality requires different approaches and different actors including governments, service providers, NHRIs, NGOs, individual experts and international mechanisms specialised in monitoring. In Ghana for example the National Development Planning Commission carries out the

Participatory Monitoring and Evaluation Survey, which polls citizens on whether policies and programmes have the impact envisaged.<sup>142</sup> Service providers mandated by governments collect individual information on inter alia drinking water quality, regularity of supply, willingness to connect to public networks, willingness to pay, capacity to pay, and geographical discrepancies.

Social dialogue between government units, water operators, water workers and users can help in establishing indicators and implementing plans to improve access to water and sanitation.<sup>143</sup> Civil society organizations and communities themselves play an important role in monitoring and evaluation of activities aimed at overcoming inequalities and discrimination, using many different approaches to collect data. It is important that they work together with the government. The NGO IRC aims to ensure that aid-driven organisations align with the monitoring of local government. The information gathered in their monitoring system seeks to guide implementing agencies and local government actors to take informed decisions on focus areas and the form of support.<sup>144</sup>

WaterAid and partners monitor the location of water-points and distribution with the use of GPS to track inequalities in service levels. This is used to assist local governments in addressing disparities in the allocation of resources for water-points and wells.<sup>145</sup> UN-HABITAT has co-funded the Global Water Operators' Partnerships Alliance, which conducted a study on inequalities in water provision in Nairobi. Data was disaggregated, showing large discrepancies in service provision between high and low income areas, concluding that the formal service provider had tended to favour investments targeting high-end consumers.<sup>146</sup>

<sup>141</sup> Ibid.

<sup>142</sup> C. de Albuquerque, V. Roaf, *On the right track - Good practices in realising the rights to water and sanitation*, 2012. P. 183.

<sup>143</sup> ILO, *Practical Guide for Strengthening Social Dialogue in Public Service Reform (2005)*, p. 33.

<sup>144</sup> See: <http://www.ircwash.org/news/quick-guide-monitoring> and IRC, *Sanitation, Hygiene and Water (SHAW) Programme of East Indonesia - Training Modules developed for 'Training of trainers on SHAW performance monitoring' September 2013*. [http://www.ircwash.org/sites/default/files/shaw\\_training\\_manual\\_on\\_monitoring\\_september\\_2013\\_0.pdf](http://www.ircwash.org/sites/default/files/shaw_training_manual_on_monitoring_september_2013_0.pdf)

<sup>145</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, 'Monitoring'*, 2014, p. 12 & <http://www.waterpointmapper.org/AboutTheMapper.aspx>

<sup>146</sup> Ibid. p.13 & <http://www.gwopa.org/about-us-gwopa>, <http://access-to-water-in-nairobi.gwopa.org/>

## The High Court of South Africa: *Beja and Others v. Premier of the Western Cape and Others*<sup>148</sup>

In this case, the city of Cape Town had decided to upgrade three areas of informal settlements comprising 1,316 households. Toilets were constructed for households, but remained unenclosed, as community members were expected to enclose the toilets themselves.<sup>149</sup> Toilets were completely open and in full view of every person in the community, mostly situated close to the road, and referred to as "a loo with a view".<sup>150</sup>

The Court found that the legal obligation to reasonably engage the local community in matters relating to the provision of toilet facilities in order to treat residents with respect and care for their dignity was not taken into account when the City decided to install the unenclosed toilets.<sup>151</sup>

## Participation

People must be involved in decision-making and planning that potentially influences their human rights. Institutionalizing participation not only strengthens democracy, it also ensures better implementation and enhances the effectiveness and sustainability of interventions. It leads to an increased knowledge on local conditions and local needs, which is indispensable for any sustainable intervention.

Most importantly, participation is not just an effective approach that may be adopted - it is mandatory.

Participation is a human rights principle and firmly grounded in international human rights law.<sup>147</sup>

### Ensuring participatory processes

Laws, regulations and policies on participation serve as direct and practical guidance in decision-making and planning processes and are of crucial importance. Compliance with such documents that reflect participation in a human rights compliant manner, can ensure that all, including marginalised groups and persons with particular needs, are afforded realistic options to participate in decision-making processes.

<sup>147</sup> Participation is enshrined in numerous international instruments, including the Universal Declaration of Human Rights in Art. 21 (a), the Declaration on the Right to Development in Art. 2 (3), the International Covenant on Civil and Political Rights in Art. 25 (a), the Convention on the Elimination of All Forms of Discrimination Against Women, Art. 7 (b) and (c), Art. 14 (2) (a), Convention on the Rights of the Child Art. 12, the Convention on the Rights of Persons with Disabilities in Art. 3 (c) and Art. 29, the Indigenous and Tribal Peoples Convention of the ILO Art. 6 and 7. In Europe, it forms part of the Protocol on Water and Health to the UNECE Water Convention in Art. 5 and 6, and the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. In Africa, it is included in the African Charter on Human and Peoples Rights Art. 13 (1). The American Convention on Human Rights Art 23 (1)(a), and the Inter-American Democratic Charter Art. 2 are examples of the right to participate in the Americas.

<sup>148</sup> *Beja and Others v. Premier of the Western Cape and Others*, (21332/10), 29 April 2011, Original available at: <http://www.saflii.org/za/cases/ZAWCHC/2011/97.html>

<sup>149</sup> *Ibid*, para. 17

<sup>150</sup> *Ibid*, para. 19

<sup>151</sup> *Ibid*, para. 146



Any decisions on water and sanitation - such as infrastructure, costs, service levels and institutional arrangements - must be taken in a participatory manner, with transparency and full access to information.

Development projects that aim to increase access to WASH services must be conducted in close consultation with all stakeholders. All too often projects fail because of a lack of participatory processes. Save the Children (UK) decided to set up a mechanism that specifically focuses on the participation of children after an evaluation showed that only community leaders were consulted, and that children – although intended primary beneficiaries of the project – were not involved in the design, implementation or evaluation of programmes.<sup>152</sup> This led to complaints by children that the siting of wells and boreholes donated by the agency had often been prioritised in terms of their proximity to beer halls rather than to schools, clinics and homesteads. The children explained that this was a decision among some influential community members to have a regular supply of beer rather than have clean water for women and children to wash with and maintain proper family hygiene.<sup>153</sup>

**Peru's National Programme for Rural Water and Sanitation (PRONASAR) aims to set up participatory management structures to meet the needs of poor, marginalised and isolated rural populations.<sup>154</sup> Its strategy on community participation states that: "The community participates in the entire project cycle, defines its needs in the choice of the technology, level of service and commitment to pay for administration, operation and maintenance, identification of the family fee based on their ability to pay, choice of governing board, assistance for communal training and health education, [...] with the understanding that the active participation of the people is the best way to ensure the sustainability of services."<sup>155</sup>**

<sup>152</sup> See: Chris McIvor with Karen Myllenen, *Children's Feedback Committees in Zimbabwe - An Experiment in Humanitarian Accountability*, Save the Children (UK) Harare, 2005. P. 7

<sup>153</sup> *Ibid.* p. 8

<sup>154</sup> Peru, *Programa Nacional de Agua y Saneamiento Rural – PRONASAR*: <http://www.vivienda.gob.pe/pronasar/estrategias.html>.

<sup>155</sup> *Ibid.*

## Ethiopia – Gender responsive budgeting

An NGO with the support of UN-Women has set up a programme on 'gender-responsive planning and budgeting' which ensures that both men and women have a say regarding resource use.

Water is an important issue for women in the communities.

In the rural areas of Ethiopia, only 36 % of households have access to drinking water, within 30-minutes walking distance.

"Before, almost all committee members were men and they did not understand our perspective as they do not carry the water," explains one female community member. The women have now managed to secure seats in every water committee. "The selected women push for our agenda, which is to construct the water spots closer to the village."<sup>160</sup>



There are many examples of development initiatives that failed because of a lack of participation and consultation with beneficiaries. Without involvement of communities, the construction of toilets may not correspond to needs, remain unused or be used for other purposes than sanitation.<sup>156</sup> In India surveys showed that open defecation is not widely recognised among rural north Indians as a threat to health.<sup>157</sup> Data shows that males are more likely to prefer open defecation than females and when girls become teenagers, open defecation decreases quickly.<sup>158</sup> Service providers and authorities must therefore ensure that women and girls are consulted and - crucially - awareness is created, through health and hygiene education and behaviour change programmes.

Ensuring women's ability to participate is not only a fundamental human right, there is also evidence that when women are actively involved in all stages of decision-making on WASH service delivery, the services are generally more effective and sustainable.<sup>159</sup> Most importantly, women and girls' voices are indispensable to ensuring that their needs are understood and prioritised, including on menstrual hygiene management.

### Barriers to participation

To ensure participation in an equal manner, barriers to participation of marginalised persons must be identified and lifted. Women's participation in consultations is often hindered by meeting times, working hours, caretaking responsibilities or physically inaccessible for chronically sick or disabled. There are often economic reasons for limiting participation. Women sometimes face social barriers to participating in meetings due to cultural norms against women speaking in public,<sup>161</sup> especially about tabooed subjects such as sanitation and menstrual hygiene

<sup>156</sup> Water and Sanitation Program, field note February 2007, available at: [http://esa.un.org/iys/docs/san\\_lib\\_docs/WSP-Community%20Led.pdf](http://esa.un.org/iys/docs/san_lib_docs/WSP-Community%20Led.pdf)

<sup>157</sup> Ibid. P. 54

<sup>158</sup> Ibid. P. 50

<sup>159</sup> WSSCC, Evidence Report: For Her It's The Big Issue - Putting women at the centre of water supply, sanitation and hygiene, 2006. Available at: [http://www.wsscc.org/sites/default/files/publications/wsscc\\_for\\_her\\_its\\_the\\_big\\_issue\\_evidence\\_report\\_2006\\_en.pdf](http://www.wsscc.org/sites/default/files/publications/wsscc_for_her_its_the_big_issue_evidence_report_2006_en.pdf)

<sup>160</sup> UN Women, In Ethiopia, rural women improve their lives, befriending budgets, August 2013. Available at: <http://www.unwomen.org/en/news/stories/2013/8/in-ethiopia-rural-women-improve-their-lives-befriending-budgets>

<sup>161</sup> Ibid. Para. 22 & UN WOMAN, 2011-2012 Progress of the World's Women - in Pursuit of Justice, 2011, p. 52. Available at: <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>.



management. A gendered approach to decision-making and planning processes can lower the risk of excluding women by instituting special measures such as targeted consultations in women-only spaces.<sup>162</sup>

Participants must feel safe when attending consultations without fear of discrimination or reprisals. Individuals may face particular barriers to participation because they fear deportation, discrimination or stigmatisation within or outside their communities as in the case of sex workers, sanitation workers, undocumented migrants, and those living with HIV/AIDS, leprosy or other stigmatised diseases. Allowing for anonymous participation may be a way to overcome these barriers.<sup>165</sup>

People must be adequately notified of opportunities to participate and plan consultations so they can adequately prepare themselves.<sup>166</sup> Organising meetings locally will reduce travel time and costs for participants and increase the likelihood of involvement. Accessible information must be made available in a transparent and easy to understand manner and in local languages.<sup>167</sup>

### Meaningful, active and free participation

Decision-makers are increasingly aware of the need to involve persons potentially affected by the decision. However, participation is often superficial and preliminary decisions are often made prior to such involvement. This causes frustration among those that make the effort to partake in opportunities to have their voices heard - and accordingly lose faith in the effectiveness of participation processes.<sup>168</sup>

Participation must be meaningful, active, and free. People must be involved in determining the terms of participation and their ways of engagement in the preliminary stages of decision-making.

## Menstrual hygiene management – a cycle of neglect

The neglect of menstrual hygiene is one of the most glaring examples of the failure of initiatives to address the needs of women and girls.

'Even when gender inequalities are addressed, deeply embedded power relations and cultural taboos persist; most people, and men in particular, find menstrual hygiene a difficult subject to talk about. As a result of these issues, WASH interventions often fail to address the needs of women and girls.' **WaterAid**<sup>163</sup>

'Unfortunately, the silence and stigma surrounding menstruation makes finding solutions for menstrual hygiene management a low priority.'

'Menstrual hygiene has been routinely ignored by professionals in the water sector, and in the health and education sectors too.' **Catarina de Albuquerque**<sup>164</sup>

<sup>162</sup> Report of the Special Rapporteur on Extreme Poverty, Right to participation of people living in poverty, Para. 49.

<sup>163</sup> S. House, T. Mahon, S. Cavill, Menstrual hygiene matters - A resource for improving menstrual hygiene around the world, WaterAid 2012, p.23

<sup>164</sup> Ibid. – Foreword.

<sup>165</sup> Report of the Special Rapporteur on safe drinking water and sanitation, Participation in the realisation of the human rights to water and sanitation, A/69/213, para. 25.

<sup>166</sup> See UNECE Aarhus Convention Art. 6 (2).

<sup>167</sup> Report of the Special Rapporteur on Extreme Poverty, Right to participation of people living in poverty, Para. 61.

<sup>168</sup> Report of the Special Rapporteur on safe drinking water and sanitation, Participation in the realisation of the human rights to water and sanitation, A/69/213, para. 29.



Their views must be considered and must influence decisions. This process must be transparent: decisions must be made public along with the reasons and considerations on which they are based so that people can track to what extent contributions in the participating process were included.<sup>169</sup> Participation must be free, without any conditions attached. Consultation must be free from manipulation or bribery.

Development agencies and other actors need to involve local stakeholders at every level of the development process to ensure that they both understand and have the capacity to make decisions about a project, including the right of beneficiaries to reject the project.<sup>170</sup> Consultation and participation is crucial to any sustainable development project.<sup>171</sup>

### **Transparency and access to information**

All relevant information and plans for upcoming policies and measures must be publicly available and transparent to enable people's scrutiny and assessment and to measure changes. Only then can people influence decisions on what measures to adopt and prioritise. When decisions on the allocation of resources are transparent and understood, they can be scrutinised and assessed for eventual changes that may be necessary.<sup>172</sup>

The Right to Information Act (RTI) in India creates the ability to demand and receive information regarding budgets and service delivery.<sup>173</sup> This Act became a useful tool for communities to improve local governance and obtain full entitlements.<sup>174</sup> As explained by UNESCO, "Without access to the information held by public bodies and in some cases by corporations and other organisations, it is difficult for people to participate actively in their society or for there to be good and effective governance".<sup>175</sup>

<sup>169</sup> UNECE Aarhus Convention, Art. 6 (9).

<sup>170</sup> *The Global Initiative for Economic, Social and Cultural Rights, A GI-ESCR Practitioner's Guide*, May 2014, p. 11-12. Available at: [globalinitiative-escr.org/wp-content/uploads/2014/05/GI-ESCR-Practitioners-Guide-on-Right-to-Participation.pdf](http://globalinitiative-escr.org/wp-content/uploads/2014/05/GI-ESCR-Practitioners-Guide-on-Right-to-Participation.pdf)

<sup>171</sup> *Ibid.* 12-13.

<sup>172</sup> *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Planning for realising the rights to water and sanitation*, A/HRC/18/33, para. 18

<sup>173</sup> *India Right to Information Act, Act No 22 of 2005*, available at: <http://righttoinformation.gov.in/>

<sup>174</sup> *Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Planning for realising the rights to water and sanitation*, A/HRC/18/33, para. 72 & WaterAid, Freshwater Action Network, Governance and Transparency Fund, 'Learning from experience - Rights and governance advocacy in the water and sanitation sector'. P.22. Available at: <http://www.freshwateraction.net/content/governance-and-transparency>

<sup>175</sup> UNESCO, *Media and Good Governance*, 2005. P. 48

## The right to participation is enshrined in many international human rights instruments:

**The Universal Declaration of Human Rights** states in Article 21(a) that everyone has the right to take part in the government of his or her country.

**The UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)** guarantees the right to participate, including in the establishment of plans, programmes and policies and in the development of laws (articles 6-8).

**The Rio Declaration on Environment and Development** of 1992 states in its principle 10 that each individual shall have appropriate access to information concerning the environment that is held by public authorities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.

**The ILO Indigenous and Tribal Peoples Convention (No. 169) of 1989** provides a guideline in its article 6 as to how consultation with indigenous and tribal peoples should be conducted. The UN Declaration on the Rights of Indigenous Peoples also makes consultation with indigenous peoples a general principle, and states in article 18 that indigenous peoples "have the right to participate in decision-making in matters which would affect their rights".

**The 1986 UN Declaration on the Right to Development** states in Article 2(3) that participation must be "[...] active, free and meaningful"

**The International Covenant on Civil and Political Rights (ICCPR)** recognises in Article 25 a general right for all people to participate politically, providing for the right to vote in elections as well as the right to take part in public affairs.

**The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** includes in Article 7 (b) the right of women to participate in the formulation and implementation of government policy and in Article 14(2)(a) that women living in rural areas have the right to participate in development planning at all levels.

**The Convention on the Rights of the Child** guarantees in Article 12 (1) the right of children to be heard and to have their views taken into account, and to express their views freely in all matters affecting them, and these views should be given due weight.

**The Convention on the Rights of Persons with Disabilities** states as a General Principle: "Full and effective participation and inclusion in society".

*The Kennedy v. City of Zanesville case<sup>179</sup> in the United States demonstrates the successful adjudication of discrimination in the provision of water. The case refers to public authorities implementing complex and costly water projects in predominantly white neighbourhoods already well connected to water supply while declining applications to expand piped services to the African-American neighbourhood with no access to water in the first place. The Court concluded that 'there is only one explanation for the fifty years of conduct [of the public authorities]: racial discrimination. That discrimination deprived Plaintiffs of a basic human need – access to uncontaminated water.'<sup>180</sup> Subsequently, a water project was finally initiated in this neighbourhood.<sup>181</sup>*

## Conflict resolution, accountability mechanisms and access to effective remedies

As outlined, all actors bear responsibilities with regards to water and sanitation. Accountability and access to effective remedies are essential to give effect to those responsibilities.

### **Accountability**

Users of water and sanitation must be able to identify who is responsible so they know to whom they should turn when they have a complaint or feel that their rights have been violated. The provision of water and sanitation is usually paired with a complex structure of institutions and actors, all bearing different – and often overlapping – responsibilities. Roles and responsibilities must be clearly defined and mechanisms must be in place to establish oversight of the diverse public and private service providers in water and sanitation.<sup>176</sup> Monitoring the responsibilities of providers is particularly essential when they fail to meet their responsibilities or discriminate against individuals. Oversight institutions must have mechanisms in place to enforce rules. This is especially relevant for coordination purposes when water and sanitation service provision is decentralised or privatised.

Complaint and redress mechanisms must be available to bring alleged violations of human rights before independent and impartial bodies. Redress should be based on standards of fairness and justice, and remedies must be effective.<sup>177</sup>

<sup>176</sup> C. de Albuquerque, V. Roaf, *On the right track - Good practices in realising the rights to water and sanitation*, p. 206, 2012, available at [www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx](http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx)

<sup>177</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, 'Justice'*, 2014, p. 5

<sup>178</sup> *Ibid.*, p. 12

<sup>179</sup> *Kennedy v City of Zanesville* [2008] District Court (Southern District of Ohio, Eastern Division) 2:03-cv-1047. Available at: <http://www.relmanlaw.com/docs/zanesville-opposition.pdf>

<sup>180</sup> *Ibid.*, p. 4.



## Seeking remedies for unequal and discriminatory practices

Violations of the right to equality and non-discrimination occur when States discriminate, and/or fail to prevent or address discrimination and stigmatisation.<sup>178</sup>

States must ensure that there are effective remedies for violations of all economic, social and cultural rights, including the principles of non-discrimination and equality, at the local, national, regional and international level. States are also obliged to set up a legal and institutional framework that secures access to justice without discrimination, including for violations by private actors. Remedies provided for must include restitution, compensation, legally binding assurances of non-repetition and corrective action, and they must be provided in an accessible, affordable, timely and effective manner.<sup>182</sup> Access to justice, however, also requires creating awareness of laws and rights and having the ability to claim them.<sup>183</sup>

Judicial remedies are not required in every case, nor is it always the most adequate approach for claimants. Therefore, non-judicial dispute resolution and complaint mechanisms must be available for timely and effective resolution. States must guarantee access to subsequent

binding remedial judicial mechanisms at the administrative and regulatory levels, and ultimately at the level of Courts.

Residents must have resort to regional courts and quasi-judicial mechanisms, as well as international quasi-judicial bodies.<sup>184</sup> Moreover, no international or bilateral treaty or agreement – such as investment protection treaties – may obstruct access to national judicial mechanisms, including courts.

## Addressing systemic violations

The right to access justice is an extremely important guarantee against State failure to provide services on an equal and non-discriminatory basis. Cases may be resolved on individual basis without addressing systemic violation, hence circumventing the necessary structural reform to legislative, policy and regulatory frameworks to ensure the progressive realisation of the rights to water and sanitation for all.<sup>185</sup> For example, a person living in an informal settlement may complain to a court on grounds of denial of a water connection. However, when tenure status is the official barrier to the service provision, the court must be able to play a corrective role by changing laws and regulations and not simply order provision of service for the individual complainant.

<sup>181</sup> The jury verdict, amounting to 10.85 million, can be found on: <http://beta.zanesvilletimesrecorder.com/assets/pdf/BA113070717.PDF>. The law firm that represented the claimants and settled (rather than going through another appeal) for 9.6 million can be found here: [http://www.cedargroveinst.org/files/Colfax\\_Zanesville.pdf](http://www.cedargroveinst.org/files/Colfax_Zanesville.pdf)

<sup>182</sup> CESCR General Comment No. 9 (1998) on the domestic application of the ICESCR, para. 9.

<sup>183</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, *Planning for realising the rights to water and sanitation*, A/HRC/18/33, para. 41

<sup>184</sup> Regional Courts include the African Court on Human and Peoples' Rights, European Court of Human Rights and the Inter-American Court of Human Rights. Regional quasi-judicial mechanisms include the African Commission on Human and Peoples' Rights and Inter-American Commission on Human Rights and European Committee of Social Rights. At the international level, quasi-judicial bodies include the individual complaint mechanisms at treaty bodies, under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the First Optional Protocol to the International Covenant on Civil and Political Rights; the third Optional Protocol to the Convention on the Rights of the Child; the Optional Protocol to the Convention on the Elimination of Discrimination against Women; Article 14 of the Convention on the Elimination of Racial Discrimination; and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

<sup>185</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook*, 'Justice', 2014, p. 19



Public interest litigation is an important mechanism for addressing systemic human rights violations including systemic exclusion of groups of people.<sup>186</sup> In such contexts, civil society organisations, which tend to be adept at identifying systemic problems and are often well-organised, can speak up on behalf of an affected community.

Amicus curiae briefs – submissions of ‘friends of the court’ who are not parties to a given case but offer additional information – are increasingly used as a way to introduce international human rights law in particular cases.<sup>187</sup>

### Non-State actors and international organisations

In addition to the obligation of States to establish accountability mechanisms and ensure access to them, actors involved in service provision have a responsibility to put in place operational-level grievance mechanisms for human rights infringements as a due diligence practice.<sup>188</sup> Aid organisations involved in service provision must also set up complaint mechanisms to strengthen accountability for beneficiaries to prevent, mitigate or resolve tensions whilst signalling areas for improvement.<sup>189</sup> It is important to note that although a complaint mechanism can be a useful tool for project monitoring, it is one of several available tools and cannot replace comprehensive monitoring of projects.

There is no blueprint for the establishment of complaint mechanisms as they are context-specific. Account should be taken of issues including literacy levels and social and cultural norms.<sup>190</sup>

### Common barriers in access to justice

States must also ensure de facto access to justice, which means that, beside the legal framework and regulations to seek redress, positive measures should be identified to eliminate discrimination in access to justice.<sup>192</sup> Those who face these obstacles in accessing justice are often the poorest, most vulnerable and marginalised in society.<sup>193</sup> Some of the common barriers to justice include:

#### Lack of awareness

Awareness and enforceability of rights is fundamental to enjoying all human rights and seeking remedies.<sup>194</sup> There is a general lack of knowledge about administrative and court procedures and the availability of assistance to access justice.<sup>195</sup> People must be proactively informed about the enforceability of human rights and remedial mechanisms as well as the barriers encountered including financial, technological or linguistic (legal terminology or minority languages).<sup>196</sup>

#### Accessibility constraints

As justice mechanisms are centralised in urban centres, travel is often involved, which implies costs and time away from work, family and other activities. This poses a serious obstacle for the poor and marginalised living in remote areas to access justice.<sup>197</sup> Caretakers, a majority of whom are women, may be particularly affected.<sup>198</sup> Solutions may include the establishment of decentralised institutions, regulations that (financially) support travel, or the appointment of intermediaries who can represent claimants at various stages of the proceedings.

<sup>186</sup> *Ibid*, p. 20.

<sup>187</sup> *Ibid*, p. 21.

<sup>188</sup> As stated by the Special representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises in A/HRC/8/5, para. 82.

<sup>189</sup> See: <http://www.ingoaccountabilitycharter.org/wpcms/wp-content/uploads/Complaint-Mechanisms-Overview-final.pdf>

<sup>190</sup> Transparency International, *good practice in community complaints mechanisms*, 2013. Available at: [http://www.transparency.org/whatwedo/answer/good\\_practices\\_in\\_community\\_complaints\\_mechanisms](http://www.transparency.org/whatwedo/answer/good_practices_in_community_complaints_mechanisms)

<sup>191</sup> See: Chris McIvor with Karen Myllenen, *Children's Feedback Committees in Zimbabwe - An Experiment in Humanitarian Accountability*, Save the Children (UK) Harare, 2005. P.9

<sup>192</sup> A/67/278, para. 11.

<sup>193</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook*, ‘Justice’, 2014, p.41

<sup>194</sup> *Ibid.*, p. 41

<sup>195</sup> Special Rapporteur on extreme poverty and human rights, UN Doc.A/67/278, para. 25.

<sup>196</sup> *Ibid.*

<sup>197</sup> Special Rapporteur on extreme poverty and human rights, UN Doc.A/67/278, paras. 36–40.

<sup>198</sup> *Ibid*, para.56.



## Monitoring of development assistance in Zimbabwe

In 2004, aid was delivered in large numbers to Zimbabwe by NGOs supported by international donors. However, the established accountability processes focused on compliance to donor requirements rather than creating a genuine feedback mechanism for beneficiaries. Of particular concern was the monitoring and collection of feedback, which was often conducted by the very field officers responsible for organising food and water distributions and against whom complaints were likely to be made.<sup>191</sup>

### Financial barriers

Remedies must be financially accessible to everyone.<sup>199</sup> Fees are often encountered at every stage of the legal process, and the loss of income while away from employment may constitute an insurmountable burden.<sup>200</sup> Women may be disproportionately disadvantaged, as they are often less financially independent or have little access to financial resources.<sup>201</sup> Additionally, illegal fees, or bribes, are often imposed in order to access administrative officials, procedures and courts. Immediate and sustainable measures must be taken to prevent corruption. Furthermore, support programmes, including paralegal assistance, are a way to ensure that seeking remedies is affordable to all.<sup>202</sup>

### Social, cultural and other barriers

There may be various obstacles to seeking redress that are less obvious, including social or cultural barriers.

Women sometimes face strong social barriers in submitting cases because of cultural norms against women speaking on their own behalf,<sup>203</sup> without the assistance of a male relative.<sup>204</sup> In some countries, for example, girls will not complain to male officials, as it is seen as socially unacceptable.<sup>205</sup> Remedial systems must be sensitive to these circumstances, while at the same time empowering women.

The complex labyrinth of laws, traditions and interactions, the use of legal jargon and the restrictive time limits and procedural rules deter people from seeking justice.<sup>206</sup> Fear of reprisals, discrimination or stigmatisation may also stand in the way of accessing justice.<sup>207</sup>

In some cases, remedial mechanisms may be required to protect the privacy and anonymity of claimants, including having others speak on behalf of affected individuals to prevent further stigmatization or reprisals.<sup>208</sup>

<sup>199</sup> A/HRC/15/31/Add.1, para. 54.

<sup>200</sup> As identified by the Special Rapporteur on extreme poverty and human rights, UN Doc. A/67/278, paras. 51 – 56, and UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, 'Justice'*, 2014, p. 42.

<sup>201</sup> *Ibid.*, para. 54.

<sup>202</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, 'Justice'*, 2014, p. 42.

<sup>203</sup> *Ibid.*, para. 22 & UN-Women Report, 2011–2012, p. 52.

<sup>204</sup> A/67/278.Para. 23.

<sup>205</sup> Transparency International, *good practice in community complaints mechanisms*, 2013.

Available at: [http://www.transparency.org/whatwedo/answer/good\\_practices\\_in\\_community\\_complaints\\_mechanisms](http://www.transparency.org/whatwedo/answer/good_practices_in_community_complaints_mechanisms), p. 4.

<sup>206</sup> As set out by the Special Rapporteur on extreme poverty and human rights, in: A/67/278, 2012, para.71.

<sup>207</sup> Transparency International, *good practice in community complaints mechanisms*, 2013.

Available at: [http://www.transparency.org/whatwedo/answer/good\\_practices\\_in\\_community\\_complaints\\_mechanisms](http://www.transparency.org/whatwedo/answer/good_practices_in_community_complaints_mechanisms)

<sup>208</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook, 'Justice'*, 2014, p. 44



## Conclusions and Recommendations

As set out in this briefing paper, a coherent approach based on human rights principles is needed if the aims and targets of sustainable development in relation to water, sanitation and hygiene, are to be realised. Such an approach is particularly essential to realise the slogan 'No One Left Behind' since marginalised groups who are most in need are also those who continue to be the most deprived.

### Obligations of States

States are the primary duty-bearers for ensuring that the human rights to water and sanitation are realised for all, on a non-discriminatory and equal basis. They have an obligation to respect, protect and fulfil these human rights. To this end, States must adhere to the following duties, as outlined in this paper:

#### Substantive equality

- In order to reach substantive equality, socially and culturally entrenched root causes must be addressed, discriminatory laws and practices repealed, and positive measures employed to achieve the equal enjoyment of rights.

<sup>1</sup> Up to now, resolutions adopted by the United Nations General Assembly and Human Rights Council use the terminology "human right to safe drinking water and sanitation". In these resolutions, the term 'safe drinking water' refers to water for the purpose of drinking, cooking and personal hygiene. Since 'drinking water' is commonly understood to cover water solely for the purpose of drinking, the term can be misleading. In this publication therefore, the term 'human rights to water and sanitation' is used instead.

Furthermore, these resolutions refer to water and sanitation in singular. However, the Committee on Economic, Social and Cultural rights and the mandate of the Special Rapporteur on water and sanitation believe that because of their distinct features which warrant separate treatment, water and sanitation should be treated as distinct human rights with equal status within the human right to an adequate standard of living. (See for instance CESCR, Statement on the Right to Sanitation, E/C.12/2010/1; Report of the Special Rapporteur on Human Rights Obligations related to Access to Sanitation (A/HRC/12/24) and Realising the human rights to water and sanitation: A handbook, available at <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>). This distinction has also concrete and programmatic consequences by allowing governments, civil society and other stakeholders to create standards specifically for the human right to sanitation and for its realisation, and to understand the distinct responsibilities, obligations and roles implicit in the realisation of both water and sanitation and develop policies and programmes in order to achieve these goals. This publication will therefore refer to the human rights to water and sanitation in the plural, except when directly quoting from the language contained in official documents adopted by the United Nations.

<sup>2</sup> See Article 1 (1) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 2 Convention on the Rights of Persons with Disabilities (CRPD).



- Laws, policies and programs impact various groups differently. A thorough analysis of needs and specificities is required, in particular from a gender and intersectionality perspective.
- States must ensure levels of basic access for all before moving to higher levels of service in areas that already have access to adequate services.

#### Legislation, policies and target setting

- States must map and reform as needed existing legislation, policies and strategies to identify beneficiaries and gaps in services.
- Targets must be set to first achieve basic service levels for all, and subsequently to improve services incrementally. Targets must be ambitious, but realistic. National strategies should accordingly be developed to guide policymaking and the corresponding allocation of budgets.

#### Service provision

- States must take steps to ensure that everyone is able to enjoy service provision for WASH that is fully human rights compliant. This includes the regulation of non-State service providers.

- States must ensure that services are affordable for all. Therefore subsidy structures, payment waivers and other mechanisms must be made available.
- States must set standards to regulate performance of service providers to ensure sustainability of services and expansion of provision to areas not yet served.
- States must ensure that existing services experience no retrogression; this includes deterioration of infrastructure but also the disconnection of services to those unable to pay.

#### Monitoring

- States must develop and make publicly available disaggregated data in a timely, accurate and accessible manner and useful format.
- States must monitor the performance of service providers to ensure the expansion of the network to unserved areas and the sustainability and affordability of services.
- States should conduct national human rights-based monitoring that includes monitoring of progress made, existing gaps and the underlying reasons of such gaps.

<sup>3</sup> Treaties with provisions on non-discrimination and equality include: Art. 2(2), 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Art. 2(1), 3 of the International Covenant on Civil and Political Rights (ICCPR); Art. 1, 2, 3 of the CEDAW; Art. 1, 2 of the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD); Art 2(1)(2) of the Convention on the Rights of the Child; and Art. 1 of the CRPD.

<sup>4</sup> Human Rights Committee, General Comment 18, HRI/GEN/1/Rev. 1 at 26, 1994, para. 8.

<sup>5</sup> UN Special Rapporteur on the human right to safe drinking water and sanitation, C. de Albuquerque, *Realising the human rights to water and sanitation: A Handbook*, 'Services', 2014, p. 24.



- Monitoring must include the commitments made by the state, the efforts taken to fulfil these commitments and the results achieved.<sup>209</sup> Therefore, structural, process and outcome indicators must be used.

#### Participation

- Any decisions on water and sanitation must be taken in equal and inclusive participatory processes to ensure that everyone is adequately represented, with transparency and full access to information.
- Participation must be meaningful, active, and free. People must be involved in determining the terms of participation and their ways of engagement in the preliminary stages of decision-making. Their views must be considered in relation to decisions.
- Barriers to participation of marginalised persons must be identified and lifted.

#### Access to justice

- To ensure accountability, roles and responsibilities must be clearly defined and oversight mechanisms established for both public and private actors in water and sanitation service provision.
- States must ensure that effective remedies are in place for alleged violations of all economic, social and cultural rights, and the principles of non-discrimination and equality, at the local, national, regional and international levels.
- Both judicial and quasi-judicial mechanisms must be available.
- States are obliged to set up a legal and institutional framework that secures access to justice without discrimination, including violations by non-State actors.

- States must ensure that courts and quasi-judicial mechanisms can identify and address systemic violations, and that legal standing is not limited to individuals and groups of individuals. Public interest litigation – legal action on behalf of the general public or particular groups – could be considered as a procedure to address existing problems that affect the human rights of many.
- States must identify and lift the barriers faced in accessing justice. Examples of these barriers are lack of awareness, accessibility constraints, financial barriers or social and cultural barriers.

#### Responsibilities of non-State actors

Independently of State obligations to protect against infringements of non-State actors, the latter also have human right responsibilities. For non-State actors to contribute to services that are human rights compliant, on a non-discriminatory and equal basis, non-State actors should take the following into account:

##### Responsibility to respect

- Corporations should act with due diligence to avoid infringing on human rights and identify, prevent and address any harm that does occur.

##### Human rights based approach

- Organisations and practitioners should actively demand information and disaggregated data and use this in their work.
- Development actors should actively identify which groups are underrepresented, marginalised or discriminated against, and seek to target them.

<sup>209</sup> Office of the United Nations High Commissioner for Human Rights, Human Rights Indicators, a Guide to Measurement and Implementation, 2012, New York and Geneva



- Non-State actors should support the role of the State as duty-bearer of the rights to water and sanitation, and strengthen the role of individuals as rights-holders.
- Non-State actors should work closely together with the government to ensure accountability and assist in bringing benefits to those with no basic access, particularly the marginalised and neglected individuals and areas.
- Non-State actors should make communities aware of their rights and entitlements and support them to engage in ongoing dialogue and negotiations with their government. This way, they can hold their government to account for realising their rights in a progressive and non-discriminatory basis.

#### Monitoring

- Non-State actors involved in service provision should carefully track progress and collect feedback so that programmes can be adjusted to target those most in need.
- Non-State actors should work together with the government on their findings: any data collected on discrimination, marginalisation and inequalities must be shared with the government.
- Donors and financial institutions should use indicators that track aid allocations so that they effectively target marginalised and disadvantaged communities.
- Civil society organizations and communities themselves play an important role in monitoring. They can identify marginalised groups and track whether developed strategies have the desired effect.

#### Participation

- Development projects that aim to increase access to WASH services should be conducted in close consultation with all stakeholders.
- Barriers to participation of marginalised persons should be identified and lifted.

#### Complaint mechanisms

- Non-State actors involved in service provision have a responsibility to put in place operational-level grievance mechanisms that allow individuals to bring alleged human rights infringements to their attention.
- Non-State service providers must cooperate with and not obstruct access to State-based accountability mechanisms.

Lastly, the progressive realisation of rights takes a great deal of awareness creation and efforts by all parties involved. Duty-bearers at all levels need to understand their responsibilities with regards to reducing inequalities. Rights-holders must be active and address existing problems and underlying causes to disparities and discrimination.

## Annex 1: Table of illustrative indicators on the rights to water and sanitation

	<b>Safety and acceptability</b>	<b>Sufficiency and continuity</b>	<b>Affordability</b>	<b>Physical accessibility</b>
<b>STRUCTURAL</b>	<p>International human rights treaties relevant to the rights to water and sanitation ratified by the State</p> <p>Date of entry into force and coverage of the rights to water and sanitation in the constitution or other form of superior law</p> <p>Date of entry into force and coverage of law requiring service providers to ensure that all the persons in their service area have access to adequate water and sanitation, including access to information on water and sanitation issues</p> <p>Time frame and coverage of national action plan(s) for universal access to water and sanitation, including within or in the immediate vicinity, of each household, health centre, educational institution and workplace, and for all population groups (e.g. nomadic and traveller communities, prisoners, detainees, slum dwellers, persons with disabilities)</p> <p>Time frame and coverage of response plan of action during armed conflict, emergency situations and natural disasters ensuring accessibility to water and sanitation</p>			
	<p>Date of entry into force and coverage of national standards for safe drinking water and secure and hygienic sanitation facilities in line with WHO guidelines</p> <p>Date of entry into force and coverage of mechanisms to oversee water and sanitation quality and review performance of suppliers</p> <p>Time frame and coverage of hygiene awareness programme contained in the national health strategy and educational curricula</p>	<p>Number of minimum litres of water per person, per day sufficient for personal and domestic use stipulated in State's regulations</p> <p>Time frame and coverage of plan of action(s) on operation and maintenance of water and sanitation facilities</p>	<p>Date and entry into force and coverage of national action plan on affordability of water and sanitation services (e.g. pricing policies, technology choice, management systems, subsidies, cash transfers, or flexible payment schemes to low-income or disadvantaged households)</p>	<p>Time frame and coverage of national plan of action for physical accessibility to safe drinking water supply and to safe, secure and hygienic sanitation facilities (e.g. removing architectural and informational barriers to a full range of disabilities)</p>
<b>PROCESS</b>	<p>Government expenditure on water and sanitation as a proportion of gross national income or total public expenditure</p> <p>Net official development assistance for water and sanitation received or provided as proportion of public expenditure on water and sanitation or gross national income</p> <p>Proportion of received complaints on the rights to water and sanitation investigated and adjudicated by courts, the national human rights institution, human rights ombudsperson or other relevant mechanisms and the proportion of these responded to effectively by the Government</p> <p>Proportion of targeted population reporting satisfaction with how involved they feel in decision making affecting their access to adequate water and sanitation</p>			
	<p>Date of entry into force and coverage of national standards for safe drinking water and secure and hygienic sanitation facilities in line with WHO guidelines</p> <p>Date of entry into force and coverage of mechanisms to oversee water and sanitation quality and review performance of suppliers</p> <p>Time frame and coverage of hygiene awareness programme contained in the national health strategy and educational curricula</p>	<p>Number of minimum litres of water per person, per day sufficient for personal and domestic use stipulated in State's regulations</p> <p>Time frame and coverage of plan of action(s) on operation and maintenance of water and sanitation facilities</p>	<p>Date and entry into force and coverage of national action plan on affordability of water and sanitation services (e.g. pricing policies, technology choice, management systems, subsidies, cash transfers, or flexible payment schemes to low-income or disadvantaged households)</p>	<p>Time frame and coverage of national plan of action for physical accessibility to safe drinking water supply and to safe, secure and hygienic sanitation facilities (e.g. removing architectural and informational barriers to a full range of disabilities)</p>

OUTCOME	Safety and acceptability	Sufficiency and continuity	Affordability	Physical accessibility
	<p>Proportion of population using drinking water which conforms to bacteriological standards (e.g. E. coli, arsenic, nitrate)*</p> <p>Number of recorded deaths and incidence of disease (e.g. diarrhoea, cholera, arsenic) due to adulterated water source or lack of adequate sanitation*</p> <p>Proportion of women and adolescent girls that are able to manage menstruation hygienically and with dignity (e.g. privacy for changing materials and for washing body, access to water and soap, disposal facilities)</p>	<p>Proportion of households who experienced disruptions in water supply more than X hours per year</p> <p>Proportion of population using sanitation facilities with safely managed waste water and excreta (e.g. waste water related excreta transported through sewer network, septic tanks or latrine pit to treatment facility or collection site)</p>	<p>Proportion of households spending more than X % of expenditure or income on water and sanitation</p>	<p>Proportion of the population using improved drinking water sources and sanitation facilities*</p> <p>Proportion of households in which the toilet or latrine is used by all members of household, (including men and women, boys and girls, older persons, persons with disabilities) whenever needed</p> <p>Proportion of household taking more than X minutes round trip time to go to water source, queuing time, collect the water, and come back to the household*</p>
<p>Proportion of women or girls collecting water or practicing open defecation outside immediate vicinity of the home, especially at night*</p> <p>Gini coefficient of household (and other relevant users) water consumption (number of litres per year)</p> <p>Gap (in percentage point) or ratio between the rates of coverage of sustainable access to safe drinking water source and sanitation facilities for the best-off group(s) and the worst-off group(s)</p> <p><small>* Millennium Development Goals or WHO/UNICEF Joint Monitoring Programme (JMP) for Water Supply and Sanitation related indicators</small></p>				

**All indicators should be disaggregated by prohibited grounds of discrimination, as applicable and reflected in metadata sheets**

## Annex 2: United Nations Human Rights Monitoring Mechanisms

**Treaty bodies:** The CESCR monitors the implementation of the obligations of States Parties to the ICESCR, and has been active in offering States guidance to effectively implement these rights. The Committees on the Rights of the Child (CRC) and on the Elimination of All Forms of Discrimination Against Women (CEDAW) have also included the human rights to water and sanitation in their review. States must submit reports with the legal, administrative and judicial measures undertaken to give effect to obligations under the treaty. To these reports, civil society organisations and NHRIs provide so called 'shadow reports' in the reporting cycle. Treaty bodies subsequently issue 'concluding observations' – assessments of the implementation of human rights treaties by the State – after examining both the State and other reports. In these concluding observations treaty bodies summarise their findings and give recommendations for the improved realisation of the rights.

For instance, the CRC found in its concluding observations on Israel in 2013 that children in the Gaza Strip suffer from sanitation related diseases such as diarrhoea and typhoid due to daily exposure to contaminated water, and states that; '... The Committee urges the State party to adopt immediate measures for the restoration of safe drinking water and adequate sanitation services...' <sup>210</sup>

**Universal Periodic Review (UPR):** This is a peer-review mechanism of the Human Rights Council, where member states assess other member States' human rights records and addresses violations when they occur. <sup>211</sup>

In the UPR of Botswana <sup>212</sup> for example, Finland expressed concern regarding the relations between diamond business and the indigenous peoples who have been prevented having access to their water boreholes <sup>213</sup> and Italy expressed concern over the conditions of detainees, as prison establishments lack basic services such as water. It recommended that Botswana align its legislation and practice with international standards on prisons. <sup>214</sup>

**Special procedures:** These procedures of the Human Rights Council are independent human rights experts with a mandate to report, monitor and advise on human rights from a country-specific perspective. <sup>215</sup>

For example, in his mission report to Canada <sup>216</sup>, the Special Rapporteur on adequate housing witnessed poor living and housing conditions of indigenous peoples. Communities did not receive adequate basic services or access to water. <sup>217</sup> He recommended that the Government should commit the necessary funding and resources to ensure access to drinking water and proper sanitation, being a particular acute issue for Aboriginal people - who should be directly involved in the design, development and operation of appropriate water systems. <sup>218</sup>

For a full overview of human rights monitoring mechanisms in the United Nations system, please refer to:  
<http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

<sup>210</sup> Committee on the Rights of the Child, *Concluding Observations on the second to fourth periodic reports of Israel*, CRC/C/ISR/CO/2-4, 4 July 2013, p. 13.

<sup>211</sup> For more information on the Universal Periodic Review, see: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

<sup>212</sup> Universal Periodic Review, *Report of the Working Group on the UPR, Botswana*, A/HRC/10/69, 13 January 2009

<sup>213</sup> *Ibid*, para. 35

<sup>214</sup> *Ibid*, para. 63

<sup>215</sup> For more information on Special Procedures see: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>

<sup>216</sup> *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, mission to Canada*, A/HRC/10/7/Add.3, 17 February 2009

<sup>217</sup> *Ibid*, para. 71 - 75

<sup>218</sup> *Ibid*, para. 95

# Notes

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