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MANUAL ON THE HUMAN RIGHTS TO SAFE DRINKING WATER AND SANITATION FOR PRACTITIONERS

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Chapter 4 An enabling environment for the human rights to water and sanitation

SYNOPSIS

Governments have to create and strengthen the enabling environment for the progressive realisation of the HRWS, fostering a clear allocation of roles and responsibilities of the different actors within the national context. All actors can contribute to the creation of such an enabling environment. The process envisages the facilitation of coordinated efforts to update and expand the legal and the regulatory framework for drinking water and sanitation service delivery, and the promotion of effective institutional arrangements. Together these ensure independent guidance for the identification of gaps and needs, on regulatory standards, norms and good practice, on procedures to correctly manage financial and human resources, and on monitoring progress as measured by indicators related to the HRWS criteria and principles.

This chapter highlights the contributions that water and sanitation practitioners, public authorities and regulators can make to the creation and functionality of an enabling environment, based on their expertise and experience. They will be able to add value to the processes of formulating legislation, design of regulations and strategy development, establishing institutional arrangements and to help avoid pitfalls and unnecessary hurdles, to bridge gaps and to highlight opportunities.

Huge differences exist between countries around the world with respect to the development of policy, legal and regulatory frameworks in general and for human rights in particular. The contributions that service providers, regulators and NGOs can make to strengthening frameworks for the human rights to safe drinking water and sanitation will, accordingly, vary widely, and an assessment of options to contribute within the national context should be the starting point of any constructive efforts.

4.1 INTRODUCTION

The universal human rights are divided into civil and political rights, and economic, social and cultural rights, each governed by its respective international, legally binding treaty known as a Covenant (see the Annex for more details). The individual freedoms guaranteed by the Covenant on Civil and Political Rights require governments to take measures ensuring the associated freedoms are respected, protected and maintained.

Economic, social and cultural rights, on the other hand, are in many instances about individuals' entitlements to basic needs in terms of goods and services. The right to an adequate standard of living covers access to safe drinking water and sanitation, as well as access to food and housing. The rights to safe drinking water and sanitation also are linked to the right to health.

Human Rights To Safe Drinking Water And Sanitation

Compared with the civil and political rights, the resource dimensions of these economic, social and cultural rights are of a different order of magnitude. In most cases, governments, as duty bearers, cannot bring their universal enjoyment to immediate effect, hence the concept of progressive realisation, explained in Annex A. This provides governments with a modality to achieve gradual progress towards the goal of enjoyment of the rights by all, within their national socioeconomic reality. However, it also stipulates that governments have to demonstrate that they maximise resource allocation in the pursuit of progressive realisation and that they leave no room for regression on progress already achieved.

The first phase in the process of progressive realisation is for governments to create an environment conducive to meeting the obligations implied by the HRWS for the benefit of all people living in their territory. Currently (2015), many governments are at a stage of planning or implementing this first step. Several governments have spearheaded the effort (some even before the international legal framework came into force), either by incorporating the HRWS into their Constitution (South Africa, Kenya and Uruguay were among the first of a growing number of examples) or by adopting laws aimed at achieving universal coverage. Their experience may serve others to accelerate the process.

An enabling environment for the HRWS includes the formulation of national and local legislation, regulatory frameworks to uphold standards, norms and good practice, institutional arrangements between public sectors at different levels of government and with public and private service providers, and guidance on procedures for the management of financial and human resources and for the monitoring of progress towards achieving the universal enjoyment of the HRWS, based on the internationally agreed criteria and principles.

The governance of modern States distinguishes three separate branches: the legislative, the executive and the judiciary branches. Laws are designed and adopted by the legislative branch; their correct application is verified independently by the judiciary branch. Within the legal framework, the executive branch can issue regulations, which together make up the regulatory framework. Compliance with regulations is verified by independent regulatory bodies.

Steps in the process of creating an enabling environment include the following:

- Mapping and analysis of the existing legislation at all levels of government.
- Reforming the legal framework to accommodate actors' responsibilities and accountability in line with the obligations implied by the HRWS, at all levels of government.
- Establishing effective institutional arrangements.
- Creating effective regulation.
- Developing guidance on assessing and managing resource needs incurred by legislation and regulation.
- Developing guidance on implementing the legal and regulatory requirements for monitoring indicators for HRWS criteria and principles.
- Periodic reporting on status, trends and developments in legislation, institutional arrangements and the regulatory framework.

Within the legal and regulatory frameworks, a number of issues will need to be defined: adequate technical standards, rules for contracts between service providers and users, minimum standards of good practice for quality of service, instruments to ensure affordability for all users and complaints mechanisms available to all users.

4.2 FUNDAMENTAL STEPS

One action for governments to undertake is the establishment or strengthening of a functional structure at the national level to coordinate the implementation of the above steps. Progressive realisation of the

An enabling environment for the human rights to water and sanitation

HRWS involves many actors at different levels. The design of a framework that supports the efficient implementation of these steps requires participation by all actors, within their individual mandates and authority. This is in line with the human rights principle of participation.

At all levels of government, relevant public sector institutions, private sector entities and civil society including the rights holders should all contribute, from the perspective of their interests and comparative advantages, to the creation of this enabling environment within which they themselves will have to cooperate. Clearly, water utilities and providers of sanitation services (private and public, including local government), informal providers of water supply and sanitation services (NGOs, unlicensed small enterprises and individuals) and regulators should be part of such a coordinated effort.

A national coordinating body for the creation or strengthening of an enabling environment for the HRWS may take different forms. In several countries, national water supply and sanitation boards dating back to the International Drinking Water Supply and Sanitation Decade of the 1980s continue to function, and their mandate and composition can be adapted to take on tasks related to the realisation of the HRWS. In other countries, national economic planning boards may provide the coordinating capacity. By their nature these coordinating bodies are used to working across sectoral and institutional boundaries, and planning is key to progressive realisation.

Over 100 countries have national human rights institutions in the form of human rights commissions or human rights ombudspersons (WaterLex 2014). These institutions have two core functions: the independent review of the nation's human rights commitments, and addressing grievances or complaints alleging human rights violations. The role of these national human rights institutions with respect to the rights to the HRWS needs to be enhanced, and one option for this is the adoption of General Comment 15 on the right to water (2002). This should result in the incorporation of these bodies among the mainstream water governance institutions in countries.

In countries where national human rights commissions exist, they are either part of the government structure or exist as NGOs. Their membership should include a range of relevant public institutions, from different levels of government, as well as members of academia who can influence policy formulation and guidance. It is desirable that service providers, regulatory bodies and NGOs also take part in such committees.

Whatever form a national coordinating entity may take, it should be able to support the creation of an enabling environment based on the experience of its members and their broad perspective on a range of human rights issues. Based on regional agreements, such as the Protocol on Water and Health under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes of the United Nations Economic Commission for Europe (UNECE)⁵, inter-ministerial committees operate in several countries that can provide a "home" for the coordination efforts leading to the desired enabling environment for HRWS. Under the UNECE Protocol (which, incidentally, achieved global status in 2015) Finland, Hungary and Norway are, for example, among the countries that have established such a committee. National coordinating bodies for the implementation of the SDGs may also have a role to play. Another option is to create a new coordinating entity dedicated to the HRWS. Such an entity should be carefully designed to include representatives of all parties concerned.

The involvement of formal water and sanitation operators in such coordinating bodies would best be achieved by representation through national associations of water and sanitation utilities; alternatively, national committees of IWA could become involved. Getting the informal service providers involved is more challenging, as they make up a more heterogeneous group with a lower level of organisation, if at

⁵<http://www.unece.org/fileadmin/DAM/env/documents/2000/wat/mp.wat.2000.1.e.pdf>; the protocol is administered jointly by UNECE and WHO.

Human Rights To Safe Drinking Water And Sanitation

Box 4.1 A proposed list of tasks for a national body to coordinate the progressive realisation of the HRWS

In each country, the legislation and regulations should facilitate a national HRWS coordinating entity:

- To propose accurate definitions of the content of the rights in a range of settings, including at home, at the workplace, at schools, in hospitals and health centres, at public places such as markets and transport hubs, and in detention centres and detention camps.
- To identify gaps and needs in existing legal and institutional frameworks as a basis for proposals to facilitate full realisation of the rights through the appropriate organisation of public authorities, including
 - Allocating tasks to the different national and local public authorities that have to contribute to the realisation of the rights, and clarifying which public authority is responsible for addressing which criterion or element of the rights, and for which activities.
 - Ensuring the appropriation of adequate means of implementation (financial and human resources) for all relevant public authorities.
 - Organising mechanisms of effective interaction between right-holders, public authorities and service providers.
 - Accurately defining the rights and responsibilities of all, including the duties of the rights holders.
- To organise monitoring of indicators for progress towards attaining each criterion and principle of the rights.

all. It would be a mistake, however, to ignore them in the process of creating strategic policy, legal and regulatory frameworks for the HRWS, since in many instances they will continue to have an important role to play.

The functions of this coordinating body, whatever form it may take, with respect to the HRWS are summarised in Box 4.1.

In addition to a dedicated effort towards legal and institutional reform, and towards strengthened regulation, key actors in delivering water and sanitation services may also engage in more conventional lobbying of politicians involved in the legislative process, such as members of parliament, or in the formulation of regulations, such as mayors.

Another initial step before screening and reforming the legal framework is to analyse and, where possible, provide an input into updating the national drinking water and sanitation statistics, and to create or update an inventory of water sources. The objective is to review this information through a human rights lens, in order to detect disparities in the distribution of availability and reliability, access, and levels of safety, affordability and acceptability within the overall population, and within population groups.

In most countries there will be a range of statistical datasets on drinking water and sanitation. Public works authorities should have information on the status and functionality of infrastructure. Service providers should have information on customer compliance with paying their bills. However, the more correlational information needed to reveal the above disparities tends to come from nationally representative household surveys and censuses carried out by national bureaus of statistics. Disaggregation of datasets can show the different service levels available to different population groups, the divide in access between rural and urban populations as well as between the formal and informal urban populations, and what impact past efforts to increase coverage have had on the situation of people with different

An enabling environment for the human rights to water and sanitation

income levels (usually represented as wealth quintiles, 20% segments of the population according to agreed wealth indicators).

There is an important role for service providers and regulators in this process, even if the datasets they collect usually do not by themselves allow for this type of disaggregation (most provider surveys will have a narrow focus with specific objectives) or are not nationally representative (in many countries regulators lack the capacity to extend surveillance beyond urban areas). More restricted datasets can, however, add valuable information to the outcome of the broader household surveys and censuses because they may go more in-depth on specific issues and are collected with greater frequency. The outcome of dedicated studies by local governments, academic institutions or NGOs on the conditions of vulnerable groups will further add to the overall picture and can be used to formulate specific local policies.

The efforts by a coordinating body to create or strengthen an enabling environment should address reconciliation of datasets from different sources, engaging, in particular, service providers and regulators, in order to obtain the strongest possible evidence base for legal, policy and institutional reform that addresses inequality, discrimination, poor accountability, and lack of sustainability, participation and access to information.

4.3 ANALYSIS AND REFORM OF EXISTING LEGISLATION

The body of law governing water issues is large and diverse. In general terms, these laws address the protection, development and management of the resource base, the various uses of water resources for different purposes, and the roles, responsibilities and entitlements of the actors and users. With respect to drinking water, overarching national legislation will be elaborated into more specific articles of law and local government (by)-laws, and into detailed standards, norms and good practices under the oversight of regulatory bodies. National authorities as a rule combine legal obligations and preferred policy options into national strategies, which guide the use of limited resources in the context of the law to achieve agreed policy objectives.

In most countries, sanitation legislation is likely to be less well-developed. Sanitation is most often addressed in the broad context of environmental or public health legislation rather than by stand-alone, dedicated acts of law. For networked sanitation systems (sewage systems) regulatory frameworks are likely to exist at the local government level; this is often not the case, however, for *in situ* sanitation and for the disposal of the faecal sludge they produce, and in rural areas.

Formal providers of drinking water and sanitation services, whether public or private, should be well aware of the national legal framework within which they operate, and the opportunities and the restrictions it entails. Informal operators, on the other hand, may be ill-informed about legal aspects and are less likely to have easy access to the relevant information. One objective of legal reform in response to the new human rights obligations will be to bring these informal operators into the legal framework and convey clear and understandable messages to them.

In reformulating legal texts, clear and accurate definitions of the human rights criteria and principles are of the essence. Any ambiguity will lead to misunderstandings among actors about their roles and responsibilities, and to confusion among the rights holders about what they can expect from national and local authorities and from service providers. Such ambiguity will also leave the responsibilities of the rights holders less than clear.

It is one issue to review the existing legal framework pertaining to drinking water and sanitation services with a view to possible human rights reforms, it is another to explore how the human rights principles introduce linkages to areas of legislation traditionally not considered of predominant relevance to water and sanitation services. For example, legislation on land tenure and the associated entitlements

Human Rights To Safe Drinking Water And Sanitation

or obstacles to water connections and sanitation services take on more prominence in a human rights context. Or, another example, requirements for gender-segregated sanitation facilities in schools and health centres may become an issue requiring specific new legislation. Legislation for environmental and health impact assessment of development policies and projects may contain elements on public participation and mechanisms to achieve this (such as public hearings), which can be incorporated into the planning component of water resources development and into the process of formulating drinking water and sanitation master plans. Legislation in support of other human rights objectives, for example health, can be gleaned for lessons to be learned and applied to drinking water and sanitation laws in relation to equality and non-discrimination, accountability, participation, sustainability and transparency.

In a few countries the first step towards creating a legal framework for the HRWS has been to enshrine the rights within the national constitution. The Republic of South Africa is an often-quoted early adopter of the HRWS as part its new 1994 Constitution, admittedly at a unique moment in the country's history (see Box 3.2). Other countries, such as Kenya (see Box 4.2), have gone through a process of legal and regulatory reform before anchoring the achievements in the country's Constitution. In as much as operators can influence the legislative process through their participation in a national coordinating body or by lobbying parliamentarians, it is recommended they aim for the formulation of sectoral legislation first, as this will have an immediate practical impact. This recommendation does not want to play down the importance of including the HRWS in the constitution (the ultimate anchor and cross-sectoral

Box 4.2 Legal and regulatory evolution in Kenya

Kenya's Water Act took effect in 2002 and establishes and defines the duties of the Water Resources Management Authority, regulates the ownership and control of water and makes provision for the conservation of surface and groundwater and the supply of services in relation with water and sewerage⁶.

Every water resource is vested in the State, but subject to any rights of user granted by or under this Act or any other written law (section 3). The Minister shall have control over every water resource in accordance with provisions of this Act (section 4). The Water Resources Management Authority is established under section 7 as a body corporate. [...]. Remaining provisions of Part III concern public water use schemes and community projects for use of water and drainage of land, the approval of use of water (water rights), drainage and waterworks, and the conservation of groundwater. A Water Services Regulatory Board is established under section 46 as a body corporate. The Board shall issue licenses for the provision of water services, provide standards for such services and carry out other functions in relation with water supply outlined in section 47. The national water services strategy adopted under section 49 shall provide for a national monitoring and information system on water services (section 50). The Minister may constitute Water Services Boards under section 51. These Boards shall provide water services or delegate functions to water service providers (sec 55). Other provisions of Part IV concern rights and duties of holders of licenses to provide water and some other matters relating to water supply [...].

(continued)

⁶http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=029540&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL.

An enabling environment for the human rights to water and sanitation

Box 4.2 Legal and regulatory evolution in Kenya (continued)

In an interview in October 2013, engineer Robert Gakubia, Chief Executive Officer of the Water Services Regulatory Board (WASREB), reflected on the evolution of legal and regulatory frameworks in Kenya. Here follow some excerpts:

[...]

[After the Act took effect in March 2003] of course we set up the institutions, the separation of different roles, separating policy, regulation and service delivery. The Act improved the accountability mechanisms by clarifying roles and responsibilities. Its implementation was guided by human rights principles. The message to the institutions was very clear on what they were supposed to be doing. [...] In Kenya we have a multiplicity of oversight agencies, which on the one hand is good, because they also check on each other, but on the other hand people might complain that there is so much caution. From the situation we were coming from this scrutiny was very important and I am talking from personal experience—I have been a public officer for all my life and I cannot tell you how important it is to build accountability which has not been there. This was the reason why all these institutions were created with very clear separations. So the resistance was, of course, expected, but little by little we have built the critical mass to drive the change. Now, people are getting to understand the meaning, because a lot of the principles that guided the reform are now in the Constitution. You simply have to operationalize those principles, so the Constitution comes in to enhance and strengthen the work we have been doing in the reform. You may know that Kenya declared water a human right as a first step of implementing the national strategy. Now the Constitution requires that every public policy has to be based on human rights principles. [...] [The legal and regulatory framework] actually developed and evolved step by step. [When human rights were mentioned], I used to say: of course, people have a right to life, even by the Constitution, but it was important to say it explicitly for water and sanitation, because now people start to ask questions such as who should deliver this right, and by asking those questions they become more aware of the responsibilities the State, the various State agencies and other actors have. The responsibility was, at the time, with the Ministry of Water Resources and we set up a team, the Water Sector Reform Secretariat. That team was responsible for driving the reform process, of course with political support. They made sure when conflicts arose they were addressed and sorted out through capacity development, so the institutions could understand why we need this and why we have to do it like this [At the start] there was a mix of engagement and of some trepidation or even fear. But to a large extent that had to do with people feeling comfortable, people being inside their comfort zone. But you see, when we started questioning performance, then they were forced outside of their comfort zone. We were questioning: are you really performing, who are you responsible for, these were the kind of questions and then they realized, hey, we need to ask ourselves these questions. And I continuously stress the point that this is where the Constitution has helped us: its adoption in 2010 introduced the articulation of the national values and principles of governance and a comprehensive bill of rights. Because the Constitution is very clear that if a right is not being met, then the State has the burden to prove that it cannot meet the right for some particular reason. And that is when the State itself has to start questioning its way of working, so the allocation of resources and the allocation of responsibilities become issues of which they realize they require monitoring to see how best to deal with them. [...]

In a post-script in January 2016, Robert Gakubia adds: *Over the past two years we prepared a draft Water Bill which was passed by one House of Parliament in July 2015. It is now being deliberated in the other House of Parliament. The bill retains and emphasizes the strong role for regulation in water service delivery. A number of contentious issues remain, primarily because of the political devolution brought about by the Constitution of 2010. These issues have to do especially with the role of some institutions under devolution (water services were devolved to the counties) and, not least, whether regulation should be implemented at sub national [county] or national level. This being a political process there are political dynamics as well. In any case, for the successful implementation of the progressive realization of the right to water and sanitation, an effective regulatory framework is essential but not sufficient on its own.*

Sources: FAOLEX—the legislative database of the Legal Office of the Food and Agriculture Organization of the United Nations; Robert Gakubia, personal communication.

Human Rights To Safe Drinking Water And Sanitation

reference point), but the process of constitutional change can be lengthy and the adoption of laws for rapid application may have a more immediate impact on progressive realisation.

The legal status of water operators may also need review to identify situations where it unnecessarily puts constraints on opportunities to pursue human rights objectives. In the majority of cases, the legal status will be straightforward—formal operators are either public or private entities, regulated by public authorities. In some cases, however, water and sanitation services are provided by international or local NGOs or by cooperatives, whose legal status and its implications may be less transparent or do not fit a standard mould. For example, the biggest operator in the rapidly expanding city of Santa Cruz de la Sierra in Bolivia, Saguapac, is a cooperative with mixed public and private characteristics, and it is expected that updates in its legal status will open new opportunities for initiatives in support of the HRWS.

A legal framework for the HRWS will have specific policy implications. The resource base of institutions with a responsibility to act will need careful consideration. In many countries, this will imply allocation of funds to local governments and to water authorities.

In this context, pro-poor policies are important. Several countries have pro-poor policies that aim to enhance the possibility for vulnerable individuals living in marginalised communities to meet their basic needs. This is often accompanied by legal provisions for national or local funding to support initiatives addressing the needs of the poor. A review of national legislation provides an opportunity to assess the effectiveness of pro-poor policies and laws in addressing the HRWS. The affordability criterion, in particular, can be highlighted in this connection, by focusing on the development and dissemination of low-cost solutions, by strengthening technical and vocational training, by promoting financial incentives, direct subsidies (for example, to cover connection costs for the poor) or cross-subsidies, and by investing in monitoring and surveillance systems to strengthen the database on access and availability in informal peri-urban settlements and among the rural poor. Service providers can be supportive of such initiatives as part of their social responsibility programmes, by indicating where financial incentives would be most effective, by promoting a judicious use of subsidy mechanisms, by providing technical cooperation to informal providers and by complementing monitoring data with any relevant information they may have at their disposal.

In the same vein, water and sanitation operators in high- and some middle-income countries can play a role in initiatives to implement policies of their government's bilateral cooperation agencies aimed at promoting the HRWS. In the context of international cooperation they can provide valuable technical inputs to enhance capabilities and capacities in low-income countries to extend water and sanitation services, with special attention to equality and non-discrimination. The model of Water Operator Partnerships (WOPs) can be applied usefully in this context. Similarly, the functions of regulatory bodies in developed economies can be emulated, appropriately adapted, to low- and middle-income settings, through international cooperation.

In the narrower context of regional cooperation, countries sharing more or less the same set of challenges and opportunities can agree on a joint approach towards developing legal frameworks that set the standards and norms for progressive realisation of the HRWS. An example of such a catalysing regional agreement is the earlier mentioned Protocol on Water and Health of the UNECE⁷, under which at least 25 governments, including those in eastern Europe, the Caucasus and Central Asia (where, in 2006, an estimated 140 million people lacked a household connection for drinking water, 41 million lacked access to improved sources and 85 million to improved sanitation facilities), have signed up to

⁷<http://www.unece.org/?id=2975>.

An enabling environment for the human rights to water and sanitation

objectives and criteria largely overlapping with those of the HRWS. Regional agreements are particularly useful to emphasise the legal, regulatory and programmatic needs of small-scale community or private operators, whose voice may not necessarily be heard at the national political level, but whose cumulative potential to contribute to progressive realisation at the regional level is hard to ignore.

4.4 INSTITUTIONAL ARRANGEMENTS

Legal reform to accommodate the requirements for progressive realisation of the HRWS criteria and principles will have to be made operational through a comprehensive agreement on roles and responsibilities. The level of complexity to arrive at such an agreement will depend on the specific institutional architecture in each country. As a rule, the responsibilities for drinking water supply are well defined but fragmented; those for access to water for unserved people are often non-existent. Responsibilities for sanitation are less well defined and their sectoral affiliation is often unstable. Legal reform will create opportunities to overcome these weaknesses. Institutional arrangements will help to bridge the gaps and enhance communications to improve coordination and eliminate overlaps.

The legislative and executive branches of national government must ensure throughout the country and for all population groups that the protection and progressive realisation of each HRWS principle and criterion is allocated to a clearly identified entity, and that this entity has adequate means of implementation at its disposal. The relation between governance structures and responsibilities is not always obvious. Lack of clarity in the allocation of responsibilities may result in HRWS issues ending up unattended to. For example:

- Normally, a public authority is responsible for organizing drinking water supply and sanitation services to households in a territory, including the progressive expansion of such services – however, it is not a foregone conclusion that they will also initiate access to safe drinking water and sanitation in schools, hospitals, and other public buildings. Even more challenging is the question who takes responsibility for the obligation to make safe drinking water and sanitation services available to the inhabitants of informal settlements, whatever their legal status may be.
- Drinking water quality and safety are usually the responsibility of the Ministry of Health, but progressive realisation with respect to this HRWS criterion remains in most cases the responsibility of the public authorities in charge of organizing water supply services.
- Affordability may be ensured through tariffs decided by the public authority responsible for organizing drinking water supply, but this responsibility may also be part of the remit of other institutions, such as the Ministry of Social Affairs, the Ministry of Finance or a local government agency (see Box 4.3).

In emergency situations a clear allocation of responsibilities will be of crucial importance. An adequate, reliable and satisfactory service delivery may be disrupted for unforeseen circumstances (a burst pipe, toxic pollution of the water source, power failure, or a natural disaster such as an earthquake, landslide, volcanic eruption or flood). A coordinated preparedness plan formulated by the operators (or, optimally, by an association of operators) must define which public body is responsible for alternative water supply to the population for different types of disruption: the local authorities or a national emergency scheme. Any such preparedness plan should include considerations that address the criteria and principles of the HRWS—an emergency situation is not an excuse for overlooking human rights issues.

Focusing on the perspective of service operators and regulators, several options to strengthen institutional links have to be assessed. In the next sub-section, the emphasis will be on operators, and it is followed by a sub-section on regulation.

Human Rights To Safe Drinking Water And Sanitation

Box 4.3 Examples of pro-poor funds from Chile, France and Zambia

In urban Chile, water and wastewater services are supplied by regional water operators under the responsibility of the Ministry of Public Works. A solidarity mechanism that targets the poor is funded by another ministry and operated by municipalities fully independent from the service delivery chain.

In France, the delivery of public water and wastewater services is the responsibility of municipalities. A type of subsidy, referred to as a solidarity mechanism, allows for paying water bills for those people who are the most financially deprived. This mechanism is partly funded and fully operated at the departmental level, the next level of administration above municipalities.

In Zambia a Trust Fund was established to support extension of services to the urban poor by the deployment of public standpipes at kiosks. The funds to establish the Trust Fund came from development partners, government and water utilities. A solidarity levy on the water bills of all customers served to generate funds for sanitation extension among the urban poor.

Sources: Gérard Payen (Chile, France), and Oswald Chandra (AfdB; Zambia), personal communications.

4.5 SERVICE DELIVERY

In many countries, public and private operators are organised in a national association (just like many at the international level are organised in IWA and/or in AquaFed). Such national associations should include the HRWS on their agenda and review the implications for their members' roles and responsibilities. This will ensure a common and consistent approach in operators' interactions with other actors. Where such a national association does not yet exist, the HRWS requirements may provide an incentive to establish one.

A link with the national coordinating entity charged with creating and strengthening an enabling environment for the progressive realisation of the HRWS will be critical. It is essential that service providers actively participate in this debate, to contribute sound evidence and their knowledge of ineffectiveness or perverse effects of existing frameworks and arrangements, to represent their interests, and to ensure their roles and responsibilities are clearly and correctly defined. They have important experience and expertise to contribute to the debate. This coordinating entity will also provide a neutral platform on which operators can interface with public authorities, regulatory bodies and civil society in a transparent way.

Private sector providers of drinking water supply and sanitation services are licensed by the national, regional or local authorities, and therefore have an official link to government. Increasingly, such licenses take the form of performance contracts which offer an opportunity to include actions that contribute to the realisation of HRWS targets. Even if they are not in the form of performance contracts, the national authorities must include HRWS obligations in the licenses, in line with their obligations (and eventual accountability) as duty bearers. How this translates into specific actions within operators' essential functions is a question addressed in Chapter 6.

In addition to the links to the licensing authority, which may be a water ministry, a department of local government (for municipality-level services) or a regulator, operators need to establish links with other national or local authorities. On general human rights issues this will be with ministries of foreign affairs or justice, on issues of affordability with social affairs ministries or social affairs departments at the local government level, on issues of drinking water quality with ministries of health or municipal health

An enabling environment for the human rights to water and sanitation

departments, and on issues of water resources with ministries of the environment or their counterparts at local government level.

Once areas of cooperation have been identified and agreed, a useful way of confirming them is through a memorandum of understanding that defines scope, timeframe, responsibilities for specific actions and resource implications.

Finally, the link between service providers and their customers also can be considered under institutional arrangements, especially in countries where there is a strong consumer protection agency. Any contract between service provider and customer should stipulate the conditions of service delivery, the rights and responsibilities of both parties and complaints mechanisms that define recourse, redress, arbitration and sanctions. These contracts also offer the opportunity to clearly lay out the responsibilities of users as rights holders in the context of HRWS.

In order for any of these contracts or memoranda not to become obstacles to the HRWS themselves, they should be periodically reviewed and updated. A level of flexibility has to be built into the framework of institutional arrangements, so it can respond to the expansion or decrease of populations, to trends in long-term water availability, to changing weather patterns, to the gradual increase of service levels linked to general socioeconomic progress and development, and to new technologies creating new delivery options. Figure 4.1 summarises the tasks and relationships of the actors involved.

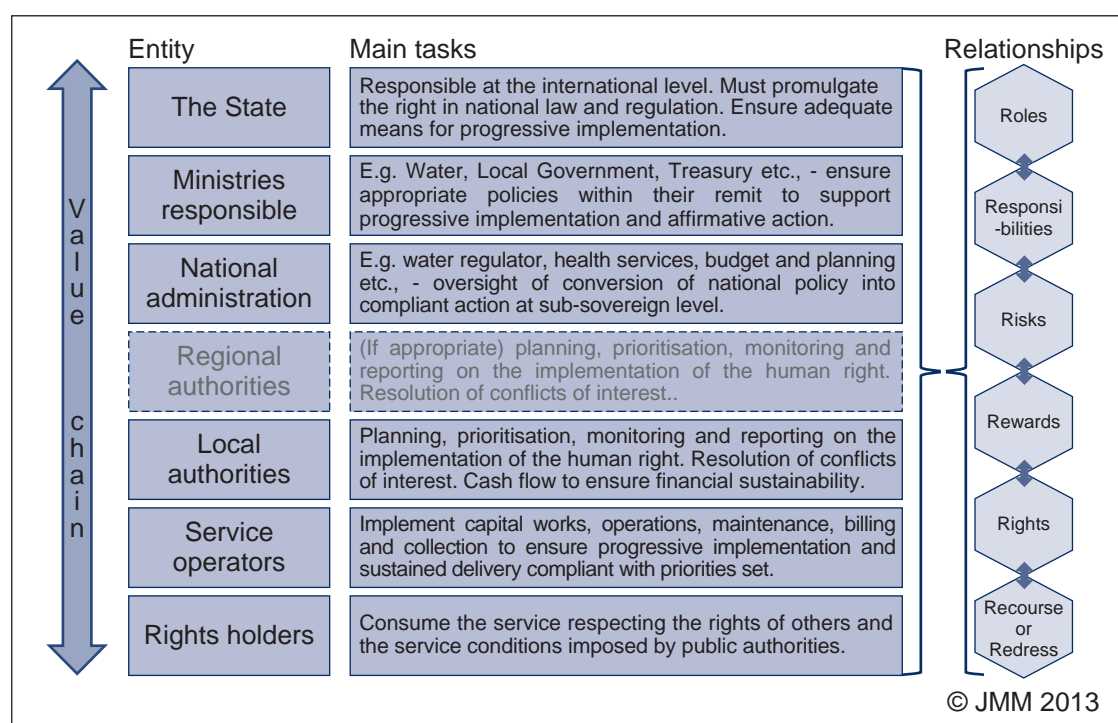


Figure 4.1 The value chain for realising the rights to water and sanitation. Source: AquaFed, as presented by Gérard Payen at the 3rd IWA Water and Development Congress and Exhibition, Nairobi, October 2013.

4.6 REGULATION

The roles and responsibilities of regulatory bodies or “regulators”⁸ (economic, drinking water quality, environment) have a strong bearing on the way operators deliver their services.

The executive branches of national and local governments establish regulations within the national legal context. Regulators interpret the laws and regulations in practical terms and are key to implementation, monitoring, reporting and enforcement. In the drinking water and sanitation context, economic regulators are concerned with finance and tariff setting; in so doing, they are in a position to influence the planning function. They have to ensure that tariffs are affordable, but at the same time that the required investments can be financed, and that adequate provision is made for maintaining serviceability of systems for sustainability to avoid regression. In some countries, for example Portugal, they also have a capacity-building role. Drinking water quality regulators can be part of an economic regulatory body, but more commonly are part of the ministries of health. They advise governments on appropriate interim and long-term standards, promote water and sanitation safety plans and ensure that effective monitoring is in place. They have a key role in reporting drinking water quality and in the investigation of incidents. In many low- and middle-income countries, regulator surveillance is limited to urban areas. Environmental or specific wastewater regulators monitor discharges to waterways and are important in reducing the impact of waste on the quality of drinking water sources and the environment.

The role of regulators goes beyond that of mere policing. Strengthening the evidence base through targeted studies helps the design and adjustment of norms and standards. For example, studies by the Bolivian regulator led to the introduction of the “tarifa justa”, a tariff system that takes into account affordability and capacity to pay. The information collected by regulators can also feed back into the legislative system to support the evolution of policies and laws. In Kenya, the regulator reviews consumer profiles together with the water utility, and decides whether a raise in tariffs is feasible, how bill collection can be made more efficient and where water kiosks can fill the gap for those who are not connected to the distribution network and can only pay in small instalments on a day-to-day basis. Clearly, any special tariff to accommodate the affordability question will have to ensure that full cost recovery, essential for sustainability, is addressed effectively. In the province of Santa Fé in Argentina, the regulator has instigated a solidarity programme in urban areas with low sewerage coverage, where inhabitants join in a monthly lottery—the community is mobilised around a public works programme implemented by themselves and the lottery determines each month which community members will get a connection to the sewerage system.

The 2002 Water Act of Kenya has bestowed the regulatory body WASREB with a list of responsibilities that include the following:

- to set and verify minimum service levels for adequate service quality;
- to set tariffs for affordability and financial sustainability;
- to institutionalise consumer engagement through citizen volunteer groups for a strengthened consumer voice;
- to establish corporate governance standards in operator enterprise that foster efficiency and professionalism;

⁸The IWA Lisbon Charter on public management and regulation defines a regulatory authority, a regulatory body or regulator as a public authority responsible for applying and enforcing standards, criteria, rules or requirements—which have been politically, legally or contractually adopted—exercising autonomous authority over the Services, in a supervisory capacity—see section 5.4.

An enabling environment for the human rights to water and sanitation

- to provide guidance on utility clustering for the commercial viability of services; and
- to carry out performance monitoring and public reporting for transparency and for the accountability of the various actors in service provision.

Even with this comprehensive package of responsibilities, WASREB now has to further increase its efforts, in particular in the area of monitoring, to ensure that the information it collects reflects the access situation on the ground, allows improved targeting of efforts to extend services or increase service levels in underserved areas, and to intensify public reporting on progress in realising the rights.

Increased monitoring and surveillance require the development of reliably measurable indicators. Many countries have been developing and measuring indicators for decades; this has been stimulated further by the need to monitor the drinking water and sanitation target during the period of the Millennium Development Goals (2000–2015) and which is now expected to accelerate and intensify in response to the HRWS and to the efforts towards the Sustainable Development Goals (2015–2030).

The interaction between regulators and service providers is a delicate one. In a context of mutual trust, regulators must be able to sanction operators who fail to meet the norms and standards, but they should also be open to the capacity development needs of operators and support them in efforts to improve performance.

Importantly, regulators should provide guidance on assessing and managing resource needs incurred by legislation and regulation. For financial resources this means working to ensure that budget appropriations accompany new laws, that there continues to be support for regulatory functions, and that cost recovery is strengthened with a view to better asset management. For human resources it means regulator engagement in human resource analysis, addressing gaps and redundancies in operators' human resource base, and the identification of new human resource needs. The recent IWA analysis of human resources gaps in drinking water, sanitation and hygiene provides evidence of the needs in terms of education, training and staff deployment to support efforts towards universal coverage (IWA 2014; see Box 4.4).

In their holistic review of water utilities' structures and operations, regulators must ensure the human rights perspectives are addressed throughout, in assessing performance, efficiency, governance and the quality of services delivered. This is particularly important with respect to types of governance where members of the senior management or board members are political appointees without specific professional qualifications in drinking water and sanitation service provision.

Box 4.4 Highlights from an IWA analysis of WASH human resources gaps and needs

- In 10 countries reviewed there was a shortfall of 778,000 trained water and sanitation professionals needed to reach universal coverage.
- Mozambique needs to double the number of trained water professionals, an additional 11,900 people; 62% of the shortfall was in the sanitation sector.
- Ninety-eight per cent of Ghana's human resource shortfall was in the sanitation sector.
- Women are massively underrepresented in the sector, on average on 16.7% of the water and sanitation sector workforce in 15 countries was female.
- Bangladesh, a country close to achieving Millennium Development Goal (MDG) water and sanitation targets, requires an additional 44,000 water sector professionals to reach universal coverage.

Source: IWA 2014.

Human Rights To Safe Drinking Water And Sanitation

Examples of regulations to be contemplated include the following categories:

- Quantity: the minimum amount of safe water to be accessible (1) at home, (2) at the work place, (3) in public buildings (schools, hospitals, prisons), (4) when the public service is disrupted (power shortage, burst pipes, flooded installations) and (5) in case of water scarcity (drought, disaster).
- Availability: for beneficiaries of public water networks, the minimum number of hours a day during which water should be running from the tap (this may differ between households and collective standpipes).
- Quality: the characteristics of water required for it to be considered safe for public consumption (number and conditions of quality tests). Measures to cope with public water supply that is unsafe (e.g. boiling alerts). Precautionary actions if one of these characteristics is not satisfactory (excess of salt, arsenic, fluoride).
- Affordability: set appropriate, contextual definitions for “affordable” and “unaffordable”. Define conditions under which individuals or households are entitled to apply for a subsidy to make their water supply affordable to them.
- Access: when a water mains bursts or electric power is interrupted, so is public water supply. This may last days or even weeks. What alternative service is guaranteed? Is the safety of the water that is distributed/sold by water tankers guaranteed, are arrangements in place for the delivery of bottled water?
- Access: where a public water or wastewater piped network goes through an inhabited area, individuals should know if they have the right to be connected to this network (and under what conditions).
- Accessibility: in urban settlements, the establishment of a maximum distance (or number of floors) between a household and the closest source of safe water.
- Accessibility: in isolated unserved areas, define the conditions for individuals to get water from a neighbouring community.

Similarly, in the strengthening of regulations for sanitation and wastewater management, these HRWS criteria-related categories need to be considered.

Finally, water utilities and regulatory bodies can strengthen their commitment and that of their staff to the realisation of the HRWS by adopting a collectively agreed code of practice, such as the IWA Bonn Charter for Safe Drinking Water⁹. In fact, the Bonn Charter, although focused on issues of drinking water quality management and formulated before the negotiations on the HRWS were concluded, contains ample reference to relevant issues. It does refer explicitly to rights issues when describing the roles and responsibilities of governments, and in its conclusion states, “Access to good, safe drinking water should be the right of every human being”. The Charter further cites accountability, transparency, progressive realisation, affordability, accessibility and availability among its principles and in its operational paragraphs. It lists obligations of governments, water suppliers, regulators and consumers. The IWA Lisbon Charter on Public Policy and Regulation for Drinking Water Supply, Sanitation and Wastewater Management was adopted by 85 government representatives at the 7th World Water Forum in Korea in April 2015. It is introduced in more detail at the end of Chapter 5.

Chapters 5 and 6 go into further depth on how the actions responding to these and other issues will be incorporated into the operational and institutional framework and into the essential functions of service providers and regulators.

⁹<http://www.iwawaterwiki.org/xwiki/bin/view/Articles/Bonncharterprinciplesforsafedinkingwater>.

