

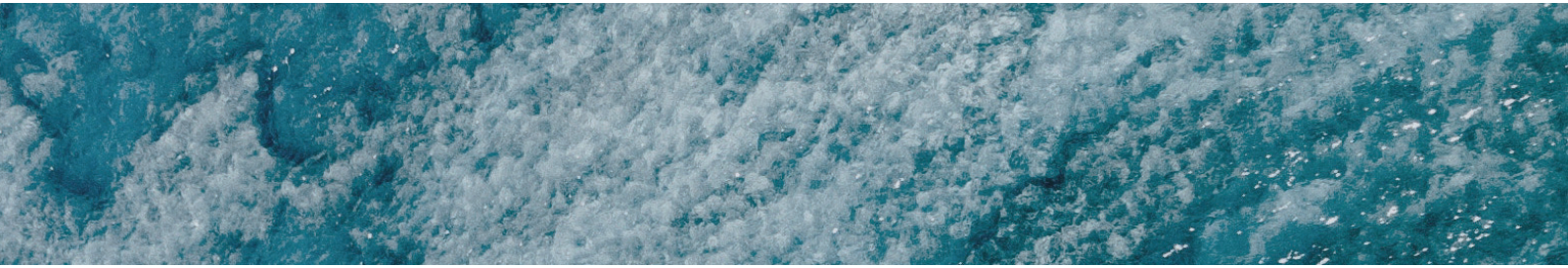
**PROTECTING THE HUMAN RIGHTS
TO WATER AND SANITATION
OF VULNERABLE GROUPS**

**THE LEAVING NO ONE BEHIND
ASSESSMENT TOOLKIT**

OCTOBER 2019

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SECTION 1: LEAVING NO ONE BEHIND AND THE NOTION OF VULNERABLE GROUPS

1. THE CONCEPT OF VULNERABLE GROUPS IN INTERNATIONAL LAW

Whilst it is today uncontested that there is enough freshwater in the world to meet the existing and future needs of the world's population¹, providing access to water and sanitation for all still remains a challenge for many States. The first ones left behind in the quest for water are indeed vulnerable groups, which are more often than not disregarded in the water allocation picture. Along this line, the 2019 GLAAS Report states that most countries do not have WASH targets in place for populations living in vulnerable situations². It stresses: “[t]he SDG imperative to leave no one behind is reflected in SDG 6 on water and sanitation, which states “Ensure availability and sustainable management of water and sanitation for all” as well as in SDG 10 on reducing inequalities within and among countries and SDG 5 on gender equality. Countries have committed to actions to target and reach populations living in vulnerable situations in order to close existing WASH service gaps and expand access to the unserved. Populations living in vulnerable situations vary by country and may include poor populations, populations living in remote and hard-to-reach areas, women, ethnic minorities and other populations that experience greater difficulties in accessing services. To succeed, measures to leave no one behind require prioritization within WASH systems with adequate financial and human resources, as well as monitoring systems that can identify inequalities, track progress towards universal coverage and allow governments to take corrective action”³.

UNGA 2030 Agenda for Sustainable Development pledges that no one will be left behind in the realisation of human rights of all through its 17 Sustainable Development Goals and 169 targets. In so doing, it builds on the Millennium Development Goals and “seeks to complete what they did not achieve, particularly in reaching the most vulnerable”⁴. With regard to access to water and sanitation in particular, SDG 6.2 seeks, by 2030, to achieve access adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations. In addition, States agree that follow-up and review processes for the implementation of the Agenda at all levels “will be people-centred, gender-sensitive, respect human rights and have a particular focus on the poorest, most vulnerable and those furthest behind”⁵. In leaving no one behind, special attention is given to the needs of the poor and those in vulnerable situations.

Vulnerability plays a crucial role in international law in general and within the human

1 BENVENISTI, Eyal, “Collective Action in the Utilization of Shared Freshwater: The Challenges of International Water Resources Law”, in: *The American Journal of International Law*, Vol. 90, 1996, p. 384.

2 UN-WATER & WORLD HEALTH ORGANIZATION (WHO), *National Systems to Support Drinking Water, Sanitation and Hygiene*, GLAAS Report 2019, p. 48. Available at: https://www.who.int/water_sanitation_health/publications/glaas-report-2019/en/

3 *Ibidem*.

4 UNITED NATIONS, A/RES/70/1, p. 6, paragraph 16.

5 *Ibidem*, page 32, paragraph 74, e).



rights framework in particular⁶. Actually, it amounts to a way of opening up the human rights universal, a step towards a more inclusive universal human rights subject⁷. Nonetheless, there is still ambiguity as to the meaning and scope of this notion. There is at present no clear definition of vulnerable groups in international law.

With regard to the human rights to water and sanitation in particular, neither does the Committee on Economic, Social and Cultural Rights provide a definition of ‘vulnerable groups’ or ‘vulnerable individual’. Neither does it specify the characterising features of vulnerability. Still, General Comment 15 on the right to water (articles 11 and 12 of the Covenant) does refer to specific groups, which have traditionally faced difficulties in exercising this right. Paragraph 16 of the mentioned instrument is particularly enlightening in this regard, when it states: “Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that: (a) 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; (b) Children are not prevented from enjoying their human rights due to the lack of adequate water in educational institutions and households or through the burden of collecting water. Provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency; (c) Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status; (d) Indigenous peoples’ access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water; (e) Nomadic and traveler communities have access to adequate water at traditional and designated halting

⁶ MISIEDJAN, Daphina, *Towards a Sustainable Human Right to Water: Supporting vulnerable people and protecting water resources*, Cambridge, Intersentia, 2019, p. 32. Cf. CHAPMAN, A. R., & CARBONETTI, B., “Human Rights Protections for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights”, in: *Human Rights Quarterly*, Vol. 33, 2011, p. 683.

⁷ PERONI, Lourdes & TIMMER, Alexandra, “Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law”, in: *International Journal of Constitutional Law*, Vol. 11, No. 4, 2013, p. 1085.



sites; (f) Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas. Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals; (g) Prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners; (h) Groups facing difficulties with physical access to water, such as older persons, persons with disabilities, victims of natural disasters, persons living in disaster-prone areas, and those living in arid and semi-arid areas, or on small islands are provided with safe and sufficient water”⁸.

Hence, for the purposes of international law, vulnerable groups can be defined as those groups and their individuals who face difficulties in exercising their rights, in this particular case their rights to safe drinking water and sanitation⁹. It is worth noting that the notion of vulnerable groups as elaborated by the CESCR is legal, rather than merely descriptive. A legal concept of vulnerable groups escapes the narrative, which describes the vulnerability of certain groups or persons in terms of innate characteristics they have or predicaments they are in, thereby sounding judgmental and stigmatising. Rather it focuses on the lack of effective legal protection characterising the situation of those groups and their individuals and acknowledges their particular characteristics and situations as elements that should help competent authorities better understand the challenges inherent in implementing their human rights in general, which include their human rights to water and sanitation. Furthermore, the Committee undoubtedly regards the individuals composing vulnerable groups as right-holders and main stakeholders, who must have a say in the way their right is realised and have the possibility to access justice in those cases where a violation of their human rights has occurred¹⁰. In addition, the list of vulnerable groups provided by the CESCR is not exhaustive. There are – or might be in the future – other groups, which because of the considerable difficulties they face in exercising their rights, among which the human rights to water and sanitation, might also be considered vulnerable and thus need special protection.

⁸ UNITED NATIONS, E/C.12/2002/11, paragraph 11.

⁹ Misiedjan defines vulnerable groups as those groups that are susceptible to not being able to obtain sustainable access to adequate quantities of water of an acceptable quality for domestic purposes due to a combination of social and environmental factors. MISIEDJAN, *op. cit.*, p. 32.

¹⁰ Cf. NIFOSI SUTTON, Ingrid, “A Human Rights-Based Vulnerability Paradigm: Lessons from the case of displaced women in post-quake Haiti”, in: ZORZI GIUSTINIANI, Flavia *et al.* (eds.), *Routledge Handbook of Human Rights and Disasters*, New York, Routledge, 2018, p.

2. THE INTERNATIONAL LEGAL REGIME PROTECTING VULNERABLE GROUPS' ACCESS TO DRINKING WATER AND SANITATION

Concern for the protection of vulnerable groups is not only embedded in the text of the Universal Declaration of Human Rights, but also informs all the UN and regional treaties adopted after 1948. Some of these instruments are particularly relevant to the situation of specific vulnerable groups, which are especially affected by violations of rights such as women, children, racial and ethnic groups and their members, persons with disabilities, migrant workers and their family members, refugees, indigenous communities, persons affected by forms of discrimination other than racial discrimination, older persons, and internally displaced people. Such treaties protect the mentioned specific groups while restating and reformulating their human rights and prescribing precise State obligations to be fulfilled to effectively ensure the realisation of those rights thus eradicating the difficulties faced by them in exercising them. Those treaties are: the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities, the Convention Relating to the Status of Refugees, the ILO Indigenous and Tribal Peoples Convention (C 169), the UN Declaration on the Rights of Indigenous Peoples, the III Geneva Convention Relative to the Treatment of Prisoners of War and the IV Geneva Convention Relative to the Protection of Civilian Persons During Times of War, the Inter-American Convention on Protecting the Human Rights of Older Persons and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. Although the two latter are regional agreements, they are still applicable within their respective regions as international particular norms.

With regards to the exercise of human rights to water and sanitation in particular, only some of those treaties possess specific norms recognising, either directly or indirectly, access to safe drinking water and sanitation of the particular vulnerable group they seek to protect. Such norms target women, children, persons with disabilities, migrant workers and the members of their families, indigenous communities, older persons, people living in poverty and internally displaced people.

As regards the rest of the vulnerable groups, the prescriptions on the human rights to water and sanitation are applicable insofar as they are applicable as well as to all human beings as human rights. As a result, those vulnerable groups not foreseen by a specific norm with regards to access to water and sanitation are legally protected by the terms of articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights and by the human rights to water and sanitation as recognised in UN General Assembly Resolution 64/292 and as specified in its meaning and scope in General Comment No 15 and in the Reports and Recommendations of the Special Rapporteurs on the human rights to water and sanitation. Those vulnerable groups would be refugees, asylum-seekers, nomadic and pastoral communities and victims of natural disasters.

INTERNATIONAL LEGAL NORMS BY SPECIFIC GROUP

1. Women

Article 14, paragraph 2, h) of the Convention on the Elimination of All Forms of Discrimination Against Women prescribes that States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (...) [t]o enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications¹¹. Likewise, in the context of the right to food security, Article 15 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women In Africa, prescribe in its paragraph 2 that State Parties shall take appropriate measures to “provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food”¹².

In addition, Article 5 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, also known as the Convention of Belém do Pará, affirms that Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights. For the purposes of the present toolkit, It is worth noting Article 9 of the same instrument when it states: “[w]ith respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom”¹³.

2. Children

Article 24 of the Convention on the Rights of the Child, states in its first paragraph that States recognise the right of the child to the enjoyment of the highest attainable standard of health. In addition, by virtue of paragraph 2, c) of the same norm States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: [t]o combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution. Furthermore, to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents, among other measures¹⁴.

¹¹ *United Nations Treaty Series*, Vol. 1246, p. 14 ss.

¹² Available at https://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf

¹³ Available at <https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf>

¹⁴ *United Nations Treaty Series*, Vol. 1577, p. 3 ss.

3. Persons with Disabilities

Article 28 of the Convention on the Rights of Persons with Disabilities, states that States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability (paragraph 1). Paragraph 2, a) of the same norm prescribes that States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: [t]o ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs¹⁵.

4. Migrant Workers and the Members of their Families

Article 70 of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families states that States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity¹⁶. Thus, it would recognize indirectly the human rights to water and sanitation as an essential part of standards of health and principles of human dignity.

5. Indigenous Communities

Article 25 , paragraph 1 of the ILO C 169 Indigenous and Tribal Peoples Convention prescribes that Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health¹⁷. As in the case of migrant workers and members of their families, this norm indirectly recognizes access to water and sanitation insofar as they are necessary prerequisites of the highest attainable standard of physical health. In addition, paragraph 2 of Article 24 of the UN Declaration on the Rights of Indigenous Peoples stipulates that “Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right”¹⁸.

6. Older Persons

Article 12 of the Inter-American Convention on Protecting the Human Rights of Older Persons prescribes that older persons have the right to a comprehensive system of care that protects and promotes their health, provides social services coverage, food and nutrition security, water, clothing, and housing, and promotes the ability of older persons to stay in their own home and maintain their independence and autonomy, should they so decide. Furthermore, Article 25, paragraph b) of the same instruments affirms that Older persons have the right to live in a healthy environment with access to basic public services. To that

15 UNITED NATIONS, A/61/611.

16 UNITED NATIONS, A/RES/45/158 of 18 December 1990. *United Nations Treaty Series*, Vol. 2220, p. 3.

17 *United Nations Treaty Series*, Vol. 1650, p. 383.

18 UNITED NATIONS, A/RES/61/295.

end, States Parties shall adopt appropriate measures to safeguard and promote the exercise of this right, inter alia: [t]o ensure access for older persons, on an equal basis with others, to basic public drinking water and sanitation services, among others¹⁹.

7. People Living in Poverty

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, also known as the 1988 Protocol of San Salvador, states in its Article 10, paragraph 2, f) on the right to health, that State parties to the Protocol agree to satisfy the health needs of “of the highest risk groups and of those whose poverty makes them the most vulnerable”²⁰.

8. Internally Displaced Persons

The 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) seeks, as stated in its Preamble, to address “the suffering and specific vulnerability of internally displaced persons”. Article 7 on their protection and assistance in situations of armed conflict, state in its paragraph 5, c) that members armed groups shall be prohibited from “[d]enying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family”. Additionally, among the specific obligations of States during internal displacement, Article 9, paragraph 2, b) prescribes that States shall “[p]rovide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities”²¹.

9. Prisoners and Detainees

Articles 20, 26, 29 and 46 of the III Geneva Convention Relative to the Treatment of Prisoners of War prescribe the supply of potable water as well as facilities “which conform to the rules of hygiene and are maintained in a constant state of cleanliness” for those subject to that state²². Articles 85, 89 and 127 of the IV Geneva Convention Relative to the Treatment of Civilians during Times of War, contains similar norms. Article 85 of the mentioned instrument states that “[i]nternees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning”²³. Article 89 establishes that sufficient drinking water will be supplied to internees. This shall also be applicable during transfer of internees, when drinking water sufficient in quality and quantity to maintain them in good health, shall be provided.

1977 Additional Protocols I and II to the Geneva Conventions also address the human

19 Available at http://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons.asp

20 Available at <https://www.oas.org/juridico/english/treaties/a-52.html>

21 Available at <https://www.unhcr.org/en-us/about-us/background/4ae9bede9/african-union-convention-protection-assistance-internally-displaced-persons.html>

22 *United Nations Treaty Series*, Vol. 75, p. 135 ss.

23 *United Nations Treaty Series*, Vol. 75, p. 287 ss.

rights to water and sanitation²⁴. In particular article 54 of Protocol I prohibits actions to be taken that leave the civilian population with such inadequate food or water as to cause its starvation or force its movement. With respect to persons whose liberty has been restricted, article 5, paragraph 1, b) of Protocol II states that “to the same extent as the local civilian population, (they shall) be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict”.

GENERAL COMMENT 15 AND SPECIAL RAPPORTEURS RECOMMENDATIONS ON VULNERABLE GROUPS

All of the above analysed norms recognise, either expressly or implicitly, the human rights to water and sanitation of certain vulnerable groups. All State parties to those treaties are legally bound by the specific international obligations therein contained with respect to access to water and sanitation of the specific vulnerable groups thereby targeted. Whilst not legally binding, soft law rules or standards may also foresee the rights to water and sanitation of vulnerable groups.



While addressing water accessibility, General Comment 15 states in its paragraph 12, c) (iii) that “[w]ater and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds”²⁵. Thereafter, the following paragraphs on non-discrimination and equality are especially relevant to the law applicable to vulnerable groups. Based on paragraph 12 of General Comment 3 (1990), the Committee emphasises that the right to water of vulnerable groups must be implemented at all times, including during severe economic crises, through the adoption of relatively low-cost programs. In addition, General Comment 15 recalls that States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, i.e. vulnerable groups.

Almost all of the reports of the Special Rapporteurs’ on the human rights to water and sanitation do also address the content of the obligations of the State and other actors

²⁴ Cf. Articles 54 and 55 of Protocol I Relating to the Protection of Victims of International Armed Conflicts. *United Nations Treaty Series*, Vol. 1125, p. 3 ss. See also Article 5, paragraph 1, b) y article 14 of Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts. *United Nations Treaty Series*, Vol. 1125, p. 609 ss.

²⁵ UNITED NATIONS, E/C.12/2002/11, *op. cit.*, paragraph 12.

involved in the water and sanitation supply sector with respect to vulnerable groups. Along this line, the first Special Rapporteur stresses that States must realize their human rights obligations in a non-discriminatory manner. They are obliged to eliminate both de jure and de facto discrimination on grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status, or any other civil, political, social or other status including the social and economic situation. They are obliged to pay priority attention to groups and individuals particularly vulnerable to exclusion and discrimination. Depending on the circumstances, they may need to adopt positive measures to redress existing discrimination²⁶.

With regard to affordability, the second Special Rapporteur recalls that the human rights to water and sanitation also have important implications as to how payment for services is raised. Human rights call for safeguards in the process of setting tariffs and determining subsidies, both in procedural and substantive terms, which include the human rights principles of transparency, access to information, participation and accountability. They oblige States to ensure that the cost of accessing water and sanitation is affordable and meets the needs of vulnerable individuals and groups. The aim of ensuring financial sustainability at the macro level must never lead to situations in which individuals are unable to afford services²⁷. In addition, he recommends that States ensure that regulatory frameworks provide a multifaceted and differentiated interpretation of affordability, capturing the specific needs of those living in vulnerable situations²⁸.

Concerning accountability, the second Special Rapporteur emphasises that the essence of both the principle of accountability and human rights is about balancing power in order to protect those living in the most vulnerable situations²⁹. In this context, a particular challenge related to service provision is the widespread informal provision or self-provision, which leads to situations where users are unable to seek assistance and to hold any actor accountable. (...) Informal provision or self-provision is prevalent in areas hard to reach and where populations in vulnerable situations reside. Standards for services set up through regulation therefore only benefit areas that already benefit from formal services, leaving behind those in a more vulnerable situation³⁰. These latter often lack the capacity and opportunities to hold actors accountable for the failure to uphold the rights to water and sanitation or for violations and abuses of those rights. Hence, the Special Rapporteur recommends that all accountable actors, including States, international organizations, bilateral and multilateral funders, NGOs, private and informal services providers, independent regulators, transnational and national companies: (b) Assess and address barriers faced by vulnerable groups to resort to a judicial or quasi-judicial mechanism, eliminating institutional, physical, economic, social or other barriers³¹.

As to accessibility, the second Special Rapporteur's report on Human rights to water and sanitation in spheres of life beyond the household with an emphasis on public spaces stresses the promotion of access to groups that live in vulnerable situations, including persons with disabilities, the elderly, children and members of the lesbian, gay, bisexual, transgender and intersex communities. In order to be deemed physically accessible, water and sanitation facilities in public spaces must meet the needs of all of those groups on an equal footing with everyone else. Access to water and sanitation in many spheres of life beyond the household is an essential element of the enjoyment of the human rights to water and sanitation. However,

26 UNITED NATIONS, A/HRC/15/31, 29 June 2010, p. 8, paragraphs 19 and 20.

27 UNITED NATIONS, A/HRC/30/39, 5 August 2015, p. 4, paragraph 8.

28 UNITED NATIONS, A/HRC/36/45, 19 July 2017, p. 20, paragraph 89.

29 UNITED NATIONS, A/73/162 of 16 July 2018, paragraph 7.

30 Ibidem, paragraph 25.

31 Ibidem, paragraphs 74 and 91.

there is often an evident neglect of the provision and promotion of these vital services in such places. Domestic legislation and policy regarding water and sanitation are, more often than not, focused only on improving access at the household level, while spheres beyond the household are rarely on the radar of national or local governments, service providers or the regulators whose role is to ensure that the provision of those basic services complies with human rights standards. As a result of that neglect, potential violations of international human rights occur all too frequently and disproportionately impact members of vulnerable groups, such as homeless people, informal workers in public spaces and persons deprived of their liberty. The lived realities of these groups mean they often have a far greater need for access to water and sanitation in spheres of life beyond the household and, consequently, when access is unavailable or otherwise inadequate, the effects felt by them can be severe. Inadequate access to water and sanitation in places outside formal households can have a negative impact on a multifarious range of economic, social, cultural and political outcomes, affecting health, educational and employment prospects, and access to social and communal opportunities. Each of those is, in and of itself, a potential breach of human rights arising out of the breach of the human rights to water and sanitation³².

In the context of development cooperation, funders and partners are urged to work together and identify individuals and groups that are disadvantaged in their access to water, sanitation and hygiene and that are particularly vulnerable to exclusion and discrimination. Then they should develop policies and programmes that prioritise those individuals and groups³³. Integrating human rights throughout the development cycle helps to ensure that the needs of those living in the most vulnerable situations are prioritised, that services are provided in a safe and affordable way and that providers guarantee participation, access to information and accountability. This approach is the best way to achieve targets 6.1 and 6.2 of the Sustainable Development Goals. Otherwise, those targets will most likely not be achieved through the traditionally technocratic way that the water and sanitation sector is usually managed³⁴. In this respect, the Special Rapporteur states that the scope of a project is a key determinant of its capacity to effectively realize human rights. The key question under the human rights framework is: who will benefit and who will be left behind? Applying that framework would encourage the project managers to start with those in the most vulnerable situations³⁵. The challenge with this decision is to ensure affordable access to services, sustainability of the system and medium- and long-term planning for the future inclusion of all persons in service provision³⁶.

When addressing gender equality, the Special Rapporteur recommends that States ensure “that regulations require that the specific needs of women and girls are incorporated into the design, implementation, monitoring and evaluation of water and sanitation facilities, taking into consideration the special needs of women and girls made more vulnerable by disability and age. Regulators should monitor whether such regulations are well interpreted, implemented and effective”³⁷.

Finally, the second Special Rapporteur dedicates a full report on the human rights to water and sanitation of forcibly displaced persons, asylum seekers and migrants in vulnerable situations, while en route, at borders, at reception and at destination. He examines the situation of their access to water and sanitation from a human rights perspective by applying the normative content of the human rights to water and sanitation and the human

32 UNITED NATIONS, A/HRC/42/47, 10 July 2019, paragraphs 43, 61 and 62.
33 UNITED NATIONS, A/71/302, 5 August 2016, p. 6, paragraph 16. Cf. UNITED NATIONS,
34 UNITED NATIONS, A/72/127, 13 July 2017, p. 25, paragraph 13.
35 This assertion also holds for megaprojects, according to the Special Rapporteur on the human rights to water and sanitation. Cf. UNITED NATIONS, A/74/197, 19 July 2019, paragraph 4.
36 UNITED NATIONS, A/72/127, *op. cit.*, paragraph 60.
37 UNITED NATIONS, A/HRC/33/49, 27 July 2016, pp. 20-21, paragraph 77, h).

rights principles of participation, equality and non-discrimination, sustainability, progressive realization and access to remedies³⁸. International human rights law, which applies at all times, and international humanitarian law, which applies to armed conflict, provide complementary and mutually reinforcing protection of the human rights to water and sanitation. The International Covenant on Economic, Social and Cultural Rights and the human rights to water and sanitation apply even in times of armed conflict, natural disasters or other emergency situations. States therefore have an obligation to provide water and sanitation services to forcibly displaced persons who do not have sufficient means, whether they are staying in camps, informal settlements, detention centres, or urban or rural areas. As State capacity may be limited in such situations, international organizations, nongovernmental organizations, funders and other humanitarian organizations can play a key role in providing assistance. Such organizations also should respect, protect and facilitate the human rights to water and sanitation in the services they provide. They should give priority to the most vulnerable groups of the population when providing humanitarian aid, including in the provision and management of water and sanitation services³⁹.

In this respect, the human rights framework does not provide quantitative guidance, which could be counterproductive given that requirements have to be assessed on a case-by-case basis. Human rights core obligations must, however, be applied as a legal basis for humanitarian assistance. During an emergency, immediate obligations of access to the minimum essential level of water and sanitation on a non-discriminatory basis apply. Human rights law prescribes a core obligation for the immediate realization of the minimum essential level of each right, without exception. The Committee on Economic, Social and Cultural Rights identified, in its general comment No. 15 (2002) on the right to water, these core obligations as ensuring safe and equal access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent diseases, especially for disadvantaged or marginalized groups; adopting and implementing a national water strategy and plan of action addressing the whole population; monitoring the extent of the realization of the right to water; adopting relatively low-cost targeted water programmes to protect vulnerable and marginalized groups; and taking measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation. Even though the Committee does not make any explicit reference to the core obligation of the right to sanitation (which until recently was treated as an integral part of the right to water) the core obligation for the immediate realization of the right to sanitation can be assumed as what every person needs for health and survival, and to live in dignity. The core obligations reflect the actual practice of many States at the national level; what forcibly displaced persons actually require may be quite different, depending on the individuals concerned, cultural factors, locations or other specific factors. The human rights to water and sanitation can provide guidance on the extent to which and how the needs of forcibly displaced persons should be fulfilled⁴⁰.

38 UNITED NATIONS, UNITED NATIONS, A/HRC/39/55, 3 August 2018, paragraph 5.

39 Ibidem, paragraph 10.

40 Ibidem, paragraph 14.

3. THE DUTY BEARER'S INTERNATIONAL OBLIGATION TO INCLUDE THOSE NORMS IN ITS RESPECTIVE NATIONAL LEGISLATION

International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties.

While the International Covenant on Economic, Social and Cultural Rights provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para. 1) towards the full realization of articles 11, paragraph 1, and 12. (General Comment 15, paragraph 17 et seq.). One of such steps is, actually, the obligation to include due access to safe drinking water and sanitation for vulnerable groups, as contained in the international norms and standards above analysed. In particular, multiple core obligations that the Committee on Economic, Social and Cultural Rights derives from the right to water address specifically vulnerable groups. These State obligations are analysed in paragraph 37, b), f) and h) of General Comment 15. Such obligations require States to ensure that vulnerable groups access water without discrimination of any kind; adopt a national strategy for the realisation of the right to water that takes into account such groups; and implement relatively low-cost targeted programs to protect those groups. As specified in paragraph 40 of the same instrument, these obligations are non-derogable⁴¹.

With regard to discrimination, the first Special Rapporteur on the human rights to water and sanitation notes that while remedies have been provided in the context of discrimination on account of race or minority status, there are fewer examples of such remedies when discrimination is on other grounds, such as property or socio-economic status, including for those living in poverty, those residing in informal settlements, the homeless and similarly vulnerable groups. Discrimination on any prohibited grounds is a violation of the rights to water and sanitation, and access to justice must be ensured for the full scope of prohibited discrimination⁴². Whereas positive measures and programmes to ensure substantive equality may require resource allocation and infrastructure development over time, the prohibition of discrimination is of immediate effect⁴³.

41 NIFOSI SUTTON, Ingrid, *The Protection of Vulnerable Groups under International Human Rights Law*, New York, Routledge, 2017, p. 136.

42 UNITED NATIONS, A/HRC/27/55, 30 June 2014, paragraph 58.

43 Ibidem, paragraph 55. The Special Rapporteur further explains that violations of the obligation to fulfil may result from failure: (a) to design and implement a strategy based on human rights standards and principles; (b) to identify and meet targets in line with human rights standards; (c) to ensure effective monitoring and accountability; and (d) to target vulnerable communities (paragraph 38 of the same instrument). Other examples of common violations include unjustified retrogressive measures such as (a) raising prices excessively so that poor people can no longer afford even basic services; (b) reducing social benefits on which poor people rely; (c) allowing infrastructure to deteriorate due to a failure to ensure operation and maintenance; and (d) implementing austerity measures that create long-term retrogression not limited to the period of crisis or which disproportionately impact marginalized or vulnerable groups (paragraph 47). In addition, she stresses the failure to prioritise vulnerable groups and provide adequate services in public facilities and institutions and in emergency situations as another example of the above-mentioned obligation (paragraph 53).

4. THE HUMAN RIGHTS BASED APPROACH: HUMAN RIGHTS TO WATER AND SANITATION AND SDG 6

SDG 6 seeks to ensure availability and sustainable management of water and sanitation for all. It includes eight global targets that are universally applicable and aspirational. However, each government must decide how to incorporate them into national planning processes, policies and strategies based on national realities, capacities, levels of development and priorities. They cover the entire water cycle including: provision of drinking water (target 6.1) and sanitation and hygiene services (6.2), treatment and reuse of wastewater and ambient water quality (6.3), water-use efficiency and scarcity (6.4), IWRM including through transboundary cooperation (6.5), protecting and restoring water-related ecosystems (6.6), international cooperation and capacity-building (6.a) and participation in water and sanitation management (6.b).

According to the 2030 Agenda, rising inequalities, natural resource depletion, environmental degradation and climate change range among the greatest challenges of our time. It recognizes that social development and economic prosperity depend on the sustainable management of freshwater resources and ecosystems and it highlights the integrated nature of SDGs.

Already in its Preamble, States declare that they are determined to mobilize the means required to implement this Agenda through a revitalized Global Partnership for Sustainable Development, based on a spirit of strengthened global solidarity, focused in particular on the needs of the poorest and most vulnerable and with the participation of all countries, all stakeholders and all people⁴⁴. In so doing, it is grounded in the Universal Declaration of Human Rights and on international human rights treaties⁴⁵. The SDGs explicitly endorse a human rights-based approach and would certainly achieve a huge step forward in the realisation of human rights, particularly economic, social and cultural rights as the human rights to water and sanitation⁴⁶. Conversely, it seems impossible to achieve sustainable development and leave no one behind without resorting to a human rights framework. The human rights framework does provide the highest level of security to all and in so doing, they help to ensure that the most vulnerable are not overlooked in the quest for aggregate progress and sustainable development. As duly stressed by the former UN Special Rapporteur on the Rights to Water and Sanitation already in 2013, “it will be critical to integrate human rights standards and principles into goals on water resources (...). The broader water resource management (...) target(s) must not be approached from a purely environmental or economic perspective”⁴⁷.

In light of the above said, the present toolkit addresses both the criteria for the realisation of the human rights to water and sanitation and the SDG 6 targets with special focus on vulnerable groups, as it appears down below.

44 UNITED NATIONS, A/RES/70/1, Preamble, p. 2.

45 Ibidem, paragraphs 10 and 19.

46 Cf. COLLINS, Lynda M., “Sustainable Development Goals and human rights: challenges and opportunities”, in: FRENCH, Duncan & KOTZE, Louis, *Sustainable Development Goals: Law, Theory and Implementation*, Cheltenham, Elgar, 2018, p. 89.

47 A/68/264, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation*, p. 21, paragraph 81. Cf. BOURQUAIN, K., *Freshwater Access from a Human Rights Perspective: A Challenge to International Water Law and Human Rights Law*, Leiden, Martinus Nijhoff, 2008, pp. 205-231.

SECTION 2: THE TOOLKIT: HRWS CRITERIA AND SDG 6 TARGETS WITHIN NATIONAL LEGAL AND POLICY

1. AVAILABILITY

Availability: Water must be available in sufficient quantities and continuous manner for personal and domestic uses, i.e. drinking, food preparation, and personal and household hygiene. According to the WHO⁴⁸, fifty to one hundred litres per person per day is an adequate quantity of water to meet health requirements. Households, hospitals, schools and other public establishments should have a sufficient number of sanitation facilities on premises or within the immediate vicinity.

1. Are there law or policies that prioritise water availability for vulnerable groups?
2. In case of lack of water availability are there effective legal or administrative complaint mechanisms in place, which are accessible to vulnerable groups?
3. Do national norms guarantee that water and sanitation facilities are present in key public institutions, such as schools, hospitals and prison facilities?
4. Are there law or policy directives that prescribe proper collection, treatment and disposal of human excreta in:
 - ▶ Prisons?
 - ▶ Refugee camps?
 - ▶ Schools?
 - ▶ Hospitals?
5. Does the law ensure that water outlets and sanitation facilities are available in areas where there is a high concentration of racial minorities?
6. Does law or policy guarantee that indigenous communities have proper access to water and sanitation facilities?
7. Are there water outlets and sanitation facilities available for the use of pastoral and nomadic groups?
8. Are there any laws or policies that establish a minimum essential amount of water that should be available to all?
9. In cases where water is not available on premises, what mechanisms

⁴⁸ HOWARD, G. and BARTRAM, J., "Domestic water quantity, service level and health", World Health Organization, 2003, p. 22-26. Available at: https://www.who.int/water_sanitation_health/diseases/WSH0302.pdf

are there in place to ensure collection times do not exceed 30 minutes including queuing?

10. Does the law ensure continuous supply of water for all?
11. In instances where water availability is not continuous, what measures are implemented to make up for this?
12. How is water supply availability ensured for persons who live in poverty or who live in marginal and less developed rural areas?
In water scarce regions, are there policies which focus on supporting innovative technology to capture and store water, i.e. nature-based solutions?
13. In water scarce regions, are there policies which focus on guaranteeing water availability to vulnerable people?

EXAMPLE: Constitution of Zimbabwe (2013)⁴⁹

“Article 77

Every person has the right to-- a. safe, clean and potable water; and b. sufficient food; and the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.”

2. ACCESSIBILITY AND TARGETS 6.1 AND 6.2

Accessibility: Water and sanitation services and facilities should be physically accessible to all and without threat to personal security. The World Health Organisation (WHO) has developed basic guidelines⁵⁰, which determine water collection time should not exceed thirty minutes roundtrip and the water source must be within one thousand meters from the household, educational institution, or workplace. Needs of vulnerable groups should be taken into consideration e.g. the elderly, persons with disabilities, and children.

T6.1: By 2030, achieve universal and equitable access to safe and affordable drinking water for all

“The 2030 Agenda (...) includes an ambitious global SDG target 6.1 to secure safe and affordable drinking water for all. Universal access presents a major challenge and implies providing households with water for drinking, cooking, personal hygiene and other domestic purposes, as well as ensuring such access to water in schools, health-care facilities and other settings. Improving the availability and quality of drinking water depends on effective management of water resources and wastewater to maintain good ambient water quality and to reduce contamination risks within the supply system (SDG targets 6.2-6.6)⁵¹.

T6.2: By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of

⁴⁹ Available at: <http://extwprlegs1.fao.org/docs/pdf/zim127325.pdf>

⁵⁰ HOWARD and BARTRAM, *op. cit.*, p. 22.

⁵¹ United Nations, Sustainable Development Goal 6 Synthesis Report 2018 on Water and Sanitation, p.35. Available at: https://www.unwater.org/publication_categories/sdg-6-synthesis-report-2018-on-water-and-sanitation/

women and girls and those in vulnerable situations.

“SDG target 6.2 aims for universal access to sanitation and also to hygiene, which was overlooked in previous global targets. The term “adequate” is consistent with the United Nations resolution on the human right to sanitation that defines sanitation as “a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene” (United Nations, General Assembly, 2009a, para. 63). It is clear that people have a right to access a latrine or toilet, and also a right not to be harmed by unmanaged faecal waste”⁵².

1. Is access to water services tied to formal land rights?
 - ▶ If so, are women guaranteed the same rights as men to own land?
 - ▶ How are the rights to access water for domestic purposes guaranteed for the individuals who do not possess formal land rights?
 - ▶ Are customary rights and other types of water tenure recognised by the law?
2. Are there any specific provisions that address physical access to sanitation services for vulnerable people? Please specify per group.
3. Does any law/policy either prescribe or provide guidance on:
 - ▶ the safety, distance and time from a dwelling or structure to reach water outlets (e.g., laws that specify water outlets must be available within a certain distance from a public building or private residence)?
 - ▶ The safety, distance and time from a residence or public building to reach sanitation facilities?
4. Is there any provision in the law/policy for availability and accessibility of water in:
 - ▶ schools?
 - ▶ Prisons?
 - ▶ Refugee camps?
5. Is there provision in the law/policy for availability and accessibility of sanitation facilities in schools? Prisons? Refugee camps?
6. Are there any norms or directives in law or policy which determine sanitation facilities are acceptable for girls? (i.e. guaranteeing privacy and adequate menstrual hygiene).
7. Are there laws/policies which ensure availability and accessibility of water and sanitation facilities in labour areas which house migrant or seasonal workers, e.g., farms, brick kilns, etc.?
8. Does the law establish an acceptable number of toilets per number of people?
9. Are water and sanitation facilities accessible to pastoral and nomadic

⁵² United Nations, Sustainable Development Goal 6 Synthesis Report 2018 on Water and Sanitation, p.43. Available at: https://www.unwater.org/publication_categories/sdg-6-synthesis-report-2018-on-water-and-sanitation/

groups?

10. Is there a general water law, a specific law for the water and sanitation supply sector or a government plan or public program, which ensures or aims to achieve universal and equitable access to safe and affordable drinking water (target 6.1) specifically including vulnerable groups?
11. Is there a norm at the national, subnational or local level or any policy plan or program to reduce open defecation (as mentioned in target 6.2), taking into consideration the needs of vulnerable groups, especially women and girls?

EXAMPLE: Costa Rica - Principles governing the national policy in the field of water resources management - Executive Decree No. 30480-MINAE of June 2002

Article 1.1 Access to drinking water is an inalienable human right and must be guaranteed constitutionally.

3. QUALITY AND TARGET 6.3

Quality: Water must be safe for consumption, free from micro-organisms, chemical substances or any other substance that can cause harm to human health. Sanitation facilities must be safe to use and effectively prevent human, animal and insect contact with human excreta. In the context of sanitation, it is essential to have access to water for hygiene purposes.

T6.3: By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally.

“Poor water quality poses risks to public health, food security, and ecosystem services and functions. Untreated domestic wastewater contains pathogens, organics and nutrients. Wastewater from industrial and other establishments may also contain hazardous substances, such as heavy metals and other pollutants. Untreated wastewater contaminates the environment, causing widespread disease and damaged ecosystems. Water pollution limits opportunities for safe and productive use and reuse of water sources to augment freshwater supplies, particularly in water-scarce regions”⁵³.

1. Are there in the law or in policy programs and plans parameters of quality and safety for drinking water sources?
2. Are there norms, standards or policies which ensure children’s access to safe drinking water?
3. Are there law or policies that guarantee water quality in:

⁵³ UNITED NATIONS, *Sustainable Development Goal 6 Synthesis Report 2018 on Water and Sanitation*, p. 55. Available at:

https://www.unwater.org/publication_categories/sdg-6-synthesis-report-2018-on-water-and-sanitation/

- ▶ Prisons?
 - ▶ Schools?
 - ▶ Refugee camps?
4. Is water quality in the establishments listed above effectively monitored?
 5. Do laws/regulations include either norms or guidance on the construction of sanitation infrastructure, including specifications to ensure safety for children or persons with physical limitations?
 6. Do laws/policy ensure or address privacy and separate sanitation facilities for women?
 7. Do laws/regulations establish requirements on household water treatment and storage (e.g. quality requirement with respect to water containers, rainwater harvesting limitations, etc.)?
 8. Is there any water quality control in indigenous communities?
 9. Are there laws and/or policy in place to reduce pollution, dumping and minimizing the use of hazardous chemicals?

EXAMPLE: Water Code Azerbaijan (1997)⁵⁴

Article 81. Protection of waters

All waters (water objects) must be protected and defended of pollution, contamination, exhaustion, which may bring damage to the health of population, and also may cause decrease of fish reserves, worsening of conditions for water supply and other unfavorable phenomena as a result of changed physical, chemical, biological characteristics of waters, decrease of their abilities for natural self-cleaning, violation of hydrologic and hydro geologic regime of waters.

The rules of protection of waters (water objects), their defense from pollution, contamination and exhaustion, and also improvement of quality and regime of waters are set up by the correspondent organ of executive power.

4. AFFORDABILITY

Affordability: The population must be able to afford water and sanitation services. To guarantee affordability governments should consider low-cost technologies, income supplements and appropriate pricing policies including free provision for those who are unable to pay. The costs of water and sanitation services should not impede the ability to access other basic needs such as food or health services.

1. Is there any law/policy/mechanism addressing affordability of water supply?
2. Is there any law/policy/mechanism addressing affordability of sanitation services?
3. Does the water tariff vary in relation to income?

⁵⁴ Available at: <http://www.fhn.gov.az/uploads/legislation/eng/qanunlar/26.12.1997az.pdf>

4. Does the water tariff consider the special circumstances of different vulnerable/disadvantaged groups, like, refugees and migrants?
5. Do subsidy schemes require written proof of tenancy, identification documents, payment of taxes, or other requirements that could be deemed onerous, or even inexistent, for certain vulnerable groups?
6. Do the service fees for sanitation/sewerage services vary depending on the regions/circumstances of the addressees such as marginal or remote areas and vulnerable/disadvantaged groups?
7. Is disconnection allowed for non-payment of water tariffs? What procedures must be followed in such cases prior to disconnecting the supply and service?
8. What are the possible consequences for non-payment of service fees for sanitation services?
9. Are there regulatory agencies prescribed by law and in place to monitor the setting of fair water tariffs?
10. Is there were a regulatory agency in place, does it contemplate special protection of vulnerable groups in their access to safe drinking water and sanitation?

EXAMPLE: City of Chicago, United States – Policy regarding low income households⁵⁵

Local district discount policy adopted pursuant to RCW 57.08.014:

“At Sammamish Plateau Water, we recognize that water and sewer are essential services. That’s why we developed our **Low-Income Discount Program to provide assistance to low-income households**. With this program, beginning July 1, 2018, eligible water and sewer customers can apply for a discount on their base utility charges.

Assistance will be provided in the form of either a utility bill discount for directly-billed customers, or a rebate check for indirectly-billed customers (for example, renters who pay for utilities in their rent or renters who pay for their water to a third-party billing service). This program is included in the District’s budget and has been funded by a previous rate adjustment of 0.25% for water rates and 0.25% sewer rates.”

5. ACCEPTABILITY

Acceptability: It is important that water and sanitation facilities are culturally and socially acceptable. In practice, this means that depending on the cultural context of each community, sanitation facilities may require privacy and be gender adequate.

1. Is there a provision in the law or contracts with service providers foreseeing the need to take into account cultural and social dimensions of

⁵⁵ Sammamish Plateau Low Income Discount Programme, available at: <https://spwater.org/339/Low-Income-Discount-Program>

acceptability of water (e.g. colour, taste or odour of water, or the positioning of a facility)?

2. Is the design, position and conditions of use of sanitation facilities compatible with the cultural preferences of intended users?
3. Does law or policy ensure water and sanitation facilities are acceptable for the use of disabled persons?
4. Do sanitation public facilities ensure privacy?
5. Is the need for gender appropriate sanitation facilities foreseen by the law?
6. Are sanitation facilities in prisons held and required to be maintained in conformity with an acceptable standard?
7. Are there sanitation facilities provided for indigenous communities? If so, are they culturally acceptable?
8. Are water and sanitation facilities in areas with high concentration of refugees culturally acceptable to different minority groups?

EXAMPLE: Grenada – Factories (Sanitary Accommodations) Regulations⁵⁶

“(9) Urinals shall be so placed or so screened as not to be visible from other parts of the factory where persons work or pass. (10) The sanitary conveniences shall be so arranged as to be conveniently accessible to the persons employed at all times while they are at the factory. (11) In cases where persons of both sexes are employed the sanitary conveniences for each sex shall be so placed or so screened that the interior shall not be visible, even when the door of any convenience is open, from any place where persons of the other sex have to work or pass; and, if the conveniences for one sex adjoin those for the other sex, the approaches shall be separate. The conveniences for each sex shall be indicated by a suitable notice.”

6. NON-DISCRIMINATION

Non-discrimination means that there is no distinction, exclusion, restriction or bias for any unjustified reason (e.g. race, colour, sex, language, religion, political opinion, nationality, social status, or any other motive) in access to water and sanitation. Governments must ensure that proactive measures are adopted to avoid the exclusion of any particular groups.

1. Is there any legislation prohibiting direct and indirect discrimination (on all grounds) and prescribing equality in the access to safe drinking water?
2. Is there any legislation prohibiting direct and indirect discrimination (on all grounds) and prescribing equality in the access to sanitation services?
3. Does any law or policy establish any affirmative action measures to ensure

⁵⁶ Available at: Factories (Sanitary Accommodation) Regulations SRO 32 of 1967, <http://laws.gov.gd/>

- vulnerable groups have access to safe drinking water?
4. Does law or policy establish affirmative action measures to make sure vulnerable groups have access to sanitation?
 5. Does law or policy determine that the government monitors inequalities in the access to safe drinking water and sanitation?
 6. Is disaggregated data on access to water and sanitation available?

EXAMPLE: Constitution of the Republic of Tunisia (2014)⁵⁷

Article 44:

The right to water shall be guaranteed. The conservation and rational use of water is a duty of the state and of society

Article 47:

Children are guaranteed the rights to dignity, health, care, education, and teaching from their parents and the state. The state must provide all types of protection to all children without discrimination and in accordance with their best interests.

7. ACCESS TO INFORMATION

Access to Information: Vulnerable groups are often excluded from the decision-making process regarding water and sanitation. Lack of adequate participation results in inappropriate technical solutions and prohibitive financial costs that result in inequitable access to water and sanitation services and facilities.

1. Does law or policy ensure that information related to access to safe drinking water, sanitation and healthy hygiene practices is disseminated among vulnerable groups? Please specify.
2. Does law or policy determine that information related to water and sanitation should be accessible and translated to languages spoken by minorities and vulnerable groups?
3. Does the law prescribe that the regulatory agency (if any) must make information on tariff setting and subsidies available to vulnerable groups?
4. Are there public programmes in place to ensure empowerment of the most vulnerable groups through capacity building in their human rights to water and sanitation?

EXAMPLE: Botswana – 1967 Water Act⁵⁸

20. Suspension or variation of rights on account of drought, etc.

Where in the opinion of the Board the supply of public water from any source or in any area is or is likely to become insufficient for the needs of persons using it on account of drought or of an emergency, the Board may authorize the Water

⁵⁷ Available at:

<http://www.undp.org/content/dam/tunisia/img/Article/CONSTITUTION-ANGLAIS%20-%20Feb%204.pdf>

⁵⁸ Available at: <http://faolex.fao.org/docs/pdf/bot42103.pdf>

Registrar at any time and from time to time to suspend or vary, by notice in writing to the holders of water rights (including any right referred to in Part II) all or any rights to abstract or use water from that source, or in that area, for such period as he may deem necessary, and upon notice being given by the Water

Registrar as aforesaid, such rights shall cease for the period of suspension or shall be exercisable only as so varied, as the case may be.

8. PUBLIC PARTICIPATION AND TARGET 6B

Public Participation: Everyone should participate in the realisation of the human rights to water and sanitation. However, members of vulnerable groups are often excluded from the decision-making process regarding water and sanitation. Their needs are rarely a priority, which leads to inequitable access to water and sanitation facilities and services. Even if services and facilities are available, lack of participation can result in inadequate technical solutions, and prohibitive costs.

T6b: Support and strengthen the participation of local communities in improving water and sanitation management.

“Effective and sustainable water and sanitation management depends on the participation of a range of stakeholders, including local communities, which is the focus of target 6.b. Participation implies provision of mechanisms to enable affected individuals and communities to meaningfully contribute to decisions related to water and sanitation planning and management. This can promote “local ownership” and lead to long-term sustainability of services”⁵⁹.

1. Are there requirements for water and sanitation institutions to ensure representation of vulnerable groups and their effective participation in decision-making processes?
2. Do the contracts between governmental authorities and operators of water and sanitation services impose upon the operators an obligation to ensure or provide for public participation at any levels at which the applicable services are delivered?
3. Does law or policy envisage capacity building activities targeted to vulnerable groups? If so, please specify per group.
4. Are women included in decision making processes related to water and sanitation?
5. Does law or policy envisage mechanisms that empower vulnerable groups? If so, please specify which groups.

EXAMPLE: Peru - Water Resources Act N° 29338, June 2009 (Unofficial translation)⁶⁰

Article 3 - Principles

⁵⁹ UNITED NATIONS, *Sustainable Development Goal 6 Synthesis Report 2018 on Water and Sanitation*, op. cit., p.99.

⁶⁰ Available at:

http://gestionsostenibledelagua.files.wordpress.com/2010/06/leyderecursoshidricos_29338.pdf

The principles governing the use and integrated management of water resources are: [...]3. Principle of public participation and water culture The State creates mechanisms for the participation of users and civil organizations in decision making that affects them in terms of water quality, quantity, timing or other features of the resource. [...] 5. Principle of respect for of water uses by Rural and Indigenous communities The State respects the customs of rural and indigenous communities and their right to use waters that pass through their lands, as long as it does not oppose the law. The State promotes ancient knowledge and technology of water use.

9. SUSTAINABILITY AND TARGETS 6.4 AND 6.6

Sustainability: means preserving the environment and being mindful of the needs of future generations. Access to water and sanitation should be ensured, while maintaining balance among economic, social, environmental and financial sustainability.

T 6.4: By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity)

“This target aims to ensure there is sufficient water for people, the economy and the environment, by reducing water withdrawals and increasing water-use efficiency across all sectors of society. Securing environmental water requirements is essential for maintaining ecosystem health and resilience, so that enough water is left in the environment at any given moment to sustain natural processes.”

T6.6: By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes.

“Freshwater aquatic ecosystems are the world’s most biologically diverse environments, and provide many products and services on which human well-being depends. Water-related ecosystems help to sustain the global hydrological cycle, the carbon cycle and nutrient cycles, and they also support water security (...). They provide natural freshwater storage, regulate flows, purify water and replenish groundwater”⁶¹.

1. How does legislation/policy ensure that water and sanitation services are delivered in a sustainable manner, considering the availability of water resources, competing demands and generally the needs of present and future generations?
2. How does the legislation/policy ensure that delivery of water and sanitation services are economically viable, environmentally sound and socially acceptable, with sufficient expenditure and other resources required for effective operation and maintenance?
3. How does legislation ensure the protection and restoration of water related ecosystems?

61 UNITED NATIONS, *Sustainable Development Goal 6 Synthesis Report 2018 on Water and Sanitation*, op. cit., p.87.

4. How does legislation address water efficiency and water scarcity in relating to vulnerable groups? Please specify.
5. How does legislation protect and restore water-related ecosystems relating to vulnerable groups?

EXAMPLE: Switzerland - 814.20 Federal Act on the Protection of Waters (Waters Protection Act, WPA), 24 January 1991 (unofficial translation from French original)⁶²

Art. 3 Duty of care

Everyone is required to take all the care due in the circumstances to avoid any harmful effects to waters.

10. ACCOUNTABILITY

Accountability: Effective complaint mechanisms should be in place to deal with water and sanitation issues and rights violations. Complainants should be entitled to appropriate remedies involving access by the victim to the appropriate authorities to have his/her claim fairly heard and resolved and secondly, the redress or relief that he/she can receive, as a result of instituting such a claim.

1. Are there remedies available against failure to provide water and sanitation services within the prescribed levels of quality and quantity provided by law/regulations?
2. Are there any legal or administrative mechanisms in place to file complaints for violations in access to water and sanitation? Are those decisions appealable?
3. Are vulnerable groups able to effectively access complaint mechanisms?
4. Do people with low income have access complaint mechanisms?
5. Are there complaint mechanisms in relation to access to water and sanitation available for persons in custody?
6. Are there mechanisms in place to provide financial assistance for legal counseling in cases concerning access to water and sanitation?
7. Is there a possibility to appeal against the decisions of service providers?

EXAMPLE: Costa Rica - Law on the Regulating Authority for Public Service, Law 7593 of 9 August 1996, as amended 27 December 2002 (Unofficial translation)⁶³

Article 30: Change of tariffs

Public service providers, legally constituted organisations of consumers, and any

62 Available at: <https://www.admin.ch/opc/en/classified-compilation/19910022/index.html>

63 Available at:

<http://www.dse.go.cr/es/02ServiciosInfo/Legislacion/PDF/Regulacion%20Servicio%20Publico/ARESEP/LeyN7593delARESEP.pdf>

other relevant public entity shall be able to present applications for the change of charges and prices. The Regulatory Authority is required to receive and process those petitions, if they keep with the formal requirements that the regulation shall establish. The Regulatory Authority will be able to modify, approve, or reject these petitions. [...]

Article 27: Handling of complaints

The Regulating Authority shall manage, investigate and resolve, [...], any complaint regarding the provision of the public services regulated in this law.

TARGET 6.5

T 6.5: By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate.

“The 2030 Agenda fully commits Member States to IWRM and transboundary cooperation over water resources. Putting this into practice will arguably be the most comprehensive step that countries can make towards achieving SDG 6 (...). Implementing a holistic IWRM approach will provide institutional structures and multi-stakeholder processes to balance the development and use of water resources for people, for sustainable economic growth and for supporting vital ecosystem services. SDG target 6.5 thus embodies the core principles of the 2030 Agenda, and directly or indirectly supports all SDGs”⁶⁴.

8. Is there a long-term government plan to integrate water resource management that includes the participation of vulnerable groups?
9. Is there a short-term government plan to improve integrated water resource management?
10. Do transboundary agreements foresee access to water and sanitation of vulnerable groups?
11. Is there a general water law? If so, does it adopt an integrated water resources management approach to water governance?
12. Do either law or policy adopt a human rights-based approach to integrated water resources management?
13. Do water resources management projects take into account the water and sanitation needs of vulnerable groups?
14. Are the traditional practices and special linkage to water of indigenous communities duly considered in transboundary management plans and treaties regulating the uses of transboundary watercourses?

11. TARGET 6A

Target 6a: By 2030, expand international cooperation and capacity-building support to developing countries in water and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, water treatment, recycling and reuse technologies.

“Expanded international cooperation can contribute to many goals and targets.

64 UNITED NATIONS, *Sustainable Development Goal 6 Synthesis Report 2018 on Water and Sanitation*, op. cit., p.75.

International cooperation is often multi-faceted. Efforts that aim to improve water supply and sanitation can help to reduce preventable deaths of babies and young children (SDG target 3.2) and combat waterborne diseases (SDG target 3.3). Programmes that support IWRM can ensure conservation, restoration and sustainable use of freshwater ecosystems (SDG targets 15.1 and 6.6) and help to restore degraded land and soil and to reduce drought and flood risk (SDG targets 15.3 and 6.4). Capacity-building in the water sector can promote job creation (SDG target 8.3), promote equal access to vocational, technical and tertiary education (SDG target 4.3) and improve education and awareness-raising on climate change mitigation and adaptation (SDG target 13.3). Support for technology should result in improved infrastructure and industries that are more resource efficient and environmentally sound (SDG target 9.4).⁶⁵

1. Is there a government plan in place, in either law or policy, to expand international cooperation and capacity building in human rights to water and sanitation?
 - ▶ In terms of capacity building, are vulnerable groups included? If so, please specify which groups.
2. Within the context of target 6a, does the support to developing countries envisage helping vulnerable groups in those countries?



65 United Nations, Sustainable Development Goal 6 Synthesis Report 2018 on Water and Sanitation, p.93. Available at: https://www.unwater.org/publication_categories/sdg-6-synthesis-report-2018-on-water-and-sanitation/

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WaterLex is a non-governmental organisation based in Geneva, Switzerland. It is a UN-Water partner with a Special Consultative Status with the United Nations Economic and Social Council. WaterLex's mission is to secure the human rights to water and sanitation through law and policy reform.

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