



TRAINING MANUAL

National Human Rights Institutions' Roles in Achieving Human Rights-based Water Governance



THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

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EXECUTIVE SUMMARY

This training material for national human rights institutions (NHRIs) on water governance and human rights seeks to strengthen the capacity of these institutions for the promotion and protection of water governance-related human rights. The training material aims to a) clarify the content and implications of the water governance-related human rights; b) understand the potential role NHRIs can play in monitoring water governance for the realisation of human rights; c) provide methodology and tools to assist NHRIs in monitoring water governance; d) provide tools to help NHRIs in promoting a human rights-based water governance; e) provide tools to assist NHRIs in protecting a human rights-based water governance.

This project lies at the heart of the National Human Rights Institutions Water initiative. Launched by the Hungarian Ombudsman for Future Generations (Hungarian NHRI) in cooperation with WaterLex in 2013, it envisages a more prominent role of NHRIs in water governance for the realisation of human rights. By disseminating important knowledge among NHRIs, the current publication is intended to serve as a contribution towards strengthening the capacity of NHRIs wishing to enhance their role in water governance for the realisation of human rights.

This publication is divided into six parts. Section 1 on *Water governance-related human rights* seeks to deepen the understanding the legal content of the human right to water and sanitation in addition to other water governance-related human rights. Section 2 on *the Role of NHRIs in water governance* examines the important role NHRIs can play in promoting and protecting water governance for the realisation of human rights. Section 3 on *Monitoring the right to water* focuses on practical aspects of monitoring the right to water, providing NHRIs with methodology and other tools. Section 4 on *Protecting a human rights-based water governance* seeks to deepen the understanding of various methods and tools available to NHRIs aimed at protecting a human rights-based water governance. Section 5 on *Promoting a human rights-based water governance* sheds light on the various promotional activities NHRIs may conduct in view of promoting water governance related human rights. Section 6 on *Advising government and parliament* provides information how NHRIs may engage with these actors in view of promotion and protecting water governance-related human rights.

In addition to providing a theoretical legal framework, the training material is a practical guide, including best practices, methodologies, and case summaries of NHRIs in action.

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DEFINITIONS

Human right to water

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.¹

Human right to water and sanitation

Recognized by the United Nations General Assembly in 2010 as a human right that is essential for the full enjoyment of life and all human rights and calling upon States and international organizations to provide financial resources, help capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all.²

Improved drinking water source

A water source that, by the nature of its construction or through active intervention, adequately protects the source from outside contamination, particularly faecal matter.³

Improved sanitation facility

A facility that hygienically separates human excreta from human contact. Sanitation facilities shared with other households are not considered to be improved.⁴

Integrated water resources management (IWRM)

IWRM is a process which promotes the co-ordinated development and management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems.⁵

Sanitation

Sanitation can be defined as a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene.⁶

Water governance

Water governance is defined by the political, social, economic and administrative systems that are in place, and which directly or indirectly affect the use, development and management of water resources and the delivery of water service delivery at different levels of society. Essentially, who gets what water, when and how, and who has the right to water and related services, and their benefits. It determines the equity and efficiency in water resource and services allocation and distribution, and balances water use between socio-economic activities and ecosystems.⁷

1 CESCR General Comment No. 15. The Right to water. E/C.12/2002/11. Para. 2.

2 Resolution adopted by the General Assembly on 28 July 2010, The human right to water and sanitation (A/RES/64/292)

3 WHO/UNICEF Joint Monitoring Programme (JMP) for Water Supply and Sanitation

4 Ibid

5 Global Water Partnership

6 Independent Expert on human rights obligations related to access to safe drinking water and sanitation, on the human rights to water and sanitation, Human rights obligations related to access to sanitation, 2009 (A/HRC/12/24), para 63.

7 UNDP Water Governance Facility (WGF) at SIWI <http://www.watergovernance.org/whatiswatergovernance>

ACRONYMS AND ABBREVIATIONS

AAAQ	Availability, Accessibility, Acceptability and Quality	NANHRI	Network of African National Human Rights Institutions
ACHPR	African Commission on Human and Peoples' Rights	NGO	Non-governmental organization
APF	Asia-Pacific Forum	NHRC	National Human Rights Commission of India
CEDAW	Convention to Eliminate All Forms of Discrimination Against Women	NHRC Nepal	National Human Rights Commission of Nepal
CESCR	Committee on Economic, Social and Cultural Rights	NHRIs	National Human Rights Institutions
CHRAGG	Tanzania Commission for Human Rights and Good Governance	OHCHR	Office of the High Commissioner for Human Rights
CKGR	Central Kalahari Game Reserve	ProSeDHer	Program Monitoring and Evaluation of the Public Policies on the Right to Water (Programa de Seguimiento y Evaluación de Políticas Públicas en Derechos Humanos)
CRC	Convention on the Rights of the Child	SAHRC	South African Human Rights Commission
DIHR	Danish Institute for Human Rights	SDGs	Sustainable Development Goals
ENNHRI	European Network of National Human Rights Institutions	SUNASS	National Superintendence of Sanitation Services (Superintendencia Nacional De Servicios De Saneamiento, Peru)
ESC	Economic, Social and Cultural	UHRC	Uganda Human Rights Commission
ESCR	Economic, Social and Cultural Rights	UN	United Nations
FAO	Food and Agricultural Organization of the United Nations	UNDP	United Nations Development Programme
GLAAS	Global Analysis and Assessment of Sanitation and Drinking-water	UNESCO	United Nations Educational, Scientific and Cultural Organization
HRBA	Human Rights-Based Approach	UNEP	United Nations Environment Programme
HRC	Human Rights Council	UNGA	United Nations General Assembly
HRWS	Human Right to Water and Sanitation	UN-Habitat	United Nations United Nations Human Settlements Programme
IACHR	Inter-American Commission on Human Rights	UNHCR	United Nations High Commissioner for Refugees
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights	UNICEF	United Nations Children's Fund
ICESCR	International Covenant on Economic, Social and Cultural Rights	UNWFP	United Nations World Food Programme
IFAD	International Fund for Agricultural Development	UPR	Universal Periodic Review
ILO	International Labour Organization	WHO	World Health Organization
INGOs	International non-governmental organizations		
JMP	Joint Monitoring Programme		
KNCHR	Kenya National Commission on Human Rights		
MDGs	Millennium Development Goals		

INTRODUCTION

WATER, FROM A LIMITED NATURAL RESOURCE TO GLOBAL CRISES

“Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity.”⁸



Water and sanitation are essential for living a healthy life with dignity. Water is also at the core of sustainable development. Water resources, and the services they provide, underpin poverty reduction, economic growth and environmental sustainability. From food and energy security to human and environmental health, water contributes to improvements in social well-being and inclusive growth, affecting the livelihoods of billions of people.⁹

At the same time, water is a limited natural resource. Several factors have been generating pressure on water resources affecting its availability, quality and accessibility. The world is facing an increased water demand that is largely influenced by population growth, urbanization, food and energy security policies, as well as trade globalization and changing consumption patterns.

Global water crises – from drought in the world’s most productive farmlands to the hundreds of millions of people without access to safe drinking water – are the biggest threat facing the planet over the next decade.¹⁰ By 2030, the world is projected to face a 40 per cent global water deficit.¹¹ In addition, population growth, urbanization, migration and industrialization, along with increases in production and consumption have also contributed to the polluting of water resources further reducing their immediate accessibility.¹² The negative effects of climate change and competing water demands further increase the risk of unequal access to water resources.

Recognizing the major importance of water and sanitation, the Millennium Development Goals (MDGs) agreed in 2000 included a target to halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation. Whilst the global MDG target for drinking water was met in 2010 with 2.6 billion people having gained access to an improved drinking water source since the 1990s, significant problems remain unresolved.¹³ There are significant disparities among regions with the Caucasus, Central Asia, Northern Africa, Oceania and sub-Saharan Africa not meeting the MDG water target.¹⁴ In 2015, 663 million people still lack improved drinking water sources in the world.¹⁵

8 CESCR General Comment No. 15. The Right to water. E/C.12/2002/11. Para. 1.

9 WWAP (United Nations World Water Assessment Programme). 2015. The United Nations World Water Development Report 2015: Water for a Sustainable World. Paris, UNESCO.

10 World Economic Forum Global Risk 2015 report.

11 WWAP (United Nations World Water Assessment Programme). 2015. The United Nations World Water Development Report 2015: Water for a Sustainable World. Paris, UNESCO.

12 Ibid

13 Progress on Sanitation and Drinking Water – 2015 update and MDG assessment. UNICEF and World Health Organization 2015.

14 Ibid

15 Ibid

Furthermore, the world missed the MDG target on sanitation by almost 700 million people.¹⁶ Large disparities in regions add to the gloomy global picture, with lowest coverage concentrated in sub-Saharan Africa and Southern Asia.¹⁷ In 2015, it is estimated that 2.4 billion people globally still use unimproved sanitation facilities.¹⁸

In addition, the use of human-rights definitions reveal an even more alarming reality: Catarina de Albuquerque, former UN Special Rapporteur on the human right to safe drinking water and sanitation, estimated that in 2013, 1.8 billion people did not have access to safe water and 4.1 billion people did not have access to adequate sanitation.

In 2010, through resolutions by the United Nations General Assembly and the Human Rights Council, access to safe drinking water and sanitation has been recognized as a human right. However, in most countries the implementation is still in its early stages. National human rights institutions (NHRIs) may also have a crucial role in creating a positive enabling environment for the recognition and national implementation of the human right to water and sanitation along with monitoring State performance towards progress.

With the inclusion of a water and sanitation-related goal in the Sustainable Development Goals (SDGs), the international community further underlined the pivotal importance of ensuring access to water and sanitation to all. The transition from the Millennium Development Goals to SDGs offers crucial momentum to advance human rights-based sustainable development and to take important steps towards a human rights-based water governance. At the same time, a strong accountability framework is needed to secure the effective and timely implementation of the SDG water and sanitation goal. National human rights institutions may have a key role in that regard.



National Human Rights Institutions and water governance

More than 100 countries currently have NHRIs charged with promoting and protecting human rights. Nevertheless, in several cases NHRIs do not have a history of monitoring, promoting and protecting water governance-related human rights, even though it may potentially be their role resulting from the unique powers conferred upon them in relation to human rights protection in general. A core function of these institutions is to independently review the implementation of a nation's human rights commitments and make recommendations for improvement. Another role is to address grievances or complaints alleging violations of national law.

Seen in this light, NHRIs can provide a core function in the promotion and protection of water governance-related human rights and contribute to a human rights-based water governance. NHRIs may be in a unique position to potentially play an active role in securing the promotion and protection of the human right to water and other water governance-related rights.

16 Ibid
17 Ibid
18 Ibid

A major contribution in the process of enhancing the role of NHRIs in relation to the right to water is the adoption of the General Comment No. 15 on the “Right to Water,” adopted in 2002 by the United Nations Committee on Economic, Social and Cultural Rights.¹⁹ It explicitly refers to national ombudsmen, human rights commissions, and similar institutions that should be permitted to address violations of the right to water. Against this backdrop, NHRIs may take their place amongst mainstream water-governance institutions.

There is an emerging coalition of NHRIs worldwide which already has encouraging experience in the promotion and protection of water governance-related human rights. That experience may serve as an inspiration for peers. The group may pave the way for other NHRIs envisaging an enhanced role in a human rights-based water governance. It is in this vein that the current training material in water governance and human rights was elaborated.

The National Human Rights Institutions Water Initiative

The present training material on water governance and human rights for the benefit of NHRIs is part of the National Human Rights Institutions Water initiative. Launched by the Hungarian Ombudsman for Future Generations (Hungarian NHRI) in cooperation with WaterLex in 2013, the NHRI Water Initiative envisages a more prominent role of NHRIs in water governance for the promotion and protection of water governance related human rights (human right to water and sanitation, right to food etc.).

This initiative is an open call for collaboration to all interested NHRI parties who wish to strengthen their role in water governance for the realisation of human rights. The objectives of the NHRI Water Initiative are twofold, as shown in the following figure:

Community building: Create a network of NHRIs that can exchange experiences and best practices on water governance:

- Building a community of practice
- Systematize information, tools, resources and good practices of NHRIs
- Support NHRIs in monitoring water governance by facilitating sharing of existing best practices

Capacity building: Support and build the capacity of NHRIs to strengthen their role in ensuring a human-rights based approach to water governance

- Offer tailor-made training on the ground
- Deliver publications and practical guides to respond to specific needs of NHRIs in relation to water governance and human rights
- Develop other tools and methods to support NHRIs in need



19 CESCR, General Comment No. 15: The right to water, E/C.12/2002/11.

The NHRI Water Initiative is expected to lead to the following outputs:

- NHRIs have an increased understanding of the scope, content and connections among water-related human rights;
- NHRIs have an increased capacity to monitor water governance-related rights from a human rights perspective;
- NHRIs have an enhanced capacity to monitor the implementation of the post-2015 agenda and Sustainable Development Goals;
- NHRIs become an important stakeholder in the improvement of water-governance processes (cf. procedural guarantees by ensuring access to information, participation, and responding to demands to address alleged infringements of rights).

The programme, which is led by a consortium of NHRIs, has already resulted in (1) an expanding international network of NHRIs on water governance and human rights; (2) a compilation of NHRI monitoring practices in the field of water governance (see publication below²⁰); and (3) sharing of practices among peers (through national, regional and international trainings).



Training material on water governance and human rights

The present training material on water governance and human rights intends to strengthen the capacity of NHRIs to make positive contributions to water governance for the promotion and protection of the human right to water and sanitation as well as other water governance-related human rights.

20 *National Human Rights Institutions and Water Governance: Compilation of Good Practices*. WaterLex 2014. Available at : http://www.waterlex.org/?post_publications=national-human-rights-institutions-and-water-governance-compilation-of-good-practices

This publication is divided into six (6) main parts.

Section	Theme	Focus
Section 1	Water governance-related human rights	Seeks to deepen the understanding the legal content of the human right to water and sanitation in addition to other water governance-related human rights. This section also outlines the relevant normative framework, the scope of these rights along with corresponding State obligations.
Section 2	Role of NHRIs in water governance	Examines the important role NHRIs can play in promoting and protecting water governance for the realisation of human rights.
Section 3	Monitoring the right to water	Focus on practical aspects of monitoring the right to water for the protection of human rights. It seeks to provide NHRIs with methodology and other tools to assist them in this task. This section intends in particular: a) to provide NHRIs with tools to evaluate the current State of implementation of the right to water; b) to assist NHRIs in undertaking data collection and analysis; c) to assist NHRIs in setting clear benchmarks and targets to assess and track State performance.
Section 4	Protecting a human rights-based water governance	Seeks to deepen the understanding of various methods and tools available to NHRIs aimed at protecting a human rights based water governance.
Section 5	Promoting a human rights-based water governance	Sheds light on the various promotional activities NHRIs may conduct in view of promoting a human rights-based water governance.
Section 6	Advising Governments and Parliaments	Provides information how NHRIs may engage with these actors in view of promoting and protecting water governance-related human rights.

This training material is addressed to NHRIs worldwide. It intends to provide guidance to these institutions on analysing the national water-governance-related framework in view of compliance with international human rights commitments. It also aims to assist NHRIs in promoting and protecting water governance-related human rights. An entire section is devoted to monitoring State obligations with regard to the human right to water, allowing the identification of indicators and other methods.

In addition to providing information on the legal framework, the training material is offered as a practical guide, including best practices, methodologies, and case summaries of NHRIs. The case summaries and good practices of NHRIs included in this publication serve the purpose of sharing important knowledge among peers.

The document also includes charts, checklists, as well as references and suggested further reading. Summaries of relevant court cases²¹ providing further guidance to NHRIs on a possible interpretation of State obligations and the content of the human right to water and sanitation are also included. Finally, at the end of each section, a list of questions and exercises are provided to practice and exercise new skills learnt.

21 WaterLex (2014): The Human Rights to Water and Sanitation in Courts Worldwide – A Selection of National, Regional and International Case Law http://hrbaportal.org/wp-content/files/Human-rights-to-water-and-sanitation-in-courts_WEB_2015.pdf

▶ SECTION 1

WATER GOVERNANCE-RELATED HUMAN RIGHTS

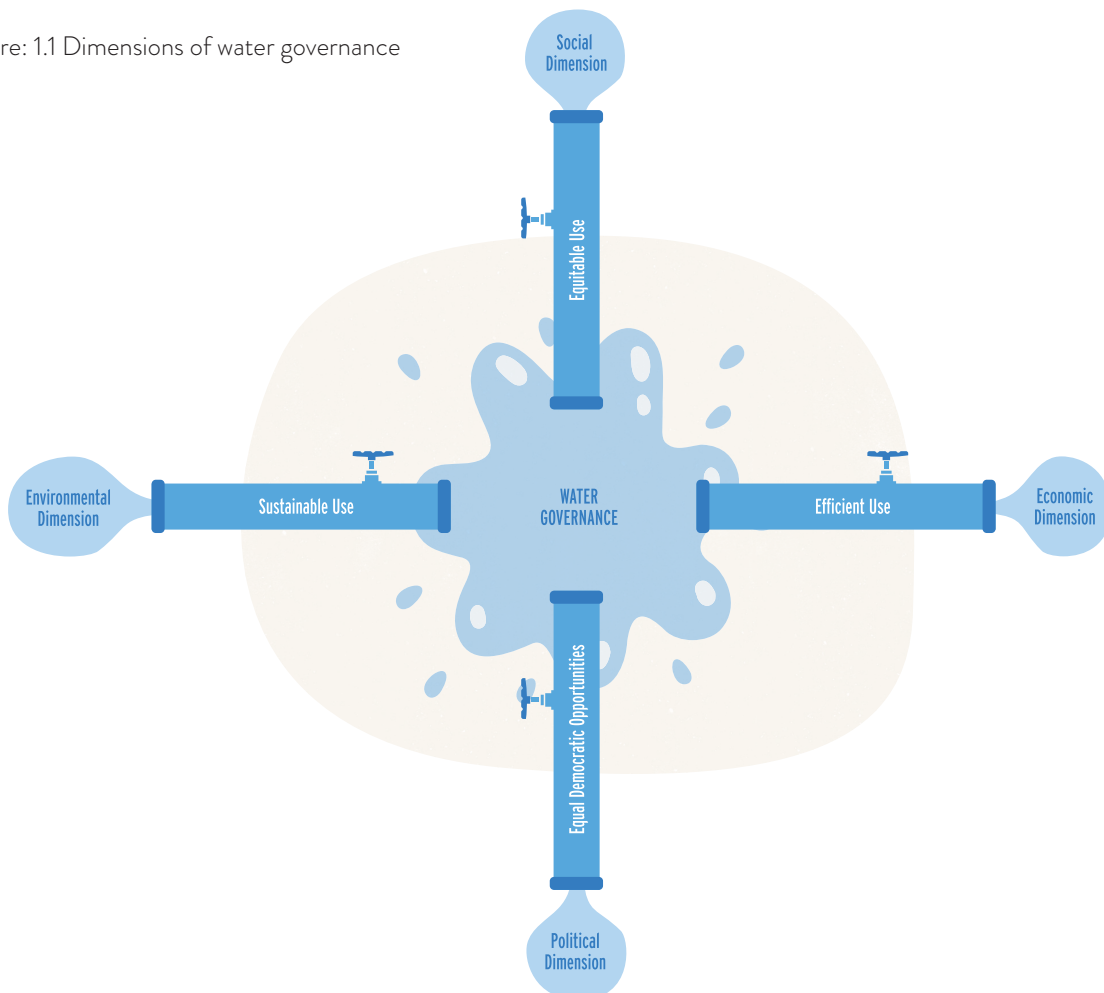


Objective: The objective of this chapter is to provide a detailed introduction to the evolution and content of the human right to water and sanitation as well as to outline the various inter-linkages in relation to human right to water and sanitation and other water governance-related human rights

INTRODUCTION

Water governance is defined by the political, social, economic and administrative systems that are in place, and which directly or indirectly affect the use, development and management of water resources and the delivery of water service at different levels of society. It determines the equity and efficiency in water resource and services allocation and distribution, and balances water use between socio-economic activities and ecosystems. Importantly, the water sector is a part of broader social, political and economic developments. Thus, it is also affected by decisions outside of the water sector.

Figure: 1.1 Dimensions of water governance



This chapter provides a detailed introduction into the evolution and content of the human right to water and sanitation. It also outlines the various inter-linkages among the human right to water and sanitation and other human rights (human rights to healthy environment, health and food, and rights of future generations etc.) collectively referred to in this manual as “*water governance-related human rights*.”

The first section concerns the legal framework of economic, social and cultural rights, i.e. the group of human rights that include the right to water and sanitation. Following a summary of the international and most important regional legal instruments, the legal nature of economic, social and cultural rights (ESCR) is explained in detail. In this context, particular attention is paid to the obligation of “progressive realisation” of ESCR.

The second section elaborates on the content of the human right to water and sanitation, such as availability, quality, acceptability, accessibility and affordability of water and sanitation, and clarifies some common misconceptions. The relevant procedural human rights principles are addressed briefly, followed by the human rights concerns relating to groups specifically vulnerable to violations of the right to water and sanitation. Finally, the obligations of States and the responsibilities of non-State actors, such as private companies, local governments, international organizations and civil society, are addressed.

The closing section outlines the main linkages between the human right to water and sanitation and some other human rights, such as the right to food, health, healthy environment and housing.

THE FRAMEWORK OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The right to water and sanitation is a universal human right, but it also belongs to the broader family of economic, social and cultural rights. For a better understanding of the core subject of this manual it is therefore necessary to outline the sources and the specific legal nature of economic, social and cultural rights at the outset.

The International Bill of Human Rights

Economic, social and cultural rights are an integral part of international human rights law. Modern international human rights law finds its moral and legal foundations in the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights as well as the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR, Covenant). The Universal Declaration, as its name suggests, is a political instrument with no legal force. It is however considered as an authoritative formulation of all human rights and, as such, it serves as the basis of the two covenants. The covenants and their various protocols, on the other hand, are international treaties whose implementation is overseen and supported by an elaborate system of human rights bodies and mechanisms within the United Nations (for the UN human rights bodies and mechanisms see sections 2 and 4). The three instruments together, i.e. the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, are commonly referred to as International Bill of Human Rights.

The international legal framework of ESCR

While the basic charter of economic, social and cultural rights remains the Covenant itself, a series of international conventions have been adopted with a view to protecting and promoting specific groups of rights. The most relevant in the context of the right to water and sanitation are:

- the Convention on the Elimination of All Forms of Discrimination Against Women (1979);
- International Labour Organization (ILO) Convention No. 161 concerning Occupational Health Services (1985);
- the Convention on the Rights of the Child (1989);
- the Convention on the Rights of Persons with Disabilities (2006).

It is important to underline that ESCR are not just dead letters frozen in international conventions, but a constantly evolving corpus of law. Central to this evolution is the role of the Committee on Economic, Social and Cultural Rights – a treaty body of 18 independent experts – which monitors States' compliance with their obligations under the Covenant. It issues observations on the periodic reports submitted by States and adopts so-called general comments on the interpretation and application of the various provisions of the ICESCR. General comments are authoritative statements that give further substance to the provisions of the Covenant and have proved to be a pivotal source of the development of economic, social and cultural rights in general, and of the right to water in particular.

The regional legal framework of ESCR

The International Bill of Human Rights and the above conventions are supplemented by regional treaties and implementation mechanisms. The most important instruments relevant for the purposes of this manual are:

- the African Charter of Human and People's Rights (1981);
- the African Charter on the Rights and Welfare of the Child (1990);
- the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003);
- the American Convention on Human Rights (1969);
- the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988);
- the Arab Charter on Human Rights (2004);
- the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950);
- the European Social Charter (1961);
- the Revised European Social Charter (1996);
- The Aarhus Convention (1998);
- the European Charter on Water Resources (2001);
- The EU Charter on Fundamental Rights (2009).



The African framework of economic, social and cultural rights, including the right to water and sanitation

Legal instruments

1986 African Charter on Human and Peoples Rights (AChHPR)

1990 African Charter on the Rights and Welfare of the Child

1990 African Charter for Popular Participation in Development and Transformation

2003 AChHPR Protocol on the Rights of Women

2011 Principles and Guidelines on the Implementation of ESCR

2012 Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa

Political programmes and declarations

2008 eThekweni Declaration of the AfricaSan Action Plan

2008 Sharm El-Sheikh Commitments for accelerating the achievement of water and sanitation goals in Africa (African Union)

2008 Tunis Ministerial Declaration

2009 Africa Water Vision for 2025

2014 Resolution on the Right to Water Obligations of the African Commission on Human and people's Rights (ACHPR/Res.300)

Economic, social and cultural rights under the Covenant

The International Covenant on Economic, Social and Cultural Rights recognizes the rights to:

- self-determination (Art. 1);
- equality for men and women (Art. 3);
- work and favourable conditions for work (Art. 6 and 7);
- form and join trade unions (Art. 8);
- social security (Art. 9);
- protection of the family, mothers and children (Art. 10);
- an adequate standard of living, including adequate food, clothing and housing (Art. 11);
- the highest attainable level of health and health care (Art. 12),
- education (Art. 14);
- free and compulsory primary education (Art. 14);
- take part in cultural life, benefit from scientific progress, benefit by authors from the protection of scientific, literary or artistic production (Art. 15).

It is important to underline again that the Covenant does not contain an exclusive inventory of rights, but – as a foundational treaty – provides the framework for the further development and elaboration of economic, social and cultural rights.

The legal nature of economic, social and cultural rights

A. Universality of human rights

Human rights law is based on the universality of rights, i.e., that all rights are indivisible and interdependent and thus constitute a single body of law. All the more so as civil and political rights and economic, social and cultural rights are not fundamentally different from one another. The two traditional groups are also linked by a number of general human rights principles such as equality and non-discrimination.

Nevertheless, economic, social and cultural rights have a number of characteristics in their implementation that may pose particular challenges for States. These characteristics are particularly prevalent in the context of the right to water and sanitation. Therefore a brief summary of their legal and political implications is provided below.

B. The concept of progressive realisation in the context of ESCR

The fundamental obligation of States in implementing economic, social and cultural rights is laid down in Article 2.1 of ICESCR as follows:

“

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The full realisation of ESCR may involve considerable financial resources and long periods of time. Thus, as the Committee on Economic, Social and Cultural Rights points out, the “progressive realisation” clause of the Article 2.1 of the Covenant creates a “flexibility device” that acknowledges the difficulties of any State trying to implement these rights. Given however the great potential of the concept for abuse by States as a pretext for inaction, much of jurisprudential and academic interpretation of this device is focused on what progressive realisation does not permit, rather than what its positive legal content is.

Thus, Article 2.1 cannot be interpreted as a *laissez-passer* to defer efforts indefinitely or until such time that a country reaches a certain level of economic development. To the contrary, it involves a series of immediate as well as long-term obligations. Equally, compliance with Article 2.1 cannot be made subject to external development aid. Conversely, all States have at their disposal a number of legal, political and financial means that can and must be mobilized to make progress at any given stage of their economic development.

The most important obligations flowing from Article 2.1 are as follows:

- **Immediate obligations:**
 - States have to begin to take *targeted positive steps* towards the full realisation of ESCR immediately. These involve legal measures (recognition of the right at issue, introducing judicial remedies, etc.) as well as policy measures (development and adoption of targeted, consistent and sufficiently progressive policies aimed at the full enjoyment of the right),
 - certain *negative obligations* apply immediately, such as
 - to prohibit any discrimination with regards to ESCR,
 - to refrain from actively violating ESCR,
 - to refrain from withdrawing existing rights (deliberate retrogressive measures can only be accepted exceptionally and must be fully justified).

- **Constant and continuing obligation to make progress:** Compliance with the above immediate obligations does not relieve States from making genuine progress towards full realisation of the rights at issues. As General Comment No. 15 on the right to water underlines, States have a constant and continuing duty to move *as expeditiously and effectively as possible* towards that goal. This implies that
 - certain positive measures must be taken “relatively shortly,” such as adoption of strategies, programmes and plans for the realisation and the promotion of the rights;
 - States must make continuous progress in the realisation of the rights. For the verification of progress-monitoring programmes and benchmarks, compliance mechanisms, etc., should be introduced;
 - States must move as quickly as possible towards full realisation of rights.

- **Obligation to make progress to the maximum of available resources:** While the financial circumstances of a State are critical factors in the pace of progress, the “maximum available resources” principle contained in the Covenant conveys important obligations on States regardless of their actual budgetary conditions. These are:
 - available resources must be used as effectively as possible. Even the least amount of money can be used more efficiently;
 - every effort must be made to meet at least the minimum obligations flowing from ESCR. In the context of several rights it implies that subsistence rights must be provided for everyone (core obligation);
 - ESCR must be given priority in making budgetary allocations;
 - in situations of grave resource constraints States should focus on the most vulnerable groups of society;
 - States with insufficient resources must exhaust all possibilities for international cooperation, i.e. States should actively seek and accept international development assistance to make progress towards full realisation.

C. State obligations to respect, protect and fulfil ESCR

In addition to the various specific obligations under the Covenant there is an established understanding that there are three general obligations States have to observe with regards to economic, social and cultural rights: the obligations to respect, to protect and fulfil the rights.

The obligation to respect	States must refrain from interfering, directly or indirectly, with the enjoyment of ESCR. In other words, States may not perform, sponsor or tolerate any practice, policy or legal measure that would deprive individuals or groups of individuals of their ESCR.
The obligation to protect	Requires States to prevent any violation of any individual's rights by any other individuals or non-State actors. It also implies that State should not only prevent actual violations, but also preclude future ones and guarantee access to legal remedies for the victims of the infringement.
The obligation to fulfil	<p>Implies positive measures by the States to ensure full realisation of ESCR. This can entail issues such as public expenditure, provision of basic public services and infrastructure, taxation, etc. The obligation to fulfil is usually disaggregated into three further obligations: the obligations to <i>facilitate</i>, <i>promote</i> and <i>provide</i>.</p> <ul style="list-style-type: none"> • <i>Facilitating</i> implies positive initiatives of the States to enable the full enjoyment of ESCR, e.g., by way of adopting enabling strategies aimed at creating the conditions necessary for people's ability to fulfil own demands. • The obligation to <i>promote</i> requires, among others, awareness-raising of the rights by way of education and the dissemination of information. • The obligation to <i>provide</i> includes direct provision of goods and services to people who, through conditions beyond their control, are not able to fulfil their own needs.

THE HUMAN RIGHT TO WATER AND SANITATION

Evolution of the human right to water and sanitation

The right to water and sanitation was formally recognized as a human right only in 2010. Despite this relatively late universal acknowledgment, the right to water and sanitation has been present in the international human rights law for decades.

When the UN General Assembly adopted the Universal Declaration of Human Rights in 1948, the right to water and sanitation was not included in the text. Neither were they specifically mentioned by the 1966 International Covenant on Economic, Social and Cultural Rights, even though the ICESCR provided for a series of fundamental rights, such as the right to food, housing, etc., whose enjoyment cannot be complete without access to water and sanitation. Some argue that such a conspicuous omission was due to the fact that during the early decades of modern human rights law, water stress (scarcity) was less widespread. Instead, water was assumed to be an inexhaustible common resource that, like air, is freely available for all.

With the unfolding of the global water crisis, however, questions relating to human access to water have gradually come to the forefront of international public attention. The UN Water Conference, the first and the last in its genre, held in 1977 in Mar del Plata, Argentina, recognized water as a right for the first time, declaring that “*All peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and qualities and of*

a quality equal to their basic needs.” This was followed by the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, which specifically mentions water and sanitation in the context of the right to adequate living conditions. The 1989 Convention on the Rights of the Child explicitly refers to water, environmental sanitation and hygiene. Throughout the 1990s a series of international development conferences – such as the 1992 Dublin Statement on Water and Sustainable Development, the 1992 Rio Conference on Environment and Development, and the 1994 Cairo Conference on Population and Development – all confirmed the existence of the right to water and sanitation.

In this chain of evolution the General Comment No. 15 on the right to water issued by the Committee on Economic, Social and Cultural Rights in 2002 constituted a major milestone. General Comment No. 15 defined the scope and content of the right to water with such precision that it still serves as the fundamental tool to interpret the right.

Excerpts from General Comment No. 15. CESCR



“Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realisation of other human rights.” (Sec. 1)

“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.” (Sec. 2)

“Water should be treated as a social and cultural good, and not primarily as an economic good.” (Sec. 11)

“State parties have a constant and continuing duty under the Covenant to move as expeditiously and effectively as possible towards the full realisation of the right to water.” (Sec. 18)

In July 2010 the UN General Assembly formally recognized, by Resolution 64/292, the right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights. The Resolution called upon States and international organizations to provide financial resources, help capacity-building and technology transfer to assist countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all. (Interestingly, in December 2013 the General Assembly adopted a fresh resolution on the same subject (Resolution 68/157). Unlike Resolution 64/292, the new resolution was accepted without a vote reflecting the unanimous endorsement of the right by the international community).

To follow up Resolution 64/292 the Human Rights Council, the UN’s multilateral human rights body, affirmed in Resolution 18/1 the next year that the rights to water and sanitation are part of existing international law and that these rights are legally binding upon States. It also urged States to develop appropriate tools and mechanisms to achieve progressively the full realisation of human rights obligations related to access to safe drinking water and sanitation.

The normative content of the human right to water and sanitation

The legal content of the human rights to water and sanitation includes the following elements:

- Availability
- Accessibility
- Acceptability
- Affordability
- Quality

The practice of the Uganda Human Rights Commission includes the assessment of availability, accessibility, acceptability, affordability and quality in relation to water, as showed in the box below.



The Uganda Human Rights Commission (UHRC) and Water Governance related Human Rights

Availability, accessibility, acceptability, affordability and quality are some of the water and sanitation-related criteria that the UHRC addresses in its work. For example, availability issues are reviewed by the commission while carrying out its mandatory visits to detention centres in 2013. Prisoners, along with refugees in refugee camps and ethnic minorities, were in fact identified as a group whose rights have been particularly and disproportionately affected. For example, the commission noted water shortages but also raised that there was a lack of sanitary towels in Prisons with wards for females. Quality was assessed by the commission for example when carried monitoring visits in areas that were affected by floods and landslides. Sanitation facilities were reported to be submerged in the flood water. This therefore raised the issue of water source contamination. The UHRC also pays attention to affordability and acceptability. Among others, it noted that among other reasons, the high costs of water impacted on health centres as they could not afford high water bills and therefore did not have running water.

The normative content of the human right to water and sanitation is essentially spelled out by General Comment No. 15 (right to water) and in the 2009 report on the right to sanitation²² of the UN Special Rapporteur on the right to safe drinking water and sanitation with subsequent HRC and UNGA decisions affirming along the following lines:

A. Freedoms and entitlements

The human right to water contains both freedoms and entitlements.

- **Freedoms** relate to the right to be free from interference in the use of water and sanitation services. Such freedoms include, among others, protection against arbitrary and illegal disconnections, prohibition of unlawful pollution of water resources, non-discrimination in the access to safe drinking water and sanitation notably on the basis of land or housing status, non-interference with access to existing water supplies, especially traditional water points, ensuring personal security when accessing water or sanitation outside the home.

²² Independent Expert on human rights obligations related to access to safe drinking water and sanitation, on the human rights to water and sanitation, Human rights obligations related to access to sanitation, 2009 (A/HRC/12/24)

- **Entitlements** include the right to a system of water supply and management that provides equal opportunity for all people to enjoy the right to water. This implies, for example, access to a minimum amount of safe drinking water to sustain life and health, access to water and sanitation in detention centres, participation in water- and sanitation-related decision-making at national and community levels, etc.

B. Adequacy

Adequacy is included in Article 11 of the ICESCR and further interpreted by General Comments:

*“The States Parties to the present Covenant recognize the right of everyone to an **adequate** standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”*

”

General Comment No. 15 on the right to water further provides that elements of the right to water must be adequate for human dignity, life and health. Adequacy of water should not be interpreted narrowly, i.e., by mere reference to certain quantitative and technological requirements.

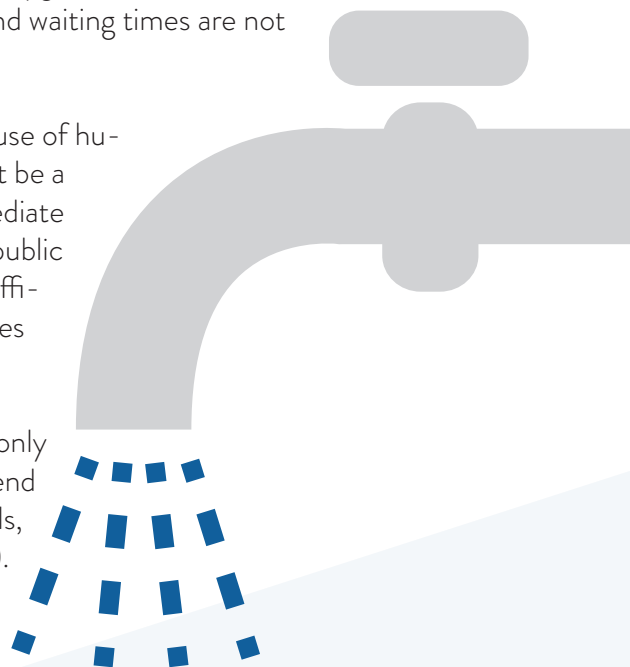
General Comment No. 15 also notes that water should be treated as a social and cultural good, and **not primarily as an economic good**. While the adequacy of water required for the right to water *may vary* according to different conditions, the following factors **apply in all circumstances: availability, quality, accessibility (physical, economic and information accessibility, non-discrimination)**.

C. Availability

In terms of water and sanitation, availability means the following:

- **Water:** water supply for each person must be sufficient and continuous for **personal and domestic use**. Personal and domestic uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene. There must be a sufficient number of water outlets to ensure that collection and waiting times are not unreasonably long.
- **Sanitation** implies the collection, treatment and disposal or reuse of human excreta and ensuring associated hygiene. There also must be a sufficient number of sanitation facilities within, or in the immediate vicinity, of each household, health or educational institution, public institutions and places, and the workplace. There must be a sufficient number of sanitation facilities to ensure that waiting times are not unreasonably long.

Water, sanitation and hygiene facilities and services must not only be available at household level, but in all places where people spend significant amounts of time, such as public institutions (e.g. schools, prisons, hospitals, refugee camps) and public places (e.g. markets).



The following court decision from India²³ provides additional insight into the interpretation of availability by a national judge.



Court decision - availability of school toilet and drinking water facilities in India

The Supreme Court of India repeatedly instructed states and union territories to ensure the provision of toilet and drinking water facilities in schools pursuant to the right to education. In the case *Environment & Consumer Protection Foundation v Delhi Administration and Others* in 2012 the Court directed all States to give effect to its directions within six months, these notably including the provision of “toilet facilities for boys and girls” and “drinking water facilities.” It emphasized that its directions are applicable to all schools, both public and private, aided or not, minority or not.

The following example from South Africa provides an example of a national legislation stipulating the right to water and sanitation.



South Africa: 1997 - Water Services Act - Act 108 of 1997 (as last amended 2004)²⁴

1. Everyone has a right of access to basic water supply and basic sanitation.
2. Every water services institution must take reasonable measures to realize these rights.
3. Every water services authority must, in its water services development plan, provide for measures to realize these rights.

The UN Special Rapporteur on the human right to safe drinking water and sanitation recommends using the following checklist for the analysis of the national legal framework with regards to the availability of water and sanitation²⁵. This checklist may prove useful for NHRIs while analysing their national legal framework in relation to the human right to water and sanitation.

23 WaterLex (2014): *The Human Rights to Water and Sanitation in Courts Worldwide: A Selection of National, Regional and International Case Law* http://hrbportal.org/wp-content/files/Human-rights-to-water-and-sanitation-in-courts_WEB_2015.pdf

24 Water Services Act, 1997 (Act No. 108 of 1997); <http://www.acts.co.za/water-services-act-1997/>

25 *Realising the Human Right to Safe Drinking Water and Sanitation: a Handbook* by the UN Special Rapporteur Catarina de Albuquerque. Legislative, regulatory and policy frameworks.

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Check	Yes	No	In progress
Where people do not have access to a networked water supply system, do laws and/or regulations provide for the right of everyone to use natural resources for domestic and personal uses?			
Do laws and/or regulations establish a clear priority of water for personal and domestic uses over other uses (e.g. agriculture)?			
Does the legal definition of sanitation also include the collection, transport, treatment, disposal or reuse of human excreta, and associated hygiene in addition to the instalment of the toilet?			
Do regulations include guidance on safe construction, regular cleaning, and emptying of pits or other places that collect human excreta?			
Do laws and/or regulations clearly define “availability of water and sanitation” in different settings where people spend significant amounts of time (e.g. homes, workplaces, schools and kindergartens, hospitals and health care centres, places of detention and public places)?			
Do laws and/or regulations specify that facilities allowing for hand-washing and practicing good menstrual hygiene must be available in public institutions (e.g. schools)?			
Do standards include a minimum amount of water to be available, and a maximum permitted interruption of services?			

Concerning **quantity**, General Comment No. 15 does not specify how much water needs to be made available, but refers to the need of WHO conformity. It underlines however that what constitutes sufficient quantity may vary greatly as some individuals and groups may require additional water due to health, climate and work conditions.



WHO guidelines on the water-quantity requirements for personal use

Quantity

50-100 litres/per person/day
20-25 litres/per person/day

Needs

Most basic needs are met, few health concerns arise
 Minimum - this amount raises health concerns because it is insufficient to meet basic hygiene and consumption requirements

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Source: http://www.who.int/water_sanitation_health/diseases/WSH03.02.pdf



**Between
50 and 100
liters of water per person
per day are needed
to ensure most basic
needs (1)**

Figure 1.2 Basic water needs
(1) According to the World Health Organization²⁶

In relation to *sanitation*, the UN Special Rapporteur on the human right to safe drinking water and sanitation underlined that although it is tempting to determine a specific minimum number of toilets needed to meet the requirement of availability, such determinations can be counterproductive in human rights terms. It was further underlined by the UN Special Rapporteur that it is crucial that the assessment of the sanitation requirements of any community is informed by the context, as well as the characteristics of particular groups which may have different sanitation needs.²⁷

The UN Special Rapporteur further identified some common challenges in relation to availability of water and sanitation²⁸:

- Lack of land tenure in informal settlements often leads to inhabitants being refused access to water and sanitation services;
- Prioritisation of use to be guaranteed;
- Water and sanitation services in public places: the Special Rapporteur notes that transgender and intersex individuals can face exclusion, denial of access, verbal harassment, physical abuse, and sometimes even arrest when using public sex-segregated sanitation facilities;
- Sustainability of services.

The following court decision from Botswana reveals how a national judge interpreted availability in relation to the Bushman community.

²⁶ Source:http://www.un.org/waterforlifedecade/pdf/facts_and_figures_human_right_to_water_eng.pdf

²⁷ Independent Expert on human rights obligations related to access to safe drinking water and sanitation, on the human rights to water and sanitation, Human rights obligations related to access to sanitation, 2009 (A/HRC/12/24) para 71.

²⁸ *Realising the Human Right to Safe Drinking Water and Sanitation: a Handbook* by the UN Special Rapporteur Catarina de Albuquerque. Legislative, regulatory and policy frameworks. http://www.ohchr.org/Documents/Issues/Water/Handbook/Book2_Frameworks.pdf



Case Law – Botswana²⁹

The Colonial Government created the Central Kalahari Game Reserve (CKGR) in 1961 for two purposes: conserving the wildlife of the area, and providing residence for the Bushmen community. Since the mid-1980s, this community had drawn water for domestic use from a borehole in Mothomelo that had originally been drilled by but no longer used by a private company. Until 2002, the District Council maintained the borehole engine and provided fuel and water to different communities in the CKGR.

In January 2002, the Bushmen were relocated against their will outside the reserve on the grounds that human settlements were incompatible with the objective of wildlife conservation. The pump engine and water tank were removed so that the borehole could not be used. As a result, the community was left without access to water and had to rely on fruits and roots to take in fluids. Water for food preparation and hygiene was unavailable. The lack of water greatly increased the community's vulnerability to sickness. A report described them as "very dirty, due to lack of adequate water for drinking and other domestic use."

Decision: Preventing a well-established Bushmen community from using a borehole, their traditional source of water, amounts to inhuman and degrading treatment contrary to article 7 of the Constitution of Botswana and the international consensus reflected by General Comment 15 and UNGA Res 64/292. As lawful occupiers of land, they had a right to access water for domestic use.

Collecting information on the availability of water and sanitation might prove to be challenging for NHRIs. Cooperation with other national entities (E.g. government offices, statistical offices, research institutes, think-thanks etc.) and the civil society offers clear added-values in the respect. A practice below of the NHRI of Namibia describes that this institution used a house-hold survey to collect information on availability.

Ombudsman of Namibia conducting a household survey to determine availability of water

In its *Special Baseline Study Report on Human Rights in Namibia*, the Ombudsman explored the situation of the right to safe drinking water and the right to sanitation. The report identified the following areas of special concern in that context: i) availability; ii) quality; iii) physical and economic accessibility. With respect to availability of water, a household survey was conducted as part of this baseline study to determine whether access to water for Namibian households improved, stayed the same or deteriorated over the preceding five years. Despite an improving trend confirmed by the study, the report of the Ombudsman concludes that access to water remains a challenge especially concerning access to piped water in rural areas.



²⁹ *The Human Rights to Water and Sanitation in Courts Worldwide. A Selection of National, Regional and International Case Law: Matsipane Mosethanyane and Gakenyatsiwe Matsipane v The Attorney General Court of Appeal (Lobatse)* 27 January 2011

D. Quality

”

Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It is an affront to human dignity.

Kofi Annan, United Nations Secretary General³⁰

Water for personal and domestic use must be safe. It must be free from microorganisms, chemical substances and radiological hazards that constitute a threat to a person's health.

The assessment of water quality is a highly complex process that requires technical expertise on micro-organisms and chemicals that might pose a health risk. WHO and UNICEF are leaders in the field and have defined a set of core parameters for water quality (microbial quality, physical parameters and chemical parameters). WHO Guidelines for Drinking-water Quality provide a basis for the development of national standards, which, if properly implemented, will ensure the safety of drinking water. When measuring water quality, efforts should be made to either make use of quality assessments from WHO and UNICEF or engage technical expertise on water quality.

In most countries, the agency responsible for the surveillance of drinking-water supply services is the ministry of health (or public health) and its regional or departmental offices. In some countries, it may be an environmental protection agency; in others, the environmental health departments of local government may have some responsibility. However, local communities and civil society in general may provide valuable information in relation to drinking water quality to NHRIs who can alert relevant authorities in case of need.



The box below describes a practice of an NHRI conducting investigations in relation to assessing water quality.

NHRI of Nepal conducting investigation in relation to water quality in diarrhoea/cholera outbreak



An outbreak of diarrhoea in mid-west Nepal became an epidemic in 2009. The National Human Rights Commission came to know about the epidemic through news media. The suspected cause of diarrhoea was not only polluted water but also intake of distributed food. The commission collected more information from local NGOs and INGOs (international non-governmental organizations) working in human rights sectors. The commission drew the Nepalese government's attention through press release and formed two teams to monitor the situation.

The teams of the NHRC Nepal monitored the affected districts based on the universal principle and laws related to human rights, and made recommendations to the government through a meeting with press. The NHRC's monitoring team collected data from the field and consulted various stakeholders. During the monitoring, the NHRC Nepal team visited food stores, observed the condition of food and medicine consumed by local people, and consulted with health workers, affected people, government sectors, human rights activists, journalists and other stakeholders to discuss and interact on the issue. The team also collected documents and information in Kathmandu from various government organizations.

On the basis of information and data collected, the commission prepared a monitoring report. During the analysis of food and diarrhoea in the context of human rights, the Commission made an explicit reference to the General Comment No. 15 on the right to water. The monitoring reported that the intake of polluted water (water mixed with excreta) was among the causes of the epidemic. In addition, the commission also organized a discussion programme among the government officials, representatives from NGO/INGOs working in the human rights sector, organizations working in consumer rights and representatives from UNWFP to bring about the facts, collect information and draw the attention of the government.

The court decision below from Bangladesh outlines the interpretation of State obligations by a national judge in relation to the safety of water.



Court decision on contaminated water – Bangladesh³¹

Over the past three decades, campaigns and technical support from international agencies to the water and sanitation sector in Bangladesh resulted in a country-wide shift from surface water to groundwater consumption. In order to reduce the disease burden due to the use of contaminated surface water, tube wells were being installed to provide access to groundwater. The demand for drinking groundwater further increased after organizations and the government promoted groundwater over surface water. However, the groundwater was not tested for arsenic contamination. The population generally assumed that groundwater was safe to drink. The contamination of groundwater sources with arsenic constitutes a major threat to the health of consumers.

Decision: The government must, on the basis of national and international laws, fulfil its legal obligations to provide safe water and must therefore take immediate measures, in particular stop human consumption from arsenic-contaminated water, raise awareness of the dangers of arsenic-contaminated water, and ensure provision of a safe water supply.

As for *sanitation*, the following quality requirements are to be respected according to the UN Special Rapporteur on the human right to safe drinking water and sanitation:³²

- Sanitation facilities must be hygienically safe to use: They must effectively prevent human, animal and insect contact with human excreta.
- Sanitation facilities must further ensure access to safe water for hand washing as well as menstrual hygiene, and anal and genital cleansing, as well as mechanisms for the hygienic disposal of menstrual products.
- Regular cleaning, emptying of pits or other places that collect human excreta, and maintenance are essential for ensuring the sustainability of sanitation facilities and continued access.
- Sanitation facilities must also be technically safe to use: The superstructure is stable and the floor is designed in a way that reduces the risk of accidents (e.g. by slipping).
- People must be enabled to use them safely at night, whether through lighted paths, flashlights, or other measures.
- Special attention should be paid to the safety needs of persons with disabilities, as well as the safety needs of children.

31 *The Human Rights to Water and Sanitation in Courts Worldwide. A Selection Of National, Regional and International Case Law: Rabia Bhuiyan v Ministry of LGRD* 26 August 2005

32 Independent expert on human rights obligations related to access to safe drinking water and sanitation, on the human rights to water and sanitation, human rights obligations related to access to sanitation, 2009 (A/HRC/12/24) para 72-73.



The following example from Côte d'Ivoire³³ highlights a national legislation incorporating water-quality-related measures.

Côte d'Ivoire: 1998 - The Water Code

“The State is responsible for the management of water resources by preserving the quality of sources, preventing waste and guaranteeing water availability.” Article 59

“Any discharge of wastewater into the environment must respect the standards in force.” Article 49

“Spills, the dumping of water of any kind, or of radioactive waste, or of anything that may cause of increase the pollution of water resources is prohibited.” Article 48

The UN Special Rapporteur proposes using the following checklist for the analysis of the national legal framework with regards to the quality of water and sanitation³⁴:

Check	Yes	No	In progress
Are there laws and/or regulations in place that protect the quality of water resources (e.g. by prohibiting the dumping of sewage and waste and demanding the containment of any seepage of fertilizers, industrial effluents and other pollutants)?			
Do regulations set standards on water quality and wastewater treatment, and are they relevant for both public and private service providers?			
Are water quality standards set according to the national and local contexts, considering contaminants that occur only in specific regions?			
Are there regulations on householders' arrangements for waste collection and disposal?			

E. Acceptability

Acceptability concerns the subjective assessment of users on water and sanitation and the delivery of services. It comprises *consumer* acceptability (the assessment of the quality of water and the service by the users) and *cultural* acceptability (i.e. subjective perceptions based on the culture of individuals, minority groups and communities). The starting point of acceptability is that water and sanitation facilities and services must meet local cultural and social standards, otherwise people will not use them. Acceptability has therefore important implications for dignity and privacy that are especially relevant in the context of the right to water and sanitation.

³³ Law No. 98-755 of 23 December 1998

³⁴ *Realising the Human Right to Safe Drinking Water and Sanitation: a Handbook* by the UN Special Rapporteur Catarina de Albuquerque. Legislative, regulatory and policy frameworks.

First of all, the *water* itself should be of acceptable colour, odour and taste for each personal and domestic use so that people will not resort to polluted alternatives that may look more attractive. This applies to all sources of water provision, including piped water, tankers, wells, etc. Secondly, the *water facility* must also be acceptable for the intended use.

The design, position and conditions of use of *sanitation facilities* must also be compatible with the cultural priorities of the intended users. Facilities to be used by more than one household should be separated by gender and ensure privacy. Facilities will need to accommodate common hygiene practices in specific cultures.

The box below provides an example of a national legislation enacting measures in relation to acceptability.³⁵



Grenada: Factories (Sanitary Accommodation) Regulations

(1) In the case of factories where females are employed, there shall be at least 1 sanitary convenience for 1 to 12 persons; 2 sanitary conveniences for 13 to 25 persons; 3 sanitary conveniences for 26 to 40 persons; 4 sanitary conveniences for 41 to 57 persons; 5 sanitary conveniences for 58 to 77 persons; 6 sanitary conveniences for 78 to 100 persons. From 101 to 200 persons, additional sanitary conveniences shall be added at the rate of 5 per cent. For over 200 persons, sanitary conveniences shall be added at the rate of 4 per cent. (2) In cases where males are employed, there shall be sanitary conveniences (not being a convenience suitable merely as a urinal), at the following rate – 1 for 1 to 15 persons; 2 for 16 to 35 persons; 3 for 36 to 65 persons; 4 for 66 to 100 persons. From 101 to 200 persons, sanitary conveniences shall be added at the rate of 3 per cent. For over 200 persons, additions shall be made at the rate of 2½ per cent. (6) Baths, preferably showers, shall be provided to meet the requirements of particular trades or occupations. (7) Every sanitary convenience shall be sufficiently ventilated and shall not communicate with any work-room except through the open air or through an intervening ventilated space: Provided that in the case of work-rooms in use prior to the commencement of these Regulations, and mechanically ventilated in such a manner that air cannot be drawn into the work-room through the sanitary conveniences, an intervening ventilated space shall not be required. (8) Every sanitary convenience (other than a convenience suitable merely as a urinal), shall be under cover and so partitioned off as to secure privacy, and shall have a proper door and fastenings. (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.

The following box describes a practice of the NHRI of South Africa in protecting the right to sanitation leading to a national court decision that provided interpretation of the content of acceptability.



South African Human Rights Commission investigation leading to a court decision on sanitation³⁶

The South African Government designed an Upgrading of Informal Settlements Programme to answer the special development needs of informal settlements. Accordingly, the City of Cape Town decided to upgrade three areas of informal settlements comprising 1,316 households.

The city decided to set up one communal toilet for every five families living in the area on the three project sites. Later, the city decided to construct individual toilets with cistern and water pipes, albeit without enclosing them. Community members were expected to enclose the toilets themselves. Most of these toilets were indeed enclosed by residents themselves, but some remained unenclosed. These were completely open and in full view of every person in the community, mostly situated close to the road, and referred to as “a loo with a view.” Residents resorted to using blankets to cover themselves when using these toilets.

The South African Human Rights Commission investigated a complaint regarding the lack of privacy provided by these toilets. As a result, the city attempted to enclose the remaining “open” toilets. However, unknown members of the community resisted the works and broke down some of the structures built, so that the city interrupted construction. In March 2010, the city enclosed 26 toilets but they were readily demolished by African National Congress Youth League members. Mrs. Beja was attacked and stabbed after using one of the unenclosed toilets. Mrs Beja and two other individuals applied to the High Court against the City of Cape Town.

The Court found: 1) that the provision of unenclosed toilets to a poor community amounts to a violation of fundamental rights as guaranteed under the Constitution of the Republic of South Africa and relevant legislation, and notably the right to human dignity and the right to adequate housing; 2) failure to provide for the meaningful participation of the community and failure to take account of the needs of vulnerable groups also rose to violations of the Constitution and relevant legislation.

The UN Special Rapporteur proposes using the following checklist for the analysis of the national legal framework with regards to the quality of water and sanitation.³⁷

Check	Yes	No	In progress
Do policy level documents set clear targets and responsibilities for meeting general acceptability standards?			

36 *The Human Rights to Water and Sanitation in Courts Worldwide. A Selection Of National, Regional and International Case Law: Beja and Others v Premier of the Western Cape and Others* High Court (Western Cape) 29 April 2011

37 *Realising the Human Right to Safe Drinking Water and Sanitation: a Handbook* by the UN Special Rapporteur Catarina de Albuquerque. Legislative, regulatory and policy frameworks.

F. Accessibility

The concept of accessibility concerns the level of access and identifies who has access. It requires that water and sanitation services must be accessible to everyone without discrimination. General Comment No. 15 identifies four dimensions of accessibility:

1. physical accessibility;
2. economic accessibility;
3. non-discrimination;
4. information accessibility.

Given that economic accessibility is discussed separately under “affordability” and non-discrimination and access to information are addressed in the context of related human rights principles, what follows is a summary of the requirements of **physical accessibility**.

Physical accessibility means that water, water and sanitation facilities are *within safe physical reach* for all sections of the population. This means that water and sanitation must be accessible within, or in the immediate vicinity, of each household, educational institution, workplace or any other place where people spend significant amounts of time.



WHO recommendations

According to the WHO, the water source has to be within 1,000 metres of the home and collection time should not exceed 30 minutes.



The water source
has to be within
1,000
meters from home (1)

(1) According to the World Health Organization (WHO)³⁸

Figure 1.3: Physical accessibility according to the WHO



Collection time
should not exceed
30 minutes (1)

Physical accessibility also implies that the facility itself is *designed* in such a way that any user, including those with special conditions (e.g. elderly, disabled people or children), can physically access them as well as that it ensures the *physical security* of users.

However, the realities with regards to physical accessibility of water facilities are, in many parts of the world, extremely alarming. The average distance that women in Africa and Asia walk to collect water is 6 kilometres.³⁹

The UN Special Rapporteur on the human right to safe drinking water and sanitation indicated the following requirements in terms of *sanitation*:⁴⁰

- Sanitation facilities must be physically accessible for everyone within, or in the immediate vicinity of, each household, health or educational institution, public institutions and places, and the workplace.
- Physical accessibility must be reliable, including access at all times of day and night.
- The location of sanitation facilities must ensure minimal risks to the physical security of users. This has particular implications for the path leading to the facility, which should be safe and convenient for all users, including older people and persons with disabilities and it must be maintained in this state.
- Sanitation facilities should be constructed in a way that minimizes the risk of attack from animals or people, particularly for women and children.
- Sanitation facilities should be designed in a way that enables all users to physically access them, including, especially, those with special access needs, such as children, persons with disabilities, elderly persons, pregnant women, parents accompanying children, chronically ill people and those accompanying them.

To sum up, physical accessibility has the following important aspects:

- Time and distance;
- Physical security;
- Design of facilities.

The realities are, however, alarming, as the Joint Monitoring Programme (JMP) draw attention to the burden of collecting drinking water, and its health and gender dimensions. The JMP showed that in several countries in sub-Saharan Africa, over a quarter of households spend at least half an hour on a single trip to collect water. The physical and time burden of water hauling was found to fall primarily on women and girls, who are responsible for water collection in seven out of ten households in 45 developing countries.⁴¹

39 The Right to Water. Fact Sheet No. 35. Office of the United Nations High Commissioner for Human Rights, the United Nations Human Settlements Programme, World Health Organization.

40 Independent Expert on human rights obligations related to access to safe drinking water and sanitation, on the human rights to water and sanitation, Human rights obligations related to access to sanitation, 2009 (A/HRC/12/24) para 75-76.

41 World Health Organization and UNICEF (2014): Progress on Sanitation and Drinking Water. 2014 Update. Geneva: WHO; See also WHO / UNICEF 2013 Update.

The box below shows a practice used by the NHRI of Kenya in investigating the negative effects of mining on accessibility of water.



NHRI of Kenya investigating negative effects of mining activity on access to water

In 2005, the Kenya Commission on Human Rights (KNCHR) undertook an inquiry concerning allegations by the community of Magarini that salt manufacturing companies operating in the area had committed human rights violations against the community. It was claimed among others that salt manufacturing in that area carried out activities, which damaged the environment and, as a result, denied the surrounding communities access to fresh water. Complaints on salinization of freshwater wells and springs were also investigated. Sanitation facilities were also allegedly inadequate for workers.

The commission first undertook a fact-finding visit followed by a baseline survey to identify stakeholders and obtain additional information on the petition, such as the number of people affected, or the nature of immediate violations and the livelihoods affected. Preceding the hearings, the commission sought to obtain community participation and attract interested parties by advertising the commencement of the process on radio and newspapers, and distributing notices and other announcements. The local administration, salt companies, the public, line ministries and experts also presented written and oral submissions to the KNCHR.

The inquiry report lays down the findings, decisions and recommendations. It was found, among others, that fresh water sources from which the surrounding community traditionally drew its water had been contaminated by underground salt seepages and other activities resulting from the salt manufacturing companies' actions. As a result of the consequent salinization, it undermined the community's right to access the only non-salty water source. It therefore forced the community to ferry water from long distances at a greater cost. The KNCHR made various recommendations, which identified short, medium and long term actions in relation to each of the issue addressed in the inquiry.

Furthermore, the box below outlines a national judge's interpretation of the obligations of public authorities and public water companies on providing water and sanitation.



Case Law – Colombia⁴²

According to a judicial inspection carried out on 15 October 2009, the water and sanitation service is deficient in several informal settlements in Ciudad Bolívar and Soacha, on the outskirts of Bogotá, which has led the inhabitants to install hose-pipe networks and connect them to tanks for their water provision. The sanitation system is precarious and in bad condition. It is not connected, or piped, as it was built by the community. The provision of public services in these *barrios* is inadequate, as there is no sanitation infrastructure and their inhabitants have built it themselves, with their own means. For the provision of drinking water the users have two options: either to make a connection through hosepipes to the tanks, although one is damaged and the other one is not sufficient to provide the service effectively and continuously to the whole community; or through tanker trucks. Some of these settlements had been legalized, while others remained illegal.

The court decided that public authorities and public water companies have the obligation to, in settlements that have already been legalized, provide water and sanitation services efficiently and in a timely manner.

The UN Special Rapporteur on the human right to safe drinking water and sanitation recommends using the following checklist for the analysis of the national legal framework with regards to the accessibility of water and sanitation⁴³:

Check	Yes	No	In progress
Do laws and/or regulations take into account the maximum distance and time it takes to reach a facility/the location of the facility in order to ensure the physical security of users?			
Do the above mentioned standards consider the obstacles particular individuals and groups may face in accessing water and sanitation?			
Are the State and/or service providers obliged to provide access to formal water and sanitation services to households independently of their tenure status?			

G. Affordability

Water services must be affordable to all. No individual or group should be denied access to safe drinking water because they cannot afford to pay. Direct and indirect costs related to water and sanitation should not prevent anyone from accessing these services and should not compromise their ability to enjoy other human rights (e.g. buying food, medicine, going to school, etc.).

42 *The Human Rights to Water and Sanitation in Courts Worldwide. A Selection of National, Regional and International Case Law: Dagoberto Bohórquez Forero c/ EAAB Empresa de Acueducto y Alcantarillado de Bogotá y Otros Tribunal Administrativo (Cundinamarca)* 3 May 2012

43 *Realising the Human Right to Safe Drinking Water and Sanitation: a Handbook* by the UN Special Rapporteur Catarina de Albuquerque. Legislative, regulatory and policy frameworks.

To ensure that water is affordable, General Comment No. 15 on the right to water calls on States to adopt the necessary measures that may include, *inter alia*:

- Use of a range of appropriate low-cost techniques and technologies;
- Appropriate pricing policies such as free or low-cost water;
- Income supplements.



Water cost should not exceed 3 per cent of household income (2)

Human rights laws do not require services to be provided free of charge. General Comment No. 15, however, does not stipulate a concrete amount that may be charged. The United Nations Development Programme (UNDP) recommends that water costs should not exceed **3 per cent of household income.**

(2) According to the United Nations Development Programme (UNDP)⁴⁴
Figure 1.4: Water costs

At the same time, General Comment No. 15 on the right to water underlines that any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.

Cost-recovery schemes however should not become a barrier to access to safe drinking water and sanitation, notably by the poor. Consequently, States have an obligation to put adequate subsidy mechanisms in place to make sure that water and sanitation services always remain affordable for the poor.

The various support and subsidy schemes should correspond to two types of costs in order to ensure affordability:

- *Connection, construction, operation and maintenance costs:* The main infrastructure and network costs are relatively high. Therefore, subsidies, payment waivers and other mechanisms must be established in order to ensure affordability.
- *Regular user fees for service delivery:* Affordability of regular user fees requires the development and monitoring of tariff systems, set by an independent regulatory body that ensures that tariffs are affordable for all.

In relation to *sanitation*, the UN Special Rapporteur pointed out that human rights do not dictate which policy is best, but insisted on a context-specific consideration of the situation. In addition, it was further noted that water disconnections resulting from an inability to pay also impact on waterborne sanitation, and this must be taken into consideration before disconnecting the water supply.



The box below provides some examples of national measures⁴⁵ in view of ensuring affordability.

Affordability standards

Indonesia

Tariff of the standard of basic need for drinking water shall be affordable to purchasing power of subscribers having the same income as Provincial Minimum Wage. (2) Tariff shall meet the principle of affordability as meant in paragraph (1) if domestic expense on the fulfilment of the standard of basic need for drinking water does not exceed 4 per cent (four per cent) of the income of subscribers (3) Justice in the imposition of tariff shall be achieved through application of differentiation tariff and cross subsidy among group of subscribers.

Standard of Basic, Need for Drinking water shall be the need for water as much as 10 cubic meter/head of family/month or 60 litres/person/day or as much as other volume unit stipulated further by the Minister in charge of resource affairs. [...] 12. Low Tariff shall be a subsidized tariff whose value is lower than the basic cost

Armenia

Financial assistance may be provided in water relations in the forms of subsidies or tax privileges established by the legislation, depending on the specific form of financial assistance stated by the National Water Program. By the government's draft of the annual State Budget, the National Assembly shall approve the amount of subsidies allocated to the water suppliers and (or) the water users from the State Budget, or tax privileges established by the legislation. The subsidies from the State Budget or tax privileges established by the legislation shall be established in a way as to benefit the reimbursement of costs associated for the protection and technical maintenance of the water wastewater systems. The subsidies specified in this code can be provided to the water suppliers and (or) water users in form of direct payments. In providing financial assistance, the following circumstances shall be taken into account: a) Purpose of providing financial assistance; b) Insuring equal conditions and exclusion of any discrimination; c) Ensuring transparency; d) Financial status of the person receiving financial assistance; e) Necessity of water wastewater systems protection.

45 Water Code of the Republic of Armenia (2002); Indonesia: Technical guidance and procedures for regulating tariffs of drinking water in regional administration-owned drinking companies, regulation of the Minister of Home Affairs, No.23/2006, 3 July 2006, <http://www.waterlex.org/waterlex-legal-database/index.php?r=site/index>

In addition, the box below contains a case summary providing an interpretation of affordability by a national judge.



Case Law – Venezuela⁴⁶

The *Condominio del Conjunto Residencial Choroní II* (hereinafter the Condominium), representing 234 families living in this residential area, was notified by the public water company Hidrocentro of the eminent disconnection of their water supply if the accumulated debt for water bills was not paid. The excessive monthly amounts to be paid since March 2004 were due to the malfunctioning meters installed by Hidrocentro. The condominium complained to Hidrocentro about the excessive water bills and asked for an adjustment of the debt, which was not accepted.

The Court decided that the disconnection of the water supply to a group of users for non-payment of excessive water bills due to malfunctioning meters installed by the public service provider, is not in conformity with the principle of proportionality and puts at risk the rights to life and health protected by the Venezuelan Constitution.

The UN Special Rapporteur on the human right to safe drinking water and sanitation recommends the following checklist for the analysis of the national legal framework with regards to the affordability of water and sanitation⁴⁷:

Check	Yes	No	In progress
Do laws/standards include mechanisms that ensure the affordability of services for all?			
Do laws/standards foresee subsidies, payment waivers and other similar mechanisms to ensure affordability?			
Do laws and standards provide opportunities for users to pay their arrears or to receive services for free in case they are unable to pay?			
Is there an independent regulatory body in place that operates on the basis of human rights and is in charge to determine the affordability of services, including the setting of tariffs?			

46 *The Human Rights to Water and Sanitation in Courts Worldwide. A Selection of National, Regional and International Case Law: Condominio del Conjunto Residencial Parque Choroní II c/ Compañía Anónima Hidrológica del Centro (Hidrocentro) Corte Primera de lo Contencioso Administrativo* 22 June 2005

47 *Realising the Human Right to Safe Drinking Water and Sanitation: a Handbook* by the UN Special Rapporteur Catarina de Albuquerque. Legislative, regulatory and policy frameworks.

Common misconceptions about the human right to water and sanitation

Full realisation of the human right to water and sanitation has been held back in many countries due to some common misconceptions surrounding the entitlements and legal obligations flowing from the right. These misconceptions may give rise to unjustified expectations on the side of the consumers and/or exaggerated demands for public expenditure on the side of the State. Both can act as important inhibitors in the progressive realisation of human rights. The most prevalent misconceptions and their clarifications are summarized in the below table.

Misconception	Clarification
The right entitles people to free water	Water and sanitation services need to be affordable for all. People are however expected to contribute financially or otherwise to the extent they can do so.
The right allows for unlimited use of water	The right entitles everyone to sufficient water for personal and domestic uses and is to be realized in a sustainable manner for present and future generations.
The rights entitles everyone to a household connection	Water and sanitation facilities need to be within, or in the immediate vicinity of the household, and can comprise facilities such as wells as pit latrines.
The right entitles people to water resources in other countries	People cannot claim water from other countries. However, customary international law on transboundary watercourses stipulates that such watercourses should be shared in an equitable and reasonable manner, with priority given to human needs.

Human rights principles and procedural rights in the context of the human right to water and sanitation

The right to water and sanitation must be ensured in the broader context of human rights. It implies that a number of fundamental human rights principles, both substantive and procedural in nature, must be observed in the progressive fulfilment of the normative content of the right. These include:

- Non-discrimination and equality,
- Access to information,
- Participation,
- Accountability and
- Sustainability.

A. Non-discrimination and equality

The principle of non-discrimination and equality is a cornerstone of human rights practice. It encompasses the prohibition of discrimination and as well as the active engagement of States to ensure equality of all in water and sanitation service provision.



Photo: “Diversity-none-01”⁴⁸

The principle involves a number of core requirements:

- Prohibition of *de jure* discrimination of individuals or groups on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;
- Elimination of *de facto* discrimination where certain practices or legislation give rise to (unintended) discriminatory effects on certain people;
- Elimination of existing inequalities in accessing to water and sanitation services. Inequalities may exist vis-à-vis lower income groups, rural populations, women, marginalized groups, etc. Targeted affirmative actions should be used to narrow and, eventually, close the gap between those served and un-served;
- Special attention be paid to places, persons and groups with special challenges. These include:
 - informal settlements, rural and urban deprived areas, water-scarce regions;
 - times of severe resource constraints;
 - potentially vulnerable and/or marginalized groups, such as indigenous peoples, nomadic and traveller communities, refugees, asylum seekers, internally displaced persons and returnees, victims of natural disasters, prisoners, older persons, people with disabilities, people with serious or chronic illnesses, children, women, etc.

General Comment No. 15 on the right to water explicitly refers to the ICESCR prohibiting “any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water.”

It also calls on States “to take steps to remove *de facto* discrimination on the prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary achieving the right to water” by providing the example: “investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.”

48 Photo by Kurt Löwenstein Educational Center International Team from Germany - qe07 (15). Licensed under CC BY 2.0 via Wikimedia Commons - <https://commons.wikimedia.org/wiki/File:Diversity-none-01.jpg#/media/File:Diversity-none-01.jpg>

The UN Special Rapporteur on the human right to safe drinking water and sanitation further identified *common challenges* in relation to discriminatory water and sanitation practices⁴⁹:

- The lack of security of tenure in informal housing settlements is often used as a reason to deny households or communities a connection to formal water and sanitation networks.
- Open defecation and urination: Homeless people and people living in informal housing settlements without sanitation facilities may have no choice but to defecate in the open. Enforcement of such rules against people who have no other option constitutes discrimination.
- Covert discrimination: Many discriminatory practices are concealed in apparently neutral laws or policies.
- Stigmatization through special procedures for subsidies.

The box below presents an example of the Hungarian Ombudsman for Future Generations taking action in relation to discriminatory water practices.

Ombudsman in Hungary investigating discrimination

In Hungary, the Ombudsman for Future Generations investigated the impact of a measure which turned off or reduced water pressure in public wells on ground of unduly high consumption, illegal discharge and wastage. The provision affected mainly the city's Roma population. The Ombudsman launched an investigation suspecting the violation of the rights to healthy drinking water, human dignity and the right to equal treatment. The Ombudsman for Future Generations established that the State is responsible to set out fair and proportional water charges to encourage the economic use of water, while at the same time, it is also in charge to promote solidarity towards those who are not able to bear the full costs of their basic everyday human needs. Since the aim of abolishing illegal discharge cannot be connected to other fundamental rights of the person, restrictions on water use are qualified as indirect discrimination.



The UN Special Rapporteur on the human right to safe drinking water and sanitation also identified some *common violations* with regards to the principles of discrimination and equity. Examples of violations of the right to equality and non-discrimination can be grouped in the following categories:⁵⁰

- Exclusion of groups or individuals from services or facilities, or failure to take measures to achieve substantive equality and address systemic patterns of inequalities;
- Failure to reasonably accommodate persons with disabilities and take into account particular requirements;
- Failure to prevent and combat discrimination and stigmatization in the private sphere, or endorsement of stigmatizing practices through State action;
- Failure to monitor inequalities in access to water and sanitation and to collect disaggregated data for that purpose.

49 *Realising the Human Right to Safe Drinking Water and Sanitation: a Handbook* by the UN Special Rapporteur Catarina de Albuquerque. Legislative, regulatory and policy frameworks.

50 Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque. Common violations of the human rights to water and sanitation (A/HRC/27/55) 30 June 2014

The UN Special Rapporteur on the human right to safe drinking water and sanitation recommends the following checklist for the analysis of the national legal framework with regards to discrimination and equity⁵¹:

Check	Yes	No	In progress
Are there laws and/or regulations enacted at national level that prohibit direct and indirect discrimination and promote equality in access to human rights to water and sanitation?			

B. Access to information



According to General Comment No. 15 on the right to water, “Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.”

Access to information comprises the right of individuals to seek and receive information about existing and planned water and sanitation laws, policies and programmes. It also encompasses the duty of the State to make information available – actively or upon request – concerning the widest range of water and sanitation-related issues, such as the conditions and tariffs of services, the quality of water, public participation, remedies, etc. The frequency, medium, format and language of the dissemination should ensure that the information is easily accessible by all. Special measures may have to be taken in order to make information available to people who are often not reached.

Figure 1.5.: The right to information



51 *Realising the Human Right to Safe Drinking Water and Sanitation: a Handbook* by the UN Special Rapporteur Catarina de Albuquerque. Legislative, regulatory and policy frameworks.

The UN Special Rapporteur on the human right to safe drinking water and sanitation identified common challenges in relation to access to information with regards to water and sanitation⁵²:

- Avoiding the de facto exclusion of people from access to information;
- Ensuring that information is understandable;
- Awareness raising and capacity building.

A practice of the NHRI of New Zealand is revealed below whereby the institution paid special attention to the right to water in relation to Treaty of Waitangi /Te Tiriti o Waitangi and Māori values.

NHRI of New Zealand



In its report *Human Rights and Water*, the New Zealand Human Rights Commission discussed the right to water in relation to the Treaty of Waitangi /Te Tiriti o Waitangi and Māori values. The report sheds light on a growing concern of Māori with regard to the ownership of freshwater along with a new era of co-governance and co-management providing a way to give full recognition of the relationship between Māori and water. As for participation, the report advocates for the maintenance and monitoring of water services to be participatory and underlines the need for transparency and access to information. It also outlines positive and negative examples in that context.

The UN Special Rapporteur recommends the following checklist for the analysis of the national legal framework with regard to information⁵³:

Check	Yes	No	In progress
Are there laws and/or regulations in place to ensure that everyone, including people who live far from centres of information and people who cannot read, is able to access information relating to water and sanitation services, in relevant languages and formats?			

C. Participation

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

Participation in decision-making processes that affect people’s access to water and sanitation ensures a better implementation of laws and policies as well as strengthens the public legitimacy of the measure taken. Participation must be active, free and meaningful. It should include:

- Early and active dissemination of information on planned and existing measures (plans, programmes, strategies, laws);
- Consultations at an early stage of decision-making through public hearings, meetings, etc. organized at times and locations convenient for the stakeholders to attend;
- The right to submit comments in writing and to receive a feedback;

52 Ibid

53 Ibid

- Broad participatory rights for all affected citizens and their groups, especially for disadvantaged people and communities;
- Transparency of the final measure and the reasons of the policy options chosen.

The UN Special Rapporteur on the human right to safe drinking water and sanitation noted that there might be disguised or direct obstacles to participation even when formal opportunities to participate in decision-making procedures exist.⁵⁴

The box below describes how the NHRI of Panama took action in order to defend the right of participation of indigenous peoples with regards to the impacts of a hydroelectric project on water.



NHRI of Panama referring to participation in relation to a project impacting on water

In exploring the potential environmental and socio-cultural impacts, including on water, of the Chan-75 Hydroelectric Project, special consideration for affected indigenous people was taken into account by the Panama NHRI on the basis of the Constitution. The Ombudsman noted that the consultation mechanism held for the approval of the project, albeit in compliance with the commitment to inform, was not a sustained process that allowed those affected to have voice on the development and clarify any doubts that may arise in data at any stage thereof. To this effect, the Ombudsman recalled that the State should refer and implement international instruments on the rights of indigenous peoples and explicitly apply the concept of free and informed participation in the course of project implementation.

The UN Special Rapporteur recommends the following checklist for the analysis of the national legal framework with regards to participation⁵⁵:

Check	Yes	No	In progress
Are there laws and/or regulations in place that guarantee that full, free and meaningful participation takes place before any decision is finalized, including participation in the process of developing any laws, regulations or policy level documents?			
Do laws and/or regulations set out precise rules on participation in matters of infrastructure, service levels, tariffs, and the operation and maintenance of water and sanitation services?			

54 Ibid
55 Ibid

D. Accountability

General Comment No. 15 on the right to water foresees that “Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels.” In addition, “All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition.”

The role of NHRIs in relation to the human right to water is explicitly included in General Comment No. 15 on the right to water whereby “**National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.**” NHRI may therefore take an enhanced role in promoting and protecting water governance related human rights.

States should be held accountable for meeting their obligations and ensuring that non-State actors also respect their obligations. Effective accountability is based on:

- *oversight and control mechanisms between both public and private actors in water and sanitation provision:* Water services are decentralized and privatized in many countries. It is imperative that service providers operate subject to clearly established responsibilities and independent monitoring, including both the physical parameters of the service (compliance with standards, targets, etc.) as well as the level of access by users;
- *right to remedies:* individuals or groups who feel that their rights have been violated must have access to independent review mechanisms and courts to have their complaints heard and resolved. Remedies provided for should include restitution, compensation, legally binding assurances of non-repetition and corrective action. Access to justice can take many forms, from administrative complaints procedures to judicial processes at local, national, regional and international levels. States must raise awareness and make information on remedies available to all.

A decision of the NHRI of New Zealand is presented below in relation to access to court to appeal water conservation orders and regional planning decision.

NHRI of New Zealand - Environment Canterbury (Temporary Commissioners and Improved Water Management) Act



The Human Rights Commission of New Zealand intervened via its submission on the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act. The Act replaced the elected council members of the Canterbury Regional Council with Government-appointed commissioners. The commissioners were tasked with acting as Environment Canterbury’s governing body. They were given special functions and powers to address issues regarding the efficient, effective, sustainable management of Canterbury’s fresh water and other regional resources. Canterbury residents were no longer allowed to access the Environment Court to appeal water conservation orders and regional planning decisions.

The Commission said that the act was undemocratic and was contrary to New Zealand’s human rights obligations under a number of international treaties. As stated in the submission: “Transparency and empowerment are essential to genuine participation. There must be an opportunity for citizens to be able to influence decisions, particularly those that are likely to have an impact on their lives.” This “ability to be heard” is a significant way of combating the notion that decisions are predetermined.

In relation to accountability, the UN Special Rapporteur on the human right to safe drinking water and sanitation identified the following *challenges*⁵⁶:

- Responsibilities in water and sanitation service provision are often divided between various actors that may lead to difficulties in establishing clear accountability, in particular in case of decentralization.
- In case of disconnections, there might be a lack of adequate procedural safeguards.

The UN Special Rapporteur recommends the following checklist for the analysis of the national legal framework with regards to accountability⁵⁷:

Check	Yes	No	In progress
Are there effective complaint mechanisms at the level of the service provider?			
Are there quasi-judicial bodies available to resolve conflicts?			
Can individuals enforce their rights against both the State and private actors?			
Are remedies provided by law (e.g. restitution, compensation, legally binding assurances of non-repetition, and corrective action)?			
Do laws and/or regulations provide for mechanisms that ensure individual complaints are effectively heard and processed in a timely way?			

E. Sustainability

Access to water and sanitation for all must be ensured in such a way that does not jeopardize the ability of future generations to realize their human rights to water and sanitation. It follows that water and sanitation service must respect the environment and ensure a balance of the different dimensions of economic, social and environmental sustainability.

The above implies a number of obligations:

- *Resource protection*: General Comment No. 15 on the right to water calls on States to “adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations.” This includes the need to protect resources from contamination and over-extraction, as well as monitoring existing resources and increasing, the efficient use of water by end-users, and impact assessment of future developments;
- *Operation and maintenance of water and sanitation service infrastructure*: States must prevent the deterioration of existing water infrastructure. Once fallen into disrepair, the sheer magnitude of the costs of re-establishing the supply system may on its own compromise future generations’ access. Frequent infrastructure failures cause water losses of millions of cubic meters every year;
- *Prioritisation of uses for personal and domestic need*: With freshwater resources becoming more

⁵⁶ Ibid.
⁵⁷ Ibid.

scarce, water uses must be prioritized in such a way that a sufficient amount of water for personal and domestic uses for present and future generations is guaranteed;

- *Establishing competent authorities and appropriate institutional arrangements* to carry out the strategies and programmes aimed at the above objectives.

The UN Special Rapporteur on the human right to safe drinking water and sanitation issued a report in 2013 on the issue of *sustainability and non-retrogression in the realisation of the human rights to water and sanitation*.⁵⁸ The UN Special Rapporteur considers **sustainability to be a fundamental human rights principle essential for realizing the human rights to water and sanitation**. The report explores the links between sustainability and the obligation of States to progressively realize the rights to water and sanitation using maximum available resources, the principle of non-retrogression, and the human rights principle of non-discrimination.

In Hungary, the Ombudsman for Future Generations, a unique type of NHRI, was established after recognizing the need to protect natural resources at constitutional level and establishing a direct link between the environment and the rights of future generations. The UN Secretary-General noted the Hungarian institution in 2013 regarding its special mandate in protecting the interest of future generations.

The Ombudsman for Future Generations in Hungary

The need for an Ombudsman for Future Generations was recognized and accepted by the Hungarian Parliament in 2007. In 2011 the parliament recognized the need to protect natural resources at constitutional level by stating in the fundamental law that: “*agricultural land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets are part of the nation’s common heritage, and named the State and every person to be obliged to protect, sustain and preserve them for future generations.*” It established a direct link among the environment, the interest of future generations and basic constitutional rights such as the right to a healthy environment and the right to physical and mental health. This strong relationship was first established by the Constitutional Court when in 1994 it emphasized the link between the right to a healthy environment and the State duty for establishing an institutional system that provides substantive and procedural legal guarantees. The UN Secretary-General noted in his report of 15 August 2013 the “Intergenerational solidarity and the needs of future generations” shared among eight other institutions and the Hungarian Office of the Commissioner for Fundamental Rights.



The situation of specific groups

General Comment No. 15 on the right to water underlines that, in the context of the human right to water, special attention must be paid to those individuals and groups who have traditionally faced difficulties in exercising their right. These include among others: the urban and rural poor, women, children, persons with disabilities, refugees and internally displaced people, and indigenous peoples.

58 Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque. A/HRC/24/44

There are several NHRIs which have already investigated the situation of vulnerable groups in relation to their rights to water and sanitation. An example is described below.



NHRI of South Africa investigating the HRWS situation of vulnerable groups

The South African Human Rights Commission (SAHRC) conducted nation-wide public hearings on water and sanitation related to the issues of service delivery and stakeholder collaboration and advocacy. The hearings sought to assess: i) The impact that a lack of access to water and sanitation can have on one's life and dignity, as well as one's ability to access other human rights; ii) The impact of poor access to water and sanitation on the right to health, education and the environment; iii) The impact that a lack of access to basic services has on particular groups such as women, children and people with disabilities; and the State of national and provincial access to water and sanitation in the country. The commission found that there is a disproportionate impact on certain vulnerable groups such as women, children and people with disabilities. The SAHRC expressed concerns against various local municipalities and a provincial department of education for not providing access to the constitutional rights to water and sanitation.

A. Urban and rural poor

The majority of those who do not have access to safe drinking water and sanitation are the poor, both in urban and rural areas. Not only are the poor more likely to be deprived of safe drinking water and sanitation, they are also less able to manage the impacts of this deprivation. In rural areas protecting the traditional sources of water from unlawful encroachment and pollution may be a key measure to ensure a minimum level of access. In deprived urban areas that include informal settlements and homeless people, water facilities must be maintained.



The poor often have less access and pay more for water

In many countries, while the poorest get less water of a lower quality, they are also often charged the most. People living in the slums of Jakarta, Manila and Nairobi pay five to 10 times more for water than those living in high-income areas in those same cities and more than consumers in London or New York. In Accra, many of the 800,000 people living at or below poverty line pay 10 times more for their water than residents in high-income areas.

Source: UNDP Human Development Report 2006

General Comment No. 15 on the right to water underlines that States should take steps to ensure the following in relation to rural and deprived urban areas:

- 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.

B. Women

In areas with no proper water supply, it is mainly women and children who collect and haul most of the water. It is a time-consuming and physically demanding exercise that puts a disproportionately heavy burden on women. Spending several hours a day walking, queuing and carrying water deprives women from the chance to engage in other productive activities, housework and childcare.

*UN Photo/Olivier Chassot*⁵⁹



It also exposes women to threats to their personal security (harassment, rape, etc.). Women are often excluded from decision-making concerning water and sanitation, therefore their specific needs and circumstances are not taken into account in the development of water and sanitation programmes.

General Comment No. 15 on the right to water underlines that States should take steps to ensure the following in relation to women:

- 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.

⁵⁹ Water Distribution in Tora Northern Darfur. Water is being distributed in Tora by an African Union-United Nations Hybrid operation in Darfur contingent from Rwanda. The closest water source is 1.5 hours away and donkeys are regularly used to transport water to the village. Source: <http://www.unmultimedia.org/photo/detail.jsp?id=405/405804&key=32&query=water&lang=en&sf=>

The following box contains examples of NHRIs paying particular attention to women's right with regards to water and sanitation.



Women's rights in India and Bangladesh

The Indian National Human Rights Commission issued a thematic report entitled Women's Right to Health. In assessing the implementation of the National Nutrition Policy of 1993 the Commission raised the lack of coordination between different departments that are supposed to provide supportive services, including safe drinking water and sanitation, and programmes that are related to women's empowerment, non-formal education and adult literacy.

The Bangladesh Commission issued a report on the government's compliance with the International Covenant on Economic, Social and Cultural Rights. In one of the sections, the commission laid down provisions on the right to water encompassed in the Convention on the Rights of Persons with Disabilities, as well as the associated right to enjoy adequate living conditions found in the Convention to Eliminate All Forms of Discrimination Against Women, and the obligation to combat disease and malnutrition and provide clean drinking water enshrined in the Convention on the Rights of the Child.

C. Children

Children's health, educational advancement and overall well-being are greatly influenced by their access to safe drinking water and sanitation. Over 90 percent of child-mortality cases are related to contaminated water and inadequate sanitation. In addition, children, along with women, tend to bear the burden of water collection to a disproportionate extent.

*UN Photo/Logan Abassi*⁶⁰



The lack of water and sanitation facilities in educational institutions is a special hindrance to children's development, especially for girls. A major reason why parents do not send their daughters to school in many countries is that there are no separate sanitation facilities for girls.

General Comment No. 15 on the right to water underlines that States should take steps to ensure the following in relation to children:

- 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.

60 Haiti Quake Leaves Shanty Town Residents with Little Water. A boy in Cité Soleil carries away a hard-won bucket of water from a broken water pipe where many Haitians struggled for their share. The shanty town of Cité Soleil has been left with severely diminished water resources after a powerful earthquake rocked the area on 12 January. 15 January 2010. <http://www.unmultimedia.org/photo/detail.jsp?id=425/425113&key=67&query=water&lang=en&sf=>

There are several NHRI that have already tackled the issue of water and sanitation of children and took action in order to promote and protect their right to water and sanitation. The following boxes contain examples.

NHRI of India reporting on HRWS in schools



The NHRI of India issues visit reports, including school visits, which take into account human rights and assess their implementation. For example, in 2013, in the Government Sr. Secondary School in Udaypur, the Commission observed that the number of toilets was not sufficient given the number of students, and soap was lacking. In addition, toilets locations were mostly unclear, and the toilets themselves were mostly unusable. It is also reported that the school had no water filters. While a cemented water tank was available for drinking purposes, the commission mentioned that it needed to be ascertained whether water is treated. Following its visit, the commission recommended that the Deputy Commission and officials of the Department of Education construct additional toilets and provide sanitary napkins as well as safe drinking water, including the use of water filters with built-in temperature control.

NHRI of Uganda reporting on the situation of children



Water-related issues were also reviewed in relation to children's rights in the Uganda Human Rights Commission's 9th Annual Report. In Northern Uganda, it is reported that children lack water in addition to proper shelter and food. Moreover, children miss school due to acute water shortages, which make them queue for long hours.

D. People with disabilities

People with disabilities face special challenges in using water and sanitation services. General comment No. 15 on the right to water calls the attention to the fact that physical accessibility is an inherent component of the right to water. The Convention on the Rights of Persons with Disabilities makes an explicit reference to access to water by persons with disabilities, in connection with the right to an adequate standard of living and to social protection.

The box below describes the disability manual designed by the NHRI of India taking into account the right to water and sanitation.

NHRI of India: The rights of disabled people in India



The Disability Manual published by the National Human Rights Commission of India assigned a subchapter to the human rights to food and water. It identified the international standards for the right to clean water followed by the domestic framework in the context of persons with disability. It further recommended that actions should be taken to ensure that accessibility needs are included in rural development programs among others in terms of access and use of sanitation facilities and water supply. Concerning the right to sanitation, the commission made mention of regulations and legislation which require the State to adapt toilets for people with disabilities, including in the transport sector.

E. Refugees and internally displaced people

Refugees, internally displaced persons and returnees face particular challenges to access safe drinking water and sanitation whether they stay in camps or in urban and rural areas. Displaced persons are also particularly vulnerable to discrimination, racism and xenophobia, which can further interfere with their ability to secure safe drinking water and sanitation. Principle 18 of the Guiding Principles on Internal Displacement (1998) clearly spells out States' obligation to provide them with drinking water.

UN Photo/Albert González Farran⁶¹



General Comment No. 15 on the right to water underlines that States should take steps to ensure the following in relation to refugees, asylum-seekers, internally displaced persons and returnees:

- They should 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.

The NHRI of Kenya investigated the situation of internally displaced people's human rights situation and provided a report, including reporting on the situation with regards to the human right to water and sanitation.



Report of the NHRI of Kenya on internally displaced people

The Kenya National Commission on Human Rights issued a report on human rights and internally displaced persons. Entitled *Homeless at home: A human rights assessment of situation of internally displaced persons*, it illustrates the situation of the human right to water and sanitation for displaced persons. Among other things, it finds that their main sources of water are rivers and streams and unprotected boreholes and wells. The distance of the source of water as well as the quality of the water are listed as being the two main challenges for displaced persons. In addition to statistics on the issue, it also gives examples of some positive developments in the country in this regard.

F. Indigenous peoples

Access to water by indigenous peoples is closely linked to their control over their ancestral lands, territories and resources. Lack of legal recognition or protection of these ancestral lands, territories or resources can have far-reaching implications for their enjoyment of the right to water.

Foto: Valter Campanato/ABr - Agência Brasil⁶²



⁶¹ Displaced Darfuris Receive Efficient Water Rollers. In the Abu Shouk IDP Camp, a child pushes an orange Water Roller, which has the same capacity as the four jerry cans carried by her companion.

31 January 2011. <http://www.unmultimedia.org/photo/detail.jsp?id=471/471219&key=220&query=water&lang=en&sf=>

⁶² Licensed under CC BY 3.0 br via Wikimedia Commons - https://commons.wikimedia.org/wiki/File:per_centC3_per_cent8Dndios_da_etnia_da_Rikbaksta.jpg#/media/File:per_centC3_per_cent8Dndios_da_etnia_da_Rikbaksta.jpg

Typical violations of their right to water include of expropriation of or encroachment on land containing natural water sources traditionally used by indigenous peoples (lakes or rivers), unlawful pollution, over-extraction, diversion of indigenous peoples' water sources to provide drinking water to urban areas, etc.

In relation to indigenous peoples, General Comment No. 15 on the right to water calls on States to take steps to ensure:

- 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.

General Comment No. 15 also calls on States to take steps to ensure that *nomadic and traveller communities* have access to adequate water at traditional and designated halting sites.

The NHRI of New Zealand paid particular attention to rights of indigenous peoples in its special report on human rights and water. See below in the box.

Access to water by Māori people in New Zealand

In its report Human Rights and Water, the New Zealand Human Rights Commission discussed the right to water in relation to the Treaty of Waitangi/Te Tiriti o Waitangi and Māori values. The report sheds light on a growing concern of Māori with regard to the ownership of freshwater along with a new era of co-governance and co-management providing a way to give full recognition of the relationship between Māori and water. As for participation, the report advocates for the maintenance and monitoring of water services to be participatory and underlines the need for transparency and access to information. It also outlines positive and negative examples in that context.



G. Prisoners and detainees

General Comment No. 15 on the right to water also calls on States to take steps to ensure that prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

There are several NHRIs who have been investigating the human rights situation of prisoners, including their situation with regard to the human right to water and sanitation. You will find examples in the box below from NHRIs of the African continent.

NHRIs in Africa reporting on the HRWS in prisons

The Human Rights Commission of Côte d'Ivoire and the Mali National Commission presented the results of prison audits in their respective annual report. They included the findings on the right to water and sanitation. For example, following visits of detention centres the Commission of Côte d'Ivoire raised concerns relating to the dignity of the prisoners as there is no privacy when using toilets and showers. Similarly, the Mali institution integrated into its 2012 annual report a chapter on the situation in prisons in the country. It assessed the right to water and sanitation in relation with the right to health.



Obligations of States

The primary duty-bearers of economic, social and cultural rights are the States. As explained above in the context of ESCR, States are under the general obligation of progressive realisation and the specific obligations to respect, protect and fulfil the human right to water and sanitation. Finally, States have certain extraterritorial obligations in the context of ESCR.

A. Progressive realisation of the human right to water and sanitation

International human rights law does not require States to immediately fulfil the human right to water and sanitation in its entirety. Rather, it calls for the progressive realisation of the right (see in detail at the beginning of Section 1). This concept implies that ...

- certain steps must be taken *immediately*;
- States are under a *constant and continuing obligation* to make progress; and
- progress must be made up *to the maximum of available resources*.

In the context of the human right to water and sanitation the obligation of progressive realisation implies the **immediate fulfilment of the core obligations** listed below as well as the duty to refrain from retrogressive measures.

States are under a *constant duty* to increase the number of people with access to water and sanitation, with a view to achieving universal access, as well as to improve the general levels of service for present and future generations. To that end, States should mobilize all available resources in an efficient and effective way, including water itself, technology, financial resources and international assistance. The obligation to use these resources *to the maximum level available* implies that States have a duty to raise adequate revenues, through taxation and other mechanisms, to create a financial base for the full realisation of the human right to water and sanitation.

B. Core obligations

Despite the recognition that the full realisation of the human right to water and sanitation may take substantial time and efforts by States, there are number of obligations that States must fulfil immediately according to General Comment No.15 on the right to water, in particular:

- to ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;
- non-discrimination, especially for disadvantaged or marginalized groups;
- to ensure physical access to water facilities or services that provide sufficient, safe and regular water;
- to ensure a sufficient number of water outlets to avoid prohibitive waiting times that are at a reasonable distance from the household;
- to ensure personal security when having to physically access to water;
- to ensure equitable distribution of all available water facilities and services;
- to adopt and implement a national water strategy and plan of action addressing the whole population;
- to monitor the extent of the realisation, or the non-realisation, of the right to water;
- to adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups;
- to take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.

C. Obligation to respect

The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to water. This obligation includes, inter alia, the following:

- refraining from engaging in any practice or activity that denies or limits equal access to adequate water;
- refrain from measures which threaten or deny individuals or communities existing access to sanitation. States must also ensure that the management of human excreta does not negatively impact on human rights;
- arbitrarily interfering with customary or traditional arrangements for water allocation;
- unlawfully diminishing or polluting water (e.g. through waste from State-owned facilities or through use and testing of weapons);
- limiting access to, or destroying, water services and infrastructure as a punitive measure (e.g. during armed conflicts in violation of international humanitarian law.)

General Comment No. 15 on the right to water lists a number of specific examples that constitute *violations* of the obligation to respect. These include, inter alia, the following:

- arbitrary or unjustified disconnection or exclusion from water services or facilities;
- discriminatory or unaffordable increases in the price of water; and
- pollution and diminution of water resources affecting human health by State (owned facilities).

It also makes reference to States' various obligations to respect the right to water under international humanitarian law. This includes the protection of basic water infrastructure that is indispensable for the survival of the civilian population (e.g. drinking water installations, supply and irrigation works), protection of the natural environment against widespread, long-term and severe damage, ensuring that civilians have access to adequate water.

The UN Special Rapporteur on the human right to safe drinking water and sanitation further identified *common violations* in terms of the obligations to respect. These include three main categories:⁶³

Direct interference with access to water or sanitation:

- a. unjustifiable or discriminatory denial of access to water or sanitation;
- b. unjustifiable disconnection from services (including from prepaid water meters), for example when people are unable to pay and are left without access to even basic services;
- c. unjustifiable restrictions on access to water or sanitation, such as latrines and toilets being locked at night or fenced-off water sources;
- d. unaffordable increases in pricing;
- e. and grabbing or other measures resulting in forced relocation that deprive the affected persons of access to water or sanitation services without an adequate alternative;
- f. destroying or poisoning water facilities or infrastructure during armed conflict, which would violate international humanitarian law.

⁶³ Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque. Common violations of the human rights to water and sanitation (A/HRC/27/55) 30 June 2014

Pollution, diversion or depletion of water resources:	<ol style="list-style-type: none"> a. dumping of waste and sewage; b. the activities of State-controlled extractive industries; c. licensing of projects predicted to result in human rights violations.
Criminalization of activities linked to water or sanitation and punitive measures:	<ol style="list-style-type: none"> a. Prohibition of public defecation or urination when no other options are available – partially as a result of increasing closures of public facilities; b. Violations resulting from decisions to deprive stigmatized groups, such as homeless people, undocumented migrants, occupiers of informal settlements or prisoners, of water and sanitation as a form of punishment for unlawful or undesired activity.

D. Obligation to protect

The obligation to protect the human right to water and sanitation requires that States must prevent third parties from interfering with people's access to water and sanitation. States should adopt legislation or other measures to ensure that private actors – e.g., industry, water providers or individuals – comply with human rights standards related to the right to water.

These measures should ensure that:

- third parties do not arbitrarily and illegally disconnect water and sanitation services;
- non-State actors act in accordance with human rights obligations related to sanitation, including through the adoption of legislative and other measures to prevent the negative impact of non-State actors on the enjoyment of sanitation. When sanitation services are operated by a private provider, the State must establish an effective regulatory framework;
- communities are protected against third parties' unsustainable extraction of the water resources they rely upon for drinking;
- the physical security of women and children is not at risk when they go to collect water or use sanitation facilities outside the home;
- landownership laws and practices do not prevent individuals and communities from accessing safe drinking water;
- third parties controlling or operating water services do not compromise the equal, affordable and physical access to sufficient safe drinking water;
- monitoring compliance with the regulatory and effective enforcement, e.g. through penalties.

Failure to enact or enforce laws to prevent the contamination and inequitable extraction of water, failure to effectively regulate and control water-services providers or to protect water-distribution systems (e.g., piped networks and wells) from interference, damage and destruction, etc., would constitute a violation of the obligation to respect.

The UN Special Rapporteur on the human right to safe drinking water and sanitation further identified *common violations* in terms of the obligations to protect. These include three main categories:⁶⁴

<p>Failure to protect in the context of service provision</p>	<p>States:</p> <ol style="list-style-type: none"> a. fail to effectively regulate and control service providers in relation to safety, quantity, conditions of service or disconnections; b. fail to regulate pricing to ensure that services are affordable for everyone; c. fail to prevent discrimination by private actors; d. fail to ensure that service providers extend services to marginalized households or communities; e. fail to require provision of reasonable accommodation of disability or extenuating circumstances; f. fail to ensure that monitoring and complaints procedures are in place.
<p>Failure to protect necessary resources or infrastructure from pollution or interference</p>	<ol style="list-style-type: none"> a. fail to protect water distribution or sanitation infrastructure from interference, damage and destruction; b. fail to regulate excessive exploitation of water resources by third parties that leads to deprivation of water necessary for personal and domestic uses; c. fail to develop and enforce regulation to protect water resources from contamination.
<p>Non-State actors may fail to comply with their human rights responsibilities</p>	

E. Obligation to fulfil

The obligation to fulfil the human right to water and sanitation requires States to ensure that the conditions are in place for everyone to enjoy the human rights to water and sanitation. This obligations includes three elements:

1. It implies the State obligation to *facilitate*, i.e. to take positive measures to assist individuals and communities to enjoy the right.
2. It also requires State to *promote* the human right to water, for example, by ensuring that there is appropriate education concerning the hygienic use of water, the protection of water sources and methods to minimize wastage.
3. Finally, States are required to *provide* water services directly, but only if there are individuals or groups of people who cannot access water through other mechanisms.

The obligation to fulfil requires States to adopt all appropriate legislative, administrative, budgetary, judicial, promotional and other measures that are necessary to fully realize the right to water. Thus, States must adopt national policies on water that:

- give priority in water management to essential personal and domestic uses;
- define the objectives for the extension of water services, with a focus on disadvantaged and marginalized groups;
- identify the resources available to meet these goals;
- specify the most cost-effective way of using them;
- outline the responsibilities and time frame for implementing the necessary measures;
- monitor results and outcomes, including ensuring adequate remedies for violations.

General Comment No. 15 on the right to water provides a list of examples of *the violations* of the obligation to provide. These comprise:

- failure to adopt or implement a national water policy designed to ensure the right to water for everyone;
- insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to water by individuals or groups, particularly the vulnerable or marginalized;
- failure to monitor the realisation of the right to water at the national level, for example by identifying right-to-water indicators and benchmarks;
- failure to take measures to reduce the inequitable distribution of water facilities and services;
- failure to adopt mechanisms for emergency relief;
- failure to ensure that the minimum essential level of the right is enjoyed by everyone;
- failure to take into account international legal obligations regarding the right to water when entering into agreements with other States or with international organizations.

The UN Special Rapporteur on the human right to safe drinking water and sanitation further identified *common violations* in terms of the obligations to fulfil. According to the Special Rapporteur, violations of the obligation to fulfil may be the most critical category. Violations of the obligation to fulfil can be grouped in the following categories:⁶⁵

Failure to develop, implement and monitor strategies, plans and programmes

Violations 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;
- d. to target vulnerable or marginalized communities.

Failure to properly raise, allocate and utilize the maximum available resources

- a. failure to raise the maximum available resources through taxation and other sources of revenue;
- b. failure to combat tax evasion and illicit financial flows;
- c. failure to seek and accept international assistance where needed;
- d. failure to allocate appropriate levels of funding;
- e. failure to fully utilize allocated resources;
- f. failure to direct resources to meeting the needs of vulnerable or marginalized communities;
- g. failure to direct sufficient funds to sub-national governments and other delegated authorities to allow them to fulfil their roles.

Corrupt practices	
Unjustified retrogressive measures	<ul style="list-style-type: none"> 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; d. implementing austerity measures that create long-term retrogression not limited to the period of crisis or which disproportionately impact marginalized or vulnerable groups.
Failure to prioritize the necessary steps to ensure minimum essential levels of access to water and sanitation	Where minimum essential levels are not ensured, the State is, <i>prima facie</i> , violating human rights, and it bears the burden of proof to demonstrate that it lacks the capacity to do so.
Failure to provide adequate services in public facilities and institutions and in Emergency situations	<p>States and other actors:</p> <ul style="list-style-type: none"> a. fail to design sustainable, resilient systems; b. fail to have emergency plans in place; c. fail to respond promptly to provide essential services to affected populations as the highest priority; d. fail to allow access to humanitarian service providers, or create onerous barriers to access; e. fail to prioritize the most vulnerable populations during times of emergency.

F. International obligations

General Comment No. 15 on the right to water underlines that States have obligations beyond their borders. Extraterritorial obligations require States to respect the human rights of people in other countries.

The UN Special Rapporteur on the human right to safe drinking water and sanitation identified some common type of violations of **extraterritorial obligations**, which are considered as a growing concern (e.g. in the context of transboundary water resources, the activities of transnational corporations, or donor activities). Extraterritorial violations may occur, for example, when⁶⁶:

- a. States fail to regulate activities of companies under their jurisdiction that cause violations abroad;
- b. States contribute to human rights violations in the context of development cooperation activities, including by imposing conditions that undermine rights;
- c. States adopt sanctions that negatively affect the realisation of human rights in other countries;
- d. States fail to respect human rights or restrict the ability of others to comply with their human rights obligations in the process of elaborating, applying and interpreting international trade and investment agreements;
- e. States fail to prevent harm resulting from greenhouse gas emissions which contribute to climate change that have negative impacts on the realisation of human rights;
- f. Water contamination or use causes human rights violations in a neighbouring country.

Water must never be used as an instrument of political or economic pressure, and States must not impose embargoes or similar measures on water as well as related goods and services that prevent the access to water and sanitation elsewhere.

With regard to the obligation to protect, States must prevent their own citizens and companies from violating the rights to water in other countries. Furthermore, States in a position to do so must assist in the full realisation of the human rights to water and sanitation in other countries.

In disaster relief and emergency assistance the human right to water and sanitation should be given due priority in a manner that is consistent with other human rights standards, and that is sustainable and culturally appropriate.

Trade and investment relations must not limit or hinder a country's capacity to ensure the full realisation of the human rights to water and sanitation.

Responsibilities of non-State actors

Under international law, the primary responsibility for the realisation of the human right to water and sanitation is held by States. Nevertheless, ensuring the full enjoyment of the right presumes a broad national and international cooperation of all relevant actors, such as the private sector, international organizations, non-governmental organizations and local authorities.

A. The private sector – business and human rights

The private sector holds key responsibilities in the realisation of the human right to water and sanitation.

First, *drinking water supply and sanitation services* are normally provided by companies that can be fully or partly privately owned. These services cover the provision of piped water, operation of sewerage systems, treatment plants, even running water tankers. As it is these companies that effectively ensure access to water and sanitation, their activities must be at the centre of attention by States. All the more so, as certain aspects of the right to water may imply service provision that goes against ordinary economic rationale (e.g. to insolvent customers, vulnerable and marginalized groups, etc.).

Second, economic activities are the *largest water users* by far. **Agriculture** (mainly through irrigation) is single-handedly responsible for 70 per cent of total freshwater withdrawals worldwide. Other major consumers include electricity generation and manufacturing, each using more water than all personal and domestic uses combined. Agricultural and industrial withdrawals thus compete directly for the same water resources as the population. This situation is likely to worsen in most parts of the world due to increased climate variability, population growth, urbanization and increased industrial output. Moreover, agriculture and industry tend to be responsible for the most of water pollution (both surface and groundwater), land use changes and land taking that may encroach on the actual or future enjoyment of the right to water.

The conceptual framework that defines the role of the private sector in the realisation of human rights was laid down by a 2008 report by Mr. John Ruggie, Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises.⁶⁷ This framework rests on *differentiated but complementary responsibilities of States and businesses*: the State duty to protect against human right abuses by third parties (including businesses), the corporate responsibility to respect human rights and the need for more effective access to remedies. The guiding principles attached to the report were endorsed by the Human Rights Council in its resolution 17/4 of 2011.

The framework explicitly refers to NHRIs among non-judicial mechanism. It notes that *“the actual and potential importance of these institutions cannot be overstated. Where NHRIs are able to address grievances involving companies, they can provide a means to hold business accountable. NHRIs are particularly well-positioned to provide processes - whether adjudicative or mediation-based - that are culturally appropriate, accessible, and expeditious.”*⁶⁸

Companies’ responsibility to respect human rights goes further than simply “doing no harm.” It may also entail positive steps to prevent and address violations of human rights within the organization itself as well as in the broader operational environment of the company. These positive steps are summarized under the concept of **“due diligence.”** The term, imported from U.S. corporate legal jargon, implies companies’ duty to act with sufficient care to map, prevent and remedy human right violations in their respective sphere of influence. In practical terms it means that companies should adopt a human rights policy. This should be based on a prior human rights impact assessment that evaluates the potential implications of their activities before they begin. The policy should aim to integrate the human right requirements throughout the operation of the company (including supply chain and sales activities). Finally, companies should track their human rights performance through monitoring and auditing processes.



The CEO Water Mandate

The CEO Water Mandate is a unique public-private initiative launched by the United Nations Secretary-General in 2007. It is designed to assist companies in the development, implementation and disclosure of water sustainability policies and practices. It seeks to build an international movement of committed companies, both leaders and learners, interested in addressing the global water crisis. As of August 2013, the CEO Water Mandate has been endorsed by roughly 100 companies, spanning numerous geographies and industries.

www.unglobalcompact.org

67 Protect, Respect and Remedy: a Framework for Business and Human Rights Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, (A/HRC/8/5) 7 April 2008

68 Ibid. para 97.

B. Local governments

Local governments are playing an **increasing role** in the realisation of the right to water and sanitation as the obligation to provide water and sanitation services is increasingly delegated to regional or local governments. Decentralization, in many parts of the world, has improved access to water and sanitation services considerably, but it also poses special challenges for local governments.

It must be underlined however that even when central governments devolve responsibilities to lower tiers of government, their duty to protect the right to water and sanitation remains. They are required to ensure that local governments comply with the international obligations. Therefore, clear lines of responsibility at and between the different levels of government have to be established with a view to avoiding conflicts of competencies and inefficiency.

In addition, States must ensure that local authorities have the financial, human and other resources necessary to discharge their duties effectively as local governments often lack the institutional and financial capacity to support access to water and sanitation services. This may lead to a bad management and the eventual degradation of existing infrastructure.

The human rights framework requires local governments to plan how they will achieve the provision to access to water and sanitation. Such plans should go beyond individual projects and programmes and be subject to regular monitoring and assessment.

C. International organizations

General Comment No. 15 on the right to water calls “*United Nations agencies and other international organizations concerned with water, as well as international organizations concerned with trade [to] cooperate effectively with States parties [...] in relation to the implementation of the right to water at the national level.*” This implies, as a priority, that these international organizations should incorporate the human right to water and sanitation into their programmes and policies.

The most important UN agencies and international organizations engaged in the promotion of the human right to water include: WHO, UNICEF, FAO, UNDP, UNESCO, UNEP, UN-Habitat, UNHCR, OHCHR, IFAD, International Federation of the Red Cross and Red Crescent Societies, the International Committee of the Red Cross, etc.

The international financial institutions, in particular the International Monetary Fund and the World Bank “*should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects.*”

D. Civil society

Civil society organizations are key promoters of the human right to water and sanitation at national and international level alike. Their various roles include providing information, information exchange, facilitating community organization, assisting communities with their advocacy processes, building community and government capacity and knowledge, monitoring government actions etc. General Comment No. 15 on the right to water also recognizes their particular importance in connection to the human right to water.

Effective NHRIs are an important link between government and civil society, in so far as they help bridge the ‘protection gap’ between the rights of individuals and the responsibilities of the State. Developing and maintaining **close relationship** with civil society in relation to water governance related human rights violations is **mutually beneficial**.

A unique practice and great example is shown below in the box, whereby the NHRI of Argentina developed an enhanced cooperation with local civil society in view of protecting and cleaning the Matanza-Riachuelo River Basin. As a result, the NHRI was assisted by civil society in elaborating its report on the matter in addition to jointly participating in the body overseeing the cleaning of the River Basin.

NHRI of Argentina cooperating with civil society

The Argentinian Ombudsman’s Office has been working over the course of the last 10 years in partnership with other institutions in promoting a process to reverse the critical situation of one of the largest in the country and the world’s most polluted watersheds: the Matanza-Riachuelo River Basin. It brought together a group of well-known NGOs, universities and local ombudsmen, who drafted the first special report on the situation of the Matanza-Riachuelo River Basin.



THE HUMAN RIGHT TO WATER AND SANITATION AND OTHER HUMAN RIGHTS

The human right to water and sanitation: a horizontal human right

The human right to water and sanitation does not exist in isolation from other human rights as water and sanitation are essential to the realisation of many other human rights. The picture below presents an illustration of the various **links with other rights**.



Figure 1.6: Water uses are interlinked and interrelated

General Comment No. 15 on the right to water elaborates in detail the various links of the human right to water to other rights, whether civil and political rights or economic, social and cultural rights. It notes the following;

- the right to water is inextricably related to the *right to the highest attainable standard of health* and the rights to *adequate housing* and *adequate food*;
- the right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the *right to life* and *human dignity*.

It further underlines that water is required for a range of different purposes, besides personal and domestic uses, to realize many of the rights stipulated in the ICESCR, for instance:

- the right to adequate food,
- right to health,
- right to gain a living by work,
- right to take part in cultural life.

The UN Special Rapporteur on the human right to safe drinking water and sanitation draws attention to additional links that exist between the human right to water and sanitation and other human rights⁶⁹:

- Access to essential services such as water and sanitation is indispensable for the realisation of the *right to adequate housing*.
- *Privacy and physical security* become pivotal where women and children have to go to shared latrines or open spaces to defecate making them particularly vulnerable to harassment, attacks, violence or rape.
- The *right to education* cannot be guaranteed where water is not available at school and sanitary facilities are not separated by gender, because often girls will not attend school during their periods if sanitation is inadequate.
- The *right to work* can be negatively affected if there is a lack of access to water and sanitation at the workplace, particularly for women during menstruation and pregnancy.
- The lack of access to water and sanitation may lead to *inhuman or degrading treatment*, particularly in the context of deprivation of liberty.
- Finite resources must be protected from overexploitation and pollution, and facilities and services dealing with excreta and wastewater should ensure a *clean and healthy living environment*.

The indivisible, interrelated and interdependent nature of human rights also calls for an integrated approach when addressing water-related human rights phenomena.

There are several NHRIs who consider the interdependence and indivisibility of human rights in their activities. In the context of water governance, this is put in practice by considering the right to water and sanitation together with other water governance related rights (e.g.: right to food, right to health etc.).

Success story from the NHRI of Uganda

The ability of the Uganda Human Rights Commission to view the right to water from different angles enables the institution to monitor, promote and protect the right of water in its various aspects. This is evidenced by the different aspects of the right of water that is assessed, monitored and reported on year in and year out by the Uganda Human Rights Commission.



Water governance related rights

The human right to water and sanitation as well as the water-related aspects of all other human rights will be collectively referred to as *water governance related rights* throughout this manual.

69 *Realising the Human Right to Safe Drinking Water and Sanitation: a Handbook* by the UN Special Rapporteur Catarina de Albuquerque. Introduction.

Priorities between different human rights

An evolving subject of international law is the prioritisation between different human rights. The various links of the right to water to other rights provides a yardstick to create a hierarchy among competing demands for water. Under this concept priority should be given to the supply of water for domestic and personal use, as well as to the requirements of the other Covenant rights; for example, water for growing essential food crops and for health interventions that protect people from disease.

i

Priority of water uses according to related human rights

1. Survival:
 - a. Minimum water for personal and domestic needs
 - b. Minimum food for survival
 - c. Emergency situations (earthquakes etc.)
 - d. Productive water for vulnerable groups
2. Core content
 - a. Water for personal and domestic needs
 - b. Food for survival
 - c. Emergency situations (earthquakes etc.)
3. Full realisation
4. Beyond human rights minimum guarantees

The right to food

The right to food is deeply rooted in the international human rights regime. It is derived from the right to an adequate standard of living as well as the right to be free from hunger (Art. 11.1 and 11.2 ICESCR). These impose a range of obligations on States from improving methods of food production, conservation and distribution all the way through support schemes to vulnerable groups and food safety requirements.

UN Photo⁷⁰



General Comment No. 15 on the right to water also makes the link between the right to water and the right to food, underlying that equitable access to water and water management systems must be ensured for disadvantaged and marginalized farmers, including women farmers. States should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.

70 Expanding Agricultural Yields in Korea through Soil and Water Management. <http://www.unmultimedia.org/photo/detail.jsp?id=191/191904&key=330&query=water&lang=en&sf=>

Several NHRIs have investigated water related human rights violations in the context of the right to food. An example is shown below from the NHRI of Bangladesh.

NHRI of Bangladesh: The right to food and the right to water



In its publication on the right to food, the Bangladesh Commission on Human Rights addressed the right to water as an interrelated right. In this publication entitled *From Basic need to Basic Right: Right to Food in Context*, the commission analysed the food security situation in Bangladesh through a review of laws, policies and international instruments. It recalled that the right to adequate standard of living includes food and water and that these are interrelated as the right to food encompasses the right to safe water. The report also specified that the right to food at the national level has to be implemented through a national strategy which should address water and sanitation.

By a resolution adopted in 2000 by the Commission on Human Rights, a *Special Rapporteur on the right to food* was appointed in order to respond fully to the necessity for an integrated and coordinated approach in the promotion and protection of the right to food.

The right to health

Safe water supplies, hygienic sanitation and good water management are fundamental to global health. Lack of access to water and sanitation has serious health consequences. At least 1.8 million children under 5 years old die every year due to water related disease, accounting for around 17 per cent of deaths in this age group. Worldwide some 2.2 million people die each year from diarrhoeal disease. Poor hygiene and unsafe water is responsible for around 88 per cent of all diarrhoeal incidents.⁷¹



General Comment No.15 on the right to water calls on States to take steps to prevent threats to health from unsafe and toxic water conditions. This obligation implies that States should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbe. States should monitor and combat situations where aquatic ecosystems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments.

71 Corcoran, E., C. Nellemann, E. Baker, R. Bos, D. Osborn, H. Savelli (eds). 2010. Sick Water? The central role of wastewater management in sustainable development. A Rapid Response Assessment. United Nations Environment Programme, UN-HABITAT, GRID-Arendal. www.grida.no

Several NHRIs have examined the human right to water and sanitation in the context of the right to health. An example is provided below from the NHRI of India.



NHRI of India: the right to health and the right to water

In India, the National Human Rights Commission addressed the right to water in the context of the right to health in the document entitled Women's Right to Health. For example, the report interpreted different fundamental rights found in the Constitution of India. In relation to the right to equality and freedom, it is mentioned that any form of discrimination has severe implications for health, preventing or limiting access to basic needs and opportunities that impact health and access to health care. For example, women are traditionally responsible for fetching water. Depending on the distance of the source of water, the location, the woman's age, caste, health status and various other conditions at home impact her access to water, which in turn affects her health and the health of others in her family. The right to water and sanitation in relation to health was also discussed during a conference on public health and human rights organized in 2001 by the Indian commission. Water and basic sanitation as a component of an essential care package for a common citizen, the need for a complete review of all drinking water projects and pollution of drinking water were mentioned during the conference.

The right to a healthy environment

Human rights law contains environmental obligations. The right to healthy environment provides an overarching human rights framework for the various environmental considerations. Despite the fact that the right to a healthy environment does not have an internationally agreed normative content, it is recognized in two regional human rights treaties (Inter-American and African) and more and more at national level.

Photo: "Carbon footprint representation"⁷²



Today 147 out of 193 national constitutions have explicit references to environmental responsibilities of government, and 92 countries have explicitly recognized the right to a healthy environment. This has consequences for the protection of water resources.

Finite water resources must be protected from overexploitation and pollution, and facilities and services dealing with excreta and wastewater should ensure a clean and healthy living environment. (For the various measures also see requirements under the sustainability principle).

Moreover, a number of procedural obligations flow from the right to healthy environment. These include: monitoring of the State of water resources, prior assessment of the impacts development projects on the right to water and sanitation, access to information, decision-making and justice, etc.

⁷² Photo by Notnarayan. Licensed under CC BY-SA 3.0 via Wikimedia Commons - https://commons.wikimedia.org/wiki/File:Carbon_footprint_representation.jpg#/media/File:Carbon_footprint_representation.jpg

NHRIs have been also examining water related human rights in the framework of environmental related investigations. NHRIs in the Latin American region have been increasingly confronted with environmental impacts of the extractive industry and other projects potentially impacting the environment and thus the human rights of local population. An example is included below showing the interpretation of the NHRI of Panama with regards to the right to a healthy environment and the right to water.

NHRI of Panama and the right to healthy environment

Following a complaint by the Alliance for Conservation and Development, the Panama NHRI conducted an investigation on potential environmental impacts of the Chan-75 Hydroelectric project, including the right to water. After observation, interviews, investigation, analysis of documents and records relating to the project, the Ombudsman published a special report expressing its concerns with regards to the socio-cultural and environmental impacts caused by the Chan-75 Hydroelectric Project. The Ombudsman relied on the international human rights interpretations in relation to the right to healthy environment, the right to water, the right to health, and the right to participation. It called upon the State, particularly the National Environmental Authority, to closely follow the implementation of the project in light of its impact on human rights, including the right to water.



In 2012, the Human Rights Council decided to establish a mandate on human rights and the environment, among others, to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and promote best practices relating to the use of human rights in environmental policymaking. Mr. John Knox was appointed in August 2012 to a three-year term as the first Independent Expert on *human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. His mandate was further extended in March 2015 for another three years as a *Special Rapporteur*.

The box below briefly outlines the intervention of the Scottish Human Rights Commission in the Human Rights Council presenting its work in view of integrating human rights standards into the national climate change policy.

NHRI of Scotland and climate change

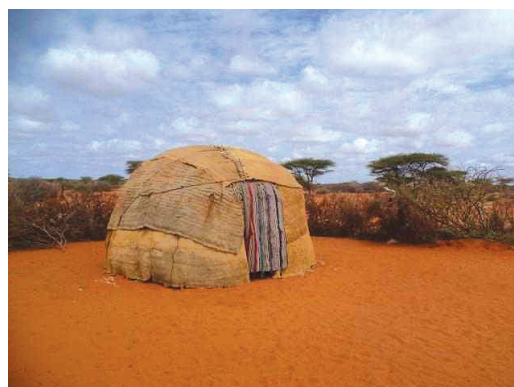
The Scottish Human Rights Commission presented an intervention during the 25th session of the Human Rights Council in 2014 welcoming the report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. The Commission argued for the need to integrate current pressing environmental challenges, including climate change into both domestic policy and practice. To this end, the Commission has led the development of Scotland's first National Action Plan for Human Rights which will help bring about a consistent process for integration of relevant human rights standards in Scotland's climate change policy and practice.



The right to housing

General Comment No. 15 on the right to water underlines the link by providing that the right to water is also inextricably related to the right of adequate housing. For the realisation of the right to adequate housing, access to essential services such as water and sanitation is indispensable. Privacy and physical security are also an issue in situations where women and children have to go to shared latrines or open spaces to defecate, because this makes them particularly vulnerable to harassment, attacks, violence or rape.

*Photo: "Aqal Soomaali"*⁷³



A practice employed by the NHRI of Côte d'Ivoire is included below with regards to linking the right to water/sanitation and the right of adequate housing.



The right to housing and the right to water in Côte d'Ivoire

The Human Rights Commission of Côte d'Ivoire linked the right to water and sanitation to the right to adequate housing in its 2009 annual report. It recalled for example that the Committee on Economic, Social and Cultural Rights established that beneficiaries of that right must have permanent access to, among other resources, drinking water and sanitation facilities. It also raised a concern with regard to the lacking sanitation installations in poor districts which as a result forces people to often defecate in public areas.

73 Photo by AbdirahmanBarre. Licensed under CC BY-SA 4.0 via Wikimedia Commons - https://commons.wikimedia.org/wiki/File:Aqal_Soomaali.jpg#/media/File:Aqal_Soomaali.jpg



Questions

- What does the concept of “progressive realisation” mean in the context of economic, social and cultural rights?
- Describe briefly the normative content of the human right to water and sanitation
- What are the core obligations of states in relation to the human right to water and sanitation?
- What is the role of the private sector in the realisation of the human right to water and sanitation?
- How would you prioritize competing water uses in view of their links to different human rights?

Exercises

- Summarize the most pressing issues in your country relating to the human right to water and sanitation
- What are the most pressing (legal, institutional, financial) shortcomings relating to access to water and sanitation in your country?
- Identify gaps in the constitutional, legal and administrative system of your country (the recognition of the right to water, the obligation to provide water and sanitation services, remedies, the situation of vulnerable groups)

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▶ SECTION 2

THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE PROMOTION AND PROTECTION OF WATER GOVERNANCE-RELATED HUMAN RIGHTS



Objective: *The objective of this chapter is to provide a brief overview of the role of National Human Rights Institutions in the promotion and protection of water governance related human rights*

INTRODUCTION

This chapter provides a brief overview of the role of NHRIs in the promotion and protection of water governance-related human rights.

NHRIs play a central role in the progressive realisation of economic, social and cultural rights. In that context and in view of the emergence of the human rights-based approach (HRBA) as a conceptual framework to water governance, NHRIs should become key players in shaping and monitoring the human rights aspects of water management. They serve as a natural bridge between the State (duty bearer) and citizens (rights holders), and may also foster coherence between environmental sustainability and human development, making sure that human rights take a centre stage in the water-related laws, policies and practices.

To that end, this chapter provides an overview of the nature of NHRIs; their role in the promotion and protection of ESCR and water governance-related human rights, as well as the reasons why and the methods how NHRIs should address water governance-related human rights issues. Finally, a summary of the emerging role of NHRIs in the international context is provided with a particular outlook to the United Nations post-2015 development framework.

WHAT ARE NHRIS?

NHRIs are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. While they are part of the State apparatus and are funded by the State, they operate and function independently from government.

The fundamental requirements concerning NHRIs are laid down in the so-called **Paris Principles**, adopted in 1991 and endorsed by the UN General Assembly in 1994. The Paris Principles call for

a broad mandate for NHRIs that includes the right to investigate individual cases or systematic violations of human rights; to submit to government, parliament or any relevant competent body opinions, recommendations, proposals and reports; to assist the development of training programmes; publicize human rights and efforts to combat discrimination, etc.

Thus, the core tasks of NHRIs include complaint handling, human rights education and enhancing legal reform. NHRIs may, inter alia, have the following responsibilities:

- Advise government, parliament and any other competent body on legislative or administrative provisions and make recommendations to ensure adherence to fundamental principles of human rights and harmonization with international human rights instruments to which the State is a party, including recommending adoption of new legislation, amendment of legislation in force, and adoption or amendment of administrative measures;
- Advise on any situation of violation of human rights;
- Prepare reports on the national human rights situation;
- Draw the attention of government to human rights violations, make proposals for relevant initiatives, and express an opinion on the positions and reactions of government;
- Encourage ratification of international human rights instruments and ensure their implementation;
- Contribute to State reports to UN bodies and regional institutions, with due respect for its independence;
- Cooperate with UN agencies, regional institutions and other NHRIs;
- Assist in formulation of programmes for teaching of and research into human rights and to take part in their execution in schools, universities and professional circles;
- Publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs; and
- Hear and consider complaints in individual cases (this is not mandatory according to the Paris Principles).



NHRIs in the World - ICC

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) is the international association of NHRIs, which accredits the national institutions according to their level of compliance with the Paris Principles. In 2014 the ICC recognized 70 NHRIs that fully comply with the Principles (“A” accreditation); 25 other institutions comply partly (observers); 10 others currently fail the accreditation test. Observer organizations take part in the work of the ICC but cannot vote or hold office, while non-member organizations have no rights or privileges with the ICC. They may, however, attend the meetings of the ICC. Regional Coordinating Committees have been established to represent and support NHRIs at the regional level.

Europe has the highest number of NHRIs (21), followed by Africa (18), the Americas (16) and the Asia-Pacific region (15).

THE ROLE OF NHRIS IN THE IMPLEMENTATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The special legal character of NHRIs gives them a status and credibility not enjoyed by either governmental or non-governmental organizations. NHRIs can therefore be catalysts for action and positive change in relation to all human rights, including economic, social and cultural rights.

General Comment No. 10 of the Committee on Economic, Social and Cultural Rights – a body of independent experts to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights – calls upon States to ensure that the mandates of NHRIs include ESCR.

NHRIs, however, could not always fulfil that crucial mission as, the General Comment No. 10 underlines, “*this role has too often either not been accorded to the institution or has been neglected or given low priority by it.*”⁷⁴ It further provides that “**it is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions.**”

By giving full attention to these issues, NHRIs can contribute to the realisation of ESCR in a unique fashion, pursuant to their mandate, through:

- the promotion of educational and information programmes designed to enhance awareness and understanding of State actions and within the population at large;
- the scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals, to ensure their consistency with ESCR;
- the provision of technical advice;
- the identification of benchmarks against which the realisation of ESCR obligations can be measured;
- surveys, research and inquiries;
- monitoring compliance with the rights at issue and providing reports to the public authorities and civil society and, last but not least;
- examination of complaints relating to the infringements of ESCR.

In summary, NHRIs are **key players in the realisation of ESCR** acting as institutional catalysts of change and a natural bridge between government and civil society.

WHY SHOULD NHRIS ADDRESS WATER GOVERNANCE ISSUES?

The indivisibility and interdependence of human rights in the context of water governance: the special role of NHRIs

General Comment No. 10, referred to above, highlights not only the central role of NHRIs in the promotion and protection of ESCR, but also recalls the *indivisible and interdependent* nature of human rights. Consequently, the **totality of all human rights** should be reflected in the work of the NHRIs.

⁷⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 10: The role of national human rights institutions in the protection of economic, social and cultural rights*, 10 December 1998, E/C.12/1998/25,

Implementation of the right to water and sanitation is not only fundamental for daily human existence and dignity, but it is also closely linked to a number of other economic and social rights, such as right to food, health or housing (see Section 1). It should naturally follow then that the protection and promotion of the right to water and sanitation should be covered by the mandate and work programme of NHRIs worldwide.

Besides such theoretical basis, the potential role of NHRIs is further augmented by a number of factors. Given the transversal role of water in all aspects of human life, water governance tends to be fragmented and driven by competing approaches and priorities.

Against this background, General Comment No. 15 on the right to water makes an explicit call urging that **“national ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.”** Moreover, NHRIs could foster coherence between environmental sustainability and human development to make sure human rights take centre stage in the water-related laws, policies and practices.

In the past few years, there has been an **emerging number of NHRIs** worldwide taking action in view of promoting and protecting water governance-related human rights. The current training material includes several example of good practices⁷⁵ developed by these institutions. These can serve as an inspiration and pave the way for other NHRIs envisaging an enhanced role in promoting and protecting water governance-related human rights. The box below includes a few examples of NHRIs active in promoting and protecting water governance-related human rights.



NHRIs active in the field of water governance-related human rights

Between 2010 and 2014 the South African Human Rights Commission conducted a nationwide campaign on the right to water and sanitation. The campaign included public hearings in all provinces of South Africa with a view to mapping out systemic gaps in the implementation of the human right to water. Based on the appalling results of this survey the commission made a series of recommendations to the government to better engage with communities and also launched various publicity and legal actions to compel the public bodies concerned to respond to the recommendations.

The New Zealand Human Rights Commission produced, in 2012, a detailed paper on human rights and water. The novelty of the paper is that it provides a critical assessment of all major water uses in New Zealand from a human rights perspective, i.e. going beyond the satisfaction of the immediate human needs. The document also extensively addresses the situation of indigenous peoples' water-related human rights.

Hungary's ombudsman responsible for the rights of future generations has developed a broad practice of investigating cases related to the protection of aquifers that serve as the bases for 95 per cent of all drinking water abstraction in the country. Recent regulatory and administrative laxity has resulted in an unwarranted proliferation of small-scale mining activities with a fundamental impact on the state of these resources. The ombudsman has revealed important legislative loopholes and enforcement omissions and called upon the government and competent authorities to redress these shortcomings.

75 For further examples of good practices adopted by NHRIs in view of promoting and protecting water governance related human rights, see: WaterLex (2014): *National Human Rights Institutions and Water Governance: Compilation of Good Practices* http://www.waterlex.org/new/wp-content/uploads/2015/02/WAT-Compilation_online.pdf

The emergence of a new paradigm of water governance: the human rights-based approach (HRBA)

A. The human rights-based approach

HRBA is a conceptual framework for the process of development that is normatively based on international human rights standards. The approach integrates the norms, standards and principles of the international human rights system – i.e. those contained in international treaties and declarations – into development plans, policies and processes.

Photo: “Drops Impact”⁷⁶



HRBA seeks to regulate the relationship between State and citizen through the notions of duty-bearer and rights-holder, and their corresponding duties and rights. It sets the abilities to meet obligations and claim rights as the target of development cooperation. It also brings the human rights principles of participation, equality and non-discrimination, and accountability into the planning, decision-making and implementation process.

The constituent elements of the HRBA include:

- express linkage to rights,
- accountability,
- empowerment,
- participation,
- non-discrimination and
- attention to vulnerable groups.

In the past two decades it has been increasingly recognized that water governance should be approached from a human rights perspectives to counterbalance the previously dominant economic perspective on water. This shift in approach has been triggered by a number of factors. First, the recognition of water as a human right (see Section 1). Second, the rapid expansion of democracies since the late 1980s that has also contributed to some extent to important developments in ESCR. Today there are more than 100 countries whose constitutions contain references to the right to a healthy environment (e.g. Hungary, Argentina etc.) and the right to water (e.g. South Africa, Tunisia, Mexico, El Salvador, Colombia, Kenya etc.). These new rights have received important judicial backing through national high courts all over the world, leading to a well-established global jurisprudence on environmental rights, including the right to water. Finally, since the late 1990s, human rights have been mainstreamed into the activities and programmes of many UN organizations and agencies. In 2003, the UN produced the Common Understanding on a Human Rights Based Approach to Development Cooperation, and, in 2009, the United Nations Development Group, consisting of 19 organizations and entities, established the Human Rights Mainstreaming Mechanism. Human rights therefore increasingly provide a common point of departure within the UN system as regards human development issues, and especially water governance.

76 Photo by Marlon Felipe - Own work. Licensed under GFDL via Wikimedia Commons - https://commons.wikimedia.org/wiki/File:Drops_Impact.JPG#/media/File:Drops_Impact.JPG

B. What are the practical implications of HRBA to water governance?

The starting point of HRBA to water governance is the recognition of the right to water and sanitation as a human right (see Section 1): **Safe drinking water is no longer a charity but a legal entitlement** with individuals at the centre. From the extensive and broad human rights system, a number of minimum standards and operational principles can be discerned for water governance. These include:

- no population group should be excluded;
- priority should be given to those who do not have access or who face discrimination in accessing safe drinking water;
- clear prioritisation in the allocation of water among competing uses;
- individuals and communities should have access to information and participate in decision-making; and
- a focus on accountability underlines the obligations of the State as duty-bearer.

The human right to water is derived from the right to an adequate standard of living and it entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses (See more in Section 1). This includes the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.

In operational terms it means that before giving consideration to other allocations of water, priority must be given to ensuring access to water for personal and domestic uses, subsistence food production and to maintaining the renewability of the resource to ensure that catchment areas continue to perform their key hydrological functions.

Applying a human rights approach to issues of water governance provides an opportunity to **observe the sector through a new lens**. It casts a fresh light on existing progress and obstacles, showing the need for a modification of established indicators, data and planning and potentially resulting in better tools and monitoring methodologies. This change of paradigm can be illustrated by looking at the traditional statistics on access to water and sanitation.

According to the 2015 Joint Monitoring Program Report⁷⁷, in 2015, 663 million people still lack improved drinking water sources and 2.4 billion lack improved sanitation. These figures imply that 2.6 billion people have gained access to an improved drinking water source since 1990⁷⁸ whilst sanitation is lagging behind. This is very useful information, and it may trigger policy responses at various levels. However, these figures are not based on a human rights based approach: Catarina de Albuquerque, the former UN Special Rapporteur on the human right to safe drinking water and sanitation estimates that in fact, in 2013, 1.8 billion people did not have access to safe water and 4.1 billion people did not have access to adequate sanitation⁷⁹.

Similarly, human rights bodies understand sanitation broadly to include the treatment and disposal or re-use of excreta and associated wastewater: sanitation does not stop simply with the use of latrines or toilets, but includes the safe disposal or reuse of faeces, urine and wastewater. In a human rights perspective, sanitation concerns not only one's own right to use a latrine or toilet, but also the rights of other people, in particular their right to health, on which there might be negative impacts. Using this definition the UN Special Rapporteur on the human right to safe drinking water estimated that 4.1 billion people lack access to sanitation.

⁷⁷ World Health Organization and UNICEF (2015): Progress on Sanitation and Drinking Water. 2015 update and MDG Assessment.

⁷⁸ Idem.

⁷⁹ United Nations General Assembly (2013-8-5): Report of the Special Rapporteur on the human right to water and sanitation to the 68th session of the UNGA, report A/68/264 on Wastewater.

A human rights approach therefore provides a **new perspective** on water and sanitation, impacting on indicators, data and planning, potentially resulting in better tools and monitoring methodologies.

NHRIs have a unique opportunity and mission to introduce and mainstream HRBA to water in the national governance scene. A good example of an NHRI advocating for a human rights based approach to water is indicated in the box below.

NHRI of New Zealand advocating a human rights approach to water



In 2012 the New Zealand Human Rights Commission published a report entitled *Human Rights and Water*. It advocates for the importance of the human rights approach to water and assesses the right to water situation in New Zealand in accordance with the criteria of availability, quality and safety, affordability, acceptability, participation and accountability. The report first deals with the human right to water explaining the international human rights framework and sets out the relevant right to water criteria in the New Zealand context. It advocates the importance of the human rights approach in general and the vitality of this approach for New Zealand. Noting the 10 criteria identified by the UN Special Rapporteur in 2010, the report discusses six of the criteria that have a particular relevance and peculiarity making them fundamental in the context of New Zealand. These are: i) the availability of fresh water; ii) quality and safety; iii) affordability; iv) acceptability in relation to the Treaty of Waitangi /Te Tiriti o Waitangi and Māori values; v) participation of citizens in water related matters; and vi) accountability.

HOW SHOULD NHRIS ADDRESS WATER GOVERNANCE ISSUES?

While further sections provide detailed information for NHRIs on monitoring the right to water, promoting and protecting water governance-related human rights; this chapter provides an introductory overview of good practices adopted⁸⁰ by various NHRIs in addressing water governance-related issues.

Mandate

Under the Paris Principles, a NHRI must be “vested with competence to promote and protect human rights.” The mandate of a NHRI is typically defined in very general terms, with hardly any reference to right to water. In order to fulfil their potential role in the field of water governance, NHRIs should be able to interpret their mandate to include the right to water and communicate it clearly. In this context, the various interpretative principles developed by the international human rights system provide helpful assistance.

80 The good practices indicated in this chapter are based on the publication: WaterLex (2014): *National Human Rights Institutions and Water Governance: Compilation of Good Practices* http://www.waterlex.org/new/wp-content/uploads/2015/02/WAT-Compilation_online.pdf. Due to a number of limitations inherent to this compilation, the publication does not include an exhaustive picture of NHRI activities in relation to water governance but shows good practices and important cases in a concise manner collected with the participation of NHRIs.

First, human rights must be interpreted as **broadly** — and restrictions as narrowly — as possible. Second, the principle of the indivisibility and interdependence of all human rights should naturally expand the mandate of NHRIs to address ESCR such as the right to water. Given that the interpretation of the mandate of NHRIs may be subject to judicial review it is encouraged that institutions interpret their jurisdiction very broadly. Such an expansive approach should apply not only the catalogue of rights to be addressed, but the types of violations and the subjects of investigations as well.



NHRI of Nepal's mandate with regards to water and ESCR

In its rather-wide mandate, the National Human Rights Commission of Nepal has been focusing on several economic, social and cultural rights. In this context, this institution has experience in particular in working on the right to food and right to health with implications on the right to water and sanitation. Whilst the focus of their work is primarily not on the right to water and sanitation, it still forms an integral part of several activities of this institution.

The mandate of the NHRI can only be performed if it is vested with the necessary powers to investigate and act on violations of human rights. The powers of NHRIs vary considerably, ranging from quasi-judicial rights to research and public advocacy. However, no matter how broad or narrow these powers are, in view of the great variety of water-related human rights issues, every NHRI should be able to identify several powers and tools to promote and protect the right to water and sanitation.

A good practice is outlined in the following box whereby an NHRI recommended the enlargement of its mandate to allow the inclusion of the human right to water and sanitation by referring to the suggestions of the UN Special Rapporteur on the human right to safe drinking water and sanitation.



Ombudsman of Namibia referring to the UN Special Rapporteur on HRWS in expanding its mandate

The Office of the Ombudsman of Namibia strives to promote and protect human rights, fair and effective administration, combat misappropriation or misuse of public resources and protect the environment and natural resources of Namibia through the independent and impartial investigation and resolution of complaints and through raising public awareness.

Concerning its mandate, the ombudsman noted that in September 2012 the Special Rapporteur on the human right to safe drinking water and sanitation recommended in its country mission report the extension of its mandate to promote and protect ESC rights including the right to water and sanitation. To this effect, the ombudsman recommended that the enabling legislation be reviewed and the scope of the mandate be extended to cover a broad range of human rights, including the right to water and sanitation.

Good practices

Collected examples of practices adopted by various NHRIs worldwide in relation to promoting and protecting water governance-related human rights will be presented in the following sections with regards to the various mandate areas thereof. However, a short overview of practices is presented below to **illustrate the potential role** of NHRIs in relation to water governance and human rights.

Practices regarding water governance-related human rights are organized according to the following thematic sections: a) promotion; b) protection; c) monitoring; d) advising the government and the parliament; e) cooperation and coordination in water governance-related NHRI activities.

A. Promotion of water governance-related human rights

NHRIs have substantial experience in raising awareness of human rights, to foster the understanding of human rights and to perform human rights education programmes to civil society, governmental entities and other public bodies. In addition, several NHRIs have considerable experience in promoting water governance-related human rights. Against this backdrop, these institutions can be also involved in water governance-related human rights promotion efforts, including in relation to the sustainable development goal on water. For more details, see Section 5.

Translating national level human rights implementation efforts and raising awareness of water governance related violations can be supported by their promotional mandate: via conducting water governance related research, education programmes to a wide range of stakeholders, media relations, the publication of independent water and sanitation related reports, targeted statements, press release and the accomplishment of various public awareness raising programmes.

The following good practices, *inter alia*, can be identified:

- Consider the interdependence and indivisibility of human rights in NHRIs' promotional activities;
- Publication of specialized human rights material (studies and other documents) on water governance-related human rights;
- Promote water governance related-human rights with a particular attention to marginalized and vulnerable groups of people;
- Raise public awareness on water governance-related rights through conferences, statements and other similar promotional activities;
- Public education related activities on water governance-related human rights;
- Community based initiatives to promote water governance-related human rights.



The NHRI of Hungary active in the field of promoting water governance-related human rights

During investigations, the Hungarian Ombudsman for Future Generations sometimes makes official visits to the site where a petition originated from (e.g. the site of groundwater pollution, or drinking water wells, etc.). It is usually a good opportunity to make a certain case more widely known to the public, as visits attract the interest of the press more easily than reports or official recommendations. In other cases, the ombudsman makes regular visits to every county in relation to the adequate protection of human rights to water and to a healthy environment, usually catches people's attention. In the field of human rights promotion, it can sometimes be challenging to find a topic that is interesting enough for the media to be dealt with and distributed. The institution realized that it is very important to choose the right language and the right cases when presenting a problem. It sometimes also holds press conferences to amplify the message and make important cases more well-known.

B. Protection of water governance-related human rights

NHRIs have a constitutional mandate to find remedies to human rights violations. They can go beyond monitoring, combining analysis with action to ensure a remedy for systematic deficiencies. NHRIs can initiate investigations, conduct public inquiries, collect data, and refer to relevant authorities, to the government and even to the public. Reporting and presenting recommendations in view of compliance can be addressed by NHRIs to national authorities (legislative and executive branches) in addition to informing global/regional review mechanisms. Depending on their mandate, some NHRIs can even initiate court proceedings and/or perform conciliation, mediation as alternative dispute settlement to seek remedies to violations. They offer a complementary avenue to monitoring and seeking remedy in a quicker and cheaper manner. Therefore, they are well placed to protect water governance related human rights violations and even seek remedies to human rights violation concerns linked to the implementation of the Post-2015 Agenda water goal.

Nevertheless, the protection of the right to water and sanitation and other water governance related rights may be challenging for NHRIs, *inter alia*, due to the progressive nature of economic, social, and cultural rights. In addition, in several countries there is a reported general perception of key actors that the right to water and sanitation is non-justiciable. A brief overview of practices adopted by various NHRIs is presented here in view of protecting water governance related human rights. For more details see Section 4.

The following good practices, *inter alia*, can be identified:

- Protect human rights in the context of water governance by intervening in environmental issues
- Pay particular attention to vulnerable and marginalized groups of people in investigating issues with regards to water governance-related human rights
- Trigger participation of communities in investigating water governance related human rights violations
- Link water governance-related human rights to investigations conducted in relation to specific sectors (e.g. extractive industry)
- Aggregate submitted complaints to better protect water governance-related human rights
- Seek remedies with the appropriate governmental or judicial body following a complaint
- Monitor the compliance with judicial orders and follow up on the findings following inquiries and investigations.

C. Monitoring water governance-related human rights

Monitoring human rights is a major function of NHRIs. Whilst monitoring is a key aspect of the general protection mandate with significant promotional features, due to its utmost importance a separate chapter is devoted to various NHRI monitoring activities and practices (See Section 3). NHRIs are also uniquely placed to potentially ensure a human rights-based monitoring of the implementation of the water governance-related human rights commitments, including the implementation of the water related sustainable development goal.

We note, that there are NHRIs who developed a specialized monitoring methodology providing them with tools to perform country monitoring in relation to the human right to water and sanitation and other related rights. The practices below seek to highlight innovative monitoring tools, techniques and mechanisms which may inspire other NHRIs in monitoring water governance related human rights.

The following good practices, *inter alia*, can be identified:

- Diversify the sources of information during investigations and monitoring activities
- Address water governance related human rights monitoring by considering the interdependence and indivisibility of human rights
- Adopt a special mechanism for monitoring State performance in relation to water governance related human rights
- Undertake periodical visits of prisons, police stations, hospitals, schools and other centres in order to assess water related human rights conditions
- Sample and test water during investigations and fact finding missions

Unique monitoring methodology of the NHRI of Colombia

In Colombia, in compliance with its constitutional and statutory mission to promote, disseminate and protect of human rights in Colombia, the Ombudsman's Office was asked to evaluate the performance of State obligations in respect of the human right to water. In its investigations, the office of the ombudsman classified the country's municipalities into a hierarchy from "worst" to "best" in terms of both water supply and environmental sustainability. The first classification used evaluation indicators based on the components of the human right to water, i.e.: i) the availability of water, i.e. ensuring a continuous supply; ii) accessibility to water, both in terms of physical access, economic access, non-discrimination and access to information, and iii) water quality, as it must be safe and must not contain microorganisms or substances that threaten health. Additional indicators included coverage levels, the gap between water coverage and sanitation coverage levels, the gap between urban and rural coverage levels, and local government capacity. The second classification, measuring environmental sustainability, classified municipalities according to their performance on three axes. These were natural water regeneration capacity (extent of plant cover, wetlands, etc.), water scarcity (risk of water shortages in adverse environmental conditions) and vulnerability (the relationship between natural regeneration capacity and water scarcity). The results of the investigation identified 46 of the 1097 municipalities as being "high risk" municipalities in which the declaration of a health emergency was recommended. In a further 117 municipalities data was deemed highly inadequate, requiring further research. Finally, in environmental terms, only 17 per cent of the Colombian population have acceptable levels of vulnerability, indicating an urgent need to build regenerative capacity and reduce water scarcity in the majority of municipalities.



D. Advising the government and the parliament

NHRIs are responsible for advising the government on human rights issues. This role of NHRIs contributes to rendering governmental bodies more accountable and offer the possibility to address systematic violations and legislative gaps. Reporting, providing recommendations and issuing opinions to the parliament additionally offers NHRIs the opportunity to receive a hearing in the country's representative and elected body.

NHRIs also enable States to meet their international responsibility “to take all appropriate action” to ensure that international obligations are implemented at national level. They can perform an important role in the international review mechanisms by ensuring that the comments and recommendations of relevant international bodies are considered and implemented at national level.

Seen in this light, these institutions are uniquely placed to influence national implementation efforts of water governance related human rights commitments, including SDGs. NHRIs are empowered to scrutinize legislation, administrative laws, draft bills and policies and even perform budget review in view of compliance with international human rights and sustainable development related commitments. Their advisory roles allows them to provide opinions, recommendations, proposals and reports to the government, parliament or other responsible organs. Thus, they can encourage and positively influence the harmonization of national legislation with international human rights commitments. In particular, NHRIs may also be involved in translating and tailoring the globally agreed commitment into national frameworks by contributing to the development of national indicators, benchmarks etc. Therefore, these institutions can have a positive impact on the national enabling environment in view of implementing water governance related human rights commitments including the water and sanitation sustainable development target. For more details, see Section 6.

The following good practices, *inter alia*, can be identified:

- Review legislation with impact on water governance-related human rights;
- Inform, assist and engage with the government on water governance-related legislation and policy formulation;
- Issue recommendations to the government following reports, investigations, inquiries, public hearings, etc.



NHRI of Namibia active in the field of advising in relation to water-governance related human rights

In part fulfilment of its duty to advise and assist the government, the Ombudsman of Namibia initiated the development of a national human rights action plan. The process started in 2009 and the final draft was submitted to Cabinet for approval. A human rights baseline study which included a country-wide household survey was undertaken, followed by a national consultative conference, stakeholders' meetings including civil society as well as regional consultative meetings.

E. Cooperation and coordination in water governance-related NHRI activities

NHRIs are of major importance in the human rights protection mechanism but they need to work alongside with various bodies and stakeholders in view of effectively protecting and promoting human rights, including water governance-related human rights. Thus, coordination and cooperation can be a key element of success for NHRIs.

As independent entities, NHRIs occupy a unique terrain that enables them linking civil society to the government. They can provide an unbiased meeting point that encourages dialogue and facilitates cooperation among various stakeholders in the national implementation of human rights commitments. NHRIs, as independent public bodies, are able to bring all concerned stakeholders around one table to facilitate discussion and information sharing processes. Their mandate also enables them to collect and channel indispensable data via collaboration with civil society, statistical offices, research institutions and academics.

In addition, NHRIs have been participating in the UN human rights protection mechanisms and have a wide ranging experience in following up recommendations concerning compliance with State commitments. NHRIs cooperate with the organizations of the United Nations system, most importantly with the Human Rights Council and its mechanism in addition to channeling inputs into the universal periodic review. More specifically, these institutions are allowed to participate in the relevant UN accountability mechanism by presenting independent reports and documentation to human rights treaty bodies, special procedures mandate holders and to the Human Rights Council and its processes. Therefore, these institutions are well suited to channel information on national level water governance-related human rights implementation efforts.

Some concrete examples are listed below of how cooperation and coordination has enabled NHRIs to better address water governance related human rights violations through their good practices:

- Maintain close partnerships with governmental organs and engage with stakeholders through various means
- Cooperate with external groups, experts or organization for publications, studies and other water related projects
- Cooperate with other NHRIs on issues having a transboundary impact on human rights

NHRI of Argentina active in the field of cooperation and coordination in relation to water governance-related human rights

The Argentinian Ombudsman's Office has been working over the course of the last 10 years in partnership with other institutions in promoting a process to reverse the critical situation of one of the largest in the country and the world's most polluted watersheds: the Matanza-Riachuelo River Basin. The Argentinian Ombudsman received several complaints denouncing the serious contamination affecting residents in the area of Matanza-Riachuelo River Basin, one of the most contaminated sites at the time in Argentina. The accusations were added to a number of complaints made by organizations or individual citizens in relation to conditions and problems concerning socio-environmental issues in the Matanza-Riachuelo Basin. It brought together a group of well-known NGOs, universities and local ombudsmen, who drafted the first special report on the situation of the Matanza-Riachuelo River Basin.



Challenges

When addressing water governance-related human rights, NHRIs face a variety of specific challenges in and outside their organizations.⁸¹

Internal challenges may include the lack of understanding and acceptance of the human right to water and sanitation by the staff of the NHRI concerned. This is a relatively recently recognized right that, especially in more affluent countries, is often perceived as a problem solved. Therefore, the first challenge may be to give priority to the issues within the organization itself. The NHRI may also lack institutional capacity both in terms of financial resources and staff time. Investigating water-related human rights may involve extensive on-site visits, the deployment of external technical knowledge and apparatus, etc. that may have considerable cost implications. Thus, NHRIs may have to supplement their skills in investigating individual violations with competency in fact-finding, the collection and analysis of primary and secondary data and the analysis of economic, including budgetary, information.

The prevailing legal, political, economic, social and cultural conditions may prove to be important external factors that inhibit effective investigation of water governance related human rights. Legal and judicial gaps may impede the realisation of the right to water despite the best efforts of the NHRI. The lack of effective civil society and accountable democratic institutions is also likely to reduce the impact of the activities of NHRIs. In some countries the cultural environment may not be receptive of the right to water and sanitation as it may be perceived as a welfare or public service issue rather than a human right. Common misconceptions about the financial implications of the right to water are particularly powerful inhibitors in this context. Public opinion may also be reluctant to accept that there is any deficiency in a country's performance of its obligations relating to water.

In carrying out their water governance related projects NHRIs are also facing obstacles which emanate from their relationship with the government and the specific role of some governmental organs. For example, NHRIs may face a lack of cooperation by government departments, such as with regard to requests for information and responses in relation to reports or publications. In addition, some government officials, including at the local level, have a lack of understanding of a human rights-based approach.

The multi-faceted nature of water governance-related human rights imposes a constant challenge for some NHRIs. As there are many actors working within the area of water governance with various interventions, it might be challenging to have a holistic focus on the promotion and protection of this right. Lastly, contextualizing the domestic standards developed in regard to the right to water and the lack of access to credible sources of information have created an obstacles to the work of many NHRIs.

81 For additional challenges, see: *Ibid.*

THE ROLE OF NHRIS IN THE PROMOTION AND PROTECTION OF WATER GOVERNANCE-RELATED RIGHTS IN THE INTERNATIONAL CONTEXT

NHRIs in international human rights mechanisms and bodies

While the primary objective of all NHRIs is the promotion and protection of human rights in their home countries, NHRIs do not operate in isolation from one another. In fact, the Paris Principles envisage a prominent role for the cooperation of NHRIs in the development and implementation of international human rights standards. To fulfil that mandate, NHRIs enjoy important rights and privileges in the United Nation's human rights mechanisms and bodies as described below.

The Human Rights Council (HRC), based in Geneva, Switzerland, is at the heart of the UN human rights system. It is an inter-governmental body made up of 47 States responsible for the promotion and protection of all human rights around the globe. The HRC among others, can address situations of human rights violations and make recommendations on them. It employs a number of procedures to obtain information on particular countries, subjects or violation incidents. Through the so-called Universal Periodic Review (UPR) the HRC evaluates the human rights record of UN member States in a comprehensive manner. The UPR normally gives the State under review an impetus and opportunity to improve its human rights situation. The Human Rights Council also maintains a complaint procedure, which addresses communications by individuals, groups or non-governmental organizations that claim to be the victims of human rights violations or that have direct and reliable knowledge of such violations. The so-called special procedures enable the HRC to assign specific mandates to renowned independent experts to report on thematic or country-specific human rights issues. The mandate holders have a broad variety of tools at their disposal to investigate individual cases or concerns of broader nature, to conduct thematic studies, raise public awareness, etc.

There are 10 additional human rights bodies that monitor the implementation of the core human rights treaties, such as the HRC, the CESCR, the Committee on the Rights of the Child, etc.

The High Commissioner for Human Rights is the principal human rights official of the United Nations. The High Commissioner is mandated by the UN General Assembly to promote and protect human rights for all, making recommendations and playing an active role in promotion and protection of human rights everywhere. The work of the OHCHR has five pillars: thematic work on specific issues; standard-setting; monitoring; implementation and human rights education. The High Commissioner complements the activities of the above political human rights bodies. The Office of the High Commissioner for Human Rights provides substantive and secretarial support for the human rights bodies.

The various UN human rights mechanisms, bodies and organizations play an important role in the promotion of water governance related human rights. Since 2008, a special rapporteur on the human right to safe drinking water and sanitation has operated under the auspices of the HRC contributing to the universal promotion of the right to water. Other special rapporteurs such as those on the right to food, adequate housing, education, health and extreme poverty also address water-related human rights. The CESCR played a seminal role in the definition and political recognition of the human right to water and sanitation.

A. How do NHRIs participate in UN human rights bodies and mechanism?

NHRIs can participate in the work of the UN human rights system individually, through the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) or regional human rights mechanisms.



International Coordinating Committee for National Human Rights Institutions (ICC)

The ICC is the international association of national human rights institutions from all parts of the globe. The ICC promotes and strengthens NHRIs to be in accordance with the Paris Principles, and provides leadership in the promotion and protection of human rights. Regional Coordinating Committees have been established to represent and support NHRIs at the regional level. The ICC:

- Facilitates and supports NHRI engagement with the UN Human Rights Council and Treaty Bodies;
- Encourages cooperation and information sharing among NHRIs, including through an annual meeting and biennial conference;
- Undertakes accreditation of NHRIs in accordance with the Paris Principles;
- Promotes the role of NHRIs within the United Nations and with States and other international agencies;
- Offers capacity building in collaboration with the Office of the High Commissioner for Human Rights (OHCHR);
- Assists NHRIs under threat;
- If requested, can assist government to establish NHRIs.

In 2015 a **Working Group on Sustainable Development** has been established with in the ICC.

The HRC provides various participatory rights to NHRIs and encourages them to play an active role in its work, including the Universal Periodic Reviews. NHRIs with “A” status accreditation, the ICC and regional coordinating bodies of NHRIs (speaking on behalf of its “A” status members) can:

- make an oral statement under all substantive agenda items of the Human Rights Council;
- participate through video messages in the HRC plenary debates, including during the adoption of the outcome of the UPR of the country by the Council, the interactive dialogue following the presentation of a country mission report by a special procedures mandate holder and panels or annual discussions;
- submit documents, which will be issued with UN document symbol;
- take separate seating in all sessions.

An example is presented below from the NHRI of Palestine intervening in the Human Rights Council on the human rights to water and sanitation situation of children.



NHRI of Palestine presenting water related information in the Human Rights Council

The Palestinian Independent Commission for Human Rights presented information during the 28th session of the Human Rights Council (2015) in relation to the human rights situation of children in the West Bank and Gaza Strip during 2014. The Commission noted that children of the Gaza Strip have suffered from the consequences of the Israeli military aggression that targeted their homes and infrastructures, such as water, electricity and sewerage networks as well as telephone lines and roads. In addition the Commission stated that children in the Gaza Strip have been deprived of access to portable water and appropriate sanitary services.

Another practice is described in the following box whereby the NHRI of Morocco presented an oral statement and participated in an interactive dialogue with the UN Special Rapporteur on the human right to safe drinking water and sanitation in the framework of the Human Rights Council.



NHRI of Morocco speaking on water and sanitation in the HRC

In its oral statement to the Human Rights Council (September 2014) in participating in an interactive dialogue with the Special Rapporteur on the human right to safe drinking water and sanitation, the NHRI of Morocco emphasized the constitutional recognition of the right to water in Morocco. In its statement, the NHRI also made reference to the actions taken by this institution in view of promoting and protecting this right both at international and national level. However, the NHRI draw attention to its recommendations to the government and parliament in making the right to water and sanitation a reality to the Moroccan population: i) adopt national implementing legislation of the constitutional recognition of the right to water; ii) adopt a human rights approach in relation to the realisation of the right to water and sanitation; iii) adopt a participatory, integrative, gender-based approach with the inclusion of human rights organizations; iv) need to accelerate the implementation of the right to sanitation, v) promote the human right to water and sanitation; vi) enhance the capacity of key stakeholders and the public as well in relation to these rights.

NHRIs can also be critical supporters of the special procedures. As a bridge between the State and civil society as well as between the international and national human rights protection systems, NHRIs can multiply the efficiency of the work of special rapporteurs, experts and working groups. The important contribution of NHRIs to disseminating the findings of the special procedures and following up their recommendations is widely recognized by special mandate holders.

B. The work of the Special Rapporteur on the human right to safe drinking water and sanitation

In 2008 the HRC appointed an independent expert and, subsequently, a UN Special Rapporteur on the human right to safe drinking water and sanitation.

The UN Special Rapporteur, Ms. Catarina de Albuquerque, has made a substantial contribution to the promotion of human right to water and sanitation. Since December 2014 the position has been held by Mr. Léo Heller.

UN Photo/Jean-Marc Ferré⁸²



The work undertaken by the Special Rapporteur, the relevant reports and recommendations all represent an **important source of information for NHRIs** with regards to the actual status of the human right to water and sanitation at national level.

The UN Special Rapporteur has been undertaking country missions, completed studies on the implementation on the right to water and sanitation, received complaints by individuals from all over the world, supported the implementation of the human right to water and sanitation and provided assistance to stakeholders (government, water utilities, NGOs etc.) in cooperation with UN agencies and NHRIs. Based on the various country visits and investigations, in her 2014 report, she laid down a comprehensive typology of violations of water-related human rights. The Special Rapporteur also issued a series of important practical guidance documents including a handbook and a compilation of best practices on the realisation of the human right to water and sanitation.

The UN Special Rapporteur visited the following countries in order to assess the specific situation in relation to the human right to water and sanitation: Bangladesh, Brazil, Costa Rica, Egypt, Japan, Jordan, Kiribati, Namibia, Senegal, Slovenia, Thailand, Tuvalu, United States of America, Uruguay and Kenya. The **country reports** of these visits along with the recommendations may feed into the arguments used by NHRIs with regards to taking actions as they represent an important source of information in relation to country analysis, challenges and recommendations for improvement.

82 Catarina de Albuquerque, UN Special Rapporteur on the human right to safe drinking water and sanitation, addresses the 24th session of the Human Rights Council. 11 September 2013



Country mission to Kenya in 2014⁸³

The UN Special Rapporteur identified the following challenges during her country mission to Kenya in 2014: i) affordability of water and sanitation services; ii) menstrual hygiene management; iii) marginalized and excluded persons, iv) maximum available resources and budgeting for the rights to water and sanitation; and v) sustainability. It was underlined that Kenya is in a critical transitional moment for the provision of water and sanitation. It was noted that there is still a long way to go to realize the human rights to water and sanitation for all. Much more has to be done to translate the law into reality for the millions of Kenyans for whom these human rights are still only a mirage. In her concluding remarks, the UN Special Rapporteur called upon the State to use the opportunity presented by the current drafting of the Water Bill, and the upcoming water and sanitation strategy to use the normative content of the rights to water and sanitation to guide actions in the sector. She also noted the urgent need to clarify the attribution of functions between various levels of government, and between various government departments, with regards to water and sanitation. In that process, national mandatory minimum standards should be adopted (or in some cases, maintained) for the legal content of the rights to water and sanitation – including tariff setting and water quality, as well as regulations aimed at prohibiting water disconnections of those unable to pay, including public spaces such as schools, health facilities and prisons. The prioritisation of the most marginalized individuals and groups, as provided in the Constitution should be clearly reflected into law, policy and financing.

There are other several inspiring examples where NHRIs have worked with the Special Rapporteur and referred to its reports in view of formulating recommendations to national authorities.

NHRI of Bangladesh referring to the Special Rapporteur on HRWS

In its report on the Bangladesh compliance with ESC rights (*The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance*), the Human Rights Commission of Bangladesh addressed the right to water and referred to the findings of Ms. Catarina de Albuquerque, Special Rapporteur on the human right to water and sanitation. Referring to sources of the Special Rapporteur allowed to identify the remaining gaps between the national framework and international requirements for the right to water and sanitation.



Ombudsman of Namibia referring to the country report of the Special Rapporteur on HRWS

In its *Special Baseline Study Report on Human Rights in Namibia*, the ombudsman explored the situation of the right to safe drinking water and the right to sanitation. The reports identified the following areas of special concern in that context: i) availability; ii) quality; iii) physical and economic accessibility. As for the quality, the report cites the concerns expressed by the Special Rapporteur on the human right to safe drinking water and sanitation in that regard and notes that there appears to be little on-going monitoring of water quality at the local level.



83 Statement by the United Nations Special Rapporteur on the human right to water and sanitation (Visit to Kenya, 22-28 July 2014)

The role of NHRIs in the post-2015 development framework⁸⁴

Whilst the MDGs' primary focus was development, the post-2015 framework also incorporates human rights relevance. The following reasons underpin the relevance of the Sustainable Development Goals to NHRIs:

- There are goals included in the SDGs that relate to economic, social and cultural rights, including the right to water and sanitation, right to health, right to food.
- There are also goals that relate to civil and political rights.
- SDGs are emphasizing the principles of equality, non-discrimination and access for all.

NHRIs are uniquely placed to connect implementation and monitoring efforts of the SDGs resulting from their **special “bridging” role**: NHRIs can inform future international accountability mechanisms related to the implementation of the Post-2015 Agenda along with disposing constitutional powers to influence the national implementation of the SDGs. Thus, NHRIs can not only serve as relay mechanism between the global mechanism and the State, but they can perform similar functions among national stakeholders engaged in national level implementation efforts of SDGs (government, civil society etc.).

Furthermore, the seven Special Procedures mandate-holders of the HRC formulated recommendations with regards to the post-2015 development framework. In their statement they highlighted, among others, that “States should provide authority and resources for independent **NHRIs to monitor the implementation of the post-2015 commitments.**”⁸⁵

In addition, several NHRIs already have substantial experience in promoting, monitoring and protecting human rights in the implementation of the MDGs including water and sanitation. There is an emerging coalition of NHRIs worldwide who dispose valuable practice and knowledge in relation to promotion and protection of water governance-related human rights. These inspiring examples can pave the way and provide additional input into the establishment of the accountability mechanism of the post-2015 agenda and further influence implementation efforts of the SDGs, in relation to water and sanitation in particular.

Against this backdrop, there are several areas where NHRIs can add value and complement national and global efforts in the timely and adequate implementation and monitoring of the water and sanitation SDG (SDG6). NHRIs may do so across several areas of their mandate, notably in promoting and protecting human rights, advising governments and cooperating with various stakeholders (See further sections). **Each of this function allows them to make an important contribution** in that respect.

Furthermore, there are areas where NHRIs could particularly engage in supporting national implementation and monitoring efforts of the water and sanitation related SDG. These may encompass the following:

84 Briefing paper. Realizing rights through the sustainable development goals: The role of national human rights institutions. Steven Jensen, The Danish Institute for Human Rights and Allison Corkery and Kate Donald, Center for Economic and Social Rights. 2015 (<http://www.humanrights.dk/publications/realizing-rights-through-sustainable-development-goals-role-national-human-rights>)

85 Statement by 17 Special Procedures mandate-holders of the Human Rights Council on the Post-2015 development agenda, 21 May 2013 : <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13341&LangID=E>

A. Promoting the inclusion of human rights in national implementation plans

The promotional mandate of NHRIs enables these institutions to raise awareness of sustainable development related human rights, to foster the understanding of human rights of actors involved in the SDG implementation process and to perform human rights education programmes to various stakeholders. Successful outreach by NHRIs in that context may greatly facilitate the human rights education of key national actors contributing to the embedding the SDG implementation efforts into human rights.

More concretely, NHRIs may also promote the national translation efforts of the water and sanitation goal into national implementation plans from a human rights lens. Advocating for human rights-compliant national targets, benchmarks and indicators may fall into these activities.

Promotional activity of the NHRI of Hungary and the post-2015 agenda

The NHRI of Hungary published a book entitled *Towards a Human Rights Based Water Governance: The Challenges for the post 2015 Thematic Consultation on Water* in collaboration with WaterLex. This publication outlines the emergence of the Human Rights Based Approach (HRBA) to water governance in the post-2015 framework. It addresses the development of the HRBA to water governance from the Dublin Declaration of 1992 onwards. The emergence of the HRBA in light of two recent major developments are analysed: the Rio+20 Conference of June 2012 resulting in the decision to prepare a set of Sustainable Development Goals that are “coherent with and integrated into the United Nations development agenda beyond 2015 and the revision of the Millennium development Goals.



B. Advising governments on human rights-centred implementation

These advisory roles allow NHRIs to provide opinions, recommendations, proposals and reports to the government, parliament or other responsible organs. Thus, they can encourage and positively influence the harmonization of national legislation with international sustainable development related goals in view of compliance with human rights. NHRIs may even conduct a human rights impact assessment of suggested implementing policies or legislation. Furthermore, NHRIs may be also involved in translating and tailoring the globally agreed water and sanitation goal into national frameworks by contributing to the development of national indicators, benchmarks etc. In addition, NHRIs can be also involved in the national level review process, including to verify that the use of financial assistance supporting the implementation of the water and sanitation goal is in line with human rights commitments.

C. Monitoring progress and engage in government accountability

A core function of NHRIs is to independently review the implementation of a nation’s human rights commitments and make recommendations for improvement. In this sense, NHRIs are empowered to perform an independent monitoring role and to respond to citizen calls for alleged human rights violations.

NHRIs are uniquely placed to ensure a human rights-based monitoring of the implementation of the post-2015 agenda. The unique role of these institutions is to ensure that monitoring is designed

to track adherence to the commitments under international and national human rights law. Several NHRIs worldwide have a wide-ranging experience in monitoring progress towards achieving internationally agreed commitments and goals based on indicators and benchmarks through collecting data from various stakeholders (national statistical offices, Government, public bodies, civil society etc.). As independent public bodies, they dispose serious added-values compared to other national monitoring bodies: NHRIs can collect national level data, act as neutral fact finders, perform independent research and initiate investigations ex officio. Therefore, NHRIs can act as a catalyst for monitoring that is participatory, evidence based, transparent and accountable.

NHRIs can leverage their experience of rights monitoring to positively influence the design and performance of mechanisms for monitoring SDG implementation in a number of ways:

- In several countries NHRIs have increased demand for the collection of relevant statistics from government departments and in some cases even collaborated directly with national statistical offices.
- NHRIs provide an independent source of information and a distinctive lens to analyse that information, which can be used to evaluate whether efforts to achieve the SDGs are respecting, protecting and fulfilling human rights - and in tracking the implementation of previous recommendations of any monitoring mechanism
- The bridging and convening role supports affected communities to share their experiences and express their views, vital perspectives in monitoring the extent to which SDG progress is equitable and rights-compliant.

D. Monitoring inequality and discrimination

The concept of “leaving no one behind” lies at the heart of the post-2015 agenda. The mandate of NHRIs allows them to identify systematic violations and to seek redress by formulating recommendation, policy options etc. to authorities. The implementation of the MDGs showed that global/national performances may not reveal significant discrepancies in the realisation of progress in relation to specific groups, regions etc. NHRIs are thus uniquely placed to monitor and identify systematic violations with regards to inequality and discrimination during the implementation of the water and sanitation related sustainable development goal. Raising awareness of identified violations, contributing to national reports on implementing progress in that regard and proposing recommendations to remedy the situation may all fit the mandate of NHRIs.

E. Protection of human rights of victims of development related violations

NHRIs have a constitutional mandate to find remedies to both individual and systematic human rights violations. They can initiate investigations, conduct public inquiries, collect data, and refer to relevant authorities and even to the public. Depending on their mandate, some NHRIs even dispose quasi-judicial powers allowing them to seek redress. This function will be particularly significant to ensure that the potential eagerness of governments to implement the water and sanitation SDG does not lead to other human rights violations.



Questions

- What are the core requirements of the Paris Principles vis-à-vis national human rights institutions?
- Why can national human rights institutions play a unique role in the promotion and protection of economic, social and cultural rights?
- What are the practical implications of the human rights-based approach to water governance?
- How can national human rights institutions interpret their mandate to address the human right to water?
- What are the key internal and external challenges in doing so?
- How can national human rights institutions participate in the international human rights system?
- How can NHRIs participate in the implementation of the water and sanitation SDG?

Exercises

- Explore the breadth of your national mandate in relation to the human right to water and sanitation
- Review your internal and external resources and address the challenges of implementing economic, social and cultural rights
- Identify forums and partners for future international cooperation
- Identify potential areas of collaboration at national level and key actors in view of participating in view of participating in the implementation of the water and sanitation SDG.

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▶ SECTION 3

MONITORING THE RIGHT TO WATER



Objective: *the objective of this chapter is to present practical aspects of the monitoring of the human right to water. It provides with methodology and other tools to assist NHRIs in this task.*

INTRODUCTION

Monitoring is a systematic process of collecting, analysing and using information to assess developments in the human rights situation over time to spot deterioration or progress. Monitoring can help uncover underlying causes of achievements and challenges for the realisation of the right to water. Analysis of policies, regulation, practice, events, reports, surveys and statistics enables NHRIs to track developments in the human rights situation over time. Monitoring helps national and local stakeholders identify gaps in implementation of the right to water. This information also provides a foundation for future legal, political and financial decisions. Making monitoring results available to the public helps raise awareness of human rights and provides rights holders with knowledge and information they can use to hold the State accountable for realising the right to water.

According to the Paris Principles NHRIs shall make reports and advise State actors on the general human rights situation in the country and specific human rights issues and vulnerable groups. The box below illustrates the NHRI monitoring mandate and how it links to other mandate areas.



The NHRI mandate includes the following activities that together constitute human rights monitoring:

- examining the legislation and administrative provisions in force, as well as bills and proposals and make such recommendations as it deems appropriate;
- preparing reports on the national situation with regard to human rights in general;
- drawing to the attention of the Government situations in any part of the country where human rights are violated and making proposals.

In particular a NHRI shall:

- be able to pinpoint what is wrong with a situation or a case and to indicate what steps can be taken to remedy it;
- improve the implementation of human rights by substantiate claims of better protection in the dialogue with authorities and regional and international organizations;
- make information available so it can be used by civil society organizations and the media in advocacy for human rights improvements.

Human rights monitoring is a core element of the NHRI mandate and the position of NHRIs as independent State institutions provides a unique platform for using monitoring strategically to promote and protect the right to water. NHRIs have a formal relationship with the State and within the international human rights system. At the national level, NHRIs often have more power to collect data from State institutions. They also have access to give recommendations to legislative and policy processes through mandatory reporting to parliament and commenting on draft laws and policies. The status as an independent State institution can be used as a platform to use monitoring and research as a vehicle to convene facts-based stakeholder dialogue and build bridges between the State, rights holders, civil society and businesses. NHRIs with quasi-judicial competence can use their complaints handling system to identify specific human rights concerns, which call for monitoring and research. At the international level, NHRIs can make written and oral interventions in the UPR process and Treaty Body Reporting. Engagement with the international human rights systems enables NHRIs to act as translator and mediator of international human rights standards and principles in the national context.

NHRIs also face various challenges in relation to monitoring. Not all NHRIs have explicit mandates to address ESCR, including the right to water, and need to address these rights through e.g. their non-discrimination mandate or civil and political rights. Internally, NHRIs may lack adequate human and financial resources to collect and analyse data and fulfil their monitoring functions on all rights and may strategically prioritize certain rights areas over others.

SETTING THE SCOPE FOR MONITORING

In order to ensure that the monitoring can be conducted in an effective, sustainable and consistent manner, it is crucial to identify what stakeholders the monitoring should concern and what obligations and entitlements should be in focus. When NHRIs design monitoring strategies, the first step is to define the scope of the monitoring. Here follows guidance on key issues for consideration in determining the scope of the monitoring.

Duty bearers and rights holders – a fundamental distinction

Human rights-based stakeholder analysis has as the core point of reference the fundamental distinction between duty bearers and rights holders. In human rights monitoring a key concern is to assess the capacities of duty-bearers to meet their obligations and of rights-holders to claim their rights.



“Programmes of development cooperation contribute to the development of the capacities of duty-bearers to meet their obligations and of ‘rights-holders’ to claim their rights. In a HRBA human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.”

The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding among UN Agencies (UN 2003) (https://undg.org/main/undg_document/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies/)

Thus, the commitment and capacity of State actors to meet their obligations is a core target area of human rights monitoring. This includes the capacity to define, monitor and enforce regulations and standards for non-State service providers, which are either contracted by the State to deliver services or do so on own initiative (e.g. NGOs or religious institutions). From a human rights perspective, a distinction is made between the State, private sector providers and rights holders. The State is always the duty bearer with an obligation to respect, protect and fulfil the right to water; however, in many countries the delivery of water services is shared between the government, development partners, private companies, civil society and other actors. The State has an obligation to ensure these providers respect human rights and comply with State regulations for water governance and delivery.

Rights holders are all individuals within the jurisdiction of the State. Rights holders are often represented by civil society, but it is important to keep in mind that civil society organizations do not always represent all groups in society. Therefore, the State must ensure that targeted efforts are made to identify vulnerable, marginalized and other groups in society and ensure targeted steps are taken to realize their right to water, including mechanisms for participation and accountability.

Commitment and capacities of States to meet their obligations

The duty to respect, protect and fulfil human rights constitutes the cornerstones of State obligations, as described above, and all human rights monitoring should take into account the level of commitment and capacity of given State actors in the given context to meet these obligations.

- **Respect** (summary of analysis in Section 1)
- **Protect** (summary of analysis in Section 1)
- **Fulfil** (summary of analysis in Section 1)

Moreover, a number of complementary State obligations derive from the concept of progressive realisation. The ICESCR, Article 2 (1), states:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”⁸⁶.



ICESCR provides an interpretation of this article in General Comment 3. The Committee points out that *“progressive realisation constitutes a recognition of the fact that full realisation of all economic, social and cultural rights will generally not be able to be achieved in a short period of time.”⁸⁷* Progressive realisation is a “flexibility device” that acknowledges the difficulties of any State trying to implement these rights. However, the Committee also states that it is the *“overall objective, indeed the raison d’être, of the Covenant [...] to establish clear obligations for States parties in respect of the full realisation of the rights in question.”⁸⁸*

86 International Covenant on Economic, Social and Cultural Rights, art 2(1)

87 GC 3, para. 9; Committee on Economic, Social and Cultural Rights: General Comment no. 3: The nature of States parties obligations (1990) E/1991/23

88 GC 3, para. 9.

By implication, a number of State obligations, which are of immediate effect, are derived from the concept of progressive realisation. Below follows a list of these obligations with explications directly adopted from the CESCR. Elaborations are provided in endnotes, where related statements by former Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque (hereafter in Section 3 referred to as former SR de Albuquerque) are also inserted to illustrate how monitoring regarding these obligations may be framed.

Obligation	Considerations for NHRI monitoring
Non-discrimination: States must guarantee that rights will be exercised without discrimination. ⁸⁹	- Disaggregation of data to detect discrimination - Targeted monitoring of specific groups (e.g. women, children or migrants)
Appropriate means: States must take steps by all appropriate means to pursue the progressive realisation of rights. ⁹⁰	Monitoring of implementation of legislative, judicial, administrative, financial, educational and social measures taken by the State.
“Achieving progressively the full realization of the rights recognized”: This is considered the principal obligation of result reflected in ICESCR, article 2 (1), and it imposes on States parties “an obligation to move as expeditiously and effectively as possible towards that goal.” ⁹¹	Monitoring over time to identify whether progress is being made on all aspects of the right to water (availability, accessibility (physical, affordability, information and non-discrimination), acceptability and quality of water and participation, accountability and non-discrimination).
Retgression: Deliberately retrogressive measures taken by States require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources. ⁹²	Integrated approach to monitoring of ESCR to detect retrogression in any of the Covenant rights.

89 GC 3, para. 1. States former SR de Albuquerque: “States must actively and immediately ensure that the principle of non-discrimination is upheld in decisions and practices relating to the rights to water and sanitation. This principle requires States to eliminate both formal and substantive discrimination on all prohibited grounds and requires the adoption of positive measures where necessary to dismantle unequal access to water and sanitation.” A/HRC/24/44, para. 24; Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque (2013)

90 Such steps must be taken “within a reasonably short time after the Covenant’s entry into force for the States concerned”. Moreover, the steps must be “deliberate, concrete and targeted as clearly as possible.” (GC 3, para 2). Such steps include: legislative measures, judicial remedies, as well as administrative, financial, educational and social measures (GC 3, paras. 3-7). Former SR de Albuquerque comments on some of these steps. On financial and administrative measures, she notes “Mobilizing tax revenue, in an appropriately targeted manner, is the responsibility of governments, and a way of implementing their human rights obligations.” (A/HRC/24/44, para. 63) On legislative measures, she notes “Water and sanitation services must be embedded in a sound legislative policy and regulatory framework.” (A/HRC/24/44, para. 23) On educational and social measures, she notes, “The Social Justice Coalition in Cape Town provides an example of how budgeting in the water and sanitation sectors that incorporates transparency, education and participation can result in gains in sustainability and better implementation of the rights to water and sanitation.” (A/HRC/24/44, para. 71). On judicial remedies, she notes, “Accountability requires States to provide effective remedies for breaches of the rights to water and sanitation. For this, a legal framework, appropriate policies, functioning institutions, and the necessary procedures and mechanisms must exist so that individuals and communities can seek redress and secure their rights to water and sanitation. The rights to water and sanitation are justiciable human rights, and should be recognized as such by governments and courts.” (A/HRC/24/44, para. 83).

91 GC 3, para 9. Former SR de Albuquerque comments on the importance of full realisation and the steps needed to progressively achieve it: “States cannot expect to meet the obligation to progressively realize human rights with minimal investments in the water and sanitation sectors that merely enable countries to make “some” progress over time...They also require the use of resources in ways that have the greatest possible impact on achieving universal realisation of these rights, by prioritizing essential levels of access to the most marginalized.” (A/HRC/24/44, para 58).

92 GC 3, para 9. Elaborating on this principle, Catarina cites General Comment 19, para 42 to the effect that “A ‘strong presumption’ exists that retrogressive measures are prohibited, and she continues: “A retrogressive measure is one that, directly or indirectly, leads to backward steps in the enjoyment of human rights. Examples include raising the price of services disproportionately so that poor people can no longer afford water and sanitation, and letting infrastructure deteriorate due to a lack of investment in operation and maintenance” (A/HRC/24/44, para 13).

<p>Minimum core obligation: It is incumbent upon every State party to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights in the Covenant.⁹³</p>	<p>Identification of benchmarks for minimum essential level for each element of the right to water</p>
<p>Maximum of its available resources: A State must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy at least its minimum core obligations. Irrespective of resource constraints, the obligation remains to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.⁹⁴</p>	<p>Integration of output and input monitoring, e.g. through budget analysis and tracking of expenditure in the water sector.</p>
<p>Monitoring of non-realisation: Resource constraints under no circumstances eliminate State obligations to monitor non-realisation of rights, and to devise strategies and programmes for their promotion.⁹⁵</p>	<p>Engaging the State in dialogue about monitoring and data collection practices, e.g. through national statistical organizations and the public administration.</p>
<p>International assistance and cooperation: States must take steps to seek and promote such measures, including in particular of an economic and technical nature.⁹⁶</p>	<p>Identification and monitoring of projects and programmes initiated through international cooperation; e.g. donor funded water infrastructure projects or service delivery by international NGOs or development agencies.</p>

93 GC 3, paras. 10-11. Elaborating on these observations, former SR de Albuquerque calls for systematic comparative analysis to challenge claims by States that they lack resources, as often “the true reason is the lack of political will to prioritize social services, and in particular water and sanitation for the most disadvantaged.” Thus, expenditure on water and sanitation sectors should be compared to expenditure on national allocation of funds e.g. the military, bailouts for banks, the construction of infrastructure for the hosting of mega-events, and the amount of funds lost due to the toleration of corruption (A/HRC/24/44, para 13).

94 GC 1. Former Special Rapporteur de Albuquerque notes, “For service provision to be sustainable, States must utilize effective monitoring and data collection practices. Monitoring the effects of decisions made and steps taken enables accountability and allows States to assess which decisions and processes produced quality impactful outcomes, which is useful for informing future decisions that are sustainable.” (A/HRC/24/44, para 54).

95 GC3, para. 13. Moreover, the essential role of such cooperation in facilitating the full realisation of the relevant rights is further underlined by the specific provisions contained in articles 11, 15, 22 and 23. With respect to article 22 the Committee has already drawn attention, in General Comment 2 (1990), to some of the opportunities and responsibilities that exist in relation to international cooperation. Article 23 also specifically identifies «the furnishing of technical assistance» as well as other activities, as being among the means of «international action for the achievement of the rights recognized ...» Former SR de Albuquerque notes, “The obligation of States to progressively realize the rights to water and sanitation through the use of maximum available resources, including through international cooperation and assistance, is essential to achieving sustainability.” (A/HRC/24/44, para 60).

96 GC15, para 28: States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity; (f) increasing the efficient use of water by end-users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; (i) and establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.

97 Former SR de Albuquerque is a proponent of the argument that it is a State obligation to observe sustainability: “Sustainability is more than mere reliability or functionality, and requires a balance of its different dimensions. Water and sanitation must be provided in a way that respects the natural environment; finite resources must be protected and overexploitation cannot occur. Likewise, the economic and social dimensions have to be balanced: while service provision relies on raising sufficient revenue, this must be achieved in such a way as to ensure affordability for all people in society, including those living in poverty.” (A/HRC/24/44, paras. 20 - 21)

Sustainability: States must adopt strategies and programmes to ensure that there is sufficient and safe water for present and future generations (reducing depletion and contamination of water resources, monitoring water reserves, ensuring developments do not interfere with the right to water and assessing impacts of actions that may impinge on water availability and natural-ecosystems watersheds)⁹⁷. In order for services to be sustainable, they must be available and accessible to everyone on a continuous and predictable basis, without discrimination.⁹⁸

Monitoring frameworks should consider the national environment and finite resources as well as economic and social dimensions linked to utilization of water resources.

The capacities of rights-holders to claim their rights

In order for rights-holders to be able to claim their rights, the state is obligated to provide rights-holders with the capacity to participate. This requires inclusive and responsive modes of governance, empowered individuals who are aware of their rights and have the ability and opportunity to engage in their local context and address barriers to the enjoyment of their rights⁹⁹. The HRBA entails moving from a focus on human needs to human rights. Consequently NHRIs should not only focus on monitoring the inputs (human, financial and technical resources) and outputs (availability, accessibility, acceptability and quality of water) but also on the steps taken by the state to ensure public participation and empower rights holders to claim their right to water.

Monitoring by NHRIs should thus include indicators relating to the state's efforts, in law and fact to enable rights holders to claim their rights. This can be aligned with broader monitoring of the right to participation as well as ESCR in general. Specifically for the right to water, General Comment No. 15 sets out the following obligations, which NHRIs should monitor:

- Information accessibility: Accessibility includes the right to seek, receive and impart information concerning water issues (para 12(c)(iv))
- National water strategy and plan of action: The strategy and plan should be devised and periodically reviewed on the basis of a participatory and transparent process. The content and process of devising the strategy and plan should give attention to all disadvantaged or marginalized groups (para 37(f))

Former SR de Albuquerque further unfolds rights holder empowerment by emphasizing that participation is a human right, which must be institutionalized. Consequently, states must ensure active, free and meaningful participation in setting the agenda for discussion, policy choices, implementation, monitoring and evaluation of steps taken to realize the right to water. Participation must take place at all levels of decision-making, including strategic decisions on overall direction, use and (re)distribution of resources¹⁰⁰. Efficient rights holder participation entails fulfilling the three pillars of participation: access to information, public participation and access to justice¹⁰¹.

98 Former SR de Albuquerque is a proponent of the argument that it is a State obligation to observe sustainability: "Sustainability is more than mere reliability or functionality, and requires a balance of its different dimensions. Water and sanitation must be provided in a way that respects the natural environment; finite resources must be protected and overexploitation cannot occur. Likewise, the economic and social dimensions have to be balanced: while service provision relies on raising sufficient revenue, this must be achieved in such a way as to ensure affordability for all people in society, including those living in poverty." (A/HRC/24/44, paras. 20- 21)

99 Danish Institute for Human Rights, *Working for Public Participation and Civil Society*, 2013, p. 5

100 A/69/213, para 4 and 91-92

101 Dr. Helen Potts *Participation and the Right to the Highest Attainable Standard of Health*, page 16 <http://repository.essex.ac.uk/9714/>

Non-state providers of water services

The primary focus of NHRI monitoring is on the conduct of the state as well as the results for rights holders in terms of progressive realisation of the right to water. However, other stakeholder groups have roles and responsibilities when it comes to water governance and delivery. NHRIs can consider how monitoring frameworks can capture the state's engagement with these actors and activities to establish a comprehensive picture of the right to water.

In many cases the state delegates its responsibility to provide water to private sector actors. Often, other non-state actors, such as NGOs and international development agencies and donors engage in direct delivery of water services. However, the state remains the primary duty bearer responsible for ensuring that the right to water is respected, protected and fulfilled. General Comment No. 15 states that where water services are operated by third parties, the state must prevent them from compromising the right to water through the establishment of an effective regulatory system, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.

This entails that the state establishes:

- participatory processes for designing service delivery systems for third parties;
- contracts and service level agreements that reflect the relevant standards and principles for progressive realisation of the right to water;
- monitoring mechanisms to detect deviations from the contractual obligations;
- enforcement mechanisms to ensure compliance with contractual obligations;
- feedback and complaints mechanisms for rights holders to hold the private sector providers accountable.

NHRI monitoring can focus on the existence and efficiency of the mechanisms established by the state and the actual compliance with service standards.



Examples of NHRI scoping of the right to water

The **Kenya National Commission on Human Rights** developed a report on internally displaced persons (*Homeless at home: A human rights assessment of situation of internally displaced persons, 2011*) containing the assessment of the human right to water and sanitation situation of internally displaced persons.

The **Mali National Commission on Human Rights** held meetings with the staff, visited the premises and discussed individually and in groups with inmates to carry out audit of prisons and police stations in the country. In total, the Commission visited detention centres in four municipalities focusing on the situation of detainees along with available infrastructure (*WaterLex Compilation of Good Practices*)

The Colombian Defensoría del Pueblo has developed a research program that assists in evaluating public policies for ESCR, including the right to water. The program is carried out in three stages: (1) Identification of problems by analysing rights and obligations based on existing rules, jurisprudence of the Constitutional Court, international law covenants and agreements. (2) Discussion of the extent to which public policies comply with ESCR obligations with a particular focus on vulnerable groups and development of a monitoring instrument. (3) Production of reports and recommendations. The Program monitoring of the public policies on the right to water – *Water ProSeDHer* – monitors the effectiveness of the policies adopted to realize the Right to Water in Colombia by relying on the indicators developed by the Committee on ESCR. The public policies include the constitutional, legal and regulatory framework of water and sanitation, national plans, departmental and development plans, strategic plans of the Ministry of Environment and public sector policies on domestic public drinking water and basic sanitation and environmental management of water resources in Colombia.

INDICATORS, BENCHMARKS AND TARGETS

Monitoring entails defining indicators, benchmarks and targets for measuring the state's compliance with its human rights obligations and commitments. The following sections outline the definitions and methodology for developing a monitoring framework.

The UN High Commissioner for Human Rights defines a human rights indicator as: *“specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights.”*¹⁰²

In other words, **indicators** refer to something which can be measured in quantitative or qualitative terms. An indicator tells us something about the right to water, which helps assess the availability, accessibility, acceptability and quality of water as well as human rights principles of non-discrimination, participation and accountability. The indicator identifies what we want to measure in generic terms but does not define any upper or lower limit for whether the indicator has been fulfilled (e.g. litres per person per day). The benchmarks (e.g. 50 litres per person per day) are often defined at national level and guided by international frameworks developed by UN agencies. The MDGs and SDGs are examples of international frameworks that seek to define globally applicable benchmarks.

102 Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (New York and Geneva, 2012)

International standards and indicators

The process of developing a monitoring framework takes its point of departure in the international standards for the right to water set out in Art 11 of the ICESCR and further specified in General Comment 15 to the ICESCR (see Section 1). Over time the CESCR has developed the availability, accessibility, acceptability and quality (AAAQ) criteria for specifying the normative content and obligation of result for fulfilling ESCR, including the right to water. This is supplemented by obligations of conduct, relating to adoption of national laws, policies, regulations and governance processes for realisation of human rights as well as human rights principles such as participation and accountability.

Other parts of the international human rights system, such as the Special Rapporteur on the human right to safe drinking water and sanitation, the Human Rights Council and Treaty Bodies also address the right to water from different angles. While the human rights standards are set out in very general terms, other international actors, such as UN agencies, international NGOs and academia, continuously seek to further specify and operationalize human rights. For instance, the WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation (JMP)¹⁰³ and UN Water's Global Annual Assessment for Water and Sanitation (GLAAS)¹⁰⁴ have developed specific indicators and targets for the right to water.

The table below lists illustrative human rights standards and outcome indicators derived from a review of international human rights law (authoritative sources) and guidance from international trendsetting actors in water (secondary sources). The next section will explain how NHRIs can develop national indicators and design a monitoring system for structural, process and outcome indicators.

103 <http://www.wssinfo.org/>

104 http://www.who.int/water_sanitation_health/glaas/en/

Criteria	Human rights standard	Generic indicator
Availability	Sufficient water	Quantity of water per person per day
	Regularity of supply	Periods of unavailability of water
		Incidents of unavailability of water over time
Accessibility		
Physical accessibility	Within safe physical reach	Total collection time including waiting time
	Access in or in immediate vicinity of each household, educational institution and workplace.	Number of people per water outlet
	Physical security should not be threatened during access.	Number of reports of threats/assaults
Economic accessibility (affordability)	Water, and water facilities and services must be affordable for all	Total (direct + indirect) costs as proportion of income
	Direct and indirect costs must not threaten the realisation of other covenant rights.	Total (direct + indirect) costs as proportion of total cost of fulfilling basic needs/rights
Non-discrimination	Accessible to all, including the most vulnerable or marginalized, in law and in fact; culturally appropriate and gender-sensitive	Proportion of vulnerable population groups covered by targeted programmes
Information accessibility	Right to seek, receive and impart information concerning water issues.	Proportion of disconnections/changes in water supply notified in advance
Acceptability	Water should be of an acceptable colour, odour and taste.	No of complaints about acceptability of water
Quality	Water for personal and domestic uses must be safe: free from threats to personal health	Proportion of water quality tests complying with WHO quality standards
		Proportion of rights holders using improved water sources

Table 3.1: Illustrative international indicators for the right to water

Types of indicators

According to the UN High Commissioner for Human Rights, human rights indicators can be divided into Structural, Process and Outcome Indicators. In 2014, the Special Rapporteur on the human right to safe drinking water and sanitation issued a report which included a table of illustrative structural, process and outcome indicators for the right to water and sanitation¹⁰⁵. An example of the different types of indicators is illustrated in the figure below.

EXAMPLE OF HUMAN RIGHTS INDICATORS FOR THE AVAILABILITY CRITERION

Structural indicators: measure the State's acceptance and commitment to realisation of human rights through adoption of legislative, policy and regulatory frameworks and mechanisms to respect, protect and fulfil human rights.

Process indicators: measure the State's ongoing efforts to transform legal and policy commitments into the desired results through programmes for progressive realisation of human rights. The process indicators relate to the state's *obligation of conduct* as defined in art 1(2) of ICESCR.

Outcome indicators: measure the actual level of realisation of human rights from the perspective of the rights holders and thus capture the effects of the state's structural and process oriented initiatives to respect, protect and fulfil human rights. The outcome indicators relate to the state's *obligation of result*, which requires states to achieve specific targets to satisfy a specific human rights standard. To the extent possible, the realisation of the right to water should be assessed via quantifiable indicators in order to compare data for different groups in society; to monitor progress or regression over time; and to provide an overall snapshot of the situation in a country. Qualitative indicators can be useful to add further depth to the analysis if they are carried out systematically.

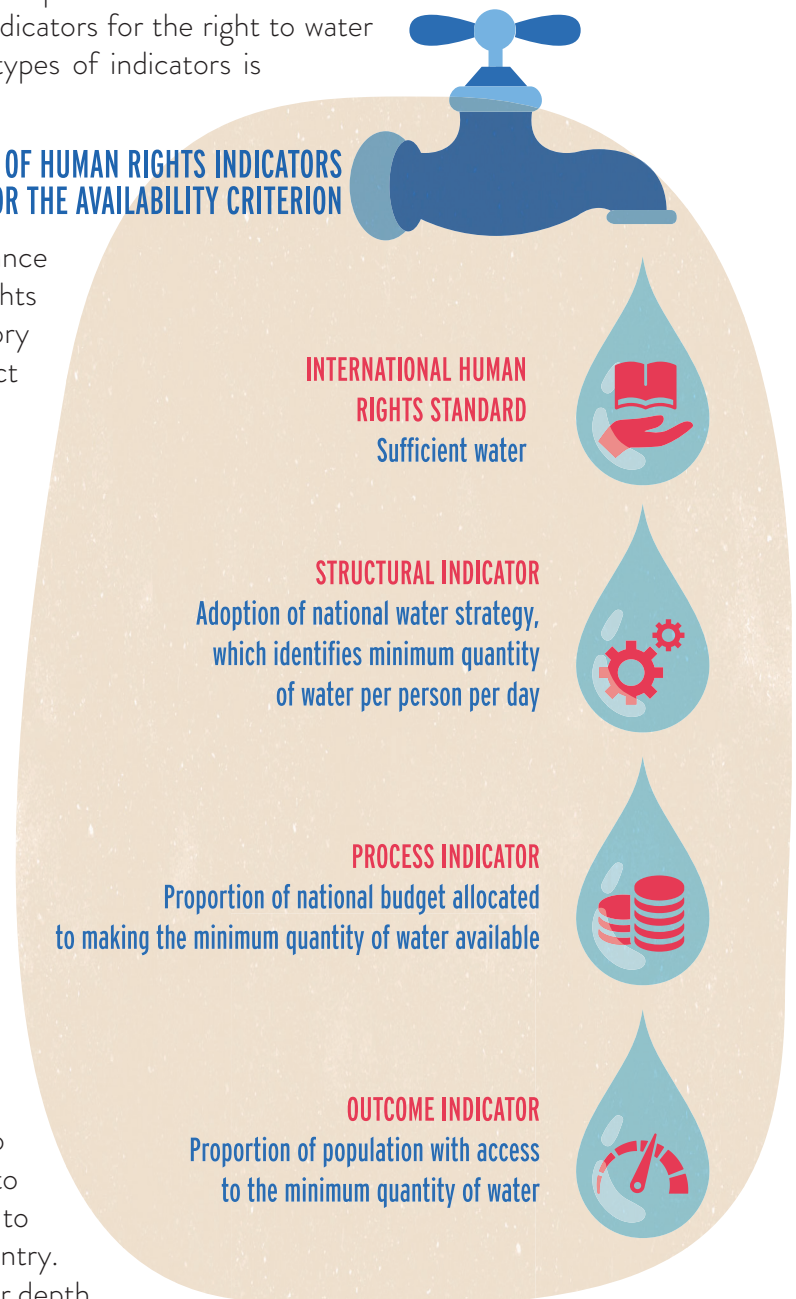


Figure 3.1: Example of human rights indicators for the availability criterion

105 Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque: Common violations of the human rights to water and sanitation A/HRC/27/55

Contextualising indicators in a country context

In order to make international human rights commitments relevant in a country context, it is useful to develop national indicators, benchmarks and targets. National indicators are developed by relating the international generic indicators to the conditions in a national context. It may also be relevant to define indicators and benchmarks at local level, in particular if there are significant differences in water delivery systems, economic development, geography or rainfall patterns within a country. In countries where customary law is applied, indicators can be operationalized at the local level, where customary institutions, such as traditional leadership, can play important roles in informal justice systems, local decision making and social power structures in the community. In cases where large-scale infrastructure or other water sector developments are taking place, it can also be relevant to develop indicators at project level.

The generic international indicators should be considered guidance for defining **national indicators**. When selecting national indicators, the main objective is to ensure the indicator captures the most relevant information in the local context. For example, regularity of water can be measured in a variety of ways and different countries might have different distribution systems and mechanisms for ensuring regularity. Some countries have a comprehensive water infrastructure and water taps in all households, while other countries have water collection points, such as boreholes, as the main distribution system. Regularity of water might be very different in urban areas where households have individual taps and disruptions might occur on a daily or weekly basis; than in rural households, where disruptions in water supply might often be longer term and dependent on seasonal rainfall patterns.

When setting **national benchmarks**: The identification of national benchmarks should consider the actual conditions in the national context as well as existing legal and policy commitments made by the state. In some countries, it might be difficult to set national benchmarks if there are substantial differences between different parts of the country or between rural and urban areas. Ideally, benchmarks should be defined in national laws, policies and regulations so the state can be held accountable for meeting them. National benchmark setting can take into consideration progressive realisation, for instance by setting yearly **targets** for gradually realising the right fully. Many countries do this in National Development Plans and other policy documents.

The table below summarizes the steps in the process of defining national indicators and targets.

Step	Description	Output
1. Review of national legal and policy framework	<ul style="list-style-type: none"> • Map key laws, policies, regulations and other documents directly or indirectly addressing the right to water. • Organize documents in hierarchy of authority (Constitution, laws, regulations, customary law, policies, action plans and programmes and guidance documents). • Identify sections and references to specific commitments to fulfil the right to water in the documents. • Organize data according to the AAAQ criteria and principles of non-discrimination, participation and accountability. 	List of references to AAAQ criteria, non-discrimination, participation and accountability
2. Identification of indicators and benchmarks	<ul style="list-style-type: none"> • Consider whether the generic international indicator is reflected in the national context. • If yes: Identify whether the national legal and policy framework addresses this indicator directly. If this is not the case, decide whether the international indicator can be adopted or an alternative indicator should be formulated. • If no: Formulate a national indicator, taking the local context into account. • Identify the most feasible indicators for monitoring (consider data availability, purpose and scope of monitoring, complexity in data collection and analysis and financial and human resource constraints). • Identify benchmarks and targets in the national legal and policy framework. If there are no benchmarks, consider initiating a consultation with key stakeholders and experts to agree on a national benchmark. 	National indicator list
3. Assessment of compatibility with international human rights standards	<ul style="list-style-type: none"> • Compare national indicators and targets with international human rights standards and indicators. 	List of gaps in the national legal and policy framework



Examples of NHRI monitoring frameworks

The Danish Institute for Human Rights created the AAAQ (Availability, Accessibility, Acceptability and Quality) Toolbox aiming to support the operationalization of the rights to water, sanitation, food, housing, health, and education. It provides different stakeholders with a monitoring tool for ESCR, including the right to water. Designed as a multi-stakeholder approach, the AAAQ Toolbox offers common methodologies for all stakeholders as well as tailored tools for States, rights-holders, business, civil society and NHRIs. The toolbox contains, among others, the AAAQ Framework (The AAAQ Framework and the Right to Water – International indicators for Availability, Accessibility, Acceptability and Quality, 2014) and the AAAQ manual on the contextualization of indicators (The AAAQ and the Right to Water – Contextualizing Indicators for Availability, Accessibility, Acceptability and Quality, 2014). <http://www.humanrights.dk/publications/aaaq-manual-right-water-contextualising-indicators>

The **National Human Rights Commission of Nepal** developed a user's guide on indicators for monitoring ESCR in cooperation with the Office of the High Commissioner for Human Rights in Nepal (Indicators for Monitoring, Economic, Social and Cultural Rights in Nepal, User's Guide). While the focus of this work is mainly on the right to food, the right to housing, the right to health, the right to education and the right to work, indicators under three of these rights relate to the right to water and sanitation. The NHRC Nepal is further planning to work effectively for the protection and promotion of the right to water and food together (WaterLex Compilation of Good Practice).

The **Ombudsman of Colombia** has developed a tracking system consisting of indicators to monitor compliance of the Colombian government with its obligations on the implementation of the right to water. The tracking system includes variables that measure the level of progress and the degree of compliance in relation to the realisation of the human right to water. Two benchmarks are developed for the tracking system: i) Compliance with the law and; ii) Realisation of the right. Compliance with the law refers the level of compliance with each component of the law, particularly availability, accessibility and quality. It indicates the relative position of the people in certain geographical space with the right. The realisation of the right measures the extent of effectiveness of the compliance with each component of the right to water in terms of resources, capacity and utilization (Source: WaterLex's *National Human Rights Institutions and Water Governance: Compilation of Good Practices*).

STRUCTURING A MONITORING REPORT

When NHRIs conduct monitoring the analysis can be organized according to the structure, process and outcome system. This approach can be applied to monitoring of the right to water for the entire country, but can also be adapted to specific monitoring reports, e.g. focusing on a specific group of rights holders (e.g. rural women or undocumented migrants), a particular aspect of the right to water (e.g. budget analysis or acceptability of water) or a specific geographic region in the country.

Structural analysis

- **Purpose:** To identify the extent to which the state has accepted its human rights obligations and committed to fulfilling the right to water through ratification of treaties and adoption of laws, policies and plans.
- **Description:** This part of the analysis includes formal law requirements on e.g. local government actors as well as non-binding commitments made by private sector actors in the form of policies on human rights, social investment schemes etc. As formal law is not always consistently enforced in all areas of a country, it is important to identify informal and customary norms and procedures, as these may be the key point of reference for the local population.
- **Result:** Overview of the formal, informal and customary norms established and observed by stakeholders in the context.

The State's *acceptance* of the right to water can be measured by the ratification and domestication of international and regional human rights treaties; and the *commitment* can be measured by the extent to which the state has established adequate constitutional, legal, policy, institutional and judicial frameworks for promotion and protection of the right to water. The constitution and laws provide the legal basis for protection and promotion of the right to water, while the policy framework translates the legislation into an implementable programme of action. The national legal and policy documents set out the state's objectives, policy framework, accountability and remedy mechanisms, strategies and plan of action in relation to the right to water. These may be supplemented by detailed sets of regulations at various levels with some possibility of variation to fit local circumstances.



Examples of structural indicators

- International human rights treaties, relevant to the right to water, ratified by the State
- Time frame and coverage of national water and sanitation strategy
- Date of entry into force and coverage of measures to prevent, treat and control diseases linked to water

The structural indicators are a simple way of taking the temperature on whether a state has adopted relevant laws and policies (in countries where customary law is formally accepted, this should be considered in the overview of the legal and policy framework). However, the existence of laws, policies, strategies and action plans is only the first step towards realisation of the right to water. The content of these documents sets out in specific terms how the state seeks to implement the right to water (process indicators) and what the expected results are (outcome indicators).



Process analysis

- **Purpose:** To understand the efficiency and cumulative effects of measures, procedures, and activities undertaken by duty bearers and other stakeholders that contribute positively or negatively to the fulfilment of the right to water.
- **Description:** This part of the analysis addresses a very complex area and it requires significant time and resources to develop a complete understanding.
- **Result:** Overview of the processes that serve as vehicles for implementation and enforcement of state human rights commitments and processes that otherwise have adverse or positive impact on human rights outcomes.

Process indicators should be designed in such a way that they capture information, which helps “*identify all the measures, by way of policies and programmes, to attain outcomes related to the realisation and enjoyment of the right*”.¹⁰⁶ The process indicators thus seek to answer the following questions:

1. Are the government’s programmes and plans adequately addressing the human rights standards?
2. Why do or don’t the government’s programmes and plans lead to the intended results?
3. Are there more efficient and effective ways of achieving the intended results?
4. Do policy decisions lead to unintended negative human rights impacts (e.g. building a large dam to provide a water supply to a city that results in loss of water supply to local people)?

Process indicators can be quantitative and measure, for example, budget allocation to water infrastructure, the geographical coverage of piping systems and state programmes, the number of boreholes per 1000 persons in rural areas or specific efforts made to provide services to vulnerable groups. Process indicators can also be derived from a qualitative analysis of the water resource management systems and institutions. NHRIs can evaluate whether these institutions have adequate consultation, complaint, and redress mechanisms in place, as well as the efficiency of these mechanisms. The analysis can include an assessment of the NHRIs mandate, independence; the state’s response to its recommendations and statements; and information extracted from complaints handling. Other relevant actors can include, for example, water regulatory bodies, water management committees and formal and informal justice institutions.

It can be difficult to reduce the complex water management and development processes to specific and measurable indicators. In some instances, a qualitative contextual analysis might be a better approach. Therefore, stakeholder engagement and dialogue at national and local levels are essential when analysing and discussing appropriate programmes to deliver services to the population in a non-discriminatory manner and ensure adequate mechanisms for participation and accountability. The specific content of the process analysis depends on the national context. The table below lists some examples of elements that could be included in the analysis.

106 Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (New York and Geneva, 2012), p. 79

Criteria	Financial resources	Human resources (public and private actors)	Technical resources for water service delivery
AAAQ	Allocation and utilization of financial resources for water management, governance and delivery	<p>Number of qualified staff involved in water management, governance and delivery.</p> <p>Level of knowledge and skills of staff.</p> <p>Clearly defined roles and responsibilities in relation to public and private service providers (monitoring, evaluation and enforcement)</p>	<p>Quantity and quality of water infrastructure</p> <p>Efficiency in mechanisms for planning and prioritisation of investments and maintenance of infrastructure</p>
Non-discrimination	Budget allocations catering for vulnerable and marginalized groups	<p>Procedures for identifying and responding to marginalized and vulnerable groups</p> <p>Capacity of staff to engage vulnerable and marginalized groups, respond to their needs and promote equality</p>	Design of water facilities in accordance with needs of vulnerable and marginalized groups
Participation	Participation of rights holders in budgeting processes	<p>Procedures for staff engagement with rights holders</p> <p>Capacity of staff to engage with rights holders</p>	Avenues for rights holders to provide input in a meaningful and timely manner to planning of technical and infrastructure development projects
Accountability	<p>Access to information in timely fashion and acceptable form about budgets, expenditure and development plans</p> <p>Transparent and accessible mechanism for rights holders monitoring of budgets</p>	Transparent and accessible monitoring body and mechanism for feedback and redress for conduct of public and private sector staff involved in water management, governance and delivery.	Transparent and accessible monitoring body and mechanism for feedback and redress for inadequate provision or utilization of infrastructure.

Table 3.2: Analytical framework for an AAAQ process indicator analysis



Outcome analysis

- Purpose: To identify the extent to which rights holders enjoy the right to water
- Description: This part of the analysis focuses on the results of the state's efforts to implement its obligation to progressively realize the right to water. Output monitoring identifies whether the different elements of the right to water are fulfilled and identifies groups in society that are excluded or marginalized from water governance and delivery.
- Result: Overview of achievements and gaps in the enjoyment of the right to water

The outcome indicators measure the state's *obligation of result* and take the rights holders' point of view with regards to the quantity of water, distance to water sources, adaptation to cultural customs, etc. These indicators can often be measured quantitatively; e.g. per centage of the population for which water is Available, Accessible, Acceptable and of adequate Quality. per centages should be used with caution and when possible be disaggregated on prohibited grounds of discrimination. In some cases qualitative indicators might be more useful, in particular in relation to the Acceptability criterion. Outcome indicators are often long-term in nature and can only slowly be improved over time. For instance, an increase in the amount of water available in a town might require expensive and long-term infrastructure development programmes and improved access to water collection points for vulnerable groups might require long-term efforts to change community perceptions about equality and non-discrimination.



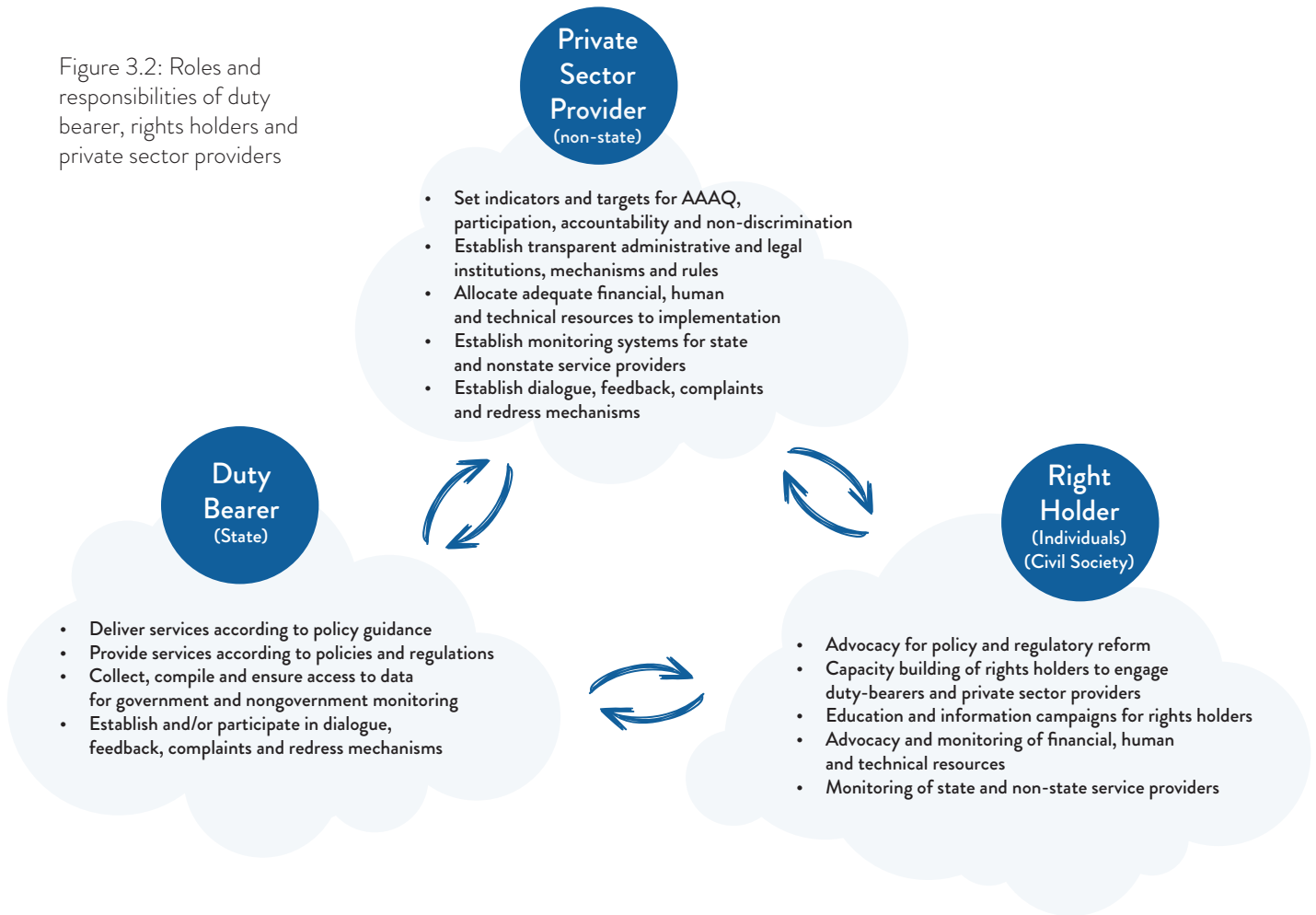
Examples of outcome indicators

- Proportion of population spending less than 30 minutes per day on collecting water;
- Number of reports of physical threats to collecting of water;
- Average accumulated period without water per year.

Stakeholder identification and analysis

The stakeholder analysis seeks to analyse the relationships between duty bearer, private sector providers and rights holders and the governance mechanisms for these relationships. This includes a mapping of the law and policy provisions guiding water delivery and service, as well as an assessment of how these provisions are implemented in practice. The analysis includes the political, social, economic and administrative systems for decision making and delivery of water services, including infrastructure. Furthermore, the principles of non-discrimination, participation and accountability should be adhered to in law, policy and practice. In many cases the state decentralizes responsibility for water delivery and service to local government, and in this case a review of by-laws and other regulations at local government level might be necessary to establish a clear overview of the local stakeholder structures.

Figure 3.2: Roles and responsibilities of duty bearer, rights holders and private sector providers



The following steps can be included in the stakeholder analysis:

1. Identify and assess the relationship between the duty bearer and private sector providers

The state is the duty bearer but in many cases services are delivered by private sector providers. The relationship between the state and the private sector providers is usually reciprocal; the state sets out expectations and requirements to private sector providers through tenders and contracts and the providers receive financial or other remuneration for delivery of service according to the formal requirements. It is important that the contracts, rules and regulations are open for public scrutiny and that there are avenues for the public to file complaints if abuses occur. The policy rationale for states to closely monitor these issue areas is particularly strong, as the states delegate duty to these actors.

2. Identify and assess the relationships between the duty bearer and the rights holders

Regardless of who delivers goods and services to the rights holders, the state is accountable to its duty to respect, protect and fulfil human rights. In addition to securing adequate water, this responsibility entails that the state establishes relevant mechanisms for public participation in policy and decision making, creates accountability mechanisms for complaints and redress and ensures that all rights holders are treated equally in law and practice. In long-term development planning, the state should ensure that the rights holders' perspectives and needs are taken into account, either through direct consultation or by engaging civil society in the formulation of development strategies.

3. Identify and assess the relationships between the private sector providers and the rights holders

In many countries, the private sector providers can charge a fee for delivering water services, and the relationship to the rights holders can be similar to any other supplier-customer relationship. All private sector providers are responsible for delivering the services set out in the contracts, rules and regulations as agreed with the state. If the private sector providers do not live up to their obligations, the rights holders should have access to remedy.

4. Identify and assess the role of other stakeholders

The relationship between duty bearer, private sector providers and rights holders cannot be seen in isolation. There is a wide range of stakeholders that have interests and/or specific functions in relation to ensuring the efficiency of the institutional systems and processes. For instance, international human rights institutions set out the international human rights standards and principles for the right to water; private companies might contribute to abuses of the right to water through pollution; donors might provide financial and other assistance to any of the three stakeholders; and other stakeholders (e.g. traditional leaders or churches) might exert formal or informal power over duty bearers, private sector providers and rights holders. An analysis of these stakeholders can consider their mandate, responsibilities, interests, competencies, attitude, power and networks and how these relate to the duty bearers, private sector providers and rights holders.

5. Assess the adequacy of institutional arrangements

The mapping of stakeholders' roles and responsibilities forms an analytical framework that can be used to examine how stakeholders act and relate to each other in practice. Informal relationships and power structures should also be considered. In many instances the informal arrangements at local level can differ significantly from the formal roles and responsibilities, e.g. when water services are being delivered by NGOs or religious organizations or in the absence of state and government institutions and agencies at local level. The table below suggests some analytical questions that can guide the analysis.

Legal/policy mapping (top-down approach)	Implementation of laws/policies (bottom-up approach)
<p>Are the institutional arrangements in the water sector adequately responding to human rights concerns and conditions in the national and local context?</p> <p>Do rules and regulations sufficiently define the roles and responsibilities of stakeholders?</p> <p>Are rules and regulations adapted to the conditions in the national and local context?</p>	<p>To what extent do stakeholders fulfil their roles and responsibilities at national and local level?</p> <p>How do informal relationships between stakeholders and power-dynamics influence the water sector and water delivery and services at local level?</p> <p>How do rights holders relate to stakeholders with formal and informal roles and responsibilities?</p>

Table 3.3: Guiding questions for assessment of institutional arrangements



Examples of NHRI monitoring reports

In 2012, the **New Zealand Human Rights Commission** released a report on the right to water in light of climate change and cultural significance. The report includes the following topics: availability, quality and safety, affordability, cultural values, participation and accountability. <http://cfnhri.org/pdf/Human-Rights-and-Water-2012.pdf>

In 2013, the **South African Human Rights Commission** developed a report on the right to access to sufficient water and decent sanitation based on complaints received, data from government departments and public hearings. The report includes the following topics: international and national obligations; contextualization of the right to water and sanitation and a presentation of data from hearings on access to water and sanitation; quality of water infrastructure; governance; intersecting rights and marginalized groups. [http://www.sahrc.org.za/home/21/files/FINAL_per_cent204th_per_cent20Proof_per_cent204_per_cent20March_per_cent20-per_cent20Water_per_cent20_per_cent20Sanitation_per_cent20low_per_cent20res_per_cent20\(2\).pdf](http://www.sahrc.org.za/home/21/files/FINAL_per_cent204th_per_cent20Proof_per_cent204_per_cent20March_per_cent20-per_cent20Water_per_cent20_per_cent20Sanitation_per_cent20low_per_cent20res_per_cent20(2).pdf)

The **West-African Network of Human Rights Institutions** adopted a human rights reporting manual which includes items for monitoring water rights among other social and economic rights. The manual takes form of a hypothetical country report on the Economic Community of West African States (ECOWAS) Protocol on Democracy and Good Governance (WaterLex Compilation of Good Practices).

MONITORING METHODOLOGY

This section provides guidance on how NHRIs may conduct monitoring in technical, practical terms taking account of HRBA principles.

Applying HRBA to data collection and processing

HRBA implies adherence to principles that should guide all interventions, including data search and processing. NHRIs should be aware of the actual and potential impacts that may result from the data collection process. For instance, use and disclosure of sensitive data on vulnerable groups may result in repercussions on these groups, thus adversely impacting their rights. More generally, the collection, processing and use of data potentially affect power and redistribution structures. Therefore, users are advised to observe HRBA principles in the implementation of the data collection process. The Box below provides guidance on the application of HRBA principles in data collection:



Human Rights Based Approach to data collection

Non-discrimination

- Identify relevant rights holder groups and ensure adequate identification of vulnerable groups.
- Identify and assess severity of different types of discrimination on prohibited grounds of discrimination and any other status.
- Prioritize disaggregated data to detect patterns of inequality and discrimination.
- Focus proactively on vulnerable groups in all aspects of the data collection.
- Invest the time and resources needed to reach out to vulnerable groups, including the poorest of the poor to ensure their realities and views are adequately reflected.

Participation

- Ensure access for all to materials and public meetings related to the data collection
- Support active, free and meaningful participation by a representative group of stakeholders in the data collection.
- Facilitate participatory hearing on data collection results
- Work for local ownership of the collection, processing and use of data

Accountability

- Identify roles and responsibilities among stakeholders with a focus on duty bearers
- Aim for dialogue and cooperation with government and private sector actors with actual or potential human rights impact
- Assess efficiency of governance structures for data collection
- Ensure viable access to information and transparency in data collection activities
- Ensure wide dissemination of the analysis and assessment of results
- Set up mechanism for grievance and redress related to data collection and assessment results

Data sources

There is a range of sources of data that should serve as a basis for monitoring. The Office of the High Commissioner for Human Rights has developed a framework to capture some of the core data sources¹⁰⁷:

- Socioeconomic statistics
- Perception and opinion surveys
- Events based data on human rights violations
- Data based on expert judgements

Socioeconomic statistics include aggregated data compiled by the state, national statistical agencies, UN agencies or international organizations. Socioeconomic statistics can be divided into the following three over all categories:

- **Administrative data** are generated by ministries and regulatory authorities and cover the state's development programmes as well as regulatory and administrative frameworks.
- **Statistical surveys** are qualitative and quantitative information collected from of a sample of the population to estimate the situation for the entire population or on specific groups in the population (e.g. women or children). Sample surveys are cost-effective alternatives or supplements to administrative data.
- **Censuses** are complete surveys of all members of the population that provide basic baseline data on key characteristics of the population.

Perception and opinion surveys aim at polling a representative sample of individuals for their personal views on a given issue.

Events-based data on human rights violations are directly linked to specific human rights violations and describe the acts of human rights violations and identify victims and perpetrators. Potential data sources include testimonies from individuals; information provided by the media, civil society, national human rights institutions; and international monitoring mechanisms such as the Special Rapporteurs or Treaty Bodies.

Data based on expert judgements are generated by a group of “informed experts” from e.g. media, government reports, NGO reports, academic researchers or advocacy groups. The data is qualitative in nature and can be used if other data sources are not available or where there is a need to verify data from other sources.

In addition to the data sources described in the above framework, the rights holders themselves constitute a data source of absolute priority.

Data provided by rights holders offer direct access to information on actual levels of rights enjoyment. Thus, rights holders can provide first-hand accounts on human rights violations, as well as on data pertaining to provision of public goods and services, which in effect constitutes a core element of rights enjoyment in daily life. For instance, rights holders can provide detailed, qualitative accounts on the water they are provided with in terms of availability, accessibility, acceptability and quality.

107 Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (New York and Geneva, 2012)

	Administrative data	Statistical survey	Census
Inclusion criterion	All events concerned by the policy or regulatory framework are registered	Restricted to population sampled	Complete enumeration of the population
Cost	Low	Medium	High
Frequency	Ongoing	3–5 years	10 years
Bias	Bias if incomplete or inaccurate recording (intentionally or no)	Significant risk of bias, but can be minimized if survey is well designed	Theoretically there is no bias, but lack of proper coverage may create one
Potential for monitoring and policymaking	Very good	Good	Good, but not for the short term

Figure 3.3. Characteristics of sources of socioeconomic statistics¹⁰⁸

In principle, no data sources can be considered fully reliable in and of themselves. Therefore, the data collection should observe the following principles to the fullest extent possible.

Source verification: Any data source should be individually assessed in terms of bias and the solidity of the approach employed by the source.

Source diversification: The reliability of data increases if more than one source cites the same data. While some data available from one source only cannot always be disregarded for practical reasons, the aim should be to cross-reference the data with other sources and grade data cited in several sources higher than data cited by one source only. (While a given data source may be effective in terms of yielding certain information, it may leave other information out of scope. Therefore, diversification should be sought in terms of use of a variety of data sources, as well as in terms of methodologies employed for data collection, as described further below.)

Sampling: Some data sets cover the entire population, or very comprehensive parts of the country. For instance, censuses are sources of such data sets. Yet, such sets may not be updated and generally limitations in terms of time and resources often render collection of such sets unfeasible. Therefore, sampling can be employed to collect data sets that may be considered representative for larger population segments and regions.

Citing, quoting and storing sources and resources: It is important to be able to back track the sources of data used. This relates to the principles of accountability and transparency discussed above. Therefore, stringent systems for source citation and referencing should be developed and observed. Moreover, sources and resources should be stored to the extent possible to allow revisiting them and to support public access to them.

108 Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (New York and Geneva, 2012) p. 64, adapted from United Nations Development Group, *Indicators for Policy Management: A Practical Guide for Enhancing the Statistical Capacity of Policy-Makers for Effective Monitoring of the MDGs at the Country Level* (New York, 2005), pp. 83 ff.

MONITORING AND THE NHRI MANDATE

This chapter contains guidance on how a NHRI can establish synergies between monitoring and other mandate areas (see Section 2).

1. Legislative and administrative provisions

NHRIs can use monitoring to improve the quality of advice and recommendations to legislative and policy reform processes. Rights related to water governance cut across many different sectors and issues, such as food production, industrial pollution, school infrastructure, health provision and education. As a consequence of the crosscutting nature of the right to water NHRIs should ideally scrutinize all new legislation, administrative regulations and major policy documents that touch upon different aspects of the right to water. Through monitoring, NHRIs can establish an overview of the key issues and priorities related to the right to water and develop a list of specific groups and/or aspects of the right to water that require special attention in legislative and administrative provisions.

2. Ratification of international instruments

NHRIs shall encourage ratification of, or accession to, international instruments. In addition to the ICESCR, other international and regional instruments are relevant for the right to water, e.g. CEDAW and ACHPR. In order to build a strong case for ratification, NHRIs can use monitoring to evaluate the consequences of ratification of specific human rights instruments. This includes an evaluation of whether a country already adheres to the instrument's provisions and analysis of what would be needed to ensure full compliance. While the right to water only constitutes a small part of most human rights instruments, monitoring data about water would most likely need to be integrated into more detailed research into a specific human rights instrument. NHRIs should also consider whether it would be useful to combine targeted dialogue and lobbying for ratification with civil society collaboration to build broad-based support.

3. International reporting

There is a reciprocal relationship between NHRI monitoring and international human rights reporting. Monitoring is a core element of NHRIs reporting to international and regional human rights bodies, such as UPR, Treaty Bodies and Special Procedures, while the recommendations and conclusions from the human rights bodies can feed into NHRIs ongoing monitoring activities. It is the state's responsibility to prepare the state reports, but this should be done in cooperation with NHRIs and civil society. Thereby NHRI monitoring data can supplement state generated data and also be used to address certain aspects of the right to water, which are not adequately illuminated or misrepresented in the state report. If the NHRI assesses that the issues are not sufficiently covered in the state report, it should make its own shadow report, if possible in collaboration with civil society. Once the review is concluded, NHRIs should monitor the state's follow up to concluding observations and recommendations and this can then feed into other monitoring, research and awareness raising activities.

4. International Cooperation

Within the UN system the human right to water has been firmly established in recent years, and the MDG target 7 on water and the SDG target for water have also contributed to a global consensus on the need to address water. NHRIs can use its engagement with the UN, regional bodies and other NHRIs to learn about methodologies and strategies for improving the quality of monitoring and using monitoring data to push for increased attention to the right to water.

NHRIs can also use international networks and policy processes to amplify their voice about national and international human rights concerns, which are uncovered by NHRI monitoring. Many NHRIs face similar challenges and can benefit from cooperation. Formalized networks such as ICC, NANHRI, APF and ENNHRI provide important platforms for articulating issues of common concerns for all NHRIs, such as the need to strengthen the link between development and human rights within the post-2015 agenda. The ICC is establishing a working group to take this work forward. Other informal networks, such as the NHRI initiative for good water governance, provide important platforms for building NHRI capacity and exchanging experiences and best practice. In relation to monitoring, such a network could develop standardized monitoring tools, align shadow reporting to UPR and Treaty Bodies and enter into dialogue and cooperation with the Special Rapporteur on the human right to safe drinking water and sanitation.

5. Human rights education and research

Human rights monitoring provides a snapshot of the actual situation of the right to water as well as developments over time. The data generated through monitoring can feed into NHRIs' ongoing work with human rights education and research. NHRIs can work with education authorities to ensure relevant aspects of the right to water are included in curricula and teaching material, with a particular focus on addressing key human rights concerns, such as discrimination or unsafe water sources. Public authorities and service providers often have a technical approach to water service delivery, and NHRIs can provide education and training in human rights standards for the right to water and HRBA. Monitoring data can uncover specific gaps in knowledge and skills among stakeholders so NHRIs can develop targeted education and training. NHRIs may also decide to carry out in-depth research on certain issues, such as access to safe water in schools or prisons. This research can then reinforce the monitoring efforts and be used to build public support for addressing certain human rights concerns.

6. Awareness raising

NHRIs should take steps to increase public awareness about the right to water through dissemination of information. Dissemination of monitoring results can be disseminated through a variety of means, e.g. through the media, stakeholder and community meetings or written information material. Awareness raising strategies should also consider central formal and informal decision-makers that can influence public opinion; e.g. in relation to hygiene practices and methods for water filtering. NHRIs should consider which special groups need particular attention. These can be groups that are particularly vulnerable to violations of the right to water (e.g. people living in drought prone areas) or groups that have specific social and cultural conditions that affect their right to water (e.g. nomads). Special steps might be needed to reach vulnerable groups as they may not be reached by information campaigns aimed at the broad population. To amplify the impact of awareness raising campaigns, NHRIs can consider working together with other stakeholders, such as civil society organizations, education institutions and professional groups.

7. Complaints handling

If a NHRI has the mandate to handle complaints, this can reinforce monitoring activities by identifying particular challenges relating to the right to water. Indicators developed for monitoring purposes can also provide a framework for handling complaints according to the defined international and national human rights indicators and targets. Some NHRIs have the power to **bring matters to court** if their decisions are not adhered to; a NHRI should also be prepared to use this power with respect to the right to water. A NHRI should consider intervening in court cases touching upon the right to water as friend of the court to ensure that the relevant human rights provisions are taken into account by the courts. When deciding what cases to bring, a NHRI should consider the public interest in a given matter, whether there is a good chance of establishing new laws that will increase the space for participation etc. Such strategic litigation can be done in collaboration with civil society unless this might prejudice the independence of the NHRI.

Examples of links between monitoring and other NHRI mandate areas

In its report on the Bangladesh compliance with ESCR (The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance), the **Human Rights Commission of Bangladesh** addressed the right to water and referred to the findings of Ms. Catarina de Albuquerque, Special Rapporteur on the human right to water and sanitation. Referring to sources of the Special Rapporteur allowed to identify the remaining gaps between the national framework and international requirements for the right to water and sanitation (Waterlex Compilation of Good Practice)

In including the findings of monitoring of detention centres in its 2012 annual report, the **Mali National Human Rights Commission** added components of the right to water and sanitation when addressing health issues. It was found that all detention centres except one had limited access to water and that toilets were in bad conditions. It therefore issued various recommendations to the government and civil society organizations. These included the need to raise awareness on sanitation and hygiene measures among the prison population. It also called on the government to construct toilets and sanitation facilities which preserve the dignity and privacy of users (Waterlex Compilation of Good Practices).





Questions

- Why should NHRIs monitor the right to water?
- Which state obligations are relevant for NHRIs to monitor?
- What are the three types of indicators used in the international human rights system?
- How can NHRIs develop a national monitoring system?
- How can NHRIs develop country reports on the right to water?
- How can NHRIs ensure that HRBA is applied in data collection?
- How can NHRIs establish synergies with other mandate areas?

Exercise

- Development of national monitoring system
- Before the training participants are asked to compile a set of laws, policies, regulations and other documents directly or indirectly addressing the right to water in their respective national context. During the training groups are asked to basically go through the steps of the table. They prepare the outputs, which can then be presented and discussed in plenum.
- Development of NHRI action plan for monitoring

FURTHER READING

- Danish Institute for Human Rights (2014): The AAAQ framework and the right to water – international indicators for availability, accessibility, acceptability and quality of water. http://www.humanrights.dk/files/media/dokumenter/udgivelser/aaaq/aaaq_international_indicators_2014.pdf
- Danish Institute for Human Rights (2014): AAAQ and the right to water – contextualising indicators for availability, accessibility, acceptability and quality. http://www.humanrights.dk/files/media/dokumenter/udgivelser/aaaq/aaaq_contextualising_indicators_2014.pdf.
- Office of the High Commissioner for Human Rights, Human Rights Indicators: A Guide to Measurement and Implementation (New York and Geneva, 2012). <http://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx>
- Special Rapporteur on the human right to safe drinking water and sanitation, Report of Catarina de Albuquerque: Common violations of the human rights to water and sanitation (A/HRC/27/55). http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/55
- Special Rapporteur on the human right to safe drinking water and sanitation. *Realising the human rights to water and sanitation: A handbook*. Booklet 5: Monitoring. http://www.ohchr.org/Documents/Issues/Water/Handbook/Book5_Monitoring.pdf

▶ SECTION 4

PROTECTING A HUMAN RIGHTS-BASED WATER GOVERNANCE



Objective: *The objective of this chapter is to identify the main investigative procedures and remedies that NHRIs can employ in protecting the human right to water and sanitation and other related rights.*

INTRODUCTION

The protection of human rights is the *raison d'être* of NHRIs. Investigating individual and systemic violations of human rights is the backbone of human rights protection. This chapter provides a detailed summary of the main procedures NHRIs may employ to discover and examine individual and systemic human rights violations as well as the main remedies they can impose to redress the abuses identified.

The chapter begins with an overview of the special role NHRIs play in the protection of economic, social and cultural rights, such as the right to water and sanitation. It is followed by a summary of the general procedural framework of human rights inquiries: principles, processes, powers and rules of investigation. Human rights violations may impact individuals or be systemic in nature (or often both). The different approaches, methods and procedures required to examine these violations is explained in detail.

Finally, once a violation of any human right is identified, NHRIs should be in a position to impose appropriate remedies. In most jurisdictions, NHRIs have a broad choice of remedial actions, including conciliation, referral to competent authorities, referral to courts, seizing international mechanisms, recommendations. The various remedial tools are summarized in the closing section of the chapter.

The investigative processes and methods described in this chapter can be universally used to address any type of human rights violation. Their application to the human right to water and sanitation is illustrated through summaries of investigations conducted into the matter by NHRIs.

PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS BY NHRIS: AN OVERVIEW

Investigations: the core of human rights protection

The Paris Principles provide that NHRIs must be vested with competence to protect human rights. At the core of such competence lies the ability of NHRIs to investigate violations of human rights.

General Comment No. 10 contains an indicative list of activities that NHRIs must be able to carry out to fulfil that mandate, including *conducting inquiries* and *examining complaints* of alleged infringements of ESCR. While not all NHRIs have the powers to hear and consider complaints and petitions concerning individual situations through so-called quasi-judicial procedures, all of them have some kind of investigative competence.

On the basis of a number of general human rights principles, most NHRIs have been able to define their jurisdictions broadly to encompass the investigation of complains, even where the establishing law does not specifically provide for such responsibilities. (The training manual of the OHCHR specifically calls on NHRIs to interpret their mandate as widely as possible: see Box below).

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The progressive interpretation of the NHRI mandate to carry out investigations – the conclusions of the OCHCR

“According to general principles of interpretation, human rights should be interpreted as broadly as possible and restrictions on rights should be interpreted as narrowly as possible. A human rights institution should interpret its mandate as widely and comprehensively as possible.”

“Sometimes [the] law does not give [the NHRI] jurisdiction to handle cases of violations of rights. [...] However, most national human rights institutions have some discretion in interpreting and implementing their mandate [...]. Where certain provisions of the national human rights institution’s statute appear to limit its ability to investigate economic, social and cultural rights, the institution has often interpreted other provisions to allow this work.”

Source: OCHCR (2005): Economic, Social and Cultural Rights – Handbook for National Human Rights Institutions, p. 35, 46.

Investigations by NHRIs can take several forms that may interact and overlap, constituting a dynamic mix of means and methods. The most common types of investigations are:

- investigations of individual violations of human rights upon a complaints,
- investigation of groups violations of human rights upon a complaint,
- *suo moto* investigation of individual or groups violations of human rights,
- investigations of systemic violations of human rights,
- conducting public inquiries.

For the purposes of this training manual the various types of investigations are discussed under two categories: complaints mechanisms and investigation of systemic violations of human rights.

The unique role of NHRI investigations in the protection of human rights

NHRIs play a crucial role in human rights protection. While court procedures remain the basic mechanisms for the protection of human rights and states (governments) bear the ultimate international responsibility, NHRIs can usefully complement the work of both the judiciary and government. First, NHRIs have a broad and flexible mandate. Unlike courts, NHRIs can initiate and carry out investigations at will. Their rules of procedure enable them to choose the subject of their investigations flexibly, to have recourse to independent research capacity, to recommend far-reaching and innovative remedies, etc. The independence of NHRIs enables them to pursue cases that might be overlooked by government bodies or the prosecution due to political or bureaucratic complacency. In conclusion, NHRIs may not only fill important gaps in the regular judicial-administrative system of human rights protection, through their investigations they can be a driving force behind enhancing overall institutional vigilance and the culture of human rights.

PROCEDURAL FRAMEWORK: PRINCIPLES, PROCESSES, POWERS AND RULES OF INVESTIGATION

Investigation principles

Investigations of NHRIs should be based on a set of firm principles, broadly recognized and recommended by the various UN guidance documents as follows¹⁰⁹:

- *Accuracy and objectivity*: investigations must be objective, thorough and accurate. The reliability and credibility of information collected and disseminated should be ensured by seeking direct evidence and corroboration.
- *Timeliness*: investigations should be carried out in a timely manner. Long delays may result in a complainant or respondent being denied justice.
- *Diversity of information*: attempts should be made to use as many sources of information as possible in investigations. All the available evidence should be collected and evaluated.
- *Adherence to human rights standards*: human rights investigations require that the relevant international and domestic human rights standards be used as points of reference when collecting and analysing the information available.
- *Respect for all parties*: investigations should be carried out in an atmosphere of the utmost respect for all those concerned. Persons accused of violating human rights are entitled to the presumption of innocence.

Strong compliance with these principles is fundamental to ensure the neutrality and the legitimacy of the investigations. The mandate of NHRIs may easily create a public impression of an institutional bias against the “usual suspects” of human rights violations. NHRIs must therefore make sure that in their investigations they do not favour the complainant (or indeed the respondent) or other stakeholders with a dedicated human rights agenda.

¹⁰⁹ Economic, Social and Cultural Rights. Handbook for National Human Rights Institutions. United Nations, OHCHR 2005.

Investigation processes

The fundamental purpose of any investigation is to answer the following questions: has there been a violation of human rights and, if so, who is responsible for the violation? The typical processes of the investigation of human rights violations comprise the following:

- **Intake:**
 - obtaining information so as to determine if a proper investigation is needed,
 - determining if the case is within the jurisdiction of the NHRI,
 - prioritising to ensure that emergency situations are addressed urgently,
 - early information and counselling to the parties, as appropriate,
 - early dispute resolution, if the information available and the nature of the case allow settlement of the case at the outset.
- **Investigation:**
 - gathering physical, testimonial and documentary evidence,
 - consulting the respondents and soliciting comments,
 - assessing the evidence and formulating findings and remedies.
- **Publishing recommendations and follow up:**
 - disseminating investigation results and recommendations,
 - deciding on whether further enforcement action is needed,
 - deciding on additional promotional activities.

The actual processes and stages of investigation may differ greatly along a number of variables. E.g. complaints-based investigations need a series of procedural steps and mechanisms that ensure easy access to the process, enable the complainant to fully participate in the process (counselling), etc. Investigations of systemic violations of human rights may require public hearings, involvement of inquiry panels, etc.

Investigation powers

The Paris Principles provide that NHRIs should be endowed with all the necessary powers to carry out investigations falling within their competence. The relevant powers of investigation regularly include the right to the following:

- hear any persons and obtain any documents or information in any other form that is necessary for the assessment of the case,
- compel the production of documents and witnesses,
- conduct on-site investigations,
- convene hearings,
- impose penalties for obstructions.

While the investigation of water-related human rights violations may be triggered by individual complaints, several NHRIs have a tendency to expand the procedure **suo moto** to a broader range of possible violations. The Paris Principles imply that NHRIs should have the authority to launch procedures at their own initiative. Own initiative investigations are particularly helpful in the context of water governance as victims tend to be great in number and economically, politically

marginalized. Investigations of individual cases may also lead to the discovery of broader, systemic violations of the human right to water and sanitation. Systemic violations are those that affect whole groups of people (identified by ethnicity, location, etc.). The causes of these violations are often embedded in broader social, economic and political structure. Therefore, investigating systemic violations may give rise to particular methodological, political, financial, etc. difficulties. In such cases, it is suggested to make public inquiries that include public hearings, have recourse to research and academic institutions, etc. in order to identify the root causes and to select the appropriate measures to tackle the issue.

Suo moto investigation of water supply by the National Human Rights Commission of India



In the case “Malfunctioning in water supply scheme in Ludhiana” (Case No. 509/19/10/2014), the National Human Rights Commission of India came across a news item published in “The Tribune” dated 15 May 2014. The media reported that despite spending considerable amount of money to increase the water supply in Haripur and Harnampur Villages in District Ludhiana, the Punjab Water Supply and Sanitation Department had not been able to provide chlorinated water and an over-head tank for storage. Reportedly, the contractor was paid without actually completing the work of laying down the pipeline properly along with storage facilities. As a result, the villagers had to depend on water from tube wells which worked only when there was power supply. The Commission called for a report from the Chief Secretary, Government of Punjab.

Investigation rules

It is important that all stages and major parameters of the investigation (i.e. the interpretation of the mandate, the rights of the complainant and of the respondent, the timeframe of the investigation, the remedies, the methods of dissemination of findings, etc.) are set out precisely in the *rules of procedure* of the NHRIs. Such rules of procedure can be supplemented by investigations guidelines and manuals. All such procedural materials must be made public and communicated to all parties involved in the investigations.

The rules of procedures should set out accurately the jurisdiction of the NHRI and various steps in the procedure. In the case of complaints based mechanisms the rules of procedure should, within the limits of the national establishing law, define at least the following:

- the types of complaints it can investigate,
- the criteria to file a complaint (by whom, what, when),
- description of how the complaint is processed (including how the complaint is investigated and assessed, how decisions and recommendations will be made, etc.),
- the rights and obligations of the complainant, the respondent, witnesses, etc.,
- possible remedies if a violation is established.

The formal rules of procedures should be complemented by mechanisms and strategies to guide the management of the caseload, including rules on prioritising cases. Dealing with individual complaints is a time-consuming and resource-intensive activity. Most NHRIs with quasi-judicial powers operate under a heavy caseload that may not only slow down complaints-based investigations, but

may also impede other important NHRIs activities, such as the active promotion of human rights. NHRIs should therefore develop means that enable them to respond to the full range of human rights complaints in a timely and effective manner as well as to prioritize cases, if need be.

INVESTIGATING INDIVIDUAL VIOLATIONS

General requirements

Investigating human rights complaints by NHRIs is the most powerful tool to lend effective protection to individuals and groups whose rights have been violated. This procedure can however only fulfil its mission, if it provides an easy and safe access to all potential victims. To that end, complaints procedures should meet a number of general requirements:

- **Formalities:** lodging complaints by victims and their representatives should be as simple and straightforward as possible. NHRIs should be able to accept oral complaints. Simple and clear official complaint forms should be developed and used widely (but should not be made exclusive).
- **No requirement for a lawyer:** lodging a complaint and participating in the investigation should not require a lawyer.
- **Costs:** the entire complaints procedure should be free of any direct charge. In some jurisdictions, the respondent may claim cost recovery, if the complaint is found to be malicious. In such cases strict criteria should be applied to determine bad faith as well as thresholds of recoverable cost, in order to avoid that cost recovery actions become a tool of retaliation by respondents.
- **Physical accessibility:** victims may be physically barred from access to the NHRIs especially in large countries. Regional contact points throughout the country or regular visits by the NHRIs to the countryside can facilitate access and enhance confidence in the complaints procedure greatly. Exclusively electronic procedures may block access to the procedure by important groups of victims.
- **Support for the complainant:** promotion of complainants' access to remedies is an inherent duty of NHRIs. It implies publicising the possibility to have recourse to the complaints procedure, providing victims information of their rights, but may also necessitate active support for the complainant. The latter may involve assistance in filing the complaint, legal counselling throughout the entire process, interpretation, etc.
- **Protection of victims, confidentiality:** human rights mechanisms cannot worsen the situation of victims. Complaint investigations can only succeed, if victims of human rights violations do not fear retaliation. This requires that victims enjoy the maximum confidentiality, especially vis-à-vis perpetrator of the human rights violation at issue. The privacy of victims and witnesses should also be ensured in publicising the results of the investigation or when the case is used for human rights promotion.



Improve access to NHRI procedures: provincial hearings by the South African Human Rights Commission on the human right to water and sanitation

In the context of a broader investigation on the human right to water and sanitation, the South African Human Rights Commission held provincial hearings which enabled local communities to:

- Interrogate the Department of Performance Monitoring and Evaluation report relating to their province and municipalities from their own lived experience.
- Share their analysis of delivery of these rights, the initiatives they have taken to access their rights and the solutions they have proposed.
- Reflect on the differentiated impact of the lack of rights, for example, on gender-based violence and gender equality.
- Engage with and hold accountable local provincial and national government to ensure the right to water and sanitation is realized.
- Enforce government accountability to regulate and monitor private entities contracted to deliver the services in a way that upholds human rights.
- Identify what businesses pay, in comparison to households, for their use as well as pollution of water.

Steps in investigating individual complaints

Investigations of complaints alleging individual violations by NHRIs normally comprise the following steps:

- *Intake*: determining the admissibility of the complaint,
- *Investigation*: gathering and analysing evidence,
- *Decision*: making a determination on the complaint.

Intake

The first stage of the investigation is the verification if the NHRI has jurisdiction to consider the complaint. It involves checking compliance with the formalities relating to the complainant and the complaint (right person, right format) as well as the establishment of the jurisdiction of the NHRI.

A. Who can file a complaint?

The first question of admissibility is whether the complaint has been lodged by the right person. The right to file a complaint is usually spelt out in the national enabling law. The Paris Principles provide useful guidance in the interpretation of the national provisions in so far as they underline that a broad range of natural and legal persons should be given the right to submit a case to NHRIs, including “individuals, their representatives, third parties, non-governmental organizations, associations of trade unions and any other representative organizations”. While victims of human rights violations should be the primary complainants, sometimes direct victims are not in the position to become so. Moreover, certain types of violations are multiple or systemic by nature, therefore representative organizations should be allowed standing.

The box below presents a good practice of the NHRI of Argentina that received numerous complaints by both associations and individuals in relation to the serious contamination of a River Basin which later led the NHRI to commence investigations on the matter.



NHRI of Argentina receiving complaints in relation to the Matanza-Riachuelo River Basin

In 2002, the *Asociación Vecinos de La Boca* (La Boca Neighbourhood Association) filed a complaint to both the national and the Buenos Aires city Ombudsmen because of the serious contamination and flooding affecting residents in the area of the Matanza-Riachuelo River Basin. They complained about the lack of action and policies of the responsible government authorities. Shortly afterwards, the Ombudsman received another complaint, this time made by María del Carmen Brite, a resident of the “Villa Inflamable” in Dock Sud. She denounced that her three children were suffering from serious health problems due to the high level of contamination caused by the Dock Sud Petro-Chemical Complex.

These accusations were added to a number of other complaints made to the Ombudsman’s Office by organizations or individual citizens in relation to conditions and problems concerning socio-environmental issues in the Matanza-Riachuelo Basin. As a result, the National Ombudsman filed complaint N. 9924/02, which led to an investigation with the objective of mobilizing public opinion.

B. Formal requirements

National legislation and/or the rules of procedures of the NHRI may establish a number of formal requirements a complaint must meet. Usually, there are formal requirements as to description of the alleged violation (when, where, how and by whom it was committed). Also, there are purely technical requirements that determine the acceptability of the case. These include the identification of the complainant (anonymous complaints are normally not accepted), correct use of the complaint form, payment of complaint fees, where available, etc.

C. Jurisdiction

After having checked the formalities, the NHRI must consider whether the complaint falls within its jurisdiction and assess whether the allegation, if proven, would constitute a violation of human rights laws.

The first formal question is whether, on the basis of the subject matter of the complaint, it is the NHRI or some other administrative or judicial body that has the mandate to consider the alleged violation. Most legal systems do not allow parallel procedures by different state bodies. Often, NHRIs can only investigate a complaint, if all other administrative and judicial remedies have already been exhausted. Where the NHRI finds out that the matter falls under the jurisdiction of another authority, it is normally required to refer the matter to the competent body or to advise the complainant to do so.

Filing complaints may also be subject to time limitations that NHRIs must review upon receipt of the complaint. NHRIs generally enjoy a certain degree of discretion to reject complaints if they are considered frivolous, bad faith or trivial.

Once the formal admissibility of the complaint has been established by the NHRI, it should assess whether the allegations, if proved, would constitute a violation of human rights standards. This early determination does not necessarily require a thorough assessment of the available facts, but should at least involve a broad categorization of the human right(s) at issue and the type of violation.

If at the end of the above process the NHRI decides not to investigate the case, it must inform the complainant of its decision, of the reasons of its rejection and of the existence of any alternative procedures that may be available.

Investigation

A. Notifications

The investigation process must begin with notifying the complainant and the respondent of the intake of the complaint. The respondent should be given sufficiently long period of time to give his version of the situation.

B. Investigation plan

Investigations should proceed on the basis of an internal investigation plan or terms of reference. This helps conducting the investigations in a timely and methodologically robust fashion. The plan should set out the known facts, the evidence to be sought (including witnesses, documents, expert testimonials, etc.), the main steps of the investigations and their timeframe, as well as the summary of the key issues to be investigated.

C. Collecting evidence

Depending on the nature of the violation at issues, NHRIs may gather physical, documentary and testimonial evidence. Physical evidence is less likely to play a key role in the context of ESCR. More important are the documentary and testimonial sources of information. Civil society may also provide valuable information to NHRIs on possible violations of water governance-related human rights. The collection of evidence should conform to applicable human rights standards, including those governing the investigation of criminal offences. In conducting interviews and obtaining testimonies special attention must be paid to the protection of victims.

Good practices of carrying out fact-finding missions and elaborating baseline studies in addition to conducting hearings and attracting wide community participation by the NHRI of Kenya are presented below in investigating the potential human rights effects, including the right to water, of salt manufacturing.



NHRI of Kenya investigating salt manufacturing

In 2005, the Kenya Commission on Human Rights undertook an inquiry concerning allegations by the community of Magarini that salt manufacturing companies operating in the area had committed human rights violations against the community. It was claimed, among others, that salt manufacturing in that area carried out activities which damaged the environment and, as a result, denied the surrounding communities access to fresh water. Complaints on salinization of freshwater wells and springs were also investigated. Sanitation facilities were also allegedly inadequate for workers.

The Commission undertook a fact-finding visit and a baseline survey was conducted to identify stakeholders and obtain additional information on the petition. Preceding the hearings, the Commission sought to obtain community participation and attract interested parties. The local administration, salt companies, the public, line ministries and experts also presented written and oral submissions to the KNCHR.

The inquiry report lays down the findings, decisions and recommendations made by the inquiry for each of the issues addressed.

D. Weighing evidence

The investigator should review all evidence obtained to determine its completeness, probative value and relevance. In evaluating the weight of evidence NHRI normally follow the so-called “balance of probabilities” test. This is a lower standard of proof than the “beyond reasonable doubt” test applied in criminal investigations. It implies that the bulk of the evidence collected shows that the allegation is “probably” founded (or not).

E. Investigation report

The conclusions of the investigation are usually summarized in an investigation report. The report should contain a summary of the complaint, the relevant legislation, description of the evidence obtained, an analysis of the evidence, the draft conclusions case and the remedies suggested.

Several NHRIs have already published investigation reports in relation to water governance-related human rights violations. An example of the NHRI of El Salvador is indicated below in relation to its investigation of the human rights violations of metallic mining.



NHRI of El Salvador investigating metallic mining

The NHRI of El Salvador reported on metallic mining in the country. The publication reflects on the impacts that could be induced to Salvadorian population by the decisions regarding the authorization of metallic mining exploitation projects within the Salvadorian territory. It also aimed at highlighting the potential damage to Salvadorian residents of the Cerro Blanco metallic mining project, located in Guatemala.

The report underlined the harmful effects of metallic mining which are the decrease of available water (and contamination of it), damage to marine environment and pisciculture and deterioration of farming land (along with its effects on livestock). It also highlighted the Helsinki Rules on the Uses of the Waters of International Rivers that States that share international hydrographical basins must “prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State.”

The NHRI of El Salvador subsequently presented a report specifically on the Cerro Blanco metallic mining project and the related potential human rights violations on 10 January 2012. The document sheds light on the mining industry in El Salvador and the impact of the mining industry on a range of human rights, such as the right to life, right to health and the right to water, and especially the harmful effects on the Lempa River which is the main water source for El Salvadorians. In addition to a description of metal mining, the report lays down the findings of the evaluation team in relation to the studies in the Upper Lempa River. A part of the report addresses potential human rights violations of the project and a list of conclusions and recommendations is included.

Decision

Based on the investigation report the NHRI should make a determination on the substance of the complaint and decide on the legal consequences. The outcome may be:

- A violation of human rights is established and remedial action is recommended,
- No violation has occurred and the complaint should be dismissed,
- Further investigation is needed before the final decision,
- The case should be referred to a competent authority.

If the NHRI concludes that the allegation is founded, it must establish precisely which act or omission by the state (or any other perpetrator) actually constitutes the violation of human rights.

In the case of the human right to water and sanitation **General Comment No. 15** provides a broad indicative **catalogue** of cases that constitute **violations of the right to water** (see Section 1) along with the report on **sanitation** (2009) of the UN Special Rapporteur on the right to safe drinking water and sanitation, in addition to her special **report on violations**¹¹⁰, as well as relevant HRC and UNGA decisions confirming these rights. See Section 1 on **case law** examples that provide further

110 See: Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque. Common violations of the human rights to water and sanitation (A/HRC/27/55) 30 June 2014

insight into the judiciary interpretation of certain water governance related cases. These national interpretations may also assist NHRIs in deciding on whether violations have occurred. Finally, see Section 6 on possible other water governance-related sources guiding NHRIs in their decisions.

In making the determination on the substance of the case, the NHRIs have to carefully assess whether the situation is a result of the state's unwillingness or inability to comply. In the context of economic, social and cultural rights states have a tendency to justify their failures with reference to unfavourable economic or political circumstances. As the Maastricht Guidelines underline a state claiming that it is unable to carry out its obligations for reasons beyond its control, has the burden of proving that it is really the case. The inability defence, as any exemption under human rights law, must be interpreted narrowly.

A case is cited below by the NHRI of Hungary on establishing state responsibility in providing access to water for minorities.



NHRI of Hungary highlighting State responsibility in water issues

Despite the nationwide hot alert signals in the summer of 2013, the local government of the city of Ózd decided to turn off 27 public wells, respectively reduce water pressure in 62 public wells on grounds of unduly high consumption, illegal discharge and wastage. In Ózd more than 1000 households have no indoor plumbing, leaving thousands of people to rely on public wells to cover their daily needs. Daily water demands are mostly determined by sanitation and domestic use of water, thus keeping water consumption under a certain threshold level may imply epidemiological risks. The provision affected mainly the city's Roma population. The Ombudsman for Future Generations launched an investigation suspecting the violation of the rights to healthy drinking water, human dignity and the right to equal treatment.

The Ombudsman for Future Generations established that the State is responsible to set out fair and proportional water charges to encourage the economic use of water, while at the same time, it is also in charge to promote solidarity towards those who are not able to bear the full costs of their basic everyday human needs. Since the aim of abolishing illegal discharge cannot be connected to other fundamental rights of the person, restrictions on water use are qualified as indirect discrimination.

Follow up

NHRIs should make their findings and recommendations public. A good practice of NHRIs carrying out investigations in relation to water governance-related human rights violations is to turn to the public. An example is shown below from the NHRI of Peru with regards an emergency situation in the Pastanza River Basin. NHRIs should also monitor the implementation of their recommendations. If the authorities addressed fail to follow up the case, NHRIs should consider legal and political avenues to make sure that the matter does not remain unattended.



NHRI of Peru monitoring implementation

The Ombudsman of Peru published a *Report on Actions against the Declaration of the State of Emergency in Pastaza River Basin, Monitoring the Implementation of the Immediate Action Plan and other short term actions*. The objectives of this report was to evaluate the level of compliance with the obligations included in the Immediate Action Plan and other short term actions approved in the context of the emergency. The investigations enabled the Ombudsman to evaluate the human rights situation and to formulate recommendations. The investigation involved the following: i) review of the regime applicable to such emergency situations; ii) meetings with relevant national and regional authorities; iii) inquiry of written information regarding the progress of the implementation; iv) systematization of monitoring results through a Matrix containing the supervised activities based of the obligations listed in the Action Plan. The report contains the detailed matrix of the progress made on the implementation along with various conclusions and recommendations, including detailed evaluation of the situation related to drinking water, sanitation and health. In particular, the Ombudsman notes that access to safe water fit for human consumption that is sufficient in quantity and easily accessible is a right which enables the realisation of other rights, such as the right to food and the highest attainable standard of physical and mental health, all those directly related to the right to life.

INVESTIGATING SYSTEMIC VIOLATIONS

Systemic violations of economic, social and cultural rights

Economic, social and cultural rights are often the subject of systemic violations. Systemic means that the problem is rooted in the fundamental systems of the society, such as the laws, policies, institutional set-up, patterns of behaviour, prevailing societal attitudes, etc. In other words: the violation is a general social phenomenon, not a coincidental emergence of similar human rights abuses. It usually also implies that society at large accepts or tolerates even widespread violations of human rights. Systemic violations can affect entire groups of individuals or even large segments of society, such as ethnic minorities, lower income groups or entire regions of a country.

If a certain type of violation has such broad causes, it is not sufficient to redress individual instances of human rights abuses in parallel. To eliminate such structural problems, NHRIs must tackle the root causes of the social phenomenon and direct their recommendations to all relevant stakeholders. It does not mean that individual perpetrators cannot and should not be identified and held accountable. Rather, it implies that notwithstanding the actual individual violations NHRIs must go further and address the deficiencies of the broader social, economic and political structures and systems that are conducive to widespread violations of human rights.

How to investigate systemic violations?

A. The basic challenges

Investigating systemic violations of human rights poses a range of particular difficulties to NHRIs. The magnitude of the underlying social phenomenon and the scale of the investigation require strong political commitment by the NHRI and significant human and financial resources. The investigation must go beyond the usual experience of individual fact finding and case analysis, and expand into a profound examination of the structures and functioning of the society as a whole. To obtain a genuine picture of the nature, scale and root causes of the violation at issue, NHRIs may have to hold a large number of hearings, consult endless number of authorities and insource research capabilities from academia, NGOs, think tanks, etc. Investigations of such calibre may last several years. As a result, investigating systemic violations may take up the resources of NHRIs to such an extent that it may inhibit the exercise of their other core functions, such as the pursuit of individual infringements of human rights. Also, tackling widespread and pervasive social phenomena requires resolute public advocacy by NHRIs. Addressing human rights issues as sensitive as taboos or misconceptions surrounding sanitation, may trigger misunderstanding, complacency or resistance by society and officialdom.

A good example of maintaining close partnerships with various stakeholders in investigating water and sanitation related systematic violations is described below from the South African Human Rights Commission.



NHRI of South Africa maintaining close cooperation with stakeholders

The South African Human Rights Commission maintains on-going relationships with government departments and other stakeholders in monitoring adherence with the recommendation presented in its water and sanitation report. The SAHRC also sits on various stakeholder committees, advisory forums, task teams etc. which deal with various rights, including the right to water and associated right. For example, it is currently part of a Mining and Environmental Community Alliance, which amongst other functions, deals with complaints of the impact of mining on water resources, such as pollution. The Commission also discussed with civil society organizations the recommendations it has formulated following the provincial hearings on the right to water held in 2012. In addition, one of the outcomes of the institution's water governance activities is the on-going liaison with government departments regarding service delivery, particularly in areas where service delivery does not meet human rights standards.

B. Starting the investigation

There are a number of typical ways NHRI's initiate the investigation of systemic human rights violations. These include:

- *Upfront review of individual complaints to identify systemic violations:* some NHRI's review individual complaints at an early stage with a view to identifying whether they indicate systemic violations,
- *Joining similar cases:* receiving a high number of complaints relating to a similar issue is a strong indication of systemic violation. In such a case NHRI's may decide to join the cases and deal with them together to ensure that the remedies are broader than individual settlements,
- *Expanding on-going investigations:* systemic human rights violations are often discovered through the investigation of individual complaints. A typical response by NHRI's is to adapt the on-going process to deal with systemic issues,
- *Systematic data collection and review:* some NHRI's review information relating to human rights (complaints, independent studies, news reports, etc.) routinely in order to pinpoint systemic violations. Consultations with stakeholders too can be important sources of information indicating systematic human rights abuses,
- *Using class action:* some jurisdictions permit the acceptance by NHRI's of class actions, i.e. complaints by individuals or organizations on behalf of a larger number of persons who are subject to similar human rights violations. Class actions are good indicators of widespread human rights abuses thus the investigation of class action complaints should also address the broader, structural aspects of the case.

A good example of an NHRI announcing the commencement of an investigation in view of reaching out to a wide ranging stakeholders is noted below.



NHRI of Kenya promoting the commencement of an investigation

In the context of the an inquiry report (Malindi) concerning allegations of human rights violations of salt manufacturing, the Commission of Human Rights in Kenya advertised the commencement of the investigation process on radio and newspapers so as to attract all interested parties. Efforts were also made to mobilize the affected Marereni community to participate through notices and other announcements.

There are NHRIs that do not exercise quasi-judicial function, but have the power to address widespread human rights abuses. For them the examination of systemic violations is the best way to carry out investigations that cover individual cases too.

Water governance related human rights violations often reveal systems-level failures and legislative gaps. Whilst addressing individual water governance related human rights violations may offer effective remedy to victims individually, by **regrouping violations** NHRIs are in a better position to offer protection against systematic violations and might even prevent future malfunctioning of legislative and governance systems in general. There are several good examples of such aggregating practice by NHRIs that eventually contributed to an improved water governance at national level.



From individual complaints to systemic water related investigations

Monitoring petitions for systemic violations in Hungary: The Ombudsman of Hungary regroups complaints and petitions submitted by different individuals into certain categories reflecting the overarching nature of a certain problem. After sorting out these petitions, it can often observe that similar problems point to the same systems-level failure. In such cases the Institution can proceed to investigate the failure ex officio and call for a revision of the law if found necessary.

Joining individual complaints in Peru: The Office of the Ombudsman of Peru received increasing water related complaints from 1999 to 2007. In 2007, citizens across the nation filed more than two thousand complaints with the Office of the Ombudsman concerning water and sanitation service. During the same period, the Office of the Ombudsman was developing a strategic roadmap to advocate and defend Social and Economic Rights. This effort led to the Ombudsman's decision in 2003 to launch an investigation of water and sanitation services throughout Peru, based on the idea that rights violations accounted for many of the obstacles to effective water and sanitation management.

C. Investigation

The structure of the investigation of systemic human rights violations is largely similar to that of the examination of individual complaints. However, addressing systemic violations may necessitate a number of additional investigative tools and steps. E.g. in addition to hearing the experiences of victims (and the respondent, if relevant), it may be necessary take evidence from a broader range of government officials, academic experts, non-governmental organizations and other human rights advocates (or indeed any other organizations and individuals who can assist the investigations). This can take place through the regular process of taking testimonials or public hearings.

A good practice adopted by the NHRI of Ghana is summarized below in conducting nation-wide investigations on the potential human rights effects — including on the right to water — of mining.

NHRI of Ghana and nationwide investigation on mining

During its nation-wide investigation on the state of human rights in mining communities, the Ghana NHRI led focus group discussions with strategic sections of mining communities including traditional rules, women's groups, farmers, artisanal (small-scale) miners and illegal artisanal miners and the youth. The NHRI received reports from communities from six different areas presenting various human rights issues. In addition, the investigation comprised of site inspection and observation along with sampling and testing water. This allowed the investigators (lawyers, statisticians, consultants and researchers) to examine the relevant issues in considerable depths. The NHRI also sought input from various institutions and a wide spectrum of other stakeholders.



Public hearings may prove particularly powerful tools in investigating systemic violations. Testimonials taken in a public event make government officials and others publicly accountable for their actions and opinions as well as raise the profile of the investigation. A great practice adopted by an NHRI is revealed below in conducting provincial and national hearings in investigating the water and sanitation situation of the country.

NHRI of South Africa conducting nation-wide hearings

In the context of a broader investigation on the right to water and sanitation, the South African Human Rights Commission held provincial hearings. In addition, it raised the importance of ensuring that an analysis of the impact of a lack of service delivery on various groups of people is understood. To this effect, the Commission conducted nation-wide public hearings on water and sanitation related to the issues of service delivery and stakeholder collaboration and advocacy.

The hearings sought to assess: i) The impact that a lack of access to water and sanitation can have on one's life and dignity, as well as one's ability to access other human rights; ii) The impact of poor access to water and sanitation on the right to health, education and the environment; iii) the impact that a lack of access to basic services has on particular groups such as women, children and people with disabilities; iii) The state of national and provincial access to water and sanitation in the country; iv) The impact of poor access to water and sanitation on the right to health, education and the environment; v) The impact that a lack of access to basic services has on particular groups such as women, children and people with disabilities; and The state of national and provincial access to water and sanitation in the country.



D. Public inquiry

Public inquiries are important mechanisms in some (predominantly common law) jurisdictions to investigate controversies of outstanding political and social profile. The conclusions of public inquiries are usually addressed to the highest level of government in great publicity.

Some NHRIs also conduct public inquiries into systemic violations of economic, social and cultural rights. Such inquiries are however a major effort, that implies extensive research, consultations and public hearings. Public hearings are particularly important as through the testimonials of victims, public officials, experts they give substance to human rights protection in the broadest sense.

A good example of an NHRI adapting the method of public inquiry is presented in the box below in relation to the human rights situation of displaced people, including the right to water.



NHRI of Tanzania conducting public inquiry

The Tanzania Commission for Human Rights and Good Governance (CHRAGG) conducted a public inquiry in 2012 on internally displaced persons, following which it published its findings in *Report on Public Inquiry on Displacement of People from Their Lands in the Tanzania*. Among others, the CHRAGG was concerned over the lack of clean and safe water that had been reported to the Commission. In discussing the effects of internal displacement of persons, the NHRI noted that citizens in Singida Region complained that they were moved to other places where there were no essential social services like health centres, water and schools. Moreover, the report points out that the eviction processes in Tanzania have been accompanied by incidents of human rights violations. Citizens were mistreated by both government officials and investors. Among others, “women and children who went to fetch water in the area for domestic use were made to frog jump and sometimes were chased by vehicles and their containers were confiscated”.

The report also focuses more specifically on access to clean water, health and education services in their new settlements. It first recalls the international framework in regard to these rights before assessing how these obligations were put into practice among the displaced population. The investigators found that health care, education and clean water were not yet installed in most of the new settlements where the people had been moved. The report also lays down recommendations in relation to the challenged that have been raised by the Commission.

Public inquiries are also an excellent vehicle to promote public debate on human rights issues. The process should therefore encourage and facilitate media involvement.



Training on national inquiries by the Asia Pacific Forum

National human rights institutions should be made aware of existing resources. For example, in 2007, the Asia Pacific Forum hosted NHRIs to pool experiences and expertise on running national public inquiries as part of a pilot training programme. Public inquiries were identified as effective tools for addressing systemic discrimination and violations of human rights. Formal seminars and group exercises provided practical “how to” strategies on:

- Setting up a public inquiry, including choosing the inquiry subject, establishing terms of reference, developing an appropriate methodology, identifying stakeholders and undertaking sufficient planning and preparation;
- Resourcing a national inquiry, including the involvement of commissioners and staff, financial resources and community resources;
- Educating and informing the community, including strategies for working with journalists and the media; and
- Planning follow-up activities and advocating the adoption of the inquiry recommendations.

Source: <http://www.asiapacificforum.net/news/going-public.html>

E. Report and recommendations

Systemic violations call for systemic responses. The report and recommendations of the investigation should address comprehensively all issues raised. It should include, among others, a careful identification of the broad causes of the violation and proposals of solutions.

Because systemic violations of economic, social and cultural rights can be attributed to public agencies and private companies alike, NHRIs should be able issue recommendations to any appropriate organization or person at any level of government and the private sector. A good example of an NHRI issuing recommendations to a wide range of stakeholders following its report on the human right to water situation in the country is included below.



NHRI of Peru issuing water related recommendations

In 2005, the Office of the Ombudsman published a study entitled *Citizens without Water: Analysis of a Rights Violation*. The objectives of this report were the following: i) Highlight the nature of the human right to water and sanitation; ii) Shed light on the situation of limited access to sanitation services of major sectors of the urban population; iii) Evaluate the quality of service urban population receives in terms of drinking water quality and continuity of service; iv) Evaluate the legal, institutional and economic aspects of the sanitation industry preventing access and improve the quality of services.

The report included 13 recommendations for the Peruvian government, in particular to the Peruvian congress; the Ministry of Housing, Infrastructure, and Sanitation; the Ministry of Health; regional, provincial, and local governments; SUNASS; and the various water and sanitation service providers. The Ombudsman presented the report on behalf of the citizens, calling on government authorities to implement the recommendations. It includes a recommendation to improve access to water and sanitation throughout the country. To gather data and evidence for the report, the Office of the Ombudsman set in motion a number of measures, several of which took on a life of their own and remained active after publication of the report.

F. The educational and publicity dimension

Investigations of systemic violations, especially through public inquiries have important educational dimensions. The discovery and presentation of widespread human rights violations always attract media attention that is beneficial for public education and awareness-raising. These processes can also create public demand for deeper societal changes that will support the implementation of the recommendations of the investigation. Several NHRIs have already turned to the public, for instance, by issuing press releases in relation to water governance related human rights violations. An example is shown below.



NHRI of Peru and press releases

In Peru, the Ombudsman made a series of statements concerning the situation of the right to water and sanitation in the country. In this regard, a number of press releases were published: respect to delays in relation to the implementation of sanitation works in La Libertad, recommendations on commitments arising out of environmental emergency plans in Loreto, the expression of concern regarding the oil spill in the sea of Tumbes and the call for eradication of illegal mining are all among recent statements related to the human right to water.

REMEDIES

The purpose and scope of remedies by NHRIs

The Paris Principles do not specify the remedies NHRIs can offer to redress human rights violations. The Principles however underline that NHRIs must have the power “to submit to the Government, Parliament and any other competent body [...] opinions, recommendations, proposals and reports on any matter concerning the [...] protection of human rights”. In other words, in no matter what format, but NHRIs should have the authority to adopt meaningful and effective remedies concerning both individual situations and systemic human rights violations.

While there is no universal catalogue of remedies, there are certain *common objectives* all remedies imposed by NHRIs should fulfil. Thus, the remedies chosen should, as a priority, return the victim to the situation where he or she would be without the human rights violation (“*making the victim whole*”). This normally requires an order to stop the violation, to compensate the victim for all material and moral damage suffered and any further action that may be needed on behalf of the perpetrator to mitigate the situation. Second, remedies should ensure that the perpetrators are held accountable. This may call for criminal investigation, administrative action or judicial review, depending on the nature and the gravity of the violation. Finally, remedies should also aim at preventing future violations not only against the same victim, but also in general. This may require changes in government regulations, policies, or a mere review of administrative or company practice.

The remedies most commonly used by NHRIs are conciliation, referral to competent authorities or courts, recourse to international human rights mechanisms, recommendations and publicity. Some NHRIs even have the power to issue enforceable orders.

Alternative dispute resolution (mediation and conciliation)

The Paris Principles provide that NHRIs with quasi-jurisdictional competence should seek “an amicable settlement through conciliation”. Although only “conciliation” is mentioned, amicable settlements can be achieved through other alternative dispute resolution techniques, i.e. processes outside formal legal procedures.

Some NHRIs are therefore specifically required by law to attempt to conciliate complaints of human rights violations. Even when not so required, an NHRI might seek to conciliate complaints. This normally takes place at an early stage of the investigation, when the main facts of the situation are already clear, but the process is not yet concluded and no other remedies have been considered.

Alternative dispute resolution may offer various benefits for the victim. It is easier, quicker, cheaper and less traumatising than court procedures or the completion of the full NHRI investigation. Victims, however, should not be forced into such procedures and to accept a settlement that he or she considers unjust.

Alternative dispute resolution however is not always an appropriate mechanism to remedy human rights violations. When the nature and the gravity of the violation is such, the case must be referred

to the criminal justice system. Early resolution of the case may not be an adequate approach to systemic violations of human rights either. If the actual situation reveals systemic violations, then conciliated settlements should only be pursued if they provide redress not only for the individual complaint, but also address the systemic issues surfaced during the procedure.

Alternative dispute resolution, if successful, is documented in a settlement agreement. In most cases, a neutral third party (facilitator, mediator or conciliator) helps the parties to find mutually acceptable solutions.



Mediation and conciliation

Mediation in the human rights process requires the NHRI to take an active role in settling the dispute. The mediator has a structured role in allowing the parties to tell their side of the story, ensuring that the balance of power between the parties is equitable and facilitating the resolution of the dispute. In mediation, the role of the mediator is to:

- Enable parties to present their points of view;
- Help the parties come to a settlement;
- Explain the basic principles of human rights;
- Ensure that neither side in the mediation is at a disadvantage;
- Help parties record the settlement;
- Ensure that the settlement is respected; and
- Return the file for investigation if mediation is unsuccessful.

In most circumstances, the facts discovered during mediation cannot be used in the investigation.

Conciliation is another form of alternative dispute resolution that NHRIs use. The conciliator gives the parties more space and opportunity to reach a settlement themselves. Often conciliation occurs later in the investigation process and the conciliator has a role in explaining to the parties the relative strengths of their positions. In conciliation, the role of the conciliator is to:

- Let the parties understand the results of the investigation, including likely outcomes if appropriate;
- Allow both parties to present their points of view;
- Help the parties identify their respective interests;
- Ensure that a mutually acceptable solution satisfies their interests as well as the public interest;
- Help the parties record the settlement and present it to the commission for approval, with recommendations; and
- Ensure that the terms of the settlement are applied.

OHCHR (2010): National Human Rights Institutions: History, Principles, Roles and Responsibilities, Professional Training Series No. 4.

Referral to authorities

During the entire course of the investigation the NHRI may come to the conclusion that another government body has the authority to consider the complaint. In this case the NHRI is usually required to refer the case to the competent authority *ex officio* (or informs the complainant about its lack of competence) and terminate its own proceedings. This is the typical step when the need for criminal or disciplinary action is revealed.

NHRIs may also make referrals to competent authorities in the course or upon the conclusion of the investigation. These may include:

- The obstruction of the negotiation may require enforceable order by another agency,
- The investigation revealed an infraction that only competent government agencies can address fully,
- A recommendation or a decision of the NHRI is not followed up and the enabling law allows to make referrals to the authority addressed or its supervisory body,
- The terms of the settlement agreement have not been met.

An example is described below of an NHRI who referred the issue of contaminated drinking water to the competent authority following a complaint received on the matter.

NHRI of Namibia - Sewerage effluent contaminating drinking water

Residents of the Okalongo Settlement in the Omusati Region complained to the Office of Ombudsman about effluent sewerage water at Okalongo ponds flowing/discharging into oshanas, contaminating drinking water and posing a health risk to both humans and animals. A further concern was that these ponds are erected within oshanas, causing the ponds to overflow freely into the oshanas during the rainy season. After visiting the sites and confirming the allegations, the Ombudsman took up the matter with the District Environmental Health Office of Omusati Region. The district office indicated that the matter is under consideration and as an interim measure additional sand has been added to one side of the pond's bank, stopping the discharge of effluent into the oshana for the time being.



Referral to courts

There are particular instances where NHRIs can make referrals to courts and tribunals. NHRIs can often file lawsuits against public authorities or private parties on behalf of victims or as a *sui generis* legal action. NHRIs may also have the power to follow up their recommendations in court to compel the authorities addressed to take action.

NHRIs can appear in court through other avenues too. In many jurisdictions, the findings and conclusions of NHRIs are subject to judicial review. In these cases NHRIs have to defend their action against the respondents (or occasionally: the victims) of the underlying complaint procedure. Enabling laws often provide NHRIs the power to intervene in on-going court procedures either on behalf of the victim or as *amicus curiae*. An example of such intervention by an NHRI in relation to a water related legislative measure is presented below.



NHRI of Honduras filing an amicus curiae

The National Commissioner of Human Rights of Honduras filed an Amicus Curiae before the Supreme Court on the basis of unconstitutionality of the Legislative Decree No. 369 -2013, whereby the National Congress approved the so called “Indenture for Recovery Improvement and distribution losses Water Purification and Sewage Treatment in Dubbed Project Services Provided by the National Autonomous Service of Aqueducts and Sewers (SANAA).” Without being party to the proceedings in this appeal of unconstitutionality, the National Commissioner seeks to act as an impartial facilitator in the settlement of the dispute, contributing to an informed judgment, legal and doctrinally, and making recommendations to ensure respect and protection of human rights such as the right to water of each person and the community, leading to a public interest that is above any individual interest. The case concerns the human rights to health, life, environment, development and others rights under the principle of indivisibility of human rights.

Another example is presented below whereby the activities of the Ombudsman led to a Supreme Court decision ordering the cleaning up of a river basin.



Protecting the human right to water before the Supreme Court in Argentina

In 2002, the Matanza-Riachuelo River that flows through Buenos Aires was listed among the most polluted places on earth. The ombudsman of Argentina, upon a complaint by a local NGO, worked together with universities and NGOs to resolve the pollution problem of the river. The inquiry of the ombudsman led to a series of recommendations issued between 2003 and 2006.

In the meantime, a group of private citizens brought the case to the Supreme Court. The ombudsman and five NGOs asked to be a part in the judiciary process. The response of the authorities was to be presented in public hearings before the Supreme Court, of which the first was held in September 2006. In 2008 the Supreme Court ruling determined the liability of the various authorities and indicated the obligations of the various government bodies in cleaning up the river. Moreover, the court ruled that the National Ombudsman and the NGOs participating in the case could establish a Chartered Body, which exercises control over the clean-up plan presented by the authorities.

Seizing international human rights mechanisms

NHRIs are key domestic counterparts of the United Nations human rights system. Importantly, under the Paris Principles, NHRIs may also provide international human rights mechanisms with independent and authoritative information on national situations. These international mechanisms include:

- the Human Rights Council, the Special Procedures and the Universal Periodic Review (UPR), i.e. the so-called Charter-based bodies and mechanisms,
- the various human rights treaty bodies and mechanisms,
- regional human rights bodies and mechanisms.

Under both the UN and the regional systems the right to file individual complaints is primarily vested with the victim(s) or, to a lesser extent, non-governmental organizations. Thus, the role of NHRIs tends to be marginal in these procedures, focusing more on the promotion of the international complaints mechanisms and providing assistance to victims. Nevertheless, there are a number of other avenues available for NHRIs in the international context that enables them to complement their national activities.

A. Chartered-based bodies and mechanisms (The Human Rights Council, the Special Procedures and the Universal Periodic Review)

NHRIs can participate in the work of the so-called Charter-based human rights bodies and mechanism in several ways (See Section 2). In this context it is the UPR that gives NHRIs the greatest leverage to protect human rights at the national domain.

NHRIs can play an essential role during both the formal UPR process and the follow-up. NHRIs can participate in all phases of the UPR process. They are central to ensuring that the recommendations adopted are acted on and real change in the human rights situation in the state takes place on the ground. In particular,

- State reports should contain a separate section by accredited NHRIs;
- NHRIs are entitled to intervene immediately after the state under review during the adoption of the outcome by the Human Rights Council plenary;
- NHRIs can participate actively in the UPR national consultations leading to the national report;
- NHRIs can submit an independent report to the OHCHR (in fact, they are strongly encouraged to do so);
- NHRIs can consult NGOs;
- NHRIs can publicize and disseminate the outcomes of the UPR in the country;
- NHRIs can monitor the implementation of recommendations.

UPR and submission of the NHRI of Guatemala on the human right to water and sanitation

The NHRI of Guatemala devoted an entire section to the analysis of the human rights to water and sanitation situation in its submission to the 29th session of the Human Rights Council/ Universal Periodic Review in 2015. After presenting the national legislation and public policy in relation to water and sanitation, the NHRI highlighted that 46 per cent of household water is fit for human consumption whilst piped water in rural areas is basically non-potable water. Citing the MDG commitments, it also noted that in the absence adequate legal regulations, the sustainable management of available water resources is not ensured. In addition, the NHRI draw attention to the unfavourable situation of indigenous communities (In the departments with population mostly of Mayan origin), more than a third of its population has no access to water. It also noted the relevance of culture in relation to indigenous communities who tend to reject the use of chlorine as a water disinfectant. Finally, the NHRI also highlighted the serious water contamination affecting 97 per cent of available national water resources.



B. Human rights treaty bodies and mechanisms

The various human rights treaties established committees that can investigate communications (complaints) alleging violations of human rights by state parties. Generally, third party or *amicus curiae* interventions are not permitted under the procedures, but NHRIs, like NGOs, occasionally submit material relevant to the complaint through the complainant. The committees may also ask for additional information from NHRIs.

There are, however, a number of other means for NHRIs to participate in treaty bodies and other treaty mechanisms. Thus, NHRIs can take part in the state reporting processes, they can promote and assist the treaty-based complaints procedure (the complainant can involve the national institution in the procedure), they can conduct national investigations which enable the victim to file a complaint, NHRIs can follow up the implementation of the recommendations of the treaty body, etc.

An example is included below on an NHRI submitting to the CESCR information on the human right to water.



NHRI of El Salvador advocating for a national water law to the CESCR

In its submission to the CESCR (April 2014), the NHRI of El Salvador highlighted the fundamental importance of the inclusion of the human right to water into the constitution in 2012. The institution however pointed out that the general national implementation legislation of this constitutional recognition of the human right to water is still missing. The general water law is currently under discussion in the legislative organ of the country. The NHRI further made reference to the availability of water noting that in total only 75.9 per cent of households dispose of piped water whilst this ratio drops to 56.7 per cent in rural areas. The NHRI recorded many complaints in relation to violation of the human right to water on the basis of excessive or improper water fees, water shortages, and irregular or unlawful restrictions to water services in addition to water contamination. The NHRI in its submission also made reference to the water related negative impacts of the extractive industry and pointed to the lack of appropriate regulation in that context.

C. Regional human rights bodies and mechanisms

The most developed regional human rights mechanisms operate in Europe, Africa and the Americas. They all maintain complaints procedures designed to redress human rights violations that have not been properly investigated or remedied by the state party. These regional mechanisms provide various avenues for NHRIs to participate directly or indirectly, although the right to file communications (petitions) is normally limited to victims or their groups. The various regional bodies can also establish working groups, committees, appoint rapporteurs, undertake country visits, peer reviews, etc. that provide ample opportunities for NHRIs to engage meaningfully for the protection of human rights in their own country.



Bringing the case of Salvadorian metal mining to the Inter-American Commission on Human Rights

The Salvadorian NHRI requested the Inter-American Commission on Human Rights (IACHR) for a special hearing to discuss the potential threats of the Cerro Blanco mining project. A thematic hearing was held at the IACHR in November 2012, where the situation of people affected by metal mining in El Salvador was addressed.

Recommendations

Recommendations are the most commonly used remedies of NHRIs. Recommendations can suggest a great variety of actions and be addressed to a broad range of authorities or other bodies. Thus, NHRIs can recommend

- compensation for victims or other individual redress measures,
- changes to legislation (see Section 6),
- changes to government policy or practice (See Section 6),
- practical measures to eliminate the physical source of the human rights violation (e.g. building of segregated toilets at schools).

Read below various examples of NHRIs formulating water governance related recommendations in view of protecting human rights.

NHRI of Hungary and mining industry



The Ombudsman for Future Generations has been active in relation to the impact of the extractive industry on water sources. In Hungary, open-pit gravel and sand mining removes thousands of hectares of agricultural land from cultivation, resulting in an irreversible, enduring change of the landscape. Mining activity leaves numerous large and small lakes behind, which e.g. on the Pest plain alone evaporate groundwater on a surface of more than 2000 hectares, exceeding the drinking-water demand of a mid-size town. After an NGO submission, the Ombudsman established that there are regulatory deficiencies that prevent the protection of groundwater loss from abandoned mine lakes. According to the law, impact assessment should be carried out prior to the opening of new mines, and it also allows for the assessment of the cumulative effects of activities already existing in the region. However, investigations revealed that due to regulatory omission, threshold values are missing under which the authorities can deny leave for mining, furthermore, the actual and combined assessment of the impact of similar activities in the water basin management plans are also lacking. Moreover, the law states that following the utilization of an environmental element, the user is required to pay fee set in advance. As evaporation is caused by human interference, it may be considered an indirect use of the environment.

Therefore, the ombudsman called upon the minister both to resolve the implementation gap as regards setting threshold values for impact qualification, as well as laying down detailed rules of payment obligations, encouraging a more economic management of mining activities and the reduction of the evaporation surface to a minimum.



NHRI of Kenya identifying actions with regards to salt manufacturing

The Kenya Commission on Human Rights made various recommendations, which identified short, medium and long term actions in relation to each of the issue addressed in the Malindi inquiry report concerning allegations by the community of Magarini that salt manufacturing companies operating in the area had committed human rights violations against the community.

Among these recommendations, water related actions are found in relation to chapter five on Salt manufacturing and environmental sustainability. The NHRI stated that, in short term, there is a need to provide water to local communities and workers to ensure access to clean and safe drinking water to all. The responsibility key actors identified in this regard are the salt companies, the Malindi County Council, and the Ministry of Water and Irrigation. Other key actors for this recommendation are the Constituency Development Fund, civil society organizations (including community based organizations) and community leaders. Other actions include: (short term) Secure and safeguard sweet water springs, wells and wetlands; Establish an appropriate waste water treatment system and institute measures to ensure there is proper management and disposal hypersaline water; or as a response in long term, mainstream environment Management System in salt manufacturing business operation.



Recommendations of the NHRI of El Salvador in environmental matters

Following a complaint by the Alliance for Conservation and Development, the NHRI of Panama conducted an investigation on potential environmental impacts of the Chan-75 Hydroelectric project, including the right to water. The Ombudsman found that despite repetitive complaints by some members of the community, the project is vital for the future energy demand of Panama. It called upon the State to respect the right of the citizens to have a free and informed consent in the implementation of the project. It also called upon the State, particularly the National Environmental Authority, to closely follow the implementation of the project in light of its impact on human rights including the right to water.

Recommendations are non-binding by their very nature. The authorities receiving them may choose to accept or reject them. In some jurisdictions, the respondent can seek judicial review of the recommendations, especially of the factual basis of the findings.

Publicising decisions

The Paris Principles give an NHRI full authority to freely publicize its recommendations and decisions. The ability for an NHRI to disseminate findings is an essential prerequisite for the credibility of a complaints mechanism and for holding perpetrators of human rights violations accountable before the wider public. The publicity and transparency of the investigations of NHRIs are also key elements in the promotion of human rights. Such promotion and awareness-raising is particularly important in the case of widespread, systemic violations affecting large number of potential victims. The publication of investigation results and decisions should take into consideration the parties' needs for confidentiality.



Hungarian Ombudsman for Future Generations - Elements of success

“The style of presenting the results of our investigations seems to be really important both in forming the public opinion as well as in realizing the intended solutions in cases of violation of fundamental human rights. A topic which is emphasized at the right time with the right tune can better reach the public as well as decision-makers.”

Follow up

NHRIs should follow up the implementation of the remedies imposed. In many jurisdictions NHRIs can launch fresh investigations in the case of reticence by the authorities or non-compliance with the recommendations. NHRIs should also use the results of their investigations for broader human rights education and awareness-raising. A great example from the NHRI of Argentina is presented below whereby the NHRI was not only involved in cleaning up a river basin but also has been participating in the body overseeing compliance with the relevant court decision ordering the cleaning up of the river.

NHRI of Argentina monitoring compliance with Supreme Court decision

The NHRI of Argentina took on a leading role in ensuring a human rights based approach towards the violations revealed in relation to the Matanza-Riachuelo River Basin. The efficient actions of this institution not only led to a Supreme Court decision ordering the cleaning up the river, but also to the formulation of a body monitoring the implementation of the orders. In addition, as the coordinator of the Collegiate Body, the Ombudsman of Argentina monitors compliance with orders of the Supreme Court in relation to the Matanza-Riachuelo River Basin. It reports to the Court in relation to the enforcement of programs submitted by the authorities, makes observations on the proposed measures and has requested inclusion of pending issues onto the agenda.





Questions

- What are the basic principles of investigating human rights violations?
- What are the typical stages of the investigation of individual complaints?
- Identify the types of evidence that may be collected during the investigations!
- What are the characteristics of public inquiries, why are they particularly well-suited to address systemic violations of human rights?
- What are the main objectives of remedies?
- How can NHRIs make best use of international human rights mechanisms in addressing individual or systemic violations of human rights?

Exercise

The capital city of your country is expanding rapidly resulting in the proliferation of nearby informal settlements. One of these informal settlements overlays an important easy-to-access aquifer that is the major source of drinking water provision for the entire city. Short of organized water and sanitation services, the inhabitants of this informal settlement abstract water through wells and hand-pumps as well as pollute the water source by human and household waste. What remedies would you choose to address this lose-lose situation? Make use of the condition that the well-to-do city dwellers have the same interest to address the issue as poor internal migrants.

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▶ SECTION 5

PROMOTING A HUMAN RIGHTS-BASED WATER GOVERNANCE



Objective: *The objective of this chapter is to summarize the main goals, principles and procedures of the promotion of human right-based water governance by national human rights institutions.*

INTRODUCTION

Human rights can only be realized if rights-holder and duty-bearers are fully aware of their entitlements and responsibilities. This applies particularly to economic, social and cultural rights whose enjoyment can only be ensured through the cooperative effort of all segments of society. Consequently, human rights need active promotion by governments, international organizations, NGOs, law enforcement agencies, last but not least, national human rights institutions.

This chapter provides an introduction into the promotion of a human rights-based water governance by NHRIs.

Following a brief explanation of the term “human rights promotion”, the special role of NHRIs in the promotion of water governance related human rights is explained. Human rights promotion has some established principles and procedures that help NHRIs maximize the effectiveness of their educational and awareness-raising activities. The summary of these principles and procedures is followed by a review of some core promotional activities by NHRIs, such as education and training, public awareness-raising campaigns, publications, working with the media, advising and assisting government and the use of community-based initiatives. Finally, the chapter addresses cooperation with civil society and other non-state actors, such as water service and large water user economic activities.

WHAT IS HUMAN RIGHTS PROMOTION?

The promotion of human rights is one of the core functions of NHRIs. Promotion is a very general term and may encompass a **broad range of activities**. Promotion of human rights by NHRI is commonly interpreted as any activity directly aimed at raising awareness and educating about human rights. In this context one should not forget, however, that virtually all NHRI actions can and should have a promotional dimension. Investigation of human rights violations, advising governments on laws and policies or participation in the work of international bodies all have an important publicity edge that HNRI should exploit for the benefit of human rights promotion.

According to the NHRI Handbook of the United Nations, the promotion of human rights should aim at¹¹¹:

- Informing and educating about human rights;
- Fostering the development of values and attitudes which uphold human rights;
- Encouraging action aimed at defending human rights from violation.

The promotion of human rights may include diverse activities such as:

- Providing advice to and assisting the State or other organizations;
- Responding to external requests for comment on initiatives, consultations, documents and reports;
- Advocating NHRI policy positions;
- Participating in meetings, conferences, workshops and consultations;
- Preparing educational materials and other publications;
- Delivering trainings and other types of educational programmes;
- Disseminating information;
- Conducting public campaigns, such as radio or television promotions;
- Releasing reports and issuing media releases on a range of national human rights institution activities, including the results of investigations or monitoring.

WHY SHOULD NHRIS PROMOTE HUMAN RIGHTS-BASED WATER GOVERNANCE?

Why promote human rights-based water governance?

Human rights can only be protected efficiently if people know about their rights and the mechanisms to enforce them. Active promotion therefore plays a key role in the creation of a human rights culture that is conducive to preventing human rights violations and discouraging impunity.

The Paris Principles place the promotion of human rights at the centre of NHRI functions. Thus, the mandates of virtually all NHRIs define important responsibilities in promoting human rights. Yet, the pressing demand for investigating human rights violations often overwhelms the resources of NHRIs to such extent that the promotion of human rights can get overlooked. It is therefore important that appropriate attention is paid to the balance between the promotion and the protection of human rights. Equally, promotion of human rights should not overshadow or replace the monitoring and protection of human rights either. Rather, all core NHRI activities should be carried out in a concerted way creating positive synergies for human rights.

The recognition of the human right to water and sanitation within the family of economic, social and cultural rights is a relatively recent development. While the human rights-based approach to water governance is rapidly gaining ground worldwide, the traditional view that access to water and sanitation is predominantly a utility issue is still widely held. Therefore, awareness-raising about the human rights aspects of water governance is an urgent task. Such awareness-raising should have a wide scope and broad purpose. Naturally, it should, as a priority, aim at the education of the most vulnerable groups of

111 OHCHR (2010): National Human Rights Institutions History, Principles, Roles and Responsibilities,

consumers. NHRIs however should not ignore the broader sustainable development implications of water governance (e.g. the protection of water resource for future generations) either. Consequently, promoting human rights-based water governance is an urgent and horizontal task.

Why NHRIs are best placed to promote human rights-based water governance?

As explained in Section 2, the institutional design of NHRIs renders them particularly well-suited for the advocacy mission that is required for successful human rights promotion. Their *par excellence* human rights agenda provides them with unmatched social and political credibility. They act as a **natural bridge** between government and civil society, between officialdom and passionate human rights activism. This puts them into a unique position to catalyse and multiply the effectiveness of human rights promotion across the entire public life of a given country.

Also mentioned in Section 2 is the fact that in view of the institutional and policy fragmentation characterising water governance in most countries, NHRIs have a **unique opportunity** to mainstream the human rights-based approach to water management. This requires education and advocacy by NHRIs that target professionals, decision-makers as well as the general public. Water is everybody's business. NHRIs should be able find an appropriate message to convey and an avenue to reach any facets of society when it comes to the human right to water and sanitation and other related rights.

To that end NHRIs should attract and retain qualified staff to manage communications activities and media relations.

PRINCIPLES OF PROMOTING HUMAN RIGHTS-BASED WATER GOVERNANCE

The promotion of economic, social and cultural rights has a number of basic principles that should be taken into consideration by NHRIs in their advocacy of the human right to water and sanitation and other water governance-related rights.

First, the development and the delivery of human rights-based water governance promotion should be **participatory in nature**. It implies that both government and non-state actors should be involved in the preparation and implementation of promotional activities. While both sectors hold considerable knowledge, experience and resources in the field human rights education, they can at the same time be the primary target audience of human rights promotion.

Intense professional networking is also necessary in the international context. NHRIs should be able to tap the resources and experiences of their peers in other countries, as well as those of the international human rights organizations. UN and regional human rights bodies can be a major source of inspiration, information and assistance for national human rights institutions.

Participation is deemed successful, if the promotional activity is designed and carried out in such way that it mobilizes diverse target groups to take the message further, i.e. it moves them to transfer the acquired knowledge and skills to others. It follows that the promotion of human rights should *encourage dialogue* and *foster cooperation* among the various stakeholders concerned.

Second, promotion of human rights-based water governance should be **programme-based**. To maximize the impact of education and awareness-raising, NHRI should develop a comprehensive strategy for human rights promotion related to water governance. It implies that the NHRI adopts a broad concept of what and how it would like to achieve through human rights promotion and it integrates this into all of its other activities. Such a programme or strategy should be developed by a multidisciplinary programme team consisting of NHRI staff, members of competent national authorities, other external partners, such as NGOs, resource persons, or target group representatives. Having a comprehensive programme as opposed ad hoc promotional activities also enables the national institution to address different audiences over time and to use its resources to best effect through a combination of methodologies and activities.

Third, the promotional activities should be **concrete and targeted**. Water governance related human rights education and awareness-raising should not be carried out as an end in itself, but should serve the practical needs and match the particular life experience of the specific target audience. Therefore, teaching abstract concepts and pure legal texts would serve little purpose, if they are not placed into the relevant practical context.

Moreover, there are a number of direct human rights considerations that must be taken into account in the development and implementation of the promotional programme or strategy. These include the gender perspective, a focus on minority, marginalized and vulnerable groups or the rural dimension.

In the context of human rights-based water governance utmost attention must be paid to the **gender perspective**. In the absence adequate water supply it is normally women and girls who carry the burden of water collection. As explained in Section 1, the responsibility of fetching water is a major drag on women's physical health and personal perspectives in the developing world. They suffer disproportionately from the lack of adequate sanitation too. In many parts of the world girls are not allowed to go to school, if no separate toilets are provided to safeguard menstrual hygiene.

Promoting the human right to water and sanitation in a gender perspective in India

The Indian National Human Rights Commission issued a thematic report on Women's Right to Health. In assessing the implementation of the National Nutrition Policy of 1993 the Commission raised the lack of coordination between different departments that are supposed to provide supportive services, including safe drinking water and sanitation, and programmes that are related to women's empowerment, non-formal education and adult literacy.



Children are also primary victims of inadequate access to water and sanitation (See Section 1). Waterborne infections are a principal source of infant mortality and developmental diseases in the developing world. Children, especially girls, take the lion's share in water collection. Their educational perspectives can be completely wiped out as a result of inadequate water and sanitation conditions at school.

Other **vulnerable groups** too tend to suffer excessively from the lack of proper water and sanitation services (See Section 1). Thus the situation of indigenous peoples, nomadic and traveller communities, refugees, asylum seekers, internally displaced persons and returnees, victims of natural disasters, prisoners, older persons, people with disabilities, people with serious or chronic illnesses, etc. deserve special attention by NHRIs.



Indigenous people and the right to water – the case of Uganda

In relation to the right of indigenous peoples, the Uganda Human Rights Commission (UHRC) conducted in its 11th annual report an assessment of the rights of ethnic minorities and specifically looked at their right to water. The UHRC observed that special attention needs to be paid to indigenous persons and noted that ethnic minorities have critical challenges in accessing clean water for domestic use. The Commission subsequently issued recommendations to the government on how to improve the situation concerning the right of water of indigenous persons.

Another important dimension of human rights-based water governance is the **rural perspective**. Not only are water and sanitation services typically of lower quality in rural areas than in large urban centres, the countryside is often a silent battlefield of land encroachment and the takeover of traditional water sources by external users. In developed countries, rural areas are home to the bulk of the violation of the human right to water and sanitation. As the return-to-investment on water infrastructure is lower in these places and the political clout of villagers tends to be marginal compared to those of the educated, well-to-do urbanites, the situation of villages is often neglected even in countries that otherwise have high quality water and sanitation services.

THE FRAMEWORK FOR THE PROMOTION OF HUMAN RIGHTS-BASED WATER GOVERNANCE

As already mentioned in relation to the principles of human rights promotion, education and awareness-raising about human rights-based water governance is most effective when based on a well-developed framework or plan. This framework should set out the purpose and objective of the NRHI's promotional activities as well as the methodologies, resources, responsibilities, timeframes and processes for developing, delivering and evaluating human rights promotion.

The promotional framework, especially as concerns training and educational activities, should contain the following chronological tasks and steps:

- Identifying participants, issues, needs,
- Setting goals and objectives,
- Determining the content and formulating the programmes,
- Preparing the materials,
- Conducting the promotional activities,
- Evaluating and follow-up.

Identifying participants, issues, needs

To be effective, the promotion of human rights-based water governance must be addressed to a particular audience. Experience suggests that a promotional activity directed towards a specific group will invariably have a greater and more lasting impact than less focused, general actions. Consequently, the participants and the issues need to be selected carefully on the basis of a thorough needs assessment. See Section 1 on state and non-state actors in relation to water governance.

Target audiences can be quite diverse and could include:

- Vulnerable and marginalized groups, such as indigenous communities, women and children;
- Local, regional and national levels of the state, including the legislature, ministries, sectoral agencies, local governments and the judiciary;
- Private service providers;
- Public monitoring bodies;
- Industrial and agricultural water users;
- Professional groups, such as lawyers and medical practitioners;
- Formal and informal educational systems, and other public institutions and services, such as hospitals;
- Private-sector business, including national and multinational corporations;
- Non-governmental organizations (local, national and international), including social development agencies, human rights organizations, social action groups, sectoral organizations, law groups, arts and cultural groups, other civil society organizations and groups;
- The general public: individuals and communities;
- Celebrities, role-models and other opinion-leaders.

The various target audiences may have **different needs** and **require different approaches**. The so-called epistemic communities, such as judges, high-ranking government officials, NGOs, etc. may have their common worldviews, jargons, attitudes that NHRIs need to take into account, if they want to reach out to these powerful groups successfully. Therefore, in order to map out the real needs of the various stakeholder and target groups NHRIs should also look to others with particular expertise, including specialist trainers, facilitators, resource persons, expert consultants and other external partners, who can provide useful assistance in the development, delivery and sponsorship of promotional activities. Civil society organization might also offer valuable experience and local knowledge in reaching out to targeted local communities, including vulnerable and marginalized groups.

When assessing the *needs* for human rights promotion NHRIs may have to go beyond their own experiences. They should review recent national and local incidents and events, monitoring reports and investigation results of others. For example, in the context of water governance, utility companies hold infinite information on who and how has access to water and sanitation. Local environmental NGOs may be aware of the pollution of water sources even if they are not monitored or reported officially. Social NGOs, charity groups and churches are likely to know about water and sanitation needs of the elderly, poor, chronically ill. Cooperation with various stakeholders is crucial in gaining access to information on water governance related human rights violations. A good example of cooperation is shown below in preparing and publishing relevant human rights reports by NHRIs.



NHRI of Kenya cooperating with university

In relation to its Third State of Human Rights Report, the Kenya National Commission on Human Rights contracted the University of Nairobi's Institute for Development Studies to undertake field research during the period June to September 2010 to determine how policy programs get implemented. The two areas chosen for this focus were the right to water and sanitation and access to electricity. These two areas were picked to reflect their particular economic and social impact in terms of health (water and sanitation) and productivity (electricity). To gauge public and expert opinion on the implementation of policy programs in these areas, a national field survey comprising a sample size of 1,200 households across the eight provinces in Kenya was undertaken in September 2010. Ten focus group discussions were also held in the different regions to complement the survey.

Setting goals and objectives

Once the target audiences and their needs have been identified, the NHRI should establish the goals and targets of the particular promotional activity. Goals concern the broader outcome of the promotional exercise, while objectives are more concrete and are often expressed in measurable terms.

Typical goals of human rights promotion in the context of ESCR include:

- Capacity building with state and non-state actors,
- Changing attitudes and values within the target groups,
- Specific problems relating to the special character of ESCR, such as progressive realisation or the availability of resources.

In the context of human rights-based water governance, the following **main themes** of promotion can be suggested:

- Promoting formal legal recognition of the human right to water and sanitation as well as other water governance-related rights in the national legal system;
- Promoting the justiciability of the human right to water and sanitation as well as other water governance-related rights;
- Promoting awareness and understanding of human rights-based water governance through public education;
- Promoting the observance of the human right to water and sanitation as well as other water governance-related rights by non-state actors.

Determining content and formulating programmes

The content and the programme of the promotional activity must be carefully tailored to the goals and objectives of the actual exercise as well as to the needs of audience. Different target groups can be influenced through different methods and messages. *Governments* can be best approached through policy positions and advice on legislation or administrative arrangements. When seeking to influence *individuals* education and training programmes are more efficient. These programmes, especially if held regularly, can induce long-term, incremental change. The *broader public* can be best approached through media campaigns and events.

The content of the promotional programme should also take account of the *media* through which the promotion takes place. The emergence of social media, the decline in print media and the growing public influence of popular celebrities may require major adjustments to the way more traditional forms of promotion used to take place.

Preparing promotional materials

Again, the type and content of promotional materials should vary according to the nature of the programme. In this context the characteristics of the *channel of dissemination* should play a major role. NHRIs should keep in mind the immense changes that have taken place in the past decade in the structure of the media and people's access to information. E.g., the younger generation can be best approached through social media that caters for a special use of language, style, and format. Also, images, videos, live streaming, etc. are becoming a standard feature of human rights promotion. In summary, NHRIs must be able to use all contemporary media techniques and practices, if they want to communicate their messages successfully.

Consequently, materials for a *broad and diverse audience* must be designed in such a way that can catch the attention of the entire target group easily: plain language, clear messages, and visual illustrations. Attention must be paid to the linguistic, ethnic and cultural differences that may exist within the given target audience.

Training and educational material for *human rights courses* must be more focused to the needs of the recipients. Care should be taken to ensure consistency of terminology and message content among different materials that have similar promotional objectives.

Handbooks for participants and for trainers can be invaluable tools, especially when the workshops are comprehensive in scope and relatively lengthy. Handbooks can contain or be linked to various other learning materials whether on-line or in print. All promotional materials should be user-friendly in their layout and format.

Promotional materials aimed at government bodies or epistemic communities such as judges, researchers etc. must be more concrete and professionally robust. If such professional materials are to be disseminated more widely, their release should be supported by press communiqués, briefing notes and media events.

A good practice of the NHRI of South Africa is presented in the box below in elaborating a guide on water and sanitation for right holders.



NHRI of South Africa - Guide on water and sanitation

The South African NHRI created a guide, which enables right holders to understand, claim and seek for redress in case their right to water and sanitation is violated. It briefly describes the human right to water and sanitation, the legal content of the right and the role of the SAHRC in relation to the protection of the human rights to water and sanitation.

Conducting promotional activities

Conducting promotional activities requires careful and professional organising. The NHRI should have sufficient institutional capacity to organize training events, maintain media relations, preparing press and educational materials, etc. Even minor logistical problems may ruin the promotional exercise.

E.g. arranging a public education programme can involve not only preparing material but ensuring adequate resources for the campaign, booking media time and space, developing and conducting parallel activities and events, briefing relevant government agencies and human rights non-governmental organizations on the campaign, etc. There may be important pre-event and post-event tasks. E.g. following a successful publicity campaign NHRI must be prepared to be flooded by new complaints, requests for information or media appearances.

Evaluating and following up

Promotional activities should be evaluated to determine, if their goals and objectives have been achieved. Evaluation is also important to help NHRI develop their future activities and programmes.

The evaluation criteria should already be established at the planning phase. The NHRI should have a clear idea of what it will see as success and how success will be measured. Evaluation should be based on the feedback of the target audience. If the activity is a broad public education campaign, such feedback might be collected through sampling the larger target population. If the activity is a small workshop, participants should be encouraged to formulate and communicate their personal opinions through informal discussion or the completion of an evaluation questionnaire. The views of those conducting the programme or activity (trainers, external resource persons, celebrities involved, etc.) should also be sought.

The evaluation should also consider the process used to develop the initiative, the logistics of its implementation and the performance of those presenting the materials.



The 2013 Budapest Water Summit – a case study of effective communication

The Budapest Water Summit was a major international water conference in October 2013 in the run-up to the adoption of Sustainable Development Goals (SDGs) by the UN. While the main political objective of the Summit was to define the main building blocks of a future water-related SDG, it was also used to promote awareness of water governance related human rights. To that end, the Summit was preceded and supported by a series of concerted awareness-raising events and actions by the President of the Republic, the government, NGOs, art communities, schools, etc.

First, only one-fourth of the summit website (www.budapestwatersummit.hu) was dedicated to the conference itself. The bulk of the web-based information was dedicated to educating the public about pressing and popular water issues. Thus the website also included topics on global water problems (Water and future), on the impact of water on arts (Inspirations), the role of water policy in Hungary (Land of thousand waters). The summit web page also included awareness-raising toolkits.

The media promotional programme was launched one before the event itself. Through the close cooperation of political stakeholders, NGOs, academic institution, the Hungarian NHRI, etc. carefully chosen media appearances in mainstream TV and radio, social media, lifestyle magazines raised the public profile of water issues to heights never seen before.

Previous to the summit a billboard photo campaign was launched (Water and future). The opening of the conference was preceded by three day dedicated film festival entitled “Life giving water.” During the conference, NGOs were showing their selection of films submitted to the Green-Go competition. Subsequent to the event, the achievements of the Summit were disseminated widely in various national and international forums.

The Hungarian Ombudsman for Future Generations participated at the Budapest Water Summit, promoting the human rights to water in the international arena. In general, the Ombudsman also promotes the human rights to water through the dissemination of reports, volumes, videos, and through its attendance at events, such as the Budapest Water Summit, all of which have a long-term positive impact.

CORE ACTIVITIES TO PROMOTE HUMAN RIGHTS BASED WATER GOVERNANCE

While no strict classification can be made of the various activities that are aimed at promoting human rights-based water governance, there are some core groups of **activities** that NHRIs should undertake to fulfil their promotional function. These include:

- Education and training,
- Public awareness-raising campaigns,
- Publications,
- Working with the media,
- Advising and assisting government,
- Community-based initiatives.

Naturally, none of these activities can exist in isolation. While each of them has a specific thrust, they also overlap and can mutually support each other. E.g. most activities must involve the media, yet the special requirements of working with the media deserve dedicated attention in this chapter. Similarly, advising the government has a strong, but not exclusive public awareness objective.

Education and training

Human rights *education* should involve the formal education sector (primary, secondary schools and tertiary education), as well as the informal sector (i.e. reaching children and young people outside schools). *Training* activities can comprise training professionals engaged in the implementation of human rights as well as the promotion of human rights through seminars and workshops.

A. The education sector

The formal education sector plays a key role in the creation of a culture of human rights. International human rights treaties contain specific obligations to include human rights education in school curricula. NHRIs often participate in the development and implementation of such human rights education programmes.

NHRIs can take part in the formal education of pupils and students through various means. They can provide expert assistance in the adoption and modification of curricula with regards to the human right to water and sanitation, carry out instruction and provide assistance to teachers, develop water and sanitation related special educational materials and tools, etc.

In the specific context of human rights-based water governance the formal education sector plays a role not only as a vehicle to impart knowledge. Schools are also key places of the violation of the right, making it a natural environment to disseminate information about children's rights to access to safe water and adequate sanitation. The easiest way to do this is to insert the topic of water and sanitation into existing human rights courses and materials. The water governance element can also be integrated into classes on health and hygiene issues.

NHRIs should also reach out to those children and young adults who do not take part in formal curricular education (working children, children living in informal settlements, etc.). Especially as these children tend to be prime victims of the violation of the human right to water and sanitation. In this context non-governmental organizations working with these groups can offer informal educational opportunities.

B. Professional training

Certain professional groups play a key role in the implementation of human rights either because of their formal duties or as a result of their formal or informal social influence. These include politicians, high ranking government and parliamentary officials, members of law enforcement agencies, public water service providers, judges, lawyers, community leaders, members of NGO, teachers, social workers, the medical profession, etc.

Training professionals has traditionally been a core NHRI promotional activity. The UN system too places a great emphasis on professional trainings, the OHCHR has developed a wide range of training materials for various professional groups with a view to assisting NHRIs in their training activities. Through a careful selection of participants with an ability to influence public opinion and/or government policy on human rights, professional trainings can multiply the impact of the promotional programme.

Given that water services are to a large extent provided by private companies, it is important that NHRI trainings include not only government agencies, local government officials, etc., but the personnel of water services operators.

Professional trainings by The Danish Institute for Human Rights

One of the main activities of the Danish Institute for Human Rights (DIHR) is to carry out professional training courses on various subjects, including the monitoring of human rights based water governance. Their “AAAQ” toolbox is an elaborate and widely recognized monitoring instrument to assess the availability, accessibility, acceptability and quality of water and sanitation. DIHR has held a large number of professional training courses on the AAAQ framework in various regions of the world, targeting among others, staff members of NHRIs.



C. Seminars and workshops on human rights-based water governance

While professional trainings are designed to convey important operational skills to the target audience, seminars and workshops provide NHRIs a useful setting to transfer knowledge and insights to smaller groups of individuals with a professional or personal interest in human rights. Seminars and workshops are also a more conducive framework for exchange of views and personal experiences or for intensive learning. Because of their small size they are also useful platforms to form new relationships among the participants. In view of the various benefits of seminars and workshops, NHRIs should be careful to select individuals that can be key drivers in the transition to human rights based water governance or who can train others that can do so.

Public awareness-raising campaigns

Awareness-raising campaigns can be important tools to inform the wider public about human rights in general or about specific situations.

General awareness-raising campaigns usually aim to impart basic information on human rights and/or the NHRI itself. They can be very effective when the broadest of audience has to be reached, e.g. to inform people about some important developments in the field of human rights. They can however be costly, labour-intensive and time-consuming. Given the lack of direct feedback their impact can be difficult to assess. Also, such campaigns can only communicate simple messages and do so in an unfocused way. Yet, as they offer the best avenue to reach large numbers of people, NHRIs find them attractive to communicate certain issues.

Targeted campaigns focus on a specific right or a set of rights. They are an important tool to raise awareness about particular human rights issues, such as issues relevant to water governance-related human rights, to encourage a better understanding and acceptance of human rights principles.



Promotional efforts of the NHRI of Sierra Leone

The NHRI of Sierra Leone presented its 2011 annual report – addressing the right to water – during workshops and public lectures, as well as through radio programs and other activities and events. The objectives of the engagement were among others to ensure that the report reached the wider population of the country and to conduct awareness-raising on the rights of women, children and persons with disabilities.

To carry out successful general or targeted awareness-raising campaigns, NHRIs must take account of a number of factors. Water and sanitation related campaigns might require specific expertise that an NHRI may not have among its own staff. Campaigns have to be carefully designed and coordinated with other promotional activities of the NHRI. To maximize the impact of the campaign, NHRIs should team up with other stakeholders who are ready to communicate the same messages through their particular means and to their particular constituencies.

In the field of human rights-based water governance media campaigns can be particularly effective. Water and sanitation is so closely linked to daily human existence that it is relatively easy to formulate powerful messages on the subject. Water issues can also be eloquently illustrated by images that everybody can understand. Even well-watered, developed countries have water issues that deserve public attention.

Media campaigns are more impactful, if carried out by multiple players in concert through diverse media. e.g. a billboard campaign by an NHRI can be successfully complemented by a photo contest organized by social NGOs that is supported by the local water company.



Video message of the NHRI of Argentina¹¹²

In a video made available to the public on the internet on the NHRI's activities in relation to water governance and Basin Management in particular, the Office of the Ombudsman of Argentina presented its experience and actions of this Argentinian institution in promoting human rights in water basin management.

Publications

Producing, collecting and disseminating information materials remain key promotional activities of NHRIs even in the age of the internet. The publications most widely produced by NHRIs include:

- Core publications,
- Annual reports,
- Specialized human rights publications including information on water governance related human rights,
- Special publications dedicated to the issues of water governance related human rights.

Core publications contain basic information about human rights and the NHRI itself. These allow the public to develop a general understanding of human rights as well as to learn about the activities of the NHRI. Such materials should be in plain language, easy to understand and visually attractive. NHRIs should also develop media materials (videos, leaflets, etc.) that advertise core publications. An example of a core publication of an NHRI including relevance to the human rights to water and sanitation is presented below.

Reporting by the NHRI of South Africa

The South African Human Rights Commission is required, in terms of section 184(3) of the Constitution, to request information from government on the progressive realisation of certain economic and social rights. This information is placed in its so-called "*Section 184(3) Reports*". In these, the South African Commission also looks at the interdependence and indivisibility between human rights. For example, when relevant, it assesses the impact of poor access to water on access to health and the impact of polluted water on the right to environment.



Annual reports are official publications that NHRIs are usually required to produce by law. They provide a detailed description and statistical summary of the activities of the NHRI and as such they serve as a basic tool of public accountability. Annual reports should target in equal measure the parliament (or any superior authority), the media and the general public. Given the diverse needs of such multiple audiences annual reports should be sufficiently detailed for official scrutiny, yet accessible for the media and the wider public. Annual reports are also used as a major sourcebook for academic research and international human rights organizations. There are an increasing number of NHRIs who add water and sanitation relevant information into their annual reports. An example is shown in the following box.

112 <https://www.youtube.com/watch?v=lawjwSbX26k>



NHRI of Côte d'Ivoire's annual report of housing/water and sanitation

The Human Rights Commission of Côte d'Ivoire linked the right to water and sanitation to the right to adequate housing in its 2009 annual report. It recalled for example that the Committee on Economic, Social and Cultural Rights established that beneficiaries of that right must have permanent access to, among other resources, drinking water and sanitation facilities. It also raised a concern with regard to the lacking sanitation installations in poor districts which as a result forces people to often defecate in public areas.

NHRIs also develop **specialized human rights materials**. They can take various formats such as regular newsletters and magazines for a general audience, address particular human rights issues, target a more professional audience, etc. These specialized human rights publications may also contain information on the situation related to water governance-related human rights. There are also several NHRIs who include water- and sanitation-related information on specialized human rights publication on other, related human rights matters. An example is hereby presented.



Disability Manual of the NHRI of India

The *Disability Manual* published by the National Human Rights Commission of India assigned a subchapter to the human rights to food and water. It identified the international standards for the right to clean water followed by the domestic framework in the context of persons with disability. It further recommended that actions should be taken to ensure that accessibility needs are included in rural development programs among others in terms of access and use of sanitation facilities and water supply. Concerning the right to sanitation, the Commission made mention of regulations and legislation which require the State to adapt toilets for people with disabilities, including in the transport sector.

Some NHRIs have already developed **specialized publications** dedicated to the issue of **water and sanitation**. A good example is presented below.



Right to Water and the Protection of Fundamental Rights in Hungary

The Hungarian Ombudsman for Future Generations published the book called *Right to Water and the Protection of Fundamental Rights in Hungary*. It is a collection of articles on the legal and conceptual frameworks of the human right to water and sanitation in general and the constitutional guarantees thereof in Hungary. Moreover, in relation to the fundamental right to environment encompassed in the Hungarian Constitution, the book lays down the mechanisms of integrating the right to water and sanitation within the legal and institutional frameworks in Hungary and the specific mechanisms employed by the Commissioner for Fundamental Right in that regard. It includes Hungarian, European and International examples of issues and solutions of water governance from a human rights perspective.

Working with the media

Mass media are a dominant force in shaping public opinion: making good use of it will determine the effectiveness of human rights promotion by NHRI.

Radio and television are still considered the most influential vehicles to reach the broadest possible audience. NHRIs are advised to develop regular radio and television programmes promoting human rights issues. Radio is particularly useful means of communication in countries with insufficient literacy levels and low TV penetration. Independent radio channels tend to offer free or subsidized airtime to NHRIs to promote human rights issues. TV and radio are also the most efficient media to broadcast human rights advertising clips and announcements.

While mainstream political *print media* has been on steady retreat in the past decade, major newspapers still have a major impact on defining the national political agenda. Thus, inserts into influential newspapers on important human rights issues can help sensitize and shape public opinion. Also, regular guest editorials in major papers can influence public discourse for the benefit of human rights. It must be underlined that the circulation of popular print media, such as lifestyle magazines and tabloid newspapers, remains steady or growing in many countries. These magazines and papers reach wide audiences and can have a huge impact on human rights awareness within important sections of society.

Press conferences should be used routinely by NHRIs to communicate important human rights developments and events. News conferences can be effective only if the institution has something truly newsworthy to communicate. They should always be supported by media releases and/or background documents to inform the media of the NHRI's work, including decisions reached in a human rights investigation.

The *internet* has recently become the most effective tool for disseminating information by NHRIs. They are also a potent platform to raise awareness, build communities or mobilize people around various human rights issues. NHRI *websites* should contain all their information and publications as well as links to external sources of materials. Websites should also feature videos, graphs, chat rooms and other interactive platforms. NHRIs should increasingly rely on *social media* to communicate their messages, to conduct awareness-raising campaigns, to build networks, especially among young people.

Media relations must be built up carefully and managed professionally. NHRIs should employ specialized communications personnel, including authorised spokespersons and public relations experts. A good example of an NHRI is presented in the box below.



Media relations and the NHRI of Hungary

During investigations, the Hungarian Ombudsman for Future Generations sometimes makes official visits to the site where a petition originated from (e.g. the site of groundwater pollution, or drinking water wells, etc.). It is usually a good opportunity to make a certain case more widely known by the public, as visits of the Office attract the interest of the press more easily than reports or official recommendations. In other cases, the Ombudsman makes regular visits to every country in relation to the adequate protection of human rights to water and to a healthy environment, usually catches people's attention. In the field of human rights promotion, it can sometimes be challenging to find a topic that is interesting enough for the media to be dealt with and distributed. The Institution realized that it is very important to choose the right language and the right cases when presenting a problem. It sometimes also holds press conferences to amplify the message and make important cases more well-known.

Community-based initiatives

NHRIs may also chose to address particular communities directly. Through organising promotional events and supporting local initiatives NHRIs can facilitate awareness of human rights within that particular community. In conducting such community-based activities it is advisable to cooperate with local leaders or activists on the ground who can help design the promotional event in a way that it suits bests the needs and cultural conditions of the particular community.

Community-based initiatives can include participation by NHRIs in the traditional festivities of a locality, dedicated campaigns over a human rights violations specific to a particular ethnic or religious community, various collective promotional activities targeting children and young people (drawing competitions, sporting events with a human rights theme), commemorating important human rights dates, etc. Such community-based actions can give substance to human rights in disadvantaged groups, stimulate further community building as well as become an invaluable source of information and inspiration for the NHRI itself.



Community-based initiative to promote water governance related human rights in Panama

In Panama, the Ombudsman organized the cleaning of the Mariato beach, as part of the commemoration of the World Water Day. This cleaning allowed to collect a large amount of leaves of palms at the edge of the beach, as well as glass bottles, beer cans, pampers, disposable plates, spoons and plastic forks, and other solid waste deposited in garbage bags.

WORKING WITH CIVIL SOCIETY IN PROMOTING HUMAN RIGHTS-BASED WATER GOVERNANCE

Civil society is a natural partner of NHRIs in the promotion of human rights and water governance related human rights as well. NGOs possess certain skills and characteristics that render them ideal partners in creating a national culture conducive to the respect of human rights. Therefore, NHRIs should establish and maintain close contacts with NGOs and other community groups with a human rights agenda. Working with NGOs can facilitate the activities of the NHRIs, in particular, can enhance the effectiveness and the visibility of the promotion of human rights.

NGOs can be involved as **useful partners** in educational and awareness raising projects. Indeed, in view of their special expertise and ground knowledge NHRIs often consult or recruit civil society organizations in developing and conducting human rights promotion. Conversely, NGOs may need to be educated by NHRIs to become effective agents of human rights in their particular field of activity.

NHRI of South Africa working with civil society: the 2014 report on the human right to water and sanitation



In 2014 the South African Human Rights Commission issued a landmark inquiry report on the state of water and sanitation (Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014). The inquiry was carried out in close cooperation with civil society organizations. The report envisages a major role for civil society in the promotion of human rights-based water governance. It specifically calls on the government to liaise with and provide funding to community-based civil society organizations for the implementation of local projects aiming at the realisations of the human right to water and sanitation.

In the context of human rights-based water governance NHRIs should not only seek the natural partnership of local NGOs, but they should also tap the resources of international non-governmental organizations. There is a number of international non-governmental organizations that are specialized in access to water and sanitation. They produce adaptable, free of charge awareness-raising tools and materials and can often provide direct assistance to NHRIs in their promotional activities.

PROMOTING OBSERVANCE OF WATER GOVERNANCE RELATED HUMAN RIGHTS BY NON-STATE ACTORS

Realisation of economic, social and cultural rights requires an effort by all segments of society. Naturally, certain non-state actors bear more direct responsibilities in the fulfilment of these rights than others. But some non-state actors can have such great impact on the enjoyment of human rights that NHRIs should **engage with them closely** with a view to promoting observance of human rights.

This applies particularly to the human rights-based water governance. With the rapid expansion of water services worldwide, it is increasingly (state-owned or private) utility companies who will determine the actual parameters of access to water and sanitation. Many of the water companies are not only privately owned, but they are also transnational corporations whose national branch may have very little say in how the company is operated locally.

When approaching water services companies NHRIs should have a firm understanding of the legal framework and the business model that governs the operation of these companies. Usually, as a natural monopoly, the provision of drinking water and sanitation services is a very heavily regulated business. While most companies are driven by profit considerations, they may also be constrained by a plethora of regulations and political pressure that actually leave very little room for manoeuvre over the terms of their operations. Nevertheless, water companies may be natural allies of NHRIs in promoting human rights-based governance. e.g. a recurring problem in poor and underserved is the wasteful use of water, frequent leakages, unenforceable backlogs in fee payments, etc. These phenomena are often rooted in social and cultural patterns that NHRIs may help address in cooperation with the utility company.

In some countries, however, the multinational water corporation may be so powerful that it can influence national and local regulation and politics to its own benefit. In such cases NHRIs should not only address the local company branch, but inform the parent corporation and the public of the country of the corporate headquarters. International NGOs with experience in handling multinational corporations can also be of assistance.

Importantly, companies other than water utilities can have major impact on the enjoyment of the human right to water and sanitation. Mining, waste management, agriculture, energy production can be major users and/or polluters of water resources. These activities, in unchecked, can wipe out the resource base of today's and tomorrow's consumers. NHRIs should seek cooperation with these undertakings before the problems get severe.

Finally, companies can be positively engaged in the promotion of human rights-based water governance more and more. Plenty of recent examples all over the world demonstrate the willingness of food, industrial, construction, etc. companies to contribute on a voluntary basis to the resolution of pressing water and sanitation problems in their operational areas. NHRIs should tap on this promising trend of corporate citizenship and forge partnerships with such companies for the advancement of the right to water and sanitation. For more information on business and human rights, see Section 1.



Salt mining in Kenya: positive company initiatives

In 2005, the Kenya Commission on Human Rights undertook an inquiry concerning allegations by the community of Magarini that salt manufacturing companies operating in the area had committed human rights violations against the community. The inquiry concluded that fresh water sources from which the surrounding community traditionally drew its water had been contaminated by underground salt seepages and other activities resulting from the salt manufacturing companies' actions. The inquiry report however also presents examples of good practices in Kenya which may inspire the salt companies. Among others it suggested that the manufacturing firms should learn from the practices of the Magadi Soda Company and provide water to schools and for domestic use.



Questions

- What are the principles of human rights promotion?
- What are the core human rights promotion activities?
- Describe the steps of the development and conducting of training programmes!
- What is the role of civil society in the promotion of human rights based water governance?
- How can water utility and major water user companies be engaged in the promotion of the human right to water and sanitation?

Exercise

- Design the main elements of a public awareness campaign on access to water and sanitation in rural elementary schools. Select the audience, the issues, the tools and timeframes in such a way that ensures the broadest possible impact.

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▶ SECTION 6

ADVISING GOVERNMENTS AND PARLIAMENTS IN A HUMAN RIGHTS-BASED WATER GOVERNANCE



Objective: *The objective of this section is to present the various means available to NHRIs as well as good practices in providing advice to the executive and legislative branches with regards to water governance related national legislation, policies and practices.*

INTRODUCTION

Assisting and advising government is a core competence of NHRIs, laid down in the Paris Principles. This role of NHRIs contributes to rendering governmental bodies more accountable and offers the possibility to address systematic violations and legislative gaps. Reporting, providing recommendations and issuing opinions to the parliament additionally offers NHRIs the opportunity to receive a hearing in the country's representative and elected body.

NHRIs cannot take over the role of political decision-makers and of the judiciary, so they only function as an additional safeguard in the development and implementation of human rights related laws and policies. This watchdog role however also gives them a unique opportunity to influence public discourse and decision-making in relation to water governance related human rights through disseminating their opinions, recommendations, proposals, position papers, reports etc.

The advisory role of NHRIs in relation to water governance is of pivotal importance taken into account the current legislative reforms taking place worldwide with regards to water governance. In particular, there are legislative reforms currently taking place in the African continent along with the Central American region. It is of outmost importance that NHRIs enhance their capacity in understanding and analysing the relevant legal framework in order to be able to accompany the current policy and legislative reforms in relation to water governance from a human rights lens.

In addition, the implementation of the globally agreed water and sanitation related sustainable development goal will also require significant national level translation and implementation effort. NHRIs are in a well suited position to assist this national level implementation process of the SDGs by several means (see also Section 2 on SDGs).

ADVISORY MANDATE OF NHRIS

According to the Paris Principles, NHRIs shall have the responsibility to submit to the Government, Parliament and any other competent body, on an advisory basis opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights. NHRI may do so either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral. Most NHRIs are empowered to make unsolicited recommendations, while a minority of NHRIs may only advise upon request by the authorities.

The Paris Principles thus provide for the subject matter with regards to “**any matters concerning the promotion and protection of human rights.**” In addition, they may do so in relation to the following:

- Any legislative or administrative provisions, provisions relating to judicial organizations, intended to preserve and extend the protection of human rights: i) NHRI shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make recommendations; ii) NHRI shall if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
- Any situation of violation of human rights which it decides to take up;
- The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions of the government.

In addition, NHRIs have the mandate to promote and ensure the harmonization of national legislation with the international human rights instruments to which the State is a party, and their effective implementation. They are also enabled to encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation.

NHRI are also allowed to publicize these opinions, recommendations, proposals and reports. While not a promotional activity *per se*, providing advice or assistance to parliament, the executive branch or the judiciary has, in most cases, a publicity dimension that NHRIs should be able to exploit for the benefit of human rights promotion.

REVIEWING EXISTING WATER GOVERNANCE-RELATED LEGISLATION, POLICY AND PRACTICE

The point of departure is to be found in General Comment No. 15 on the right to water stipulating that existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to water, and should be repealed, amended or changed if inconsistent with the Covenant requirements.

NHRIs should systematically review existing law, policy and practice “to preserve and extend the protection of human rights”. Thanks to their general advisory mandate in relation to all human rights, NHRIs are also in a position to review existing law, policy and practices in relation to the preservation and extension of water governance-related human rights.

This water governance-related review process is likely to involve some or all of the following elements:

Water governance related legal mapping	<ul style="list-style-type: none"> Identifying international human rights instruments in relation to the human rights to water and sanitation as well as other connected rights to assess national level compliance; Selecting national water governance related laws, policies and practices that are to be reviewed; Assessing the degree to which these existing national water governance related laws, policies and practices ensure the rights at issue are being enjoyed;
Formulating recommendations	<ul style="list-style-type: none"> Identifying the ways in which the water governance related law, policy or practice might be improved and who has the responsibility for this; Preparing a report with recommendations;
Advocacy	<ul style="list-style-type: none"> Lobbying to ensure that the report is reviewed and the recommendations adopted; On the basis of monitoring activities, NHRI can proceed to reporting publicly on the degree to which the recommendations have been adopted.

Legal mapping of a given country might involve a complex analysis of the water governance related human rights framework. The following main steps could be envisaged in analysing the national framework:

1. Analysis with regards to the signature and ratification of **international and regional treaties/ political declarations** to determine the relevant international commitments of the country. See further pages outlining main international/regional treaties relevant to the human right to water.
2. **Analysis of national law/policy** in terms of the specification of the content of the human right to water and sanitation:
 - Constitution;
 - National legislation: Water Code; other legislation on water resources management; legislation on environmental matters (related to water); legislation on agriculture; legislation on energy (extractive industry); legislation on health;
 - National policy/strategy: National Water Strategy (Governmental Documentation - Ministry of Health, Ministry of Water, Ministry of Environment, Ministry of Development etc.).
3. **Analysis of local (state/region etc.) level:** Specification of the content of rights and obligations in local regulations.

Assessing the degree to which these existing national water governance related laws, policies and practices ensure the rights should be guided by the elements of **availability, quality, acceptability and accessibility (physical-, economic- and information accessibility)**. See Section 1 on the *content* of the human right to water and sanitation, as well as on the obligations of State and non-State actors to assess national level compliance from a human rights lens. Section 1 also provides examples of national legislations worldwide.

Furthermore, WaterLex developed an online **legal database** in relation to the right to water and sanitation that might provide further assistance to NHRIs in identifying water governance related legal frameworks worldwide. This Legal database is accessible (free of charge) via the following website: <http://www.waterlex.org/waterlex-legal-database/>



Figure 6.1: WaterLex Legal Database

An example is presented below from New Zealand whereby the NHRI conducted an analysis of the relevant legal framework and concluded that it was not in line with international human rights commitments.

NHRI of New Zealand reviewing national law

The New Zealand Human Rights Commission made a submission on the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act to the Local Government and Environmental Committee. The act replaced the elected council members of the Canterbury Regional Council with Government-appointed commissioners. Furthermore, Canterbury residents were no longer allowed to access the Environmental Court to appeal water conservation orders and regional planning decisions. The Commission stated that the Bill was undemocratic and was contrary to New Zealand's human rights obligations under a number of international treaties.



In addition, the former UN Special Rapporteur developed **checklists** in analysing relevant national legislative, regulatory and policy frameworks in her handbook on realising the human right to water and sanitation.¹¹³ Those checklists may provide an important source of information for NHRIs in the process of analysing national framework with regards to water governance related human rights.



REVIEWING WATER GOVERNANCE-RELATED PROPOSED LEGISLATION, POLICY AND PRACTICE

General Comment No. 15 on the right to water further calls on States to adopt a **national strategy or plan of action** to realize the right to water. It also outlines the content of this national strategy by stating that it must:

- be based upon human rights law and principles;
- cover all aspects of the right to water and the corresponding obligations of states;
- define clear objectives;
- set targets or goals to be achieved and the time-frame for their achievement;
- formulate adequate policies and corresponding benchmarks and indicators.

General Comment No. 15 further stipulates the principles to respect in those national strategies and plans (e.g. non-discrimination, participation etc.). It also notes that States may find it advantageous to adopt **framework legislation** to operationalize their right to water strategy. According to General Comment No. 15, such legislation should include:

- targets or goals to be attained and the time-frame for their achievement;
- the means by which the purpose could be achieved;
- the intended collaboration with civil society, private sector and international organizations;
- institutional responsibility for the process;
- national mechanisms for its monitoring;
- remedies and recourse procedures.

The review process aimed at providing advice on proposed water governance-related legislation, policy and practice from a human rights angle will be similar to the one outlined in the previous section. NHRIs may be involved in advising the legislative and executive branch in relation to the following in the context of water governance:

- Providing advice on incorporating international water governance related instruments into the national framework;
- Providing advice on water governance related draft legislation, policy and practice (including water related budgets);
- Advocating for the ratification of water governance related international human rights instruments;
- Providing advice on reports intended for international human rights accountability mechanism.

Advice on incorporating international norms

According to the Paris Principles, NHRIs have the mandate to promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party. Thus, NHRIs have a fundamental role to play in assisting the national level harmonization process of internationally agreed relevant human rights norms.

This specific element of the advisory mandate of NHRIs are of particular importance in view of incorporating the relevant international framework with regards to water governance related human rights into the national framework. Therefore, it could be a good starting point for NHRIs to promote and advise governments on the domestic implementation of relevant water governance-related international instruments.

See the box below outlining the international and regional treaties and relevant UN resolutions including obligations related to the right to water:

International treaties	<ul style="list-style-type: none"> • The International Covenant on Economic, Social and Cultural Rights (1966) • The Convention on the Elimination of All Forms of Discrimination Against Women, adopted in 1979 (Art. 14 (2)) • International Labour Organization (ILO) Convention No. 161 concerning Occupational Health Services, adopted in 1985 (Art. 5) • The Convention on the Rights of the Child, adopted in 1989 (Arts. 24 and 27 (3)) • The Convention on the Rights of Persons with Disabilities, adopted in 2006 (Art. 28)
Regional treaties	<ul style="list-style-type: none"> • The African Charter on the Rights and Welfare of the Child (1990) • The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) • The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) • The Arab Charter on Human Rights (2004) • European Charter on Water Resources (2001) • African Charter of Human and People's Rights (1981) • American Convention on Human Rights (1969) • European Social Charter (1961) • Revised European Social Charter (1996) • European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
UN normative documents	<p>Recognition of water and sanitation as human rights was reaffirmed: by the UN General Assembly in July 2010 (A/RES/64/292) and by the Human Rights Council in September 2010 (HRC Resolution 15/9). Both the UN General Assembly and the Human Rights Council subsequently reaffirmed recognition of the human rights to water and sanitation.</p>

With the adaptation of the water and sanitation related sustainable development goal, NHRIs may also have a key role in assisting national level authorities to incorporate the SDG goal into the national framework. See more details on this matter at the end of the current section.

Ratification of human rights instruments

According to the Paris Principles, NHRIs are also enabled to encourage ratification of the international human rights related instruments or accession to those instruments, and to ensure their implementation. In this vain, NHRIs may also encourage ratification or accession to water governance related international human rights instruments. An example of an NHRI advocating for a ratification is presented in the following box.



NHRI of El Salvador advocating for ratification

The NHRI of El Salvador also demanded the early ratification of the amendment to article 69 of the Constitution of El Salvador. The provision recognizes the right to water and adequate food as basic human rights complementing their protection and development with secondary laws on the subject, in addition to a law prohibiting metallic mining and import of chemicals.

Targeted review of legislation, policy or practice

NHRIs may also advise governments and parliaments on draft water governance-related legislation and policy from a human rights perspective. In terms of process, reviewing a proposed draft legislation in relation to water governance may involve similar steps described with regards to legal mapping of that national framework. Section 1 on the *content* of the human right to water and sanitation and other relevant rights, the obligations of relevant actors outline the elements to verify in reviewing draft legislation, policy or practice.

The following *sources* may provide additional assistance to NHRIs in analysing the content of water governance related tabled drafts from a human rights lens.

General Comment No. 15	The right to water
Thematic reports of the UN Special Rapporteur on the human right to water and sanitation	<ul style="list-style-type: none"> • The human right to participation in the context of realizing the human rights to water and sanitation, 2014 (A/69/213) • <i>Realising the Human Right to Safe Drinking Water and Sanitation: a Handbook</i>, 2014 (A/HRC/27/55/Add.3) • Wastewater management and the rights to water and sanitation, 2013 (A/68/264) • Sustainability and non-retrogression in the realisation of the human rights to water and sanitation, 2013 (A/HRC/24/44) • Stigma and the realisation of the human rights to water and sanitation, 2012 (A/HRC/21/42) • Financing for the realisation of the rights to water and sanitation, 2011 (A/66/255) • Planning for the realisation of the rights to water and sanitation, 2011 (A/HRC/18/33) • Good practices compilation, 2011 (A/HRC/18/33/Add.1) • Human rights obligations related to non-State service provision in water and sanitation, 2010 (A/HRC/15/31) • Human rights obligations related to access to sanitation, 2009 (A/HRC/12/24)
Country mission reports of the UN Special Rapporteur on the human right to safe drinking water and sanitation	<p>Kenya, (to be published 2015)</p> <p>Jordan 2014</p> <p>Brazil, 2014</p> <p>Kiribati, 2013</p> <p>Tuvalu, 2013</p> <p>Thailand, 2013</p> <p>Senegal, 2012</p> <p>Uruguay, 2012</p> <p>Namibia, 2012</p> <p>Slovenia, 2011</p> <p>Japan, 2011</p> <p>USA, 2011</p> <p>Egypt, 2010</p> <p>Bangladesh, 2010</p> <p>Costa Rica, 2009</p>

The box below provides an example of an NHRI examining water and sanitation related national draft legislation.



NHRI of El Salvador reviewing draft law on metallic mining

In 2012, El Salvador's Ministry of Economy along with the Ministry of Environment and Natural Resources presented to the National Parliament the so called Special Law for the suspension of administrative procedures related to metallic mining exploration and exploitation projects. Based on this law proposal and based on the constitutional mandate, the El Procurador for Human Rights Defense presented to the National Parliament an opinion about the Special Law.

This opinion starts by outlining the growing challenge of availability of water resources in El Salvador. It is noted that increasing water demand due to growing population and negative effects of climate change all contribute to this challenge. In particular, the report notes that environmental pollution through the spreading of heavy metals as a consequence of metallic mining is becoming the main cause for drought and progressive worsening of water quality in El Salvador. The report goes on to mention the harmful impacts of metallic mining which requires large quantities of water by itself and holds that "the greatest impact of a mining project is the effect on the quality and availability of water in the area near the project."

In this opinion the National Human Rights Institution confirmed that it had an interest to address all issues related to the legislative proposal in relation to the decisions taken by the Salvadorian State concerning the mining industry as its regulation may have impacts on human rights. That is, as a result of the implications of sustainable development and implications regarding the respect of human rights such as: life, health, proper feeding, environment, water and the rest of concurrent human rights; stipulated both in national law as well as in international human rights instruments that El Salvador subscribed in.

The NHRI also highlighted that the legislative proposal only discusses the possibility to end the suspension, but it does not open the alternative of the definitive prohibition of the metallic mining industry in El Salvador, neither allows the alternative to use studies and opinions from experts, organizations outside public institutions. The report concludes that as the metallic mining industry cannot function without posing serious risk to health and life, the best alternative to address the problem from a human rights perspective is not suspension but rather the total prohibition of such extractive activity.

The following example shows an NHRI advocating and assisting the government in view of adapting a national human rights actions plan comprising water and sanitation issues.

Assisting the government of Namibia in the development of a national human rights action plan



The Ombudsman of Namibia initiated and assisted the Government of the Republic of Namibia to develop a national human rights action plan for Namibia. It is a human rights policy document, identifying comprehensive and measurable steps that a country will take to improve the promotion and protection of human rights. The plan identified the right to water and sanitation among its 7 thematic areas (the right to water and sanitation, education, health, housing, land, access to justice and the right not be discriminated against). Namibia is the most arid country south of the Sahara and the Baseline Study points out that the majority of people have to cover a distance of 1-2km to access the source of water and 49 per cent of households practiced open defecation. The ombudsman will monitor and evaluate the implementation of the plan with regular reporting to parliament.

National budget review and analysis provide additional information on monitoring progress in relation to water governance related human rights. There are, however, a number of other regulations and laws that may affect affordability. These may include, among others¹¹⁴:

- Taxes and charges on small-scale water and sanitation services;
- Excessive taxes and charges on water and sanitation facilities and equipment;
- Regulations that prevent small-scale provision, or which raise significant barriers to the provision of small-scale services;
- Restrictions on water and sanitation providers from providing services to certain categories of users etc.
- Disconnection of water supplies leading to users purchasing more expensive water or accessing unsafe water for essential uses;
- Increase in the costs of other essential goods (where these are fixed by the state) that impinge on the ability of users to purchase water and sanitation.

In addition to a checklist provided in Section 1 on affordability, the following *checklist* may further assist NHRIs in analysing affordability and financing of water and sanitation.¹¹⁵

Check	Yes	No	In progress
What percentage of the water and sanitation budget is directed towards expanding access to water and sanitation services to those who currently lack adequate access?			
Does the government policy or plan provide for a broad range of options for facilities and service levels, including low-cost options? Is community participation required for such decisions?			
Do regulations include a requirement for flexible payment options?			
Are subsidies for extension of services and for payment of tariffs provided to low-income communities?			
Does any legislation or regulation raise the cost of water service provision to prohibitively high levels? (e.g. through high taxes on necessary equipment).			
Is there a legal prohibition on complete exclusion from a water source, for example by disconnection?			

Implementing the water and sanitation related sustainable development goal

As discussed in Section 2, NHRIs may have a particular role in promoting and protecting human rights in the implementation of the post-2015 sustainable development agenda. The national implementation process of the water and sanitation related SDG offers a unique opportunity to NHRIs to promote and protect water governance-related human rights. They may be able to do so via the following:

1. Promotion of water governance-related human rights in national implementation plans:

NHRIs' bridging role uniquely positions them to ensure the national level tailoring process of globally agreed water and sanitation upholds the principles of inclusion, participation and non-discrimination. NHRIs can also promote nationally-tailored targets, benchmarks and indicators that are aligned with human rights obligations, as well as setting out principles and criteria for tailoring, informed by human rights considerations. NHRIs can utilize their experience in building the capacity of government bodies to apply a human rights-based approach and in engaging in consultative processes for priority-setting, policy-making, planning and budgeting in a variety of sectors—both locally and nationally.

- 2. Advising governments on rights-centred implementation:** NHRIs can be instrumental in ensuring that human rights considerations are not neglected in the post-2015 context. For instance, NHRIs could conduct human rights impact assessments of water and sanitation related policies and programmes proposed or put in place to implement the goals. NHRIs might also play a crucial role in assessing whether financial resources for the implementation of the water and sanitation goal are being raised and used in human rights-compliant ways.



Questions

- What is the purpose of reviewing existing legislation, strategies and policies?
- What steps are likely to be involved in the process of reviewing legislation, strategies and policies?
- Name the obligatory elements of the national strategy or plan of action to realize the right to water.
- List the elements that should be included in the national framework legislation that is aimed at operationalization of the right to water strategy.
- Name the areas where NHRIs may be involved in advising the legislative and executive branch in the context of water governance.
- List the areas where NHRIs may contribute to the national level implementation process of the water and sanitation related SDG.

Exercise

Review which international or regional treaties with relevance to the human right to water and sanitation were signed by your country. Check if there are regional political declarations that your country has signed up to in relation to water and sanitation. Analyse the constitution of your country: does it recognize the human right to water and sanitation? If not, elaborate an action plan in order to advocate for the recognition of the human right to water and sanitation at national level. Is the constitutional recognition of the human right to water and sanitation adequately reflected in national legislation? If not, how would you advise your government and parliament in view of implementing the human right to water and sanitation in your country? Draw a list of the national legislation containing references to water and sanitation and analyse it from a human rights lens applying the criteria of availability, accessibility, affordability, quality. What advice would you give to your government in view of bringing national legislation in compliance with relevant international human rights commitments?

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