



POLICIES FOR INCLUSIVE DECISION-MAKING IN A CLIMATE ADAPTIVE WORLD

A collaborative review of water resources
management legal good practices in 16 countries



ABOUT THIS DOCUMENT

This paper attempts to examine how countries can legislatively safeguard essential elements of the human right to water in worsening climate conditions, and what this means for service providers and businesses.

This report was prepared in collaboration with Human Right 2 Water, Inter-American Development Bank, Nestlé, Water Research Commission (the ‘Collaborators’)².

The information contained here in is based on the Collaborators’ research and analysis, but it does not constitute professional or legal advice or is a substitute thereof. Nothing in this report should be construed as implying new legal obligations or intended to explore individual approaches to, or involvement in, specific impacts and nothing in it should be deemed or construed as statements made individually by Collaborators.

The analysis carried out for this report was for the purpose of this report only and is not intended to be understood as findings of fact or admissions of liability. While the report is supported by all the Collaborators, not every element of the report, may be endorsed by all of the Collaborators. Further, it is the Collaborators’ understanding that changes in circumstances may occur after the finalization of the report which may impact its accuracy in certain aspects.

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EXECUTIVE SUMMARY

In a world that is struggling daily with climate change and dwindling good quality water resources, we need to find a more holistic approach to water management that considers all the Sustainable Development Goals. It is the responsibility of all authorities, businesses and citizens to work with communities to find solutions for the dwindling of our water resources having regard to society and the environment. This paper attempts to examine how countries can legislatively safeguard essential elements of the human right to water in worsening climate conditions, and what this means for service providers and businesses.

A really challenging area that is often overlooked in legislation relates to equality and inclusion in water management, as defined by the Human Rights-Based Approach, the HRBA.

The HRBA is included in international law for water, wastewater (sanitation) and the environment, and it integrates the principles of public participation and inclusivity, non-discrimination, access to information and transparency, accountability and sustainability (see Section 2: The Human Rights-Based Approach). Through a thorough review of water and environmental laws in 16 countries, we have gathered good practices from three regions of the world to explain how these laws have been incorporated. It is evident that none of these countries have integrated every aspect of the HRBA, so this document highlights some of the better examples from each.

In terms of how this affects the day-to-day operation of water services, industrial and commercial enterprises, and municipal policy makers, these extracts provide a guide on how to best integrate the HRBA in water laws and policies, and the notice that should be given to international law as it refers to water, wastewater management, and the maintenance of a safe, clean and healthy environment.

A selection of the good practices for each principle under the HRBA, are highlighted below:

Non-Discrimination	Legal measures need to be taken to protect the more vulnerable
Public Participation	Meaningful participation of all relevant stakeholders needs to be actively encouraged through law and policy
Access to Information	Access to information about water resources should be simple, easily accessible, and in a format that communities can access
Accountability	The grievance and remedy process should encourage participation without harassment
Sustainability	Nature-based solutions should always be considered as part of the solution for long-term sustainability

1. INTRODUCTION

The human right to water², includes criteria to lay out the essential elements of meeting this human right (accessibility, availability, affordability, acceptability and quality) and addresses the principles of the HRBA - equality and non-discrimination, participation and inclusion, access to information, accountability and sustainability. These are commonly known as cross-cutting principles.

The integration of the HRBA in water governance has accelerated over the years and proven to be effective. HRBA is a common framework that seeks to further human rights by incorporating the application of human rights principles in all steps of service provision. At the heart of HRBA lies the aspiration to support the capacities of rights-holders to claim their rights and duty-bearers to fulfil their human rights obligations. Emphasis is placed on ensuring action to support the marginalised and vulnerable.

The corresponding principles of the human rights to water and sanitation (HRWS), and the right to a healthy environment (HRHE), are rooted in the HRBA, and the integration of these international principles into national law provide for a more sustainable and inclusive governance framework that is reactive to the changing environment today, the need for current data and information, and for people to be engaged in decision-making at all levels.

Water demand and supply is subject to continuous change related to climate, reflected in more frequent extreme weather events, and resulting in an increasing necessity to re-evaluate planning for water availability through population growth, mobility and increasingly scarce and contaminated resources. There is an important need to access timely information for planning, and for the community to be engaged in water management decisions. Without reactive planning based on good data, and without the active engagement and understanding of all members of society, the world will struggle to deal with the resilience needed to adapt and mitigate to climate change.

For service providers and businesses that provide, use or impact water resources, whether state-owned, private, or a blend of public and private partnerships (PPPs), the HRBA can provide a framework for effective management. The legal and policy frameworks set a minimum standard for services to adhere to. This document aims to highlight some of the good practices from each region, to serve as a reference and a source of example laws for service providers, businesses and national governments.

1.1 METHODOLOGY

This report draws upon a much larger study that was conducted by Human Right 2 Water in 2022-2023 in 16 countries. It captures the way that the water-related rights, and the HRBA principles for water and sanitation provision and a healthy environment have been integrated into national law in three regions: Latin America, Africa and Asia. By far the most challenging area for legislation is found in the principles of the HRBA. By highlighting the good practices in several countries, we are able to share approaches that are currently used under different cultural, geophysical, social, economic and political conditions

2 In this document, the ‘human right to water’ assumes the inclusion of both the rights to water and to sanitation, as explained in Section 2 on The Human Rights Based Approach

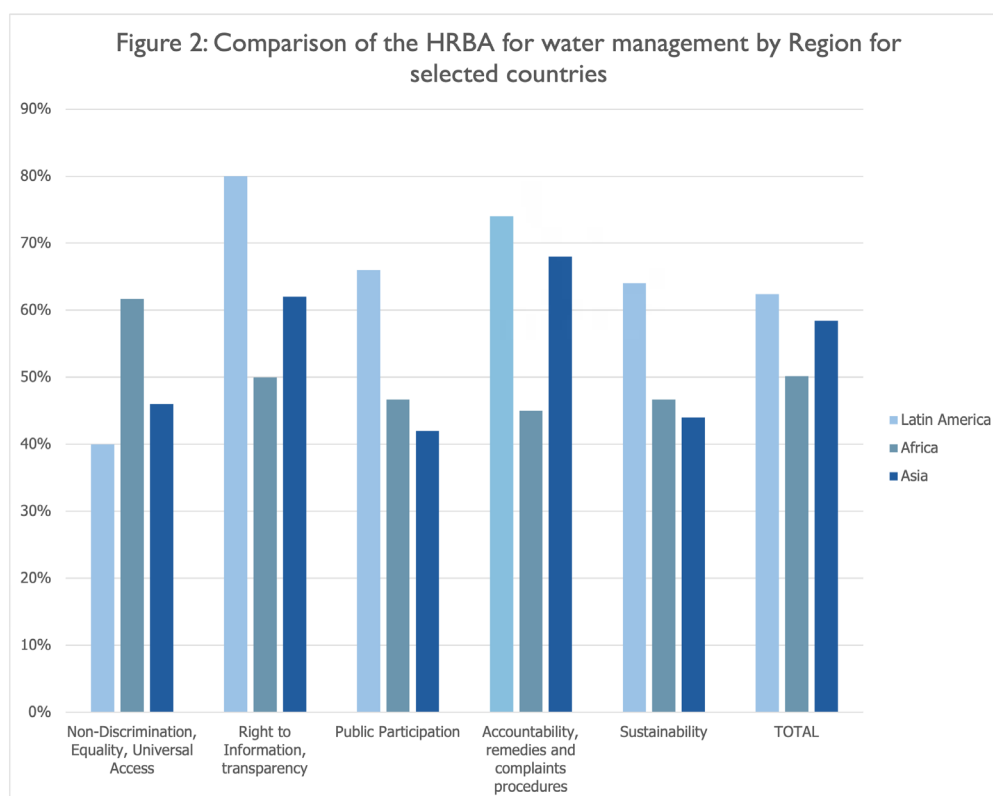
Latin America	Africa	Asia
Costa Rica	Chad	India
Guatemala	Kenya	Nepal
Honduras	Niger	New Zealand
El Salvador	Senegal	Singapore
Mexico	South Africa	Turkey
	Uganda	

Table 1: List of countries in the study

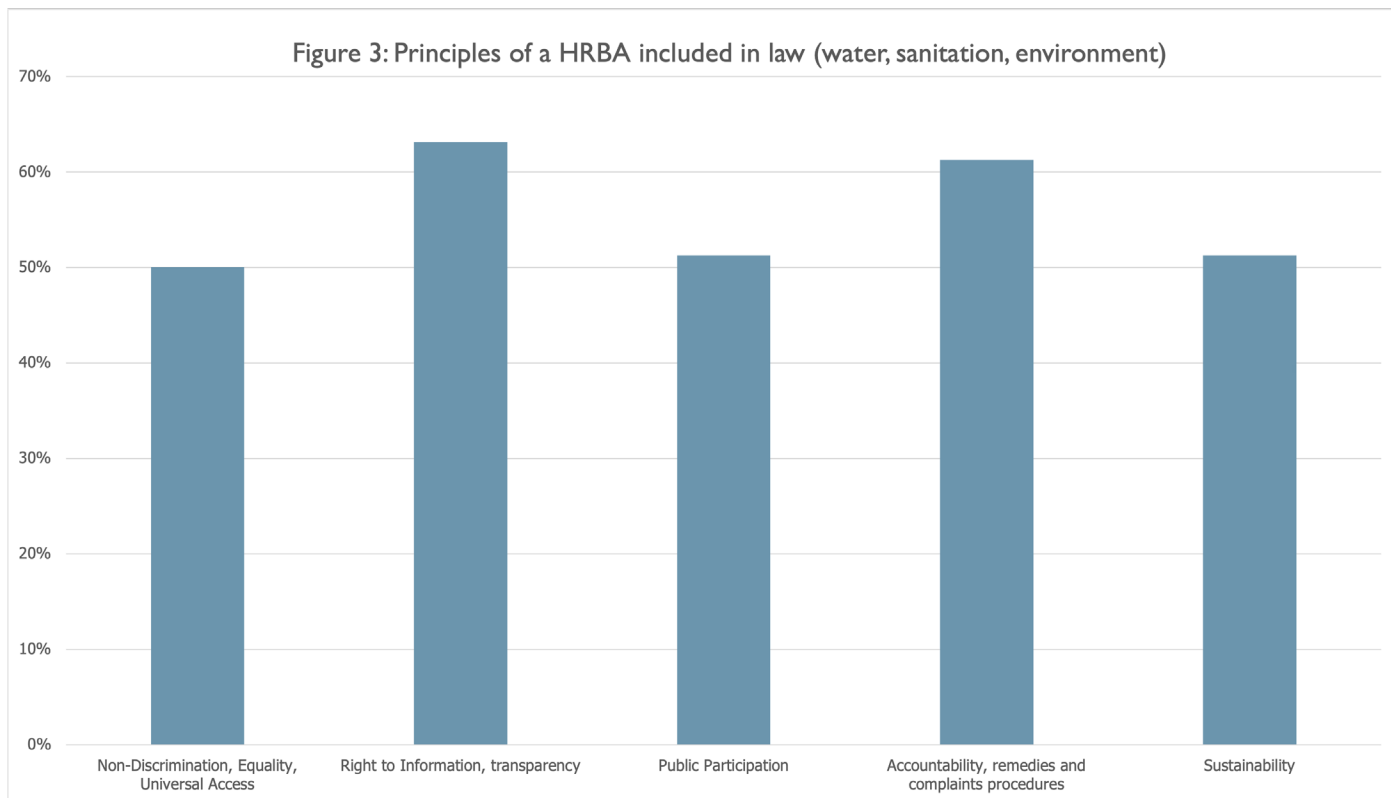
A comparative analysis between the principles of the HRWS and the HRHEⁱ was used as the foundation for the analysis, to capture the areas where these human rights are linked. The methodology was then integrated into the HR2W country legal mapping approach for water and sanitationⁱⁱ.

The national legal studies have then been used as a source of information for drawing on the key principles that are highlighted in this analysis. From this raw data it is possible to draw conclusions about the areas where there are potential gaps in policies related to the human rights-based approach and use this to develop a set of recommendations for inclusive decision-making that will support the management of water in climate adaptive situations.

The following two graphs capture the key principles by region, where there are strong policies for an inclusive, participatory, non-discriminatory approach, with frameworks for data transparency, accountability and sustainability (Figure 2) and the collective principles globally (Figure 2).



The height of the bars demonstrates the extent to which each principle has been integrated into national law for water, sanitation and a healthy environment. 50% implies that half of the relevant laws reflected in the HR2W analysis are represented. It is possible to see that, based on the countries studied, that the right to information was the principle most adopted in national law, and that non-discrimination and public participation were the weakest.



Despite a fairly low representation (on average around 50% of the laws were included), there were some good practices from each region. Referencing the actual laws under each of the principles (the five elements shown in the chart), we are in a position to highlight some of the more exemplary good practices from each of the Regions and countries analysed.



2. THE HUMAN RIGHTS-BASED APPROACH^{III}

The integration of human rights into development programming has been ongoing for quite some time, although the term ‘human rights-based approach’ (HRBA) is a more recent development. It was in 1997, during Kofi Annan’s mandate as Secretary General of the UN, that he recognised the importance of an HRBA and advocated in favour of its implementation across the UN System.

The human right to water, as first described by General Comment No.15^{iv} (now the human rights to water and sanitation) includes criteria to lay out the essential elements of meeting this human right (accessibility, availability, affordability, acceptability and quality) and addresses the principles of the HRBA. A really challenging area, and that most often missing in legislation, relates to equality and inclusion, as defined by the HRBA.

Adopting an HRBA means incorporating human rights and human rights principles into any and every working project. It goes beyond focusing on outcomes and draws attention to the entire process, implementing human rights principles in every step of the project design, planning and operations – by applying this method, the result will also have a positive effect in strengthening human rights..

As the HRBA gained traction and became a widely used approach, different attempts to define the term have emerged. For this reason, there is no single universal definition for HRBA.

The most common definition comes from the UN Common Understanding, as it serves as the foundation for organisations which then may adapt the approach to their own mandates. Adopted in 2003 by the UN Sustainable Development Group (UNSDG), the UN Common Understanding on HRBAs to Development Cooperation and Programming (UN Common Understanding) sought to make sure that UN agencies, funds and programmes consistently implemented an HRBA in their programmes at a global and regional level. Most importantly, these guidelines provide practitioners with the tools necessary to operationalise an HRBA and mainstream human rights in their work.

Bearing in mind the guiding principles determined by the UN Common Understanding^v, the incorporation of HRBA represents a change in thinking, shifting from previously more common approaches, such as charity and needs based. HRBA focuses on building holistic processes and empowering individuals to claim their rights, while charity and needs approaches focus primarily on input and short-term solutions.^{vi}

Every person is entitled to inalienable and fundamental human rights. To guarantee the protection of human dignity, human rights to water and sanitation need to follow these five principles:

EQUALITY AND NON-DISCRIMINATION:

Individuals are equally entitled to their human rights without discrimination of race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status, as explained by Article 2 of the Universal Declaration of Human Rights (UDHR),^{vii} and promoted by other human rights treaty bodies, such as the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Rights of Persons with Disabilities.^{viii}

PARTICIPATION AND INCLUSION:

The right to participate in political and public life directly and indirectly, as well as in key decision-making processes, is an integral component of empowering individuals and groups. It is one of the core elements of the HRBA aimed at eliminating marginalisation and discrimination. Indeed, the UN Declaration on the Right to Development (UNDRD) notably recognises that all persons are entitled to an active, free and informed participation in their contribution to and for their enjoyment of civil, economic, social, cultural and political development, through which all other human rights and fundamental freedoms can be realised.^{ix}

ACCESS TO INFORMATION:

The right to information encompasses the right to access information held by public bodies and reflects the premise that all information held by governments and governmental institutions is in principle public and can only be withheld for legitimate reasons. It is an integral component of the fundamental right of freedom of expression, as recognised by resolution 59 of the UN General Assembly (1946),^x and Article 19 of the UDHR (1948). The freedom of expression encompasses the freedom ‘to seek, receive and impart information and ideas through any media regardless of frontiers.’^{xi}

ACCOUNTABILITY:

This principle entitles rights-holders to institute proceedings to seek appropriate redress for the violation of their human rights before a competent domestic court, an international court, such as the European Court of Human Rights (ECtHR), or an international treaty body, such as the UN Human Rights Committee (UNHCR), in accordance with the rules and procedures provided by the law. Many international and regional treaties demand an effective remedy to be made available for individual victims of human rights violations.^{xii} A remedy involves two key components: firstly, the victim having access to the appropriate authorities to have his/her claim fairly heard and adjudicated upon and secondly, the redress or relief that he/she can receive because of instituting such a claim.

SUSTAINABILITY:

This requires us to be mindful of future generations and guarantee access to water and sanitation, while maintaining balance among economic, social, and environmental sustainability. This notion of intergenerational equity was notably enshrined in Principle 3 of the Rio Declaration,^{xiii} and reiterated by the UN Committee on Economic, Social and Cultural Rights (CESCR) through its General Comment 15 (GC 15).^{xiv}

3. GOOD PRACTICES

The following sections highlight good practices from each of the three regions studied, under each of the principles of the HRBA. The introductory table for each section pulls together the relevant principles from the HRHE and the HRWS, and the examples show good practices that demonstrate how these principles are given effect through national laws. It is worthwhile noting that these are analyses based national law reviews, and not an expression of how the laws have been implemented through adoption of policy at the local level.

3.1 NON-DISCRIMINATION, EQUITY AND UNIVERSAL ACCESS

PRINCIPLES OF THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT (FROM FRAMEWORK PRINCIPLES)	PRINCIPLES OF THE HUMAN RIGHTS TO WATER AND SANITATION (FROM GENERAL COMMENT No.15)
NON-DISCRIMINATION, EQUITY AND UNIVERSAL ACCESS	
Principle 1. States should <u>prohibit discrimination</u> and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.	GC. 15. With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and <u>to prevent any discrimination</u> on internationally prohibited grounds in the provision of water and water services.

Non-discrimination is one of the more challenging principles to deal with in practice, although it may be recognised in law. However, without recognition of non-discrimination, there is little chance of widespread recognition of the problem, and action at the local level. From this basic principle, many policies should then be developed to enact improvements in discrimination, impacting the most vulnerable members of society and their access to water and wastewater services and sanitation ('Water Services'). The human right to a clean, healthy, and sustainable environment, is especially important for people that depend on untreated surface water, or local wells for their main source of potable water.

In planning for climate extreme events, non-discrimination is critical to protect the human rights of the most vulnerable, and to design water services to ensure that the most heavily impacted and marginalised people are given priority. The first hurdle in legislation is to recognise that there is potential for discrimination, in order to build solutions to cope with the resulting inequalities. These examples show different approaches to dealing with discrimination in the context of water management and the protection of the environment ranging from the general approach to equity, to the specific examples on gender and inclusion of specific disadvantaged groups.

I. LEGAL MEASURES TO PROTECT THE RIGHTS OF THOSE WHO ARE MOST VULNERABLE.

Guatemala

Good Practice: *The constitution provides for non-discrimination when it comes to people's health, and it links the conservation and protection of the environment to social and economic well-being.*

Art. 64 of the Constitution provides that “[t]he conservation, protection and improvement of the natural heritage of the Nation [,] is declared [to be] of national interest. The State will promote the creation of national parks, reservations, and natural sanctuaries [refugios], which are inalienable. A law will guarantee their protection and that of the fauna and the flora that exists within them.” Also, Art. 93 of the Constitution provides that “The enjoyment of health is a fundamental right of the human being, without any discrimination.” Moreover, Art. 97 provides that “The State, the municipalities and the inhabitants of the national territory are obligated to promote the social, economic, and technological development that prevents the pollution of the environment and maintains the ecological balance. All the necessary regulations will be dictated to guarantee that the use...”

Kenya

Good Practice: *Affirmative action with an equalisation fund established to ensure basic services are provided to marginalised areas.*

Art. 56 and 204 Constitution of Kenya 2016 state that the State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups have reasonable access to water, health services and infrastructure. The Equalisation Fund shall be established for the purpose of, amongst other things, ensuring basic services including water are provided to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.

India

Good Practice: *The right to access to clean drinking water is considered fundamental to life.*

Article 21 of the Constitution states that “no person shall be deprived of his life or personal liberty except according to the procedure established by law”. This was interpreted by the court to include the entitlement of citizens to receive safe drinking water (potable water) in *Bandhua Mukti Morcha vs. Union of India*, where the petitioner was an ‘an organisation dedicated to the cause of the release of bonded labourers’. By various surveys, it was found that several workmen in these mines were migrant workers from other States in India who were ‘bonded labourers.’ They were living in conditions of extreme poverty. The mine owners did not provide them with shelter, clean drinking water, latrines or medical facilities— as such, the petitioner filed a petition under Article 32 of the Constitution. The Supreme Court, by stating that there is no doubt that pure drinking water is absolutely essential to the health and welfare of the workmen and some authority has to be responsible for providing it, derived the concept of right to ‘healthy environment’ as part of the right to life.

The court recently reiterated again that “the right to access to clean drinking water is fundamental to life and there is a duty on the state under Article 21 to provide clean drinking water to its citizens”. It was held by the court that “Any act of the State that allows pollution of water body must be treated as arbitrary and contrary to the public interest and in violation of the right to clean water under Article 21.

II. THE PROHIBITION OF DIRECT AND INDIRECT DISCRIMINATION AND PROMOTION OF EQUALITY

Honduras

Good Practice: *The principle that water is a social resource, with equitable access.*

Article 3 of the General Water Law requires the management of water resources to conform to a list of principles, among those the principle that “water is a social resource, its access will be equitable.” Article 6 of the Framework Law provides that treatment of users should be guided by the principles of “equality, equity, and solidarity.” Article 13 of the Framework Law also empowers ERSAPS to investigate and punish illegal or discriminatory conduct among providers and users alike. Finally, Article 14(10) of the ERSAPS Regulation No. 1/2006 requires service providers to “establish efficient mechanisms for the resolution of conflicts that may arise with users, who should receive respectful and non-discriminatory treatment.”

Kenya

Good Practice: *There is a Water Sector Trust Fund to provide grants to counties to assist in financing development in marginalised areas.*

Every person has the right to access water resources. See section 9 Kenya Water Act 2016.

Dividends or other payments shall not be paid to the owners of public water services providers as long as the universal rights of access to safe and clean water have not been achieved by the designated service areas. See Section 131(3) Kenya Water Act 2016.

The Water Sector Trust Fund is established to provide conditional and unconditional grants to counties to assist in financing the development and management of water services in marginalised areas. See Section 114 Kenya Water Act 2016.

Nepal

Good Practice: *Explicit mention in the constitution that all citizens are equal, and there shall be no discrimination on any grounds.*

Article 18 of the Constitution: “All citizens shall be equal before law. No person shall be denied the equal protection of law. There shall be no discrimination in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical conditions, disability, health condition, marital status, pregnancy, economic condition, language or geographical region, ideology and such other matters.”

Article 24 further stipulates rights opposing untouchability and discrimination that becomes important in ensuring availability and accessibility of water and sanitation services: “in producing or distributing any goods, services or facilities, no person belonging to any particular caste or tribe shall be prevented from purchasing or acquiring such goods, services or facilities nor shall such goods, services or facilities be sold, distributed or provided only to the persons belonging to any particular caste or tribe.”

Further the National Water Policy includes social inclusion key element of the country’s commitment to shared growth.

Sec. 39 (2) of the Children's Act, 2048 (1992) mentions that preventing children from drinking water is not justifiable for punishment to maintain discipline.

III. PEOPLE DO NOT SUFFER FROM A REDUCTION IN THE HEALTH OF THEIR ENVIRONMENT.

Nepal

Good Practice: *Victims of environmental pollution and degradation have the right to be compensated by the polluting entity.*

Article 30 of the Constitution provides that each person shall have the right to live in a healthy and clean environment. The victim of environmental pollution and degradation has the right to be compensated by the pollutant as provided for by law. One of the objectives of the Water Resources Policy 2020 is to develop water resources with minimal negative impact to the environment. Further, the Water Resources Policy 2020's working strategies includes that the water resource project affected areas shall be cared for and protected; and the water resources shall be developed by minimizing the negative impacts on society, culture and the environment.

IV. LEGAL RECOGNITION FOR WOMEN IN SAFEGUARDING THE ENVIRONMENT AND WATER RESOURCES.

El-Salvador

Good Practice: *Women are actively encouraged to participate in environmental processes, and regulators need to consider how environmental policies may adversely impact women over men.*

The Law on Equality, Equity and Eradication of Discrimination against Women (Ley de Igualdad, Equidad, y Erradicación de la Discriminación Contra las Mujeres-“Women's Equality Law”) specifically encourages the participation of women in developing environmental policies. Environmental regulators are required to take into account how their environmental policies may adversely impact women over men. Women's Equality Law, Art. 32.

Nepal

Good Practice: *Enhanced participation of women and vulnerable groups in decision-making.*

Under the National Urban Water Supply and Sanitation Sector Policy 2009, one of the objectives is to ensure the participation of users, especially women and the vulnerable groups, in articulation of their concerns and in decision making at all practical levels. Similarly, the Rural Water Supply and Sanitation National Strategy 2004 includes enhanced participation by gender, caste and disadvantaged groups.

Kenya

Good Practice: *Gender diversity is systematically included in senior appointments.*

Under the First Schedule of the Kenya Water Act 2016, appointments to the board of the Authority, Regulatory Board, board of water works development agencies, board of Water Sector Trust Fund, board of the National Water Harvesting and Storage Authority and any committee or tribunal established under the 2016 Act must have regard to gender diversity. See Section 2(1)(d) First Schedule, Kenya Water Act 2016.

3.2 PUBLIC PARTICIPATION

PRINCIPLES OF THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT (FROM FRAMEWORK PRINCIPLES)	PRINCIPLES OF THE HUMAN RIGHTS TO WATER AND SANITATION (FROM GENERAL COMMENT No.15)
PUBLIC PARTICIPATION	
Principle 2. States should provide for and facilitate <u>public participation in decision-making related to the environment</u> and take the views of the public into account in the decision-making process.	GC 48. The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. <u>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.</u> 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.

Public participation, and the interpreted meaning of these words, varies vastly across the regions. In some countries this participation may be limited to the sharing of information, the right to access data and the right to comment, question or complain about the data. In many countries, in Latin America especially, the governance framework revolves around the local communities operating their own water systems, such that they are more completely involved in the decision-making process. Most countries are somewhere in between the two systems, with public participation regarded as an important part of consultative processes, and the decision-making programmes.

When regarding climate adaptation, a range of nature-based and locally sustainable solutions need to be sought, requiring the local and historical knowledge of the community. It therefore becomes extremely important to gather information from people whose forefathers have lived on the land, and a diverse group of people, including women, elderly, indigenous and nomadic societies. Including them meaningfully in the decision-making process may not happen without legislation to make this possible.

The following examples include processes for engaging local communities in water-related decisions, and regulations for insisting that participation is meaningful for vulnerable groups. While not addressing climate adaptation directly, the inclusion of stakeholders in water management decision-making is a good basis for dealing with adaptation decisions.

V. LAW AND POLICY ADDRESSING PUBLIC PARTICIPATION.

Costa Rica

Good Practice: *The formation of local cooperatives, called rural aqueduct associations, to enable the participation of local communities in water management.*

The water governance structure in Costa Rica provides for a multi-layered water management system, with the responsibility for clean water provision given to local cooperatives, called rural aqueduct associations, ASADAS (Las Asociaciones administradoras de los Sistemas de Acueductos y Alcantarillados comunales)^{xv}.

Article 2(a) of the [Environmental Law of Costa Rica](#) provides that the State and the individuals must participate in the sustainable preservation of the environment, described as a common heritage of all the inhabitants of Costa Rica”.

Article 1 of [Law 8861](#) similarly provides that “people living in the Republic have the right to participate actively and consciously, in the decision-making process whose purpose is to protect and improve the environment. The State, municipalities and other public institutions have the duty to guarantee this right and to promote its effective enforcement.”

Mexico

Good Practice: *The water services provider must provide spaces and mechanisms for individuals, communities and organisations to participate in water decision-making and management.*

Article 14 BIS (I-III) of the [National Water Law](#) provides that CONAGUA must actively engage with individuals, communities and organizations seeking to express their views and participate in water-related issues. To that end, CONAGUA must provide the spaces and mechanisms for those groups to participate in water decision-making processes and management; make explicit commitments resulting from water decisions and management; and assume direct responsibilities in implementation, implementation, monitoring and evaluation of specific measures to contribute to the solution of water problems and to the improvement of water resources management. CONAGUA must also conclude agreements to improve and promote water culture at the national level. It must also conclude agreements with water users for the conservation, preservation, restoration, and efficient use of water.

South Africa

Good Practice: *Public participation in environment governance is a fundamental principle, allowing for the development of understanding, skills and capacity to participate equitably and effectively.*

Section 2 of NEMA (The National **Environmental** Management Act 107 of 1998) promotes public participation of all interested and affected parties in environmental governance as a fundamental principle and objective of NEMA and states that people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation. NEMA provides for public participation as a minimum requirement (among others) when, inter alia, (i) introducing new legislation and/or regulations; (ii) applications are submitted for environmental authorisations (for purposes of conducting the requisite environmental impact assessment); (iii) the Minister concludes environmental management cooperation agreements in accordance with the provisions of NEMA.

Uganda

Good Practice: *Participation of under-represented groups such as women, youth, disabled, NGOs and academic institutions are required to be represented in senior decision-making bodies, and also through water and sanitation user groups, land committees, and environment management processes.*

The legal framework tackles participation by requiring that certain groups of people, such as women, persons with disabilities, the youth or even NGOs, research and academic institutions, are represented within councils but also within the board of directors of The National Management Environment Act (NEMA), for instance the Water and Sanitation Gender Strategy (2018-2022) and the Environmental Health Policy of 2005 and National Environment Management Policy of 1994. The Water Act and the Land Act also enable participation respectively through water user groups and water and sanitation committees, and via communal land associations and land committees. In addition to the provisions that require adequate representation in certain committees or institutions, the legal framework also clearly articulates the concept of participation in the Constitution, the Local Governments Act, the Water Act and the Environment Act. Participation is mainly enshrined as a principle that must be taken into account or be referred to by certain bodies. For example, NEMA must ensure the observance of the principles of environment management, which include “to encourage the participation by the people of Uganda in the development of policies, plans and processes for the management of the environment” (section 5(2)(a) Environmental Act).

Nepal

Good Practice: *The right to participate for all marginalised and vulnerable groups is integrated throughout the Constitution and Plans for the water sector development, the management of water resources, and the protection of the environment.*

Art. 42 (1) of the Constitution stipulates the right to participate with regards to marginalised and vulnerable groups: “The socially backward women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, minorities, persons with disabilities, marginalized communities, Muslims, backward classes, gender and sexual minorities, youths, farmers, labourers, oppressed or citizens of backward regions and indigent Khas Aryashall have the right to participate in the State bodies on the basis of inclusive principle.”

Further, the National Water Plan 2005 includes participation of and consultation with all stakeholders as a policy principle for water sector development (Art. 3.2). Increased gender-balanced participation and attention to marginalised and vulnerable groups is also listed among the social development principles.

The Water Resources Policy 2020’s working strategies includes encouragement and increase of participation of related stakeholders and private sector for the conservation and development of water resources. Similarly, in its environmental sustainability principles, the Water Resources Strategy 2002 includes public participation in environmental protection, conservation and management as essential for the sustainable development of water resources.

VI. PARTICIPATION IN WATER-RELATED ISSUES

Costa Rica

Good Practice: *The formation of decentralised, regional bodies (Councils) through the participation of civil society, to enable and promote citizen participation in the discussion of environmental policies.*

Article 7 of the Environmental Law of Costa Rica provides for the formation of “Regional Environmental Councils” under the umbrella of the Ministry of Environment and Energy. The Councils are decentralized, regional bodies, created with the participation of civil society for the analysis, discussion and control of environmental activities, programs and projects. These councils shall promote—through activities, programs and projects—citizen participation in the analysis and discussion of environmental policies affecting the corresponding regions.

For projects that may have an environmental impact, Article 22 of the [Environmental Law of Costa Rica](#) provides that “persons, natural or legal, public or private, shall have the right to be heard by the National Environmental Technical Secretariat at any stage of the evaluation process and at the operational stage of the work or project. The comments of interested parties will be included in the file and assessed for the final report. Within five working days following receipt of an environmental impact assessment, the National Environmental Technical Secretariat shall send an extract of it to the municipalities in whose jurisdiction the work, activity or project will be carried out. It will also give extensive publicity, by the mass media, to the list of studies submitted for consideration”.

Consistently, Article 58 of the [General Regulation on Environmental Impact Assessment Proceedings](#) allows the participation of communities in public hearings related to projects that require environmental assessment.

South Africa

Good Practice: *A structured public participation process is included in any submission for environmental authorisation, including written responses and recordings of meeting minutes.*

In respect of public participation processes undertaken in terms of NEMA, before the submission of an application for an environmental authorisation, a public participation process must be undertaken and for at least 30 days after submission of the application for an environmental authorisation, the relevant competent authority and interested and affected persons must be provided with an opportunity to comment on reports. For each public participation process, all organs of state which have jurisdiction in respect of the activity to which the application relates must comment on the reports within a period of 30 days (failing which they will be regarded as having no comment). Written comments on reports and plans submitted by registered and interested and affected persons must be recorded in the reports and plans by the person conducting public participation and such written comments, including responses to such comments and records of meetings should be attached to the reports and plans that are submitted to the competent authority.^{xvi}

Uganda

Good Practice: *Customer satisfaction is measured through independent surveys, gathered through local water committees to enhance collaboration with stakeholders.*

The current framework, through the Water Act and the addendum to Performance Contract IV with the **National Water and Sewerage Corporation (NWSC)**, translate the importance to ensure participation by the NWSC. The customer satisfaction index, targeted at 90% by the end of year 2 of the addendum, measures customers’ satisfaction with NWSC services through independent surveys. Importantly, one of the assumptions related to this target is that the NWSC effectively uses the local water committees to enhance collaborations with communities and other stakeholders. Because participation is stated as an assumption of the performance scorecard in relation to customer satisfaction rather than a requirement that must be applied, it is crucial to also introduce mechanisms or procedures that would ensure genuine participation. In addition, setting up clear positive requirements for public participation in regulations (statutory instruments) is essential as they would be applicable to all water and sewerage authorities. Similarly, to access to information, use of appropriate language and meetings in locations that can be easily accessed are key elements to ensure active and meaningful participation.

VII. IWRM MECHANISM WITH PROVISION FOR REGIONAL OR LOCAL PARTICIPATION

Costa Rica

Good Practice: *Investment in an IWRM process to improve water management and governance at the river basin scale, allowing for the participation of local stakeholders.*

Costa Rica has undertaken the *Sixaola River Binational Watershed IWRM program* to improve the water management in the Sixaola River Basin shared with Panama. Under that program, the Ministry of Environment and Energy (MINAE) and the Ministry of National Planning and Economic Policy (MIDEPLAN) of Costa Rica, and the Ministry of Economy and Finance (MEF), and the Ministry of Environment (MIAMBIENTE) of Panama, will invest more than \$4.3 million over four years to improve the governance of the Basin and water management.

The *Sixaola project* includes a wide range of protected areas and will make possible to use water, soil and natural resources in the watershed, without putting natural resources at risk.

South Africa

Good Practice: *Catchment Management Agencies (CMAs) are established to delegate water resource management to regional or catchment level and involve local communities.*

The National Water Act provides for the “progressive establishment by the Minister of [Catchment Management Agencies, CMAs]. The purpose of establishing these [CMAs] is to delegate water resource management to the regional or catchment level and to involve local communities, within the framework of the national water resource strategy.”^{xvii}

Nepal

Good Practice: *Water User Committees (WUCs) require at least 33% participation of women, and representatives of vulnerable groups.*

Several laws regulate the establishment of various associations and groups of water users. Of interest is the gender balance and participation of vulnerable groups, stipulated in the WUAs.

WUSCs: Water Users Associations (WUAs) are governed by the Water Resource Act 1992, Water Resource Rules 1993 and Drinking Water Rules 1998 and come into effect once registered at the District Water Resource Committee (DWRC). As WUA’s executive body, Water Users and Sanitation Committees (WUSCs) have several roles such as operator, service provider, regulator, monitor, fund raiser and manager. WUSCs include at least 33% representation of women and representation from disadvantaged groups. Water Users Committees have formed their Federations from district to National level. Users Committees registered in DWRC will be eligible for membership to Federation of Water Users.

3.3 THE RIGHT TO INFORMATION AND TRANSPARENCY

PRINCIPLES OF THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT (FROM FRAMEWORK PRINCIPLES)	PRINCIPLES OF THE HUMAN RIGHTS TO WATER AND SANITATION (FROM GENERAL COMMENT No.15)
ACCESS TO INFORMATION	
Principle 1. States should provide <u>public access to environmental information</u> by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.	GC 48. The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. 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. <u>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.</u>

Data and information are made accessible in a proactive way, and it needs to be readily accessible, not only through the request of information. It starts with education in schools and wide community awareness campaigns to enable people to be aware of their right to information, and the importance of understanding their environment, and their rights to water and improved sanitation.

According to international human rights law, water services providers, and businesses using water also have a duty and an obligation to adopt an open policy to share information with the public on wastewater quality, impacts on water bodies, and on the environment in order to plan for future climatic events, and the general decrease in drinking water availability.

Climate adaptation is highly sensitive to the access to timely and accurate information for the reactivity to extreme weather events and the ability to plan for resilience under different scenarios. The following examples provide legislation for making data available, and in some cases, for ensuring that data is accessibly available on a regular basis, without the need for elaborate requesting processes. Several countries start the education process on environmental awareness at a young age in schools, such that future generations of people will be more sensitive to the need to care for the environment given the changes in climate.

VIII. THE RIGHT TO SEEK, RECEIVE AND IMPART INFORMATION HELD BY PUBLIC AUTHORITIES.

Honduras

Good Practice: *An independent user service office is required to receive, record, process and respond to all verbal or written requests and claims.*

Honduras introduced a Law on Transparency and Access to Public Information in 2006 (decree no. 170). Art. 8 names the Institute for Access to Public Information (IAIP) as the public administration body responsible for promoting and facilitating citizens' access to public information. The IAIP has operational, budgetary and decision-making independence.^{xviii}

Article 25(2) of the Framework Law provides users the right to receive information on the provision of services, rate regime and collection, plans of expansion and improvement of services and any other circumstance that may be of interest to a user, in a sufficiently detailed manner to allow the exercise of their rights as a user. Further, Article 44 notes that refusal to provide information to users is considered a provider infraction and subject to penalties. Article 51 of the ERSAPS Regulation No. 27/2014 requires providers to create and maintain a user service office, independent of the business area, to receive, record, process and respond to all verbal or written requests and claims submitted by users in connection with the services it provides. The user service office must have appropriate infrastructure and sufficient and trained personnel to provide adequate information and prompt attention to queries and claims.

India

Good Practice: *Every citizen has the right to access information held by public authorities with a view to encourage transparency and accountability in government.*

The Right to Information Act, 2005 (**RTI Act**), extends to the whole of India except Jammu and Kashmir and seeks to afford every citizen the right to access information held by public authorities with a view to encouraging transparency and accountability in government (the RTI Act, preamble). Authorities have the responsibility to record and maintain appropriate records and any request for information should be handled expeditiously, and in any event within 30 days of the receipt of the request (the RTI Act, Sections 4 and 7).

IX. ACCESS TO WATER AND ENVIRONMENT-RELATED INFORMATION HELD BY PUBLIC AUTHORITIES.

Honduras

Good Practice: *Individuals have the right to be informed about the state of the environment and all actions taken in this field.*

The various water- and sanitation-related laws and regulations referenced do not provide explicit exceptions to the type of information that can be accessed. As to who can access information, the Framework Law and various ERSAPS Regulations speak of the right to information as a right possessed by the users of water and sanitation services.

In relation to environment-related information, the General Regulation of the Law of the Environment provides individuals the right to be “informed about the state of the environment and all actions taken in this field.” (Article 90). No exceptions are provided in this Regulation.

Kenya

Good Practice: *A national monitoring and georeferenced information system on water resources. Any member of the public may have access to the information held in any national information system..*

The Regulatory Board shall establish a national monitoring and georeferenced information system on water resources. For the purposes of the information systems, the Regulatory Board may by order, require any person within a reasonable time or on a regular basis, to provide it with information, documents, samples or materials. The Cabinet Secretary may make regulations to facilitate access to information by the public. The regulations may specify requirements and the nature of information

for the keeping of records and the furnishing of information to the Regulatory Board. A member of the public shall have access to the information contained in any national information system, subject to any law relating to access to information and upon payment of the prescribed fees. See Section 111 Kenya Water Act 2016.

The Authority shall have the powers to collect, analyse and disseminate information on water resources, Section 13(2)(b) Kenya Water Act 2016.

A member of the public on payment of prescribed fee shall have access to any specific information contained in any national information system and supplied with a copy of any document contained in the information system, which is accessible to the public. See Section 21 Kenya Water Act 2016.

The powers and functions of the basin water resources committee shall be to advise the Authority and the county government concerning collection of data, analysing, and managing the information system of water resources; and information sharing between the basin area and the Authority. See Section 27(e) and (i) Kenya Water Act 2016.

The Water Storage Authority shall have the power to collect and provide information for the formulation by the Cabinet Secretary of the national water resources and flood control strategies. See Section 32(1)(c) Kenya Water Act 2016.

The Authority shall establish and maintain a national register of permits and the register shall contain the details of the permit holders, the respective terms and conditions of each permit and the results of any monitoring and enforcement action taken by the Authority in respect to each permit. The public may access the information contained in the register on payment of the prescribed fee. See Section 54 Kenya Water Act 2016.

The Regulatory Board Trustees shall maintain and make publicly available information on the water projects financed and impact of such projects. See Section 116(1)(f) Kenya Water Act 2016.

Any record required by the Director-General under the Environmental Management and Co-ordination Act 2022 shall be available to any person desiring access following application in writing to the authority and the payment of the prescribed fee. See section 164(2) Environmental Management and Co-ordination Act 2022 (**EMCA**).

X. INSTITUTIONS REQUIRED BY LAW/POLICY TO MAKE INFORMATION ON WATER PUBLIC.

Honduras

Good Practice: *Users have the right to receive information on the provision of services, and any circumstance that may be of interest..*

Article 13 of the Framework Law requires ERSAPS to “maintain a public record of the information presented by the providers and of the information generated on the technical, economic and operational aspects of the provision of services.” Article 25 of the Framework Law also empowers water and sanitation users with the right to “receive information on the provision of services, rate regime and collection, plans of expansion and improvement of services, and any other circumstance that may be of interest to [the user], in a sufficiently detailed manner to allow the exercise of [users] rights.” These articles, however, do not provide requirements for periodic publication. As such, these rights appear to be a right to access information.

Kenya

Good Practice: *The Water Act entitles the authorities to facilitate access to information by the public.*

The Cabinet Secretary may make Regulations to facilitate the access to information by the public. See Section 111(3) Kenya Water Act 2016.

Within three months after the end of each financial year, the regulatory Board shall prepare an annual report of its work and activities and shall cause the report to be published and publicised. See Section 112 Kenya Water Act 2016.

The Cabinet Secretary may make Regulations with respect to any matter for the giving effect to the 2016 Water Act. Such regulation may make provision with respect to information to be made available to the public. See Section 142(1) and (2)(h) Kenya Water Act 2016.

India

Good Practice: *The Department of Drinking Water and Sanitation provides monthly information and survey results on its website, and further information may be requested.*

The Department of Drinking Water & Sanitation provides technical and financial assistance to the States to provide safe and adequate drinking water to rural India with focus on service delivery. The Department's Centrally Sponsored Scheme, the National Rural Drinking Water Programme (NRDWP), was restructured and subsumed into Jal Jeevan Mission (JJM) to provide Functional Household Tap Connection (FHTC) to every rural household i.e., Har Ghar Jal, by 2024. The Department of Drinking Water & Sanitation provides certain information, including monthly reporting, surveys etc. on its website. There also appears to be the ability to request further information by submitting requests.

XI. LANGUAGE, LOCATIONS, FORMAT, TIMING AND MEANS FOR SHARING INFORMATION:

Honduras

Good Practice: *Information relating to the rights of water and sanitation users is widely disseminated through different media and accessible locations.*

Article 51 requires that the rights and obligations of water and sanitation users, including their right to information, be “widely disseminated, through posters, internet portals, media, notices placed on public access sites within the provider’s facilities and especially in the user’s attention offices.”

India

Good Practice: *The website for the Department of Drinking Water and Sanitation must provide maximum accessibility and usability to its visitors.*

There are no specific legal requirements. However, the Department of Drinking Water & Sanitation website does contain an accessibility statement. This states that it is committed to ensure that the website is accessible to all users irrespective of device in use, technology or ability, and that the

website has been built, with an aim, to provide maximum accessibility and usability to its visitors.

XII. EDUCATION ON THE IMPORTANCE OF A HEALTHY ENVIRONMENT IN SCHOOL CURRICULA

Honduras

Good Practice: *The education authorities are required to promote, support and facilitate the integration of education on natural resources and the environment.*

While not explicitly related to a healthy environment, Chapter II (Articles 93-102) of the General Regulation of the Law of the Environment focuses on environmental education. Article 93 establishes environmental education “as a fundamental instrument to promote the integral development of the Honduran population.” Articles 94 and 95 requires SERNA to “promote, support and facilitate the integration of education on natural resources and the environment through the national environmental education system” and propose related curricula. The curricula is intended to not only further knowledge of nature but also “sensitize the population in the formation of civic and moral values, the protection and orderly use of natural resources and the preservation of the environment.”

Kenya

Good Practice: *Authorities are required to enhance education and public awareness and participation in environmental management.*

One of the functions of the Authority is to undertake programmes intended to enhance environmental education, public awareness, and public participation in environmental management.

See section 12(2)(n) EMCA 2022.

India

Good Practice: *Environmental education is mandated to include a projection of the environment component, in particular relating to water and resource conservation, sanitation and hygiene.*

Firstly, the Constitution of India (Article 21) simply states that “The State shall provide free and compulsory education to all children of the age of six to fourteen in such manner as the State may, by law, determine.”

In addition, environmental education is mandated by the Supreme Court of India and overseen by the National Council of Education Research and Training (NCERT). The National Curriculum Framework, developed by NCERT, includes a “Protection of the Environment” component. In particular, the National Education Policy 2020 references that skills of students should include “environmental awareness including water and resource conservation, sanitation and hygiene.”

XIII. EDUCATION OF THE POPULATION ON WATER RELATED ISSUES.

Good Practice: *Environmental regulations require agencies to educate the population on nature and conservation.*

Honduras

While not specifically confined to water related issues, environmental regulations require Honduran agencies to educate the population on nature and conservation. Article 13(h) of the General Regulation of the Law of the Environment requires SERNA to “promote awareness programs aimed at the different sectors of society, with the aim of integrating them voluntarily in activities for the protection and conservation of the environment and natural resources.” Article 89 also requires SERNA to “promote the conclusion of agreements with the mass media for the dissemination, information and promotion of ecological actions.”

Kenya

The National Environmental Action Plan being prepared under section 70(3) EMCA 2022 shall include recommending methods for building national awareness through environmental education and the importance of sustainable use of the environment and natural resources for national development, see Section 71(d) EMCA 2022.

3.4 ACCOUNTABILITY

PRINCIPLES OF THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT (FROM FRAMEWORK PRINCIPLES)	PRINCIPLES OF THE HUMAN RIGHTS TO WATER AND SANITATION (FROM GENERAL COMMENT No.15)
ACCOUNTABILITY	
<p>Principle 8. To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.</p>	<p>56. Before any action that interferes with an individual’s right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies</p> <p>GC 24. Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment.</p>

Accountability requires a responsible approach to the management of water resources. State and non state actors, including service providers, businesses, and agricultural actors need to understand the impact of their actions on the environment. In order to achieve this, a consultative approach, controlled by an effective regulatory system, should be established, to ensure that the community is able to contribute to decision-making, and voice their grievances, with a timely response. This legal recourse is essential to protect people's rights to water and a healthy environment.

A responsible approach to the management of water resources is becoming more fundamental to climate management, in order to adapt to the changing environment. The full and useful engagement of the community is essential to ensure that water resources are protected. The following examples support the ability for people to access environment justice by speaking up without intimidation. They also show how the responsibility of water service providers can be ensured through monitoring processes that track the complaints processes, and also the regulation of water technical data on quality and availability.

XIV. REMEDIES TO FILE COMPLAINTS OR OTHER WAYS OF ACCESSING JUSTICE.

Costa Rica

Good Practice: *Every person is entitled to denounce any acts that don't respect the right to a healthy and ecologically balanced environment and claim redress for damage caused*

Article 50 of the [Costa Rican Constitution](#) provides that every person is “entitled to denounce any acts that may infringe the said right and claim redress for the damage caused” with respect to the right to “a healthy and ecologically balanced environment.”^{xix}

The 1995 Organic Law on the Environment established the Environmental Administrative Tribunal, which has “exclusive jurisdiction over cases concerning alleged violations of environmental legislation or the legislation on the protection of natural resources (including the General Health Law and the Water Law) caused by any act or omission of a public or private entity.” The decisions of the Tribunal cannot be appealed.^{xx}

El-Salvador

Good Practice: *Any person or entity may petition the water authority to take preventative measures in the face of an imminent threat to water resources.*

The Water Law grants the ASA the power to take preventative measures to protect water resources and sanctioning authority to enforce the law. Any natural person or entity may petition the ASA to take these preventative measures in the face of an imminent threat to the country's water resources. If the ASA's ruling is breached or ignored, the petitioners may take the case to the Environmental Court, which operates under the Environmental Law. Water Law, Section III.

Natural persons and entities may take civil action against a defendant under the Environmental Law. (Environmental Law, § II) Petitioners can address their complaint to MARN (Environmental Law, Art. 42) or through the Environmental Courts (Environmental Law, Art. 102(c)). Petitioners may also bring their case before the Constitutional Chamber of the Supreme Court of Justice.

Criminal cases may be brought by filing a complaint with the Office of the Attorney General of the Republic or the Courts of Peace in accordance with the Criminal Code (see arts. 267, 268 and 269).

Good Practice: *Any person or entity may petition the water authority to take preventative measures in the face of an imminent threat to water resources.*

In terms of section 33 of NEMA, any person can institute action in respect of any breach or threatened breach of any duty (barring a public duty owed by an organ of state) under any law, including in relation to licences, permission or authorisations granted under that law (i.e. NEMA, National Water Act etc.), where that duty is concerned with the protection of the environment. An individual can institute a private prosecution, in the public interest, or in the interest of the protection of the environment.

Further, the Promotion of Administrative Justice Act (PAJA) provides a framework to seek administrative review of decisions made by public authorities. A review of administrative decisions in terms of the PAJA can be used to rectify institutional and structural deficiencies in the delivery of water services.

Further, sections 28 and 32 of NEMA include various prescribed remedies for non-compliance of the act and requires responsible persons to take reasonable measures to remedy such harm. For example, section 28(12) of NEMA provides that any person may, after giving the Director-General or provisional head of department 30 days' notice, apply to a competent court for an order directing the Director-General or any provincial head of department to take prescribed steps (provided for in terms of section 28(4) of NEMA) if the Director-General or provincial head of department fails to take any such remedial steps.

In addition, NEMA also creates a framework for environmental management inspectors to enforce any environmental management law, including the National Water Act and the Water Services Act. Notwithstanding the foregoing, common law remains relevant in terms of providing gateways for enforcement and obtaining remedies where legislation is unhelpful. Civil society and local communities in particular can benefit from enforcing common law-based remedies such as the interdict and damage claim. Similarly, regulatory agencies can use the common law to control pollution and enforce statutory requirements.^{xxi}

Further, section 146 of the National Water Act establishes the Water Tribunal to hear appeals against certain decisions made by a responsible authority, CMA or water management institution under this act. The Water Tribunal is an independent body whose members are appointed through an independent selection process. The Tribunal may conduct hearings anywhere in South Africa. Complaints to the Water Tribunal can be brought by any person whom, under the National Water Act, is responsible for water affairs (this includes an organ of state and the Minister). Certain decisions by the Water Tribunal are appealable. Under section 149, a person may appeal to a High Court against a decision of the Tribunal regarding a question of law.

New Zealand

Good Practice: *The consumer complaints process for drinking water is maintained and reported annually, to ensure that action is being taken on complaints*

Section 38 of the Water Services Act 2021 (WSA): A drinking water supplier must establish, maintain and administer a consumer complaints process and report annually to Taumata Arowai on its consumer complaints process.

Section 39 of WSA: A Drinking water consumer who is not satisfied with the outcome of a complaint under Part 2, Subpart 4 of the WSA may request Taumata Arowai to review the complaint. Taumata Arowai must: Investigate the drinking water supplier's handling of the complaint and take any action that Taumata Arowai considers necessary as a result of Taumata Arowai's investigation findings.

The Environment Court of New Zealand is an appellate court and includes hearing appeals about issues that arise under the RMA.

XV. MONITORING OF WATER & SANITATION SERVICE PROVIDERS

Costa Rica

Good Practice: *The efficiency and quality of water services provided by water operators are regulated and monitored through technical inspections*

Pursuant to the General Health Law (Law No. 5395 of 1973), the Ministry of Health monitors the effective implementation of regulatory measures on water quality by water suppliers.^{xxii}

Additionally, the Regulatory Authority for Public Services (ARESEP) implements technical regulations designed to ensure the efficiency and quality of services provided by the water operators, while also monitoring compliance with regulations via technical inspections.^{xxiii}

The Ombudsman's Office (Defensoría de los habitantes) has “the general responsibility of investigating, either on own initiative or at the request of a party, complaints concerning alleged human rights violations by public authorities through administrative acts or omissions in the exercise of administrative functions,” which include complaints concerning water and sanitation.^{xxiv}

El-Salvador

Good Practice: *The regulation of smaller water and sanitation service providers is the responsibility of the main provider under the Water Law.*

ANDA is both a regulator and the main provider of water and sanitation services in El Salvador (serving approximately 40% of the population), although there are approximately 1000 other smaller service providers, including Rural Water Boards, that provide water and sanitation services in the country. (See question A.5 in this chapter.) ANDA is also responsible for regulating the other service providers as well.

With the passage of the Water Law, ANDA will be regulated by the new ASA. ANDA's books are also subject to audits by the Central Reserve Bank of El Salvador.

South Africa

Good Practice: *Water Services are monitored by the regulator of water and sanitation services as part of the Water Services Act.*

Under Section 3(1) of the National Water Act, the National Government is the “public trustee of the nation's water resources” and must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, pursuant to its constitutional mandate. Although the Constitution assigns the provision of water services to local government, the national Department of Water and Sanitation may prescribe compulsory national standards relating to the provision of water services (including sanitation services), and is obliged to monitor the compliance of every water services institutions with these standards, as specified in Section 62 of the Water Services Act.

Good Practice: *The Water Services Regulator must prepare a drinking water compliance, monitoring and enforcement strategy.*

Section 8 of the Water Services Regulator Act 2020 (WSA): Taumata Arowai is the regulator of water services in New Zealand.

Section 32 of the WSA: Taumata Arowai must monitor compliance with drinking water safety plans by drinking water suppliers and monitor compliance by drinking water suppliers with other legislative requirements.

Section 136 of the WSA: The board of Taumata Arowai must prepare a drinking water compliance, monitoring and enforcement strategy.

XVI. APPEAL AGAINST DECISIONS OF SERVICE PROVIDERS

Costa Rica

Good Practice: *Appeals can be made in the national court if it pertains to the protection of fundamental rights in the constitution of human rights treaties, if signed in Costa Rica.*

There appears to be the possibility to appeal if the complaint is brought in national courts (e.g., the Constitutional Court) and the complaint pertains to the protection of fundamental rights in the Constitution or in international human rights treaties signed and in force in Costa Rica.^{xxv} However, the decisions of the Environmental Administrative Tribunal are not appealable.^{xxvi}

XVII. PROTECTION OF RIGHTS TO FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

Costa Rica

Good Practice: *Freedom of thought and expression, and protection for human rights defenders is afforded under the Universal Declaration of Human Rights, and the American Convention on Human Rights.*

Article 19 of the Universal Declaration of Human Rights and Article 13 of the American Convention on Human Rights recognizes the right to freedom of thought and expression.^{xxvii} Under these international conventions, protection is also afforded to human rights defenders to assemble peacefully and to disseminate information about human rights and draw attention to whether they are observed in practice.^{xxviii}

El-Salvador

Good Practice: *The constitution grants the right to peaceably assemble, without arms, for any lawful purpose and express themselves freely.*

The Environmental Law and the Water Law both generally aim to encourage the participation of individuals in environmental preservation efforts.

The Constitution, while not specifically protecting environmental activism, does grant the right to peaceably assemble, without arms, for any lawful purpose and to express themselves freely (provided they do not subvert the public order nor injure the moral, honour or private lives of others). Constitution Art. 6 & 7.

South Africa

Good Practice: *The South African Human Rights Commission is required to promote the protection and respect of human rights.*

The South African Human Rights Commission (**SAHRC**) is a constitutional institution established and regulated by the South African Human Rights Commission Act 40 of 2013 (the SAHRC Act) pursuant to sections 115 and 184 of the Constitution. According to the Preamble to the SAHRC Act, the Constitution requires the SAHRC to (a) promote respect for human rights and a culture of human rights; (b) promote the protection, development and attainment of human rights.

New Zealand

Good Practice: *Intimidation is protected by two Acts which would protect anyone working on environmental matters that feels threat of violence, intimidation or harassment.*

The Harassment Act 1997 and Section 21 of the Summary Offences Act 1981 prohibit intimidation. While such legislation does not specifically refer to environmental issues, it would extend to protect anyone working on environmental matters that feel threats of violence, intimation and/or harassment.

3.5 SUSTAINABILITY

PRINCIPLES OF THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT (FROM FRAMEWORK PRINCIPLES)	PRINCIPLES OF THE HUMAN RIGHTS TO WATER AND SANITATION (FROM GENERAL COMMENT No.15)
SUSTAINABILITY	
Principle 1. States should respect, protect and fulfil human rights in order to ensure <u>a safe, clean, healthy and sustainable environment.</u>	Respect: GC 21: The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; <u>unlawfully diminishing or polluting water</u> , for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.

Protect: GC 23. The obligation to protect requires States parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations, and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.

Fulfill: GC26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water... and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.

GC.11. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.

The obligations to respect, protect and fulfil the human rights to water and a safe, clean, healthy and sustainable environment provide a framework for consideration of the longer-term values of our natural water resources, and their conservation for future generations. Legal frameworks that include a more holistic approach to water resource management, considering environmental impacts long term, can provide a sustainable solution.

Climate adaptation is founded on the ability to build sustainable water management models. The following examples demonstrate the importance that States are giving to this matter through recognition in the constitution and water laws. Even if not directly mentioning climate change, the ability to manage resources in a sustainable manner must take into account long term changes in weather patterns and allow for a certain amount of resilience to change. There are also some proactive examples (e.g. for wetlands protection) that use nature-based solutions to adapt to the climate change.

XVIII. SERVICES ARE DELIVERED IN A SUSTAINABLE MANNER.

Mexico

Good Practice: *Sustainable development is recognised in the constitution through the right to live in a healthy environment for the development and well-being of everyone.*

The Mexican federal legal framework contains different provisions that seek to ensure sustainable use of water resources and protect the environment. With time, these can contribute to preserving sufficient water of quality both for present and future generations. The Constitution, for example, makes references to sustainable development in addition to establishing a right to live in a healthy environment for the development and well-being of everyone (Article 4 of the Constitution).

Laws specific to the environment further address the principle of sustainability in relation to use and extraction of water resources as well as supply of drinking water. The General Environmental Law specifically states that the criteria for the sustainable use of water and aquatic ecosystems will be considered in the operation and administration of drinking water and sewage systems that serve population centres and industries. (General Law on Ecological Balance and Environmental Protection, Art. 89 VI)

More generally in relation to water resources, one of the purposes of the Mexico National Water Law is to preserve the quantity and quality of national water to achieve sustainable development. (National Water Law, Art. 1)

Singapore

Good Practice: *The national water agency has developed policy with standards to guarantee the sustainability of water resources through the 'Four Taps' strategy.*

Singapore has a policy dedicated to sustainability and ensuring the availability of water resources in the future, considering projected population and economic growth. The Singapore National Water Agency (PUB) has developed standards to guarantee the sustainability of water sources via the 'four taps'. The policy also focuses on managing water demand through a multi-faceted approach of: pricing water to reflect its scarcity, mandating water efficiency standards and encouraging water conservation practices.^{xxix}

XIX. SERVICES ARE DELIVERED SUSTAINABLY TO RURAL AND DEPRIVED URBAN AREAS.

Mexico

Good Practice: *The constitution provides for the regulation of natural resources which are susceptible to appropriation in a way that should help to provide environmental balance with urban development.*

Article 27 of the Constitution provides the right of the Nation to regulate the use of natural resources which are susceptible to appropriation "in order to make an equitable distribution of public wealth, to conserve them, to achieve a balanced development of the country and to improve the living conditions of rural and urban population." Consequently, appropriate measures shall be issued to organize human settlements and to define adequate provisions, reserves, uses and allocations of land, water, and forest. Such measures shall seek to perform public works and, planning and regulating the creation, maintenance improvement and growth of population centres; preserving and restoring environmental balance; dividing rural estates; setting the collective exploitation and organization of ejidos and communities; developing small rural properties; promoting of agriculture, livestock farming, forestry and other economic activities in rural areas; and avoiding the destruction of natural elements and damages against property to the detriment of society.

Uganda

Good Practice: *Water resources should be managed in an integrated and sustainable manner to provide water ...for present and future generations.*

Objective XXVII of the Constitution (the State shall promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the Present and Future generations) highlights the Government's responsibility of holding in trust

and managing the water resources of Uganda as a common good for all the people of Uganda and for the present and future generations.

Part of the mandate of the **Directorate of Water Resources Management (DWRM)** is defined as: “to manage and develop the water resources of Uganda in an integrated and sustainable manner in order to provide water of adequate quantity and quality for socio-economic needs for both the present and future generations.” This objective is further reiterated in other related policies, for instance, in the National Environment Management Policy and subsequent Statute in which a key policy objective for water resources conservation and management for ensuring water quality is “...to sustainably manage and develop the water resources in a coordinated and integrated manner so as to provide water of acceptable quality for all social and economic needs....”. The Environmental Act also includes principles with respect to environmental management, requiring that activities relating to extractive processes of renewable and non-renewable natural resources are carried out in a sustainable manner as well as promoting green growth in environmental planning, implementation of sustainable development goals in all sectors and ensuring optimum sustainable yield in the use of renewable natural resources.

XX. IWRM MECHANISM INCLUDING REGIONAL OR LOCAL ASSOCIATIONS.

Mexico

Good Practice: *Water is governed at the river basin level, with representation of diverse stakeholders to implement an integrated strategy.*

The National Water Law regulates IWRM mechanisms mainly in Chapter VI on integrated water management and water use efficiency. Additionally, national policy aims to generate integrated water resource management with direct action and participation by local actors at the basin level. Pursuant to Article 9, the National Water Commission is the highest technical, regulatory and advisory body of the Federation in the field of IWRM. Basin Councils that are fully integrated and comprised of diverse representation from federal, state, municipal authorities and civil society shall be vehicles to facilitate cooperation among relevant actors in the water sector while serving as advisors for improved water administration, development of water infrastructure, improved water services, resource preservation of the basin, and the promotion of the socio-economic / environmental value of water in civil society. (National Water Law, Art. 13, chapter IV)

Working at the regional level, the Water Advisory Board (Consejo Consultivo del Agua), is an autonomous entity composed of individuals from the private and social sector who are well versed in the subject of water and its management. At the request of the Federal Executive, the Advisory Board may advise, recommend, analyze and evaluate the national priority or strategic problems related to the exploitation, use, and the renewal of water resources, including international conventions. In addition, it may carry out its own recommendations, analysis and evaluations as it deems appropriate in relation to integrated water resources management. (National Water Law, Art. 14 BIS 1)

XXI. REDUCE PEOPLE SUFFERING FROM WATER SCARCITY BY OPTIMISING WATER USE.

South Africa

Good Practice: *The Reserve was introduced in 1998 to provide for basic human needs of individuals for drinking, food preparation and personal hygiene.*

The National Water Act introduced the concept of The Reserve.^{xxx} The Reserve consists of the basic human needs reserve and the ecological reserve.

The basic human needs reserve provides for the essential needs of individuals served by the water resource in question and includes water for drinking, for food preparation and for personal hygiene. Principle 8 of the White Paper on a National Water Policy for South Africa (1997) states that the amount of water required to give effect to the basic human needs reserve is that amount which ensures that all people have access to sufficient water. This amount must be reserved. This has been operationalised as 25 litres per person per day. Along with the ecological reserve, this amount receives first priority in water allocation processes, and must be set aside before water can be allocated for any other use.

The minimum requirements for these services are spelt out in the 2003 Strategic Framework for Water Services and national norms and standards prescribed by the Minister of Water and Sanitation through section 9 of the Water Services Act.

XXII. RESTORE WATER ECOSYSTEMS: MOUNTAINS, FORESTS, WETLANDS, RIVERS, AQUIFERS, LAKES.

South Africa

Good Practice: *Protection of ecosystems such as wetlands is integrated into the landowners 'Duty of Care' principle.*

The National Water Act, NEMA and the Conservation of Agricultural Resources Act 43 of 1984 serve as the primary legislation for the protection of the water-related ecosystems and the environment. Principles such as the 'duty of care', enshrined in section 28 of the NEMA, require that landowners must take reasonable measures to prevent, minimise and rectify environmental degradation on their properties. In addition, these regulatory frameworks ensure that urban and commercial developments do not affect or alter the natural state of wetlands. Currently, governmental initiatives such as Working for Wetlands are in place to ensure protection and restoration of water-related ecosystems. This illustration of cooperative governance and partnerships comes to life through projects that focus on the rehabilitation, wise-use and protection of wetlands. Further, the Conservation of Agricultural Resources Act of 1984 also provides for control over the utilisation of the natural agricultural resources of South Africa in order to promote the conservation of the soil, the water sources and the vegetation and the combating of weeds and invader plants; and for matters connected therewith.

XXIII. ECONOMICALLY SUSTAINABLE, FOR O&M AND THE PROTECTION OF THE ENVIRONMENT

Uganda

Good Practice: *The quality of the water resources is protected in the sustainable development commitments, linking water quality with economic development.*

According to the National Water Quality Management Strategy (NWQMS), the Government of Uganda's commitment to sustainable development reflects a clear predisposition to protect and enhance the quality of the nation's water resources. This is also reflected in National Water policy (NWP) Objective 4.1: "To manage and develop the water resources of Uganda in an integrated and sustainable manner, so as to secure and provide water of adequate quantity and quality for all social and economic needs of the present and future generations with the full participation of all Stakeholders". This demonstrates a recognition of a link between water quality and the economy and that effective water quality management at all levels, including from an economic standpoint, will guarantee safe water provision. This position is echoed in the Environmental Act in its environmental management principles.

Good Practice: *Lack of natural resources has driven strict controls and planning around water resources to protect natural catchments.*

Over the past 20 years, Singapore has worked on achieving long-term water sustainability, due to its lack of natural resources. To assist in achieving this PUB is undergoing a research and development effort aiming at halving energy requirements for its used water treatment and desalination.^{xxx} There is also legislation which provides for the protection of water catchment areas.^{xxxii}

4. CONCLUSIONS

The HRBA provides a framework for countries to integrate an inclusive and participative approach that will encourage the involvement of relevant stakeholders in water management decision-making, and support water management for sustainable and climate adaptive solutions. Although the principles are not fully integrated in any given country, it is possible to extract some good practices as examples of how to use the HRBA to become more inclusive.

From the viewpoint of operators in the water services industry, and for corporations that have operations linked to water resources, it is equally important for these entities to understand the highest standards of international human rights law, and how they could apply some of these best practices.

In reviewing the legal extracts for each of the principles selected here for the HRBA, we can highlight a few points for each section of this report:

Non-Discrimination: Legal measures need to be taken to protect the more vulnerable.

It is evident from the examples shown that legislation relating to non-discrimination starts at national level, in the constitution. However, to really protect different vulnerable people, the legislation should be interpreted at the local level, recognising that people from differently disadvantaged backgrounds should have their rights protected. From the climate adaptation perspective, the vulnerable groups are usually the most impacted by hydroclimatic extreme events, requiring special priority to be given to these groups. Any operations that are linked to water resources that work in regions that do not specifically protect vulnerable people, should develop internal policies to reflect international law.

Public Participation: Meaningful participation of all relevant stakeholders needs to be actively encouraged through law and policy.

There are some excellent examples of participative decision-making included in this document, reflecting the delegation of decisions to local communities for water management. Provided that these community groups are also able to be inclusive of marginalised people, and gender-balanced, then there is a high chance that their expertise and opinions are considered in a meaningful way. The concern is whether the direction from higher authorities is able to provide the resources, training and budget to ensure that these communities are able to work in a sustainable way for climate adaptation. Local operators have a responsibility to ensure that management of water resources includes meaningful participation of the local community.

Access to Information: Access to information about water resources should be simple, easily accessible, and in a format that communities can access.

Providing access to information should be a two-way process of providing and asking for information in order to ensure that decision-making for resilience to climate extreme events is enabled. Many of these examples allow for sharing of information, but it is not clear if the quality of data is sufficient to make fully informed decisions. This requires regular monitoring of data on quality and volumes of water, together with appropriate modelling for forecasting events. From the HRBA, the data should be made accessible, through a wide range of media and languages to create the transparency required. Operators often have access to data on water that can be easily shared to improve local decision-making on water resources.

Accountability: The grievance and remedy process should encourage participation without retaliation

Regulatory processes are needed to support regular monitoring of environmental and water related standards with results shared publicly, to create full accountability. Grievance processes cannot function efficiently unless people are confident that they are safe to speak out, that they will not be prejudiced in response, and that they will see some form of action and redress for the problem. There are several good practices here from different countries, but accountability will only function well if there is a transparent and safe process. This should be good business practice in any service industry.

Sustainability: Nature-based solutions should always be considered as part of the solution for long-term sustainability

This is a broad topic, and it can reflect sustainable socio-economic outcomes, in addition to environmental ones. In the context of climate adaptation, it is important to consider all forms of sustainability. Several of the countries have strong laws reflecting the link between the use of water and aquatic ecosystems at the national level, while considering the operation of drinking water and sewage systems. Of particular interest is the protection of wetland ecosystems in South Africa, for their long-term conservation, which also provides a natural adaptation to climate change.

Sustainability as a holistic concept is also related to the ability of local communities to manage their own resources in a sustainable manner for greater adaptation to climate change. This very much relates to the principles of non-discrimination, participation and inclusion, data accessibility and accountability, that are interwoven throughout all of these principles, allowing local ownership, innovative thinking based on local knowledge, and innovative solutions that are driven by the principles of equality and inclusion for vulnerable groups. All authorities, service providers and businesses that are linked to water resources have a role to play and a responsibility to engage the HRBA in all stakeholder engagement and consultations.

Endnotes

- i Comparative Analysis of the principles of the human rights to water and sanitation and the right to a healthy environment, 2022, Human Right 2 Water, A.Loeffen et al
- ii [Right to Healthy Environment – Human Right 2 Water for reference to full country legal mapping reports in these countries](#)
- iii 'The Human Rights Based Approach: A practical guide for the realisation of the human rights to water and sanitation in development programming', 2020, Human Right 2 Water, A.Aguilera, G.Casanova, A.Loeffen, R.Turner
- iv General comment no. 15 (2002), The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)
- v United Nations Sustainable Development Group (UNSDG), The Human Rights Based Approach to Development Cooperation Toward a Common Understanding Among UN Agencies (UNSDG, 2003)
- vi Danish Institute for Human Rights, Applying a Rights-based Approach. An Inspirational Guide for Civil Society (2007) p.10
- vii UDHR (n 3) Art 2
- viii Convention on the Elimination of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (CERD); Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD)
- ix Declaration on the Right to Development (adopted 4 December 1986) UNGA Res 41/128 (UNDRD) Arts 2 & 8
- x UNGA Res 59 (14 December 1946) UN Doc A/RES/59
- xi UDHR (n 3) Art 19
- xii See Basic Principles and Guidelines on the Right to a Remedy and Reparation for victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (adopted 16 December 2005) UNGA Res 60/147
- xiii Rio Declaration on Environment and Development (3-14 June 1992) UN Doc A/CONF.151/26 (Vol.1), 31 ILM 874 Principle 3
- xiv UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.15: The Right to Water (Art 11 and 12 of the Covenant) (20 January 2003) UN Doc E/C.12/2002/11 Par 11
- xv <https://www.thegef.org/newsroom/feature-stories/providing-access-clean-water-despite-climate-change-and-covid-19>
- xvi Public Participation Guideline in terms of National Environmental Management Act, 1998, Environmental Impact Assessment Regulations. Sourced at: https://www.dffe.gov.za/sites/default/files/docs/publicparticipationguideline_intermsofnemaEIAregulations.pdf
- xvii Guidelines for Compulsory National Standards at Chapter 7.
- xviii DERECHO AL AGUA Y AL SANEAMIENTO, Servicios inclusivos universales, BID, 2020, Onga-wa, con coordinación de Maria del Mar Rivero y Gonzalo Marin
- xix [Costa Rica 1949 \(rev. 2020\) Constitution - Constitute \(constituteproject.org\)](#).
- xx https://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-24-Add1_E.pdf
- xxi https://cer.org.za/wp-content/uploads/2011/11/LHR-DBSA_Water_Report.pdf
- xxii https://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-24-Add1_E.pdf
- xxiii https://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-24-Add1_E.pdf
- xxiv https://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-24-Add1_E.pdf
- xxv [Constitutional Court orders AyA to take over water management in Santa Ana of Nicoya due to irregularities in the ASADA \(vozdeguanacaste.com\)](#)
- xxvi https://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-24-Add1_E.pdf
- xxvii [A-HRC-25-53-Add1_fr.doc \(live.com\)](#).
- xxviii Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, arts. 5, 6 and 8.
- xxix <https://www.pub.gov.sg/Documents/PUBOurWaterOurFuture.pdf>
- xxx National Water Act 36 of 1998, Section 16.

xxxi <https://theconversation.com/how-singapores-water-management-has-become-a-global-model-for-how-to-tackle-climate-crisis-162117>; <https://www.pub.gov.sg/resources/publications/research>

xxxii See, for example, <https://sso.agc.gov.sg/SL/PUA2001-S401-2006?Doc-Date=20180329&ProvIds=P1II-#pr5->

Human Right 2 Water is an international public interest development organisation based in Switzerland. It's mission is to use and share expert knowledge on how the human rights to water and sanitation should be integrated into law, policy and practice to realise safe and sustainable access to water and sanitation for all, including the most vulnerable and marginalised.



<http://humanright2water.org/>