

Rights-based approaches to increasing access to water and sanitation



Acknowledgements

This Discussion paper is intended to serve as an introduction to the concepts, theories and legal frameworks behind the evolving understanding of rights-based approaches to water and sanitation.

It is primarily meant to guide WaterAid country programmes in an action learning initiative aimed at applying these approaches on the ground and, in the process, to develop a menu of appropriate tools as they strive to realise WaterAid's vision of a world where everyone has access to safe water and sanitation.

At the end of this process, we hope to create a more comprehensive Policy paper on WaterAid's understanding and application of the rights-based approach to water and sanitation. It will be informed and enriched by the insights gained from this action learning initiative as well as the discourses and debates taking place in other agencies and forums, in particular the Office of the UN Special Rapporteur on the Human Right to Water and Sanitation.

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Cover image: WaterAid/Dieter Telemans

Children from the Children's Parliament, including Reahan, the Health Minister, and his brother Reakshan, the Finance Minister, hold up a jug of water, Puthur village, Kanyakumari district, Tamil Nadu, India.

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1 Introduction

WaterAid's Global Strategy is based on a firm belief that 'safe water and sanitation are fundamental to life and everyone has a right to these basic services'. This is also the essence of Aim 1: 'We will promote and secure poor people's rights and access to safe water, improved hygiene and sanitation.' Consequently, WaterAid's current Global and Country Strategies make a commitment to promoting and securing poor people's rights to safe water and sanitation.

In 2005, WaterAid introduced a more explicit **rights-based approach** to its programme work with the development of its 'Citizens' Action' projects. In October 2010, members of WaterAid's International Programmes Department, Policy and Campaigns Department, and the Global Advocacy Executive came together at a workshop in London to consider what rights and rights-based approaches mean for our work. This built on earlier work, particularly in the South Asia and West Africa regions, the insights gained in the process of developing and mainstreaming the *Equity and inclusion framework* across WaterAid, as well as the ambitious Global Transparency Fund programme which was launched in 2008 with the goal to improve the accountability and responsiveness of duty bearers to ensure equitable and sustainable WASH services for the poorest and most marginalised. The emphasis at the October 2010 workshop was on arriving at a better understanding of this work through reflecting on specific rights-based programmes of work – with WaterAid's specific focus on the excluded.

Subsequently, a Rights-based approach working group was set the task of developing a background paper to set out the concepts, theories and legal frameworks to inform the practice of rights-based approaches with which to pursue WaterAid's vision of access to safe water and sanitation for all. This WaterAid lens to rights-based approaches is particularly important because while the concept of human rights is by definition universal, for WaterAid the primary focus of our work is access to these rights by the excluded.

This document fulfils that mandate by first setting out briefly the milestones in the development of the rights to safe drinking water and sanitation at international level, which resulted in the landmark resolution in 2010 when the United Nations recognised the rights to water and sanitation. It also points out WaterAid's contribution to that development, particularly over the past decade. The document further clarifies the meaning of a human rights-based approach as WaterAid understands it, and then goes on to highlight some of the methods WaterAid is developing at programme implementation level. It also references some of the commitments that WaterAid country programmes have given in their respective country strategies. It is hoped that sharing these findings across WaterAid would help towards furthering the empowerment of people to fully engage in development efforts that affect their access to safe water and sanitation.

Some clarification is in order at the beginning of this document.

- 1 WaterAid does not see itself as a **rights** organisation. However, as an organisation that is focused on water, sanitation and hygiene (WASH), we believe that everyone has a **right** to access basic water and sanitation services. Our experience over the years has shown us

that the reality of millions of people forced to live without access to water and sanitation is due not only to a lack of resources and technologies, but is even more crucially a result of the inequitable power relations that exist in our world.. Rights-based approaches can help us to analyse the issues around inequitable power relations that act as barriers to people having access to safe water and sanitation. Hence we are becoming more and more aware of the need to complement the needs-based approach with a rights-based approach if we are to find empowering and sustainable access to WASH by poor people. This is why WaterAid supports and encourages rights-based approaches in fulfilling its goals.

- 2 There is an ongoing and highly technical debate on whether to refer to the right to water and sanitation in the singular or plural. Whatever the merits of either side in this debate, it is clear that there is no right to hygiene (at present), so we should bear this in mind when using the phrase ‘right/s to WASH’. As of now we have decided to use the term ‘rights to water and sanitation’ (in the plural) to denote that the right to water and the right to sanitation are separate though linked.



Women’s Self Help Group, who came together to tell us about life in their community, Kaushal Nagar, India.

WaterAid/Jon Spaul

2 Understanding the International Framework of Human Rights – with special reference to the rights to water and sanitation

The values of dignity and equity that underlie all human rights emerge from a variety of sources, including religious and a-religious ideological convictions regarding the essential dignity and justice that every single human being desires for him/herself. They are consequently rooted in many historic global struggles, especially the struggles for independence and self-rule.

International human rights treaties, negotiated by representatives of governments around the world, provide the currently internationally accepted framework of human rights, and a commonly accepted standard to gauge their degree of implementation.

While there have been various efforts at articulating human rights in different forms in past centuries (eg the Magna Carta, the French Revolution, various national constitutions like that of the United States of America etc), the current human rights environment is considered to have been initiated in 1948, in the aftermath of World War II, when the international community adopted the **Universal Declaration of Human Rights**.

However, by the time that the various nation states were prepared to turn the provisions of the declaration into international covenants, the Cold War had overshadowed and polarised human rights into two separate categories. The capitalist bloc argued that civil and political rights had priority and that economic and social rights were mere aspirations. The communist bloc argued to the contrary that rights to food, water, health, one's own culture etc were paramount, and civil and political rights could only have any meaning after human beings enjoyed the right to life, and for which the former were necessary. Hence two separate treaties were created in 1966 – the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) and the International Covenant on Civil and Political Rights (**ICCPR**).

Over the years since the Covenant was first brought out, there have been many references to the rights to water and sanitation and the committee appointed by the ICESCR went on to recognise water as a human right in its General Comment No.6 (1995). The committee also pointed out that the right to water is inextricably related to the right to the highest attainable standard of health (art. 12, para.1) and the rights to adequate housing and adequate food (art. 11, para.1). The right should also be seen in conjunction with others enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.

In addition to the ICESCR, the rights to water and sanitation (linked though separate rights) are founded on a number of international instruments and political declarations in the fields of human rights, environmental law and humanitarian law (See Annex 1 on p38). An explicit articulation of these rights to water and/or sanitation can be found in the Convention on the elimination of discrimination against women (1979), the Convention on the rights of the child (1989), the UN General Assembly Resolution on 'The right to development' (1999)

(A/Res/54/175), the General Comment on the right to water (2002), the Convention on the rights of persons with disabilities (2006), and the report of the UN High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments (2007) (A/HRC/6/3). In addition, numerous other international conferences organised by the UN and other multilateral agencies also explored these two rights.

Finally on July 28, 2010, the General Assembly of the United Nations formally recognised water and sanitation as basic human rights and thus fully endorsed the General Comment No.15 that had earlier been issued in 2002. That General Comment had noted that *‘Article 11, paragraph 1, of the (ICESCR) Covenant specifies a number of rights emanating from, and indispensable for, the realisation of the right to an adequate standard of living ‘including adequate food, clothing and housing’. The use of the word ‘including’ indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival’.*

The UN Resolution 64/292 acknowledged that access to clean drinking water and sanitation are integral to the realisation of all human rights.

In September of the same year, the UN-instituted Human Rights Council, which has the mandate to monitor the implementation of all human rights, also passed a resolution to the same effect and further called upon states to develop appropriate tools and mechanisms to achieve progressively the full realisation of human rights obligations related to access to safe drinking water and sanitation, including in currently un-served and underserved areas.

As the UN Special Rapporteur on Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque subsequently observed, “This means that for the UN, the right to water and sanitation is contained in existing human rights treaties and is therefore legally binding...The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable¹.”

From global recognition to regional endorsement

Africa

The African Commission on Human and Peoples' Rights (ACHPR), established in 1986, is a quasi-judicial body tasked with promoting and protecting human rights and collective rights throughout the African continent. The commission has a charter, which all 53 member states have signed up to, and the role of the ACHPR is to implement the charter and consider individual complaints of violations of the charter.

Following an exposure visit in 2009 to understand the mechanisms of the ACHPR, colleagues from WaterAid in West Africa took an active part in the NGO delegation at the 47th Ordinary

Session of the African Commission on Human and Peoples' Rights (ACHPR) in 2010. As part of the deliberations, the ACHPR considered the recognition of rights to water and sanitation as a right essential to people's dignity, especially poor people and vulnerable groups such as women, children, physically challenged people and those living with health challenges including HIV/AIDS.

Currently, the African Union is deliberating the proposal made to the ACHPR in May 2010 to nominate a Special Rapporteur on water, sanitation and hygiene, in order to monitor the compliance of the various States to continental commitments on water and sanitation and ensure everyone's rights to access sufficient, safe, accessible and affordable water and sanitation in Africa.

South Asia

Government officials participating in the 3rd South Asian Conference on Sanitation (SACOSAN 3) in Delhi November 2008 recognised that access to sanitation and safe drinking water is a basic right, and accorded national priority to sanitation as an imperative.

In the declaration adopted at the Ministerial Summit at the 4th South Asian Conference on Sanitation in Colombo, Sri Lanka in April 2011, officials renewed their commitment and unanimously agreed, in light of the recent UN resolution recognising the right to water and sanitation, to work progressively to realise this in programmes and projects and, eventually, in legislation. Furthermore they agreed to establish **specific public sector budget allocations** for sanitation and hygiene programmes. While these are not legally enforceable commitments and undertakings, they are statements of intention and the directions in which the national governments in the region have committed themselves to progress.

WaterAid also made important contributions towards some of the key milestones on the journey to recognition of the human rights of water and sanitation, both at regional and international levels. (For a summary of WaterAid's contributions – see Annex 1, p 35).

Implications of international treaties

When signed and ratified by a country/State, international covenants/treaties have a certain legal weight. Like national laws, international human rights law is further spelt out in a set of written rules. However, it is more a **horizontal** than a vertical body of law, since the rules are negotiated between the parties (ie the constituent governments that represent countries in the United Nations) and not imposed by a higher legislative body.

States are obliged by these international legal instruments they have adopted and ratified to **respect, protect** and **fulfil** their commitments to the human rights enshrined in these covenants and conventions. These three obligations are explained further below as they would apply to the right to water and sanitation.

The obligation to respect

The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the rights to water and sanitation. For example, States should refrain from: polluting water resources; arbitrarily and illegally disconnecting water and sanitation services; reducing the provision of safe drinking water to slums in order to meet the demand of wealthier areas; destroying water services and infrastructure as a punitive measure during an armed conflict; or depleting water resources that indigenous peoples rely upon for drinking.

The obligation to protect

The obligation to protect requires States to prevent third parties from interfering with the rights to water and sanitation. This would mean that States should adopt legislation or other measures to ensure that private actors – eg industry, water providers or individuals – comply with human rights standards related to the rights to water and sanitation. States should, for instance, adopt the necessary legislative and other measures to ensure that third parties do not arbitrarily and illegally disconnect water and sanitation services; communities are protected against third parties' unsustainable extraction of the water resources they rely upon for drinking; the physical security of women and children is not at risk when they go to collect water or use sanitation facilities outside the home; landownership laws and practices do not prevent individuals and communities from accessing safe drinking water; the third parties controlling or operating water services do not compromise the equal, affordable and physical access to sufficient safe drinking water.

The obligation to fulfil

The obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realise the rights to water and sanitation. States must, among other things, **adopt a national policy on water** that gives priority in water management to essential personal and domestic uses, identify the resources available to meet these goals; specify the most cost-effective way of using these resources, outline the responsibilities and time frame for implementing the necessary measures; and monitor results and outcomes, including ensuring adequate remedies for violations. Under this same obligation to fulfil, States must also, progressively and to the extent allowed by their available resources, extend water and sanitation services to vulnerable and marginalised groups; make water and sanitation services more affordable; ensure that there is appropriate education about the proper use of water and sanitation, and encourage methods to minimise waste.

The responsibilities of others or non-State actors

In advocating for the rights to water and sanitation, it has already been noted that the ultimate responsibility lies with the State. However, it is also important to be clear that according to international human rights law, although governments are responsible for ensuring that such a provision is in place they are not necessarily responsible for direct provision. Instead, they are

responsible for ensuring that the policies, systems, processes, mechanisms, standards and procedures are in place.

In the realisation of the rights to water and sanitation, there are other stakeholders who also have an important role to play. Some of these are:

- Claimants for the rights to water and sanitation – all men, women and children, whatever their residential status.
- Members of the legislature and executive – policy-makers, regulators and allocators of resources – including national and local legislative and administrative authorities, catchment management bodies and officials who are responsible not only for water and sanitation provision but also for related services, such as social, health, development, information gathering and statistics, and budget issues.
- Water and sanitation services providers – ranging from public, private or cooperative large-scale network providers to small-scale water or sanitation service providers.
- Members of the judiciary and other monitoring bodies – public institutions that promote, monitor and enforce human rights and those that are responsible for monitoring and regulating delivery of water and sanitation services – including human rights institutions, ombudspersons, judicial courts and regulators.
- Citizens and citizen groups – civil society organisations such as non-governmental organisations, academic institutions, the media and professional bodies.
- Competing water users – industrial and agricultural water users.
- International organisations – both multilateral and bilateral.

The obligation on States to protect and fulfil human rights entails that States ensure non-State actors (especially other non-state providers, or more powerful water users) do not infringe upon the rights to water and sanitation of others, especially the powerless/marginalised and excluded ones. This is the obligation to protect described above. In addition, there is an increasing debate about the extent to which other actors in society – individuals, inter-governmental and non-governmental organisations (NGOs), and businesses – have responsibilities with regard to the promotion and protection of human rights. Another closely connected issue is the question of the duties of the rights holders to do their bit towards the fulfilment of their own rights – especially in the maintaining of water and sanitation facilities that may have been set up by the State or other providers or by the rights holders themselves. This is even truer in respect to sanitation, since it is an intensely private affair in most cultures, and it is very difficult for outsiders to insist on acceptable behaviours.

International human rights law does not prescribe whether water services should be delivered by public or private providers or by a combination of the two. Nevertheless, the human rights framework requires States to ensure that if water services are operated or controlled by third parties (ie non-State actors) States must put in place an effective regulatory framework which

includes independent monitoring, genuine public participation and penalties for non-compliance. It is implicit in this duty to regulate that the State should put this framework in place before delegating the provision of safe drinking water and sanitation to such non-State actors.

Therefore, in order to ensure a holistic approach to poverty reduction and human development, the rights to water and sanitation must be translated into a clear strategic framework, protected by national legislation and empowered with a set of binding guidelines with sufficient substance backed up by budgets and sanctions to ensure that national governments, local authorities and private operators are accountable to the communities they serve. Rhetoric alone is not enough.

As a result of these obligations, these international instruments have been found to have great value in protecting individuals and groups against actions that interfere with the fundamental human dignity of each individual that is enshrined in these treaties. Since it is the State which is responsible to ensure that these human rights are enjoyed by all those living within its borders, human rights are principally concerned with the relationship between the individual and communities vis a vis the State.



In Yaounde, Cameroon, participants take part in World's Longest Toilet Queue event, 20 March 2010. WASH Coalition, Cameroon

3 Key elements/components in the rights to water and sanitation

Progressive realisation of rights

The international human rights framework with regard to water and sanitation acknowledges that such rights can only be progressively realised. This has led some States to postpone (and even avoid) taking responsibility to fulfil the obligations they have taken on themselves by signing and ratifying this international human rights framework. Nevertheless, such a progressive realisable rights framework gives rights-based approaches their advocacy dimension. The responsibility of the State to **fulfil** is the primary strength of such an approach as governments have already voluntarily signed up to these obligations. This provides a firm foundation for advocacy that attempts to influence policy formulation in favour of the excluded.

Article 2(1) of the ICESR Covenant indicates that signatories are under the obligation to progressively realise the rights to water and sanitation to the maximum of their available resources. However, this does not mean that this is a never-ending pilgrimage that allows States to indefinitely delay the fulfilment of these rights. Even though it is an obligation to be realised progressively, it includes the requirement that national target-setting be undertaken with reference to an objective assessment of the national priorities and resource constraints of each country. States must have a vision of how to fully realise the rights to water and sanitation for all, and elaborate national strategies and action plans to implement this vision.

For WaterAid, this universalist approach must focus on the excluded as a priority, since these are the ones who are usually reached the last in such a progressive implementation of these rights. These should be endorsed at the highest political level and integrated within national poverty reduction strategies, and expenditure and monitoring frameworks to ensure their operational viability, sustainability and comprehensiveness. States are required to move towards the goal of full realisation as expeditiously and effectively as possible, within available resources and within the framework of international cooperation and assistance, where needed. This calls for the translation of the internationally recognised right to water and sanitation into locally determined benchmarks for measuring progress, thereby enhancing accountability.

In this context the Millennium Development Goals (MDGs) can offer a valuable vehicle for the progressive realisation of all economic, social and cultural rights. As far as access to water and sanitation are concerned, the MDG target is set at a 50% reduction in the lack of access by the year 2015. But international human rights obligations do not stop at a 50% reduction or any other arbitrary benchmark. Within whatever time period may prove realistic, international human rights law requires that states ultimately aim for universal coverage within time frames tailored to the country situation. Achieving the global MDG targets would undoubtedly represent a great success for many countries; but it is important to keep in mind that this would still leave 672 million people without access to water and 1.7 billion people without access to sanitation in 2015. This is precisely why WaterAid has an additional commitment to focus on the excluded as a priority.

Content of the rights to water and sanitation

Keeping the above in mind, there still remains the thorny issue of what exactly is the content of these rights to water and sanitation. What would constitute the fulfillment of a State's responsibility with regard to ensuring the rights to water and sanitation for those living within its borders?

General Comment No.15 (2002) offers clarity in this regard when it states: 'The human right to water entitles everyone to **sufficient, safe, acceptable, physically accessible** and **affordable** water for **personal and domestic uses...**' While there are a number of other important uses for water such as for the production of food and use within cultural and religious practices, the human right to water prioritises the allocation of water for personal and domestic uses.

General Comment No.15 also states in Article 10: 'The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.'

As far as sanitation is concerned, General Comment No.15 and the Sub-Commission Guidelines do not give it a definition. However, the description of the relevant entitlements and State obligations implies that sanitation comprises at least a toilet or latrine, along with associated services such as sewage or latrine exhaustion. The criterion of 'conducive to the protection of public health and the environment' in the Sub-Commission Guidelines indicates that wastewater drainage channels are required where piped water, but not sewage, is available in urban and peri-urban areas².

It is also noted that 'access to sanitation was not adequately covered in General Comment No. 15, other than clarifying the need for safe sanitation to ensure water quality. This omission has been addressed in other human rights instruments since General Comment No. 15 was adopted, but certain aspects of sanitation as a human right, such as definition of standards, do still need to be clarified³'.

The above mentioned criteria used with regard to the content of the right to water that have been listed by General Comment No.15 have been further spelt out as follows:

Sufficient: An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.

Each person has the right to a water supply that is **sufficient** and **continuous** for personal and domestic uses, such as drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. As far as sufficiency is concerned, the comment states that the quantity of water available for each person should correspond to World Health Organisation (WHO) guidelines on how much water is necessary for survival, and taking into account that some

individuals and groups may also require additional water due to health, climate and work conditions⁴. ‘Continuous’ means that the regularity of the water supply is sufficient for personal and domestic uses.

Safe and acceptable: The right to water means that people are also entitled to water of adequate quality. This means that the water required for each personal or domestic use must be safe and therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person’s health. Acceptability is understood as referring to the colour, odour and taste that is culturally appropriate for each personal or domestic use.

Accessible and affordable: The Comment notes water facilities and services must be accessible to everyone, without discrimination, within the jurisdiction of the State party. It identifies four overlapping dimensions of accessibility, defined as follows:

- **Physical accessibility:** Safe water and adequate water facilities and services must be within safe physical reach of all sections of the population, which is defined as ‘within the immediate vicinity, of each household, educational institution and workplace’. They should be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements.
- **Economic accessibility:** Safe water, water facilities and services, and the direct and indirect costs and charges associated with securing water, must be affordable for all. This ties in with the concept of affordability and this is understood as a cost that does not demand more than 5% of a family’s monthly income.
- **Non-discrimination:** Access to safe water and water facilities and services should be realised, in law and in fact, without discrimination with regard to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other prohibited grounds.
- **Information accessibility:** Accessibility is defined as including the right to seek, receive and impart information concerning water issues.

What human rights to water and sanitation are not

First misconception: *The human right to water means that water must be free.*

This is not necessarily true. The human right to water requires that water is affordable to everyone. This means that an assessment needs to be made of whether people can afford to pay. Where people are genuinely unable to do so, the state must ensure that service providers design measures to address this reality, even offering support if necessary. The measures a State chooses to address this are the prerogative of the State. Some States may choose to adopt a free basic water policy; others may adopt targeted subsidies. Human rights law does not prescribe particular policy options, but offers a guiding framework of the outcomes to be achieved. What matters is that everyone has access to safe water and sanitation that he or she can afford.

Second misconception: *The human rights to water and sanitation prohibit private sector participation.* Human rights law does not take sides on the public versus private debate. What is considered is the impact on the enjoyment of the rights. How is the system set up, whether public or private, to ensure access to safe water and sanitation that is affordable, sufficiently available and acceptable without discrimination? This requires regulatory systems to monitor these impacts, regardless of whether services are provided by a public or private entity.

Third misconception: *The human rights to water and sanitation mean that everyone is entitled to a tap and flush toilet tomorrow.* Human rights law does not expect overnight solutions to these problems. Instead, these are obligations of progressive realisation, which means that States are obliged to take steps towards the full realisation of the rights. However, the obligation to take steps implies that the government is clear about the targets it is moving towards, and therefore it is crucial that the State has a vision and a strategy to achieve these. The government must articulate its plan for working towards universal access and the steps it intends to take to achieve this. Of course, as mentioned earlier, for WaterAid, the realisation of the rights to WASH must primarily be set as the targeting of services to the poor, the marginalised and excluded. It is those with limited or no access to capital and assets for whom WASH water and sanitation poverty brings the greatest burden of privations and, for that reason, the least capability to develop adaptation or survival strategies.

4 Understanding the human rights-based approach

Why a rights-based approach?

Despite the human rights proclamations at international level and the signing and ratifying of treaties by a large majority of the nation States, globally 884 million people live without safe drinking water and 2.6 billion do not have adequate sanitation. A large proportion of this population consists of the poor and those who are marginalised on the basis of caste, ethnicity, gender, age, ability or because they live in remote (eg hilly regions) or disadvantaged locations (eg urban slums). Another significant number are those who are excluded because they are landless or migrants or not legal citizens. Those people most deprived of their basic needs are also those who have the least voice on account of exclusion and discrimination.

As the WASH deprivation experienced by these groups is clear and demands an immediate response, many local and international NGOs, and even private commercial bodies, have adopted a service-delivery approach. This normally involves offering immediate satisfaction of the needs, with significant funding and resources being channelled towards building and maintaining WASH infrastructure.

With time, however, the limitations of an exclusively hardware-based service delivery approach – which involves NGOs and private commercial bodies supplementing and often substituting the State as a service provider – have become increasingly evident. Therefore, a number of civil society interventions have recently introduced another component which includes a rights-based approach to WASH services. Importantly, civil society initiatives have also begun to recognise and reflect on the interconnectedness of water/sanitation requirements and other human development outcomes. Consequently, there has been an attempt by many civil society groups to integrate WASH interventions with other livelihood needs as identified by the local community. Rights-based approaches help towards such integration, especially where the focus is on identifying those who are marginalised, vulnerable and excluded. The rights-based approach process helps to empower them and amplify their voice to demand their rights, while also supporting them to discharge their responsibilities.

The above change in strategy can be traced to the growing recognition of the following two socio-political realities found in most countries:

- States function through large bureaucracies that are normally neither responsive nor sensitive to the needs of the poor and whose track record of policy implementation on poverty eradication is often weak. In the WASH sector this is exacerbated by institutional fragmentation, limited sector coordination, weak accountability mechanisms, low and unpredictable finance, inadequate attention to water resource management and low priority to sanitation.

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- Corrupt and venal government is a major problem in much of our world and has become intrinsic to governance in many countries. This has severely impaired the effectiveness of governments in implementing poverty reduction programmes. Lack of transparency and effective participation of people, especially of the marginalised, exacerbate the corruption.

Against this background there is the growing realisation that, in a world where economically and socially marginalised people's human rights to water and sanitation are ignored, empowering of the excluded communities to claim these rights, as far as possible, in a legally enforceable manner, must become a defining feature of our approach.

The rights-based approach is aimed at **facilitating a process** whereby the citizen is empowered to hold the State **accountable** to honour their **human rights and legal entitlements**. Adopting a rights-based approach, therefore, involves not only focusing on the **content**, but also on the **process** through which these rights are realised.

As far as content is concerned, the focus is on identifying certain essential and basic needs of people such as food, health and livelihood, not just as **needs** but as **rights**, and working towards getting these legally enshrined in a country's constitution/laws/administrative procedures and schemes. These rights belong to a person, not by virtue of his/her social acceptability/contribution, citizenship, gender, age or any other criterion, but purely by virtue of being a human being.

The rights-based approach perceives the State as the primary custodian of these rights, and therefore aims to build accountability into the WASH service sector at policy and implementation level.

The second part of the rights-based approach, ie the process dimension, focuses not so much on the **what**, but on the **how**. Looking at the rights-based approach from this perspective, the primary focus is on changing the power relationship between vulnerable/marginalised people and those in power (primarily the State), so that the former can be claimants, not supplicants, for these rights.

Understanding various aspects of the rights-based approach

The terms rights-based approach and human rights-based approach have generally been used interchangeably. However, there could be a nuanced distinction drawn between the two. A rights-based approach can refer to an approach that is based on the justiciable rights/entitlements that are already obtainable within a country. A human rights-based approach on the other hand (wherever this distinction is made) can refer to an approach that is based on international human rights standards, or what is known commonly as the International Bill of Rights (a common phrase used to include the UDHR and the International Covenants and Conventions).

Consequently, this latter approach brings in a **moral dimension** by introducing international human rights law into the broader policy and development debate within countries, and is directed at promoting and protecting these rights, even if such rights have not been translated

into individual country legislation. In this understanding, the rights-based approach is then a subset of the larger universe of the human rights-based approach.

Aside from the above difference, the human rights-based approaches and rights-based approaches have the same elements, and a common term, rights-based approaches, is used to apply to both approaches to distinguish them from other non-rights based approaches.

There are some other important elements in rights-based approaches that need to be highlighted. In one understanding of a rights-based approach, any effort towards securing people's legitimate rights or entitlements would be considered a rights-based approach. This understanding focuses on the outcome, ie whether the people eventually gain these rights. However, WaterAid holds a more nuanced understanding of this phrase, by emphasising not only the securing of these rights (outcome), but also **how** these rights are achieved (process). An outcome-focused approach may be done more efficiently, for instance when an influential person lobbies individually with a person in power and gets some benefit for the vulnerable and marginalised, but it can very likely end up as a 'service delivery of rights' approach.

WaterAid has come to believe that we would not have succeeded in our mission if, for instance, we managed to get a drinking water source for a marginalised group as a 'gift' to them by a benevolent outsider (whether governmental or non-governmental). This is because in our understanding, individuals and communities, especially from vulnerable and marginalised groups, ought to be present at the centre of development policy and practice if these outcomes are to be sustainable and spread into other arenas of creating a human rights compliant society. Therefore, while plans, policies and processes of development ought to be anchored in a system of rights and corresponding obligations established by international law, it is equally important, in WaterAid's understanding of the rights-based approach, that there are strategic and planned efforts to ensure that these vulnerable/marginalised individuals and communities participate in establishing these outcomes.

This is possible only when there is a change in the power equations between such individuals/communities and the State. Therefore, one of the crucial elements in such an understanding of the rights-based approach is the effort to increase the power of these vis a vis the State. As a result, rights-based approaches place a lot of importance on the internal attitude with which citizens approach the State/other duty bearers vis-à-vis the latter's responsibility to ensure human rights – ie as claimants of their rights, rather than as supplicants.

A second important element is related to the fact that within human rights law, it is the State which is the custodian of all human rights. It is the State that is responsible to ensure that such rights are enjoyed by all those who live within its geographical borders. Therefore, transforming the State into one that is accountable to all, particularly to the vulnerable and marginalised, is central to the rights-based approach.

Yet another important aspect of this approach is that it also focuses on bringing about systemic change. This is a crucial element as it may so happen that with a people-centred approach the governmental institution may become more accountable – but only temporarily. For example, a

good government officer may work towards ensuring that all departments under his/her control become accountable to the marginalised and excluded – but s/he cannot go beyond his/her own jurisdiction. However, when this particular officer is transferred out to another post, it could happen that the situation reverts back to that of non-accountability. The rights-based approach therefore tries to work towards a change in the ‘system’ so that the accountability mechanisms are institutionalised and are enforced, irrespective of the officer in charge. This may not always be possible but a rights-based effort, as WaterAid understands it, necessarily attempts to move in this direction and is therefore consistent with WaterAid’s mission of transforming lives.

Finally, in trying to understand the rights-based approach there may be a need to clarify use of the terms **rights** and **entitlements**. While these terms are used interchangeably and without any significant difference in meaning in various documents, including in the international covenants on human rights, it may be helpful to draw a distinction between the two terms to make for greater understanding of the work being done by different groups of WaterAid’s partners around the world.

Almost every country in the world has schemes to fulfil some of the requirements of human rights, including the rights to water and sanitation. These could be termed **entitlements**, ie specific services/incentives that governments offer through various schemes to their citizens. A particular government may set up a scheme to offer funds to build individual latrines and offer them to each household that earns an income below a prescribed limit. Such an entitlement is justiciable to the degree that the country has made legal or regulatory provision for such a scheme, and it is not just the largesse of some particular elected representative in power. However, these schemes can be changed at will by the prevalent or successive governments. Moreover, the services offered under such a scheme may not cover all that ought to be covered in order to fulfil the internationally declared human right in that arena (eg for sanitation). If this is the meaning applied to ‘entitlement’, then a **right** to water and sanitation would cover far more than entitlements offer, though it would also include such entitlements. Most importantly, unlike a scheme, this right would be grounded either in the constitution or some official Act of the country (see Annex 3 for more details).

The table below gives a brief summary of the differences between a rights-based approach and a needs-based approach⁵.

	Needs-based approach	Rights-based approach
Vulnerability	Vulnerability is addressed as a symptom of poverty or marginalisation.	Vulnerability is seen as a structural issue, both caused by, and leading to, unequal power relations in society.
Justice	An increase in justice may be achieved as a by-product of meeting needs , but it does not explore the injustices that led to the deprivation in the first place.	Justice is the focus of the efforts. Thus it tends to challenge traditional, social, cultural and even legal practices and norms that may foster injustice.
Discrimination	Tends to work with the symptoms of	Deals with the causes of

(eg based on gender, creed, caste, economy etc)	discrimination, rather than the causes.	discrimination, as it works with the power equations that support such discriminations.
Power relations	Does not engage with power equation issues. In fact they are likely to approach the current power holders for help, thus unconsciously enhancing their power.	Focuses on addressing the differential power issues that underlie poverty and disadvantage and tries to re-draw the power equations.
Accountability	In NBA projects, accountability is only in terms of use of funds – so that the funding agency (governmental or non-governmental) is satisfied that funds are used for what was intended.	Works towards ensuring the accountability of the State and other service providers , and pushes them to fulfil their obligations to respect the rights of all, especially the marginalised.
Citizenship	Citizens are perceived as beneficiaries who hopefully enjoy the largesse of the government.	Citizens are seen as significant actors in a democratic state , and so emphasis is placed on opening up direct channels of communication between citizens (and other people living within a state’s jurisdiction, eg refugees) and the State’s officers/institutions.
Conflict	The aim is to avoid upheaval and discontent by somehow arranging to satisfy the needs of the community.	By opening up space for expressing demands and multi-way communication among stakeholders, rights-based approaches create possibilities in conflict prevention, though at times they may also function in a conflicting manner. Grievances simmering beneath the surface can be and are brought into open debate for negotiation or challenge.

Importance of rights-based approaches

A rights-based approach works towards ensuring that the most vulnerable and marginalised people are taken into account, and empowers individuals and communities from these excluded groups to participate in the development process as rights holders, rather than as recipients of the goodwill of others.

Such a rights-based approach is relevant at each stage of the development process: from situation analysis and needs assessment through to policy and programme implementation, and

to monitoring and evaluation. It is an approach that seeks to analyse inequalities which lie at the heart of development problems and to redress discriminatory practices and unjust distributions of power that impede development progress. It seeks, in effect, to re-negotiate the existing power equation between the previously un-empowered and the State. It also allows for a better understanding of how laws, social practices, policies and institutions positively or negatively affect development issues. It changes the relationship between development actor and poor/vulnerable people from one of charity and powerlessness to one of obligation and rights. It ensures that people living in poverty are fully recognised as being part of the solution. As a result, approaching development from a rights perspective informs people of their legal rights and entitlements, and empowers them to achieve/claim those rights/entitlements.

As the struggle over the use of water resources becomes increasingly competitive, the voice and influence of the poor is weakening in a number of places. Therefore, it is particularly important that governments ensure that their policies and systems are effective enough to reach the poorest and most marginalised communities, in order that the rights to water and sanitation be realised for these groups.

WaterAid has gradually come to realise that established best practices in development work foster empowerment, equity, ownership, accountability and sustainability, and these are promoted in rights-based approaches. We see it as an approach that will help to create an enabling environment that recognises the dignity of every individual, especially among the poor, respects their right to be drivers of change, and stresses the responsibility of governments to make this happen.

It is in this context that WaterAid has come to believe that a people-centred rights-based approach can deliver more sustainable solutions, because if it is successful, then decisions are more likely to be focused on what marginalised communities and individuals require, understand and can manage, rather than what external agencies deem is necessary. Even when it is not possible to fully influence decision-making at legislative level, the change in self-perception of people from seeing themselves as passive recipients to rights claimants, gradually works towards changing the power equations at different levels. Eventually, it leads to more people-centric decision-making.

Conclusion

In summary, the basic rationale for using a human rights-based approach to development (particularly in the WASH sector) lies ultimately in the essential dignity and justice that is due to every individual, however marginalised s/he may be. International human rights law, particularly when ratified by a nation State, offers a legal and moral basis for such an approach because governments have already voluntarily signed up to these obligations. Furthermore, there is increasing evidence that the human rights-based approach leads to better and more sustainable human development outcomes. Educated, healthy and empowered people are able to lift themselves and their families out of poverty and contribute to the wider economy. Finally, it is important to remember that both aspects are important in this approach - the outcomes (getting the rights) and the process (claiming of the rights).



The mapping process, women drawing houses with dyed ash, Narayanpara village, Rajshahi district, Bangladesh.

Charlie Bibby/ Financial Times

5 Applying human rights-based approaches: WaterAid's experience

In realising the aspirations and aims of WaterAid Global Strategy 2009-15, particularly Aim 1 and Aim 2, the human rights-based approach has a special contribution to make.

Under **Aim 1**, we seek to 'promote and secure poor people's rights and access to safe water, improved hygiene and sanitation'. The rights-based approach underscores the fact that not only is it important that the poor people have access to safe WASH, but the process in which they secure this access matters; that is, as claimants of their rights, rather than as supplicants.

The emphasis of **Aim 2**, 'we will support governments and service providers in developing their capacity to deliver safe water, improved hygiene and sanitation', is that governments and service providers are able to deliver. To ensure that the delivery of WASH services actually happens on the ground, governments and service providers must have the capacity to do so. **Capability** is necessary; but capability on its own is not sufficient. The ability and authority of governments and public organisations to get water and sanitation services to poor and excluded people through effective policies, plans and sound implementation practices, must be accompanied by **accountability** in terms of the ability of poor and excluded people and civil society to scrutinise public institutions and hold them to account, and **responsiveness** on the part of governments and public institutions to the needs of citizens and their readiness to respect people's rights to WASH.

WaterAid's experience of promoting rights to water and sanitation in a systematic manner goes back to 2005 when a project entitled 'Citizen's Action'⁶ was initiated to empower people to demand their rights to WASH services⁷. In 2009, WaterAid initiated a Governance and Transparency Fund Programme⁸ which was aimed at strengthening southern civil society advocacy in water and sanitation, while also improving the accountability and responsiveness of duty bearers to ensure equitable and sustainable WASH services. In 2010, WaterAid finalised its Equity and inclusion framework⁹, based on the principles of fairness and non-discrimination. This framework provides guidance on understanding the underlying causes of people lacking access to water and sanitation, working with duty bearers to strengthen their capacity to fulfil their obligations and empowering those without access. The framework triggered organisation-wide discussions on the rationale for and the practical implications of promoting rights to water and sanitation. It has been an evolutionary process.

The following section seeks to describe and demonstrate programme and advocacy approaches that WaterAid teams have adopted in their programme work that carry elements of rights-based approaches. These tools and mechanisms, briefly described here are: Citizens' Action, budget advocacy, engaging in urban reform processes, working with parliament, working with the media, and engaging in sector reviews and poverty reduction strategy processes.

5.1 Citizens' Action

Citizens' Action is an advocacy initiative which aims to transform current levels of State accountability by building an empowered citizenry capable of engaging constructively with governments and other service providers and holding these entities accountable for the provision of quality, accessible and sustainable services. It is founded on the belief that an informed and empowered community, who have been educated and trained on their rights and are confident to engage with the government and other service providers to demand that they deliver on their commitments and obligations, is an essential precondition for ensuring accountable governance in a given community. It is important to complement Citizens' Action work with local government skills and resource development, for example through education on human rights and increasing resources, to further improve their ability to respond to demands from rights holders. As a methodology, Citizens' Action is designed to facilitate the process of knowledge generation, empowerment and constructive engagement by rights holders.

In the first instance, local people, with assistance from a facilitating agency such as a local NGO, develop a fuller understanding of: a) their entitlements to water and sanitation (for example, rights to water and sanitation, details of district or local plans), b) their current water and sanitation service situation (service levels), c) who is responsible for implementation of laws/policy and service delivery, and d) responsibilities of the community and the government for maintaining services.

In order to carry out the above, citizens' groups decide upon suitable data collection methods (from the following list, which is not exhaustive) and use the different types of information generated and verified in dialogue platforms with service providers and government for action-oriented results:

- Community scorecards on which people rank or score the range of service/s.
- Slum enumeration and censuses which involve mapping services.
- Mapping access to water and sanitation services to show their distribution – equity mapping can be done not just at local level but also at district and national levels.
- Report cards, which are essentially a market research exercise to assess public satisfaction with services.
- Public juries, accountability days, and other stakeholder dialogue platforms to bring those responsible for ensuring service provision together with citizens.
- Planning and budgeting for interventions – through dialogue, participating in planning and budgeting processes, budget literacy.
- Monitoring progress and implementation – participatory monitoring of budgets, services and outcomes.

The 'Roving camera' project in Madagascar is an interesting example of how filming as a tool was used to ensure that communities had the opportunity to freely express their thoughts, needs and concerns, and enter into a constructive dialogue with the duty bearers about improving the state of water and sanitation in their communities.

<http://www.youtube.com/watch?v=O9VXjGUu3QM>

In the Kuwempe division of Kampala, Uganda, a detailed community mapping exercise and consultation was initiated by local organisation, Community Integrated Development Initiatives (CIDI), with WaterAid's support. This exercise revealed the extent of dissatisfaction with the reliability and quality of service. This led to the bringing together of service providers and NGOs working in the division to address the issues, creating a clear development plan and implementing it.

http://www.wateraid.org/documents/plugin_documents/stepping_into_action.pdf

Training on the Right to information (RTI) Act in India and advocacy processes supported by our partners has encouraged communities to submit a number of applications seeking information on the Government's delivery programmes. In the state of Jharkhand, for instance, as a result of intensive campaigning, the high court has issued notices to two district magistrates to address the drinking water problem.

Reference: WaterAid: Governance and Transparency Fund Annual Report 2010/11

5.2 Budget advocacy

Budget advocacy is founded on three principles: Transparency, accountability and participation. Participation in the budget is central to good governance, transparency and accountability. Budget advocacy works towards trying to ensure more equitable budget allocations. The poor and marginalised in most countries have little influence on budgetary decisions made by the government even though its implications for their lives and livelihoods could be huge. Budget advocacy seeks to alter this situation by enabling citizens to have a voice in budgetary decisions and make the State accountable to its citizens in the utilisation of the budget.

An essential aspect of utilising this tool is to help poor communities to become aware of the four stages to the annual budget cycle – formulation, enactment, execution and audit – and to explore and decide on the most effective way to engage at each of the four stages of the budget-making process. It is only by taking into account the different processes and actors of this cycle that suitable and strategic advocacy plans be created.

As the budget cycle is an ongoing process, advocates need to be strategic about the types of advocacy they are undertaking at different times in the national and local decision-making processes about where government resources are being allocated.

While it is essential that civil society organisations (CSOs) enable citizens to articulate their concerns directly where possible, budgets are complex and highly politicised, and CSOs can also perform an important role in representation, directly critiquing and assisting the budget process. Furthermore, as well as acting as a conduit from the people to government, CSOs can help with dissemination in the other direction, clarifying and transmitting information about government spending and systems to the people. Ultimately, this can help build genuine accountability, whereby citizens, especially the poor and marginalised, are aware of their rights, and the government is aware of its responsibilities (and vice versa).

A detailed community-based assessment of utilisation of subsidies in the Thakurgaon district of Bangladesh was undertaken with support from WaterAid and its partners. This revealed the extent to which subsidies were captured by the non-poor (35% and 54% respectively in the two areas studied). Using simple participatory techniques, community-based organisations, facilitated by local organisations, undertook the process of collecting, analysing and presenting the information in a manner that empowered them to discuss these with the local government responsible and thereby improve targeting subsidies to the ‘hard core’ poor, as the government policy demanded.

http://www.wateraid.org/documents/plugin_documents/stepping_into_action.pdf

5.3 Engaging in urban reform processes

In the developing world, urban environments pose a huge and growing challenge, aggravated by the rapid pace of urbanisation in developing countries. Characteristically, these areas are unplanned, very densely populated and the poorer parts are often un-served by even the most basic water and sanitation infrastructure. A key factor is that most of the inhabitants are considered to be illegal occupants, are invisible and unorganised. Not having legal tenure for their homes puts them at an additional disadvantage and a weak bargaining position when it comes to formal service provision. Where there is no safe water supply, people either collect from polluted sources or rely on vendors, who are invariably unregulated, selling expensive water of dubious and untested origin. A lack of sanitation facilities means that streets are turned into sites of open defecation and drainage channels become full of untreated sewage.

WaterAid is supporting local urban partner networks to take part in processes that attempt to re-direct resources towards meeting these challenges. These partner networks are advocating to ensure that the voices of those without services as well as the experience of local NGOs that service urban WASH needs are considered in urban developmental decision-making.

WaterAid supported Dushtha Shasthya Kendra (DSK), a local NGO in Bangladesh, in its decade long campaign to get the Dhaka Water Supply Agency to provide formal water connections to people living in informal settlements, previously considered as living there illegally since they did not have a legal tenure to live in them. This has now set the precedent for lobbying with the public sector water and sanitation agencies in other cities like Chittagong and Khulna, to give formal connections to those living in informal settlements.

http://www.wateraid.org/documents/plugin_documents/water_points_for_urban_slum_dwelle

Urban water utilities are in urgent need of reform. Across all of its country programmes WaterAid advocates support for the financial and operational autonomy of utilities from political interference as well as ensuring a clear performance contract (that takes on board the rights of the excluded) between utilities and governments. Our experience reinforces the importance of CSO networks that champion the voices and issues of the poorest within urban reform developments and supporting such CSOs is an integral component of WaterAid's efforts in advancing the WASH rights of the urban poor.

Supporting civil society networks to engage in urban reform processes involves developing a knowledge base that unpacks the complex components of the options available to governments as well as the skills to engage and influence decision-makers to consider the experience of people who lack WASH access. It does this by bringing these excluded voices, issues and solutions to the decision-making table.

Engaging in urban reform processes requires practical knowledge of the issues – which may be very complex – and supporting partner representatives to gain meaningful access to represent the voices and issues of the poor.

In Lilongwe, Malawi, WaterAid and its partner, Centre for Community Organisation and Development (CCODE), worked with the Lilongwe Water Board to bridge the gap between poor consumers and the Board which had resulted in the group being cut off from formal water supplies. In the process, a better understanding based on mutual trust was engendered, with the Board being more committed to deliver services to the poor.

http://www.wateraid.org/international/what_we_do/where_we_work/malawi/2584.asp

5.4 Working with parliament/elected representatives

Parliaments are now recognised as a key element of domestic accountability for WASH and more widely for development work. Previous work on accountability in water and sanitation, such as WaterAid's Citizens' Action project, has focused on accountability at local levels between service providers and users. However, broader domestic accountability between national governments and citizens is required for WASH – this is where parliaments have a crucial role.

When it comes to working with parliaments, our experience is that each country's governance system calls for different strategies. In some cases it is outreach to local members of parliament that can be very effective, and those who are best placed to do such lobbying of Members of Parliament at a very local level are the representatives of WASH network members at that level. In other countries, lobbying at central political party level may be more effective, and in such cases engaging with heads of political parties or its most influential members may be more helpful than lobbying the local Member of Parliament. In such cases, if local network members are linked up with national advocacy CSO networks, they can more easily be supported to understand and address core issues in the sector, and make their voices heard.

Lobbying members of parliament at both local level (in their own constituencies) and at national level (when they sit in the national parliament) serves to bring attention to the chronic difficulties people face with very limited access to WASH in a forum. Again, different systems of parliamentary democracy work differently. In some cases the central parliament is the seat of all decision-making, but in other cases, this responsibility may be relegated to lower levels, and an understanding of this in one's own country would guide the advocacy strategy. In addition to individual lobbying there are a number of ways to engage with parliamentarians. Understanding the way parliament functions would give many insights and opportunities to influence the legislature. The 'naming and shaming' technique, the use of the opposition, the pressure from a carefully orchestrated media campaign, the use of Gandhi-like protests and pressure tactics, the clever use of parliamentary devices (eg the 'question hour' that is available in some parliaments), has often pushed governments to take action in the areas of policy-making, planning, legislation, budgeting, implementation, monitoring, oversight, and sanctioning/penalising.

In Burkina Faso, WaterAid and its partners have initiated an innovative approach called 'Leader-led Total Sanitation' which aims to engage local communities in preparing a profile of the sanitation situation of villages, and of community, business and political leaders. With the information collected and with short video clips on the real state of sanitation in their respective villages, the communities aim to highlight the sanitation crisis and encourage leaders to champion the cause of sanitation. To ensure that this is firmly on the political agenda, these leaders, in discussion with key members of parliament, set up a network of parliamentarians to raise the sanitation crisis in parliamentary debates.

In India, WaterAid and its partners worked with the Bihar State Assembly and engaged the elected members of the State Assembly by organising State-wide walks and Assembly level discussions to emphasise the sanitation crisis. In Bangladesh, we are currently working with an all-party parliamentary group focusing on WASH to raise the profile of the water and sanitation situation within parliament.

<http://www.lefaso.net/spip.php?article44566>

5.5 Working with the media

The media is a powerful ally and engaging with the media effectively is another way to enable community-level voices to be heard by a wider audience and influence key decision-makers. To achieve these aims, CSOs must work to forge a close link among those affected by a lack of safe water and sanitation, community-level organisations and the media. This means nurturing relationships with media personnel at different levels (from stringers at local levels to key decision-makers/editors at central level). With this network in place it becomes much easier to gather, share and publish information on WASH-related issues, and carry out successful campaigns that attempt to bring about positive change.

Our experience has also shown that a distinction needs to be made between publicity and media advocacy. A lot of CSOs get their programmes and efforts highlighted in the media and claim that they are doing media advocacy. This claim may not be necessarily true despite an impressive

number of press clippings. Media advocacy is the strategic use of the media to create a public discourse so that this public discourse then influences the policy-makers and other arms of the government or other influential players/stakeholders. The publicity work referred to earlier may or may not lead to this. The fact is that many things are publicised in the media as the media is hungry for news, but that does not necessarily make it an effective use of the media from an advocacy perspective.

The media is also used more generally to help the public and politicians appreciate the importance of water, sanitation and hygiene in education, health and economic development. This provides a strong foundation to demand sustained, equitable and efficient expenditure for the sector.

Building and maintaining relationships with the media at both country and regional levels is critical for carrying out impactful policy work. The momentum generated by such relationships can not only bring issues affecting poor people into the public domain but also put pressure on governments and decision-makers to deliver on their WASH responsibilities.

Information and Communication Network on Water, Hygiene and Sanitation (RICHE), a network of journalists in Burkina Faso, has played a key role in raising the issue of rights to water and sanitation and how poor people have been affected, thereby challenging the government and service providers to take action.

<http://www.lefaso.net/spip.php?article41953>

In South Asia, the power of the media has been used to create mass awareness and shape public opinion on the importance of safe water and sanitation and to impress upon policy-makers and governments the measures to be taken to ensure that these basic needs are met. The South Asia Regional Media Forum on WASH was established in 2011 to write and broadcast extensively on the important but ignored issues of water, sanitation and hygiene, to bring to light human tragedies, mainly of women and children, hidden behind crude statistics, and to jointly target important political meetings, and regional and international events.

During the South Asia Conference on Sanitation (SACOSAN) in April 2011 and the South Asian Association for Regional Co-operation (SAARC) summit in November 2011, the forum journalists actively highlighted the poor situation of sanitation in the region in news and feature articles. In its very first year, the forum was able to publish more than 200 stories on issues such as access to water and sanitation by marginalised communities, disasters and access to water and sanitation, urban water and sanitation problems, children and WASH requirements, and the link between health and WASH.

<http://washmediasa.wordpress.com/>

http://www.wateraid.org/documents/plugin_documents/south_asia_media_scrapbook.pdf

5.6 Engaging in poverty reduction and sector development processes

In international development debates, the challenge of building responsive and accountable states which in turn will work to alleviate poverty, protect rights and tackle social inequalities, has been a focus of development in recent years. Much of the debate centres on improving the institutions of government. Yet States are not built through formal institutions alone. Organised citizens also play a critical role, through articulating their concerns, mobilising pressure for change, and monitoring government performance.

The 2008 United Nations World Public Sector Report entitled ‘People matter: Civic engagement in public governance’, argues that engagement is important in policy development, as well as in budget, service delivery and accountability processes ... and (produces) outcomes that favour the poor and the disadvantaged’.

Government actors must be encouraged to recognise and support the critical role of citizen action and their engagement in poverty reduction and sector development processes if change is to be sustainable. Trying to build responsive and accountable States without recognising and supporting the contributions of organised citizens to the process will do little to bring about sustainable change.

In Mali, as part of WaterAid’s work on governance and transparency, local organisations have been able to build relationships with various government departments as a result of which, they have been engaged with processes around poverty reduction strategies and joint sector reviews. Advocacy by the National Steering Committee for the International Campaign for Water, Sanitation and Hygiene (CN-CIEPA) on blocks within the water and sanitation sector has led to revitalisation of the steering committee of the Water and Sanitation Sector Programme (PROSEA), the national co-ordination mechanism. A civil society platform has also been created to feed into the steering committee discussions.

Reference: WaterAid: Governance and Transparency Fund Annual Report 2010

5.7 Conclusion

WaterAid’s experience of applying rights-based approaches so far, has made us realise that, irrespective of the specific tool utilised, there are a few underlying guiding principles that apply to our efforts at championing the WASH rights of poor people. These are also principles highlighted in a recent publication by the Institute for Development Studies¹⁰:

- Building and protecting democratic space is critical. Creating and maintaining the democratic space for citizens to organise and articulate their voices is a pre-requisite for effective policy change.
- CSOs rarely change policy by themselves. Broad coalition building that includes other stakeholders, including government actors, is critical for achieving pro-poor change. Achieving the broader goals of civil society campaigns requires the capacity to operate at multiple levels; sometimes at different stages in a campaign, and sometimes

simultaneously. While many types of alliances are important, civil society actors must ally with others in diverse coalitions – including with progressive figures within government, legal scholars, academics, technocrats of professional associations who bring specialist knowledge to bear on policy debates, and of course with grassroots organisations and social movements.

- Strategic framing of issues and messages is important, paying special attention to international norms as well as the national context. ‘Universal’ framing helps coalitions claim the moral high ground, and can also play an important role in alliance building. However, in some cases activists prefer to downplay international norms and stress national and local values.
- Contentious issues may require contentious politics. Campaigns require a greater focus on collective action and popular mobilisation, as well as skilful use of high profile media. Campaigns that involve conflict and antagonism, rather than more comfortable partnerships with government, require a strong, relatively independent civil society which can challenge and hold its own against powerful interests.
- To sustain success, robust change requires robust campaigns. Building cultures and constituencies for change can be as important in the long term as changes in government policies. To be sustainable, campaigns should effect change at every level – from local to national, tangible to intangible levels. The better that national policy reforms are implemented, the more likely they are to translate into material improvements in people’s lives and to gain popular support. The more that campaigns create intangible changes in decision-making patterns, accountability and rights-claiming capabilities, the more the policies themselves will be owned and remain in place.

The other important conclusion that WaterAid’s experience so far has brought us is that a people-centred rights-based approach can deliver more sustainable solutions, because if it is successful, then decisions are more likely to be focused on what marginalised communities and individuals require, understand and can manage, rather than what external agencies deem is necessary. Even when it is not possible to fully influence decision-making at legislative level, the change in the self-perception of people from seeing themselves as passive recipients to rights claimants, gradually works towards changing the power equations at different levels. Eventually, it leads to more people-centric decision-making.

6 The way forward to embedding a human rights-based approach at WaterAid

This document set out to describe a framework that affirms people's rights to safe water and sanitation and the theoretical framework that informs rights-based approaches to increasing people's access to safe water and sanitation being developed across WaterAid programmes.

To ensure that good practice in the rights to water and sanitation arena is deepened and sufficiently supported to enable staff and partners to take the work forward at national and local level, in line with the WaterAid Global Strategy 2009-2015, the following steps are proposed by the rights-based approach working group for further consideration:

- 1 **Allow the discourse and debate on rights-based approaches within WaterAid to be informed and enriched** through actively engaging in e-discussions, webinars and consultations led by other agencies and forums, especially the office of the UN Special Rapporteur on the Human Right to Water and Sanitation.
- 2 **Clarify a WaterAid approach to rights.** Recognising that there are competing emphasises and definitions of rights-based approaches, WaterAid should strive to be clearer on the elements it supports and its own emphasis – for instance, qualifying the rights-based approach's principle of universalism by emphasising the non-discrimination benefits and with a focus on the poorest and most marginalised.
- 3 **An action-reflection-action initiative** to deepen learning from doing may support the development of a menu of appropriate tools for adaptation by global colleagues. This route will require a number of country programmes to open up one of their particular rights-based approach projects – including creating or working with local level citizens' rights platforms – to a peer learning group, whereby other colleagues would accompany the project and, through discussion, review and learning, document the good practice steps that are part of delivering effective WASH outcomes.
- 4 **Carry out a review of practice along thematic approaches including non-WaterAid sources** (eg budget advocacy, urban reform advocacy, local level citizens' action) to bring together practice and learning around different approaches. This will help to better understand rights-based approaches by helping WaterAid to either develop key principles or inform the action-reflection-action project approaches, by drawing on experience, challenges, successes and other practical learning. These will then be examples to inform good practice and bring clarity to rights-based approaches.
- 5 **Mainstream rights-based approaches.** Developing a few key principles may be a practical way of mainstreaming rights-based approaches across the different political contexts within which WaterAid is developing its programmes. WaterAid needs to reflect further on whether the development of a set of minimum standards would help embed rights-based approaches among WaterAid staff around the world and the partners with whom we work.

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- 6 **Develop a more systematic organisational orientation and/or training programme** that will help to change the mindset and therefore approach of WaterAid staff, as well as helping to develop skills in implementing a rights-based approach in collaboration with our partners. Such orientation and/or training may not necessarily be successful enough if carried out within the confines of a training centre, but may need significant mentoring to take it forward. In order to ensure that we are moving in that direction it would be important to develop a clear set of indicators that will help us assess our progress on the rights trajectory.

For WaterAid, shifting towards and deepening a more rights-based approach to complement its already established service delivery work is imperative for the realisation of the Global Strategy. This requires a shift in mind-set which can only be achieved by working through the issues and approaches, in addition to learning from the answers provided by others.

The international framework for realising people's rights to increasing access to safe water and sanitation was finally specifically articulated and secured by a UN resolution in 2010. However, much remains to be done at national level to open up democratic spaces that ensure citizens are able to engage in decision-making processes that address issues of equity and secure sustainable access to safe water and sanitation for all. At this stage in its evolution, WaterAid is convinced that the use of rights-based approaches will significantly help towards achieving these aims.



Idrissa Traore, Chief of Division and Planning Studies, and Tieman Coulibali, in charge of liquid waste for the Division of Sanitation, Mali.
WaterAid/Layton Thompson

Annex 1 International milestones and WaterAid’s contributions to the recognition of the human rights to water and sanitation¹¹

Timeline/ milestones and WaterAid contribution	Legal and policy developments in the WASH sector	Specific detail related to clarifying and affirming the human rights to water and sanitation
March 1977	Mar del Plata UN Water Conference	The Action Plan from the United Nations Water Conference explicitly recognised water as a right for the first time declaring that, ‘All peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs.’
December 1979	<i>Convention on the Elimination of All Forms of Discrimination Against Women</i> (CEDAW)	The convention sets out an agenda to end discrimination against women, and explicitly references both water and sanitation within its text. Article 14(2)(h) of CEDAW provides, ‘States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: ... (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.’
November 1989	<i>Convention on the Rights of the Child</i> (CRC)	The convention explicitly mentions water, environmental sanitation and hygiene. Article 24(2) states: ‘States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ... c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application

		<p>of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution; ...</p> <p>(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents.’</p>
January 1992	International Conference on Water and Sustainable Development. Dublin Conference	Principle 4 of the Dublin Conference states that ‘it is vital to recognise first the basic right of all human beings to have access to clean water and sanitation at an affordable price’.
June 1992	United Nations Conference on Environment and Development. Rio Summit	Chapter 18 of Agenda 21 endorsed the resolution of the Mar del Plata Water Conference that all peoples have the right to have access to drinking water , and called this ‘the commonly agreed premise’.
September 1994	United Nations International Conference on Population and Development	The programme of action of the UN International Conference on Population and Development affirms that all individuals ‘have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation’.
December 1999	<i>UN General Assembly Resolution A/Res/54/175 ‘The Right to Development’</i>	Article 12 of the resolution affirms that ‘in the full realisation of the right to development, inter alia: (a) The rights to food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national governments and for the international community’.
December 2001 Belinda Calaguas, Head of Policy was a conference speaker.	International Conference on Fresh Water, Bonn, Germany Freshwater Action	Through this conference the Bonn Recommendations for Action were adopted: ‘Concerted actions are needed to enhance capacities and knowledge, secure rights,

Outcomes from Bonn fed directly into the World Summit on Sustainable Development

September 2002
WaterAid Director, Stephen Turner, was a key lobbyist making the case that sanitation had to be given an equal status to water in efforts to reduce poverty through the MDGs – which leaders from 189 nations embraced as a vision in the MDG Declaration in 2000

November 2002
WaterAid, along with Centre for Housing Rights and Evictions (COHRE) and the World Health Organisation (WHO) made submissions making the advocacy case that if women and children had explicit rights to access water and that given rights were indivisible and universal, it followed that all humans had a right to access water.

Network coordinated the NGO delegation to this significant Bonn freshwater conference

World Summit on Sustainable Development (**WSSD**)

Freshwater Action Network (FAN) coordinated the NGO Pavilion in the Water Dome – taking up its first major role of facilitating CSO voices in international policy-making.

General Comment No. 15: The right to water

2003 – WaterAid along with WHO, COHRE, The Office of the High Commission on Human Rights and the Centre for Social and Economic Rights (CESR) publish a guide to General Comment No.15 – A Right to Water.

develop leadership, overcome local inequalities ensure that local communities have access to the technologies and financial and other resources that they need to turn choices into actions.’

The **Political Declaration** of the Summit states, ‘We welcome the Johannesburg Summit focus on the indivisibility of human dignity and are resolved through decisions on targets, timetables and partnerships to speedily increase access to basic requirements such as clean water, sanitation, energy, health care, food security and the protection of biodiversity.’

During WSSD, **sanitation was latterly included in MDG 7** (Environmental Sustainability) in addition to water access: ‘Halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation’.

General Comment No.15 interprets the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) confirming the right to water in international law. This comment provides guidelines for the interpretation of the right to water, framing it within two articles,

Article 11, the right to an adequate standard of living, and Article 12, the right to the highest attainable standard of health. The comment clearly outlines states parties’ obligations to the right and defines what actions would constitute a violation.

Article I.1 states that, ‘The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realisation of other human rights.’

<p>September 2003 The WDR was a key analytical resource that informed the development of WaterAid’s Citizens’ Action methodology.</p>	<p>World Development Report 2004: <i>Making Services Work For Poor People</i></p>	<p>The World Development Report 2004 on access to basic services sets out the ‘short route to social accountability’ promoting relationship building between citizens and service providers directly, not just between government and service providers omitting citizens’ participation (considered a long route to accountability).</p>
<p>March 2005 WaterAid launches a landmark report as contribution to UN Decade for Water.</p>	<p>WaterAid <i>Getting to Boiling Point</i> A rigorous examination of the sector blockages at both national and international levels</p>	<p>One of WaterAid’s main contributions to the new UN Decade for Water launched at the UN Commission for Sustainable Development (CSD) on MDGs for WASH. Individual country reports launched across almost all WaterAid country programmes. UK Secretary of State Hilary Benn (DfID) commends and doubles aid for the sector.</p>
<p>March 2005 WaterAid launches Citizens’ Action as a contribution towards the second UN Decade for Water: Water for Life 2005 – 2015.</p>	<p>WaterAid <i>Citizens’ Action</i></p>	<p>WaterAid launches <i>Citizens’ Action</i> methodologies which promote tools to support citizens to understand and engage in the local level decision-making environment in the sector, and to push local government to be more responsive to their needs through transparent information sharing and platforms where multi-stakeholders can address water issues jointly and set out solutions.</p>
<p>July 2005</p>	<p>Draft Guidelines for the Realisation of the Right to Drinking Water and Sanitation E/CN.4/Sub.2/2005/25</p>	<p>These draft guidelines, contained in the report of the Special Rapporteur to the UN Economic and Social Council, El Hadji Guissé, and adopted in Sub-Commission on the Promotion and Protection of Human Rights, were intended to assist government policy-makers, international agencies and members of civil society working in the water and sanitation sector to implement the right to drinking water and sanitation. These guidelines did not legally define the rights but rather provided guidance for their implementation.</p>
<p>November 2006 WaterAid makes a contribution to the Human Development</p>	<p>The Human Development Report (HDR) 2006 <i>Beyond Scarcity: Power,</i></p>	<p>The HDR framed debates on development challenges and argued that achieving the eight MDGs very much depended on strengthening water governance at local, national, regional</p>

<p>Report– ‘Getting the ‘off track’ on target’.</p>	<p><i>People and the Global Water Crisis</i></p>	<p>and global levels. The report said making the human right to water was imperative and called for national strategies to be supported with international aid and a global action plan.</p>
<p>November 2006 WaterAid, FAN, Stakeholders Forum and COHRE lobby for a positive position on the right to water.</p>	<p>UK Government recognises the right to water.</p>	<p>The UK Government officially recognises the right to water. Secretary of State for International Development Hilary Benn says, “Every time I ask poor people what they want there is a resounding chorus of ‘water’.”</p>
<p>November 2006</p>	<p>Human Rights Council Decision 2/104</p>	<p>The Human Rights Council “request the Office of the United Nations High Commissioner for Human Rights, taking into account the views of states and other stakeholders, to conduct, within existing resources, a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, which includes relevant conclusions and recommendations thereon, to be submitted prior to the sixth session of the council.”</p>
<p>December 2006 This convention was a key cornerstone in the development of WaterAid’s Equity and inclusion framework promoting accessible WASH services for all.</p>	<p>Convention on the Rights of Persons with Disabilities</p>	<p>Article 28, defines the right of persons with disabilities to an adequate standard of living and states, ‘2. States parties recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right, including measures: (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs.’</p>

August 2007	Report of the UN High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments	Following decision 2/104 of the Human Rights Council, the Report from the High Commissioner for Human Rights states that, ‘It is now the time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses... to sustain life and health.’
March 2008	Human Rights Council Resolution 7/22	Human Rights Council decides “to appoint, for a period of three years, an independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation.”
2008 Key WaterAid contribution to the UN International Year of Sanitation	International Year of Sanitation <i>Sanitation: A human rights imperative</i>	WaterAid, COHRE, Swiss Agency for Development and Cooperation (SDC) and UN-HABITAT launch the publication <i>Sanitation: A human rights imperative</i> . Developed as a vital contribution to the International Year of Sanitation 2008, it sought to initiate the crucial discussion on the human right to sanitation. The publication outlines the legal basis of and standards for the human right to sanitation and proposes priority government actions to ensure the right to sanitation.
October 2009 WaterAid facilitates CSO contributions to consultations by the UNHRC Office of the Independent Expert on: Sanitation; private sector participation; and good rights practices.	Human Rights Council Resolution 12/8	In this resolution, the Human Rights Council welcomes the consultation with the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, acknowledges the independent expert’s first annual report and, for the first time, recognises that States have an obligation to address and eliminate discrimination with regard to access to sanitation, and urges them to address effectively inequalities in this area.
July 2010 WaterAid and FAN, lobby the UK	UN General Assembly Resolution A/RES/64/292	UN resolution formally recognises the right to water and sanitation and acknowledges clean drinking water and sanitation are essential to

Government to take a positive position during the UN Resolution voting.

realisation of all human rights. The resolution calls upon States and international organisations to provide financial resources, capacity-building and technology transfer to help countries, in particular developing countries, provide safe, clean, accessible and affordable drinking water and sanitation for all.

September 2010
WaterAid in Sweden, UK, Uganda, Zambia and Bangladesh lobby their respective governments to vote in the affirmative.

Human Rights Council
Resolution
A/HRC/RES/15/9

UNHRC affirms that the rights to water and sanitation are part of existing international law and confirms that these rights are legally binding upon States. It also calls upon States to develop appropriate tools and mechanisms to achieve progressively the full realisation of human rights obligations related to access to safe drinking water and sanitation, including in currently un-served and underserved areas.

April 2011

Human Rights Council
Resolution
A/HRC/RES/16/2

In this resolution, the Human Rights Council decides “to extend the mandate of the current mandate holder as a Special Rapporteur on the human right to safe drinking water and sanitation for a period of three years” and “encourages the Special Rapporteur, in fulfilling his or her mandate... to promote the full realisation of the human right to safe drinking water and sanitation by, inter alia, continuing to give particular emphasis to practical solutions with regard to its implementation, in particular in the context of country missions, and following the criteria of availability, quality, physical accessibility, affordability and acceptability.”

Annex 2 International human rights law and monitoring mechanisms¹¹

Three major sources of International human rights law can be identified:

- **International Bill of Rights**
This category consists of treaties, covenants, conventions and other documents of a bilateral or multilateral nature that have been negotiated by States. Upon signing and ratifying an international instrument, the party agrees to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the treaty, pending a decision on ratification. Yet, it is important to keep in mind that States can adopt a convention in general while specifying that they do not accept certain provisions in the document. Thus for instance, CEDAW (the Convention on the Elimination of Discrimination against Women) reportedly has been signed and ratified by several countries but subject to certain declarations, reservations and objections.
- **International customary laws:**
These can be understood to be comprised of a set of principles or rules that the **majority of States have accepted as law through long-term practice.**
- **Judicial decisions (case law):** Orders passed by a court of competent jurisdiction on matters submitted to it in the matter of human rights function as precedents in future situations.

Whether they are bound by international conventions or by customary law, all States have obligations under international human rights law. Yet, as this law is more horizontal than vertical, how are the States and their governments brought to account when they fail to comply with their human rights obligations? Several mechanisms have been created to monitor human rights violations.

1 **International mechanisms:**

Treaty bodies: The majority of international agreements dealing with human rights issues foresee the creation of a specialised committee to monitor States' compliance with the treaty's provisions.

Other bodies: Unlike specialised treaty bodies, the Human Rights Commission and the High Commissioner for Human Rights are mandated to deal with all human rights violations in every country. This does not mean that they have sanctioning or penalising power, but that they can make a strong representation to the national government and/or to the UN about any human rights abuses that they come to be aware of.

- ### 2 **Regional mechanisms:**
- In addition to the international mechanisms set up by the UN already mentioned, three regions have developed specific mechanisms to address human rights issues.

The **African Charter on Human and People's Rights** (ACHPR) came into force in 1986. In Europe, the compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms is monitored by the **European Court of Human Rights**. In America, the Inter American Convention is secured by the **Inter American Court of Human Rights**.

Procedures

Reporting: This is the most widely used procedure. Each party is asked to report to the appropriate committee on the measures undertaken to comply with the provisions of the treaty. After having sent a written report, the country delegation makes an oral presentation on the basis of which the committee (but also sometimes NGOs) will be able to ask questions. No real sanction exists for States that fail to comply with their obligations. The procedure is more about naming and shaming.

Special procedures: Special Rapporteurs or working groups can be appointed to make a thorough research on a specific topic or country. As far as the rights to water and sanitation are concerned, Ms Catarina de Albuquerque was appointed Special Rapporteur in September 2008.

Complaints mechanisms: There are various mechanisms within the UN human rights system by which individuals can submit complaints of human rights violations.

Annex 3 Some practical aspects of rights-based approaches¹²

Keeping in mind this **theoretical** understanding of a rights-based approach as WaterAid understands it, there are, additionally, some important points to consider in practice.

Facilitation: First of all it must be acknowledged that creating an environment where citizens feel empowered to hold the State accountable is often not possible without the involvement of a facilitating agent. Facilitation itself could be understood in three different ways. The first way can be explained using the analogy of a wheel. In a cycle wheel, for instance, the **central hub** holds all the spokes and the tyre together and in that sense facilitates them to function effectively and smoothly. This facilitation role is crucial and, more significantly, is continuously needed.

The second is the analogy of a **catalyst** for a chemical experiment. The catalytic agent creates an environment which helps two other chemicals to react to each other. The catalyst facilitates the starting of the chemical reaction. However, once the reaction is initiated, the catalyst is no longer needed and the two chemicals involved in the reaction continue on their own.

There is a third analogy that describes another kind of facilitation style, that of the **gardener**. This is the facilitator who helps the plants grow, by using his/her expertise to know where to plant the seeds, when to prune, when to feed, when to offer support etc. This is by far a more involved role than that of a catalyst, but is different from that of the cycle hub, because eventually the plant does stand on its own, grows and gives fruits while the gardener's role gradually recedes. There are therefore obvious differences in these types of facilitation, even though in all three the role of the outside entity is crucial. It would seem that a sustainable rights-based approach must eschew the cycle hub type of facilitation and choose one of the other two types.

Empowerment of people: Secondly, as mentioned earlier, this approach requires the **participation** of individuals and communities (from among the vulnerable and marginalised) in the decisions that affect their lives. Lack of adequate participation, particularly of excluded people, has been a troubling feature of many national poverty reduction planning processes. Participation has sometimes been reduced to the involvement of user groups in delivery of water and sanitation or has been dominated by a few well established non governmental organisations. A reductionist, tokenistic and technocratic understanding of participation might lighten the State's load, but will rarely, if ever, be sufficient to genuinely empower people in connection with the decision-making processes that affect their lives.

Therefore, in order to give full meaning and practical expression to participation it is vital for States to transcend ad hoc and project level participatory processes, and seek to encourage a more fundamental and sustainable culture of participation. Active, free and meaningful participation should be internalised in democratic institutions and political culture. This approach therefore compels the participatory formulation of public policies and development plans and the institutionalisation of truly democratic processes. Participation is meant to empower people, to help them learn how to challenge existing inequities and to transform power relations in order to

bring about real and sustainable changes. This is particularly true for most vulnerable and marginalised people.

The first degree of such empowerment could be said to be **awareness**. Building awareness may be dissected to reveal three stages. The first stage occurs when the individuals or groups are enlightened by being informed of their rights and entitlements. This means having access to information concerning water and sanitation and related plans, policies and programmes, including the use of development assistance. Barriers, including low literacy levels, language constraints, cultural and physical obstacles, need to be overcome. Information must be available in formats that are understandable and can be used by those who face such obstacles. However, **information** by itself does not necessarily empower – as the huge amount of information available on the net easily testifies. These vulnerable and marginalised communities must also have the ability to internalise such information and apply the same to their own lives. When this happens, they could be said to have reached the stage of **knowledge**.

Finally vulnerable and marginalised people need to be asking the analytical question **why** – which in effect helps them to search for the root causes of their being deprived of their human rights. Once they have reached this stage of **analysis**, they can be said to have become truly aware. Furthermore it is only when the ‘other side’ realises that people have awareness, at least at the level of knowledge, that there will be a change in the power equation – for in such a situation knowledge becomes power. This awareness then nudges these individuals and communities to the next degree of empowerment, ie **voice**. This refers to the ability of the community to use the awareness of their entitlements to express their claims for their rights/entitlements.

The third and final degree of empowerment, ie **influence**, occurs when citizens are capable of – and know they are capable of – bringing about change among governments and service providers through various kinds of pressure (eg people pressure, legal pressure) to ensure that their rights/entitlements are claimed.

Accountability of the State: A central feature of a rights-based approach is the notion of responsibility and accountability of the State. In practice this demands the development of adequate policies, laws, institutions, budgets, administrative procedures and practices, and mechanisms of redress. Issues of good governance at national and local levels are therefore perceived as part of the human rights agenda, and are particularly pertinent to the WASH sector.

So what does **accountability** of the State mean in this approach? Very often this is a vague enough term that any positive response of the State where the citizen gains something could be claimed to be progress in making the State accountable. Therefore it would help to speak of different aspects of State accountability.

- 1 **Access** refers to the ease with which the rights holders can relate directly with the State entities that are responsible to ensure their WASH (or other human) rights.
- 2 **Transparency** refers to the willingness of the State and its officers to allow the rights holders to get all the information that is relevant to their rights/entitlements.

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- 3 **Responsiveness** refers to the attitude and actions of State authorities in genuinely taking into consideration the demands/concerns of the rights holders.
 - 4 **Compliance** refers to the readiness of the State authorities to fulfil what they have been entrusted to do in ensuring these WASH rights of the citizens, and even to enforce sanctions on those officers who have failed to fulfil their duties.

Fostering transparency, for instance, is seen as a means of holding public officials accountable and thus a great weapon to fight corruption. When government meetings are open to the press and the public, when budgets and financial statements may be reviewed by anyone, when laws, rules and decisions are open to discussion, they are seen as transparent and there is less opportunity for the authorities to abuse the system in their own interest.

Again, apart from judicial and quasi-judicial mechanisms, there is a broad range of administrative, political and social mechanisms and processes that can strengthen compliance. Effective auditing mechanisms as well as incentives for the progressive realisation of all human rights, especially as they are expressed in the Millennium Development Goals, can be set up. The auditing mechanisms could include public expenditure reviews, participatory social audits, community scorecards, impact assessments of public policies, and budget transparency initiatives etc.

In carrying these out there are many institutions with roles to play, from parliamentary review committees and oversight mechanisms to executive and administrative agencies, line ministries, national audit offices and local government bodies. Water and sanitation regulatory bodies, in particular, can play a significant role, when endowed with the power to monitor and enforce service standards, tariffs and regulations in line with human rights standards. Ombudspersons and national human rights institutions, civil society organisations, community organisers and alternative law groups also have the potential to help strengthen accountability.

In this context, it is also important to know which organ of the State is to be made accountable. The State is not a monolithic entity and there are different authorities who are entrusted with carrying out the various duties related to ensuring the rights of its citizens. These authorities include both **elected** representatives (from village to national levels), as well as **appointed** authorities (administrative executive/bureaucracy and the judiciary). These different authorities would relate to the rights holders differently, since each category would have different responsibilities. It would therefore be pointless to demand change of policy from those who are 'appointed' to the administrative executive, though some change of policy aspects could perhaps be explored with those who are 'appointed' to the judiciary. At the same time, though ultimately for policies to become law one has to deal with the appropriate legislature, the higher level bureaucrats are likely to have a great say in the actual drafting of the law and therefore influencing the latter could be an important element of a rights-based approach. As far as systemic implementation of already established policies, acts and laws are concerned, rights based advocates may need to focus on those who are 'appointed', whether to the administrative executive, or the judiciary.

Glossary

Agenda 21

The plan of action to achieve sustainable development that was adopted by world leaders at the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil, June 1992.

Convention

The two main treaties on human rights are the two covenants described below. However, the international community soon felt the need to articulate the rights of groups of individuals who fell into a particular category in order to speak of their rights as a group or collective. Thus while references to the rights of women are made in the two covenants (ICESCR and ICCPR), the need was felt to spell this out in greater detail. This was subsequently done in the Convention on the Elimination of Discrimination Against Women (CEDAW). A similar effort has been made with reference to the rights of children, disabled people, indigenous groups and others. Therefore, while the covenants focus on individual human rights, conventions usually focus on what are sometimes termed group rights. Like covenants, conventions also need to be further ratified by individual countries. In many cases they do this after indicating their exceptions. In this context, CEDAW has the largest number of exceptions by different countries. However, once ratified, these conventions have the same status legally as a covenant.

Covenants – International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR)

The ICESCR is a treaty that 160 countries have signed and ratified as of April 2011, making it obligatory for these countries in international law. This covenant is the primary basis for the human rights to water and sanitation and other economic, social and cultural rights. The CCPR covenant focuses on civil and political rights. The ICESCR is popularly considered to be a covenant that focuses on freedom from **want**, while the latter focuses on freedom from **fear**.

Civil society organisations

For some, civil society organisations is a generic term used to refer to all NGOs, and could therefore equally refer to corporate groups, community-based groups, and registered NGOs or INGOs. However, in this document the term refers only to registered NGOs/INGOs and community-based organisations.

Customary international law

International norms derived from a general and consistent practice of States and followed by them out of a sense of legal obligation (*opinio juris*), rather than from formal expression in a treaty or legal text, are what make up customary international law. Such norms are legally binding on all States, with the exception of those that are persistent objectors.

Domestic uses of water

Domestic use normally includes drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.

General Comment No.15

UN General Comment No.15 on the Right to Water refers to the document adopted in 2002 by the UN Committee on Economic, Social and Cultural Rights – a committee of experts elected by those States that have ratified the ICESCR.

General Comment No.15 informs the details of the provisions set out in the right to water, and this was affirmed by the UN General Assembly in July 2010. For example, the committee explained what would be meant by **sufficient** water for personal and domestic use as otherwise there was likelihood of significant variations across countries.

Improved drinking water sources

This phrase refers to drinking water sources including the following: piped household water connections located inside the user's dwelling, plot or yard; public taps or standpipes; tube wells or boreholes; protected dug wells; protected springs; or rainwater collection.

Improved sanitation

An improved sanitation facility is one that hygienically separates human excreta from human (and animal) contact, and can consist of one of the following facilities: flush/pour latrine; flush to piped sewer system; septic tank; pit latrine; or ventilated improved pit latrine.

Joint Monitoring Programme (JMP)

The WHO/UNICEF Joint Monitoring Programme (JMP) for Water Supply and Sanitation is the official United Nations mechanism tasked with monitoring progress towards the Millennium Development Goal relating to drinking water and sanitation (MDG 7, Target 7c), which is to 'halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation'.

Lobbying

Currently lobbying applies to any legitimate form of influencing others – especially influencing those in power or trying to garner support among others who could help to influence those in power. However, lobbying may be quite independent of a people-centred kind of advocacy approach and so does not necessarily need support from the affected groups themselves. The original term comes from the lobby of the US Senate/House of Representatives where the accredited lobbyists would remain, paying attention to the discussions going on, and thereby getting a chance to bend the ear of the elected representative/senate member in favour of his/her client when the former came out into the lobby for a break.

Millennium Development Goals (MDGs)

The United Nations Millennium Development Goals (MDGs) are eight goals that all 191 UN member states agreed to try to achieve by the year 2015. The United Nations Millennium Declaration, signed in September 2000, commits world leaders to combat poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women. The MDGs are derived from this declaration, and all have specific targets and indicators.

Open defecation

This refers to the practice of human beings carrying out their natural bowel functions in fields, forests, bushes, open bodies of water, beaches or other open spaces.

Pit latrine

This refers to a latrine with a pit for accumulation and decomposition of excreta and from which liquid infiltrates into the surrounding soil.

Policy-centred advocacy and people-centred advocacy

Both policy-centred and people-centred advocacy can be part of the human rights-based approach. However, in policy-centred advocacy work, the focus is on the outcome of changing the policies and laws in a State, even if it is done through individual lobbying by influential persons. In a people-centred advocacy effort, getting people empowered to work towards influencing the State is as important, though it also works towards policy/law/implementation change.

Rights and entitlements

Often these two terms are used interchangeably, but may be usefully differentiated – even though such differentiation is not articulated in international law. The term ‘entitlement’ could be used to refer to those specific provisions made by a particular State for its citizens. Thus, if a particular State states that it will ensure 25 litres of water per person per day, even though this may be less than what the right to water envisages (as per the WHO guidelines), then this would be an entitlement for all citizens in that State. Such entitlements can be enhanced, changed or withdrawn by the State. In as much as they are in force, they are also justiciable. However, the ‘right’ (to Water and Sanitation) would be a term encompassing a wider range of entitlements and systems that would fulfil what the International Bill of Human Rights demands. A service delivery approach would focus on entitlements, while a focus on the human rights to water and sanitation would demand a human rights-based approach. Of course the latter would also incorporate the entitlements, but would not be limited to them if they do not fulfil all requirements of the rights.

Vulnerable and marginalised groups

Vulnerable groups are those, such as children, that require special attention due to their physical or other conditions.

Marginalised groups are those that require special attention due to their traditional and/or current exclusion from political power and resources (eg those living in informal settlements)

Water point

This is a generic term used to describe any point of access to water for domestic uses. This includes: household connections; stand pipes; wells; boreholes; springs; rainwater harvesting units; and water kiosks or other point of transaction with a water vendor. The term is used to avoid any bias or confusion regarding certain types of access to water.

WHO guidelines for drinking water quality

The WHO guidelines provide guidance on good practices for ensuring that drinking water is adequate for human health.

Further reading

- 1 De Albuquerque C and Roaf V (2012) *On the right track. Good practices in realising the rights to water and sanitation*. United Nations.
<http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/GoodPractices.aspx>
This is a new publication on good practices from the UN Special Rapporteur on the Human Right to Water and Sanitation, Catarina de Albuquerque. Available to download in English and French. The link also sets out the findings of a consultation with different stakeholders.
- 2 For frequently asked questions and a detailed fact sheet on the right to water, see the webpage of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation:
<http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx>
- 3 *Water and sanitation are human rights – so what? Implications and actions needed to put rights into practice*. Results from the 27th AGUASAN workshop, 20-24 June 2011, Geneva, Switzerland. http://www.aguasan.ch/ws2011/Aguasan_WS_2011_files/frame.htm
This is a web-based toolkit that provides a useful introduction to integrating rights into programmes.
- 4 Link to the June 2012 World Bank/RWSN webinar and PowerPoint with Catarina de Albuquerque, UN Special Rapporteur on the Human Right to Water and Sanitation.
<http://worldbankva.adobeconnect.com/p7ngkx5tmz/>
<http://water.worldbank.org/sites/water.worldbank.org/files/publication/Webinar-5-June-2012-SR-water-and-sanitation.pdf>
- 5 *The Advocacy Sourcebook*, WaterAid. A toolkit for understanding advocacy and the critical steps to address in developing robust advocacy strategies.
www.wateraid.org/advocacysourcebook
- 6 WaterAid/Freshwater Action Network (2011) *Learning from experience. Rights and governance advocacy in the water and sanitation sector*.
www.freshwateraction.net/learningfromexperience
This is a WaterAid/Freshwater Action Network resource demonstrating rights-based approaches in action as part of the Governance and Transparency (GTF) programme:
- 7 Freshwater Action Network (2010) *Rights to water and sanitation: A handbook for activists*.
www.freshwateraction.net/content/rights-water-and-sanitation-handbook-activists
- 8 For a multi agency information website on the right to water and sanitation see
www.righttowater.info.
- 9 For academic research and learning on understanding how citizens can gain greater control over the institutions that affect their lives, see the Development Research Centre on Citizenship, Participation and Accountability: www.drc-citizenship.org.
- 10 A new Freshwater Action Network resource/database was launched this year. It is an online resource listing the status of the rights to water and sanitation in national law and policy.

<http://www.freshwateraction.net/content/rights-water-and-sanitation-law-and-policy-sourcebook>

- 11 WASH United, Freshwater Action Network, WaterLex (2012) *The rights to water and sanitation in law and policy – a sourcebook*.
This publication looks at laws and policies guaranteeing the human right to drinking water and sanitation at national, regional and international levels.
- 12 WASH Watch is an online platform for monitoring government policy commitments and budgets for water supply, sanitation and hygiene. It captures relevant information around the monitoring of national, regional and global commitments. www.washwatch.org.

Endnotes

¹ See the United Nations Press Release ‘*Right to water and sanitation is legally binding, affirms key UN body*’ (2010). Available at: <http://www.un.org/apps/news/story.asp?NewsID=36308>.

² COHRE, AAAS, SDC and UN-HABITAT (2007) *Manual on the right to water and sanitation*. UN-HABITAT, pp 12.

³ <http://www.righttowater.info/progress-so-far/general-comments-2/>

⁴ The amount of water required for various needs is a technical, rather than legal issue. The amount of water that should be available is not specified in the General Comment on the Right to Water. Instead it states that water must be sufficient and continuous for personal and domestic uses and refers to the guidelines of the World Health Organisation on water requirements (Howard G and Batram J (2003) *Domestic water quantity, service level and health*. WHO, pp 22).

It is difficult to obtain consensus on the amount of water required to meet basic needs due to variation in requirements resulting from factors such as health, climate and work conditions. Some advocates fear that to specify a minimum requirement might lead to a reduction in the amount of water accessible by individuals living in societies where a higher minimum standard is already in place. The 2006 UN Human Development Report *Beyond water scarcity* recommended a minimum of 20 litres per person per day. Although they suggested that they could not be prescriptive about the amount of water some advocates are using a minimum of 20 litres in their lobbying.

⁵ Based on UK Interagency Group on Human Rights-based Approaches, 2007.

⁶ WaterAid (2006) *Bridging the gap: Citizen’s Action for accountability in water and sanitation*. WaterAid, UK.

⁷ WaterAid (2008) *Stepping into action: The second report on Citizen’s Action for accountability in water and sanitation*. WaterAid, UK.

⁸ WaterAid (2009, 2010, 2011) *Governance and Transparency Fund. Developing Southern Civil Society advocacy in water and sanitation in sub-Saharan Africa, South Asia and Central America*. Governance and Transparency Funds Annual Reports, UK.

⁹ WaterAid (2010) *Equity and inclusion – A rights based approach*. WaterAid, UK.

¹⁰ IDS (2008) *Building responsive States: Citizen Action and national policy change*. Focus Policy Briefing, October 2008, no 5. www.ids.ac.uk.

¹¹ Compiled by Mary O’Connell.

¹² Adapted from teaching and training resources prepared by Josantony Joseph.