



The human rights to water and sanitation and the human rights-based approach

UN Member States have recognized the human rights to water and sanitation as part of binding international human rights law. In 2015, the right to sanitation was acknowledged as a distinct right, placing priority on its universal realization. The human rights-based approach stresses the correspondence between rights and obligations. Responsibilities and accountability, non-discrimination and disadvantaged groups are put in focus.

The Human Rights to Water and Sanitation (HRWS) | The human *right to safe drinking water* was first recognized by the UN General Assembly and the Human Rights Council as part of binding international law in 2010 (UN General Assembly 2010). It entitles everyone to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use. *The right to sanitation* was explicitly recognized as a distinct right in 2015. It entitles everyone to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and socially and culturally acceptable and that provides privacy and ensures dignity (UN General Assembly 2015). The state's obligation to protect, respect and fulfil these rights does not preclude privately operated services or tariffs – as long as the total cost does not impact negatively on the household's ability to pay for other basic needs (UN CESCR, 2002). Hence, a pro-poor policy is imperative in many countries to allow for the most marginalized to be served on equal terms.

The human rights-based approach (HRBA) | This complementary approach is a perspective and a framework that aims to ensure that peace, justice, fundamental freedoms, democracy and, in particular, respect for the human rights are integrated and mainstreamed into various activities and programmes. A Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming was adopted in 2003 by the United Nations Development Group (UN, 2003). This approach guides the development cooperation work of all UN bodies demonstrating how the values that underpin the HRBA are of increasing global importance. These values are also receiving growing acceptance, not least in Agenda 2030, the Sustainable Development Goals and accompanying targets.

The HRBA approach gives equal attention to *what* should be done as well as to *how*. Applied at three different levels the approach embraces goals, processes, and outcomes, respectively:

- **Goal:** All programmes of development cooperation, policies and technical assistance should strive to further the realization of human rights;
- **Processes:** Human rights standards contained in, and principles derived from, the 1948 Universal Declaration of Human Rights and other international human rights instruments should guide all development cooperation and programming in all sectors and in all phases, from the initial root cause analyses throughout implementation to the monitoring and evaluation stage;
- **Outcomes:** Development cooperation should contribute to the development of the capacities of 'duty-bearer' to meet their obligations and/or of 'rights-holders' to claim their rights (<http://hrbaportal.org/faq>).

As the second point refers to, the HRBA builds on certain human rights standards and core principles; universality and inalienability, indivisibility, inter-dependence and inter-relatedness, equality and non-discrimination, participation and inclusion, accountability, and the rule of law.

The HRBA is commonly operationalized by ensuring that the procedural aspects of these principles are duly taken into account, especially emphasizing 'P-A-N-T': Participation, Accountability, Non-discrimination and Transparency.

This has much in common with definitions of ‘good governance’.

National level implementation | The steps that the state, as the primary duty-bearer, has to take to realize human rights involve a review of existing legislation, strategies and policies. This is to ensure that they respond to the obligations arising from the HRWS and the HRBA. It is often necessary for states to adopt a national strategy or plan of action in order to fully realize the rights. These plans should include all applicable substantive rights and responsibilities (that is, the specific content of the rights) as well as the procedural rights. Is it also advisable that ‘mapping’ of rights-holders, duty-bearers, other key actors, institutions and their relationships as well as investigation of the inequalities at stake is done on a case-by-case basis.

The HRWS are closely linked with fulfilment of the rights to an adequate standard of living and health, and to a large number of goals and targets under Agenda 2030. To realize those rights governments need to plan for and allocate water first and foremost to domestic purposes. However they should also keep in mind the water quantities needed to realize other human rights including food security. Transboundary cooperation is important as the need for diplomacy in dealing with competition over shared resources is increasing.

Progressive realization | State governments have far-reaching obligations to progressively realize the two interrelated rights of access to safe drinking water and sanitation for all. Yet, it has been estimated that 1.8 billion people still use unsafe water (Onda, LoBuglio & Bartram, 2012).

To systematically integrate the HRWS and a HRBA into a country’s law and policy at all relevant levels is a long-term challenge. According to the International Covenant on Economic, Social and Cultural Rights of 1966, State parties are required to take deliberate, concrete, and targeted steps and make full use of the maximum available resources in order to gradually realize the HRWS. The Committee on Economic Social and Cultural Rights is one UN body that monitors and reviews steps taken. The state has a number of core obligations that must be fulfilled immediately, such as to ensure that the right to water will be

exercised without discrimination of any kind and that everyone has access to a minimum essential amount of water (Winkler, 2014). Twenty litres per person and day is often connected with survival and health, but is not sufficient in the long run to provide an adequate standard of living.

The binding nature of human rights		
Legally binding 'Hard law'	Politically binding 'Soft law'	Morally/ethically
States ... as laid down in binding Conventions, and EU Directives	States ... as laid down in Declaration, UNGA Resolutions, General Comments...	Individuals Responsibility to meet the needs of the present w/o compromising the ability of future generations...
<ul style="list-style-type: none"> ICESCR & ICCPR, 1966 CEDAW, 1976 Water Courses Convention, 1997 	<ul style="list-style-type: none"> Declaration on HR, 1948 GC No.15, 2002 Res. 64/292, 15/9, 2010 	Corporations Expected to act with due diligence <ul style="list-style-type: none"> UN Guiding Principles Global Compact/ CEO Water Mandate

Who is a duty-bearer? | Human rights bind State parties, hence the primary duty-bearer is the state and its government institutions. Human rights responsibilities can also apply to non-state actors, including organizations and individuals. In many places the state has given private or semi-private companies the mandate to act as service providers on its behalf. This can comprise water and wastewater treatment, water distribution, and/ or metering and billing. In such cases, the state needs to adopt and implement an effective regulatory framework, including standards, indicators and monitoring provisions of all service providers. As the primary duty-bearer, the state must ensure equal access to all. As contractors, private actors can be held accountable for actions or omissions that result in human rights violations, such as an unaffordable tariff increase or unjustified disconnection from water services.



Photo: Jenny Grönwall

Information should be made available in ways suitable to those addressed. Infographics advising against open defecation by a children’s toilet in India.



The human right to water does not preclude private operators or water tariffs. This man in Ghana has bought purified drinking water in 500 ml sachets.

Rights – but also responsibilities | Irrespective of who is in charge of fulfilling the HRWS, private enterprises are increasingly expected to act with due diligence to avoid infringing on the rights of others. Within the European Union, large and public-interest entities must disclose non-financial information related to their policies, main risks and outcomes linked to human rights (Directive 2014/95/EU).

Individuals have ethical obligations to respect others’ human rights, as well as a responsibility to “[meet] the needs of the present without compromising the ability of future generations to meet their own needs”, as expressed in Our Common Future (known as the Brundtland Report) in 1987 (WCED, 1987).

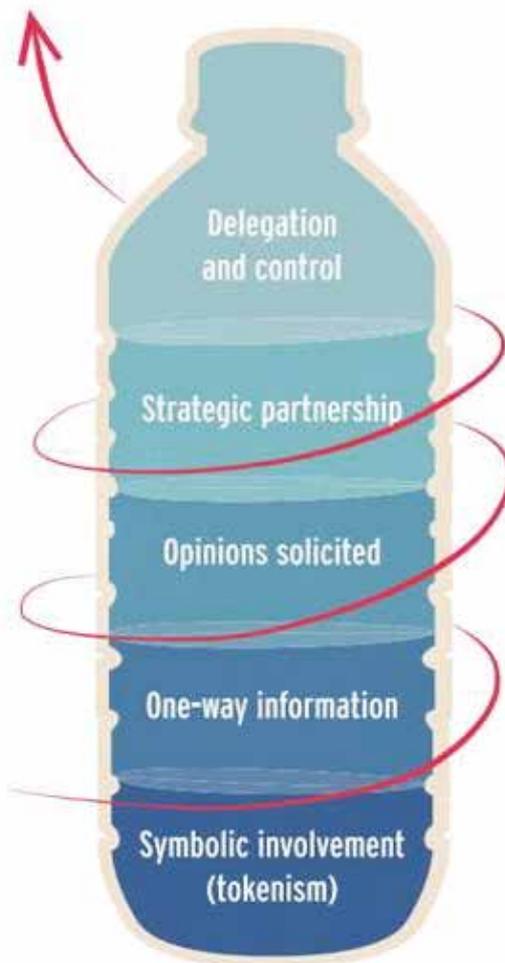
Meaningful transparency and participation | Good governance and the HRBA means that rather than referring to ‘beneficiaries’ of development cooperation and projects, people are to be seen as agents in shaping their world. All those with legitimate interests in the outcome of a decision should be given equal possibilities to participate. Different means and channels should be established through which the concerned parties can have access to information, be encouraged to express themselves freely, and influence the process. Meaningful participation should be seen both as a means and an end in itself. Often the high degree of technical complexity in water and sanitation-related decisions can lead to information asymmetry, and unequal power relations may lie behind a picture of consensus. Unfortunately stakeholder involvement is often only symbolic or consists of one-way information. It is furthermore common that NGOs and community-based organizations, just like ordinary citizens, have limited capacities – and sometimes limited interest – in engaging actively and timely. All these issues need to be duly taken into consideration by government actors and their proxies, and generally in programming. Capacity building can take many forms to address structural inequalities.

The UNDP Water Governance Facility at SIWI (WGF) applies the HRBA and recognizes people as key actors in their own

development. Among the work we have done or are engaged in one finds the following:

- In 2015, the WGF supported a country mapping exercise led by WaterLex and WaterAid Uganda. This collaboration with the Ugandan government aimed to explore and gain better understanding of the main challenges to fulfilling the HRWS. Read more about the Uganda Country Mapping;
- Together with WaterLex, REDICA and Cap-Net, we have made a Manual on a Human Rights-Based Approach to Integrated Water Resources Management along with an online course that is available for training;
- The programme Governance, Advocacy and Leadership in Water, Sanitation and Hygiene (GoAL WaSH) supports governance reform, sector leadership, capacity development and participation to enhance the performance of the drinking water and sanitation sectors in partner countries for effective, equitable and sustainable service delivery. For instance, in Tajikistan the programme supports the consumers’ unions, and has supported the establishment of Public Advisory Councils in two cities, to protect the rights and interests of consumers and encourage their participation in decision making processes. In Paraguay, GoAL WaSH is supporting the Chaco Water and Sanitation Work Group (MIAS Chaco), where different insti-

Participation can take place directly or through intermediary organizations. Public officials and other decision makers need to be responsive to engagement, whatever form it takes.



tutions, including NGOs and representatives from indigenous people meet to discuss priorities and plans. In Bosnia-Herzegovina a new tariff setting methodology built in respect for the HRWS, especially the principles of equity and equality, to enable the local community to assure water under equal conditions for the entire population;

- The partnership between UNICEF and the WGF aims to provide UNICEF and UNDP WASH staff with the accountability tools and guidance they need to achieve improved governance and thereby help shape programmes to deliver increased sustainability in WASH services. Read more about Accountability in WASH: Explaining the Concept and Accountability in WASH: A reference guide for programming;
- A joint research initiative called Trans-cultural Transparency focused on how to overcome socio-cultural clashes between communities, service providers, development co-operation actors and local authorities, particularly in areas with large groups of indigenous peoples in Latin America. Recommendations to be borne in mind by stakeholders are provided in Working with indigenous peoples in rural water and sanitation;
- A Women's group working for water integrity has been established in the MENA (Middle East and North Africa) region. Read inspiring stories here.
- The HRBA was a guiding light in the work with the Kenyan government and others to institutionalize the human right to water in the Bondo village.

The UNDP Water Governance Facility at SIWI (WGF)

The UNDP Water Governance Facility at SIWI (WGF) is a collaboration between the United Nations Development Programme (UNDP) and the Stockholm International Water Institute (SIWI). The WGF provides strategic water governance support to low- and middle-income countries to advance socially equitable, environmentally sustainable and economically efficient management of water resources and water and sanitation services. The ultimate aim is to improve lives and livelihoods and reduce poverty, inequalities and exclusion. The WGF forms part of the UNDP Water and Ocean Governance Programme (WOGP) and receives financial support from the Swedish International Development Cooperation Agency (Sida).

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For more information, please visit www.watergovernance.org.

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References

- Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. Retrieved from <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32014L0095>.
- HRBA Portal: FAQ on HRBA. Retrieved from <http://hrbaportal.org/faq>.
- Onda, K., J. LoBuglio and J. Bartram (2012). Global Access to Safe Water: Accounting for Water Quality and the Resulting Impact on MDG Progress. *Int. J. Environ. Res. Public Health* 9(3): 880-894; doi:10.3390/ijerph9030880.
- United Nations (2003): The Human Rights-Based Approach to Development Cooperation. Towards a Common Understanding among UN Agencies, Statement agreed at the Interagency Workshop on a Human Rights-Based Approach, May 3–5, 2003, Stamford, Conn. Retrieved from http://portal.unesco.org/shs/en/files/7733/11212588401SHS-April-S_1.pdf/SHS-April-S%2B1.pdf
- UN CESCR (2002), General Comment No. 15. The right to water. Retrieved from www.refworld.org/docid/4538838d11.html.
- UN General Assembly (2010). UN Res. A/RES/64/292. The human right to water and sanitation. Retrieved from www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E.
- UN General Assembly (2015). UN Res. A/C.3/70/L.55/Rev.1 2015. The human rights to safe drinking water and sanitation. Retrieved from <http://undocs.org/A/C.3/70/L.55/Rev.1>.
- WCED (World Commission on Environment and Development) (1987). *Our Common Future*. Oxford: Oxford University Press. Retrieved from www.un-documents.net/our-common-future.pdf.
- Winkler, I. (2014). *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation*. Oxford and Portland, Oregon: Hart Publishing.