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REALISING THE HUMAN RIGHTS TO WATER AND SANITATION:  
A HANDBOOK BY THE UN SPECIAL RAPPOREUR  
CATARINA DE ALBUQUERQUE

## Principles

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Realising the human rights to water and sanitation:  
A Handbook by the UN Special Rapporteur  
Catarina de Albuquerque

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PRINCIPLES:  
**Non-discrimination and equality**

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## 01. The legal foundations of non-discrimination

Equality and non-discrimination are the bedrock principles of human rights law. The Universal Declaration of Human Rights states in article 1 that “All human beings are born free and equal in dignity and rights”, and in article 2 that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind. [...]”.

All of the major human rights treaties that have come into force since the adoption of the Universal Declaration of Human Rights contain legal obligations to end discrimination and ensure equality. The International Covenant on Economic, Social and Cultural Rights (ICESCR) specifies that the rights set out in the treaty will be extended “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”, and the International Covenant on Civil and Political Rights (ICCPR) includes an almost identical guarantee. The Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) include extensive and specific protections against discrimination on the basis of race and sex. Likewise, the Convention on the Rights of the Child (CRC), the International Convention on the Protection of All Migrant Workers and Their Families, and the Convention on the Rights of Persons with Disabilities (CRPD) all include guarantees of non-discrimination.

## THE STATE MUST ACT WITHOUT DISCRIMINATION IN ALL SPHERES

Discrimination is defined as any distinction, exclusion or restriction which has the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>1</sup>

The principle of non-discrimination prohibits the less favourable or detrimental treatment of one individual or group based on a prohibited ground, such as ethnicity,

sex, or religion. It also proscribes less favourable or detrimental impact on any individual or group identified on the basis of a prohibited ground. This principle is binding for all levels and entities of a State: the State must act without discrimination in all spheres and at all times. All rights and benefits guaranteed by a State must be extended without discrimination, even if those rights and benefits are not themselves required under human rights law.<sup>2</sup>

### Different forms of discrimination

Human rights instruments and documents use various terms to explain different forms of discrimination.

#### Formal and substantive discrimination:

The Committee on Economic, Social and Cultural Rights distinguishes between formal and substantive discrimination: In its General Comment No. 20 on Non-Discrimination, the Committee states that “Eliminating **formal discrimination** requires ensuring that a State’s constitution, laws and policy documents do not discriminate on prohibited grounds”. However, merely addressing formal discrimination will not eliminate **substantive discrimination**. General Comment No. 20 further states that “Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice, instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination.”<sup>3</sup>

Sometimes, formal and substantive discrimination are referred to as *de jure* and *de facto* discrimination, that is, discrimination in law and in practice.

#### Direct and indirect discrimination:

The Committee on Economic, Social and Cultural Rights also distinguishes between direct and indirect discrimination: “**Direct discrimination** occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground. [...] Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation. [...] **Indirect discrimination** refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates.”<sup>4</sup>

## 02. Achieving substantive equality

Non-discrimination and equality are linked under human rights law: States must ensure that individuals and groups do not suffer from discrimination and that they can enjoy full equality.

Equal does not mean ‘the same’ nor “identical treatment in every instance”.<sup>5</sup> Human rights law requires equal access to basic services, but this does not mean that everyone must benefit from the same technical solutions or the same type of service, such as flush toilets.

Equality does not imply treating what is unequal equally. People who are not equal may require different treatment in order to achieve substantive equality. States may need to adopt affirmative measures, giving preference to certain groups and individuals in order to redress past discrimination.

For instance, CEDAW requires States to take measures “to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”.<sup>6</sup>

## 03. Adopting targeted measures and affirmative action

In order to achieve substantive equality, States have an obligation to prioritise individuals and groups that are particularly vulnerable to exclusion and discrimination. Depending on the circumstances, they may need to adopt targeted positive measures to redress existing discrimination.

There are times when historical or deeply engrained discrimination will be so intractable that temporary special measures – often called ‘affirmative action’ or ‘positive discrimination’ – are required. Where barriers exist and persist, leading to the denial of rights to individuals and groups, positive measures are necessary to ensure the equal participation of all and the redistribution of power and resources to groups subordinated by discrimination.<sup>7</sup>



## 04. Immediate and progressive obligations

States have an immediate obligation to guarantee non-discrimination in the exercise of the human rights to water and to sanitation. They must ensure that their laws, policies, programmes and practices do not discriminate. However, it must be acknowledged that addressing and remedying inequalities and discrimination and their underlying structural causes takes time and costs money.

The Limburg Principles point out that “*de facto* discrimination occurring as a result of the unequal enjoyment of economic, social and cultural rights, on account of a lack of resources or otherwise, should be brought to an end as speedily as possible”.<sup>8</sup>

The Committee on Economic, Social and Cultural Rights calls on States to adopt measures against discrimination as a matter of priority: “failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party’s disposition in an effort to address and eliminate the discrimination, as a matter of priority”.<sup>9</sup> Hence, human rights law acknowledges that eliminating discrimination and achieving substantive equality is dependent on the availability of resources, but the Committee on Economic, Social and Cultural Rights puts the burden of proof on States to justify their inaction where they fail to eliminate inequalities.





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## 05. Linking discrimination to marginalisation, vulnerability, stigmatisation and disadvantage

The individuals and groups that States must target to address discrimination are usually the most marginalised, vulnerable, stigmatised and disadvantaged – in their access to water and sanitation, but also in society at large.

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**Marginalisation** refers to the process that systematically denies people opportunities and resources that are available to other members of society, and which would otherwise serve to promote social integration.

**Exclusion** is the most extreme form of marginalisation.

**Vulnerability** often refers to individuals or groups under threat of physical or mental harm, for example, at times of conflict, abuse, rape or neglect, and perhaps because of their disadvantaged social or economic status.

All individuals may sometimes be vulnerable, requiring help to realise their human rights. By emphasising the situation that makes individuals vulnerable, rather than assigning entire populations groups that status, the concept of vulnerability becomes less patronising and victimising.

**Stigma** can be understood as a process of dehumanising, degrading, discrediting and devaluing people in certain population groups; it is often based on a feeling of disgust. Stigma attaches itself to an attribute, quality or identity that is regarded as 'inferior' or 'abnormal'. Stigma is based on a socially constructed 'us' and 'them', which serve to confirm the 'normality' of the majority through the devaluation of the 'other'.<sup>10</sup> Stigma often lies at the root of discrimination; it is an antecedent to and a rationale for discrimination. It provides a 'justification', so that discrimination comes to be seen as natural, necessary and desirable. Stigma plays an insidious role in making systemic discrimination possible.

**Disadvantaged individuals and groups** is a useful term to refer to all people who are discriminated against, experience inequalities or inequities, or are marginalised, vulnerable or stigmatised.

## Key terms

**Discrimination:** Any distinction, exclusion or restriction that has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

**Non-Discrimination:** This legal principle prohibits the less favourable treatment of individuals or groups, or detrimental impacts on such individuals or groups based on prohibited grounds.

**Prohibited grounds:** The grounds on which basis States are prohibited from differentiating among different individuals and groups. Several grounds are explicitly listed in the ICESCR, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. "Other status" has been interpreted to include grounds such as disability, age, health status and economic and social situation.

**Equality:** The legally binding obligation to ensure that everyone can enjoy her or his rights equally. Equality does not imply treating people who are unequal equally; it does not indicate identical treatment in all cases.

**Substantive equality:** This requires a focus on all groups in society experiencing direct or indirect discrimination, and the adoption of targeted measures to support these groups when barriers persist, including affirmative action or temporary special measures.

**Affirmative action / Temporary special measures:** Measures required to redress existing discrimination and to ensure the equal participation of all, or the redistribution of power and resources to groups and individuals who experience discrimination.

**Equity:** The moral imperative to dismantle unjust differences, based on principles of fairness and justice. It requires a focus on the most disadvantaged and the poorest individuals and groups. From a human rights perspective, relying on equity carries risks because its definition is malleable and not legally binding. Equity may dilute rights claims if considered separately from equality and non-discrimination.



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## 06. Prohibited grounds of discrimination

Human rights treaties specify that individuals belonging to particular groups must be protected against discrimination. Article 2(2) of the International Convention on Economic, Social and Cultural Rights lists the prohibited grounds of discrimination as “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The reference to “other status” indicates that this is not an exhaustive list. Other prohibited grounds of discrimination that are of a comparable nature may be incorporated in this category, allowing for the evolution of protections to match evolving discrimination. Human rights law recognises that discrimination is highly contextual and can change over time.

Inequalities are present in every country across the globe. Some types of discrimination, such as those based on gender, age or disability, exist in most, if not all, countries. Ethnic, religious and caste discrimination can take different shapes from country to country. While the specific groups may vary, patterns of marginalisation, exclusion and discrimination are consistent across the world.

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### **Race, colour, language, religion, national origin, birth, caste, descent and ethnicity**

“Discrimination on the basis of “race and colour”, which includes an individual’s ethnic origin, is prohibited by the International Covenant on Economic, Social and Cultural Rights as well as by other treaties, including the International Convention on the Elimination of Racial Discrimination.”<sup>11</sup> The Committee on Economic, Social and Cultural Rights points out that “The prohibited ground of birth also includes descent, especially on the basis of caste and analogous systems of inherited status.”<sup>12</sup> Discrimination based on language, religion, national origin and ethnicity is also prohibited.

In some countries, indigenous peoples living on reserves do not have access to water or sanitation services.<sup>13</sup> Similarly, pastoralist communities and nomadic or semi-nomadic tribes are often neglected in terms of access to services.<sup>14</sup> Roma or traveller populations in many European countries do not have access to water and sanitation that is comparable to that enjoyed by the majority population<sup>15</sup>, while scheduled castes experience discrimination in access to water and sanitation in some South Asian countries.<sup>16</sup> Moreover, scheduled castes are regularly forced into the most menial, socially degrading, dirty and hazardous jobs, such as working as manual scavengers or sweepers (emptying toilets by hand).

Religious and linguistic minorities also face inequalities in many countries. In Nepal, data show that while open defecation rates for the majority Hindu population is 37%, the rate for the minority Muslim population is 70%. In Laos, the open defecation rate for the majority Lao-speaking population is 39%, while the rates for minority-speaking populations were significantly higher: 55% among Khmou speakers, 67% among Hmong speakers, and 85% among speakers of other languages.<sup>17</sup>

### **Sex and gender**

In the context of water and sanitation, women and girls experience inequalities in several ways. Where it is necessary to collect water, this job almost always falls to women and girls, and they are often physically and sexually threatened when they do so.<sup>18</sup>

Women also face security risks when they defecate in the open, as well as risking their health by waiting until dusk to relieve themselves.<sup>19</sup>

In parts of Nepal, women’s menstruation is subject to cultural stigmatisation and discriminatory practices. In the traditional practice of chhaupadi, women are obliged to stay in secluded huts or sheds for the duration of their menstruation.<sup>20</sup> Girls stay out of school during menstruation, or drop out completely at puberty, because there are often no appropriate facilities to manage their menstruation.

### **Disability, age and health**

Human rights law provides strong protections for persons with disabilities, in particular through the Convention on the Rights of Persons with Disabilities. The World Health Organization estimates that over one billion people worldwide live with some kind of physical, mental, intellectual or sensory impairment.<sup>21</sup> Persons with disabilities are disproportionately represented among those who lack access to safe drinking water and sanitation.<sup>22</sup> Water and sanitation facilities may not be designed to meet the needs of persons with disabilities. A case study in Ethiopia revealed that the entrances to toilets are often too narrow for wheelchairs, forcing individuals to crawl or drag themselves on the floor to reach the toilets.<sup>23</sup>

With regard to age, the Convention on the Rights of the Child offers strong protection for children and their particular needs.<sup>24</sup> Human rights bodies have acknowledged age as a prohibited ground of discrimination<sup>25</sup>, and efforts are currently underway in

the UN system to create a human rights instrument on the rights of older persons. Depending on their particular situation, older persons might face challenges in accessing water and sanitation due to mobility, vulnerability or other restrictions.

With respect to health status, the Committee on Economic, Social and Cultural Rights clarifies that “States parties should also adopt measures to address widespread stigmatisation of persons on the basis of their health status, such as mental illness, diseases such as leprosy and women who have suffered obstetric fistula, which often undermines the ability of individuals to enjoy fully their Covenant rights.”<sup>26</sup> Similarly, people who are HIV-positive may face discrimination<sup>27</sup>, leading to their exclusion from access to communal water and sanitation facilities by their neighbours.<sup>28</sup>

States must also take into account the fact that women with obstetric fistula or people living with HIV/ AIDS often have increased sanitation and hygiene needs, and so need more water.

### **Property, place of residence and economic and social situation**

The Committee on Economic, Social and Cultural Rights has pointed out that “Covenant rights, [...] should not be made conditional on a person’s land tenure status, such as living in an informal settlement.”<sup>29</sup> Further, people “must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society”.<sup>30</sup> Specifically with respect to water, the CESCR has emphasised that people living in slums and homeless people must not be denied equal rights.<sup>31</sup> However, slums and informal settlements are often not taken into account in urban planning and the people living there are often simply absent from official records and urban plans.

Discrimination against homeless people becomes apparent in their criminalisation, for instance through the adoption of local ordinances criminalising proxy behaviours including public urination and defecation. While such laws seem neutral, they disproportionately affect homeless people, who rely on scarce public toilets.<sup>32</sup>

A person’s economic and social situation is often closely linked to her or his profession or occupation, sometimes also leading to discrimination. For example, sex workers, while often comparatively affluent, are frequently marginalised and socially excluded, with service providers failing to provide services to the places where they work and live.<sup>33</sup>

## **HOMELESS PEOPLE MUST NOT BE DENIED EQUAL RIGHTS**

### **Nationality – Refugees, internally displaced persons and asylum seekers**

“The Covenant rights apply to everyone, including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”<sup>34</sup> Under such circumstances, people often have difficulties contributing to the realisation of their human rights to water and sanitation with their own means. They often lack access to resources and cannot rely on the usual coping mechanisms. States are therefore required to take measures to ensure that refugees and other displaced persons are able to access water and sanitation.<sup>35</sup>

### **Prisoners**

Prisoners have the same human rights to water and sanitation as everyone else. The CESCR has called on States to ensure that “prisoners and detainees are provided with sufficient and safe water for their daily individual requirements”<sup>36</sup>, and this also applies to sanitation services. Prison conditions, including water and sanitation, are notoriously substandard in many parts of the world. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted that in many countries, “authorities simply do not regard it as their responsibility to provide detainees with the most basic services necessary for survival, let alone for a dignified existence or [...] an ‘adequate standard of living’ ”.<sup>37</sup>

### **Other prohibited grounds of discrimination**

Other prohibited grounds of discrimination may have an impact on people’s access to water and sanitation, including political or other opinion, marital and family status, sexual orientation and gender identity.<sup>38</sup> “The notion of the prohibited ground “sex” has evolved considerably, to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights”<sup>39</sup>, including to accessing water and sanitation facilities. For example, people who don’t conform to a fixed idea of gender may experience harassment and abuse when using gender-segregated sanitation facilities.

The groups and individuals mentioned here illustrate some of the most common forms of discrimination in relation to the human rights to water and sanitation, but new relevant grounds may evolve over time.

## 07. Multiple discrimination

Often, inequalities intersect and their effects accumulate. For example, a woman with a disability or a girl belonging to an ethnic minority may experience multiple discrimination. Social, cultural, economic and political inequalities all have reinforcing effects that perpetuate social exclusion.<sup>40</sup>

## 08. More than wealth disparities

While the focus is often on people living in poverty, it must not be forgotten that the world's poorest people are not randomly distributed – they disproportionately share one or several of the factors that commonly lead to exclusion and discrimination.

A focus on wealth disparities cannot address the root causes of exclusion and lack of access to social development, including water and sanitation. Sometimes, the barriers to access for certain groups are not financial, but rather it is the existence of laws, policies or cumbersome administrative procedures that lead to their exclusion.

A person with a disability and a person from an ethnic minority might both be poor and lack access to water and/or sanitation, but the reasons for their lack of access differ, and the policy responses necessary to guarantee them access are also different.

## 09. Checklist

Legislative, policy and regulatory frameworks	
	Yes In progress No
Does the Constitution or legislative framework specifically provide for non-discrimination and equality?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Does the Constitution require affirmative action or temporary special measures to achieve substantive equality?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are there laws providing complaint mechanisms, to ensure that discriminatory practices are addressed?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Do policies specifically target people who don't have adequate access to water and sanitation?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Financing and budgeting	
Are the regions and population groups that lack access to services prioritised in budgets?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Do financial reports reveal an enhanced financial effort on the part of the government to ensure that the most marginalised and hardest-to-reach communities are able to realise their human rights to water and sanitation?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are tariffs set in a way that ensures affordability for all individual users?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are there progressive tax regimes in place to raise the revenue for water and sanitation services in a way that does not overly burden people living in poverty?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Planning	
Do strategies and plans prioritise basic access, and focus on the progressive realisation of safe and sustainable water, sanitation and hygiene for all, while eliminating inequalities?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Do strategies and plans address spatial inequalities, such as those experienced by communities in rural areas and informal settlements or slums?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Target setting	
Have disadvantaged individuals and groups been identified?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Has the process of identifying disadvantaged individuals and groups been inclusive and participatory?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are the barriers and reasons for lack of access understood and addressed?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Have specific targets been set for disadvantaged groups?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Have targets been set to eliminate inequalities in access?	<input type="radio"/> <input type="radio"/> <input type="radio"/>

Monitoring	
	Yes In progress No
Is data disaggregated according to prohibited grounds of discrimination?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are targets for specific population groups monitored?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are the efforts to reduce inequalities measured, including the targeting of resources?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Is the increase or decrease in inequalities being monitored?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Awareness raising	
Are there awareness raising and advocacy campaigns to uncover and address discrimination, stigma and stereotypes, including campaigns aimed at local authorities, ministries, the judiciary, regulatory bodies and civil society?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are the people who experience discrimination, stigmatisation and stereotyping able to participate in the design of measures to address these?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Is human rights education, with a focus on non-discrimination and equality, part of the school curriculum?	<input type="radio"/> <input type="radio"/> <input type="radio"/>



PRINCIPLES:  
**Access to information**



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## 01. The value of access to information

Access to information, itself a human right, is critical for realising all other human rights and is a prerequisite for active, free and meaningful participation. Governance and accountability can only be strengthened by an informed public that is able to hold the State to account for decisions made and services delivered. Openness is one of the best antidotes to corruption.<sup>41</sup>

People need to have access to information:

- for democratic engagement, such as through community councils and participatory budgeting;
- for active, free and meaningful participation in the design of policies and planning on water and sanitation related issues;
- to monitor their representatives and hold them accountable; and
- to make daily decisions about their use of water and sanitation services.

Poor and marginalised individuals and communities are often the passive objects of policymaking, excluded from public debate, unable to participate in political life and prevented from influencing the decisions that have a profound effect on their everyday lives. Access to information helps balance the unequal power dynamic that exists between marginalised individuals and groups and the State and other bodies such as service providers.



## 02. Standards and frameworks

### 2.1. International Standards

Article 19 of the Universal Declaration of Human Rights states that the right to freedom of expression includes the right to seek, receive and impart information and ideas of all kinds. A similar provision is found in article 19 of the International Covenant on Civil and Political Rights (ICCPR).

In 1946 the United Nations General Assembly affirmed that “Freedom of information is a fundamental human right and [...] the touchstone of all the freedoms to which the United Nations is consecrated”.<sup>42</sup>

The Human Rights Committee’s General Comment No. 34<sup>43</sup> clarifies that article 19 of the Covenant embraces a right to information held by public bodies, and that other entities may be subject to obligations when carrying out public functions. Further, the Committee confirms that States have an obligation to proactively publish information of public interest and that they should ensure “easy, prompt, effective and practical access to such information”.<sup>44</sup> The CESCR’s General Comment No. 15 on the right to water confirms that:

“Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties”.<sup>45</sup>

The Aarhus Convention of the United Nations Economic Commission for Europe (UNECE) requires that all information that could enable the public to take measures to prevent or mitigate harm arising from an environmental threat, such as contaminated water, and is held by a public authority, is disseminated immediately and without delay to members of the public who may be affected.<sup>46</sup>

## 2.2.

### The right to information in national law

The right to information is typically recognised at the national level through constitutional provisions and national laws. To date, more than 95 countries have adopted relevant legislation.<sup>47</sup> (see [Frameworks, pp. 17-20](#))

## 2.3.

### Principles for the right to information

The UN Special Rapporteur on Freedom of Opinion and Expression endorsed nine principles for freedom of information in his report to the 2000 session of the (then) United Nations Commission on Human Rights.<sup>48</sup>

These Principles are based on international and regional law and standards, evolving State practice as reflected in national laws, and the judgements of national courts. These are:

#### 1. Maximum disclosure

Public bodies have an obligation to disclose information and every member of the public has a corresponding right to request and receive information.

#### 2. Obligation to publish

Public bodies should be legally obliged to publish and disseminate information, as well as respond to requests.

#### 3. Promotion of open government

Public bodies should actively challenge the practices and attitudes that protect deep-rooted cultures of secrecy, by training public officials, improving maintenance of records, and providing the right incentives and penalties for those responsible for facilitating access to information.

PUBLIC BODIES HAVE  
AN OBLIGATION  
TO DISCLOSE  
INFORMATION

#### 4. Limited scope of exceptions

Exceptions to the right to information should be clear, narrow and subject to strict 'harm' and 'public interest' tests.

#### 5. Processes to facilitate access

The law should stipulate clear processes for applications for information, with an independent appeal body to review decisions not to make information available.

#### 6. Costs

Individuals should not be deterred from making requests for information by excessive costs.

#### 7. Open meetings

Meetings of public bodies should be open to the public.

#### 8. Disclosure takes precedence

Laws that are inconsistent with the principle of maximum disclosure should be amended or repealed.

#### 9. Protection for whistleblowers

Individuals who release information on wrongdoing (whistleblowers) must be protected against any legal, administrative or employment-related sanctions.

INDIVIDUALS  
WHO RELEASE  
INFORMATION  
ON WRONGDOING  
MUST BE PROTECTED

## 2.4. Model laws

At the regional level, the Organization of American States approved a Model Law on Access to Public Information in 2010.<sup>49</sup> This Model Law defines the right of access to information, its scope, purpose and interpretation; it describes measures to promote openness; it suggests procedures for the filing and processing of information requests; it proposes a regime of restricted exceptions and an appeals system; and it highlights the importance of setting up an Information Commission.

The Model Law also lists key classes of information subject to proactive disclosure by any public authority, irrespective of specific demands by the public.

The African Union followed suit in 2013, adopting a Model Access to Information Law.<sup>50</sup>

## 2.5. Regional mechanisms for the right to information

Where no constitutional provision and no specific law is available to individuals, people can turn to regional and international human rights protection systems. Individuals in Africa, the Americas and Europe can appeal to their regional commissions and courts. In other regions, the global system provided by UN bodies provides protection. (see [Justice](#), pp.31-34) In Europe, the Compliance Committee created by the Aarhus Convention can receive complaints concerning a State's failure to observe its obligation to protect the right to information.<sup>51</sup>

PEOPLE CAN  
TURN TO REGIONAL  
AND INTERNATIONAL  
HUMAN RIGHTS  
PROTECTION  
SYSTEMS

# 03. Actors that are obliged to comply with the right to information

The obligation to make information available to the public should apply to all public bodies and authorities owned or controlled by States (at local, municipal and national levels).<sup>52</sup>

The UN Human Rights Committee's General Comment No. 34 expressly supports and extends this understanding to private entities that perform public functions or receive public funds.<sup>53</sup>

In several countries, State-owned or subsidiary companies are subject to right to information laws.<sup>54</sup> However, while many laws extend their protection to bodies that perform 'public functions', they often fail to define what this means.

Armenia's Access to Information law enumerates functions of "public importance" to include "sport, education, culture, social security, transport, communication and communal services".<sup>55</sup>

Several courts and tribunals have clarified that private companies, even when not controlled by the government, should fall under the scope of right to information laws – for example in South Africa.<sup>56</sup> According to this interpretation, private entities involved in water and sanitation service provision are covered by most national access to information frameworks. (see [Frameworks](#), pp.17-20)

### 3.1. Legitimate restrictions

There are limited circumstances in which international law considers that publicly held information may not be disclosed to the public. According to article 19(3) of the International Covenant on Civil and Political Rights (ICCPR), article 13 (2) of the American Convention on Human Rights, and, with slightly different language, article 10 of the European Convention on Human Rights, restrictions on access to information are only permitted to protect: the rights or reputations of others; national security; public order; public health; and morals. The Human Rights Committee, when interpreting article 19(3) of the ICCPR, considers that a limitation may be considered legitimate if it falls within strict conditions defined in a three-step test:

1. The information must relate to a legitimate aim listed in law.
2. Disclosure of information must threaten to cause substantial harm.
3. If the disclosure of information could lead to harm, any harm to the aim must be greater than the public's interest in the information.<sup>57</sup>

Therefore, even categories of information in principle listed as legitimate exceptions may not be used as grounds to withhold information when the public interest test / harm test assessing a concrete case leads to the conclusion that public interest in the disclosure is higher.

The interpretation of cases that fall under the national security exception is complex and this exception has been repeatedly used to promote very restrictive 'State secrets', and secrecy bills, including cases relating to information on water held by the State or private actors.

The Chilean access to information law applies to public bodies and public services, as well as public companies or companies where the State holds more than 50% of shares or has major decision power<sup>58</sup>; and the South African Constitution allows individuals and government bodies to access records held by the State and by private bodies when the record is "necessary for the exercise or protection" of people's rights.<sup>59</sup>

LIMITATIONS TO THE OBLIGATION TO MAKE INFORMATION PUBLIC ARE ONLY LEGITIMATE IF THEY FALL WITHIN A THREE-STEP TEST

## 04. Challenges to realising the right to information

Even in countries that have clear right to information legislation, there are challenges to realising this right.

#### 4.1. Weak legislation and enforcement

In many countries, legislation on the right to information lacks clear procedures to realise the right, and does not take adequate account of the Principles as outlined above.

For example, there may be a long list of broad exceptions to realising the right, and limited right of appeal for those wishing to challenge refusals to make information available to the public.

Even in cases where an adequate framework for freedom of information exists, relevant authorities often fail to meet their minimum obligations:

In 2007, Jordan was the first Arab country to adopt a law on access to information, which stipulates that every Jordanian has the right to obtain information, requires officials to facilitate access to information and guarantees the disclosure of information. In practice, however, this right only applies to citizens and it is difficult to exercise it due to the number of conditions, including the need to prove “a lawful interest or a legitimate reason” in order to obtain information. In the event that the competent department refuses to supply a citizen with the information requested, the citizen is entitled to submit a complaint against the official concerned to the Information Council, which is almost exclusively composed of members of the executive. This raises doubts about the Council’s independence.<sup>60</sup>

#### 4.2. Culture of secrecy and corruption

Access to information is important to tackle corruption and create transparent and open governance. Refusals to provide access to information can be due to a ‘culture of secrecy’, where States do not expect to be held to account for their actions. (see *Services*, pp.38-39)

The Indian Right to Information Act provides opportunities for access to information but in many cases, it is not an easy process. In one case, when a complainant filed his Right to Information request to the local authority seeking information about the beneficiaries of a government scheme, he was threatened and told to drop his request for information. On lodging a complaint at the local police station, he was advised to move away as the local leader was well connected to senior politicians.<sup>61</sup>

#### 4.3. Lack of information about the right to information

The public is generally not sufficiently aware of their right to access public information and of how to use the relevant legislation. All those who produce information and data should ensure that the information is available in accessible formats, both in terms of language and distribution. Incentives and, where necessary, sanctions may need to be applied for public officials tasked with ensuring access to information and compliance with access to information legislation.

Promotional materials, including manuals and guidelines, information campaigns (through the main media channels, but also using community and alternative broadcasters) and partnerships with the media and civil society organisations should also be developed with the aim of informing individuals about legislation relating to access to information, especially key responsibilities and procedures. Materials should be user friendly, culturally sensitive and translated into all relevant languages and dialects to ensure the greatest possible circulation. In some areas, spaces such as community and religious centres may be the most appropriate places to ensure that information reaches all members of the community. Music and theatre have been used to disseminate information about both the right to information and the human rights to water and sanitation.<sup>62</sup>

#### 4.4. Complex processes for accessing information, and poor data management

Often the procedures for accessing information are difficult to follow for both the government authorities as well as the individuals seeking information, particularly at the local level.

Governments will often not commit sufficient human and financial resources to be able to provide the requested information as quickly as required, or to work proactively to provide access to information.

Record keeping, particularly at local levels, can be very limited, with little accurate collection of data, using out-dated indicators. Where information is available, it will often only be translated into majority languages, and may not be in accessible formats for those who are not able to read.

Information technology should simplify access to information, through the availability of databases on websites, but the data must be clearly presented so that it is easily understood by users. For those without access to the internet, or who are not able to read, however, there must be other ways of accessing this information, perhaps by ensuring that local authority officials are able to provide support enabling users to access this data.

## 4.5. State and trade secret legislation

State and trade secrets legislation will undermine access to information.

In the USA, the Court of Appeals for the District of Columbia feared that information on dam failures and chemical spills, and on emergency plans related to these events, could be used by terrorists to plan an attack. Therefore such information does not have to be made public, despite the clear public interest in having access to information on potential problems with water quality.<sup>63</sup>

In some states of the USA, companies are not obliged to publish information on the chemicals used in the hydraulic fracturing process (fracking), as this is a trade secret. Local residents have had significant problems with water quality in areas where fracking takes place.<sup>64</sup>

State and trade secrets legislation must be assessed for compliance with the test for legitimate restrictions on access to information and, when necessary, be amended or repealed.

# 05. Checklist





State actors	
	Yes In progress No
Is there a constitutional provision or national law on the right to information?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Does such a provision or instrument include the following features:	<input type="radio"/> <input type="radio"/> <input type="radio"/>
The right to present information requests without having to show a legal interest in the information;	<input type="radio"/> <input type="radio"/> <input type="radio"/>
The duty of bodies to reply, including the obligation to set procedures and deadlines for handling information requests;	<input type="radio"/> <input type="radio"/> <input type="radio"/>
A limited set of exemptions that allow for the withholding of certain categories of information, as long as the overriding public interest does not require disclosure;	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Internal appeal mechanisms;	<input type="radio"/> <input type="radio"/> <input type="radio"/>
External independent review mechanisms and / or	<input type="radio"/> <input type="radio"/> <input type="radio"/>
A requirement for public bodies to proactively publish some types of relevant information?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are all individuals able to request all information held by a public body, including the executive, legislative and judicial branches of the state, as well as public corporations and publicly-funded bodies?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are public bodies legally obliged to publish and disseminate information, as well as to respond to requests?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are there incentives and penalties for those responsible for facilitating access?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Is the general public made aware of their rights and how to exercise them?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are the costs associated with requests for information affordable?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are meetings of public bodies open to the public?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Have laws that are inconsistent with the principle of maximum disclosure been amended or repealed?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are individuals who release information on wrongdoing (whistleblowers) protected against any legal, administrative or employment-related sanction?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Continued...	

State actors continued...	
	Yes In progress No
Is information on the state of the environment and/or human health issues, and on policies and measures, made public? Is it disseminated immediately and without delay to members of the public who may be affected?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are the people aware of the existence and the potential uses of access to information frameworks and of the provision of data on water and sanitation?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Is there training within public administration to foster a culture of openness and transparency?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Are promotional materials, including manuals, guidelines, and information campaigns in partnerships with the media and civil society organisations developed with the aim of informing individuals about the access to information framework?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Is information spread through the main channels and via alternative community broadcasters? Is the information user-zfriendly and culturally sensitive and translated into all relevant languages and dialects?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Non-State actors that perform public functions or receive public funds	
Does the national legal framework enable everyone to request information held by private entities that perform public functions or receive public funds?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Does the national legal framework entitle everyone to request information on water and sanitation that is held by service providers?	<input type="radio"/> <input type="radio"/> <input type="radio"/>
Business actors	
Does the national legal framework require business enterprises whose operations or operating contexts pose risks to human rights to provide information on the potential impact on human rights?	<input type="radio"/> <input type="radio"/> <input type="radio"/>



PRINCIPLES:  
The right to participation

# Contents

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Participation brings many advantages in terms of empowerment, ownership, and sustainability, but above all, participation is a human right. This short essay outlines the legal foundations of the right to participation and describes barriers to participation and how they can be overcome.

## 01. Legal basis of the right to participation

The right to participation is enshrined in numerous international human rights instruments. Article 21(a) of the Universal Declaration of Human Rights states that everyone has the right to take part in the government of his or her country.

The 1986 UN Declaration on the Right to Development, though not legally binding, has significantly influenced the understanding of participation, and article 2(2) requires participation to be “[...] active, free and meaningful”. This is the definition that this Handbook uses.

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) recognises a general right for all people to participate politically, providing for the right to vote in elections as well as the right to take part in public affairs. This covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.<sup>65</sup>

Treaties adopted subsequent to the Covenant on Civil and Political Rights expand the understanding of participation. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) spells out the right of women to participate in the formulation and implementation of government policy (article 7(b)) and further specifies that women living in rural areas have the right to participate in development planning at all levels (article 14(2)(a)).<sup>66</sup>

## PUBLIC PARTICIPATION IN TARGET-SETTING AND DEVELOPING WATER-MANAGEMENT PLANS

The Convention on the Rights of the Child guarantees the right of children to be heard and to have their views taken into account, and refers to their right to participate and express their views freely in all matters affecting them, and these views should be given due weight.<sup>67</sup>

“Full and effective participation and inclusion in society” is one of the general principles of the Convention on the Rights of Persons with Disabilities.<sup>68</sup>

In Europe, article 5(i) of the Protocol on Water and Health to the UNECE Water Convention identifies access to information and public participation in decision-making as a principle, and articles 6(2) and (5)(b) require public participation in target-setting and developing water-management plans.

The UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) is a pioneering instrument with regard to participation. It guarantees the right to participate in specific activities, including in the establishment of plans, programmes and policies and in the development of laws (articles 6-8). Efforts are underway to develop a similar instrument under the auspices of the UN Economic Commission for Latin America and the Caribbean.<sup>69</sup>

Other relevant regional instruments in Africa, Europe and the Americas also promote the right to participation. This right is also enshrined in many national legal systems. [\(see Frameworks, pp.21-24\)](#)

## 02. Elements of “active, free and meaningful” participation

The essential elements for ensuring active, free and meaningful participation set limits on the use of tokenistic forms of participation, mere sharing of information or superficial consultation

### 2.1. Involving people in setting out the terms of engagement

People must be involved in determining the terms of participation, the scope of the questions to be addressed, how they are framed, and rules of procedure. The choice of mode of engagement determines whether people will be willing and able to participate. The people involved should, for instance, help decide about venues, meeting times, and the balance between electronic and face-to-face interaction.<sup>70</sup>

## 2.2. Creating space for participation

States must ensure that people have the opportunity to engage and develop participatory initiatives. However, States must not put the entire burden on people taking the initiative to engage and thereby justify State inaction. States have an obligation to create opportunities for participation, and eliminate barriers to participation.

## 2.3. Enabling people to access participatory processes

The most persistent barrier to participation may lie in surmounting a culture of low expectations and cynicism, held among both, individuals and public officials. States should revise the incentive structures for public officials so that they are rewarded for facilitating authentic participation. This may require training on facilitation and inter-personal skills.

Enabling participants can take many forms. To support village-level autonomy in development planning in the late 1990s, the Indian state of Kerala offered seminars to teach participants the basics of conducting assessments and formulating development plans.<sup>71</sup> In Brazil, Porto Alegre invests in budget seminars for regional delegates elected to the Participatory Budgeting Council and other interested participants.<sup>72</sup>

Other barriers may relate to language, literacy, meeting times, venue, advance registration, and physical access. If deadlines for public input into a proposed law or policy are too tight, some individuals may be excluded. Meeting times may be a barrier for an entire community if times fail to take into account people's livelihoods, for example, seasonal migration in pastoralist communities. .

## 2.4. Guaranteeing free and safe participation

Free participation rules out any form of coercion, inducement, manipulation or intimidation, whether direct or indirect. There must be no conditions attached, such as linking a person's access to water and sanitation to attendance of a public hearing. Participation must not have been secured through bribery or the promise of a reward.<sup>73</sup>

Participation must be safe. People must be able to voice their concerns freely or request information without fear of reprisals or discrimination. This implies, for instance, that armed forces must not be present at hearings. Some individuals, including sex workers, undocumented migrants, survivors of human trafficking, or rejected asylum seekers face particular barriers and fear exposing themselves when taking part in official processes. Similarly, sanitation workers in many countries may not want to be identified. States must take specific measures to enable people to take part without fear of exposure, for example by allowing anonymous participation.

## 2.5. Ensuring access to information

People must understand how to participate, and have access to the information they need in order to engage and form an opinion.

Access to information must be "full and equal"<sup>74</sup> and information must be clear and consistent and presented in different formats and appropriate language to be understandable. In order for people to respond appropriately to the information presented, it must be provided well in advance of any opportunity to provide input.<sup>75</sup> Cost must not be a barrier to accessing information. (see **Principles: Information**)

## 2.6. Providing reasonable opportunities to influence decision-making

Meaningful participation entails more than expressing an opinion: the views expressed must be able to influence both the process of decision-making as well as the outcome. Where people are involved in processes that have no impact on policy-making, the potential for frustration is enormous. The Aarhus Convention requires that public bodies take due account of the outcome of public participation and notify the public of the decision made, giving reasons and spelling out what was considered in reaching the decision.<sup>76</sup>





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## 03. Difficulties in ensuring participation

Great efforts may be needed to ensure that all those concerned have the opportunity to influence decision-making and that existing power structures are addressed.

### 3.1. Complementing representative democracy with direct participation

Some argue that direct participation would be unnecessary where structures for representative democracy exist. However, periodic elections are a blunt tool for public participation, let alone for ensuring inclusion<sup>77</sup>, and the realisation of human rights is an everyday concern. For this dynamic process of realising rights, participatory processes complement representative democratic structures and allow for more direct influence.

---

### 3.2. Continuous State support and oversight in the context of community management

The terminology of ‘user participation’ and ‘community ownership’ has been part of the water and sanitation sector for decades. This has sometimes led to States delegating service delivery to communities, thus in effect withdrawing from their obligations in the name of ‘participation’. While communities have various vital roles to play in constructing and managing their own services, States retain the obligation to ensure that services are adequate through support, regulation and oversight. Participation in decision-making must not be confused with ‘free labour’ in the construction of facilities.

### 3.3. Balancing technical expertise and experiential knowledge

The delivery of water and sanitation services is often seen as complex, technical and best solved by experts.<sup>78</sup> This can be used as pretext to exclude people from decision-making, on the basis that issues are too complicated for lay people to understand. Experts have a vital role to play, but ideally act as facilitators, helping to synthesise expert knowledge and enabling people to take informed decisions.

This approach has been successful in disability modifications for water and sanitation facilities, through discussions between engineers and the persons with disabilities themselves, who have a better understanding of the barriers to their access and what the best solutions might be.<sup>79</sup>

When this balance has not been struck, negative results are common. Providing communities with a standard design of latrines was expected to solve the rural sanitation challenge. However, such latrines are often not used, or are put to other use, for example, as storage facilities. Specialist knowledge of the local culture plays the crucial role of analysing the strengths and weaknesses of various options so that people can make informed choices in light of individual household needs.<sup>80</sup>

The idea of testimony can be extremely powerful and effective for bringing people’s experiences to bear. Poverty truth commissions can lead to a useful inversion of power dynamics, with experts through experience testifying and those ‘in power’ hearing the testimony.<sup>81</sup>

### 3.4. Factoring in the costs of participatory processes

Participation costs money and time. While the focus is often on costs for the State and service providers, the time and opportunity costs for people participating must not be overlooked. While this is not an argument against promoting participation, it should serve as a reminder of the constant dilemma people face.

Such investments pay off in terms of sustainable realisation of the rights. The waste of facilities that are not used demonstrates that investing in participatory processes is well worth it. The cost of participation should not be viewed as an external expense, but should be factored in from the beginning.

### 3.5. Balancing competing interests

Ensuring participation and gathering everyone’s views inevitably brings diverse and competing interests to the fore. Workers in utilities or small-scale service providers have interests that differ from those of water users. The framework for balancing these interests is that of human rights and the law. Many tensions will be resolved through applying the legislative framework, which rules out illegitimate interests.

The challenge is to balance the legitimate interests and to find solutions that—while not taking all competing views on board—are acceptable to everyone. This is achieved through interaction, bringing all views to the table, open discussions, analysis of the different interests and corresponding rights, agreement on a way forward, due protection given to minority concerns and, monitoring progress on the agreed plan.



### 3.6. Ensuring inclusion

Participatory processes will not automatically include everyone. When no specific measures are taken, men, majority ethnic groups, wealthier, more educated households, and people with a higher social status tend to dominate participatory processes.

Identifying disadvantaged individuals and groups requires deliberate efforts because they are often invisible to policy makers. Processes to identify everyone concerned can be made more successful by decentralising processes, by working together with a wide range of local non-governmental organisations and the national human rights institution as well as with others who can help identify the most marginalised individuals.

Efforts must enable effective participation. For example, a mode of engagement that relies on writing would marginalise those who cannot read.

Even when they are able to take part in meetings, marginalised people often exercise self-censorship, being intimidated either by the presence of others with 'higher' status, or by formal procedures. One approach to avoid this is starting the process with more homogenous groups to discuss particular issues, e.g. groups of women or of young people, and then bring their input into the larger process. At the international level, the United Nations Environment Programme engages with 'major groups' rather than civil society *per se* including children and youth, farmers, indigenous peoples, women, and workers and trade unions.<sup>82</sup>

Another approach is to have an explicit discussion on the rules for deliberation, accompanied by a conscious attempt to draw out the voices of marginalised individuals.

An assessment of barriers must take account of all obstacles: physical, institutional, attitudinal and social, so

that these can be addressed and overcome. (see [Services p. 8](#)) Institutional barriers include where consultations take place, meeting times that suit civil service employees rather than the communities, and whether childcare is provided.<sup>83</sup> Social barriers include prejudices and stereotypes. In many instances, social norms translate into legitimising women's exclusion from decision-making. Taboos around menstruation, combined with inadequate access to water and sanitation, explain why a significant number of girls consistently lose about a week of schooling each month.<sup>84</sup> Without deliberate efforts to draw out their own analysis and ideas, solutions will often fail to address women's and girls' needs.<sup>85</sup>

Children are among those most often excluded from participatory processes, and it must not be assumed that adults will automatically represent their views. It is essential to create the space and allow for sufficient time for child-led processes.

Deliberate inclusion is even more crucial in circumstances where people are marginalised because of stigma, which 'legitimises' exclusion.<sup>86</sup>

### 3.7. Balancing direct participation and representation

People hold rights as individuals and have varied and often conflicting views and interests, which makes it difficult for anyone to represent anyone else. However, direct participation poses challenges in terms of processing and responding to the variety of inputs. Channelling participation through representatives is seen as a solution for making participation manageable, but this carries with it the danger of creating and reinforcing exclusions. The Convention on the Rights of Persons with Disabilities, for instance, stresses that persons with disabilities must be enabled to participate and, not only organisations working on their behalf (articles 29, 33(3)).

In representative participation, people do not engage with policy makers directly, but through collective entities 'representing' them: NGOs, neighbourhood associations, or community-based groups. In some instances, stakeholder participation has been limited to a few well-established NGOs, raising doubts about whether their involvement amounts to authentic, inclusive participation.

Stakeholder participation can enhance or detract from meaningful participation depending on a range of factors, including:

- accurate, sensitive and transparent identification, so that the invited groups are representative of those most concerned;
- the degree to which the collective entity is indeed representative of the interests of those it claims to represent;
- a deliberate effort to 'map' concerned people who may not be reached through this method, and devising a way to fill this gap. Examples include extremely poor people who are not likely to join associations, or stigmatised persons.

Other approaches that have been used include random selection, which has the advantage of avoiding biases in selection and getting different perspectives.<sup>87</sup> The crucial thing is to make deliberate efforts to guarantee extensive inclusion.

STATES MUST  
MAKE DELIBERATE  
EFFORTS TO  
GUARANTEE  
EXTENSIVE  
INCLUSION



## 04. Checklist

State actors	
<b>Institutionalising participation</b>	
	<div style="display: flex; justify-content: space-around; font-size: 0.8em;"> <span>Yes</span> <span>In progress</span> <span>No</span> </div>
Is active, free and meaningful participation recognised as a human right in national legislation and ensured at all levels of decision-making, including in the development of laws, policies, programming, budgeting, service provision and monitoring of water and sanitation? Is this justiciable?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Is the State party to international and regional instruments that guarantee the human right to participation, as well as their respective complaint mechanisms?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Are people who are likely to be affected by any plans or investments able to participate meaningfully in planning?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Are the costs for participatory processes incorporated in the initial design of any measures?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
<b>Ensuring inclusive processes</b>	
Are marginalised people and groups identified and included in the participation process?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Are there measures to overcome existing barriers to participation by all?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Are there safe spaces for deliberation among marginalised groups?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Are the individuals and groups who are invited to consultations identified in a transparent, accurate and sensitive way?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
<b>Ensuring active, free and meaningful participation</b>	
Do people have access to information about participatory processes, and are they able to determine the terms of their participation, the scope of the issues to be addressed and the rules of procedure?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Have concrete measures been put in place to ensure that participation is free from direct or indirect coercion, inducement, manipulation or intimidation?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Do participatory processes give people real opportunities to influence decisions? Have concrete measures been put in place to achieve this?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>

Service providers	
	<div style="display: flex; justify-content: space-around; font-size: 0.8em;"> <span>Yes</span> <span>In progress</span> <span>No</span> </div>
Is the service provider obliged to engage in active, free and meaningful participatory processes on the types of service delivered?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Are these processes inclusive?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Is there oversight of these processes?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
<b>International organisations, multilateral and bilateral donors</b>	
Do international organisations, multilateral and bilateral donors include participation as a mandatory requirement for projects / interventions in recipient countries?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>
Do they ensure that any conditions imposed on recipient countries do not circumvent participatory processes?	<div style="display: flex; justify-content: space-around;"> <span><input type="radio"/></span> <span><input type="radio"/></span> <span><input type="radio"/></span> </div>



PRINCIPLES:  
**Sustainability and non-retrogression**

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## 01. Situating sustainability in the human rights framework

Sustainability is a fundamental human rights principle essential for realising the human rights to water and sanitation. The human rights framework warrants a holistic understanding of sustainability as the direct counterpart to retrogression. For services to be sustainable, they must be available, accessible and affordable to everyone on a continuous and predictable basis, without discrimination.

Human rights law requires progressive realisation towards fully realising the human rights to water and sanitation for everyone. Once services and facilities have been improved, the positive change must be maintained and slippages or retrogression must be avoided. Sustainability is more than mere reliability or functionality. Water and sanitation must be provided in a way that respects the natural environment<sup>88</sup> and ensures a balance of the different dimensions of economic, social and environmental sustainability. Services must be available for present and future generations, and the provision of services today should not compromise the ability of future generations to realise their human rights to water and sanitation.<sup>89</sup>

Ensuring sustainability provides significant challenges in the water and sanitation sectors. Throughout Africa, it is estimated that, at any given moment, between 30 and 40 per cent of hand pumps are not functional.<sup>90</sup> Similarly, wastewater plants sometimes

## AUSTERITY MEASURES OFTEN HAVE A DISPROPORTIONATE IMPACT ON THOSE WHO ARE ALREADY DISADVANTAGED IN SOCIETY

stop being operational a short time after their construction, or never reach their optimum capacity.<sup>91</sup> In comparison to gains in access, such retrogression is not systematically monitored, such that the measured progress in access is inflated and inaccurate.

These challenges are aggravated in times of economic and financial crisis. In adopting 'austerity measures', States may not use the policy space afforded to them in order to protect human rights adequately. Austerity measures, as currently being enacted in many countries in Europe, often have a disproportionate impact on those who are already disadvantaged in society. These measures are often deliberately retrogressive, and are applied to reduce costs.

However, examining the broader challenges of ensuring sustainability, some State acts and omissions may have a retrogressive effect, even if not deliberate. Where States

fail to ensure adequate operation and maintenance, where they fail to implement adequate mechanisms for regulation, monitoring and sector oversight, or where they fail to build and strengthen their capacity in the long term, the result may be unsustainable interventions that lead to retrogression in the realisation of the human rights to water and sanitation. While such retrogression cannot always be avoided, the human rights framework requires that States act with care and deliberation, exercise due diligence to assess the impacts of their actions and omissions on the realisation of human rights, and adjust their policies and measures as soon as they become aware that current policies might lead to unsustainable results. Challenges to sustainability should be addressed holistically, both in times of economic growth as well as in times of economic crisis, so that States are better prepared for times of crisis.

## 02. Principles to achieve sustainability

### 2.1. Holistic and coordinated planning

States must plan holistically, aiming for sustained, universal coverage. It is the State's obligation to develop its vision of how to ensure services for everyone and forever, including in instances where other actors are involved in service provision. States must devote the necessary financial and institutional resources to operation and maintenance in order to avoid retrogression. During periods of growth, States should plan for the long-term realisation of the human rights to water and sanitation so as to build resilience for times of crisis. States must strengthen the capacity for coordination and integrated planning.

### 2.2. Support from donors and NGOs

While the support and participation of donors and NGOs in water and sanitation service delivery is welcome, there can be challenges to sustainability when they act as service providers without ensuring that services provided will receive the necessary support in the long-term. Sustainability strategies are therefore crucial to guarantee permanent operation and maintenance and to plan with governments and communities for phased exits, local ownership and the necessary government regulation.

### 2.3. Private sector participation

Austerity measures are often accompanied by calls for increased private sector participation as a means for governments to raise revenue in the short term. While certain safeguards are often in place to protect users, concerns relating to sustainability remain. Often profits made by private operators are mainly distributed among shareholders, rather than being reinvested in maintaining and extending service provision, the result being increased prices for consumers, continued need for public investment, and potentially unsustainable services. States must ensure that the necessary investments are committed back into the system, thus ensuring sustainability, and that contracts for service provision take account of long-term requirements for operation and maintenance.

### 2.4. Sustainable financing

While sustainable service provision relies on raising sufficient revenue for maintaining, improving and expanding systems, this must be achieved in such a way as to ensure the social dimension of sustainability for all people, including those living in poverty. The human rights framework does not require water and sanitation services to be provided free of charge, but they must be affordable, requiring a safety net for those who cannot afford to pay (full) costs. Service provision is funded through tariffs, taxes and transfers from either from within a country, or from external sources. Where service tariffs are not sufficient to fully fund sustainable services, States must mobilise tax revenue in an appropriately targeted manner. External and domestic resources must be consolidated to enable States to target resources effectively so as to prioritise essential levels of access for everyone.<sup>92</sup>

### 2.5. Forever and for everyone

As resources are scarce, policy-makers may perceive a dilemma of prioritising sustainability (“forever”) or expanding services to those yet unserved (“everyone”). The human rights framework stresses the imperative of achieving equality through the efficient use of resources. States must eliminate inequalities in access and expand access to minimum essential service levels before improving service levels for those already served. If the available resources are only invested in maintaining existing systems, inequalities in access will never be overcome. The principles of sustainability and equality complement each other: true sustainability can be achieved only when everyone has access to services.

### 2.6. Meaningful participation

Meaningful participation is not only required to ensure that water and sanitation services are socially and culturally acceptable, but also secures their sustainable use. Ensuring meaningful participation is challenging, in particular during times of crisis, due to time constraints and the perceived need for quick solutions. However, without participation, States and other actors may misunderstand the barriers to access and their origins, resulting in choices that are unacceptable to the people they aim to serve, resulting in unsustainable solutions. For example, in Tuvalu a participatory approach comprising education, awareness raising to address misconceptions, and a redesign of toilets has led to a change of perception among the general public concerning previously rejected eco-sanitation solutions.<sup>93</sup>

### 2.7. Appropriate technology choices

Technology choices need to be appropriate as well as economically and socially viable. Sustainable service provision may require a higher investment cost, or it may depend on regular maintenance. The choice of technology must be carefully made dependent on existing resources, and projected resources in the medium- and long-term. For example, in regions where water is scarce, it may be preferable to promote sanitation that is not based on sewerage systems.<sup>94</sup>

### 2.8. Effective monitoring, independent regulation and accountability

These prevent corruption, improve data, and lead to informed planning and budgeting decisions. States must improve continuous and independent monitoring, including of the sustainability of interventions. They must ensure independent regulation of the water and sanitation sectors, and they must put in place accountability mechanisms to deal with unsustainable and retrogressive practices.





# 03. Checklist

## State actors

	Yes	In progress	No
Is planning coordinated and integrated between different ministries, departments and agencies, and aiming for sustained, universal coverage?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Are the necessary financial and institutional resources committed to operation and maintenance?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
During periods of economic growth, is there planning for resilience at times of crisis?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
When adopting austerity measures, is there adequate protection of human rights, with a particular focus on disadvantaged individuals and groups?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Do contracts for private sector participation take account of long-term requirements for operation and maintenance? Are profits reinvested in maintaining and extending service provision?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Are water and sanitation services affordable for all people, including those living in poverty; are revenues sufficient for maintaining, improving and expanding systems?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Are technology choices appropriate?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Are there monitoring and accountability mechanisms in place to deal with unsustainable and retrogressive practices?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Donors

Does international cooperation for water and sanitation service delivery include strategies for sustainability, including operation and maintenance strategies?	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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PRINCIPLES:  
Image credits and references



- 78** J. L. Creighton, *The public participation handbook: Making better decisions through citizen involvement* (San Francisco: John Wiley and Sons, 2005), p. 5.
- 79** See H. Jones and B. Reed, *Water and sanitation for disabled people and other vulnerable groups: Designing services to improve accessibility* (UK: WEDC Loughborough, 2005): [www.lboro.ac.uk/wedc/publications](http://www.lboro.ac.uk/wedc/publications).
- 80** Ibid.
- 81** See for example, Faith in Community Scotland, *The Poverty Truth Commission*: [www.faithincommunityscotland.org/poverty-truth-commission](http://www.faithincommunityscotland.org/poverty-truth-commission).
- 82** United Nations Environment Programme, *Major groups and stakeholders*: [www.unep.org/civil-society](http://www.unep.org/civil-society).
- 83** H. Jones and B. Reed, *Water and sanitation for disabled people and other vulnerable groups: Designing services to improve accessibility* (UK: WEDC Loughborough, 2005).
- 84** See Special Rapporteur on the human rights to water and sanitation, *Stigma*, 2012 (A/HRC/21/42), para. 22.
- 85** K. O'Reilly, *Combining sanitation and women's participation in water supply: An example from Rajasthan*, 20(1) *Development in Practice* 45-56 (2010).
- 86** See Special Rapporteur on the human rights to water and sanitation, *Stigma*, 2012 (A/HRC/21/42), para. 78.
- 87** Y. Sintomer, C. Herzberg and A. Röcke, *From Porto Alegre to Europe: Potential and limitations of participatory budgeting*, 32(1) *International Journal of Urban and Regional Research* 164-178 (2008), p. 173.
- 88** CESCR, General Comment No. 15 (E/C.12/2002/11), para. 28; see also *Water services that last*, New WASH sustainability assessment tool: [http://www.waterservicesthatlast.org/news/new\\_wash\\_sustainability\\_assessment\\_tool](http://www.waterservicesthatlast.org/news/new_wash_sustainability_assessment_tool).
- 89** CESCR, General Comment No. 15 (E/C.12/2002/11), para. 11.
- 90** Rural Water Supply Network, *Handpump data, selected countries in Sub-Saharan Africa*, UNICEF Zambia (2007): <http://www.watsan.org/docs/number-of-broken-down-handpumps-in-Africa.pdf>.
- 91** E. Corcoran et al., *Sick water? The central role of wastewater management in sustainable development* (UNDP/UN-HABITAT, 2010), p. 60.
- 92** WaterAid, *Sustainability framework* (2011), p. 16.
- 93** Special Rapporteur on the human rights to water and sanitation, *Mission to Tuvalu*, 2013 (A/HRC/24/44/Add.2), para. 30.
- 94** Special Rapporteur on the human rights to water and sanitation, *Mission to Namibia*, 2012 (A/HRC/21/42/Add.3), para. 33.