

## MEASURING PROGRESS

### A HUMAN RIGHTS APPROACH TO PLANNING AND MONITORING ACCESS TO WATER AND SANITATION SERVICES FOR DOMESTIC AND PERSONAL USES

## DRAFT DISCUSSION DOCUMENT

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*This is a draft discussion document on a human rights-based approach to planning and monitoring access to water and sanitation. We welcome all inputs which may serve to improve the methodology. Inputs may be sent to WaterLex Director of Operations Tobias Schmitz, [t.schmitz@waterlex.org](mailto:t.schmitz@waterlex.org)*

## INTRODUCTION

The effective articulation of water and sanitation services provision with international human rights law requires a reframing of national laws and policies governing the water and sanitation sector. And it has deep consequences, particularly in terms of stakeholder engagement for existing practices in assessing the current demand, service planning, delivery, maintenance, monitoring and evaluation. Until fairly recently, laws regulating water and sanitation services, as well as water, sanitation and hygiene (WASH) policies, strategies and implementation practices, have evolved relatively independently of human rights law and its institutional structures and mechanisms. However, with the recognition of water and sanitation as a human right<sup>1</sup>, these laws, policies and strategies are required by the constitutional character of human rights standards to be “retrofitted” to human rights laws and systems.

In this article we focus on the twin aspects of *planning and monitoring*, and more specifically on the key role played by *indicators* in laying the foundations for the planning activities that states and other actors undertake in their efforts to extend and maintain access to water and sanitation services for local populations. What should a National Action Plan for the realisation of the human right to water and sanitation (HRWS) look like? Which indicators are essential to measure progress towards the enjoyment of this right?

At global and national levels, monitoring access to water and sanitation services has improved tremendously over the last two decades, but the recognition of water and sanitation as a human right requires a reassessment of both the planning and the monitoring frameworks. A revised framework would enable greater focus on and sensitivity to elements such as vulnerability and marginalisation,

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<sup>1</sup> Legally speaking the right to water and sanitation is referred to as a single right, even if water and sanitation could potentially be seen as two separate issues. Thus UNGA resolution A/64/292, declares that the UNGA “Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights” and similarly HRC resolution A/HRC/RES/18 declares that it “affirms that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living”

on the one hand, and sustainability, on the other hand. It would also entail greater coherence with the existing commitments of states established after the Millennium Development Goal had been agreed upon.

Focusing on indicators allows several problems to be solved at once: It provides a methodology for research to be conducted into the current state of implementation of the right in any one country, it generates a framework for state planning, and it provides a format for monitoring.

## HUMAN RIGHTS BODIES AND THE MONITORING OF STATE COMPLIANCE WITH INTERNATIONAL TREATIES

From the point of view of *human rights*, in 1990, a landmark event took place: The World Summit for Children, which was attended by 71 heads of state. It occurred less than one year after the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC). Article 24 of the CRC declared that “States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health ... [...] ... shall pursue full implementation of this right and, in particular, shall take appropriate measures ... [...] ... to combat disease and malnutrition ... [...] ... through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”<sup>2</sup>. In article 27, states recognised “the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development”<sup>3</sup> which was later clarified and includes access to clean drinking water and latrines.

The CRC is the second explicit reference to the right to water in international law, following the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) in 1979. Article 14(2) of CEDAW had mentioned water supply in relation to the rights of rural women, providing that: “States parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right ... [...] ... (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication”<sup>4</sup>.

The great significance of the CRC, beyond the fact that it extended the scope of population groups whose rights to water were protected, is its ratification by 192 countries, strongly embedding the rights of children to water and sanitation in both international and national law.

## MEASURING PROGRESS: THE ORIGINS OF INTERNATIONALLY COORDINATED MONITORING OF WATER AND SANITATION RELATED DATA

From the point of view of *monitoring*, and linked to the extensive ratification of the CRC, in 1990 the World Health Organisation and UNICEF joined forces to create the Joint Monitoring Programme (JMP), which increased the capacity of the global effort to estimate and document global coverage in access to water and sanitation services. This greatly increased insight into the global water and sanitation delivery effort and enabled comparisons to be made between different countries. The statistics were initially based on data sourced from national authorities, but in 1997 the JMP reviewed its position and switched from data provided by government sources to data generated by independent and nationally representative population censuses and household surveys. From 1997 onwards, the JMP rapidly grew to become the standard source of global data on access to water and

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<sup>2</sup> OHCHR (1989) : Convention on the Rights of the Child, art. 24

<sup>3</sup> OHCHR (1989) : Convention on the Rights of the Child, art. 27

<sup>4</sup> OHCHR (1979): Convention on the Elimination of all forms of Discrimination Against Women, Art 14

sanitation.<sup>5</sup> It currently provides an overview of data from 190 countries. From 2000 onwards the definitions of access to water and sanitation were derived from the Millennium Development Goals (MDGs):

- An improved drinking-water source is defined as one that, by nature of its construction or through active intervention, is protected from outside contamination, in particular from contamination with faecal matter.
- An improved sanitation facility is defined as one that hygienically separates human excreta from human contact.

Note that these definitions have their basis in the technical specifications of the water source/sanitation facility. The definitions are a **proxy** for safety and hygiene: The water source may nevertheless be unsafe and the sanitation facility may yet be unhygienic despite meeting the above criteria<sup>6</sup>.

### MDGs AND MONITORING

The Millennium Summit in New York in September 2000 was historic in bringing together the largest ever gathering of world leaders (100 heads of state and 47 heads of government), who adopted the Millennium Declaration introducing eight time-bound and quantitative targets for addressing extreme poverty. The Millennium Declaration, a resolution of the UN General Assembly, included the resolution “To halve, by the year 2015, the proportion of the world’s people ... [...] ... who are unable to reach or to afford safe drinking water”<sup>7</sup>. The goal to halve by 2015 the proportion of the world’s people without access to basic sanitation was added at the World Summit on Sustainable Development in Johannesburg in 2002. Among the great strengths of the MDGs was the global consensus that they achieved, enabling the focused mobilisation of resources and coherent action across a wide range of stakeholders. Added to this consensus were the simplicity and clarity of the targets and their numerical character, which increased the focus and measurability of interventions. To complete the articulation of historical efforts to increase access to water and sanitation with a human rights framework, it is important to assess the milestones of the MDGs: What were the achievements of the MDGs from the point of view of water and sanitation? What changes did they bring to sectoral policies, strategies, and institutions?

Between 2000 and 2014, one of the key global yardsticks of progress in ensuring access to water and sanitation has been Goal 7, target 7.C, of the MDGs. The target was to halve, by 2015, the proportion of the world’s population without sustainable access to safe drinking water and basic sanitation. The MDGs had a powerful impact on global access to water and sanitation through the power of alignment, coherence, and focus, i.e. by aligning the resources and capacities of a broad range of stakeholders around a shared set of objectives. A large global platform, constituted by multilateral organisations, government leaders, national ministries, financial and technical partners, public and private sector entities, non-governmental organisations, community organisations and individuals, demonstrated strong coherence in their efforts to achieve two interrelated, relatively simple and measurable goals. The results of this joint effort were impressive. In the sphere of access to water, the goal was achieved by 2010. Five years ahead of schedule, the number of people without access to an improved water

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<sup>5</sup> Bartram, J., Brocklehurst, C., Fisher, M., Luyendijk, R., Hossain, R., Wardlaw, T. and Gordon, B (2014) Global Monitoring of Water Supply and Sanitation: History, Methods and Future Challenges. *International Journal of Environmental Research and Public Health* vol. 11(8), 8137-8165.

<sup>6</sup> See Roaf, V., Khalfan, A., and Langford, M. (2005) : Monitoring Implementation of the Right to Water : a framework for developing indicators. Berlin: Heinrich Böll Foundation Global Issues Papers no. 14, pg. 13

<sup>7</sup> United Nations General Assembly (2000) : Resolution RES/A/55/2. United Nations Millennium Declaration. New York : UNGA

source had been reduced to 780 million. Between 1990 and 2010, more than 2 billion people obtained access to an improved water source. Access to improved sanitation, however, lagged behind progress in access to water. Between 1990 and 2010, some 1.8 billion people gained access to improved sanitation facilities – a huge achievement even if the goal was not found to be on track. Nevertheless, by 2012, some 2.5 billion people still lacked access to improved sanitation facilities<sup>8</sup>.

Beyond the improvements brought about in the daily lives of millions of people, the MDGs have also served to give impetus to the global planning cycle around water and sanitation. One of the great achievements of the MDG period has been the refinement and upscaling of a global system of monitoring, which enables factors to be identified that ensured progress in some areas and delayed it in other areas. The MDGs enhanced the comparability of data between countries through agreement on basic definitions of access to water and sanitation, even if the national household surveys on which they came to be based did come from different origins and used different definitions. However, there was a global monitoring system in existence long before the MDGs: UN-led compilation of governmental data commenced in the 1960s and proceeded to improve through four decades in the context of the UN Development Decades. In this period, the year 1990 was of particular importance for water and sanitation, both from the point of view of human rights and from the point of view of monitoring. On the one hand, a solid foundation was laid for the recognition of the HRWS, and the same year saw the establishment of the JMP, which is so well known today as the anchor of global monitoring on water and sanitation.

#### THE LIMITATIONS OF THE MDG MONITORING PROCESS

If the simplicity of targets and the power of aggregate numbers were strengths of the MDGs, these strengths also had prominent drawbacks, the most important of which is reductionism. The first drawback of such reductionism is that, paradoxically, reliance on aggregate figures can actually mask poverty rather than providing tools to solve it. In this vein, in 2012, the UN Special Rapporteur on the human right to safe drinking water and sanitation commented that

many agree that the current set of MDGs, which focus on average global progress, has masked the inequalities that lie behind these averages ... [...] ... for the future framework, better tools and methodologies for measuring the underlying inequalities need to be developed.<sup>9</sup>

In other words, one of the results of aggregation is that in theory the MDG targets could be met without the living standards of the poorest people in the world having been improved.

Secondly, reductionism was featured in a departure from the recognition of poverty as a multidimensional phenomenon. This was manifested in an overly simplistic approach to the causes and solutions of poverty. The MDGs were strongly influenced by the basic needs approach, which was utilitarian in nature and focused on the presence of a package of goods and services that were assumed to be key constituents of well-being. This approach has since been superseded by Sen's capabilities approach which focuses on the resources available to any individual or household on the basis of which basic needs – and other needs – may be accessed. Some authors also argue that focusing governance on quantitative targets can orient governments away from the causes of poverty as well as from the qualitative dimensions that are equally important in defining well-being.

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<sup>8</sup> WHO / Unicef Joint Monitoring Programme for Water Supply and Sanitation (2012) : Progress on drinking water and sanitation 2012 update

<sup>9</sup> From De Albuquerque (2012) : The Future is Now. Eliminating inequalities in sanitation, water and hygiene. Input paper of the UN Special Rapporteur on the human right to safe drinking water and sanitation to the Global Thematic Consultation on Addressing Inequalities.

There is much truth in the idea that aggregation masks inequality. Ten years after the Millennium Declaration, the world was declared to be “on track” for its water goal. However, this masked many disparities within and between regions: the tendency of the (early years of the) MDG tracking system to focus on aggregate outcomes focuses attention away from persistent inequalities, which in themselves require not aggregation but *disaggregation* of data into rural and urban areas, male and female recipients of services, high and low income areas, privileged ethnic groups versus marginalised ethnic groups, etc. Thankfully, however, the household surveys on which much JMP data is based contain such details and they record some basic categories such as income, gender, geographical location and other such data. This enabled the JMP itself to uncover some systemic inequalities based on existing data sets. The UNICEF-WHO JMP clarified the fact that by 2010, more than half of the world’s population lacking access to an “improved” source of water had been provided with such a source, but that approximately half of this progress could be attributed to economic progress in China and India, and that some 2.6 billion people still lacked access to improved sanitation<sup>10</sup>. Also, because of strong progress in monitoring, it has become clear amongst other things that (exceptions noted) the resources devoted to water and sanitation at the national level fall short of political commitments and that spending within the WASH sector is disproportionately oriented towards water rather than sanitation. It has further become clear that once allocated, resources are not targeted sufficiently towards areas of need such as towards poor countries: Only half of the development aid targeted for sanitation and drinking water is targeted towards Sub Saharan Africa, South Asia, and South East Asia where the majority of the world’s poor live. Furthermore, resources are not targeted towards disadvantaged and marginalised population groups: Just one in five countries consistently apply equity criteria in their funding allocations.<sup>11</sup>

Nevertheless, in the early years of MDG monitoring, the main focus was on the final aggregate outcomes, and this was in many respects a weakness. This leads de Albuquerque, Winkler and Satterwaite to state that “the failure to address inequalities may be the most significant blind spot of the MDGs and ... [...] ... this focus on aggregate outcomes provides no particular incentive to reach marginalised groups”<sup>12</sup>. Earlier, Roaf, Khalfan and Langford had raised similar issues, identifying the MDG monitoring effort as one that has a tendency to focus on *outcome indicators* which are useful in highlighting the problem (for example, 748 million people currently do not have access to an improved water source), but which do not shed much light on how or where to focus efforts to improve delivery. In the opinion of the latter authors, one of the most important implications of reviewing indicators from a human rights perspective is to ask the question whether the indicator in question is disaggregated into potentially significant variables which can facilitate comparisons across demographic, ethnic and religious and ethnic sub-groups as well as gender. In short, the outcome indicators monitored throughout the MDG period can be useful for the purposes of human rights monitoring to the extent that they are disaggregated. This disaggregation enables the identification of and corresponding focus on marginalised and disadvantaged groups. It requires recognition of the fact that the causes of vulnerability and marginalisation can be highly contextual, depending on local political, economic, cultural and environmental circumstances. Again, highlighting a problem is not the same thing as identifying its causes, and a smart combination of quantitative and qualitative data is needed to identify why pockets of deprivation persist. Furthermore, standardisation and aggregation can mask differences in the needs themselves. Winkler (2012) states that “it is impossible to determine in general terms the precise amount of water that is needed to fulfil the human right to water as

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<sup>10</sup> WHO / UNICEF (2010): Progress on Sanitation and Drinking Water. 2010 Update. Geneva: WHO

<sup>11</sup> WHO / UN-Water (2012): GLAAS 2012 Report. UN-Water Global Analysis and Assessment of Sanitation and Drinking Water. The challenge of extending and maintaining services.

<sup>12</sup> Winkler, I., Satterwaite, M. and de Albuquerque, C. (2014) : Measuring What We Treasure and Treasuring What We measure : Post 2015 Monitoring for the Promotion of Equality in the Water, Sanitation and Hygiene Sector. NYU School of Law Public Law and Legal Theory Research Paper Series Working Paper no. 14-48.

requirements may vary, for example due to differing climatic conditions as well as varying individual requirements”<sup>13</sup>.

A third critique of the MDGs is the lack of national ownership of development interventions. This perspective emphasises the fact that even if the world was relatively united behind the MDGs, international donor aid was fragmented, uncoordinated, opaque, and unpredictable. In 2005 the Paris High Level Forum on Aid Effectiveness was held, which noted that the international aid process was too strongly aligned with donor priorities rather than democratic processes at the national level. The “Paris Process” led to the “Paris Principles” for donor effectiveness which included greater ownership of development by receiving country governments, greater alignment of aid with country strategies, greater harmonisation amongst donors, greater results orientation, and greater transparency and mutual accountability.

However, this perspective on global monitoring does not do sufficient justice to the gradual increase in accuracy, comparability, and level of detail available in global data sets which was achieved to a large extent in the period of the MDGs. From the beginning, JMP data has enabled some disaggregation and has successfully captured differences between rural and urban areas, the household surveys on which the JMP is based enables analysis from the point of view of household income, and the JMP does register different service levels in access to both water and sanitation. Also, there has been much internal reflection and evaluation of progress. For example, in 2008, UN-Water launched the Global Analysis and Assessment of Sanitation and Drinking-Water (UN-GLAAS) which provided a biennial update on policy frameworks, institutional arrangements, the human resource base, and national and international finance streams in support of drinking water and sanitation. UN-GLAAS reports did provide an insight into causality that the existing monitoring system was found to be lacking, and enabled a glimpse beyond the figures to the policy, institutional and financial dynamics that went into the global delivery effort at any given time. Furthermore, in 2011, WHO and UNICEF organised the first consultation on post-2015 monitoring of drinking water and sanitation precisely to review the global drinking water- and sanitation-monitoring landscape, and identify the strengths and weaknesses of the MDG target. It also focused explicitly on the recognition of the HRWS, analysing the underlying principles of a rights-based approach, the mechanisms for the implementation of the right, the linkage to national implementation plans, and the criteria it contained.

## **THE EMERGENCE OF A HUMAN RIGHTS BASED APPROACH TO WATER & SANITATION SERVICE DELIVERY**

In the period during which the MDGs were being implemented, the world has witnessed the rapid emergence of a Human Rights Based Approach (HRBA) to water and sanitation service delivery, which is beginning to significantly impact on the ways in which water is being managed (cf. human rights-based water governance<sup>14</sup>). Since 2010, States have progressively acknowledged responsibility to ensure adequate water and sanitation services in the framework of international human rights law. This recognition used the language and principles developed in November 2002 by the UN Committee monitoring and interpreting the International Covenant on Economic, Social and Cultural Rights (CESCR). At that time, in an effort to interpret State party obligations to the Covenant and their wider implications, the UN Committee declared that “the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration,

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<sup>13</sup> Winkler, I (2012): The Human Rights to Water. Significance, Legal Status and Implications for Water Allocation. Oxford and Portland, Oregon: Hart

<sup>14</sup> Water Governance is necessary for the realisation of a number of human rights, including the right to water and sanitation, the right to food, the rights of indigenous peoples, and the right to a healthy environment. UNDP Cap-Net together with Redica, SIWI and WaterLex are drafting a manual on a human rights based approach to Integrated Water Resources Management, forthcoming in 2014,

to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements”<sup>15</sup>.

Aside from its influence of the recent UN General Assembly and UN Human Rights Council (HRC) resolutions, this authoritative interpretation of the covenant (ICESCR) set in motion a global debate on a human rights approach to water and sanitation service delivery, resulting in more than 30 countries amending their legislation to incorporate water as a human right. General Comment no. 15 also provides a primary source of information for what constitutes “sufficient, safe, acceptable, physically accessible and affordable” water as well as providing guidance on procedural issues framing the governance of water and sanitation. When 122 countries formally recognized water and sanitation as a human right through a resolution of the UN General Assembly (A/64/292) on the 28<sup>th</sup> of July, 2010, these countries confirmed that the legal doctrine developed by the UN Committee was aligned with their respective interpretation of obligations under international human rights law. A confirmation of this achievement came through on the 24<sup>th</sup> of September 2010, with the adoption by the UN HRC of a resolution (A/HRC/RES/18) recognizing that the rights to water and sanitation are part of the right to an adequate standard of living which as such establishes a direct link not just with the first Covenant, but also for universality purposes with the 1948 UN Declaration on Human Rights and its direct link to the UN Charter. In addition, over the past decades there have been at least 142 court cases related to the right to water and sanitation, providing significant insight into current interpretations of both procedural and substantive aspects of the right.

## WHAT DIFFERENCE DOES A HUMAN RIGHTS APPROACH MAKE?

### (A) Fine-tuning the outcomes

Applying a human rights approach to issues of water governance provides an opportunity to observe the sector through a new lens. It casts a fresh light on existing progress and obstacles, showing the need for a modification of established indicators, data, and planning, and potentially resulting in better tools and monitoring methodologies. As will be described in more detail below, a human rights approach involves focusing on *structure, process, and outcomes*. The effect of a rights-based approach on outcomes can be illustrated by looking at the traditional statistics on access to water and sanitation, which in turn are based on the MDGs.

According to the 2014 JMP Report<sup>16</sup>, over 748 million people do not have access to an improved water facility and 2.5 billion lack improved sanitation. These figures would imply that over the last year, 20 million people have been provided with access to an improved source of water but that progress in access to sanitation has stagnated. This is very useful information, and it may trigger policy responses at various levels. However, these figures are not based on a HRBA: Catarina de Albuquerque, the Special Rapporteur on the HRWS, estimates that in fact, in 2013, 1.8 billion people did not have access to safe water and 4.1 billion people did not have access to adequate sanitation<sup>17</sup>.

These are substantially different figures to those produced by the JMP, and they are the result of a different definition of access to water and sanitation. In a human rights framework, access to water needs to be *continuous*, and because some 2.67 billion people live in river basins in which the environmental flow requirements are violated for at least one month a year, they regularly face severe water scarcity. Though they might in theory have access to protected water points, this does not constitute access to water if the supply is interrupted for longer periods of time. Furthermore, within

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<sup>15</sup> Committee on Economic, Social and Cultural Rights (2002) : Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights. General Comment no. 15 : The Right to Water.

<sup>16</sup> World Health Organisation and UNICEF (2014): Progress on Sanitation and Drinking Water. 2014 Update. Geneva: WHO; See also WHO / UNICEF 2013 Update.

<sup>17</sup> United Nations General Assembly (2013-8-5): Report of the Special Rapporteur on the human right to water and sanitation to the 68<sup>th</sup> session of the UNGA, report A/68/264 on Wastewater.

the human rights framework, water needs to be *safe*, i.e. free from threats to health from micro-organisms, chemical substances and radiological hazards. However, in developing countries, approximately 70% of industrial wastewater remains untreated. Industrialisation creates heavy pollution loads: Some 300-500 million tons of heavy metals, solvents, toxic sludge, etc., are dumped untreated into waters every year<sup>18</sup>. Therefore, the idea that only 748 million people do not have access to safe water should be treated with some caution.

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

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

#### **(B) Securing an appropriate process**

A human rights approach does not only help to fine-tune outcomes, it also helps to ensure an appropriate process through the strengthening of access to information and participation, by embedding non-discrimination as a principle of delivery, and by ensuring that rights can be enjoyed both now and in the future (sustainability). The right to *information* includes the right to seek, receive and impart information concerning water issues. It requires 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. It includes the obligation to ensure full and timely disclosure of information on measures that may interfere with the enjoyment of the right. The right to *participation* includes the rights of stakeholders to participate in decision-making processes that may affect their exercise of their rights, from the national level of policy formulation and strategy development down to the level of local interventions such as water and sanitation projects. The right to *enjoyment without discrimination* implies that states have an obligation to ensure that rights are enjoyed without discrimination, and this implies a responsibility to target and protect vulnerable and marginalised groups. Finally, the right to *sustainability* implies economic, environmental and social sustainability: rights holders may enjoy rights not only in the present but also in the future.

#### **A HRBA TO PLANNING, IMPLEMENTATION AND MONITORING**

From the point of view of economic, social and cultural rights, in which the right to water and sanitation finds its origin, effective planning and monitoring are essential prerequisites to making human rights meaningful and for ensuring accountability when laws and policies create, perpetuate, or exacerbate deprivations. Human rights indicators are therefore derived from two sources: firstly, the normative content of the right, and secondly, to hold duty bearers accountable.

The development of indicators to measure progress in realising economic social and cultural rights can be complex and challenging due to some of the language used in the covenant. For instance Article 2(1) of the ECSCR commits states parties to take steps to the maximum of available resources to ensure

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<sup>18</sup> Ibid.

progressively the full realisation of the rights recognised in the covenant. In the view of the Centre for Economic and Social Rights, the conditionality and context specificity of this language of “progressive realisation” and “maximum available resources,” combined with the complexity of public policy, make it difficult to trace patterns back to policy failures. In the view of the Office of the High Commissioner for Human Rights (OHCHR), human rights standards and principles are essentially a value-driven and prescriptive narration anchored in legalistic language and they are not always suited to the tasks of policymaking and implementation<sup>19</sup>. They have to be transformed into a message that is more tangible and operational. Human rights advocates need to be equipped with methodologies and specific tools that ensure improved communication with a broader set of stakeholders who may or may not have an introduction to human rights. Herein lies the central challenge of the monitoring of economic, social and cultural rights.

Interestingly, while global and national monitoring of access to water and sanitation has been critiqued for an overly quantitative approach, human-rights based monitoring has, by contrast, a history of being predominantly qualitative and focused on the collection of narratives and evidence in relation to individual events. The enjoyment of human rights, by its nature, relates to qualitative aspects of life and to subjective experiences. Nevertheless, a key challenge with such qualitative monitoring is the need to aggregate the assessment of events to the systemic level such that a judgement can be made about the sufficiency of resources or about what constitutes progress. Increasingly, human rights monitoring experts are underlining the powerful role that numbers can play in delivering hard evidence of systematic failures to deliver on economic, social and cultural rights<sup>20</sup>. However, they do warn against the danger of numerical methods obtaining a fetish status. UN Special Rapporteur on HRWS Catarina de Albuquerque summarised this neatly in asserting (in relation to the post 2015 framework) that “the future framework must measure what is valuable and not value only what is measurable”<sup>21</sup>.

In essence, a convergence would seem to be taking place, in which there is a recognition that both quantitative and qualitative data are needed in undertaking human rights assessments. The use of indicators is key to monitoring, and quantitative and qualitative indicators can be mutually supporting. The CESCR has through various General Comments recommended that states develop benchmarks<sup>22</sup> and use both qualitative and quantitative data to assess progress over time in the realisation of these rights, the CEDAW has underlined the importance of statistical information to understand the situation of women, and the CRC has recommended the use of disaggregated data.

The main issue is to develop indicators which relate to the enjoyment of human rights. To achieve this, the OHCHR recommends that the legal standard related to a right is described in a number of **attributes** of that right which characterise its enjoyment. To be comprehensive, these attributes need to be rooted in and cover the various standards and concepts highlighted in the treaties on which the right is based. These attributes need to reflect the essence of the normative content of the right, and the attributes should be mutually exclusive (they may not overlap)<sup>23</sup>.

### **INTRODUCING THE 3 COMPONENTS OF A HUMAN RIGHTS-BASED WATSAN SERVICE PROVISION**

Lessons can be learned in this process from the work of the former UN Special Rapporteur on the right to health, Paul Hunt. In 2006, Hunt pioneered the development of indicators for the measurement of

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<sup>19</sup> OHCHR (2012) : Human Rights Indicators. A Guide to Implementation and Implementation. Geneva : OHCHR

<sup>20</sup> Centre for Economic and Social Rights (2012) : New Horizons in Economic and Social Rights Monitoring. Seminar report.

<sup>21</sup> De Albuquerque, Catarina (2012) : The Future is Now. Eliminating inequalities in sanitation, water and hygiene. Contribution of the UN Special Rapporteur on the human right to safe drinking water and sanitation to the Global Thematic Consultation on Addressing Inequalities : the heart of the post 2015 Development Agenda and the Future We Want for All

<sup>22</sup> Such as in the UNECE Protocol on Water & Health

<sup>23</sup> OHCHR (2012) : Human Rights Indicators. A Guide to Implementation and Implementation.Op. Cit.

progress in the realisation of the right to health. Because the right to water and sanitation is closely related to the right to health in many ways, this approach is both instructive and path breaking. Rather than trying to design indicators of the right to health on the basis of legal principles, during his country missions, Hunt identified existing health measures that reflected specific human rights norms. By doing so, he linked existing indicator data to specific norms on the right to health<sup>24</sup>.

Importantly, Hunt also provided a classification of indicators into structural, process and outcome indicators. This classification has greatly assisted the process of indicator development.

**Structural indicators** refer to the legal frameworks, policy processes, strategies and institutional mechanisms which have been developed to protect and fulfil human rights. They reflect the extent to which international standards have been incorporated into national law, integrated into policy processes, and linked to coordinated implementation through the clarification of the roles and tasks of various national and local institutions as well as, ideally, the time frames within which certain implementation phases need to be completed.

**Process indicators** take stock of the actions taken by duty bearers to implement its human rights commitments as set out in laws, policies and strategies. They refer to the concrete means by which the intended outcome is pursued. This could refer to the commitment of budgets and staff towards the realisation of the stated goals, it could refer to the public provision of information on planned programmes and invitations to participate in the formulation, implementation or evaluation of programmes, it could refer to the workings of the justice system or the functioning of quasi-judicial institutions in receiving and processing complaints, or to marginalisation and vulnerability mappings to pinpoint the whereabouts of marginalised and vulnerable population groups. Finally it could also refer to measures at the water resource level to allocate water for the realisation of human rights, protect citizens against pollution, or manage river basins to ensure enjoyment of the rights for future generations.

**Outcome indicators** attempt to reflect the expected benefits associated with the enjoyment of the right itself. These include the direct individual or household benefits such as continuity of supply, affordability, distance from the home, quality, and acceptability as well as benefits at the level of society itself such as progressive increases in the standard of living and the standard of health.

Some authors have suggested an alternative classification of ESC rights based on generic categories of indicators on adequacy, accessibility, availability, adaptability, acceptability and quality<sup>25</sup>. However this approach has the disadvantage that it negates the careful attempt to identify attributes that characterise the enjoyment of the right by standardising *a priori* the attributes that should be measured. While it certainly provides guidance on some aspects of a right, it does not cover the full range of indicators that need to be developed.

In addition to the breakdown into structural, process and outcome indicators it is important to note, as Roaf, Khalfan and Langford have highlighted, that human rights impose upon states three types of obligations, i.e. the obligation to respect, protect and fulfil the right in question. It follows from this that the range of indicators developed for planning and monitoring should cover these three types of obligations.

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<sup>24</sup> See Roaf, V., Khalfan, A., and Langford, M. (2005) : Monitoring Implementation of the Right to Water : a framework for developing indicators, Op. Cit.

<sup>25</sup> See for instance Roaf, V., Khalfan, A., and Langford, M. (2005) : Monitoring Implementation of the Right to Water : a framework for developing indicators, Op. Cit.

## PLANNING AND MONITORING THE IMPLEMENTATION OF THE HRWS

General Comment no. 15 on the right to water devotes section V to implementation at the national level, and it calls for the adoption of a *national water strategy and action plan* and states that “the strategy and plan of action should be devised and regularly reviewed ...(...)... *it should include methods, such as the right to water indicators and benchmarks, by which progress can be closely monitored*”<sup>26</sup>.

Because the recognition of the HRWS has taken place recently, both the planning and the monitoring of progress on the implementation of it is a relatively new and underdeveloped field. Over the two terms of her mandate, UN Special Rapporteur Catarina de Albuquerque has made a tremendous contribution to the clarification of the contents of right, to the elaboration of a separate right to sanitation, to the highlighting of good practices in implementation, and to the transmission of a relatively complex message on the content of the right to water and sanitation to practitioners all over the world whose training and orientation did often not include a background in human rights.

This being said, much work still remains to be done, and the area of planning and monitoring on indicators is such an area in which more normative clarity can still be obtained through ‘norm entrepreneurship’ and through research.

While there is broad agreement on the principles surrounding the HRWS, currently the devil is very much in the details related to implementation. Although it has not yet been stated explicitly, it would seem evident that the ‘table of contents’ of a national water and sanitation strategy and action plan should be based on the normative content of the right, it should list the state commitments related to the realisation of the right, and it should focus on a choice of the key indicators and benchmarks relevant to tracking the implementation of the right. It would appear to be *of great value to obtain normative clarity on the table of contents for a national strategy and plan of action*.

Based on the discussion above, there are at least three major components to such a table of contents.

The first component would be at the level of structural indicators: It should list the existing legal frameworks, policy processes, strategies and institutional mechanisms which have been developed to respect, protect and fulfil human rights normative constituents. It must be emphasised here that these legal frameworks, policy processes, strategies and institutional mechanisms can be derived from or may apply to different institutional levels, i.e. the international level, the national level, and the local level.

The second component would be at the level of process indicators: It should take stock of the actions taken by duty bearers to implement its human rights commitments as set out in laws, policies and strategies. *Implementation is about overcoming practical obstacles*: The construction of a solid legal framework is not the same thing as achieving justice in practice, as there are many more intervening variables on the way to the realisation of the HRWS. Multiple failures and structural inadequacies exist at the level of WASH-related budgeting, coordination and targeting of ODA, effectiveness of governance, levels of institutional training and knowledge on the HRWS, availability, accuracy, appropriateness and access to information, community awareness and the right to effective participation, the right to non-discrimination in the provision of services, the right to the provision of services in a sustainable manner (the rights of present AND future generations), etc.

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<sup>26</sup> CESCR (2002): Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights. General Comment No. 15 (2002): The right to water. (Emphasis added)

The third component would be at the level of outcome indicators: the expected benefits associated with the enjoyment of the right. Because it is defined in General Comment no. 15, the right to water is usually understood to include the right to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. The right to sanitation, which was only flagged but not defined in General Comment no. 15, includes access to excreta disposal facilities (thus a toilet or adequate latrine) which can effectively prevent human contact with excreta, which ensure privacy and protect dignity, and whereby wastewater and excreta is treated or disposed of in a manner that avoids threats to public health and damage to ecosystems. These aspects in turn have been identified and expressed as attributes of an adequate standard of living, the highest attainable standard of health, the right to housing and adequate food, and the right to life and human dignity

How, then, to arrive at a definitive table of contents? It would seem evident that in order to identify and prioritise the key areas of action within a national plan, it is first necessary to undertake a systematic evaluation or 'snapshot' of the current state of implementation of the HRWS in direct consultation with all stakeholders, resulting in the production of a **Country Mapping**.

In this scenario, the indicators for the research are based on an up to date assessment of the obligations of a given country under both international and national law, the legal system of that country as well as the existing structure of the WASH sector from the point of view of policies, institutions, data, finances, sustainability, and poverty alleviation. The conclusion of the country mapping provides key information to authorities and development partners to strengthen an integrated and coordinated approach to water governance while complying with international and national human rights obligations. In short, a Country Mapping is an essential ingredient for the elaboration of National Action Plans.

Once the current state of implementation of the HRWS has been evaluated, it is possible to develop a National Action Plan to ensure further realisation.

A Country Mapping highlights the key areas in which national progress is 'underperforming' and therefore provides the key focal points for the elaboration of a National Action Plan, using the same indicators and criteria as those using the country mappings to structure consultations and expert inputs into action plans. These plans potentially provide coherence between various institutional mandates and development partners as a well as a central point for reference for access to information on and participation in the water and sanitation sector.

WaterLex hopes this working draft provides adequate background and spurs interesting and productive discussion at our Measuring Progress conference and workshop in Geneva on 21<sup>st</sup> and 22<sup>nd</sup> November 2014. The draft will be updated with results from the event. Input may also be sent directly to WaterLex Director of Operations Tobias Schmitz at [t.schmitz@waterlex.org](mailto:t.schmitz@waterlex.org)