

NATIONAL HUMAN RIGHTS INSTITUTIONS AND WATER GOVERNANCE

COMPILATION OF GOOD PRACTICES

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For more information:
WaterLex – International Secretariat
Email: info@waterlex.org
Telephone: +41 22 733 83 36
Website: www.waterlex.org

Design by Julien Lance | colegram
Layout by Laura Augias | colegram
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EXECUTIVE SUMMARY

The compilation of National Human Rights Institutions (NHRIs) good practices on water governance seeks to strengthen the capacity of these institutions for the realisation of water governance related human rights. It intends to identify, gather and document important knowledge about the practices, along with the challenges, key factors in success and important lessons to be learnt in activities undertaken by NHRIs in relation to water governance.

This project lies at the heart of the National Human Rights Institutions Water Initiative. Launched by the Hungarian Ombudsman for Future Generations (Hungarian NHRI) in cooperation with WaterLex in 2013, it envisages a more prominent role of NHRIs in water governance for the realisation of human rights. By compiling and disseminating good practices among NHRIs, the current publication is intended to serve as a contribution towards creating a community of practice of NHRIs wishing to enhance their role in water governance for the realisation of human rights.

This publication is divided into three parts. Section 1 on *Good Practices* gathers water governance related concrete examples of practices adopted by various NHRIs worldwide. This first section includes good practices grouped according to the following themes: i) promotion of water governance related human rights; ii) protection of water governance related human rights; iii) monitoring water governance related human rights; iv) advising the government and the parliament; and v) cooperation and coordination in water governance related NHRI activities. Section 2 on *Summaries of NHRIs' water governance activities* provides an outline of several institutions' work in relation to water governance. This section offers additional information on examples included in the first section and should be referred to for a more complete overview of NHRIs activities. Section 3 on *Challenges and Obstacles* sheds light on both existing and future challenges along with obstacles encountered by participating NHRIs.

This publication covers 21 NHRIs and also benefited from the assistance of a regional network (West Africa). WaterLex is thankful to all participating institutions who contributed by sharing their practices. The good practices compilation is disseminated to NHRIs worldwide to facilitate exchange of information among peers on water governance for the realisation of human rights.

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LIST OF ACRONYMS AND ABBREVIATIONS

AAQ	Availability, Accessibility, Acceptability and Quality
AML	African Minerals Ltd
AWC	Anganwadi Centres
ANA	National Water Authority (Autoridad Nacional del Agua)
CEDAW	Convention to Eliminate All Forms of Discrimination Against Women
CHRAJ	Commission on Human Rights & Administrative Justice of Ghana
CNDHCI	Commission Nationale des Droits de l'Homme de Côte d'Ivoire
CRA	Comision de Regulación de Agua Potable Saneamiento Básico
CRC	Convention on the Rights of the Child
DIHR	Danish Institute for Human Rights
DPME	Presidency's Department of Performance Monitoring and Evaluation
DPN	Defensor del Pueblo de la Nación
ECOWAS	Economic Community of West African States
EPS	Company Providing Sanitation Services (Empresa prestadora de servicios de saneamiento)
ESC	Economic, Social and Cultural
ESCR	Economic, Social and Cultural Rights
GDP	Gross Domestic Product
HRBA	Human Rights-Based Approach
HRCSL	Human Rights Commission of Sierra Leone
IACHR	Inter-American Commission on Human Rights
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDS	University of Kenya's Institute for Development Studies
INGOs	International non-governmental organizations
KESAMA	Kenya Salt Manufacturer's Association
KNCHR	Kenya National Commission on Human Rights
MACA	Maison d'Arrêt et de Correction d'Abidjan
MDAs	Government Ministries, Departments and Agencies

NHRC	National Human Rights Commission of India
NHRC Nepal	National Human Rights Commission of Nepal
NGO	Non-governmental organization
NHRIs	National Human Rights Institutions
RDP	Reconstruction and Development Programme
PRONASAR	National Rural Water Supply and Sanitation Project (Proyecto Nacional de Agua y Saneamiento Rural)
ProSeDHer	Program Monitoring and Evaluation of the Public Policies on the Right to Water (Programa de Seguimiento y Evaluación de Políticas Públicas en Derechos Humanos)
SAHRC	South African Human Rights Commission
SEDAPAL	Lima Water and Sewerage Service Company (Servicio de Agua Potable y Alcantarillado de Lima)
SUNASS	National Superintendence of Sanitation Services (Superintendencia Nacional de Servicios de Saneamiento)
UHRC	Uganda Human Rights Commission
UN	United Nations
WHO	World Health Organization

INTRODUCTION

In 2010, through resolutions by the United Nations' General Assembly¹ and the Human Rights Council², access to safe drinking water and sanitation has been recognised as a human right. However, in most countries the implementation of the right to water is still in its early stages.

More than 100 countries currently have National Human Rights Institutions (NHRIs) in the form of Human Rights Commissions or Ombudspersons charged with investigating, promoting and protecting human rights. Nevertheless, in several cases NHRIs do not have a history of monitoring water governance related human rights albeit their potential role resulting from the unique powers conferred upon them in relation to human rights protection in general. A core function of these institutions is to independently review the implementation of a nation's human rights commitments and make recommendations for improvement. Another role is to address grievances or complaints alleging violations of national law.

Seen in this light, NHRIs can provide a core function in contributing to the implementation of a human rights based water governance and providing civil society with an avenue to improve their human rights related expertise (legal framework, protection mechanisms, complaints etc.) and thereby enhance their role in this context as well. NHRIs may be in a unique position to potentially play an active role in securing the implementation and protection of the human right to water and other water related rights.

A major contribution in the process of enhancing the role of NHRIs in relation to the right to water is the adoption of the General Comment No. 15. The General Comment No. 15 on the "Right to Water" adopted in 2002 by the United Nations Committee on Economic, Social and Cultural Rights³ explicitly refers to national ombudsmen, human rights commissions, and similar institutions that should be permitted to address violations of the right to water. Against this backdrop, NHRIs need to take their place amongst mainstream water governance institutions.

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1. United Nations General Assembly, *The Human Right to Water and Sanitation*, 64th Sess., 3 August 2010, A/RES/64/292.
 2. United Nations Human Rights Council, *Human rights and access to safe drinking water and sanitation*, 6 October 2010, A/HRC/RES/15/9.
 3. CESCR, General Comment No. 15: *The right to water*, E/C.12/2002/11.

There is an emerging collation of NHRIs worldwide who already dispose encouraging experience in relation to water governance for the realisation of human rights that may serve as an inspiration for peers. Thus, they may pave the way for other NHRIs envisaging an enhanced role in a human rights based water governance. It is in this vein that this compilation of good practices of NHRIs in water governance was elaborated.

A. THE WATERLEX NATIONAL HUMAN RIGHTS INSTITUTIONS WATER INITIATIVE

The present compilation of NHRI good practices in water governance is part of the National Human Rights Institutions Water Initiative. Launched by the Hungarian Ombudsman for Future Generations (Hungarian NHRI) in cooperation with WaterLex in 2013, the **NHRI Water Initiative envisages a more prominent role of NHRIs in water governance for the realisation of human rights**. This initiative is an open call for collaboration to all interested NHRI parties who wish to strengthen their role in water governance for the realisation of human rights. Its objectives are twofold. First, the Initiative aims at creating a network of NHRIs that can exchange experiences and good practices with each other. Second, capacity building and mutual exchange of experiences are delivered to assist NHRIs in the execution of these tasks.

B. THE RELEVANCE OF A COMPILATION ON GOOD PRACTICES IN LIGHT OF THE NHRI WATER INITIATIVE

The present compilation of good practices seeks to identify, gather and document important knowledge about the challenges, key factors in success and important lessons to be learnt in activities undertaken by NHRIs in relation to water governance. More specifically, by disseminating the good practices compilation among NHRIs, this publication has the following objectives:

- Serve as an important contribution towards **creating a community of practice** of NHRIs wishing to enhance their role in water governance for the realisation of human rights.
- **Strengthen the capacity of NHRIs** to make positive contributions to water governance for the realisation of human rights.
- **Promote an enhanced role of NHRIs in water governance** for the realisation of human rights, and therefore promote a human rights based water governance worldwide.

This publication is divided into three parts. Section 1 on *Good Practices* identifies water governance related good practices and gathers concrete examples of practices adopted by various NHRIs worldwide. This first section includes good practices using the following themes: i) promotion of water

governance related human rights; ii) protection of water governance related human rights; iii) monitoring water governance related human rights; iv) advising the government and the parliament; v) cooperation and coordination in water governance related NHRI activities. Section 2 on *Summaries of NHRIs' water governance activities* provides an outline of several institutions' work in relation to water governance. This section offers additional information on examples included in the first section and should be referred to for a more complete overview of NHRIs activities. Section 3 on *Challenges and obstacles* sheds light on challenges and obstacles encountered by participating NHRIs. This final section also outlines the areas where participating NHRIs would like to learn from peers.

C. METHODOLOGY

1. What are good practices?

For the purpose of this compilation, practice is defined largely. It encompasses both policy and implementation. Therefore, practices include diverse initiatives that encompass one or more of the following: legislation (at the national, subnational and local levels), regulations, policies, strategies, institutional frameworks, planning and coordination procedures, international cooperation policies, programmes, projects, campaigns, complaints procedures, investigation methods, non-judicial decisions, etc.

For the purposes of this compilation, a practice of an NHRI is considered **“good”** if it **contributes to the realisation of human rights in the context of water governance**. Notably, it must contribute to the realisation of the following human rights in the context of water governance:

- human right to water and sanitation,
- human right to a healthy environment,
- human right to food,
- human right to health,
- human rights of indigenous peoples,
- human rights of future generations.

In addition, the following non-exhaustive list of criteria can be applied to identify good practices: effectiveness, efficiency, creativeness and ease of implementation.

The following themes are covered by the good practices:

Promotion of water related human rights:	Documenting different ways in which human rights have been promoted (e.g. through public awareness campaigns, publications, media interventions, etc.).
Protection of water related human rights:	Documenting different ways in which complaints or other sources have been investigated and triggered action by NHRI's to protect citizens' rights and to find remedy.
Monitoring water related human rights:	Documenting different ways in which allegations of violations and State performance towards progress have been monitored (e.g.: different monitoring methodologies and ways of collecting data, etc.)
Advising governments and parliaments:	Documenting different ways in which NHRIs provided recommendations, advices to different governmental institutions or to parliaments.
Cooperation and Coordination:	Documenting different ways in which NHRIs cooperated with various stakeholders during their activities in relation to water governance.

It is to be noted that the above-mentioned classification is only one possible classification of various NHRI practices and it should not be considered a complete catalogue of possible NHRI actions in relation to water governance. In addition, practices included in this publication may fall into several categories at the same time. Therefore, the classification proposed in the compilation is to be regarded as one possible method to assemble water governance related activities of NHRIs.

2. Methods and Timeline

The process to identify and gather good practices included several steps. The first step covered desk research of NHRI practices, policies and programmes via collection and compilation of available information. The main source of information consisted of public websites of NHRIs.

The second step comprised a dialogue with NHRIs willing to participate in the compilation of good practices. A questionnaire communicated in advance to NHRIs formed the basis of this step. Participating NHRIs either sent written responses to the questionnaire or commented and reviewed the documentation elaborated by WaterLex. The outcome of the dialogue, including the analysis of the written responses in addition to the desk research on each NHRI, forms the basis of this publication. In order to enhance the credibility of the good practices compilation, a peer-review process with the participation of NHRIs concerned was also conducted.

The final step includes the dissemination of the good practices compilation among NHRIs to facilitate exchange of information among peers on water governance. The current publication will be available to NHRIs both in paper and in electronic version. In addition, WaterLex foresees to present this good practices compilation to NHRIs at the forthcoming annual meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in March 2015 in the United Nations (UN) Geneva headquarters.

3. Participating National Human Rights Institutions

WaterLex proceeded to the identification and compilation of good practices of NHRIs in cooperation with NHRIs who already have an experience in water governance related human rights. The selection criteria of NHRIs included geographical balance and experience in water governance related human rights activities.

The following NHRIs are covered by the current version of the good practices compilation:

An updated version of the current good practices compilation is foreseen based on the growing number of institutions participating in the NHRI Water Initiative network and the expending capacity building activity delivered by WaterLex to NHRIs on water governance and human rights.

EUROPE	AFRICA		LATIN AMERICA	ASIAN-PACIFIC
Hungary	South Africa	Côte d'Ivoire	Peru	Bangladesh
Denmark	Namibia	Ghana	Colombia	India
	Kenya	Mali	Argentina	New Zealand
	Uganda	Nigeria	El Salvador	Nepal
	Sierra Leone	Tanzania	Panama	
	West African Network			

4. Disclaimer

There are a number of limitations inherent to this compilation. Whilst many NHRIs have been approached based on the above mentioned criteria via the NHRI Water Initiative network and capacity building activities delivered by WaterLex to NHRIs worldwide, the content of this publication is largely dependent on the availability of information and the willingness of NHRIs to participate in the compilation. Depending on the level of dialogue attained with NHRIs, some institutions only sent responses to the questionnaire, whilst others also reviewed summaries prepared by WaterLex and provided

complimentary explanations and information. Due to these limitations, the current publication does not intend to provide an exhaustive picture of NHRIs' activities, but rather show good practices and important cases collected on water governance in a concise manner.

OVERVIEW OF
GOOD PRACTICES

PART I

This chapter presents collected examples of practices adopted by various NHRIs worldwide. Practices are organized according to the following thematic sections: a) promotion of water governance related human rights; b) protection of water governance related human rights; c) monitoring water governance related human rights; d) advising the government and the parliament; e) cooperation and coordination in water governance related NHRI activities.

For a complete overview, examples included in this section are to be considered together with the summaries of NHRI activities described in the following section. The proposed classification is only one possible way of grouping various NHRI practices whereby examples by nature may fall into several groups at the same time.

A. PROMOTION OF WATER GOVERNANCE RELATED HUMAN RIGHTS

The promotional activities carried out by NHRIs may result in numerous beneficial outcomes including more informed and empowered citizens in relation to water governance. This section puts forth specific promotional activities delivered by NHRIs, which have played a role in changing people's awareness on water governance related human rights issues.

PRACTICE 1: CONSIDER THE INTERDEPENDENCE AND INDIVISIBILITY OF HUMAN RIGHTS IN NHRIS' PROMOTIONAL ACTIVITIES

NHRIs may consider the interdependence and indivisibility of human rights which is also reflected in their promotional activities. In the context of water governance, this is put in practice by considering the right to water and sanitation together with other water governance related rights (e.g.: right to food, right to health etc.).

1. Right to food

In its publication on the right to food, the **Bangladesh Commission on Human Rights** addressed the right to water as an interrelated right. In this publication entitled *From Basic need to Basic Right: Right to Food in Context*, the Commission analysed the food security situation in Bangladesh through a review of laws, policies and international instruments. It recalled that the right to adequate standard of living includes food and water and that these are interrelated as the right to food encompasses the right to safe water.

The report also specified that the right to food at the national level has to be implemented through a national strategy which should address water and sanitation.

The **South African Human Rights Commission** (SAHRC) undertakes studies on focus areas, which generally involve the impact of the focus area on other rights. For example, when studying the right to food, the SAHRC ensured that associated impacts of agriculture of water resources were also explored. During the right to food campaign that took place between November 2013 and February 2014, the Commission also recalled that to produce their own food, people need seeds, skills but also water among other resources.

The **National Commission on Human Rights of Mali** discussed the right to water in combination with the right to food under a section on Economic Social and Cultural Rights in its 2011 annual report. The section overviews the situation in relation to access and availability of clean drinking water. It also compares the statistics of rural and urban areas.

In its 12th annual report, the **Uganda Human Rights Commission** assessed the access to water as a component of the human right to food. The Commission reported on the state of the Uganda's population's access to clean water. It noted that access to clean and safe water for home consumption and generally water for production has increased over the years. In addition, in 2008 to 2009, access to water from improved sources was possible for 63% of rural dwellers and for 60% of urban dwellers. The Commission concluded that in summary, access to clean and safe water in Uganda had increased over the years.

Success story

The ability of the Uganda Human Rights Commission to view the right to water from different angles enables the institution to monitor, promote and protect the right of water in its various aspects. This is evidenced by the different aspects of the right of water that is assessed, monitored and reported on year in and year out by the Uganda Human Rights Commission.

2. Right to housing

In its report entitled *The Human Right to Adequate Housing and Land*, the **National Human Rights Commission of India** recalls that the right to water is a prerequisite for the realisation of the right to adequate housing. The right to water is interpreted in light of international conventions and instruments. The document further identifies the conditions affecting homeless people, or those living in slums or inadequate settlements. In all three cases, the importance to provide access to water and sanitation is raised. In addition, the report addresses housing and land related rights in other specific situations, such as the Indian Ocean tsunami of 2004. The commission made mention of inadequate access to water and sanitation and laid down international instruments applicable in post-disaster situations.

The **Human Rights Commission of Côte d'Ivoire** linked the right to water and sanitation to the right to adequate housing in its 2009 annual report. It recalled for example that the Committee on Economic, Social and Cultural Rights established that beneficiaries of that right must have permanent access to, among other resources, drinking water and sanitation facilities. It also raised a concern with regard to the lacking sanitation installations in poor districts which as a result forces people to often defecate in public areas.

3. Right to health

In **India**, the **National Human Rights Commission** addressed the right to water in the context of the right to health in the document entitled *Women's Right to Health*. For example, the report interpreted different fundamental rights found in the Constitution of India. In relation to the right to equality and freedom, it is mentioned that any form of discrimination has severe implications for health, preventing or limiting access to basic needs and opportunities that impact health and access to health care. For example, women are traditionally responsible for fetching water. Depending on the distance of the source of water, the location, the woman's age, caste, health status and various other conditions at home impact her access to water, which in turn affects her health and the health of others in her family.

The right to water and sanitation in relation to health was also discussed during a conference on Public Health & Human Rights organized in 2001 by the Indian Commission. Water and basic sanitation as a component of an essential care package for a common citizen, the need for a complete review of all drinking water projects and pollution of drinking water were mentioned during the conference.

The **South African Human Rights Commission** is required, in terms of section 184(3) of the Constitution, to request information from the government on the progressive realisation of certain economic and social rights. This information is placed in its so-called “*Section 184(3)*” Reports. In these, the South African Commission also looks at the interdependence and indivisibility between human rights. For example, when relevant, it assesses the impact of poor access to water on access to health and the impact of polluted water on the right to environment.

The **Human Rights Commission of Côte d’Ivoire** and the **Mali National Commission** presented the results of prison audits in their respective annual report. They included the findings on the right to water and Sanitation. For example, following visits of detention centres the Commission of Côte d’Ivoire raised concerns relating to the dignity of the prisoners as there is no privacy when using toilets and showers. Similarly, the Mali institution integrated into its 2012 annual report a chapter on the situation in prisons in the country. It assessed the right to water and sanitation in relation with the right to health.

PRACTICE 2: PUBLICATION OF SPECIALIZED HUMAN RIGHTS MATERIAL (STUDIES AND OTHER DOCUMENTS) ON WATER GOVERNANCE RELATED HUMAN RIGHTS

NHRI practices show that the assessment and documentation of water governance related human rights situation in many cases form a section in a more general human rights report or may result in a publication specifically dedicated to the right to water and sanitation. The latter practice is not yet widespread, at the same time there are already inspiring examples of NHRI’s dedicated publication on the human right to water.

1. Specialized publications on the right to water and sanitation

The **New Zealand Human Rights Commission** published in 2012 a report on *Human Rights and Water*. It advocates for the importance of the human rights approach to water and assesses the right to water situation in New Zealand in accordance with the criteria of availability, quality and safety, affordability, acceptability, participation and accountability. The report first deals with the human right to water explaining the international human rights framework and sets out the relevant right to water criteria in the New Zealand context. It advocates the importance of the human rights approach in general and the vitality of this approach for New Zealand. Noting the ten criteria identified by the UN Special Rapporteur in 2010, the report discusses six of the criteria that have a particular relevance and peculiarity making

them fundamental in the context of New Zealand. These are: i) the availability of fresh water; ii) quality and safety; iii) affordability; iv) acceptability in relation to the Treaty of Waitangi /Te Tiriti o Waitangi and Māori values; v) participation of citizens in water related matters; and vi) accountability.

The **Hungarian Ombudsman for Future Generations** published the book called *Right to Water and the Protection of Fundamental Rights in Hungary*. It is a collection of articles on the legal and conceptual frameworks of the human right to water and sanitation in general and the constitutional guarantees thereof in Hungary. Moreover, in relation to the fundamental right to environment encompassed in the Hungarian Constitution, the book lays down the mechanisms of integrating the right to water and sanitation within the legal and institutional frameworks in Hungary and the specific mechanisms employed by the Commissioner for Fundamental Right in that regard. It includes Hungarian, European and International examples of issues and solutions of water governance from a human rights perspective.

Based on a trend of complaints received and increased complaints in the media, the **South African Commission** establishes every year a strategic focus area. During the 2012-2013 financial year, the Commission chose the right to water and sanitation as its strategic focus area and proceeded with a specific methodology to assess the realisation of the right to water and sanitation across the country. To produce research reports on the strategic focus areas, the Commission conducts independent primary research with regard to the realisation of the right in question. With regard to the recent *Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014*, the primary methodology used as the basis for compiling information were the nine public hearings on the right to water and sanitation, held between August 2012 and December 2012 in each of South Africa's respective provinces plus a national conference held in March 2013. The Commission also engaged with various government departments on the findings and recommendations that emanated from the provincial hearings.

The **Office of the Ombudsman of Peru** issued in 2005 the study entitled *Citizens without Water: Analysis of a Rights Violation*. The publication highlights the nature of the human right to water and sanitation, sheds light on the situation of limited access to sanitation services of major sectors of the urban population, evaluates the quality of service that the urban population receives in terms of drinking water quality and continuity of service, and evaluates the legal, institutional and economics aspects of the sanitation industry preventing access and improve the quality of services.

2. Other type of publications containing information on water governance related human rights

In 2011, the **Kenyan Commission** published *The Third State of Human Rights Report*, which assesses how Kenya implemented the first half of the Medium-Term Plan of Kenya Vision 2030. A section of the report is devoted to the right to water and sanitation. It enumerates State obligations for these rights and assesses how targets set by Kenya were achieved. It also analyses the concrete impact of the increased water coverage in terms of accessibility. The report argues that one way of improving access to water might involve giving people incentives to fit water storage facilities in their households and business premises.

The **Human Rights Commission of Bangladesh** discussed the right to water throughout its report *The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance*. An overview of the international instruments related to the right to water may be found in the first section, which is followed by an analysis of the national legislations and policies adopted by Bangladesh to achieve supply of pure drinking water to all and access to improved sanitation. The report also tackles the impact of climate change on water in Bangladesh as well as contamination of water, recalling the importance to inform the population over water quality and contamination risks.

In its *Special Baseline Study Report on Human Rights in Namibia*, the **Ombudsman of Namibia** explored the situation of the right to safe drinking water and the right to sanitation. The report introduces the relevant international legal standards on the human right to water and sanitation and addresses the national legal and policy frameworks. In relation to sanitation facilities, the report adds special emphasis on the availability of sanitation facilities at public institutions and the sanitation budget. The report also provides several recommendations for the mobilization and implementation of water supply and sanitation policies in the country.

The **Human Rights Commission of Sierra Leone** divided its 2011 annual report into different sections. The third, on the state of human rights, included a part on ESC rights (economic, social and cultural rights) which addressed among others the right to water. It highlighted the difficulties faced by the inhabitants and the problems threatening the realisation of the right. Similarly, the 2013 annual report identified access to clean and safe water as a challenge. The Commission also discussed water in relation to the mining sector. The 2011 annual report made recommendations to the authorities

to take action and comply with laws and regulations as the consequences of abandoned mining pits were concerning.

PRACTICE 3: PROMOTE WATER GOVERNANCE RELATED HUMAN RIGHTS WITH A PARTICULAR ATTENTION TO MARGINALISED AND VULNERABLE GROUPS OF PEOPLE

Many National Human Rights Institutions have paid special attention to vulnerable and marginalised groups of people in promoting human rights. In the context of the right to water and sanitation, indigenous peoples, internally displaced persons, persons with disabilities, women, etc. may require particular attention. Such promotional activity of NHRIs may include the publication of dedicated thematic reports, annual reports containing sections on water governance related human rights with special focus on marginalized and vulnerable groups and other similar type of activities.

1. Indigenous Peoples

In relation to the right of indigenous peoples, the **Uganda Human Rights Commission** (UHRC) conducted in its 11th annual report an assessment of the rights of ethnic minorities and specifically looked at their right to water. The UHRC observed that special attention needs to be paid to indigenous persons and noted that ethnic minorities have critical challenges in accessing clean water for domestic use. The Commission subsequently issued recommendations to the government on how to improve the situation concerning the right of water of indigenous persons.

In its report *Human Rights and Water*, the **New Zealand Human Rights Commission** discussed the right to water in relation to the Treaty of Waitangi /Te Tiriti o Waitangi and Māori values. The report sheds light on a growing concern of Māori with regard to the ownership of freshwater along with a new era of co-governance and co-management providing a way to give full recognition of the relationship between Māori and water. As for participation, the report advocates for the maintenance and monitoring of water services to be participatory and underlines the need for transparency and access to information. It also outlines positive and negative examples in that context.

2. Women's rights

The **Indian National Human Rights Commission** issued a thematic report on *Women's Right to Health*. In assessing the implementation of the National Nutrition Policy of 1993 the Commission raised the lack of coordination between different departments that are supposed to provide supportive services, including safe drinking water and sanitation, and programmes

that are related to women's empowerment, non-formal education and adult literacy.

The **Bangladesh Commission** issued a report on the government's compliance with the International Covenant on Economic, Social and Cultural Rights. In one of the sections the Commission lays down provisions on the right to water encompassed in the Convention on the Rights of Persons with Disabilities, as well as the associated right to enjoy adequate living conditions found in the Convention to Eliminate All Forms of Discrimination Against Women, and the obligation to combat disease and malnutrition and provide clean drinking water enshrined in the Convention on the Rights of the Child.

In *The Third State of Human Rights Report*, the **Kenya National Commission** stressed the importance of accessibility of water for vulnerable groups in drier areas, mainly women and children. It recommended a coordinated intervention by the Ministry of Development of Northern Kenya and Arid Lands.

3. Persons with disabilities

The *Disability Manual* published by the **National Human Rights Commission of India** assigned a subchapter to the human rights to food and water. It identified the international standards for the right to clean water followed by the domestic framework in the context of persons with disability. It further recommended that actions should be taken to ensure that accessibility needs are included in rural development programs among others in terms of access and use of sanitation facilities and water supply. Concerning the right to sanitation, the Commission made mention of regulations and legislation which require the State to adapt toilets for people with disabilities, including in the transport sector.

The *2013 Special Baseline Study Report on Human Rights in Namibia* of the **Ombudsman of Namibia** includes a chapter on Civil and Political Rights which are also discussed specifically in relation to vulnerable groups. The section on People Living with Disabilities identifies safe drinking and sanitation as an issue of special concern for this group. It states that people with disabilities living in informal settlements are more susceptible to diseases because of drinking unsafe water or not having sufficient water because of the conditions they find themselves in at these residential areas.

4. Internally displaced persons

The **Kenya National Commission on Human Rights** issued a report on human rights and internally displaced persons. *Homeless at home: A human rights assessment of situation of internally displaced persons* illustrates the situation of the human right to water and sanitation for displaced persons. Among others, it finds that their main sources of water are rivers and streams and unprotected boreholes and wells. The distance of the source of water as well as the quality of the water are listed as being the two main challenges for displaced persons. In addition to statistics on the issue, it also gives examples of some positive developments in the country in this regard.

PRACTICE 4: RAISE PUBLIC AWARENESS ON WATER GOVERNANCE RELATED RIGHTS THROUGH CONFERENCES, STATEMENTS AND OTHER SIMILAR PROMOTIONAL ACTIVITIES

NHRIs organize or participate in public awareness raising activities, which either focus directly on the right to water and sanitation or are related to it through an interrelated issue. The activities may take form of conferences or other similar type of events that may also serve to present publications in order to reach wider populations. Fact sheets, promotional videos and statements also contribute to promoting water governance related human rights to the wider public.

1. Conferences

The **Hungarian Ombudsman for Future Generations** participated at the international conference of the Budapest Water Summit in 2013, promoting the human rights to water in the international arena. In general, the Ombudsman also promotes the human rights to water through the dissemination of reports, volumes, videos, and through its attendance at events, such as the Budapest Water Summit, all of which have a long-term positive impact.

The **Indian National Human Rights Commission** organized the “National Conference on Health Care as a Human Right”. The right to water and sanitation was discussed in the context of improving healthcare in terms of quality of water, and promotion of hygiene and sanitation. One of the four substantive sessions was on “Clean Drinking Water, Hygiene and Sanitation: A Step Towards Better Health Care”.

The **Human Rights Commission of Côte d’Ivoire** participated in a conference on climate change in 2009. The conference resulted in the *Lomé Declaration on Climate Change and Protection of Civilians in West Africa*, in which the participants called for the use of a human-based approach in

considering the impacts of climate change. The participants discussed the threats that communities and populations are facing due to climate change, such as flooding and declining water supplies. The conference identified the consequences of climate change as being a factor for the aggravation of conflicts between local communities over natural resources. It also pointed out that the rights of displaced persons, including the rights to shelter, clean water and health, are infringed.

2. Statements and press releases

In **Peru, the Ombudsman** made a series of statements concerning the situation of the right to water and sanitation in the country. In this regard, a number of press releases were published: respect to delays in relation to the implementation of sanitation works in La Libertad, recommendations on commitments arising out of environmental emergency plans in Loreto, the expression of concern regarding the oil spill in the sea of Tumbes and the call for eradication of illegal mining are all among recent statements related to the human right to water.

Issuing statements on the occasion of world water day offers a good opportunity for NHRIs to promote water governance related human rights. In a statement as part of the world water day 2014, the **Attorney for the Defence of Human Rights of the Procuraduría para la Defensa of El Salvador**, reiterated its issued position which recognized that water is essential for life, health, food and to live in dignity. He again expressed concerns about the problems of water in El Salvador, in relation to the high levels of pollution and scarcity vital liquid thereof, and called on the government to take actions.

The **Human Rights Commission of Côte d'Ivoire** issued a statement on the human rights situation in the country during the post-electoral crisis that lasted from November 2010 to April 2011. It made mention of the right to water and sanitation by deploring the fact that the provision of public services and supply of water were paralyzed in many municipalities.

Success story

“The style of presenting the results of our investigations seems to be really important both in forming the public opinion as well as in realizing the intended solutions in cases of violation of fundamental human rights. A topic which is emphasized at the right time with the right tune can better reach the public as well as decision-makers.”

Hungarian Ombudsman for Future Generations

The **Indian Human Rights Commission** issues statements on reported violations and the steps taken by the commission in this regard. For example, in a press release dated June 2014, the NHRC requested the governmental departments to report on the issue of lack of toilets and open defecation. It also raised concerns about safety issues in the use of sanitation facilities following a survey that found that 30% of women who went out for toilet became victims of sexual assault.

3. Fact sheets, promotional videos and presentation of publications

The **NHRI of Sierra Leone** presented its 2011 annual report during workshops and public lectures, as well as through radio programs and other activities and events. The objectives of the engagement were among others to ensure that the report reached the wider population of the country and to conduct awareness-raising on the rights of women, children and persons with disabilities.

In **Hungary, the Ombudsman for Future Generations** launched the *National Human Rights Institutions Water Initiative*. This Hungarian institution is instrumental in promoting an enhanced role of NHRIs in water governance for the realisation of human rights. In view of reaching out to peers, the Ombudsman released a promotional video available to NHRI colleagues on the human right to water with Hungarian examples and challenges.

In a video made available to the wider public on the internet on the NHRI's activities in relation to water governance and Basin Management in particular, the **Office of the Ombudsman of Argentina** presented its experience and actions of this Argentinian institution in promoting human rights in water basin management.

The **South African NHRI** created a guide, which enables right holders to understand, claim and seek for redress in case their right to water and sanitation is violated. It briefly describes the human right to water and sanitation, the legal content of the right and the role of the SAHRC in relation to the protection of the human right to water and sanitation.

4. Importance of media

During investigations, the **Hungarian Ombudsman for Future Generations** sometimes makes official visits to the site where a petition originated from (e.g. the site of groundwater pollution, or drinking water wells, etc.). It is usually a good opportunity to make a certain case more widely known by the public, as visits of the Office attract the interest of the press more easily

than reports or official recommendations. In other cases, the Ombudsman makes regular visits to every country in relation to the adequate protection of human rights to water and to a healthy environment, which usually catches people's attention. In the field of human rights promotion, it can sometimes be challenging to find a topic that is interesting enough for the media to be dealt with and distributed. The Institution realized that it is very important to choose the right language and the right cases when presenting a problem. It sometimes also holds press conferences to amplify the message and make important cases more well-known.

PRACTICE 5: PUBLIC EDUCATION RELATED ACTIVITIES ON WATER GOVERNANCE RELATED HUMAN RIGHTS

Developing human rights education in relation to water governance for the realisation of human rights is key to the promotional angle of NHRIs work. NHRI practices show that several institutions have already been putting considerable efforts into educating both the wider public but also their own staff in that context. This involves participation in capacity building and other similar type of activities.

The **Kenya National Human Rights Commission** was involved in a capacity building workshop sought to enhance the understanding of the right to water and sanitation among duty bearers. Water service providers, civil society organizations and the ministry of water and irrigation participated in the workshop. It enabled the participants to establish a common understanding on the human rights conceptual framework in relation to the right to water and sanitation; share contextual experiences, lessons learned and good practices on promoting the right to water and sanitation; and review capacity building materials on the right to water and sanitation that the Commission had developed earlier. The Kenya Human Rights Commission developed 5000 facts sheets on the rights to health, water and sanitation, and disseminated them among the population.

In the training programmes of the **West African Network of NHRIs** addressed to their own staff, part of the curricula concerns right to water, sanitation and healthy environment. In addition, the trainings also have modules on the rights to health and education.

The **South African Human Rights Commission** carried out various water promotional activities. In relation to advocacy, its activities include presentations, speeches and training on the right to water and associated rights.

During the capacity building programs and training under the subject Economic, Social and Cultural Rights, the **NHRC Nepal** is empowering the civil society and non-governmental organizations (NGOs) in relation to the right to food and the right to water.

PRACTICE 6: COMMUNITY BASED INITIATIVES TO PROMOTE WATER GOVERNANCE RELATED HUMAN RIGHTS

NHRIs may also organize community-based activities that directly involve local communities or subsectors to promote water governance related human rights.

In **Panama, the Ombudsman** organized the cleaning of the Mariato beach, as part of the commemoration of the World Water Day. This cleaning allowed to collect a large amount of leaves of palms at the edge of the beach, as well as glass bottles, beer cans, pampers, disposable plates, spoons and plastic forks, and other solid waste deposited in garbage bags.

B. PROTECTION OF WATER GOVERNANCE RELATED HUMAN RIGHTS

The protection of the right to water and sanitation and other water governance related rights may be challenging for NHRIs, *inter alia*, due to the progressive nature of social, economic and cultural rights. In addition, in several countries there is a reported general perception of key actors that the right to water and sanitation is non-justiciable. This section presents practices adopted by various National Human Rights Institutions in view of protecting water governance related human rights. Investigating human rights violations is central to this role. In addition, examples of NHRI actions seeking possible remedies for victims of human rights violations and possible avenues to access them are included. As a result of their protection activities, some NHRIs observed the enhanced respect of the right to water by State actors and third parties alike.

PRACTICE 1: PROTECT HUMAN RIGHTS IN THE CONTEXT OF WATER GOVERNANCE BY INTERVENING IN ENVIRONMENTAL ISSUES

Water governance may be addressed in the context of various environmental issues. Pursuant to their function of protection, NHRIs may also intervene in such issues through investigations and inquiries.

The **Defensor del Pueblo of Argentina** has a strong environmental focus and deals with water and sanitation as part of the environmental theme. The Argentinian NHRI has been taking a very active role in promoting human rights in water basin management. It has experience in intervening in complaints on insufficient ecological flows, water pollution from industrial and domestic sources, inadequate water management, erosion, floods, illegal water diversion, habitat degradation, land use changes, etc. To address such issues, the institution uses strategies, which allow to understand the social, ecological and legal system that interact with them. The focus of their activities in relation to water relates to promoting the establishment of basin authorities or advocating changes in the existing one's proceedings in line with the principles of ensuring access to information, accountability and wide citizen participation in environmental decision-making.

Water, as an environmental element of outstanding importance, was examined from two aspects by the **Ombudsman of Hungary** in 2011. One is the protection of water, from human polluting activity; this protection may be

realised by way of plans for the management of catchment areas in order to attain the objective of a good ecological status and by promoting sustainable management of water, a finite natural resource. The other aspect is protection against harmfully too much or harmfully too little water, such as the protection of human lives and property, the prevention of floods and inland waters, or the mitigation of damage.

In light of its protection functions, the Ombudsman investigated among others the severe natural damage caused by the firm Hubertus Ltd in the Nagy-berek Fehérvíz Nature Reserve. The Ombudsman assessed the enforcement of the nature protection requirements in water law licensing proceedings. It established that the first instance water law operating licence, issued on the basis of guidance from the second instance water management authority, had resulted in a violation of the law since the stipulations related to the regulation of water did not take into consideration the nature protection status and multiple protection of the area.

The Hungarian Ombudsman also received a submission from an NGO in relation to the protection of groundwater loss from abandoned mine lakes. Investigations revealed that due to regulatory omission, threshold values are missing under which the authorities can deny leave for mining, furthermore, the actual and combined assessment of the impact of similar activities in the water basin management plans are also lacking.

Following a complaint by the Alliance for Conservation and Development, the **Panama NHRI** conducted an investigation on potential environmental impacts of the Chan-75 Hydroelectric project, including the right to water. After observation, interviews, investigation, analysis of documents and records relating to the project, the Ombudsman published a special report expressing its concerns with regards to the socio-cultural and environmental impacts caused by the Chan-75 Hydroelectric Project. The Ombudsman relied on the international human rights interpretations in relation to the right to a healthy environment, the right to water, the right to health, and the right to participation. It called upon the State, particularly the National Environmental Authority, to closely follow the implementation of the project in light of its impact on human rights, including the right to water.

In 2005, the **Kenya Commission on Human Rights** undertook an inquiry concerning allegations by the community of Magarini that salt manufacturing companies operating in the area had committed human rights violations against the community. It was claimed, among others, that salt

manufacturing in that area carried out activities which damaged the environment and, as a result, denied the surrounding communities access to fresh water. Complaints on salinization of freshwater wells and springs were also investigated. Sanitation facilities were also allegedly inadequate for workers. The Commission undertook a fact-finding visit and a baseline survey was conducted to identify stakeholders and obtain additional information on the petition. Preceding the hearings, the Commission sought to obtain community participation and attract interested parties. The local administration, salt companies, the public, line ministries and experts also presented written and oral submissions to the KNCHR. The inquiry report lays down the findings, decisions and recommendations made by the inquiry for each of the issues addressed.

PRACTICE 2: PAY PARTICULAR ATTENTION TO VULNERABLE AND MARGINALISED GROUPS OF PEOPLE IN INVESTIGATING ISSUES RELATED TO WATER GOVERNANCE RELATED HUMAN RIGHTS

Marginalized and vulnerable groups may experience increased difficulties in seeking remedies to alleged human rights violations. This section shows good examples of NHRIs paying special attention to these groups (e.g.: indigenous peoples, minorities etc.) already during the investigation of alleged violations.

In **Hungary, the Ombudsman for Future Generations** investigated the impact of a measure which turned off or reduced water pressure in public wells on ground of unduly high consumption, illegal discharge and wastage. The provision affected mainly the city's Roma population. The Ombudsman launched an investigation suspecting the violation of the rights to healthy drinking water, human dignity and the right to equal treatment. The Ombudsman for Future Generations established that the State is responsible to set out fair and proportional water charges to encourage the economic use of water, while at the same time, it is also in charge to promote solidarity towards those who are not able to bear the full costs of their basic everyday human needs. Since the aim of abolishing illegal discharge cannot be connected to other fundamental rights of the person, restrictions on water use are qualified as indirect discrimination.

In investigation exploring the potential environmental and socio-cultural impacts of the Chan-75 Hydroelectric Project, special consideration for affected indigenous people was taken into account by the **Panama NHRI** (Defensoría del Pueblo) on the basis of the Constitution. The Ombudsman noted that the consultation mechanism held for the approval of the project,

albeit in compliance with the commitment to inform, was not a sustained process that allowed those affected to have voice on the development and clarify any doubts that may arise in data at any stage thereof. To this effect, the Ombudsman recalled that the State should refer and implement international instruments on the rights of indigenous peoples and explicitly apply the concept of free and informed participation in the course of project implementation.

During its nation-wide investigation on the state of human rights in mining communities, the **Ghana NHRI** led focus group discussions with strategic sections of mining communities including traditional rules, women's groups, farmers, artisanal miners and illegal artisanal miners and the youth. The NHRI received reports from communities from six different areas presenting various human rights issues. In addition, the investigation comprised of site inspection and observation along with sampling and testing water. This allowed the investigators (lawyers, statisticians, consultants and researchers) to examine the relevant issues in considerable depths. The NHRI also sought input from various institutions and a wide spectrum of other stakeholders.

PRACTICE 3: TRIGGER PARTICIPATION OF COMMUNITIES IN INVESTIGATING WATER GOVERNANCE RELATED HUMAN RIGHTS VIOLATIONS

Comprehension of the local picture in addition to the national situation is of utmost importance as local realities and challenges may be often masked by good national statistics. Practices confirm that by holding public hearings during investigations and inquiries, along with gathering testimonies from a wide-ranging stakeholders (residents, civil society organizations in addition to governmental bodies) many NHRIs have succeeded to mobilize local and other communities during investigations. These techniques allowed an increased understanding of the human rights situation.

In the context of an inquiry report (Malindi) concerning allegations of human rights violations of salt manufacturing, the **Commission of Human Rights in Kenya** advertised the commencement of the investigation process on radio and newspapers so as to attract all interested parties. Efforts were also made to mobilize the affected Marereni community to participate through notices and other announcements.

In the **Sierra Leone Commission's** inquiry report on gross human rights violations in Bumbuna (2012), personal statements by victims and focus group discussions allowed the NHRI to focus on the perspectives of the community and its view on the causes and impacts on the different segments of the population. The Commission also issued a public notice to call for the submission of written memoranda or other documents that provide relevant information for the inquiry. Although the inquiry was related to protests of workers due to their working conditions at African Minerals Ltd, the Commission also addressed the complaints of the community in general as they were also involved in the strike. It found for example that water was an issue for women who held that the activities of the company interfered with the water source.

In the context of a broader investigation on the right to water and sanitation, the **South African Human Rights Commission** held provincial hearings which enabled local communities to:

- Interrogate the Department of Performance Monitoring and Evaluation report relating to their province and municipalities from their own lived experience.
- Share their analysis of delivery of these rights, the initiatives they have taken to access their rights and the solutions they have proposed.
- Reflect on the differentiated impact of the lack of rights, for example, on gender-based violence and gender equality.
- Engage with and hold accountable local provincial and national government to ensure the right to water and sanitation is realized.
- Enforce government accountability to regulate and monitor private entities contracted to deliver the services in a way that upholds human rights.
- Identify what businesses pay, in comparison to households, for their use as well as pollution of water.

The **SAHRC** also raised the importance of ensuring that an analysis of the impact of a lack of service delivery on various groups of people is understood. To this effect, the Commission conducted nation-wide public hearings on water and sanitation related to the issues of service delivery and stakeholder collaboration and advocacy. The hearings sought to assess:

- The impact that a lack of access to water and sanitation can have on one's life and dignity, as well as one's ability to access other human rights;
- The impact of poor access to water and sanitation on the right to health, education and the environment;
- The impact that a lack of access to basic services has on particular groups such as women, children and people with disabilities;

- The state of national and provincial access to water and sanitation in the country. The impact of poor access to water and sanitation on the right to health, education and the environment;
- The impact that a lack of access to basic services has on particular groups such as women, children and people with disabilities; and
- The state of national and provincial access to water and sanitation in the country.

PRACTICE 4: LINK WATER GOVERNANCE RELATED HUMAN RIGHTS TO INVESTIGATIONS CONDUCTED IN RELATION TO SPECIFIC SECTORS

Several National Human Rights Institutions have carried out investigations and published findings on the human rights situation of specific sectors (e.g. mining, investigations into labour rights of specific sectors etc.), some of which also included issues related to the right to water and sanitation and other water governance related rights.

The **Hungarian Ombudsman for Future Generations** carries out comprehensive and strategic investigations in relation to certain fields, such as the state of thermal waters in Hungary, or unlicensed water wells, etc. In the work of the Office the protection of water resources is based on a human rights approach and on the notion of the common heritage of the nation, which is also enclosed in the Fundamental Law of Hungary. The Ombudsman has been also active in relation to the impact of the extractive industry on water sources. Hungary is impacted negatively by mining activities such as open-pit gravel and sand mining. Following an NGO submission, the Ombudsman established that there are regulatory deficiencies that prevent the protection of groundwater loss from abandoned mine lakes. It recalled that impact assessments are required by law prior the opening of new mines and that the user is required to pay fee set in advance following the utilization of an environmental element. The Ombudsman found implementation gaps in this regard and called upon the minister to resolve them.

The **National Human Rights Commission of Bangladesh** published a report on the rights of garments workers. This report entitled *Security and Safety Net of Garment Workers: Need for Amendment of Labour Law* analyses the conditions of garment workers in light of the national legal framework in Bangladesh and international standards. It included water-related concerns in addressing security issues. The study report concluded that 68% of the factories in the sector of readymade garments do not have pure drinking water available for the workers.

The **NHRI of El Salvador** reported on metallic mining in the country. The objective of its publication was to reflect the impacts that could be induced to Salvadorian population by the decisions regarding the authorization of metallic mining exploitation projects within the Salvadorian territory. Secondly, it also aimed at highlighting the potential damage to Salvadorian residents of the Cerro Blanco metallic mining project, located in Guatemala. The report underlined the harmful effects of metallic mining which are the decrease of available water (and contamination of it), damage to marine environment and pisciculture and deterioration of farming land (along with its effects on livestock). It also highlighted the Helsinki Rules on the Uses of the Waters of International Rivers, pursuant to which States that share international drainage basins must “prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State”.

The NHRI of El Salvador subsequently presented a report specifically on the Cerro Blanco metallic mining project and the related potential human rights violations on 10 January 2012. The document sheds light on the mining industry in El Salvador and the impact of the mining industry on a range of human rights, such as the right to life, right to health and the right to water, and especially the harmful effects on the Lempa River which is the main water source for El Salvadorians. In addition to a description of metal mining, the report lays down the findings of the evaluation team in relation to the studies in the Upper Lempa River. A part of the report addresses potential human rights violations of the project and a list of conclusions and recommendations is included.

The **Ghana NHRI** addressed the right to water in a nation-wide investigation on the State of Human Rights in Mining Communities in Ghana. It found that access to water is a problem in many communities. Tests of water sampled from water sources in 22 out of 28 mining communities showed that, at least, two water quality parameters with health implications were present and in concentrations significantly higher than the World Health Organization maximum allowable limits for drinking water. The report *The State of Human Rights in Mining Communities in Ghana* lays down the findings from the mining communities where water and water sources were also assessed.

The **head of the ombudsman office of Callao, Peru** (office of the NHRI located in Callao), warned that through monitoring by commissioners of wells and reservoirs, it was identified that the company EMAPA-Hualal did

not ensure adequate provision of sanitation due to poor infrastructure, a situation that threatens the health of the population. Also in Huando, San Isidro and San Cristobal reservoirs verified the presence of fecal waste and solid waste in the vicinity as well as infrastructure in very poor condition, with broken pipes and rusted caps.

PRACTICE 5: AGGREGATE SUBMITTED COMPLAINTS TO BETTER PROTECT WATER GOVERNANCE RELATED HUMAN RIGHTS

Water governance related human rights violations often reveal systems-level failures and legislative gaps. Whilst addressing individual water governance related human rights violations may offer effective remedy to victims individually, by regrouping violations NHRIs are in a better position to offer protection against systematic violations and might even prevent future malfunctioning of legislative and governance systems in general. There are several good examples of such aggregating practice by NHRIs that eventually contributed to an improved water governance at national level.

Following the receipt of two complaints on access to sanitation, **the South African Human Rights Commission** findings recognized that sanitation problems revealed by individual complaints were part of a bigger problem facing millions of people lacking access to sanitation and the lack of right based approach to service delivery. Therefore, the NHRI took a decision to strategically link these complaints to a broader investigation on the right to water and sanitation in the country. This broader investigation led to provincial and nation-wide public hearings followed by the publication of a report assessing the right to water and sanitation in South Africa.

The **Argentinian Ombudsman** received several complaints denouncing the serious contamination affecting residents in the area of Matanza-Riachuelo River Basin, one of the most contaminated sites at the time in Argentina. The accusations were added to a number of complaints made by organizations or individual citizens in relation to conditions and problems concerning socio-environmental issues in the Matanza-Riachuelo Basin. As a result, the National Ombudsman filed a complaint (N. 9924/02) which led to an investigation resulting in several recommendations by the Ombudsman, a Supreme Court decision, the establishment of an inter-jurisdictional Basin Authority and eventually a Chartered Body with the participation of the NHRI exercising control over the clean-up plan.

The **Ombudsman of Hungary** regroups complaints and petitions submitted by different individuals into certain categories reflecting the overarching nature of a certain problem. After sorting out these petitions, it can often observe that similar problems point to the same systems-level failure. In such cases the Institution can proceed to investigate the failure ex officio and call for a revision of the law if found necessary.

Success story

Aggregation of submitted complaints can be a successful practice for NHRIs in relation to water governance:

“Knowing what issues cause the most trouble for residents can help the institution find systems-level failures and gaps. While solving these issues the institution can prevent future malfunctioning of legislative and governance systems as well as promote improved governance of water resources.”

Hungarian Ombudsman for Future Generations

The **Office of the Ombudsman of Peru** received increasing water related complaints from 1999 to 2007. In 2007, citizens across the nation filed more than two thousand complaints with the Office of the Ombudsman concerning water and sanitation service. During the same period, the Office of the Ombudsman was developing a strategic roadmap to advocate and defend Social and Economic Rights. This effort led to the Ombudsman’s decision in 2003 to launch an investigation of water and sanitation services throughout Peru, based on the idea that rights violations accounted for many of the obstacles to effective water and sanitation management.

PRACTICE 6: SEEK REMEDIES WITH THE APPROPRIATE GOVERNMENTAL OR JUDICIAL BODY FOLLOWING A COMPLAINT

Bringing identified human rights violations to justice, seeking remedy and redress are key roles of NHRIs in view of protecting human rights. In addition to offering a complementary mechanism to the judiciary, NHRIs also have access to the government and policymakers whilst dispose the right to turn to the wider public (e.g.: publishing findings etc.). Depending on their mandate, NHRIs used various avenues to disseminate the results of their investigations, formulate recommendations, seize governmental and other bodies to offer redress to victims.

Note: The current section offers several examples, however other thematic chapters contain additional good examples.

1. Address and engage with governmental and other bodies

Residents of the Okalongo Settlement in the Omusati Region complained to the **Office of Ombudsman of Namibia** about effluent sewerage water at Okalongo ponds flowing/discharging into oshanas⁴, contaminating drinking water and posing a health risk to both humans and animals. A further concern was that these ponds are erected within oshanas, causing the ponds to overflow freely into the oshanas during the rainy season. After visiting the sites and confirming the allegations, the Ombudsman took up the matter with the District Environmental Health Office of Omusati Region. The district office indicated that the matter is under consideration and as an interim measure additional sand has been added to one side of the pond's bank, stopping the discharge of effluent into the oshana for the time being.

The protection related work of the **NHRC Nepal** resolved some of the local issues while negotiating with the local authority/government for the access to water and eliminating discrimination culture for the use of water resources. Some of the cases regarding the distribution of water and use of tap water have been resolved when officers were in field mission while discussing with locals and the local authority.

2. Prior to the publication of reports, address findings and recommendations to the government to seek detailed responses

This inquiry practice has been adopted by the **South African Human Rights Commission** prior its 2014 *Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa*. The report itself is the assessment of the overall situation of the right to water and sanitation in the country. It followed national and provincial hearings that were held to determine the work of the South African government to realize the human right to water and sanitation. The draft findings and recommendations were circulated to the government representatives. They were also delivered to relevant government departments for their responses within a specified timeframe. Some departments requested further engagement on the Commission's findings and recommendations which resulted in a roundtable discussion with over ten departments.

4. Oshanas are depression-like water-courses formed when the long, flat, open sandy plains in northern Namibia are filled with water during the rainy season. Gerhard de Klerk, *Namibia Senior Secondary Certificate, Geography Module 1*, Cambridge University Press, 2009, p. 53.

3. Issue recommendations to various stakeholders following investigations and inquiries

Following a complaint by the Alliance for Conservation and Development, the **NHRI of Panama** conducted an investigation on potential environmental impacts of the Chan-75 Hydroelectric project, including the right to water. The Ombudsman found that despite repetitive complaints by some members of the community, the project is vital for the future energy demand of Panama. It called upon the State to respect the right of the citizens to have a free and informed consent in the implementation of the project. It also called upon the State, particularly the National Environmental Authority, to closely follow the implementation of the project in light of its impact on human rights including the right to water.

In **Hungary, the Ombudsman for Future Generations** received a submission from an NGO in relation to the protection of groundwater loss from abandoned mine lakes. Investigations revealed that due to regulatory omission, threshold values are missing under which the authorities can deny leave for mining, furthermore, the actual and combined assessment of the impact of similar activities in the water basin management plans are also lacking. The Ombudsman called upon the minister both to resolve the implementation gap as regards setting threshold values for impact qualification, as well as laying down detailed rules of payment obligations, encouraging a more economic management of mining activities and the reduction of the evaporation surface to a minimum.

In the Malindi inquiry report, the **Kenyan Commission on Human Rights** formulated short-term and long-term actions that should be taken by various actors in regard to the environmental impacts addressed in the inquiry. Along with the recommendations, the aim of response and the responsible actors are identified for each specific response sought. An example of short-term response is the need to secure and safeguard sweet water springs, wells and wetlands. The aim is among others to ensure that the poorest of the poor in the local community continue to get access and use water from these natural water points at no cost. The following key actors were further identified for this action: Ministry of Water and Irrigation, Malindi County Council and Kenya Salt Manufacturer's Association, and the Ministry of Environment and Natural Resources.

In its annual report, the **Human Rights Commission of Mali** also formulated recommendations to the Commission itself. It identified for example the

need to organize systematic and regular visits of all detention centres and offer training on human rights to prison officials.

4. Seizing international bodies

The **Salvadorian NHRI** requested the Inter-American Commission on Human Rights (IACHR) for a special hearing to discuss the potential threats of the Cerro Blanco mining project. A thematic hearing was held at the IACHR in November 2012, where the situation of people affected by metal mining in El Salvador was addressed.

PRACTICE 7: MONITOR THE COMPLIANCE WITH JUDICIAL ORDERS AND FOLLOW UP ON THE FINDINGS FOLLOWING INQUIRIES AND INVESTIGATIONS

Participation of NHRIs in the follow up process to recommendations or other type of remedies may contribute to monitoring progress towards compliance. In this context, NHRIs may offer a unique complementary avenue in view of enforcement and thereby protection of rights.

The **NHRI of Argentina** took on a leading role in ensuring a human rights based approach towards the violations revealed in relation to the Matanza-Riachuelo River Basin. The efficient actions of this institution not only led to a Supreme Court decision ordering the cleaning up the river, but also to the formulation of a body monitoring the implementation of the orders. In addition, as the coordinator of the Collegiate Body, the Ombudsman of Argentina monitors compliance with orders of the Supreme Court in relation to the Matanza-Riachuelo River Basin. It reports to the Court in relation to the enforcement of programs submitted by the authorities, makes observations on the proposed measures and has requested inclusion of pending issues onto the agenda.

The **South African Human Rights Commission** held site inspections and meetings in Rammulotsi and Makhaza, the two communities where unenclosed toilets were identified. Among others, it aimed to assess the progress made in implementing the findings it made in the two cases. The SAHRC has been also monitoring adherence with the recommendation presented in its report on water and sanitation. It involves on-going liaison with government departments and other stakeholders.

Following its inquiry report on human rights violations in the salt manufacturing industry in Magarini, the **Kenyan Commission on Human Rights** met with the local communities in 2012 to follow up on the recommendations it issued.

C. MONITORING WATER GOVERNANCE RELATED HUMAN RIGHTS

Monitoring human rights is a major function of NHRIs. Whilst monitoring is a key aspect of the general protection mandate with significant promotional features, due to its utmost importance a separate chapter is devoted to various NHRI monitoring practices. The practices below seek to highlight innovative monitoring tools, techniques and mechanisms which may inspire other NHRIs in monitoring water governance related human rights.

PRACTICE 1: DIVERSIFY THE SOURCES OF INFORMATION DURING INVESTIGATIONS AND MONITORING ACTIVITIES

Lack of credible sources is an obstacle that NHRIs may face with regard to water governance related human rights violations. This issue has been tackled by various institutions by diversifying their sources of information, including sources supplied by local communities and other various stakeholders in addition to sources of international bodies.

During the inquiry on gross human rights violations that occurred in Bumbuna, the **Sierra Leone National Commission on Human Rights** received personal statements from victims, as well as reports from other organizations conducting initial investigations into the Bumbuna incidents and additional documents (e.g. reports of previous inquiries etc.) which were submitted at the public hearing. In addition, focus group discussions were carried out to confirm the description of events. Receiving information from diverse stakeholders and sources allowed to corroborate the information through different methods.

The **Kenya National Commission on Human Rights** consulted various stakeholders during the elaboration of its report on internally displaced persons (*Homeless at home: A human rights assessment of situation of internally displaced persons, 2011*) containing the assessment of the human right to water and sanitation situation of internally displaced persons. This project was carried out in cooperation with the United Nations High Commissioner for Refugees. In addition to household surveys, incident reports and focus group discussions, meetings with community leaders, internally displaced persons leaders and the local administration were also organized.

The **Office of the Ombudsman of Namibia** undertook a household survey to feed information into its 2013 Special Baseline Study Report on Human Rights. This national household-level survey designed and conducted in 1,280 households allowed to assess perceptions, attitudes and understanding of human rights issues in Namibia. This method involving nation-wide household surveys contributed to determine whether access to water and sanitation improved, stayed the same or deteriorated in the country.

In its report on the Bangladesh compliance with ESC rights (*The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance*), the **Human Rights Commission of Bangladesh** addressed the right to water and referred to the findings of Ms. Catarina de Albuquerque, Special Rapporteur on the human right to water and sanitation. Referring to sources of the Special Rapporteur allowed to identify the remaining gaps between the national framework and international requirements for the right to water and sanitation.

Key factors of success

- *Credibility enjoyed by the institution*
 - *Strong relationships with relevant government departments at a national, provincial and local level*
 - *Network of specialists and resources built by working closely with civil society organizations involved in associated projects and studies*
 - *Understanding of the analysis of the impact of a lack of service delivery on various groups of people*
 - *Work closely with the national statistics body to ensure the rigorous collection of relevant information on the level of access to water*
-

The **Commission of Côte d'Ivoire** also relied on information from United Nations bodies to audit the human rights situation in the country including reference to the right to water and sanitation. In addition, it also obtained information from various stakeholders including the media, victims of violations and non-governmental organizations.

In **Mali, the National Commission on Human Rights** held meetings with the staff, visited the premises and discussed individually and in groups with inmates to carry out audit of prisons and police stations in the country. In total, the Commission visited detention centres in four municipalities focusing on the situation of detainees along with available infrastructure.

PRACTICE 2: ADDRESS WATER GOVERNANCE RELATED HUMAN RIGHTS MONITORING BY CONSIDERING THE INTERDEPENDENCE AND INDIVISIBILITY OF HUMAN RIGHTS

The ability to address the right to water and other water governance related rights through different angles may be a key factor of success in relation to water governance as it allows NHRIs to monitor, promote and protect the right to water in its various aspects. In the context of their monitoring functions, NHRIs may thus consider the interdependence of human rights in addition to also paying special attention to marginalised and vulnerable people.

1. The right to food, the right to housing and the right to health

The **NHRC Nepal** developed a user's guide on indicators for monitoring economic, social and cultural rights in cooperation with the Office of the High Commissioner for Human Rights in Nepal: *Indicators for Monitoring, Economic, Social and Cultural Rights in Nepal, User's Guide*. While the focus of this work is mainly on the right to food, the right to housing, the right to health, the right to education and the right to work, indicators under three of these rights relate to the right to water and sanitation. The NHRC Nepal is further planning to work effectively for the protection and promotion of the right to water and food together.

One of the process indicators for the right to adequate food is the proportion of targeted population having access to clean drinking water in the reporting period. As for the right to housing, the following three indicators are included among other process indicators: i) proportion of household budget of target populations groups spent on water supply, sanitation, electricity and garbage disposal; ii) share of public expenditure allocated to maintenance of sanitation, water supply, electricity and physical connectivity of habitations; iii) proportion of target population extended sustainable access to improved water source, access to improved sanitation, electricity and garbage disposal in the reporting period. For outcome indicators, the number or proportion of households dependent on private sources for water supply and the proportion of vulnerable households dependent on private sources for water supply are found under the right to adequate housing. Water related indicators are also found under the right to health. The user's guide mentions that the right to highest attainable standard of physical and mental health includes factors such as drinking water and adequate sanitation. In this regard, proportion of population with access to safe drinking water is identified under the process indicators.

The **Uganda Human Rights Commission** has a specialized unit that specifically looks at the right to health issues. This unit inspects among others health facilities to assess their conditions and make recommendations. A key determinant looked at by the Commission whilst carrying out these inspections is access to clean water and sanitation. The availability, affordability, and quality of the water within health facilities is assessed and recommendations are made thereafter. This aspect has been monitored since the inception of the Right to Health Unit in 2008.

In including the findings of monitoring of detention centres in its 2012 annual report, the **Mali National Human Rights Commission** added components of the right to water and sanitation when addressing health issues. It was found that all detention centres except one had limited access to water and that toilets were in bad conditions. It therefore issued various recommendations to the government and civil society organizations. These included the need to raise awareness on sanitation and hygiene measures among the prison population. It also called on the government to construct toilets and sanitation facilities which preserve the dignity and privacy of users.

2. Special consideration for marginalised and vulnerable people

The **South African Human Rights Commission** paid special attention to vulnerable groups of people throughout the assessment of the human rights situation resulting in the *Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014*. As a result, one of the main findings from the Commission's engagements is that there is a disproportionate impact on vulnerable groups, including women, children and people with disabilities. For instance, the Commission found that women were impacted as the main caregivers and people with disabilities had to use services that did not cater for their needs.

PRACTICE 3: ADOPT A SPECIAL MECHANISM FOR MONITORING STATE PERFORMANCE IN RELATION TO WATER GOVERNANCE RELATED HUMAN RIGHTS

There are several National Human Rights Institutions that developed a specialized monitoring methodology providing them with tools to perform country monitoring in relation to the human right to water and sanitation and other related rights. These examples offer unique methodologies that can pave the way for other NHRIs envisaging an enhanced role in water governance for the realisation of human rights.

1. The Defensoría del Pueblo of Colombia: Program Monitoring and Evaluation of Public Policies on Human Rights

To evaluate the performance of the Colombian government with regard to its obligations in respect of the human right to water, the Colombian Defensoría del Pueblo classified the country's municipalities into a hierarchy from "worst" to "best". The first classification used evaluation indicators based on the components of the human right to water: availability, accessibility, and quality. It also evaluated coverage levels, the gap between water coverage and sanitation coverage levels, the gap between urban and rural coverage levels, and local government capacity. The second classification referred to natural water regeneration capacity, water scarcity and vulnerability.

The Colombian Defensoría del Pueblo developed a Program Monitoring and Evaluation of Public policies on Human Rights (ProSeDHer), a research program that assists in evaluating public policies aimed at the realisation of economic, social and cultural rights, including the right to water.

The research program covers three interconnected stages. The first identifies the problems that exist against the right and subjects. It thus studies the nature and scope of the right and establishes the correlative obligations of the State. This content is analysed on the basis of existing rules, jurisprudence of the Constitutional Court, international law covenants and agreements.

In the second stage, public policies that the country has in place to comply with obligations in relation to economic, social and cultural rights – particularly in relation to the most vulnerable sectors of the population – are discussed. A measuring instrument is designed containing questions and indicators to monitor and assess the status of implementation of the law throughout the country and compliance with the State's obligations. The instrument applies to the competent authorities at national, provincial, district and municipal levels. Also, eventually, to individuals providing public services. It is only when the objectives of the first two stages are reached, that the Ombudsman may have a number of indicators relating to compliance with the obligations of the State's with regard to the implementation of economic, social and cultural rights.

The third phase begins through the production of reports that provide an objective, accurate and clear analysis of a specific problem along with a set of recommendations and initiatives to ensure the progressive realisation of the rights subject to analysis.

The Program monitoring of the public policies on the right to water – Water ProSeDHer – monitors the effectiveness of the policies adopted to realize the Right to Water in Colombia by relying on the indicators developed by the Committee on ESCR. The public policies, in such sense, include the constitutional, legal and regulatory framework of water and sanitation, national plans, departmental and development plans, strategic plans of the Ministry of Environment and public sector policies on domestic public drinking water and basic sanitation and environmental management of water resources in Colombia.

2. The Defensoría del Pueblo of Colombia: The tracking system

Another contribution of the Ombudsman of Colombia is its tracking system. The tracking system consists of a system of indicators to monitor compliance of the Colombian government with its obligations on the implementation of the right to water.

The tracking system includes variables that measure the level of progress and the degree of compliance in relation to the realisation of the human right to water. Two benchmarks are developed for the tracking system: i) Compliance with the Law and; ii) Realisation of the Right. Compliance with the Law refers the level of compliance with each component of the law, particularly availability, accessibility and quality. It indicates the relative position of the people in certain geographical space with the right. The Realisation of the Right measures the extent of effectiveness of the compliance with each component of the right to water in terms of resources, capacity and utilization.

Two main systems of indicators are developed for this purpose: i) Main Indicators and; ii) Secondary Indicators. The Main Indicators for compliance with the law are availability, accessibility and quality, whereas the Main Indicators for the realisation of the right include resource, capacity and utilization. The Secondary Indicators include resource availability, resource availability for human consumption, resource use externalities, physical accessibility, economic accessibility, access to information, quality-pollution sources hydric, quality water supply-portability and sustainability and efficiency of providers. Different variables are developed for each measurement in order to assess the level of compliance and the realisation of the human right to water.

3. The AAAQ Toolbox of the Danish Institute for Human Rights

The Danish Institute for Human Rights created an AAAQ (Availability, Accessibility, Acceptability and Quality) Toolbox aiming to support the operationalization of the rights to water, sanitation, food, housing, health, and education. It provides different stakeholders with a monitoring tool for ESC rights, including the right to water and sanitation. Designed as a multi-stakeholder approach, the AAAQ Toolbox offers common methodologies for all stakeholders as well as tailored tools for States, rights-holders, business, civil society and NHRIs.

The toolbox contains, among others, the AAAQ Framework (*The AAAQ Framework and the Right to Water – International indicators for Availability, Accessibility, Acceptability and Quality*, 2014) and the AAAQ manual on the contextualization of indicators (*The AAAQ and the Right to Water – Contextualizing Indicators for Availability, Accessibility, Acceptability and Quality*, 2014).

The AAAQ Framework offers NHRIs, as well as other stakeholders, a possible generic methodology for the operationalization of rights, exemplified through the right to water. The aim of the methodology is to identify the core normative dimensions of the right in terms of the criteria of Availability, Accessibility, Acceptability and Quality, and to develop a framework on the basis of the AAAQ criteria that consists of specific standards, generic indicators and generic benchmarks. AAAQ Frameworks for each right outline the underlying methodology and rationale behind DIHRs interpretation of the AAAQ criteria and define a set of generic human rights standards and indicators derived from international hard and soft law. The purpose of the AAAQ Frameworks is to build consensus about the understanding of the content and interpretation of the international human rights standards and principles, thereby establishing a common reference for all stakeholders.

The purpose of the Manual is to guide stakeholders through a process of identifying national indicators and targets in order to establish a common understanding and interpretation of the right to water in a specific country context. The Manual contains guidance for the adaption and application of the AAAQ Frameworks in different contexts by NHRIs and other stakeholders. The manuals provide specific information about targets for service delivery that are directly informed by human rights standards.

Module I of the AAAQ Toolbox details the human rights framework, the human rights standards for water, and the indicators and benchmarks for the right to water. It defines a set of generic human rights standards and

indicators derived from international hard and soft law. Module II of the AAAQ Toolbox helps contextualize the international indicators and targets to the national context. It allows to adapt the AAAQ Framework to reflect local and national conditions since infrastructure and resources vary of the national context and the legislations and policies differ in each country. To do so, the following components are used:

- Component 1 – Stakeholder analysis. It addresses the relationships between duty bearer, private sector providers and rights holders and how these relationships are managed. A Manual guides the user by providing possible steps that may be included into the stakeholder analysis.
- Component 2 – The structural indicators. These aim at identifying the State's acceptance of the right to water and its commitment to realize it through ratification of international instruments and adoption of national policies or strategies. The Manual provides examples of possible structural indicators.
- Component 3 – The outcome indicators. These determine whether the right to water is realized for rights holders and assess the State's obligation of result. The Manual offers a process of identifying outcome indicators.
- Component 4 – The process indicators. These indicators help identify and measure the processes that lead to the realisation of the right to water. The Manual proposes a guide to establish process indicators. These seek to determine:
 - if the government's programmes and plans adequately address the human rights standards;
 - why the government's programmes and plans lead or do not lead to the intended results;
 - if there are more efficient and effective ways of achieving the intended results;
 - if policy decisions lead to unintended negative human rights impacts (e.g. building a large dam to provide a water supply to a city that results in loss of water supply to local people).

The Danish Institute for Human Rights identified the following initiatives that it facilitated with the AAAQ framework specifically for other NHRIs:

- Develop public information campaigns and material. The DIHR AAAQ Toolbox can be used to make the link between international human rights standards and systems and local realities clearer, thereby making human rights information relevant for rights holders.
- Develop indicator and monitoring frameworks to reflect the AAAQ criteria, thereby ensuring that analysis and reporting to the State, national stakeholders and international human rights mechanisms (e.g. Universal

Periodic Review and Treaty Bodies) reflect the human rights standards and principles.

- Integrate the DIHR AAAQ Toolbox in curricula for human rights education, e.g. civic education, education of law enforcement agencies and the judiciary, human rights education in primary and secondary schools and training of civil society organizations in monitoring and reporting on ESCR.
- Develop checklists for handling complaints on ESCR. The DIHR AAAQ Toolbox can assist NHRIs in clarifying when a human right has been violated according to international and national law.
- Facilitate multi-stakeholder dialogue based on the DIHR AAAQ Toolbox to enable facts-based dialogue and joint action planning for realisation of ESCR.

4. The reporting manual of the Network of National Human Rights Institutions in West Africa

The West-African Network of Human Rights Institutions adopted a human rights reporting manual which includes items for monitoring water rights among other social and economic rights. The manual takes form of a hypothetical country report on the Economic Community of West African States (ECOWAS) Protocol on Democracy and Good Governance.

The first part of the report addresses the country context and methodology. It lays down the general information and socio-economic indices about the monitored country (e.g. life expectancy, population, GDP, education, health facilities) and describes how the report has been carried out (e.g. in close partnership with the civil society, training of trainers to monitor human rights, time frame or composition of the review committee).

The core content of the hypothetical country report is divided into three main sections: A) General Background, which discusses equal protection, access to justice and social services for all, as well as strengthening the institutions of human rights and justice in the region; B) The institutional design of NHRIs; C) Content and Coverage: Accountability on Specific Human Rights Issues/Challenges. Each section lays down articles from the ECOWAS legal framework, which are particularly relevant and related to the main theme of the section. The report subsequently formulates benchmarks for each section. Based on the legal framework and the benchmarks, the institution may monitor the progress of the country and identify the challenges that it is facing with regard to each identified topic.

In section C, the legal framework is further divided into seven sub-sections containing specific issues/challenges. One of them englobes the enforcement of Economic, Social and Cultural Rights, which in its turn addresses water issues. More specifically, this sub-section lays down Article 65(h) of the ECOWAS Conflict Prevention Framework which states that “with the active involvement of civil society, Member States shall undertake to establish community resource governance committees, particularly in sensitive internal enclaves and common border areas, to promote the transparent, equitable and environmental friendly use of [...] water [...].” The water governance benchmarks that the hypothetical report identified are the following:

- Pro-Poor national development strategy in place and implemented;
- Mechanism in place for the management of national resource;
- Anti-corruption agencies in place to ensure accountability for public resource;
- Policy and mechanism in place for enhancing civil society participation in governance.

Once the legal framework and benchmarks are identified, the institution may identify progress and challenges the State is facing with regard to each section (e.g. institutional design) or sub-section (e.g. Economic, Social and Cultural Right). The following elements may serve as examples of progress in regard to water:

- The government has established the Civil Society Commission to facilitate the involvement of civil society organizations, community based organizations and NGOs in policymaking, implementation and review.
- The government has established a commission to oversee equitable management of the country’s resources – minerals, water, land and forests.

The report also contains recommendations for different stakeholders (e.g.: the government may be called to improve the infrastructure for potable water).

PRACTICE 4: UNDERTAKE PERIODICAL VISITS OF PRISONS, POLICE STATIONS, HOSPITALS, SCHOOLS AND OTHER CENTRES IN ORDER TO ASSESS WATER RELATED HUMAN RIGHTS CONDITIONS

Several NHRI in the African continent have important experience in assessing the situation of the human right to water and sanitation during monitoring of the general human rights situation of detention centres. Others also monitor the human right to water and sanitation situation in schools, child development centres and hospitals. By undertaking periodical visits of various centres, the NHRI is enabled to review progress on the human rights situation, including the right to water and sanitation.

Findings of these visits are generally reported by NHRIs in their annual reports, separate reports for each visit or in compilations of monitoring activities.

The **Human Rights Commission in Ghana** regularly monitors prisons, schools, orphanages as well as Refuge Camps For Persons Accused of Witchcraft. It assesses for example the availability of water, as well as the conditions of the sanitation facilities. In 2009, 25 prisons and 355 police cells were visited by this institution. In addition to sanitation concerns, shortages of clean water were reported. Based on visits to schools, the NHRI subsequently reported that 16% of public schools had no toilets in 2013. Visits conducted by the NHRI to Refuge Camps led to reporting on poor sanitation facilities and inadequate access to water. The Human Rights Commission included these findings into its annual reports.

The right to water and sanitation is also monitored in child development centres that the **Indian National Human Rights Commission** visits. Visits to the Anganwadi Centre (AWC) in Sarol Village led the NHRI reporting on the lack of child-friendly toilets as well as running water and safe drinking water. The Deputy Commissioner was urged to act on this matter. While toilets were clean at AWC Centre No. 21, the Commission noted that there was no soap and no running water. It was thus recommended to the District Administration to supply safe drinking water in all AWCs. The Indian NHRI also conducts visits to schools and prisons and issues recommendations to resolve the identified human rights violations. It also regroups the information by geographical zones.

The **Uganda Human Rights Commission** also has experience in assessing the water and sanitation situation during visits to detention centres. It noted during its visits that progressive efforts were made to eradicate the bucket system. In addition, the Uganda Prison Service installed toilets in 20 prison units. The outcome of monitoring activities of the Commission in places of detentions results in the enhanced observance of the right to water and sanitation by the Prison Service. The Uganda Commission also included components of the right to water and sanitation in monitoring of places of detention, hospitals and remand homes. The Commission has components of the right to water that are included in its monitoring work. As such, it is included in its monitoring tools as an aspect to be monitored.

In **Nigeria**, the **National Human Rights Commission** has a wide-ranging experience in carrying out nation-wide visits of detention centres and prison

audits including assessing the human rights situation in relation to water and sanitation. Findings include recommendations to Federal and State Governments, the prison and the police. These various prisons audits also enabled the institution to observe changes by comparing specific periods. This methodology allowed the Commission to notice a decline of the conditions of toilet facilities between 2007 and 2009 in the south-south zone of Nigeria. In addition, it enables it to refer to the recommendations found in previous reports. In 2009, the Commission stated for example that the recommendations contained in previous audits especially that of 2007 remained valid following the 2009 audit. In its reports, it also divides the results by geographical zones.

The **Sierra Leone Commission** visited temporary Ebola centres where it audited the right to water and sanitation. The importance of observing these rights was stressed by the Commission in a press release following the visits.

PRACTICE 5: SAMPLE AND TEST WATER DURING INVESTIGATIONS AND FACT FINDING MISSIONS

Assessing the quality of water can be considered a highly complex activity requiring specialized expertise. Some NHRIs dispose of encouraging examples of water sampling and testing during fact finding missions in the context of incident-based monitoring.

The **Commission on Human Rights & Administrative Justice of Ghana** undertook a nation-wide investigation on systematic human rights abuses in mining communities. The various purposes of this investigation included the protection of the right to clean water. During the investigation, the NHRI of Ghana tested water samples from water sources in 28 mining communities. It analysed its findings in relation to the World Health Organization (WHO) maximum allowable limits for drinking water. It concluded that several sources contained concentration of substances higher than the WHO limits.

Success story

In the context of a diarrhea epidemic in Nepal, the National Human Rights Commission of Nepal (NHRC Nepal) carried out a fact finding mission on the right to food and water situation. After the physical examination of the food and water in the lab, the fact finding mission led to the conclusion that there was epidemic from water and food and it has recommended to the Government of Nepal for various changes.

D. ADVISING THE GOVERNMENT AND PARLIAMENT

National Human Rights Institutions are responsible for advising the government on human rights issues. This role of NHRIs contributes to rendering governmental bodies more accountable and offers the possibility to address systematic violations and legislative gaps. Reporting, providing recommendations and issuing opinions to the parliament additionally offers NHRIs the opportunity to receive a hearing in the country's representative and elected body.

PRACTICE 1: REVIEW LEGISLATION WITH IMPACT ON WATER GOVERNANCE RELATED HUMAN RIGHTS

National Human Rights Institutions systematically review existing law, policy and practice and their mandate usually allows reviewing proposed legislation, policy or practice. Advocating compliance of national legislation with the international framework in relation to the human right to water and sanitation is of utmost importance. NHRI practices reveal that some of these institutions are instrumental in supporting recognition of the human right to water in the constitution and subsequently review national legislation in view of compliance.

The **New Zealand Human Rights Commission** made a submission on the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act to the Local Government and Environmental Committee. The act replaced the elected council members of the Canterbury Regional Council with Government-appointed commissioners. Furthermore, Canterbury residents were no longer allowed to access the Environmental Court to appeal water conservation orders and regional planning decisions. The Commission stated that the Bill was undemocratic and was contrary to New Zealand's human rights obligations under a number of international treaties.

Success story

In the field of the protection of human rights, the Office reveals discrepancies, makes suggestions for improvements in the field of implementation and legislation, and uses its soft power through media representation to enforce the implementation of these recommendations. The success of the protection of these rights also depends on the political nature of the concrete problem, and whether it affects economic or other strong interests.

Hungarian Ombudsman for Future Generations

The **NHRI of El Salvador** presented an opinion to the parliament on a law proposal for the suspension of administrative procedures related to metallic mining exploration and exploitation projects. The opinion notes that environmental pollution through the spreading of heavy metals as a consequence of metallic mining is becoming the main cause for drought and progressive worsening of water quality in El Salvador. It also contained additional concerns regarding water demand in El Salvador, as well as the risks related to the metallic mining industry. In this regard it highlighted that the best alternative would be to prohibit such extractive activity but that this is not discussed in the proposal.

The NHRI of El Salvador also demanded the early ratification of the amendment to article 69 of the Constitution of El Salvador. The provision recognizes the right to water and adequate food as basic human rights complementing their protection and development with secondary laws on the subject, in addition to a law prohibiting metallic mining and import of chemicals.

Namibia's national human rights institution noted that in September 2012 the Special Rapporteur on the human right to safe drinking water and sanitation recommended the extension of its mandate to promote and protect ESC rights including the right to water and sanitation. To this effect, the Ombudsman recommended that the enabling legislation be reviewed and the scope of the mandate be extended to cover a broad range of human rights including the right to water and sanitation.

PRACTICE 2: INFORM, ASSIST AND ENGAGE WITH THE GOVERNMENT ON LEGISLATION AND POLICY FORMULATION

NHRIs have taken up various forms of engagement with governmental bodies in view of protecting water governance related human rights. These examples may concern involvement in policy formulation, requesting from and providing information to various bodies.

For its so-called “Section 184(3)” annual reports on Economic and Social Rights, carried out pursuant to its mandate under section 184(3) of the South African constitution, the **South African Human Rights Commission** requests information from government departments on the steps that they have taken in a specific year towards the progressive realisation of economic and social rights, including the right to sufficient water. In an effort to hold government to account, the Commission also engaged extensively with government departments on the recommendations issued following an investigation and

provincial hearings on the right to water and sanitation (national hearing, written communication, subpoena hearing, roundtable discussion).

The **Ombudsman of Namibia** initiated and assisted the Government of the Republic of Namibia to develop a national human rights action plan (NHRAP) for Namibia. It is a human rights policy document, identifying comprehensive and measurable steps that a country will take to improve the promotion and protection of human rights. The plan identified the right to water and sanitation among its 7 thematic areas (the right to water and sanitation, education, health, housing, land, access to justice and the right not be discriminated against). Namibia is the most arid country south of the Sahara and the Baseline Study points out that the majority of people have to cover a distance of 1-2km to access the source of water and 49% of households practiced open defecation. The Ombudsman will monitor and evaluate the implementation of the plan with regular reporting to parliament.

Success story

“In part fulfilment of its duty to advise and assist the government, the Ombudsman of Namibia initiated the development of a national human rights action plan (NHRAP). The process started in 2009 and the final draft was submitted to Cabinet for approval. A human rights baseline study which included a country-wide household survey was undertaken, followed by a national consultative conference, stakeholders’ meetings including civil society as well as regional consultative meetings.” The immense contribution to the realization of human rights of the national human rights action plan is a key factor of the institution’s success in water governance related projects.

The **Human Rights Commission of Sierra Leone** disseminated its 2011 annual report through various activities. The objective of the engagement was among others to engage and inform representatives of Government Ministries, Departments and Agencies (MDAs) and civil society organizations on the recommendations made to their respective institutions, to follow up on the status of the implementation of the 2009 recommendations made to the MDAs and other institutions.

PRACTICE 3: ISSUE RECOMMENDATIONS TO THE GOVERNMENT FOLLOWING REPORTS, INVESTIGATIONS, INQUIRIES, PUBLIC HEARINGS, ETC.

Issuing recommendations to the government following investigations and identification of violations lays also at the heart of the protection role of

NHRIs seeking remedy and redress to violations. These recommendations may effectively influence decision-making and the public opinion as well.

Following provincial hearings in the context of a broad investigation on the right to water and sanitation in South Africa, the **South African Human Rights Commission** developed a set of comprehensive recommendations to improve the state of access to water and sanitation in the country. These recommendations addressed *inter alia* improving institutional arrangements, enhancing a human rights-based approach to service delivery and improving access to services in schools, particularly for girls.

Following the audit of prisons, the **National Commission of Human Rights of Nigeria** issues reports on the findings which also contain recommendations. The 2012 report called on the government, the ministry of interior and the Nigerian prison service to renovate the prison facilities. In addition to general recommendations such as the need to build prison accommodations with modern toilet facilities, the 2009 report also includes more specific recommendations. It is recommended for example that the Federal Government should review the prison Act and ensure that the Nigerian Prison Service receive with adequate resources to improve the living conditions and access to health care in the Nigerian prisons.

The **Peruvian Defensoría del Pueblo** included 19 recommendations for the Peruvian government in its report *Citizens without water: analysis of a rights violation*. In particular, they were addressed to the Peruvian congress; the Ministry of Housing, Infrastructure, and Sanitation; the Ministry of Health; regional, provincial, and local governments; the National Superintendence of Sanitation Services; and the various water and sanitation service providers. It calls on the State and the water service providers to improve access to water and sanitation throughout the country. Following complaints against Peru's state water and sewerage utility on concentrations of arsenic and aluminium in water supplied by the service provider, the Office of the Ombudsman of Peru recommended the Ministry of Health to expedite the approval of the rules on the criteria to determine the amount of sanctions to impose when there is a failure to provide water suitable for human consumption.

In **El Salvador**, the **NHRI** formulated recommendations to the government in relation to the Cerro Blanco mining project. These included to protect the human rights of the people by complying with its national and international obligations on human rights and to work with the government of Guatemala and look for mutually agreeable solutions to solve the contamination problems of the mining industry.

The 2013 *Special Baseline Study Report on Human Rights in Namibia* of the **NHRI of Namibia** recommended the effective mobilization and implementation of water supply and sanitation policies in the country. The ombudsman's recommendations include: i) Implementation of the National Sanitation Strategy; ii) Coherence between the macroeconomic framework, namely, policy and budget decision; iii) Analysis of the fiscal policy for financing the water and sanitation policy from the perspective of equality and non-discrimination; iv) Analysis of the sanitation strategy costing from the perspective of the right to water and sanitation; v) Analysis of budget allocations for the implementation of the sanitation strategy.

E. COORDINATION AND COOPERATION

NHRIs are of major importance in the human rights protection mechanism but they need to work alongside with various bodies and stakeholders in view of effectively protecting and promoting human rights. Thus, coordination and cooperation can be a key element of success for NHRIs. This section shows concrete examples of how cooperation and coordination has enabled NHRIs to better address water governance related human rights violations through their good practices.

PRACTICE 1: MAINTAIN CLOSE PARTNERSHIPS WITH GOVERNMENTAL ORGANS AND ENGAGE WITH STAKEHOLDERS THROUGH VARIOUS MEANS

Building and maintaining close partnership with ministries, prisons or other governmental organs facilitates the role of human rights institutions with respect to its monitoring functions in the State.

Success story

“Our mandate allows for us to visit places of detention and health facilities, which are the key areas where the Uganda Human Right Commission monitors the right to water. Our close and good working partnerships with the Uganda Prisons Service and the Ministry of Health has allowed us to easily access the detention and health facilities. This has enabled us to assess the conditions of the facilities and bring all human rights violations, including the right to water to the forefront. Progressively, this led to improved conditions in places of detention especially in respect to water and sanitation.”

Uganda Human Rights Commission

The **South African Human Rights Commission** maintains on-going liaison with government departments and other stakeholders in monitoring adherence with the recommendation presented in its water and sanitation report. The SAHRC also sits on various stakeholder committees, advisory forums, task teams etc. which deal with various rights, including the right to water and associated rights. For example, it is currently part of the Mining and Environmental Community Alliance, which amongst other functions, deals with complaints of the impact of mining on water resources, such as pollution. The Commission also discussed with civil society organizations the recommendations it has formulated following the provincial hearings

on the right to water held in 2012. In addition, one of the outcomes of the institution's water governance activities is the on-going liaison with government departments regarding service delivery, particularly in areas where service delivery does not meet human rights standards.

PRACTICE 2: COOPERATE WITH EXTERNAL GROUPS, EXPERTS OR ORGANIZATION FOR PUBLICATIONS, STUDIES AND OTHER WATER RELATED PROJECTS

Establishing active and on-going engagement with various stakeholders allows the NHRI to seek information from a wide-ranging source. Access to independent and reliable sources of information is essential for comprehensive planning and monitoring of water governance related human rights. In addition, civil society organizations desiring to participate effectively in the planning, implementation and review of water governance have an important point of entry via National Human Rights Institutions.

Cooperation with universities, researchers and other experts

In relation to its *Third State of Human Rights Report*, the **Kenya National Commission on Human Rights** contracted the University of Nairobi's Institute for Development Studies to undertake field research during the period of June to September 2010 to determine how policy programmes are implemented. The two areas chosen for this focus were the right to water and sanitation and access to electricity. These two areas were picked to reflect their particular economic and social impact in terms of health (water and sanitation) and productivity (electricity). To gauge public and expert opinion on the implementation of policy programs in these areas, a national field survey comprising a sample size of 1,200 households across the eight provinces in Kenya was undertaken in September 2010. Ten focus group discussions were also held in the different regions to complement the survey.

The **Indian National Human Rights Commission** undertook an extensive talent search to generate a team of authors possessing extensive knowledge in human rights and disability issues. It received rich and comprehensive inputs from eminent academics and activists. The combination of expertise allowed the Commission to analyse international and domestic law presented in its *Disability Manual* from a disability perspective. The Manual discusses the right to water in one of the subchapters.

In its investigation on human rights in mining communities, the human rights **Commission of Ghana** worked with researchers, a statistician as well as consultants specialized in various fields of mining. Moreover, the

Commission sought also input from mining companies, the Environmental Protection Agency, the Ministry of Lands, Forestry and Mines, security agencies, land owners, representatives of communities affected by mining as well as civil society groups, all of which participated in a stakeholder's forum. The participants discussed and shared their views on the human rights situation in the mining area. The investigation showed problems over accessibility and quality of water in many mining communities.

Success story

“Personal requests with a series of specialists from diverse fields, as well as organized expert conferences can highly improve the quality of investigations and recommendations of the NHRI. In addition to the work of the office, frequent meetings and communication with independent experts contribute to the recognition of the adequacy and accuracy of the Office’ statements. During water related investigations, there are often questions which are completely technical, structural, biological or chemical in nature. As there are mostly lawyers working in the Office, it is essential to cooperate with and gain adequate information from experts and scientists from other fields, as well as from the Hungarian Academy of Sciences. This kind of cooperation is usually very effective and significantly boosts the quality of the work of the Ombudsman.”

Hungarian Ombudsman for Future Generations

Cooperation with civil society

The **South African Commission** works closely with the national statistics body to ensure the rigorous collection of relevant information on the level of access to water. The Commission identified this cooperation as a key factor of success. Another key factor of success for SACHR is to work closely with civil society organizations involved in associated projects and studies and thereby build a network of specialists and resources.

The **Hungarian Ombudsman for Future Generations** cooperated with WaterLex, a public interest organization, for its publication *Towards a Human Rights Based Water Governance: The Challenges for the post 2015 Thematic Consultation on Water*. In addition, the Ombudsman for Future Generations launched the National Human Rights Institutions Water Initiative in cooperation with WaterLex advocating an enhanced role of NHRIs worldwide in water governance for the realisation of human rights.

Success story

Cooperation with the requested authorities and various bodies is a key factor of success for the Hungarian Ombudsman for Future Generations. It mentions however that this element highly depends on human factors and personal relationships with the given authority. Positive past experiences and relationships can speed up the investigation process as well as the answer and implementation phase of certain solutions. Close cooperation can also contribute to the development of an atmosphere of shared goals and common ground, which can help remove boundaries of putative or conflicting interests.

The **Argentinian Ombudsman's Office** has been working over the course of the last 10 years in partnership with other institutions in promoting a process to reverse the critical situation of one of the largest in the country and the world's most polluted watersheds: the Matanza-Riachuelo River Basin. It brought together a group of well-known NGOs, universities and local ombudsmen, who drafted the first special report on the situation of the Matanza-Riachuelo River Basin.

During meetings with NGOs and civil society including government agency, training, and workshop, the **National Human Rights Commission of Nepal** is empowering for right to food and its relation with water.

A human rights baseline study which included a country-wide household survey was undertaken by the **Namibia Ombudsman** pursuant to the National Human Rights Action Plan. It was followed by a national consultative conference, stakeholders' meetings including civil society as well as regional consultative meetings.

PRACTICE 3: COOPERATE WITH OTHER NATIONAL HUMAN RIGHTS INSTITUTIONS ON ISSUES HAVING A TRANSBOUNDARY IMPACT ON HUMAN RIGHTS

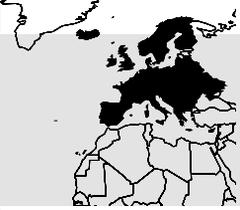
Whilst NHRIs developed regional and international cooperation mechanisms to facilitate dialogue, NHRI practices so far show that cooperation among these institutions is not yet a widespread practice in relation to water governance and human rights. However, an inspiring example may pave the way for others seeking enhanced cooperation. NHRIs are supported in these efforts by the WaterLex National Human Rights Institution Water Initiative.

Following their visits to the Cerro Blanco mining project, the **El Salvador institution for human rights defence** and the Ombudsman of Guatemala jointly agreed to alert their respective governments about potential social conflicts caused by the project, which include water pollution.

PART II

SUMMARIES OF NHRIS' WATER GOVERNANCE RELATED ACTIVITIES

- A. EUROPE**
- B. ASIA-PACIFIC**
- C. LATIN AMERICA**
- D. AFRICA**



HUNGARY⁵

Key words – Fundamental Law, Rights of Future Generations

Practices – Investigation, Review of legislation, Monitoring, Publication

Relevant criteria – Accessibility, Non-discrimination, Affordability

Websites – www.ajbh.hu

LEGAL FRAMEWORK

Fundamental Law of Hungary (Arts P and XX), Hungarian Constitutional Court decision No 28/ 1994, Article 30 of the Fundamental Law of Hungary and based on the Act CXI of 2011 on the Commissioner for Fundamental Rights

- Pursuant to Article P of the Fundamental Law, *“natural resources, in particular [...] the reserves of water, [...] form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.”*
- Pursuant to Article XX, *“(1) Everyone shall have the right to physical and mental health. (2) Hungary shall promote the application of the right referred to in Paragraph (1) [...] by ensuring access to healthy [...] drinking water, [...] as well as by ensuring the protection of the environment.”*
- Pursuant to Article XXI, *“Hungary recognises and enforces the right of everyone to a healthy environment.”*

MANDATE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS

Anyone can submit a complaint to the Commissioner for Fundamental Rights if through omission or commission the public and/or other organs performing public duties infringes the fundamental rights of the person submitting the petition, or presents an imminent danger, when the person reporting has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or if no legal remedy is available to him or her. On this basis, the Commissioner for Fundamental Rights conducts investigation and presents a proposal to the concerned authority to remedy the violation. The Commissioner can also pass recommendations in relation to laws and amendments.

THE OMBUDSMAN FOR FUTURE GENERATIONS

The need for an Ombudsman for Future Generations was recognized and accepted by the Hungarian Parliament in 2007. In 2011 the parliament recognized the need to protect natural resources at constitutional level by stating in the Fundamental Law that: *“agricultural land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets are part of the nation’s common heritage, and named the State and every person to be obliged to protect, sustain and preserve them for future generations.”* It established a direct link between the environment, the interest of future generations and basic constitutional rights such as the right to a healthy environment and the right to physical and mental health. This strong relationship was first established by the Constitutional Court when in 1994 it emphasized the link between the right to a healthy environment and the State duty for establishing an institutional system that provides substantive and procedural legal guarantees in this respect. The UN Secretary-General noted in his report of 15 August 2013 on “Intergenerational solidarity and the needs of future generations”, among eight other institutions, the Hungarian Office of the Commissioner for Fundamental Rights regarding its special mandate in protecting the interest of future generations.

THE OMBUDSMAN FOR FUTURE GENERATIONS AND WATER GOVERNANCE RELATED HUMAN RIGHTS

In 2011, the Ombudsman for Future Generations examined water, as an environmental element of outstanding importance, from two aspects. One is the protection of water, as an element of the environment, from human polluting activity; this protection may be realised by way of plans for the management of catchment areas in order to attain the objective of a good ecological status and by promoting sustainable management of water, a finite natural resource. The other aspect is protection against harmfully too much or harmfully too little water, such as the protection of human lives and property, the prevention of floods and inland waters, or the mitigation of damage.

In 2011 the Ombudsman received numerous complaints concerning the treatment of sewage-water. The annual report raised that the complainants either objected to the operation of sewage plants or drainage systems (protested against the odour), or disagreed with the solutions for disposal of the liquid waste of municipalities. In accordance with those set forth in previous reports of the Parliamentary Commissioner for Civil Rights, the Ombudsman examined primarily whether the organs competent to take measures had done everything to remedy the problems.

In its statement related to an investigation on the decrease of the water level of the Nagybereki Fehérvíz Nature Protection Area, the Ombudsman for Future Generations assessed the enforcement of the nature protection requirements in water law licensing proceedings. It established that the first instance water law operating licence, issued on the basis of guidance from the second instance water management authority, had resulted in a violation of the law since the stipulations related to the regulation of water did not take into consideration the nature protection status and multiple protection of the area.

The Ombudsman for Future Generations has also been active in relation to the impact of the extractive industry on water sources. In Hungary, open-pit gravel and sand mining removes thousands of hectares of agricultural land from cultivation, resulting in an irreversible, enduring change of the landscape. Mining activity leaves numerous large and small lakes behind, which e.g. on the Pest plain alone evaporate groundwater on a surface of more than 2000 hectares, exceeding the drinking-water demand of a mid-size town. After an NGO submission, the Ombudsman established that there are regulatory deficiencies that prevent the protection of groundwater loss from abandoned mine lakes. According to the law, impact assessment should be carried out prior to the opening of new mines, and it also allows for the assessment of the cumulative effects of activities already existing in the region. However, investigations revealed that due to regulatory omission, threshold values are missing under which the authorities can deny leave for mining, furthermore, the actual and combined assessment of the impact of similar activities in the water basin management plans are also lacking. Moreover, the law states that following the utilization of an environmental element, the user is required to pay fee set in advance. As evaporation is caused by human interference, it may be considered an indirect use of the environment. Therefore, the Ombudsman called upon the minister both to resolve the implementation gap as regards setting threshold values for impact qualification, as well as laying down detailed rules of payment obligations, encouraging a more economic management of mining activities and the reduction of the evaporation surface to a minimum.

In a more recent case on water and sanitation, these rights have been violated on a discriminatory basis. Despite the nationwide hot alert signals in the summer of 2013, the local government of the city of Ózd decided to turn off 27 public wells, respectively reduce water pressure in 62 public wells on grounds of unduly high consumption, illegal discharge and wastage. In Ózd more than 1000 households have no indoor plumbing, leaving

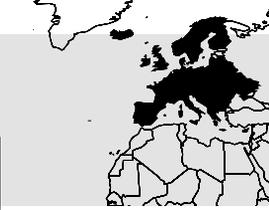
thousands of people to rely on public wells to cover their daily needs. Daily water demands are mostly determined by sanitation and domestic use of water, thus keeping water consumption under a certain threshold level may imply epidemiological risks. The provision affected mainly the city's Roma population. The Ombudsman launched an investigation suspecting the violation of the rights to healthy drinking water, human dignity and the right to equal treatment. The Ombudsman for Future Generations established that the State is responsible to set out fair and proportional water charges to encourage the economic use of water, while at the same time, it is also in charge to promote solidarity towards those who are not able to bear the full costs of their basic everyday human needs. Since the aim of abolishing illegal discharge cannot be connected to other fundamental rights of the person, restrictions on water use are qualified as indirect discrimination.

Other notable activities of the Ombudsman for Future Generations in relation to the right to water and sanitation include its publication activities. In this regard, two main publications are to be mentioned. The first publication is entitled *United Nations, Intergenerational solidarity and the needs of future generations: Report of the Secretary-General, 68th Sess., 15 August 2013, A/68/322. (2013)*. The book is a collection of articles on the legal and conceptual frameworks of the human right to water and sanitation in general and the constitutional guarantees thereof in Hungary. The book also explains the different activities of the Office of the Commissioner for Fundamental Rights in relation to the realisation of the human right to water and sanitation. Particularly, on the basis of the constitutional protection of the right to environment under the Hungarian Fundamental Law, the book medals on the mechanisms of integrating the right to water and sanitation within the legal and institutional frameworks in Hungary and the specific mechanisms employed by the Commissioner for Fundamental Right in that regard.

The other publication is entitled *Towards a Human Rights Based Water Governance: The Challenges for the post 2015 Thematic Consultation on Water* and published in collaboration with WaterLex. This publication outlines the emergence of the Human Rights Based Approach (HRBA) to water governance in the post-2015 framework. It addresses the development of the HRBA to water governance from the Dublin Declaration of 1992 onwards. The emergence of the HRBA in light of two recent major developments are analysed: the Rio+20 Conference of June 2012 resulting in the decision to prepare a set of Sustainable Development Goals that are coherent with and integrated into the United Nations development agenda beyond 2015 and the revision of the Millennium development Goals.

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5. United Nations, *Intergenerational solidarity and the needs of future generations: Report of the Secretary-General*, 68th Sess., 15 August 2013, A/68/322.
 - Report of the Hungarian Parliamentary Commissioner for Future Generations, 2011. Available at http://jno.hu/report2011/jno_report_2011.pdf.
 - Parliamentary Commissioner for Future Generations, “Emergency at the Nekota”, Press release, 25 September 2011. Available at: <http://jno.hu/en/?doc=pr-110925>.
 - OHCHR, “Question for the Purpose of Informing the Thematic Report to the Human Rights Council from the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation”, 2014. Available at: <http://www.ohchr.org/Documents/Issues/Water/HRViolations/HungarianCommissionerFundamentalRights.doc>.
 - Marcel Szabó and Veronika Greksza, “Right to Water and the Protection of Fundamental Rights in Hungary”, 2013. Available at: <http://www.ajbh.hu/documents/14315/121663/Right+to+water+Book.pdf/boa67476-20a7-4f40-91f3-f2024df9ad49>.
 - Aline Baillat, Tobias Schmitz and Marcel Szabó, “Towards a Human Rights Based Water Governance: Challenges for the post 2015 Thematic Consultations on Water”, WaterLex, 2013. Available at: http://www.waterlex.org/new/wp-content/uploads/2013/09/HR_WaterGovernance.pdf.

DENMARK⁶



Key words – AAAQ Toolbox, Contextualization, Indicators, Methodology

Practices – Monitoring, Reporting, Promotion, Information

Relevant criteria – Availability, Accessibility, Acceptability, Quality

Website – www.humanrights.dk

LEGAL FRAMEWORK

The right to water is not part of the Danish constitution. However, as an EU member state, Denmark is bound by water related laws of the European Union.

MANDATE OF THE DANISH INSTITUTE FOR HUMAN RIGHTS

Mandated to promote and protect human rights and equal treatment in Denmark and abroad, the Danish Institute for Human Rights (DIHR) was established by act in 2012. With regard to its mandate in Denmark, the DIHR provides advice to the government, the parliament, ministries and public authorities on various human rights. It also carries out analyses and research on various human rights issues, and maps out human rights challenges in the country. At the international level, it works with States, NGOs as well as the business sector, providing them with assistance and education on human rights.

THE DANISH INSTITUTE FOR HUMAN RIGHTS AND WATER GOVERNANCE RELATED HUMAN RIGHTS

1. The AAAQ Toolbox

The Danish Institute for Human Rights developed a toolbox for monitoring economic and social rights through the Availability, Accessibility, Acceptability and Quality Framework (AAAQ). The toolbox encompasses a collection of documents, tools and methodologies for the understanding and application of the AAAQ criteria in different contexts. It targets National Human Rights Institutions, States, private sector providers and civil society.

The toolbox contains 4 modules: 1) the *AAAQ frameworks*, which for each right outline the underlying methodology and rationale behind DIHRs interpretation of the AAAQ criteria and define a set of generic human rights standards and indicators derived from international hard and soft law; 2) the

AAAQ *Manuals* providing guidance for the adaption and application of the AAAQ Framework; 3) the AAAQ *Action Planning Guidelines*, developed in cooperation with the Institute's partners, that provide guidance and advise on the implementation of the AAAQ tools targeting specific stakeholders; and 4) the AAAQ *NHRI Facilitator Guidelines* which will contain resource and training material for NHRIs to provide advice for AAAQ processes. Altogether, these modules help operationalize ESC rights, including the right to water and sanitation.

DIHR is continuously updating the toolbox with analysis and tools for the rights to water, sanitation, health, education, housing and food and further information and updates can be obtained from the DIHR AAAQ team at aaaq@humanrights.dk.

2. The AAAQ Framework and the Right to Water: International indicators for availability, accessibility, acceptability and quality

The document entitled *The AAAQ Framework and the right to water* explores a generic methodology which serves two purposes: it firstly identifies the core normative dimensions of the right to water in terms of Availability, Accessibility, Acceptability and Quality, and secondly develops a framework on the basis of these criteria that contains specific standards as well as generic indicators and benchmarks. It therefore serves as a framework for the analysis of the different criteria and concepts of ESC rights through a common frame of reference. The specific meanings and contents of each ESC right is however addressed individually. In this context, the document created a methodology and a background for AAAQ on the right to water.

The first chapter identifies the international human rights framework, and concepts that are relevant for and common to the AAAQ toolbox as a whole. It includes the international human rights framework and concrete ESC rights mechanism, thus it refers to core treaties and their respective optional protocols, regional treaties and protocols, national constitution and legislation, as well as not legally binding instruments such as declarations, principles, recommendations, etc., issued for example by the Human Rights Council or Treaty bodies.

This first chapter also outlines the human rights based approach and important concepts, including progressive realisation and adequacy. A specific table demonstrates how the concept of adequacy applies to specific ESC rights in term of availability, accessibility, acceptability and quality. It shows that water, for example, should be available in sufficient quantities

and supplied regularly. In addition to physical and economic accessibility, non-discrimination and information also fall under the accessibility criteria for water. As for acceptability, the colour, odour and taste are to be looked at, as well as cultural and consumer acceptability. On the last criteria, quality, the table refers to WHO guidelines, absence of health risk as well as improved source and facility. It therefore helps to understand the concept of adequacy in the context of a specific right.

Chapter 2 explains the methodology used for the design of the AAAQ framework. It is applied to all rights within the AAAQ toolbox and aims at identifying specific standards by hierarchizing the sources. This methodology focuses on mapping authoritative and secondary sources in addition to generic indicators and benchmarks. Authoritative sources, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) or other treaties, General Comments etc., encompass standards which are generally accepted and usually provide guidance on standards and identification of indicators. Secondary sources further specify the general right laid down in authoritative sources and also provide guidance on the identification of potential indicators or benchmarks. The Danish Institute refers in this context to guidelines, manuals, fact sheets or other documents issued by UN agencies, NGOs, governmental organizations, academia or donors. Criteria have been also identified to screen secondary sources to ensure their relevance, authoritative sanctioning, tangibility and credibility.

These two levels of sources allow to identify generic deducted indicators. These describe what is to be measured in generic form such as litres of water per person per day. The generic benchmarks can be considered as a milestone or yardstick towards a target. Benchmarks attach specific value to the indicator, the DIHR attempts to attach two values: one being set as the absolute minimum and the other as the recommended value. In all cases, contextualization is necessary with regards to benchmarks and should involve participation of stakeholders.

The AAAQ framework is applied in details to the right to water in chapter 3. It defines international human rights principles and standards related to the right to water, and further identifies generic indicators and benchmarks. The chapter sheds light on authoritative sources of the right to water and presents an interpretation of the right to water through the AAAQ framework with reference to the General Comment No. 15. For instance, safe water is a core obligation. To fulfil the quality criterion, water for personal and domestic uses must be free from threats to personal health and all water facilities and

services must of sufficient quality. Based on the listed secondary sources, the document identifies generic indicators and generic benchmarks. In this case it would be the application of WHO guidelines, with an 80% generic benchmark. This approach is applied with regards to availability, accessibility, acceptability and quality with respect to the human rights standards, including authoritative and secondary sources for the right to water, the generic indicators and generic benchmarks.

3. AAAQ and the Right to Water: Contextualising indicators for availability, accessibility, acceptability and quality

Within the AAAQ toolbox, the AAAQ Manual was developed to offer guidance to stakeholders through the process of identifying national indicators and targets in order to establish a common understanding and interpretation of the right to water in a specific country. The document targets rights holders, duty bearers, private sector providers, civil society and national human rights institutes and more specifically provides them with guidance for the adapting and application of the AAAQ Framework according to the national context and with regard to the right to water.

Module I summarizes the AAAQ Framework explained above by detailing the human rights framework, the human rights standards for water, and the indicators and benchmarks for the right to water.

The core content of the document is found in *Module II* that focuses on adapting the international generic indicators and benchmarks to the conditions in a national context by developing country-specific indicators and targets. This module is divided into four components: i) stakeholder analysis, ii) structural indicators, iii) outcome indicators and iv) process indicators. The content of this module helps contextualize the international indicators and targets to the national context. It allows to adapt the AAAQ Framework to reflect local and national conditions since infrastructure and resources vary of the national context and the legislations and policies differ in each country.

The first component of this chapter (component number 4), the *stakeholders analysis*, seeks to analyse the relationships between duty bearer, private sector providers and rights holders and how these relationships are managed. While the State is the duty bearer, services are often provided by private sector providers. The State however remains accountable towards right holders as it bears the duty to respect, protect and fulfil human rights. Another aspect of this component is the relationships between private sector providers and the rights holders. This is for example related to the fees

charged by private sector providers and access to remedy for rights holders when obligations are not met. There are also other stakeholders that may have roles or responsibilities in water delivery and service such as donors, private companies contributing to abuses, or international human rights institutions. In analysing their relationships, one may consider their respective mandates, interests, attitude, power, etc. The section also identifies steps that could be included in this stakeholders analysis along with questions that may guide the assessment of institutional arrangements and mapping of stakeholders' roles and responsibilities (e.g. On the legal/policy mapping: Do rules and regulations sufficiently define the roles and responsibilities of stakeholders?; On implementation of laws/policies: To what extent do stakeholders fulfil their roles and responsibilities at national and local level?).

Component 5 contains guidelines to facilitate the identification of *structural indicators*. In other words, it aims at identifying the State's acceptance of the right to water and its commitment to realize it. This component contains examples for both. With regard to its acceptance, an example of a proposed approach lays down international instruments related to water, and sees if these have been signed and ratified by the specific State. As for the State's commitment to the realisation to the right, it looks at the adoption of national legislation, strategy or plan of action on water and sanitation.

The last two components of Module II serve as guidance through the process of identifying indicators through an analysis of the legal and policy framework. This step looks at the content of the instruments rather than only their existence. More specifically, component number 6 addresses outcome indicators which determine whether the right to water is realized for rights holders and which assess the State's obligation of result. The following example on availability in Zambia facilitates the understanding of the possible approach. By taking the quantity of water used per person per day as a generic indicator the following steps may be followed:

- 1) map and review the content of the relevant national instruments – for instance, Zambia's constitution would be an authoritative source which encompass clean and safe water and Zambia Vision 2030 is a secondary source which refers to access to safe and clean water;
- 2) identify national indicators – e.g. litres per person per day;
- 3) identify national targets – e.g. law and policy set the targets to a minimum of 20 litres per person per day;
- 4) assess compatibility with international human rights standards – with regard to Zambia, it is compatible with the intermediate standards but not with the objective.

As this analysis does not address causes and effects, component number 7 further identifies process indicators which help identify and measure the processes that lead to the realisation of the right to water. They seek to determine:

- if the government's programmes and plans adequately address the human rights standards
- why the government's programmes and plans lead or do not lead to the intended results
- if there are more efficient and effective ways of achieving the intended results
- if policy decisions lead to unintended negative human rights impacts (e.g. building a large dam to provide a water supply to a city that results in loss of water supply to local people).

An example of process indicators may be the budget allocation for water infrastructure, the number of boreholes per 1000 persons in rural areas or also a qualitative analysis of the complaints and redress mechanisms in place for water resources management institutions.

In light of the guidance on the contextualization of the AAAQ indicators and targets within a national context, the last chapter concerns action planning. It thus gives examples of the practical application of the DIHR AAAQ toolbox for private sector providers, States, NHRIs and civil society.

In this regard, the DIHR identified the following initiatives that it facilitated with the AAAQ framework specifically for NHRIs:

- Develop public information campaigns and material. The DIHR AAAQ Toolbox can be used to make the link between international human rights standards and systems and local realities clearer, thereby making human rights information relevant for rights holders.
- Develop indicator and monitoring frameworks to reflect the AAAQ criteria, thereby ensuring that analysis and reporting to the State, national stakeholders and international human rights mechanisms (e.g. Universal Periodic Review and Treaty Bodies) reflect the human rights standards and principles.
- Integrate the DIHR AAAQ Toolbox in curricula for human rights education, e.g. civic education, education of law enforcement agencies and the judiciary, human rights education in primary and secondary schools and training of civil society organizations in monitoring and reporting on ESC rights.

- Develop checklists for handling complaints on ESC rights. The DIHR AAAQ Toolbox can assist NHRIs in clarifying when a human right has been violated according to international and national law.
- Facilitate multi-stakeholder dialogue based on the DIHR AAAQ Toolbox to enable facts-based dialogue and joint action planning for realisation of ESC rights.

Additional initiatives are laid down for action planning for other stakeholders.

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6. Marie Villumsen and Mads Holst Jensen, “AAAQ and the Right to Water: Contextualising indicators for availability, accessibility, acceptability and quality”, Danish Institute for Human Rights, 2014. Available at: <http://www.humanrights.dk/publications/aaaq-manual-right-water-contextualising-indicators>.
 - Mads Holst Jensen, Marie Villumsen and Thomas Døcker Petersen, “The AAQ Framework and the Right to Water: International indicators for availability, accessibility, acceptability and quality”, Danish Institute for Human Rights, 2014. Available at: <http://www.humanrights.dk/publications/aaaq-framework-right-water-international-indicators>.



NEW ZEALAND⁷

Key Words – Canterbury, Indigenous people, Māori

Practice – Country evaluation, Thematic reporting, Legislative review

Relevant criteria – Accessibility, Accountability, Quality, Participation

Website – www.hrc.co.nz

LEGAL FRAMEWORK

Climate Change Response Act 2002, Environment Act 1986, Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010, Environmental Protection Authority Act 2011, Health Act 1956, Local Government Act 2002, Resource Management Act 1991.

MANDATE OF THE HUMAN RIGHTS COMMISSION

The New Zealand Human Rights Commission, which was established in 1977, operates under the Human Rights Act 1993. Under section 5 of the Act the Commission has the mandate to advocate, promote and protect human rights including inquiring into human rights matters if the Commission is of a view that the matter involves infringement of human rights.

NEW ZEALAND HUMAN RIGHTS COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

The mandate of the Human Rights Commission of New Zealand in relation to the right to water and sanitation is derived from:

- Article 25 of the Universal Declaration of Human Rights relating to the right to an adequate standard of living
- the rights to food, health and an adequate standard of living set out in the International Covenant on Economic, Social and Cultural Rights
- the references to the right to water in the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities; and the Declaration on the Rights of Indigenous Peoples
- the recognition by the UN General Assembly and the UN Human Rights Council in 2010 of the right to water and sanitation.

To this effect, the Human Rights Commission released a Report entitled “*Human Rights and Water Tika Tangata me te Wai*” in 2012 which assessed the country’s situation with regard to water and advocated for a human rights approach. The Human Rights Commission has been also active in relation to legislative and government policy measures with impacts on the right to water.

1. Report – Human Rights and Water (2012)

Acknowledging the international legal framework on the right to water and the abundance of water resources in New Zealand, the Report outlines that water has become one of the challenges the country is facing. The Report advocates for the importance of the human rights approach to water and assesses the right to water situation in New Zealand in accordance with the criteria of availability, quality and safety, affordability, acceptability, participation and accountability. The aim of the paper is to promote human rights as a central consideration in the evolving debate about freshwater – its availability, its quality and safety, its affordability, its use and the relationship with the Treaty of Waitangi, the degree to which citizens participate in decision-making about it, and the accountability that is linked to national guidance and standard-setting.

The report first deals with the human right to water explaining the international human rights framework and sets out the relevant right to water criteria in the New Zealand context. The report advocates the importance of the human rights approach in general and the vitality of this approach for New Zealand. Noting the ten criteria identified by the UN Special Rapporteur in 2010, the report points out that six of the criteria have a particular relevance and peculiarity making them fundamental in the context of New Zealand. These are: i) the availability of fresh water; ii) quality and safety; iii) affordability; iv) acceptability in relation to the Treaty of Waitangi /Te Tiriti o Waitangi and Māori values; v) participation of citizens in water related matters; and vi) accountability.

Concerning availability, the report notes that New Zealand is well endowed with a large supply of freshwater and the sufficiency and continuity of freshwater for domestic use in New Zealand is not a problem in general. However, the report highlights that shortages occur because the water is often in the wrong place at the wrong time causing growing concern about the quantity and quality of freshwater resources. In terms of water for non-domestic purposes, the report notes that its management and use are creating tensions

in most parts of New Zealand and particularly in regions such as Canterbury, the Waikato and the Manawatu.

In relation to quality and safety, the report notes that even though New Zealand is considered as one of the countries with high water quality, there is an increasing level of concern about water quality. It also cites the New Zealand Institute's 2011 Report that indicates a deteriorating water quality trend. While referring to various studies and research in that context, the report also underlines that different measures of water quality are used and produce what can appear to the general public to be confusing and contradictory results. An overview of both domestic freshwater and non-domestic freshwater situation, along with New Zealand's lakes and rivers is provided.

The report indicates that due to the water abundance in New Zealand, affordability issues have only recently begun to be discussed. In that context, the paper looks at human rights relating to privatization and water metering. In relation to the debate surrounding privatization, the Commission stated it was essential that government retained sufficient control to ensure that human rights commitments are observed by third party providers. Local government and private providers also have to be aware of human rights obligations such as the principles of non-discrimination and public participation specifically in relation to contracts for the supply of water.

With respect to Te Tiriti o Waitangi and Māori values, the report sheds light on a growing concern of Māori with regard to the ownership of freshwater along with a new era of co-governance and co-management providing a way to give full recognition of the relationship between Māori and water. As for participation, the report advocates for the maintenance and monitoring of water services to be participatory and underlines the need for transparency and access to information. It also outlines positive and negative examples in that context: on the positive side, the Land and Water Forum is cited which uniquely engaged 58 stakeholders with each other and subsequently held 18 public meetings involving more than 1200 people to discuss its recommendations. On the negative side, the suspension of local democracy for Canterbury regional council voters until 2013⁸ over concerns about freshwater management is mentioned.

As for accountability, the report outlines the relevant international and domestic rules highlighting the complexity and elusive nature of freshwater management. It underlined that the human rights implications relating to

water are emerging as issues that the Commission is increasingly likely to be asked for advice on in relation to legislation, policy and practice. In 2010, members of Parliament's Local Government Select Committee, when considering submissions about amending the Local Government Act, asked for information and guidance on human rights and water privatization. The Commission expects that as regional and local government councils and agencies are part of the State they will ensure that in discharging their responsibilities in relation to freshwater they will apply the human rights principles set out in this paper.

The report concludes that despite the current abundance and the relative good quality of water in New Zealand, there is rising concern over access to water, drinking-water quality, the water footprint of agricultural products, loss of wetlands and increased irrigation in pristine areas, Treaty of Waitangi / Te Tiriti o Waitangi, and cultural considerations. There is increasing recognition that guardianship of the quantity and quality of water cannot be taken for granted in New Zealand. This has been reinforced by the Canterbury earthquakes, a disaster that immediately impacted on the water and sanitation needs of 400,000 people and has continuing consequences. It is emphasized that the human rights perspective has a significant role to play in how the guardianship of freshwater should be exercised against competing political, civil, economic, social and cultural interests.

2. Environment Canterbury (Temporary Commissioners and Improved Water Management) Act

The Human Rights Commission also played an important role via its submission on the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act. The Act replaced the elected council members of the Canterbury Regional Council with Government-appointed commissioners. The commissioners were tasked with acting as Environment Canterbury's governing body. They were given special functions and powers to address issues regarding the efficient, effective, sustainable management of Canterbury's fresh water and other regional resources. Canterbury residents were no longer allowed to access the Environment Court to appeal water conservation orders and regional planning decisions.

The Commission said that the Act was undemocratic and was contrary to New Zealand's human rights obligations under a number of international treaties. As stated in the submission: "Transparency and empowerment are essential to genuine participation. There must be an opportunity for citizens to be able to influence decisions, particularly those that are likely to have

an impact on their lives”. This “ability to be heard” is a significant way of combating the notion that decisions are predetermined.

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7. Human Rights Commission, “Human Rights and Water, Tika Tangata me te Wai”, 2012. Available at: <http://www.hrc.co.nz/human-rights-environment/human-rights-and-water>.
 - Human Rights Commission, “News and Issues: Submission on the Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill”, 9 November 2012, <http://www.hrc.co.nz/2012/11/09/submission-on-the-environment-canterbury-temporary-commissioners-and-improved-water-management-bill>.
 8. Subsequently it was extended to 2016.

NEPAL⁹



Key words – Right to food, Right to Health
Practices – Monitoring, Investigation, Reporting
Relevant criteria – Quality, Accessibility
Website – www.nhrcnepal.org/index.html

LEGAL FRAMEWORK

Constitution of Nepal 2007 guarantees the right to life as fundamental right but it does not explicitly recognize the human right to water and sanitation.

MANDATE OF THE NATIONAL HUMAN RIGHTS COMMISSION OF NEPAL

The National Human Rights Commission of Nepal (NHRC Nepal) was established under the Human Rights Commission Act of 1997. The Interim Constitution of Nepal of 2007 has mandated the Commission with wider responsibilities with the primary responsibility to protect and promote the human rights. The institution may receive complaints against human rights and carry out necessary monitoring and investigation. The Commission also forwards recommendations to the government for necessary actions to be taken in view of seeking remedy.

THE NATIONAL HUMAN RIGHTS COMMISSION OF NEPAL AND WATER GOVERNANCE RELATED HUMAN RIGHTS

In its rather wider mandate, the National Human Rights Commission has been focusing on several economic, social and cultural rights. In this context, this institution has experience in particular in working on the right to food and right to health with implications on the right to water and sanitation. Whilst the focus of their work is primarily not on the right to water and sanitation, it still forms an integral part of several activities of this institution.

1. Monitoring/Investigation Report on the Death of General Public due to Diarrhea/Cholera

The outbreak of Diarrhea in Mid-west Nepal turned out to be an epidemic in 2009. According to government's data, more than forty thousand people were affected by the epidemic and undergone treatment. The National Human Rights Commission came to know about the epidemic through different news media. It was suspected that the cause of diarrhea was not only due to polluted water but also due to the intake of food distributed. The Commission collected more information from local NGOs and INGOs

(international non-governmental organizations) working in human rights sectors. The Commission drew attention of the Nepal government through press release and formed two teams to monitor the situation.

The teams of the NHRC Nepal monitored the affected districts based on the universal principle and laws related to human rights and recommended the government through press meetings. The NHRC's monitoring team collected data from the field and consulted various stakeholders. During the monitoring, the NHRC Nepal team visited food stores, observed the condition of food consumed by local people, medicine, consulted health workers, affected people, government sectors, human rights activists, journalists and different stakeholders to discuss and interact on the issue. The team also collected documents and information in Kathmandu from various government organizations. On the basis of information and data collected, the Commission prepared a monitoring report. The monitoring reported that the intake of polluted water (water mixed with excreta) was among the causes of the epidemic. In addition, the Commission also organized a discussion program among the government officials, representatives from NGO/INGOs working in human rights sector, organizations working in consumer's rights and representatives from UNWFP to bring about the facts, collect information and draw attention of the government.

The Commission received the fact from the Department of Epidemiology and Disease Control, Ministry of Health and Population, Government of Nepal with a claim that the main cause of diarrhea in the mid and far Western remote and hilly districts of Nepal is due to polluted water, use of expired Piyus (water purifier) and cholera contained in the water. But it is also revealed that non-edible and decayed food was distributed in the affected areas.

During the analysis of food and diarrhea in the context of human rights, the Commission made an explicit reference to the General Comment No. 15 on the right to water and noted that the right to water means to have access to enough, hygienic and drinkable water and physically reachable to the source of water for personal and household use. The Commission concluded that as the people of the affected areas are deprived of healthy and nutritious food and water, they were not able to enjoy the rights to healthy and nutritious food and water. Right to food and water is one of the most important and foremost right which is directly related to the right to life and good health.

The Commission issued several recommendations to the Government of Nepal aiming at improving food safety. In these recommendations, it

explicitly called upon the government to make necessary arrangements to ensure people of the remote and hilly areas the right to food and water.

2. Indicators for Monitoring Economic, Social and Cultural Rights in Nepal – A User’s Guide

The *User’s Guide* developed by the Commission contains structural, process and outcome indicators to monitor the rights to adequate food, housing, health, education and work in Nepal. While the focus of this work is mainly on the right to food, the right to housing, the right to health, the right to education and the right to work, indicators under three of these rights relate to the right to water and sanitation. This User’s Guide on indicators is result of the interaction and collaboration between the Commission, the OHCHR-Nepal and stakeholders.

One of the process indicators for the right to adequate food is the proportion of targeted population having access to clean drinking water in the reporting period. As for the right to housing, the following three indicators are included among other process indicators: i) proportion of household budget of target populations groups spent on water supply, sanitation, electricity and garbage disposal; ii) share of public expenditure allocated to maintenance of sanitation, water supply, electricity and physical connectivity of habitations; iii) proportion of target population extended sustainable access to improved water source, access to improved sanitation, electricity and garbage disposal in the reporting period. For outcome indicators, the number or proportion of households dependent on private sources for water supply and the proportion of vulnerable households dependent on private sources for water supply are found under the right to adequate housing. Water related indicators are also found under the right to health.

The user’s guide mentions that the right to highest attainable standard of physical and mental health includes factors such as drinking water and adequate sanitation. In this regard, proportion of population with access to safe drinking water is identified under the process indicators.

3. Press release and statement

By issuing a press release (30 June 2013), the NHRC Nepal draw attention to the situation emerged from the hindrance caused to the supply of drinking water by the companies with various demands placed forth. The Commission argued that such a move to make very essential drinking water supply scarce in market as the matter of bargain is sheer inhumane and downright against human rights. It emphasized that drinking water supply is associated

with the citizens' fundamental human rights and it wouldn't do any better if undue hindrance is caused to the water supply. The Commission urged the Government of Nepal to give continuity to the smooth and easy supply of drinking water keeping in mind the fundamental rights of the consumers.

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9. National Human Rights Commission and Office of the High Commissioner for Human Rights in Nepal, "Indicators for Monitoring, Economic, Social and Cultural Rights in Nepal: A User's Guide", 2011.
 - National Human Rights Commission, "Monitoring/Investigation Report on the Death of General Public due to Diarrhea/Cholera and Distribution of Food items in the Mid & Far Western Districts including Jajarkot", 2009.
 - National Human Rights Commission, "Nepal Urges Unhindered Drinking Water Supply", Press release, 30 June 2013. Available at: http://nhrcnepal.org/nhrc_new/doc/newsletter/PR-Water%20Supply-Eng-30June2013.pdf.

BANGLADESH¹⁰



Key words – Priority rights, Arsenic, Awareness, Climate change, Implementation, Sustainability, Information, Right to food

Practices – Reporting, Investigation

Relevant criteria – Quality, Accessibility, Affordability, Acceptability

Website – www.nhrc.org.bd

LEGAL FRAMEWORK

The Constitution of Bangladesh does not refer to the human right to water and sanitation but article 15(a) addresses basic necessities. Yet, interpreting this provision as including the right to water and sanitation could not be judicially enforceable as part II of the Constitution on fundamental principles serves as an interpretative guide in the law making process and the interpretation of laws of Bangladesh.

The 2013 Bangladesh Water Act created a framework for improved management of water resources in Bangladesh. It also addresses rights to water and sanitation as “priority rights”, without however explicitly recognizing those rights to all. Other policies and strategies were adopted by Bangladesh with regard to water and sanitation: the Government of the People’s Republic of Bangladesh National Policy for Safe Water Supply & Sanitation of 1998 was adopted with the purpose of enabling access to safe water and sanitation services at an affordable cost in a sustainable and equitable way. It presents a separate strategy for the rural and urban water supply and sanitation. The National Sanitation Strategy of 2005 addresses the sanitation from different angles such as through surveys and identification of sanitation issues. Other policies and strategies include the 2004 Water Management Plan, the Policy for Arsenic Mitigation of 2004, a Sector Development Framework adopted in 2004, the Pro-Poor Strategy for Water and Sanitation from 2004 and a Poverty Reduction Strategy paper dated 2009.

MANDATE OF THE NATIONAL HUMAN RIGHTS COMMISSION OF BANGLADESH

The National Human Rights Commission of Bangladesh finds its legal basis in Act No. 53 of 2009, an Act to Establish National Human Rights

Commission. The Commission aims at establishing a human rights culture throughout the country and promoting and protecting human rights. Its main goals are to ensure: the respect of everyone's dignity, accountability of State officials, international human rights visibility, and its credibility, objectivity and effectivity to be a prominent human rights institutions for the protection of human rights throughout the country.

Its functions are enumerated in its founding act and encompass mainly: examining human rights safeguards encompassed in laws or the Constitution, inspecting jail or detention facilities, and raising public awareness. The Commission is also mandated to inquire, suo-moto or on a petition presented to it by a person affected or any person on his behalf, into a complaint of violation of human rights. It may resolve the issues through mediation and conciliation. Moreover, it has the right to issue recommendations on the outcome of its inspections or reviews, as well as on the effective implementation of human rights instruments.

The Commission established a first strategic plan ending in 2015 which identified climate change and environmental issues as a focus area. It did not however figure in the human rights priority issues of the strategic plan prepared for the period 2015-2018.

THE COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

The Commission published study reports on various themes. The right to water and sanitation is briefly touched upon in the reports, such as in the context of the right to food in *From Basic need to Basic Right: Right to Food in Context*. It analyses the food security situation in Bangladesh through a review of laws, policies and international instruments. It recalls that the right to adequate standard of living includes food and water and that these are inter-related as the right to food encompasses the right to safe water. The report also specifies that the right to food at the national level has to be implemented through a national strategy which should address water and sanitation. It differentiates the basic need approach from the right-based approach which is lacking in Bangladesh. A right-based approach is expected to put emphasis on poor and vulnerable people, and help the government to reach them. In addition, this approach supports other basic human rights. The report concludes with recommendations on the right to food.

The Commission also supported and collaborated with the Centre for Legal Research to publish a report on the rights of garments workers. *Security and Safety Net of Garment Workers: Need for Amendment of Labour Law* analyses the conditions of garment workers in light of the national legal framework in Bangladesh and international standards. In addressing security issues, the study report maintains that 68% of the factories in the sector of readymade garments do not have pure drinking water available for the workers.

Report – The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance

Pursuant to the Commission's monitoring and reporting functions, a report was published in 2012 on the compliance of Bangladesh with the International Covenant on Economic, Social and Cultural Rights.

The first part is an overview of economic, social and cultural rights. Regarding the right to water, an interpretation based on the General Comment No 15 is put forth. In addition to defining the right, it also explains that each person should have sufficient and continuous water supply to meet the availability requirement, and that water must be safe and acceptable in terms of taste, colour, and odour to fulfil the requirements. Accessibility as well as its four dimensions (physical accessibility, economic accessibility, non-discrimination and information accessibility) are also defined. Finally, the first part lays down provisions on the right to water encompassed in the Convention on the Rights of Persons with Disabilities, as well as the associated right to enjoy adequate living conditions found in the Convention to Eliminate All Forms of Discrimination Against Women, and the obligation to combat disease and malnutrition and provide clean drinking water enshrined in the Convention on the Rights of the Child.

The second part analyses the national legislations and policies adopted by Bangladesh to achieve supply of pure drinking water to all and access to improved sanitation. It also enumerates the responsibilities of the various ministries. Monitoring, governing and formulation of policy in the sector of water and sanitation services falls within the responsibility of the Ministry of Local Government, Rural Development and Cooperatives. The ministry Department of Public Health Engineering covers all parts of the country while urban areas are under the responsibility of water supply and sewerage authorities. Ministries of health, education, family welfare, water resources, environment and forests, finance, and the Planning Commission also have competencies over water and sanitation.

Despite these legislations, gaps remain between the national framework and the international requirements for the right to water and sanitation. Some of these were identified by the UN Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, and enunciated in the third part of the report. For example, consultation with water and sanitation users is not always carried out in practice although there is an emphasis in the policies on their participation in policy design, implementation and monitoring. As highlighted in the report the Independent Expert furthermore found that ministries and water supply and sewerage authorities need to better harmonize their work. In addition, independent regulation of the water supply and sanitation are also necessary, along with operational and institutional reforms that are primordial for effective regulation. It was also recalled that while the input of the civil society in Bangladesh is important, it is the State's responsibility to respect, protect and fulfil human rights.

Climate change is also identified as an important issue affecting water in Bangladesh as water salinity is increased due to rising sea levels. Water is threatened with risks of asbestos contamination by traveling through old pipes from the water source to the tap. Quality of water in Bangladesh is also a concern due to presence of arsenic in groundwater and since surface water is polluted. Arsenic in drinking water has in fact lowered to 70-80% the access to safe drinking water in Bangladesh. The report states that although the Policy for Arsenic Mitigation was adopted in 2004, its implementation is weak.

The report moreover recalls the importance to inform the population over water quality and contamination risks. Though it welcomes the awareness raising efforts made by the government, more efforts are needed in this regard. For example, it is reported that the system of marking the wells to prevent people from drinking arsenic-contaminated water is sometimes unclear to people with intellectual disabilities. Yet, some people are inclined to drink arsenic-contaminated water in situations where alternative sources are far. This is also due to the fact that arsenic does not immediately affect one's health as it is colourless, tasteless and odourless.

Recommendations are also formulated to improve the realisation of ESC rights. These encompass the need to carry out nationwide water-quality testing in a "systematic, regular and coordinated way". The report concludes that right to water remains to be recognized and ensured through a normative legal framework.

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10. NHRC Bangladesh, "Strategic Plan of the national Human Rights Commission 2010 – 2015, Revised May 2011", 2011. Available at: http://www.nhrc.org.bd/PDF/Human%20RightsStrategic_Plan.pdf.
- Abdullah Al Faruque, "From Basic Need to Basic Right: Right to Food in Context, National Human Rights Commission of Bangladesh", NHRC Bangladesh, 2014. Available at: <http://www.nhrc.org.bd/PDF/Study%20reports/basic%20Right.pdf>.
 - National Human Rights Commission of Bangladesh, "Security and Safety Net of Garments Workers: Need for Amendment of Labour Law", 2014. Available at: <http://www.nhrc.org.bd/PDF/Study%20reports/GARMENTS%20WORKERS.pdf>.
 - S M Zakir Hossain, "The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance", NHRC Bangladesh, 2012. Available at: <http://www.nhrc.org.bd/PDF/Study%20reports/International%20Covenant%20on%20Economic,%20Social%20and%20Cultural%20Rights%20a%20study%20on%20Bangladesh%20Compliance.pdf>.



INDIA¹¹

Key words – Right to health, Right to education, Right to life, Right to housing

Practices – Conference, Statements, Notifications, Request for reports, Thematic reports, Visits to detention centres, Visit to schools and child development centres

Relevant criteria – Quality, Availability, Accessibility, Non-discrimination

Website – www.nhrc.nic.in

LEGAL FRAMEWORK

The Indian Constitution does not explicitly mention the right to water and sanitation which is also not guaranteed in other Indian laws. Yet, the right to life and personal liberty found in Article 21 of the Constitution has been interpreted by different Indian courts as encompassing the right to water and sanitation. Accessibility to sanitation facilities and water is also found in the National housing and Habitat Policy, 1998, which aims to ensure that dwelling units have an easy access to those facilities.

MANDATE OF THE NATIONAL HUMAN RIGHTS COMMISSION OF INDIA (NHRC)

Chapter II of the 1993 Protection of Human Rights Act established the National Human Rights Commission. The functions of the NHRC may be found in Chapter III of the Act. Its mandate include inquiry functions based on *suo motu cognizance* of reports or on a petition. The complaint may be lodged on the violation or the negligence in the prevention of a violation. The Commission can also intervene in proceedings involving violations of human rights, visit jails or detention centres, review human rights safeguards, promote research and awareness of human rights. It focuses on widening the realisation of human rights to “all sections of society”, and in particular to the vulnerable groups.

THE COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

1. Water related statements and events

The Commission held in November 2013 the “*National Conference on Health Care as a Human Right*”. The two-day event focused on the accessibility, affordability and quality of healthcare. The right to water and sanitation

was discussed in the context of improving healthcare in terms of quality of water, and promotion of hygiene and sanitation. One of the four substantive sessions was on “Clean Drinking Water, Hygiene and Sanitation: A Step Towards Better Health Care”. Key recommendations on the improvement of the healthcare system were submitted to the government and included the need to adopt policies and enhance awareness on water in healthcare services. In addition to policy makers and NGOs, representatives of the Ministry of Drinking Water and Sanitation also participated to the conference.

NHRC also prepared a report on the “*Regional Consultation on Public Health & Human Rights*” organized in April 2001 by the Commission. The objective was to advocate the importance of adopting a synergistic approach to public health and human rights. The Consultation also sought to identify avenues of action conforming to human rights principles to advance public health objective in three priority areas: access to health care, nutrition and tobacco control. Issues discussed during the event included quality of water and accessibility as well as improvement in water and sanitation. In a response to the moderator’s question “what would form the component of an essential care package for a common citizen?” the panellist Professor Ranbir Singh included the adequate supply of water and basic sanitation in his answer. Pollution of drinking water and the need for a complete review of all drinking water projects were also raised during the conference.

In a press release dated June 2014, the NHRC requested the governmental departments to report on the issue of lack of toilets and open defecation. The Commission also raised concerns about safety issues in the use of sanitation facilities following a survey that found that 30% of women “who went out for toilet became victims of sexual assault”.

2. Right to water and sanitation in thematic reports

Right to water and sanitation is also touched upon in some thematic reports issued by the Commission. For example, the document *Women’s Right to Health* was prepared together with the Karnataka Women’s Information and Resource Centre, as well as experts and activists involved in that field. The document presents among others a critical analysis of the healthcare system in India. In this context it reviews for example the National Nutrition Policy of 1993 and raises issues at the implementation level. These included a lack of coordination at the implementation level between the different departments that are supposed to provide supportive services – like safe drinking water, sanitation, day care services – and programmes that are related to women’s empowerment, non-formal education and adult literacy. It also

informs on the existing international and national framework for Women's right to health. The report also interprets different fundamental rights found in the Constitution of India. In relation to the right to equality and freedom, it is mentioned that in the context of health, any form of discrimination has severe implications for health, preventing or limiting access to basic needs and opportunities that impact health and access to health care. For example, women are traditionally responsible for fetching water. Depending on the distance of the source of water, the location, the woman's age, caste, health status and various other conditions at home impact her access to water, which in turn affects her health and the health of others in her family.

Similarly, in *The Human Right to Adequate Housing and Land* it is recalled that the right to water is a prerequisite for the realisation of the right to adequate housing. The right to water is interpreted in light of international conventions and instruments. The document further identifies the conditions affecting homeless people, or those living in slums or inadequate settlements. In all three cases, the importance to provide access to water and sanitation is raised. In addition, the report addresses housing- and land-related rights in other specific situations, such as the Indian Ocean tsunami of 2004. The Commission made mention of inadequate access to water and sanitation. It also laid down in international instruments applicable in post-disaster situations.

Women's Right to Health and *The Human Right to Adequate Housing and Land* are part of a series of books prepared as reference material for university students. It falls within the Commission's function to promote human rights literacy and education in Indian universities. The latter dossier concludes with recommendations to national and State governments, such as the implementation of international law, and a list of advocacy options for students. The former identifies strategies and actions that were initiated by various actors.

3. Disability Manual (2005)

The *Disability Manual* published by the NHRC assigns a subchapter to the human rights to food and water which are addressed separately. These were mainly approached under a section on economic, social and cultural rights. It identifies the international standards for the right to clean water followed by the domestic framework in the context of persons with disability. It further recommends that actions should be taken to ensure that accessibility needs are included in rural development programs among others in terms of access and use of sanitation facilities and water supply. Concerning the

right to sanitation, the Commission makes mention of regulations and legislation which requires the State to adapt toilets for people with disabilities, including in the transport sector. The institution contacted academics and activists with the aim of seeking additional input for the analysis.

4. Scavenging and Sanitation workshop and documentation

NHRC held a “National Workshop on Manual Scavenging and Sanitation” in 2008. From the outcome and deliberations of the workshop, the Commission subsequently issued a leaflet with recommendations on manual scavenging and sanitation. The recommendations include the need to forbid the construction of new houses with dry latrines through municipal and panchayat bye laws. It also recommends that scarcity of water has to be “addressed by adopting appropriate technology and methodologies” and that new water shield latrines or sanitary latrines should be constructed.

5. Monitoring and reporting

Under its flagship 28-district programme and Camp Commission Sittings, the Commission has been monitoring the provision of basic human necessities including safe drinking water to the most marginalized sections of society, particularly those falling into the ‘Below Poverty Line’ category. The Commission has adopted an effective method to monitor the implementation of the key socio-economic Flagship programmes of the Government of India by sending its teams to assess the functioning of the institutions which are mandated to provide these basic human needs, including safe drinking water.

The Commission has also directed two of its Special Rapporteurs to visit the Indian States of Bihar, Uttar Pradesh and West Bengal for verifying the magnitude of the problems emanating from arsenic contamination of drinking water. The reports of the rapporteurs will be considered by the Commission and appropriate directions will be issued to the concerned government authorities.

Following the visits of prisons in India, the Commission issues reports on each detention facility. Many of the reports contain an assessment of basic amenities, including water supply and sanitation. In general, the Commission identifies the source, quantity and quality of water, as well as the condition of the sanitation facilities. Other visit reports, including school visits, take into account those rights and assess their implementation. For example, in 2013 in the Government Sr. Secondary School in Udaypur, the Commission observed that the number of toilets was not sufficient given the

number of students and soap was lacking. In addition, toilets were mostly unclear and unusable. It is also reported that the school had no water filters. While a cemented water tank was available for drinking purposes, the Commission mentioned that it needed to be ascertained whether water is treated. Following its visit, the Commission recommended the Deputy Commission and officials of the Department of Education to construct additional toilets and provide sanitary napkins as well as safe drinking water including water filters with built in temperature control.

Similarly, the Commission visited child development centres. At the Anganwadi Centre (AWC) in Sarol Village, child-friendly toilets were lacking as well as running water and safe drinking water. The Deputy Commissioner was urged to act on this matter. While toilets were clean at AWC Centre No. 21, the Commission noted that there was no soap and no running water. It was thus recommended that the District Administration should in such context supply safe drinking water in all AWCs.

6. Cases

The Commission has been receiving many complaints pertaining to issues relating to water. More specifically, it has intervened in matters related to the right to safe drinking water and has recommended necessary relief.

For example, in the case “Malfunctioning in water supply scheme in Ludhiana” (Case No. 509/19/10/2014), the Commission came across a news item published in "The Tribune" dated 15 May 2014. The media reported that despite spending more than Rs.14 lakh to increase the water supply in Haripur and Harnampur Villages in District Ludhiana, the Punjab Water Supply and Sanitation Department had not been able to provide chlorinated water and an over-head tank for storage. Reportedly, the Contractor was paid without actually completing the work of laying down the pipeline properly along with storage facilities. As a result, the villagers had to depend on water from tube wells which worked only when there was power supply. The Commission called for a report from the Chief Secretary, Govt. of Punjab. The matter is still under consideration by the NHRC.

The Commission has also received more than 100 complaints from the residents of Dwarka, a residential colony in Delhi. The complaints were about shortage and quality of water. The Commission has taken cognizance of the complaints and is following up on the matter with concerned authorities.

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11. National Human Rights Commission, "Making right to health a fundamental right will be a way forward in improving healthcare services, says NHRC Chairperson", Press release, 6 November 2013. Available at: <http://www.nhrc.nic.in/dispArchive.asp?fno=12999>.
 - National Human Rights Commission, "Curtain Raiser: NHRC National Conference on Health Care as a Human Right", Press release, 31 October 2013. Available at: <http://nhrc.nic.in/disparchive.asp?fno=12994>.
 - National Human Rights Commission, "NHRC seeks reports from Centre, States and UTs on issue of defecation in open and lack of toilets", Press release, 30 June 2014. Available at: <http://www.nhrc.nic.in/disparchive.asp?fno=13239>.
 - National Human Rights Commission, "NHRC issue notice to the Government of Punjab on malfunctioning in water supply scheme in Lubhiana", Press release, 23 May 2014. Available at <http://www.nhrc.nic.in/disparchive.asp?fno=13210>.
 - N. B. Sarojini & others, "Women's Right to Health", NHRC, 2006. Available at: <http://www.nhrc.nic.in/Documents/Publications/Womens.pdf>.
 - National Human Rights Commission, "Regional Consultation on public Health & Human Rights: Report & Recommendations", 2001. Available at: <http://www.nhrc.nic.in/Documents/Publications/publichealthText.pdf>.
 - Miloon Kothari, Sabrina Karmali & Shivani Chaudhry, "The Human Rights to Adequate housing and Land", NHRC, 2006. Available at: <http://www.nhrc.nic.in/Documents/Publications/Housing.pdf>.
 - National Human Rights Commission, "Disability Manual", 2005. Available at: <http://nhrc.nic.in/documents/Publications/NHRC-Book-Disability.pdf>.
 - National Human Rights Commission, "Recommendations of the National Human Rights Commission on Manual Scavenging and Sanitation", 2008. Available at: http://www.nhrc.nic.in/Documents/Publications/Rec_ManualScavngingAndSanitation_Eng.pdf.
 - National Human Rights Commission, "Review Visit of NHRC to Chamba District in Himachal Pradesh", 2013. Available at: http://nhrc.nic.in/Documents/Reports/13_hr_aware_chamba_himachal_pradesh_17_20_Nov_2013.pdf.
 - National Human Rights Commission, 'Reports', <http://www.nhrc.nic.in>.



PERU¹²

Key words – Pastaza River, Pluspetrol, Extractive industry
Practices – Thematic reporting, Monitoring, Investigation, Hearings
Relevant criteria – Accessibility, Quality, Discrimination, Affordability
Website – www.defensoria.gob.pe

LEGAL FRAMEWORK

The 2009 Water Law (established National Water Authority (ANA)), National Water Resources Management Strategy, National Rural Water Supply and Sanitation Project (PRONASAR).

MANDATE OF THE DEFENSORÍA DEL PUEBLO (THE OFFICE OF THE OMBUDSMAN)

Under Article 161 and 162, the Office of the Ombudsman has the mandate of defending the human rights of Peruvians and ensure the provision of public services for citizens. Established in 1996, the office has a constitutional mandate to investigate citizens' complaints, monitor the impact of State action on citizens' rights, and advise the national government on how to rectify problems. The Ombudsman is also empowered to disseminate information to the public regarding how the government is addressing public concerns. The Defensoría del Pueblo of Peru established a mechanism for receiving and responding to the citizen's complaints about water delivery.

THE OFFICE OF THE OMBUDSMAN AND WATER GOVERNANCE RELATED HUMAN RIGHTS

During the first two years of the Ombudsman's operation, approximately 10% of the complaints and requests lodged with the office concerned public services, including water and sanitation. Common requests encompassed the following: improvements in service quality, enforcement of fair rate schedules, and requests for expanded coverage. Complaints in relation to water and sanitation in Lima rose from 159 in 1999 to 302 in 2000. At the national level, the Ombudsman received in 2007 more than two thousand complaints concerning water and sanitation service. They were lodged against SEDAPAL (Lima Water and Sewerage Service Company), SUNASS (National Superintendence of Sanitation Services) and 50 other sanitation services. The rights concerned discrimination in access to water

and sanitation services, as well as arbitrary charges and “other forms of incorrect billing incorrect metering, and poor quality of customer care”.

During the same period, the Office of the Ombudsman was developing a strategic roadmap to advocate and defend Social and Economic Rights. This effort led the deputy ombudsman for public utilities and the environment launch in 2003 an investigation of water and sanitation services in the country. It was based on the idea that rights violations accounted for many of the obstacles to effective water and sanitation management. The Ombudsman considered that the vital character of drinking water and sewerage, and problems related to the lack of access, quality and costs directly affect the lives and health of the citizens, in particular the poorest. Therefore, monitoring of public services with regards to water and sanitation became fundamental and a priority for this institution.

1. Report – Citizens without Water: Analysis of a Rights Violation

In 2005, the Office of the Ombudsman published a study entitled *Citizens without Water: Analysis of a Rights Violation*. The objectives of this report were the following: i) Highlight the nature of the human right to water and sanitation; ii) Shed light on the situation of limited access to sanitation services of major sectors of the urban population; iii) Evaluate the quality of service urban population receives in terms of drinking water quality and continuity of service; iv) Evaluate the legal, institutional and economic aspects of the sanitation industry preventing access and improve the quality of services. The report included 13 recommendations for the Peruvian government, in particular to the Peruvian congress; the Ministry of Housing, Infrastructure, and Sanitation; the Ministry of Health; regional, provincial, and local governments; SUNASS; and the various water and sanitation service providers. The Ombudsman presented the report on behalf of the citizens, calling on government authorities to implement the recommendations. It includes a recommendation to improve access to water and sanitation throughout the country. To gather data and evidence for the report, the Office of the Ombudsman set in motion a number of measures, several of which took on a life of their own and remained active after publication of the report.

2. Water related statements

The Ombudsman also made series of statements concerning the situation of the right to water and sanitation in Peru. In this regard, a number of press releases were published with respect to delays in relation to the implementation of sanitation works in La Libertad, recommendations on commitments arising out of environmental emergency plans in Loreto, the

expression of concern regarding the oil spill in the sea of Tumbes and the call for eradication of illegal mining are all among recent statements related to the human right to water.

In its Press Release from 2013 (Press Release no. 184/OCII/DP/2013), the head of the ombudsman office of Callao warned that through monitoring by commissioners of wells and reservoirs, it was identified that the company EMAPA-Hualar did not ensure adequate provision of sanitation due to poor infrastructure, a situation that threatens the health of the population. Also in Huando, San Isidro and San Cristobal reservoirs verified the presence of fecal waste and solid waste in the vicinity as well as infrastructure in very poor condition, with broken pipes and rusted caps. Finally, the ombudsman recommended EMAPA-Hualar to take necessary actions in order to improve the infrastructure of sanitation services and ensure proper delivery of the service to the users.

In its press release on 4 March 2014 (Press Release no. 042/OCII/DP/2014) the Defensoría del Pueblo expressed concerns about loopholes that prevent timely punishment of companies that distribute drinking water of questionable quality, as evidenced by complaints of permanently present inhabitants of various parts of the country. Complaints were received against Peru's state water and sewerage utility – SEDAPAR SA – *“for the supply of water with high concentrations of arsenic and boron in the Mollendo districts, Cocachacra, Punta de Bombon and Mejía, province of Islay, and also in Tacna, where the Regional Health Directorate Tacna itself concludes that the Lending Institution Sanitation Services Tacna – Tacna SA EPS does not meet the maximum permissible limits for aluminium and arsenic,”* noted the Ombudsman. The Ombudsman recalled that water suppliers must comply with the obligation to disinfect water before delivery to the population, as well as to eliminate or reduce excess heavy metals or other elements. To this effect, the Office of the Ombudsman recommended the Ministry of Health to expedite the approval of the rules on the criteria to determine the amount of sanctions to impose on Companies Providing Sanitation Services (EPS), Provincial and District Municipalities and rural areas' operators that fail to provide water suitable for human consumption. Finally, the Ombudsman noted the inability of Regional Health Directories to implement corrective measures or sanctions to problems in water quality; it also recalled that it is necessary that the SUNASS advise the EPS to improve their systems and water treatment processes; and called on the Ministry of Health to convene others to the early adoption of specifications which will enable the realisation of the human right to water.

3. Pastaza River case

The Ombudsman also published a *Report on Actions against the Declaration of the State of Emergency in Pastaza River Basin, Monitoring the Implementation of the Immediate Action Plan and other short term actions*. The objectives of this report was to evaluate the level of compliance with the obligations included in the Immediate Action Plan and other short term actions approved in the context of the emergency. The investigations enabled the Ombudsman to evaluate the human rights situation and to formulate recommendations. The investigation involved the following: i) review of the regime applicable to such emergency situations; ii) meetings with relevant national and regional authorities; iii) inquiry of written information regarding the progress of the implementation; iv) systematization of monitoring results through a Matrix containing the supervised activities based of the obligations listed in the Action Plan. The report contains the detailed matrix of the progress made on the implementation along with various conclusions and recommendations, including detailed evaluation of the situation related to drinking water, sanitation and health. In particular, the Ombudsman notes that access to safe water fit for human consumption that is sufficient in quantity and easily accessible is a right which enables the realisation of other rights, such as the right to food and the highest attainable standard of physical and mental health, all those directly related to the right to life.

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12. World Bank Institute, "Advocacy by the Office of the Ombudsman: Enabling Water Reforms Based on Citizens' Feedback in Peru", Social Accountability Notes, 2010. Available at http://siteresources.worldbank.org/INTSOCACCEMSIDEGOV/Resources/2871813-1200515311988/4577172-1271445400159/noteso2_peru.pdf.
 - Defensoría del Pueblo, "Ciudadanos sin Agua: Análisis de un derecho vulnerado", Informe Defensorial Nr 94. Available at (in Spanish): http://bvs.minsa.gob.pe/local/minsa/1058_GOB292.pdf.
 - Defensoría del Pueblo, "Portal de noticias: Defensoría del Pueblo advierte el mal estado de pozos y reservorios en Huaral", Press release, 18 November 2013. Available at (in Spanish): <http://www.defensoria.gob.pe/portal-noticias.php?n=10996>.
 - Defensoría del Pueblo, "Portal de Noticias: Defensoría del Pueblo advierte vacíos legales para sancionar a empresas que distribuyen agua para consumo humano de dudosa calidad", Press release, 4 March 2014. Available at (in Spanish): <http://www.defensoria.gob.pe/portal-noticias.php?n=11474>.
 - Defensoría del Pueblo, "Acciones del Estado Frente a la Declaratoria de Emergencia Ambiental en la Cuenca del Río Pastaza. Supervisión a la implementación del Plan de Acción Inmediato y de Corto Plazo.", Serie Informes de Adjuntía – Informe N.º 001-2014-DP/AMASPP/MA, 2014. Available at (in Spanish): <http://www.defensoria.gob.pe/modules/Downloads/informes/vari0s/2014/Informe-de-Adjuntia-N-001-2014-DP-AMASPP/MA.pdf>.



COLOMBIA¹³

Key words – Matrix, Indicators, Tracking
Practices – Monitoring, Research, Legislative review
Relevant criteria – Accountability, Accessibility, Acceptability, Sustainability
Website – www.defensoria.org.co

LEGAL FRAMEWORK

The Constitution of Colombia of 1991 (art 49), Law 142, Ley de Servicios Públicos Domiciliarios, Comisión de Regulación de Agua Potable y Saneamiento Básico (CRA).

MANDATE OF THE DEFENSORÍA DEL PUEBLO (OFFICE OF THE OMBUDSMAN)

The Defensoría del Pueblo of Colombia, established by Law 24 of 1992, is a national agency with the mandate to oversee the protection of human rights in Colombia. It has the mandate of receiving and investigating complaints of human rights violation including the human right to water and sanitation.

THE DEFENSORÍA AND WATER GOVERNANCE RELATED HUMAN RIGHTS

The Defensoría del Pueblo of Colombia can be mentioned as one of the exemplary national human rights institutions with a separate and complete section exclusively devoted to the domestic realization of the human right to water. This human right to water section addresses the relevant national policies and the specific mechanisms of monitoring the government's responsibility in the realization of the human right to water.

1. Research program to evaluate public policies

The Defensoría developed a research program called ProSeDHer (Program Monitoring and Evaluation of Public Policies on Human Rights) in 2001 that assists in evaluating public policies aimed at the realization of economic, social and cultural rights (ESCR), including the right to water. The research program seeks to establish the specific scope and effectiveness of the public policies adopted by the Colombian government in relation to the practical contributions of such policies towards the realization of ESCR.

The methodology of the ProSeDHer program covers three interconnected stages. The first stage aims at identifying the problems that exist against the rights and subjects. In this part, the nature and scope of the right are studied and the correlative obligations of the State are established. This content is analysed on the basis of existing rules, jurisprudence of the Constitutional Court, international law covenants and agreements. In the second stage, public policies that the country has in place to comply with obligations in relation to economic, social and cultural rights – particularly in relation to the most vulnerable sectors of the population – are discussed. A measuring instrument is designed containing questions and indicators to monitor and assess the status of implementation of the law throughout the country and compliance with the State's obligations. The instrument applies to the competent authorities at national, provincial, district and municipal levels. Also, eventually, to individuals providing public services. It is only when the objectives of the first two stages are reached, that the Ombudsman may have a number of indicators relating to compliance with the obligations of the State's with regard to the implementation of economic, social and cultural rights.

The third phase begins through the production of reports that provide an objective, accurate and clear analysis of a specific problem along with a set of recommendations and initiatives to ensure the progressive realization of the rights subject to analysis.

The Program monitoring of the public policies on the right to water – Water ProSeDHer – monitors the effectiveness of the policies adopted to realize the right to water in Colombia by relying on the indicators developed by the Committee on ESCR. The public policies, in such sense, include the constitutional, legal and regulatory framework of water and sanitation, national plans, departmental and development plans, strategic plans of the Ministry of Environment and public sector policies on domestic public drinking water and basic sanitation and environmental management of water resources in Colombia.

2. State performance evaluation and monitoring in relation to the human right to water

Pursuant to its mandate, the Defensoría evaluated the performance of State obligations in respect of the human right to water. In its investigations, the office of the Ombudsman classified the country's municipalities into a hierarchy from 'worst' to 'best' in terms of both water supply and environmental sustainability. The first classification used evaluation indicators based on

the components of the human right to water, i.e.: i) the availability of water, i.e. ensuring a continuous supply; ii) accessibility to water, both in terms of physical access, economic access, non-discrimination and access to information, and iii) water quality, as it must be safe and must not contain microorganisms or substances that threaten health. Additional indicators included coverage levels, the gap between water coverage and sanitation coverage levels, the gap between urban and rural coverage levels, and local government capacity. The second classification, measuring environmental sustainability, classified municipalities according to their performance on three axes. These were natural water regeneration capacity (extent of plant cover, wetlands, etc.), water scarcity (risk of water shortages in adverse environmental conditions) and vulnerability (the relationship between natural regeneration capacity and water scarcity). The results of the investigation identified 46 of the 1097 municipalities as being 'high risk' municipalities in which the declaration of a health emergency was recommended. In a further 117 municipalities data was deemed highly inadequate, requiring further research. Finally, in environmental terms, only 17% of the Colombian population have acceptable levels of vulnerability, indicating an urgent need to build regenerative capacity and reduce water scarcity in the majority of municipalities.

The Defensoría developed a detailed matrix concerning the implementation of the right to water in Colombia. According to the matrix, the implementation of the human right to water will be monitored on the basis of the human right to water, public policy issues and the right to water tracking system. The human right to water part outlines the international and national legal frameworks on the duty of the Colombian government concerning the implementation of the right to water and sanitation. In line with this, the Office of Ombudsman developed a matrix obligations in which it highlighted the specific measures that the Colombian government needs to take in light of the obligations mentioned in the General Comment no 15 of the Committee on ESCR on the human right to water. The matrix deals with the obligations to respect, protect and comply and their respective national obligations in the Colombian context.

ProSeDHer has been vital to establish the effectiveness of the public policies to ensure respect, protection and the progressive realization of ESC rights including the right to water. Through the ProSeDHer, the Office of the Ombudsman engaged in defining the content and scope of the human right to water under the Colombian constitution, case law and international human rights instruments. The Office of the Ombudsman published a detailed

document on the issue in which it outlined the comprehensive study on the right to water in the national and international framework. The document deals with both the content, scope and nature of the obligations under the national and international legal framework on the right to water. Also, the Ombudsman outlined the bill that enshrines the human right to water into national law. Finally, the Ombudsman dealt with the substantive issues arising in the implementation of the right to water in light of the General Comment no 15 on the human right to water. Once it dealt with the content, scope and nature of obligations of the human right to water under the national and international framework, the Ombudsman identified public policy issues relevant for the implementation of the human right to water. The report indicates the relevance of including the concept of human rights in the approach towards analysing public policy issues on the ground that both drinking water and basic sanitation are essential rights for life of people and it is the duty of the State to take necessary actions so that, without discrimination, its people enjoy sufficient drinking water to meet the needs of food and toiletries, mainly. The report entitled *Diagnosis Enforcement of the Human Right to Water in Colombia* mainly compiles the list of policies, plans and strategies precisely on public domestic drinking water and basic sanitation, and environmental management of water resources in Colombia.

Another major contribution of the Ombudsman of Colombia is its tracking system. The tracking system consist of a system of indicators to monitor compliance of the Colombian government with its obligations on the implementation of the right to water. The tracking system includes variables that measure the level of progress and the degree of compliance in relation to the realization of the human right to water. Two benchmarks are developed for the tracking system: i) Compliance with the Law and; ii) Realization of the Right. Compliance with the Law refers to the level of compliance with each components of the law, particularly availability, accessibility and quality. It indicates the relative position of the people in certain geographical space with the right. The Realization of the Right measures the extent of effectiveness of the compliance with each component of the right to water in terms of resources, capacity and utilization.

Two main systems of indicators are developed for this purpose: i) Main Indicators and; ii) Secondary Indicators. The Main Indicators for compliance with the law are availability, accessibility and quality, whereas the Main Indicators for the realization of the right include resource, capacity and utilization. The Secondary Indicators include resource availability, resource availability for human consumption, resource use externalities, physical accessibility,

economic accessibility, access to information, quality-pollution sources hydric, quality water supply-portability and sustainability and efficiency of providers. Different variables are developed for each measurement in order to assess the level of compliance and the realization of the human right to water.

Based on the obligations to respect, protect and fulfil under General Comment no.15 on the human right to water, the Ombudsman developed an obligation matrix concerning the obligation of the State on the right to water and sanitation. The obligation matrix, as part of the main matrix, points out the specific legal obligation of the government of Colombia in accordance with the international human rights instruments and the constitution of Colombia on the right to water and sanitation. In addition, the Ombudsman has a matrix to follow up the progress on the human right to water at departmental level through its Departmental Compliance Diagnostic on the Human Right to Water. As a result, the Ombudsman conducted compliance reports of the human right to water for 32 departments in April 2010.

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13. Defensoría del Pueblo, “Programa de Seguimiento y Evaluación de las Políticas Públicas en Derechos Humanos, ProSeDHer”, <http://www.defensoria.gov.co/es/public/contenido/1307/ProSeDHer.htm>.
 - Defensoría del Pueblo, “Tercer diagnóstico sobre la calidad del agua para consumo humano”, 2007.
 - Defensoría del Pueblo, “Clasificación municipal de la provisión de agua en Colombia”, 2009.
 - Defensoría del Pueblo, “Diagnostico Sobre Calidad de Agua para Consumo Humano”, 2006. Available at (in Spanish): www.defensoria.gov.co/attachment/14/informe_123.pdf.

ARGENTINA¹⁴



Key words – Matanza-Riachuelo River basin, Pollution, Indigenous people

Practices – Monitoring implementation, Public education, Advocacy and Hearings

Relevant criteria – Acceptability, Accessibility, Quality, Accountability

Website – www.dpn.gob.ar

LEGAL FRAMEWORK

The National Constitution (Article 41 on the right to a healthy environment, and Article 75, inc 22 on Human Rights Treaties), General Environment Law No 25.675. The human right to water is recognized in the Argentinian constitution, which includes through its article 75 inc 22 and as a part of the constitutional text, the Human Rights Treaties ratified by Argentina. These include the International Covenant on Economic, Social and Cultural Rights (Articles 11 and 12); the Convention on the Rights of the Child (Article 24.2.c); and The Convention on the Elimination of All Forms of Discrimination Against Women (art. 14.2.h).

MANDATE OF THE DEFENSOR DEL PUEBLO DE LA NACIÓN (NATIONAL OMBUDSMAN)

The Ombudsman's Office was established by the National Constitution of 1994 (Article 86 and 43). It is an autonomous institution with capacity to propose legislation. The fundamental objective of this institution is to protect the rights and interests of individuals and the community against acts and omissions by the national public administration and the control of the public administration activity.

THE DEFENSOR DEL PUEBLO DE LA NACIÓN AND WATER GOVERNANCE RELATED HUMAN RIGHTS

The Defensor del Pueblo (DPN) of Argentina has a strong environmental focus and deals with water and sanitation as part of the environmental theme. Their focus in relation to the environment includes work on pollution, environmental risks towards children, industrial pollution, and environmental impact of agrochemical use, mining, deforestation, watershed management, social participation and management of urban solid waste. In cases where water and sewage public utilities are involved the DPN deals

with the individual complaints on service quality and investments plans through its public services division. The Argentinian NHRI has been taking a very active role in promoting human rights in water basin management. Its wide-ranging experience of intervention in that contexts includes, *inter alia*, inefficient ecological flows, water pollution from industrial and domestic sources, inadequate water management, erosion, floods, illegal water diversion, habitat degradation, land use changes etc. The focus of their activities in relation to water relates to promoting the establishment of basin authorities or advocating changes in the existing one's proceedings in line with the principles of ensuring access to information, accountability and wide citizen participation in environmental decision-making.

Matanza-Riachuelo River Basin Case

As a result of its landmark intervention, the Ombudsman's Office has been working over the course of the last 10 years in partnership with other institutions in promoting a process to reverse the critical situation of one of the largest in the country and the world's most polluted watersheds: the Matanza-Riachuelo River Basin. The Ombudsman in his role as coordinator of the Collegiate Body monitors compliance based on the orders of the Supreme Court in the Matanza -Riachuelo River Basin case. It reports to the Court in relation to the enforcement of programs submitted by the authorities, it makes observations on the proposed measures and has requested inclusion of pending issues onto the agenda.

The case originates in 2002, when the *Asociación Vecinos de La Boca* (La Boca Neighborhood Association) filed a complaint to both the national and the Buenos Aires city Ombudsmen because of the serious contamination and flooding affecting residents in the area of the Matanza -Riachuelo River Basin. They complained about the lack of action and policies of the responsible government authorities. Shortly afterwards, the Ombudsman received another complaint, this time made by María del Carmen Brite, a resident of the "*Villa Inflamable*" in Dock Sud. She denounced that her three children were suffering from serious health problems due to the high level of contamination caused by the Dock Sud Petro-Chemical Complex. These accusations were added to a number of other complaints made to the Ombudsman's Office by organizations or individual citizens in relation to conditions and problems concerning socio-environmental issues in the Matanza-Riachuelo Basin. As a result, the National Ombudsman filed complaint N. 9924/02, which led to an investigation with the objective of mobilizing public opinion.

During 2003, the Ombudsman brought together a group of well-known NGOs, Universities and local ombudsmen, who drafted the first special report on the situation of the Matanza- Riachuelo River Basin. This report was followed by a second Special Report Monitoring the Case of the Matanza-Riachuelo River Basin during the period of 2003-2005. The inquiry led to a set of recommendations by the Ombudsman, set out in resolutions 31/2003, 112/2003, 43/2006, 44/2006, 46/2006, 47/2006 and 48/2006 suggesting the establishment of an inter-jurisdictional Basin Authority.

In the meantime, a group of private citizens brought the case to the Supreme Court, which after the release of the second Special Report opened the case and requested the authorities a plan to address the question. The Ombudsman and 5 NGOs asked to be a part in the judiciary process. The response of the authorities was to be presented in public hearings before the Supreme Court, of which the first was held in September 2006. During this hearing, the Riachuelo Basin Clean-Up Plan was presented, and an inter-jurisdictional Committee on the Basin was created to enable integrated planning of the management of the river. In 2008 this was followed by a Supreme Court ruling that determined the liability of the various authorities and indicated the obligations of the various government bodies in cleaning up the river. Moreover, the court ruled that the National Ombudsman and the NGO's participating in the case could establish a Chartered Body, which exercises control over the clean-up plan. Since 2008 the Ombudsman and the NGO's presented periodical reports, held weekly monitoring meetings and expressed its opinion in over a hundred of writing statements in court.

Concerning watershed management, the Defensoria believes that access to water is a fundamental right and that water is irreplaceable for sustaining human life and other living organs and is an essential element for most production processes input. However, in Argentina the availability of water is uneven, with areas that are below the limit of aridity and others that are affected by recurrent flooding events. The Ombudsman advocates integrated watershed management, which is a process for the management and coordination of development of water, land and related resources, in order to ensure human rights and sustainability of ecosystems. This involves coordinating the actions of numerous agencies both national and local State level not only to minimize and remedy water pollution, but also to address the problems arising from the excesses and shortages of water for human uses and ecosystems, wetland protection, proper treatment of municipal solid waste, land use planning of production activities. All this can only be achieved through participatory planning of all sectors of government

and society, via the establishment of maximum discharge parameters that include the mass load of rivers, clear objectives for maintenance and restoration of rivers and soils uses as defined for each zone, and the establishment of basin authorities for leadership and decision-making.

14. Defensor del Pueblo de la Nación, 'Cuenca Matanza-Riachuelo', <http://www.dpn.gob.ar/areas.php?cl=24&act=list>.

EL SALVADOR¹⁵



Key words – Metallic mining, Mining project Cerro Blanco
Practice – Research and publication, Investigation, Thematic reporting and Advocacy
Relevant criteria – Participation, Accessibility, Quality
Website – www.pddh.gob.sv

LEGAL FRAMEWORK

General Water Law (“*Ley General de Agua*”): a broad bill that would prioritize human consumption over industrial and commercial uses of water was introduced in March 2012. However, this draft bill is still currently under debate in the National Parliament.

MANDATE OF THE PROCURADURÍA PARA LA DEFENSA DE LOS DERECHOS HUMANOS (INSTITUTION FOR HUMAN RIGHTS DEFENCE)

The mandate of the El Salvador NHRI is based on Article 194 of the El Salvador Constitution and Articles 11 and 12 of the law establishing the Procuraduría para la Defensa de los Derechos Humanos. Among its functions, the Procuraduría ensures respect and guarantees human rights; investigates cases of human rights violations; promotes reforms before State organs in relation to human rights; issues opinions on bills affecting human rights; and prepares and publishes reports.

PROCURADURÍA PARA LA DEFENSA DE LOS DERECHOS HUMANOS AND WATER GOVERNANCE RELATED HUMAN RIGHTS

The Procuraduría has been very active in relation to the impact of metallic mining activities in El Salvador including its impact on the human right to water and the right to a healthy environment. In this regard, it conducted investigations concerning certain mining projects and published a report on these activities. Major practices of the institution in relation to the human right to water relate to its position report concerning the General Water Law currently under discussion and study reports concerning the impact of metallic mining industries on the right to water in El Salvador.

1. National water legislation reform

The NHRI of El Salvador has been very vocal in demanding the early ratification of the amendment to article 69 of the Constitution of El Salvador,

which recognizes the right to water and adequate food as basic human rights complementing their protection and development with secondary laws on the subject. In addition, this institution has been also active in relation to the law prohibiting metallic mining and import of chemicals.

2. Position Report on Special Law

In 2012, the Ministry of Economy along with the Ministry of Environment and Natural Resources of El Salvador presented to the National Parliament the law proposal for the so called Special Law for the suspension of administrative procedures related to metallic mining exploration and exploitation projects. Based on this law proposal and based on the constitutional mandate, the El Procurador for Human Rights Defense presented to the National Parliament an opinion about the Special Law.

This opinion starts by outlining the growing challenge of availability of water resources in El Salvador. It is noted that increasing water demand due to growing population and negative effects of climate change all contribute to this challenge. In particular, the report notes that environmental pollution through the spreading of heavy metals as a consequence of metallic mining is becoming the main cause for drought and progressive worsening of water quality in El Salvador. The report goes on to mention the harmful impacts of metallic mining which requires large quantities of water by itself and holds that “the greatest impact of a mining project is the effect on the quality and availability of water in the area near the project.”

In this opinion the National Human Rights Institution confirmed that it had an interest to address all issues related to the legislative proposal in relation to the decisions taken by the Salvadorian State concerning the mining industry as its regulation may have impacts on human rights. That is, as a result of the implications of sustainable development and implications regarding the respect of human rights such as: life, health, proper feeding, environment, water and the rest of concurrent human rights; stipulated both in national law as well as in international human rights instruments that El Salvador subscribed in.

The NHRI also highlighted that the legislative proposal only discusses the possibility to end the suspension, but it does not open the alternative of the definitive prohibition of the metallic mining industry in El Salvador, nor does it allow the alternative to use studies and opinions from experts, organizations outside public institutions. The report concludes that as the metallic mining industry cannot function without posing serious risk to

health and life, the best alternative to address the problem from a human rights perspective is not suspension but rather the total prohibition of such extractive activity.

3. Report on metallic mining in El Salvador (2012)

The reports underline that the harmful effects of metallic mining have been deeply documented in a number of studies and among these are: Decrease of available water (and contamination of it), damage to marine environment and pisciculture and deterioration of farming land (along with its effects on livestock). It also highlights the Helsinki Rules on the Uses of the Waters of International Rivers, pursuant to which States that share international drainage basins must “prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State”, and failure to comply with this regulation implies the payment of a compensation for the damages and related losses caused by the co-basin State.

The report has the following objectives: Firstly, to reflect the impacts that could be induced to Salvadorian population by the decisions regarding the authorization of metallic mining exploitation projects within the Salvadorian territory. Secondly, to highlight the potential damage to Salvadorian residents of the Cerro Blanco metallic mining project, located in Guatemala. In that respect, the report affirms that the damage will be caused by the harmful effects of metallic mining in the shared drainage basin.

4. Special Report on the Cerro Blanco mining project

The “Cerro Blanco” mining project is an initiative developed for the Entre Mares of Guatemala LLC, which is a subsidiary society of the Canadian GoldCorp Incorporation. The Cerro Blanco mining project is located approximately 153 kilometres east of the city of Guatemala, and around 18 kilometres away of Metapán, in the Department of Santa Ana, El Salvador, where the Salvadorian Guija Lake is located. The lake is situated within an international hydrographical (drainage) basin that is shared by El Salvador and Guatemala. At the same time, the Cerro Blanco project is located within the Trifinio Region at the borders of Guatemala, El Salvador, and Honduras. This area is where the principal shared drainage basins originate for the three countries (Trinational Lempa basin, Binational Motagua River basin and Binational Ulua River basin). These basins have great importance from an environmental, human and productive point of view. For example, the Lempa River is the source of potable water for 37% of the metropolitan area of San Salvador in El Salvador.

The NHRI of El Salvador presented a Special Report on Mining Project Cerro Blanco and the related potential human rights violations on 10 January 2012 (2013). This extensive report sheds light on the mining industry in El Salvador and the impact of the mining industry on a range of human rights, such as the right to life, right to health and the right to water, and especially the harmful effects on the Lempa River which is the main water source for El Salvadorians.

First, the report describes metal mining with a special focus on GoldCorp Inc Extractive industries, including the Cerro Blanco project, and their impact in Central America. Metallic mining involves the use of large amounts of water. If water used in mining operations can lead to a decrease in the amount of water available for human consumption, it is a serious problem in itself, according to the report. However, the environmental impact of metal mining resulting in serious water pollution is not less important. In addition, the acid drainage to the surface caused by such mining industries results in acid water due to a chemical process that occurs when sulphur-containing are exposed to air and water. Such impact of mining does not only affect the availability of clean and acceptable water but also the aquatic life. As a result, the soil is unfit for agriculture, livestock grazing and other uses. The report continues to highlight the potential impacts of the project on the right to health.

The report also underlines the findings of the evaluation team whereby the studies in the Upper Lempa River (Trifinio Plan) indicate that water from Honduras and Guatemala is already contaminated by different uses in these countries. The combination of factors such as deforestation, lack of land use planning, dumping of solid and liquid waste in waterways, the contribution of contaminated water from Guatemala and Honduras basins, degradation of watersheds, exploitation of poor soils and cumulative impacts caused by disasters, increase environmental vulnerability of the Northern Zone. In this context, the construction of new infrastructure could generate a number of adverse effects that must be analysed in light of other past, present and future effects on the Lempa Basin in particular and on the North Zone in general.

The report also covers the institutional actions taken by the Procuraduría after visiting the Cerro Blanco project together with the Ombudsman of Guatemala. Both institutions agreed to pressure their respective governments to alert them about potential social conflicts caused by the mining projects. In addition, the Procuraduría requested the Inter-American Commission

on Human Rights for a special hearing to discuss the potential threats and asked the Commission to “protect the locals” who have come forward, saying the project would affect them. As it was noted, the Cerro Blanco is a threat to their human rights. On November 4, 2012, the IACHR held a thematic hearing on the situation of the people affected by metal mining in El Salvador. The report also lists various events and meetings the Procuraduría participated in, with regard to the Cerro Blanco mining project.

A substantial part of the report deals with the potential human rights violations of the Cerro Blanco project. The right to life, the right to health, the right to a healthy environment, the right of access to information and the right to water are described as the major rights that could be potentially violated by the project. Concerning the right to water, the report provides an extensive description of the legal frameworks at the national, regional and international level including the General Comment no 15 on the human right to water and the UN Human Rights Council Resolution 15/9 of 2010. The report underlines that the impact the mine will have in one of the main water source of El Salvador is evident: it will prevent people to have access to clean water, which will clash with the proper quality of life and dignity of the Salvadoran population. This reason makes it imperative that the Salvadorian State takes appropriate measures to avoid water contamination, independently the source of the contamination.

The report also incorporates a list of conclusions and recommendations. The conclusions mainly indicate the risks of human life and environmental impacts of the Cerro Blanco mining project and emphasize the fact that the government of El Salvador needs to do more in regulating the mining activities and their potential impacts on the human rights of Salvadorians. The recommendations call upon the Salvadorian government to protect the human rights of the people by complying with its national and international obligations on human rights. It calls upon the government to work with the government of Guatemala and look for mutually agreeable solutions to solve the contamination problems of the mining industry.

5. Statement by Procuraduría para la Defensa as part of the world water day 2014

Attorney for the Defense of Human Rights, David Ernesto Morales Cruz, reiterated its issued position last 29 November 2013, which recognized that water is essential for life, health, food and to live in dignity. He again expressed concerns about the plight of water in El Salvador, in relation to the high levels of pollution and water scarcity. The statement refers to official

information, according to which El Salvador is the country that has the lowest water availability level in Latin America and the Caribbean. The Ministry of Environment and Natural Resources findings also underlined that in recent years the surface water and groundwater suffered a marked deterioration by pollution and overfishing. Such a scenario is compounded by the effects of climate change, the excessive use of agrochemicals, as well as the threat of the exploitation of metallic mining projects.

He called on taking urgent measures directed not only to recognize the damage to aquifers and provide immediate solutions, but to making firm measures to ensure the availability, quality and sustainability of water for all people, without discrimination and based on the principle of equity. He also called on the obligations of the Salvadoran State to undertake all actions within its power to address and resolve the challenges of sustainability in water issues and coordinate cross-border, as one of the ways to cope in times of environmental and climate crisis. He reiterated its demand for the early ratification of the amendment to article 69 of the Constitution, which recognizes the right to water and adequate food as basic human rights complementing their protection and development with secondary laws on the subject, and a law prohibiting mining and metal use and import of chemicals, debts are still pending in the legislative breast. Finally, he urged all public institutions with expertise in water to join efforts for the guarantee, respect and protection of this vital law in coordination with social organizations.

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15. Procuraduría para la Defensa de los Derechos Humanos, “Position about Metallic Mining in El Salvador, The “Cerro Blanco” transborder Project and its potential impacts on Human Rights for the residents in the Republic of El Salvador”, 2012. Available at: <http://asprode.org/docs/report.pdf>.
 - Oscar Humberto Luna and Yanira Cortez Estévez, “Informe Especial sobre el Proyecto Minero “Cerro Blanco” y las Potenciales Vulneraciones a Derechos Humanos en la población salvadoreña”, PDDH, 2013. Available at (in Spanish): <http://www.pddh.gob.sv/menuareas/menumed/458-presentacion-de-informe-especial-sobre-el-proyecto-minero-qcerro-blancoq>.
 - Procuraduría para la Defensa de los Derechos Humanos, “Audiencia temática ante la Comisión Interamericana de Derechos Humanos (CIDH): ‘Medio Ambiente y Derechos Humanos en El Salvador’”, Press release, 18 January 2012. Available at: <http://www.pddh.gob.sv/component/jdownloads/finish/5-informes-especiales/103-informe-la-situacion-del-medio-ambiente-y-sus-impactos-en-los-derechos-humanos-en-el-salvador?Itemid=135>.
 - Procuraduría para la Defensa de los Derechos Humanos, “Comunicado en el marco del Día Mundial del Agua 2014”, Press release, 20 March 2014. Available at (in Spanish): <http://www.pddh.gob.sv/menupress/menuprensa/560-comunicado-en-el-marco-del-dia-mundial-del-agua-2014>.
 - Procurador para la Defensa de los Derechos Humanos, “Pronunciamiento del Procurador para la Defensa de los Derechos Humanos”, Press release, 14 January 2013. Available at (in Spanish): <http://www.pddh.gob.sv/menudocs-7/viewcategory/1-pronunciamientos?start=10>.

PANAMA¹⁶



Key words – Chan-75, Hydroelectric project, ESC rights, Indigenous rights

Practice – Monitoring, Reporting, Investigation

Relevant criteria – Participation, Acceptability, Accessibility

Website – www.defensoriadelpueblo.gob.pa

LEGAL FRAMEWORK

Article 110 of the National Constitution of Panama confirms that the State has the primary responsibility to develop the accessibility of drinking water and sanitation for the prevention of communicable diseases. Pursuant to Article 118, it is also the State's duty to guarantee that the population lives in a healthy environment and free of pollution.

MANDATE OF THE DEFENSORÍA DEL PUEBLO DE LA REPUBLICA DE PANAMA

This institution was created through Act No. 7 of 5 February 1997 to ensure the protection of human rights of all citizens of Panama. The Ombudsman is fully independent and has functional, administrative and financial autonomy. The powers of the Ombudsman include the following: investigate, conciliate or denounce acts or omissions of public officials that may constitute human rights violation. The Ombudsman is empowered to exercise a non-judicial review over the public administration and defend human rights against government authorities. The Ombudsman may also investigate and report facts, acts or omissions of public, mixed or private companies, or individuals, to develop a public service concession or administrative authorization, which may constitute violations of human rights.

DEFENSORÍA DEL PUEBLO AND WATER GOVERNANCE RELATED HUMAN RIGHTS

The NHRI of Panama has been active in relation to the impacts of a major hydroelectric project called the Chan-75 Hydroelectric Project. The main relevant activity of the Defensoría in that respect relates to the investigation of the case along with the publication of a special report on the socio-cultural and environmental impacts caused by the Chan-75 Hydroelectric Project.

1. Special Report on Socio-cultural and environmental impacts caused by the Chan-75 Hydroelectric Project (2009)

This report is meant to explore potential environmental impacts, including the human right to water, along with the socio-cultural impacts of the Chan-75 Hydroelectric project. The investigation is conducted following the complaint by the Alliance for Conservation and Development for the alleged abuses and violations of the rights of the communities affected by the construction of the project. After observation, interviews, investigation and analysis of documents and records relating to the project, the Ombudsman published a special report on the matter.

The report primarily introduces the conceptual and theoretical frameworks giving rise for the need and implementation of the project. In that context, the need for energy and renewable sources in Panama is analysed and the climate change angle of the project is explored (Clean Development Mechanism). The report addresses human rights in general and ESC rights in particular on the basis of the international and regional human rights instruments, particularly the Universal Declaration of Human Rights and the American Declaration of Human Rights. The national obligation of Panama in light of these instruments and other international documents ratified by Panama are further included.

The report also outlines the efforts of the Ombudsman in dealing with the challenges on the right to a healthy environment, including the right to water in light of such projects, specifically in relation to the Changuinola River. The Ombudsman tried to involve the stakeholders of the project including the ministries to solicit information on the real situation affecting the rights of the communities in the area surrounding the hydroelectric project. Visits, meetings and inspections with communities and authorities involved were also conducted. In this regard, demands of the affected population for the suspension of the project on the basis of the impact on their right to a healthy environment, including the right to water were noted. Further, the Ombudsman solicited the National Environmental Authority that claimed having conducted an Environmental Impact Assessment and implemented mitigation mechanisms on the potential impacts, along with compliance of the constructing company with 95% of the mitigation measures. The Ministry of Social Development was also invited to submit its position. The Ministry indicated that it established an interdisciplinary team for conducting interviews and surveys allowing the identification of different areas of concern, such as ignorance of the project, community participation, water related problems and health problems. The Ministry further explained that

following efforts to solve the problems, a social protection system was established and participation of affected communities was enhanced.

In its analysis of the situation, the Ombudsman expressed concerns due to the possible harmful socio-cultural and environmental impacts that could result from the implementation of this hydroelectric project. In that context, the constitutional rights of the citizens, the duties of the government, the national policies and legislations on environment including water were addressed. The Ombudsman relied on the international human rights interpretations in relation to the right to a healthy environment, the right to water, the right to health and the right to participation in this context. A special consideration for affected indigenous peoples has also been taken into account on the basis of article 90 of the Constitution of Panama, which provides that the State recognizes and respects the ethnic identity of national indigenous communities and that it will develop and implement social and economic policies for the human development of these groups. At the same time, the Ombudsman noted that the consultation mechanism held for the approval of the project, albeit in compliance with the commitment to inform, was not a sustained process that allowed those affected to have voice on the development and clarify any doubts that may arise in data at any stage thereof. To this effect, the Ombudsman recalled that the State should refer and implement international instruments on the rights of indigenous peoples and explicitly apply the concept of free and informed participation in the course of project implementation.

Finally, the Ombudsman concluded that despite repetitive complaints by some members of the community, the project is vital for the future energy demand of Panama and called upon the State to respect the right of the citizens to have a free and informed consent in the implementation of the project. It also called upon the State, particularly the National Environmental Authority, to closely follow the implementation of the project in light of its impact on human rights including the right to water.

2. Other activities in relation to water

The Ombudsman organized through its Regional Office Veraguas the cleaning of the Mariato beach, as part of the commemoration of the World Water Day. This cleaning allowed to collect a large amount of leaves of palms at the edge of the beach, as well as glass bottles, beer cans, pampers, disposable plates, spoons and plastic forks, and other solid waste deposited in garbage bags. The Ombudsman reiterated its commitment to ensure promotion of

human rights through various actions that enable people receiving information about these rights and the legal tools available to enforce them.

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16. Defensoría del Pueblo, “Informe Especial sobre impactos socio culturales y ambientales ocasionados por el Proyecto Hidroeléctrico Chan 75”, 2009. Available at (in Spanish): http://defensoriadelpueblo.gob.pa/index.php?option=com_k2&view=item&id=3935:informe-especial-sobre-impactos-socio-culturales-y-ambientales-ocasionados-por-el-proyecto-hidroelectrico-chan-7&Itemid=101.
 - Defensoría del Pueblo, “Defensoría del Pueblo Realiza Limpieza de Playa Mariato”, Press release, 23 April 2014, online: http://www.defensoriadelpueblo.gob.pa/index.php?option=com_k2&view=item&id=5071:defensoria-del-pueblo-realiza-limpieza-de-playa-mariato.

SOUTH AFRICA¹⁷



Key words – Hearings, Rammulotsi, Makhaza

Practices – Monitoring implementation, Thematic reporting, Advocacy, Public education, Provincial and National hearings

Relevant criteria – Accessibility, Accountability, Participation

Website – www.sahrc.org.za

LEGAL FRAMEWORK

The National Constitution (section 27(1) explicitly provides for the human right to water), Free Basic Services Policy (2000), 1997 Water Services Act, 1998 National Water Act, 2003 Strategic Framework for Water Services and 2008 National Water and Sanitation Regulatory Strategy, The Constitutional Court of South Africa in *Mazibuko vs. City of Johannesburg*, The High Court of SA in *The Bon Vista Mansions Case 2001*. South Africa introduced a policy of Free Basic Services (2001) including water, electricity and solid waste collection. As part of that policy, every household is to receive the first 6 cubic meters per month for free. The policy was introduced gradually since 2000 within the means of each municipality. Each municipality decides if free basic water is made available to everyone or only to the poor. Most municipalities provide free basic water to all or almost all their residents. In 2012 the program reached 86% of all households.

MANDATE OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC)

Under Section 184 of the Constitution of South Africa, the South African Human Rights Commission has the mandate to promote, protect and monitor and assess the observance of human rights, including to monitor the realization of socio-economic rights. The Human Rights Commission Act of 1994 specifically empowers the Commission to investigate and report on the observance of human rights and to take steps and secure appropriate redress where human rights have been violated.

SAHRC AND WATER GOVERNANCE RELATED HUMAN RIGHTS

The South Africa Human Rights Commission has been actively engaging in activities related to the right to water and sanitation. One of the six Commissioners' focus areas is Environment, Natural resources and Rural Development specially mandated in following up the implementation of International Covenant on Economic, Social and Cultural Rights.

1. Rammulotsi and Makhaza cases

In 2010, the SAHRC received two complaints on municipalities that built toilets without enclosures in their local communities. The SAHRC investigated the complaints and ruled that both municipalities had violated the right to dignity, privacy and to a clean and healthy environment. In both findings, the SAHRC addressed the responsibility of the local municipalities to immediately enclose these toilets. The SAHRC findings also recognized the fact that this was part of a bigger problem faced by millions of poor people in terms of lack of access to sanitation and a lack of a right based approach to service delivery. Later in the year, residents of Makhaza approached the Western Cape High Court for relief, as the toilets remained unenclosed. The Court found in favour of the applicants, ruling that the toilets violated the right to dignity and privacy and that no provision was made for vulnerable groups such as the elderly, people with disabilities and women.

Following the receipt of two complaints on access to sanitation, the Commission took a decision to strategically link these complaints to a broader investigation on the right to water and sanitation in South Africa. In 2012, the Commission embarked on a series of provincial hearings on the right to water and sanitation. The Commission visited rural communities in all nine provinces and asked these communities to highlight the problems that they were experiencing in terms of access to water and sanitation. The hearings aimed to enable local communities to:

- Interrogate the Department of Performance Monitoring and Evaluation report relating to their province and municipalities from their own lived experience.
- Share their analysis of delivery of these rights, the initiatives they have taken to access their rights and the solutions they have proposed.
- Reflect on the differentiated impact of the lack of rights, for example, on gender-based violence and gender equality.
- Engage with and hold accountable local provincial and national government to ensure the right to water and sanitation is realized.
- Enforce government accountability to regulate and monitor private entities contracted to deliver the services in a way that upholds human rights.
- Identify what businesses pay, in comparison to households, for their use as well as pollution of water.

Following the provincial hearings, the Commission developed a set of comprehensive recommendations to improve the state of access to water and sanitation in the country. These recommendations addressed *inter alia* improving institutional arrangements, enhancing a human rights-based

approach to service delivery and improving access to services in schools, particularly for girls. In an effort to hold government to account, the Commission engaged extensively with government departments on these recommendations (national hearing, written communication, subpoena hearing, roundtable discussion). These recommendations were also discussed with civil society organizations, especially through the Section Five Committee and their comments were incorporated.

In 2012, the SAHRC held site inspections and meetings in Rammulotsi and Makhaza, the two communities where unenclosed toilets were identified. The goal was to assess the progress made in implementing the SAHRC's findings in the Rammulotsi and Makhaza cases, to enable community participation so government officials were able to see and hear first-hand the community concerns regarding the delivery of water and sanitation. The SAHRC aimed to facilitate the engagement between community members and the municipality to ensure that remaining problems related to the right to sanitation were addressed.

Further, the Commission conducted nation-wide public hearings on water and sanitation related to the issues of service delivery and stakeholder collaboration and advocacy. The hearings sought to assess:

- The impact that a lack of access to water and sanitation can have on one's life and dignity, as well as one's ability to access other human rights;
- The impact of poor access to water and sanitation on the right to health, education and the environment;
- The impact that a lack of access to basic services has on particular groups such as women, children and people with disabilities; and
- The state of national and provincial access to water and sanitation in the country.

The testimonies of residents and civil society organizations and government departments indicated that the poorer areas of South Africa suffer from complete lack of access or have access only to non-functional or broken infrastructure. The Commission also found that there is a disproportionate impact on certain vulnerable groups such as women, children and people with disabilities. The SAHRC expressed concerns against various local municipalities and a provincial department of education for not providing access to the constitutional rights to water and sanitation.

Despite several commitments the Commission received from the government to develop a proactive strategy to address the lack of clean drinking

water and adequate sanitation, there are poor communities who still do not experience these fundamental human rights. In relation to a 2011 complaint, the Commission called on the Presidency's Department of Performance Monitoring and Evaluation (DPME) to provide a report on the status of the right to sanitation and the plan to effect the rights to water and sanitation. DPME's report revealed that an estimated 16 million poor people do not have access to adequate sanitation, and 3.5 million poor people do not have access to clean drinking water. The impact on all other rights, including health, education and safety and security (especially for women and girls) is devastating.

In the five complaints received (against Madibeng Local Municipality, Setsoto Local Municipality, Matjhabeng Local Municipality, Emalahleni Local Municipality and North West Department of Education), the Commission found that these entities violated the residents' right to dignity by neglecting or failing to take reasonable steps to provide residents with sufficient clean water and adequate sanitation. The Commission received complaints from residents and individuals who felt that their respective local municipalities and the North West Provincial Department of Education violated their rights by not providing them with adequate access to water and sanitation as enshrined in the constitution. The Commission recommended that the four municipalities put interim measures in place for the provision of adequate, uninterrupted water services to the residents before 25 December 2013.

2. The 2014 SAHRC Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa

SAHRC released a report assessing the overall situation of the right to water and sanitation in South Africa following national and provincial hearings that were held to determine the work of the South African government to realize the human right to water and sanitation. Prior to the report, the SAHRC had addressed findings and recommendation to the relevant government organs seeking for detailed response concerning the human right to water and sanitation. In its findings, the SAHRC identified the following main issues: i) water is considered as a commodity, not a human right, making those with no financial means to be deprived of their human right to water and sanitation; ii) either there is lack of access to water and sanitation infrastructure or most of the infrastructures are not functional; iii) the quality of water and sanitation is poor and the water and sanitation problems have a serious impact on the enjoyment of other intersecting rights too; iv) the lack of monitoring projects and corruption are major challenges: the relevant government organs and officials have no or very little understanding of the

human rights approach; v) finally, the impact on the vulnerable groups and farm labourers is significant.

The Report is divided into four main parts. The first part introduces the mandate of the SAHRC in relation to the Socio-Economic Rights in general and the human right to water and sanitation in particular. In that context, the report mainly underlines the mandate of the Commission under section 184 of the Constitution of South Africa. It specifically mentions section 184 (3) that empowers the Commission to require information from the relevant organs of the government concerning the measures they have taken towards the realization of the rights and freedoms including the right to water and sanitation.

The second part introduces the international and national legal framework on the right to water and sanitation. This part introduces the legal basis of the obligation in relation to the realization of the right to water and sanitation under the international human rights regime. It introduces, *inter alia* the International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child (CRC) and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and other regional human rights instruments incorporating the right to water and sanitation. It also addresses the national legal basis of the realization of the human right to water and sanitation specifically mentioning the Constitution of South Africa and other water legislations providing the duty of the government to realize the right to water and sanitation.

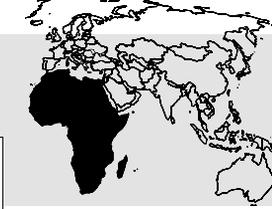
The third section assesses the situation of access to water and sanitation in South Africa. The criterion applied by the Commission is the Reconstruction and Development Programme (RDP), the South African Socio-economic policy specifically designed to alleviate poverty and address the massive shortfalls in social services including clean water and sanitation. As a result, the overall access to water in South Africa shows that within RDP-Acceptable, 46.3% of South Africans have access to piped water within dwelling, 27.1% piped water within stand and 11.7% within 200m from stand. Within not RDP-Acceptable, 6.2% of South Africans have access to water more than 200 m from stand whereas 8.8% do not have access to piped water at all. With respect to access to sanitation, within RDP-Acceptable 60.1% have flush toilet, 2.5% have chemical toilet and 8.8% have ventilated pit latrine. Within not RDP-Acceptable level, 19.3% have access to unventilated pit latrine, 2.1% to bucket latrine and 5.2% to none at all.

Finally, the fourth section focuses on the work of the SAHRC in the last four years concerning the monitoring and implementation of the right to water and sanitation in South Africa. It specifically focuses on the complaints the SAHRC received, the investigations it conducted and its oversight roles (monitoring and evaluation of the activities of the municipalities) in the course of the realization of the human right to water and sanitation. Finally, after identifying the main challenges of the realization of the right to water and sanitation particularly in the implementation of the human rights based approach and the impact on the indigent people, the report provides recommendations. These include calling for the eradication of bucket toilet system, the need to have toilets in schools, the need for more transparency and accountability by municipalities and effective implementation of the National Indigent Policy.

The SAHRC has also developed a Guide for the Human Rights to Water and Sanitation that will enable the addressees of the rights to understand, claim and seek for redress in case their right to water and sanitation is violated. The guide briefly describes the human right to water and sanitation, the legal content of the right and the role of the SAHRC in relation to the protection of the human right to water and sanitation.

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17. South African Human Rights Commission, "Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa", 2014. Available at: <http://www.gov.za/documents/report-right-access-sufficient-water-and-decent-sanitation-south-africa-2014>.
 - South African Human Rights Commission, "Briefing note on the Provincial Hearings 2012 (Issued by the Deputy Chair's office: Commissioner Pregs Govender), 2012. Available at: <http://www.sahrc.org.za/home/21/files/Briefing%20note%20of%20on%20the%20Provincial%20Hearings%202012.pdf>.

NAMIBIA¹⁸



Key words – Omusati, Okalongo, Baseline Study
Practice – Monitoring, Reporting, Investigation,
Relevant Criteria – Acceptability, Accessibility,
Quality, Availability
Website – www.ombudsman.org.na

LEGAL FRAMEWORK

Water Supply and Sanitation Policy 1993, Water Resources Management Act 2004, Environmental Management Act 2007 and Water Resources Management Bill 2010

MANDATE OF THE OFFICE OF THE OMBUDSMAN OF NAMIBIA

The Office of the Ombudsman of Namibia strives to promote and protect human rights, fair and effective administration, combat misappropriation or misuse of public resources and protect the environment and natural resources of Namibia through the independent and impartial investigation and resolution of complaints and through raising public awareness. Concerning its mandate, the Ombudsman noted that in September 2012 the Special Rapporteur on the human right to safe drinking water and sanitation recommended the extension of its mandate to promote and protect ESC rights including the right to water and sanitation. To this effect, the Ombudsman recommended that the enabling legislation be reviewed and the scope of the mandate be extended to cover a broad range of human rights including the right to water and sanitation.

OFFICE OF THE OMBUDSMAN AND WATER GOVERNANCE RELATED HUMAN RIGHTS

Environment is included in the mandate of the Office of the Ombudsman, the protection of the environment and natural resources are mentioned in the mission statement of the Office. In its Annual Report 2012, the Office of the Ombudsman elaborated on its major activities and the human rights and environment were mentioned as one of the major focus areas. Despite its power to take issue to a court, the Ombudsman chose a non-adversarial approach through which it tried to investigate complaints and look for remedies through mutual negotiation with the concerned public authority.

1. 2013 Special Baseline Study Report on Human Rights in Namibia

In its *Special Baseline Study Report on Human Rights in Namibia*, the Ombudsman explored the situation of the right to safe drinking water and the right to sanitation. Concerning the right to water, the report introduces the relevant international legal standards on the human right to water and addresses the national legal and policy frameworks with special emphasis on the Water Resources Management Act of 2004. The reports identified the following areas of special concern in that context: i) availability; ii) quality; iii) physical and economic accessibility.

With respect to availability of water, a household survey was conducted as part of this Baseline study to determine whether access to water for Namibian households improved, stayed the same or deteriorated over the preceding five years. Despite an improving trend confirmed by the study, access to water remains a challenge especially concerning access to piped water in rural areas. As for the quality, the report cites the concerns expressed by the Special Rapporteur on the human right to safe drinking water and sanitation in that regard and notes that there appears to be little on-going monitoring of water quality at the local level. The report also indicates slight improvements achieved concerning accessibility (both physical and economic). Finally, it provides several recommendations including on the allocation of funding on the access to water in light of marginalization and social exclusion of the beneficiaries. It also reiterates that solutions consistent with human rights standards – i.e. affordability and acceptability – must be devised to ensure access to water and sanitation for people lacking secure tenure, especially those living in informal settlements. Among his recommendations, he also called for the government to establish an independent water regulator for monitoring water and sanitation services.

In relation to the right to sanitation, the baseline survey indicated a decline in sanitation qualities in Namibia. It emphasizes that the non-availability and inaccessibility of sanitation services have become major challenges. The report further notes that the non-availability of sanitation services is also observed in public institutions. The report finally recommended the effective mobilization and implementation of water supply and sanitation policies in Namibia. These recommendations include: i) Implementation of the National Sanitation Strategy; ii) Coherence between the macroeconomic framework, namely, policy and budget decision; iii) Analysis of the fiscal policy for financing the water and sanitation policy from the perspective of equality and non-discrimination; iv) Analysis of the sanitation strategy

costing from the perspective of the right to water and sanitation; v) Analysis of budget allocations for the implementation of the sanitation strategy.

In another chapter of the report, safe drinking water and sanitation is identified as an issue of special concern for people with disabilities. It states that people with disabilities living in informal settlements are more susceptible to diseases because of drinking unsafe water or not having sufficient water because of the conditions they find themselves in at these residential areas. The right to water and sanitation is furthermore linked to different other rights discussed in the report, including the right to adequate housing, the right to health and the environment.

2. Case – Sewerage affluent contaminating drinking water

Residents of the Okalongo Settlement in the Omusati Region complained to the Office of Ombudsman about effluent sewerage water at Okalongo ponds flowing/discharging into oshanas, contaminating drinking water and posing a health risk to both humans and animals. A further concern was that these ponds are erected within oshanas, causing the ponds to overflow freely into the oshanas during the rainy season. After visiting the sites and confirming the allegations, the Ombudsman took up the matter with the District Environmental Health Office of Omusati Region. The district office indicated that the matter is under consideration and as an interim measure additional sand has been added to one side of the pond's bank, stopping the discharge of effluent into the oshana for the time being.

18. John Nakuta Eds., "2013 Special Baseline Study Report on Human Rights in Namibia", Ombudsman Namibia, 2013. Available at: <http://www.ombudsman.org.na/reports/special-reports/finish/4-special-reports/22-2013-baseline-study-report-on-human-rights-in-namibia>.
– Office of the Ombudsman of Namibia, "Annual Report 2012". Available at: <http://www.ombudsman.org.na/reports/annual-reports>.



CÔTE D'IVOIRE¹⁹

Key words – Dignity, Privacy, Environment, Right to housing, Post-electoral crisis, Lomé Declaration on Climate Change and Protection of Civilians in West Africa

Practices – Monitoring, Reporting, Visits, Statements, Conferences

Relevant criteria – Accessibility, Quality, Availability

Website – www.cndhci.net

LEGAL FRAMEWORK

The right to water and sanitation is not encompassed in the Constitution of Côte d'Ivoire but the State guarantees the provision of drinking water in its 1998 Water Code.

MANDATE OF THE NATIONAL HUMAN RIGHTS COMMISSION [COMMISSION NATIONALE DES DROITS DE L'HOMME DE CÔTE D'IVOIRE (CNDHCI)]

The Commission was established by law no 2012-1132 which replaces Decision no 2005-08/PR under which the previous Commission was operating. The institution has four main functions with regard to the protection, promotion and defence of human rights. These are: conciliation, consultation, evaluation and proposition. In order to fulfil its mandate, the CNDHCI is responsible among others for ensuring the harmonization of national law with international law, issuing notices, visiting detention centres, and analysing any other issue related to the promotion, protection and defence of human rights. It may furthermore receive complaints of violations of human rights and carry out non-judiciary investigations. Complaints may be received from the victim or any other person. They may be lodged orally or in writing.

THE COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

1. Reporting

The 2009 annual report enunciates the activities carried out by the Commission during the year. It also documents the situation of human rights in the country and issues recommendations to the State, the population and organs providing support to the State. To audit the state of human rights in the country, the Commission relied on documentary sources, as well as information from the media, victims, NGOs and United Nations bodies.

In this report, the Commissions makes mention of the right to water and sanitation. For example, in discussing the right to adequate housing the Commission recalls that the Committee on Economic, Social and Cultural Rights established that beneficiaries of that right must have permanent access to, among other resources, drinking water and sanitation facilities. Ivorian law, however, does not encompass provisions on the right to housing. Other socio-economic problems are mentioned such as the fact that the number of informal settlements and poorer districts are increasing. As sanitation installations are lacking in these neighbourhoods, people are often forced to defecate in public areas which becomes also a concern in terms of pollution of the environment and insalubrity of recreational areas.

The right to sanitation is also addressed in another context. Following visits of detention centres, an analysis of the living conditions of prisoners demonstrates that sanitary installations in the detention premises are not always clean and well maintained. There are also concerns relating to the dignity of the prisoners as there is no privacy when using toilets and showers. At the Maison d'Arrêt et de Correction d'Abidjan (MACA) it was also reported that prisoners were affected by frequent interruptions in the supply of water.

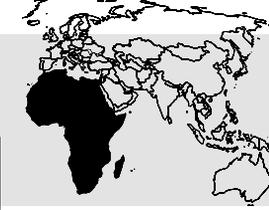
Finally, the Commission reports on the activities it undertook pursuant to its function of promotion of human rights. It participated for example in the 2009 Regional Conference on Protection Challenges to Climate Change in West Africa. Organized in Togo, the event discussed the threats that communities and populations are facing due to climate change, such as flooding and declining water supplies. The conference resulted in the Lomé Declaration on Climate Change and Protection of Civilians in West Africa, in which the participants call for the use of a human-based approach in considering the impacts of climate change. The conference identified the consequences of climate change as being a factor for the aggravation of conflicts between local communities over natural resources. In addition, it pointed out that the rights of displaced persons, including the rights to shelter, clean water and health are infringed.

2. Water related statement

In April 2011, the Commission issued a statement on the situation of human rights in Côte d'Ivoire during the post-electoral crisis that lasted from November 2010 to April 2011. It condemned all the human rights violations that occurred during the crisis and deplored the impact of the violence of the conflict which in addition to leading to massacres of hundreds of people,

also paralyzed the provision of public services and interrupted the supply of water and electricity in a number of municipalities.

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19. Commission Nationale des Droits de l'Homme de Côte d'Ivoire, "Rapport Annuel 2009: L'État des Droits de l'Homme en Côte d'Ivoire", 2009. Available at (in French): <http://www.cndhci.net/DOCUMENTS/RAPPORT%20ANNUEL%202009%20VERSION%20DU%2014%20JUN%202010.pdf>.
 - Economic Community of West African States, "Conference adopts human rights-based approach to climate change issues in West-Africa", Press release, 17 September 2009. Available at: <http://news.ecowas.int/presseshow.php?nb=090&lang=en&annee=2009>.



Key words – Contamination of water sources, Mining, Detention facilities, Orphanages, schools, Refugee Camps for Persons Accused of Witchcraft

Practices – Investigation, Education, Monitoring

Relevant criteria – Quality, Accessibility, Availability, Affordability

Website – www.chrajghana.com

LEGAL FRAMEWORK

The Constitution of Ghana does not entrench the right to water and sanitation. The closely related right to life and right to dignity may be however found in the instrument. The Ministry of Water Resources, Works and Housing issued a National Water Policy in 2007. It focuses on water supply but sanitation is also addressed. The structure of the Policy identifies ten to eleven focus areas for each of the three categories of strategic actions: water resources management, urban water supply, community water and sanitation. Each focus area is addressed in relation to the principles and challenges, policy objectives and policy measures and/or actions. For example, access to water, as a focus area for water resources management presents the fundamental right to safe and adequate water to meet basic human needs as a main principle and a challenge. To achieve this, one of the policy objectives is to facilitate improving access to potable water without discrimination. Measures and actions are further laid down, such as strengthening District Assemblies and ensure sustainability. It is followed by a section on implementation guidelines.

Ghana has also developed the national Environmental Sanitation Policy which was revised in 2010. Sanitation is addressed through its different components including the collection and sanitary disposal of excreta. It also touches upon the need to install public toilets and promote the construction of household toilets. Finally, the Community Water and Sanitation Agency was established in 1998. Its purpose is to “*facilitate the provision of safe water and related sanitation services to rural communities and small towns*”.

MANDATE OF THE COMMISSION ON HUMAN RIGHTS & ADMINISTRATIVE JUSTICE (CHRAJ)

In accordance with Article 216 of the 1992 Constitution of Ghana, the Commission on Human Rights & Administrative Justice Act established the institution in 1993. The mandate of the Commission may be divided into three categories: human rights, administrative justice and anti-corruption. Under its human rights functions, the Commission has a duty to promote and protect fundamental human rights and freedoms. Pursuant to its promotion and prevention functions, it undertakes monitoring and research activities, and issues publications, hold symposia and lectures in order to educate the public on human rights and freedoms. To protect and enforce human rights, the Commission may investigate complaints or systematic human rights abuses. Its powers in this regard enable it to obtain assistance for its investigations, by requiring an institution or person to submit information, documents, records or other materials, or to appear before the Commission.

It is also mandated with investigative functions as well as the power to seek remedy. An individual or body of persons may file a complaint of violations of fundamental rights and freedoms. This may be done orally or in written. Complaints concerning injustice, abuse of power and unfair treatment by a public officer may be also investigated pursuant to the Commission's administrative justice functions. Similarly, complaints of corruption fall under the investigative functions of the Commission as it also serves as an Anti-Corruption Agency.

THE COMMISSION ON HUMAN RIGHTS & ADMINISTRATIVE JUSTICE AND WATER GOVERNANCE RELATED HUMAN RIGHTS

1. Monitoring and reporting

Pursuant to its monitoring functions, the Commission visited schools, Refugee Camps for Persons Accused of Witchcraft, detention facilities and orphanages. With regard to all four institutions, CHRAJ audited the sanitation facilities among other living conditions. In 2009, 25 prisons and 355 police cells were visited. In addition to sanitation concerns, shortages of clean water were also reported by the Commission in 2010. Similarly, the Commission reported in 2013 that 16% of public school had no toilets. Poor sanitation facilities and inadequate water were also an issue in the Refugee Camps. The Commission included these findings in its annual reports.

2. The State of Human Rights in Mining Communities in Ghana (2008)

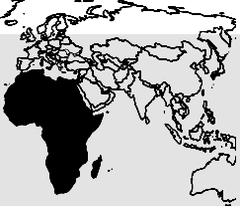
CHRAJ undertook in December 2006 a nation-wide investigation on systematic human rights abuses in mining communities. The various purposes of this investigation included the protection of the right to clean water. The

Commission received reports from communities from six different areas which discussed various human rights issues that they were facing. Regarding water, concerns over accessibility and quality of water were raised, and included also affordability as some communities had to fetch water from distanced sources which was also often more costly.

The investigation comprised site inspection and observation along with discussions with different groups of people within the communities, such as youth, women's groups or small scale miners, and consultations with mining companies and governmental institutions related to the mining sector. The CHRAJ also sampled and tested water. It concluded that several sources contained concentration of substances higher than the WHO allowable limits. In those cases, alternative sustainable water sources should be provided to the communities, and, when pollution of water is caused by the activities of mining companies, the latter should clean the water. It identified twenty-five water bodies from three different areas that required immediate action. Finally, it recommended the Environmental Protection Agency (EPA) and the Water Resources Commission to work with mining companies to minimize the diversion, disruption and pollution of water bodies in their operational areas.

The investigation was carried out by a team from the Commission composed of two lawyers with human rights backgrounds, two researchers and a statistician. They were supported by three consultants specialized in various fields of mining. The Commission sought also input from mining companies, the Environmental Protection Agency, the Ministry of Lands, Forestry and Mines, security agencies, land owners, representatives of communities affected by mining as well as civil society groups, all of which participated in a stakeholder's forum. The participants discussed and shared their views on the human rights situation in the mining area.

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20. Commission on Human Rights & Administrative Justice, 'Mandates', http://www.chrajghana.com/?page_id=43.
- Richard Quayson, "Highlights of the 2013 CHRAJ Report on the State of Human Rights in Ghana", CHRAJ, 2013. Available at: <http://www.chrajghana.com/?p=689>
 - Commission on Human Rights & Administrative Justice, "Seventeenth Annual Report 2010", 2010. Available at: http://chrajghana.com/wp-content/uploads/2012/08/Annual_Report_2010.pdf.
 - Commission on Human Rights & Administrative Justice, "The State of human Rights in Mining Communities in Ghana", 2008. Available at: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/THE%20STATE%20OF%20HUMAN%20RIGHTS%20IN%20MINING%20COMMUNITIES%20IN%20GHANA.pdf>.



KENYA²¹

Key words – Salt mines, Displaced persons, Cooperation, Public awareness, Investigation, Participation

Practices – Monitoring, Investigation, Education, Training, Campaigns and advocacy on human rights facilitation

Relevant criteria – Quality, Accessibility, Accountability, Participation

Website – www.knchr.org

LEGAL FRAMEWORK

The Constitution encompasses the right of everyone to clean and safe water in adequate quantities, and to reasonable standards of sanitation. Kenya adopted also a new Water Bill in 2014, which recalls the right of every person to those rights. A Water Strategy is also expected to be adopted, detailing the necessary standards to progressively realize the right to water. The National Water Services Strategy adopted in 2007 in accordance with the Water Act 2002 identifies goals and actions regarding among others the right to water and sanitation. Other instruments include the National Environmental Sanitation and Hygiene Policy 2007 and the Pro-Poor Implementation Plan for Water Supply and Sanitation from the same year.

MANDATE OF THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

The Kenya National Commission on Human Rights finds its legal basis under article 59 of the 2010 Constitution. The Kenya National Commission on Human Rights Act of 2011 further details the powers of the Commission. The core mandate of the KNCHR is to enhance the promotion and protection of human rights in Kenya. This is carried out in two ways:

- by acting as a watch-dog over the government in the area of human rights; and
- by providing key leadership in moving the country towards a human rights state.

The Commission investigates, monitors and reports on the observance of human rights, and conducts human rights education. It may also investigate or research matters related to the respect of human rights, and make recommendations to the government. This may be done on basis of complaints or on its own initiative. The institution is also mandated with the function

of ensuring compliance with human rights treaties and conventions. The KNHRC adopted redress mechanisms. Among others, it may conduct litigation in cases which encompass issues of interpretation of the Bill of Rights. It focuses on cases that are of a broad public interest in Kenya. Another redress mechanism consists of public inquiries. The Commission is also involved in alternative dispute resolution through mechanisms such as mediation, negotiations and arbitration.

Finally, every person whose right or fundamental freedom in the Bill of Rights has been violated, denied or infringed, or is threatened, may complain to the Commission. Complaints are also received from civil society organizations, community- or faith- based organizations. They may be lodged verbally or in writing, an online form is also available on the website. Complaints of civil nature are not part of the Commission's mandate.

THE COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

The Commission promotes the human right to water and sanitation through various ways. During the year 2012-2013, it developed 5000 facts sheets on the rights to health, water and sanitation and disseminated them among the population.

In 2011, the Commission took part in projects aiming at increasing public awareness on economic and social rights. For example, it was involved in a capacity building workshop which sought to enhance the understanding of the right to water and sanitation among duty bearers. Water service providers, civil society organizations and the ministry of water and irrigation participated in the workshop. It enabled the participants to:

- Establish a common understanding on human rights conceptual framework in relation to the right to water and sanitation;
- Share contextual experiences, lessons learned and good practices on promoting the right to water and sanitation;
- Review capacity building materials on the right to water and sanitation that the Commission had earlier developed.

1. Report – A Human Rights Assessment of Kenya's Vision 2030

The Commission published in 2011 *The Third State of Human Rights Report* which assesses how Kenya implemented the first half of the Medium-Term Plan of Kenya Vision 2030. The report responds to the Commission's reporting function as found in the Constitution and the Kenya National Commission on Human Rights Act.

Section 6 of Chapter 6 of the Report is devoted to the right to water and sanitation. It enumerates State obligations for these rights and assesses how targets set by Kenya were achieved since the end of 2000s. Among others, it analyses the concrete impact of the increased water coverage in terms of accessibility. Progress made by the government and remaining challenges are also enunciated with the regard to sanitation facilities, affordability of water, reliability and sustainability of water services, and sustainability. The study is based among others on a field research carried out by the University of Nairobi's Institute for Development Studies (IDS) contracted by the KNCHR. IDS undertook a public opinion survey on how the various governmental programs are implemented.

The chapter on water and sanitation also encompasses recommendations: the efforts deployed in Nairobi and Kumusu concerning access to water and sanitation should be enlarged to the rest of the country. The importance of accessibility of water for vulnerable groups, mainly children and women, in drier areas is also stressed. In this regard, a coordinated intervention by the Ministry of Development of Northern Kenya and Arid Lands is recommended. Incentives to fit water storage facilities in household should be put in place in order to decrease the wastage of rain water. Finally, special attention should be given to reclaim and conserve water towers and catchment areas.

2. Report – Homeless at home: A human rights assessment of situation of internally displaced persons (2011)

In a report of 2011 on human rights and internally displaced persons, the National Commission puts forth the situation of the human right to water and sanitation for displaced persons. It uses statistics to illustrate the current situation and challenges that internally displaced persons are facing in Kenya. Among others, it finds that their main sources of water are rivers and streams and unprotected boreholes and wells. The distance of the source of water as well as the quality of the water are listed as being the two main challenged for displaced persons.

The report also raises the fact that almost 50% of the household have a limited access of water in terms of quantity, estimated to 0 to 15 litres of water per day. As for sanitation facilities, 69% of the families use latrines and 92% have no access to hand washing facilities. These issues, such as poor sanitation, lead to threats of water borne diseases in several regions. The report however also makes mention of some positive developments in the country: the construction of toilets in schools at Mawingu or the

collaboration between the government and humanitarian organizations for water tanks. This could serve as an example for other regions.

The project was carried out in cooperation with the United Nation High Commissioner for Refugees. They appointed and trained 25 IDP monitors that were assigned to specific zones from April to December 2011. Interviews were held with displaced communities and key IDP households were contacted for random protection assessment. It also based its findings on household surveys, focus group discussions, and incident reports which are summarized in the report. Informant interviews were also held, and were conducted with Internally Displaced Persons leaders, community leaders and the local administration.

3. Case: The Malindi inquiry report (2006)

In 2005, the Kenya Commission on Human Rights undertook an inquiry concerning allegations by the community of Magarini that salt manufacturing companies operating in the area had committed human rights violations against the community. It was claimed among others that salt manufacturing in that area carried out activities which damaged the environment and, as a result, denied the surrounding communities access to fresh water. Complaints on salinization of freshwater wells and springs were also investigated. Sanitation facilities were also allegedly inadequate for workers.

The Commission undertook a fact-finding visit between 7 and 10 March 2005. Following the visit, a baseline survey was conducted to identify stakeholders and obtain additional information on the petition, such as the number of people affected, or the nature of immediate violations and the livelihoods affected. Preceding the hearings, the Commission sought to obtain community participation and attract interested parties by advertising the commencement of the process on radio and newspapers, and distributing notices and other announcements. The local administration, salt companies, the public, line ministries and experts also presented written and oral submissions to the KNCHR.

The inquiry report lays down the findings, decisions and recommendations made by the inquiry for each of the issues addressed (land, public administration, labour, the environment and corporate citizenship). Water-related issues are mainly related to the environmental claims. It was found among others that fresh water sources from which the surrounding community traditionally drew its water had been contaminated by underground salt seepages and other activities resulting from the salt manufacturing companies'

actions. As a result of the consequent salinization, it undermined the community's right to access the only non-salty water source. It therefore forced the community to ferry water from long distances at a greater cost.

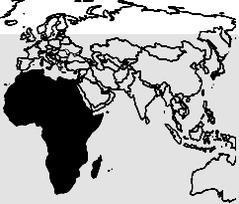
The KNCHR made various recommendations, which identified short, medium and long term actions in relation to each of the issue addressed in the inquiry. Water related actions are found in relation to chapter five on Salt manufacturing and environmental sustainability. For example, in short term, there is a need to provide water to local communities and workers to ensure access to clean and safe drinking water to all. The responsible key actors identified in this regard are the salt companies (KESAMA), the Malindi County Council, and the Ministry of Water and Irrigation. Other key actors for this recommendation are the Constituency Development Fund, civil society organizations (including community based organizations) and community leaders. Other actions include: (short term) Secure and safeguard sweet water springs, wells and wetlands; Establish an appropriate waste water treatment system and institute measures to ensure there is proper management and disposal hypersaline water; or as a response in long term, mainstream environment Management System in salt manufacturing business operation.

As for the right to sanitation, the Inquiry's decision stated that salt companies must provide sanitation facilities appropriate for both male and female workers. In addition, they must be placed at accessible locations, particularly for workers harvesting salt. Companies may consider using mobile toilets; but in any case, they must ensure that effluent from toilets does not contaminate the salt ponds.

Chapter six of the inquiry report also presents examples of good practices in Kenya which may inspire the salt companies. Among others it suggests that the manufacturing firms addressed in the inquiry should learn from the practices of the Magadi Soda Company and provide water to schools and for domestic use. It also identifies community initiatives, such as the implementation of the Mjanaheri Water Project for taking clean water to the Gongoni area.

The Commission met with the local communities in 2012 to follow up on the recommendations made in the report.

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21. Kenya National Commission on Human Rights, 'About us: Establishment', <http://www.knchr.org/Aboutus/Establishment.aspx>.
 - Kenya National Commission on Human Rights, "A Human Rights Assessment of Kenya Vision 2030", 2008-2010.
 - Kenya National Commission on Human Rights and the United Nations High Commissioner for Refugees, "Homeless at home: A Human Rights Assessment of Situation of Internally Displaced Persons in Kenya", 2011. Available at: <http://www.knchr.org/Portals/o/HOMELESS%2oAT%2oHOME%2oA%2oHUMAN%2oRIGHTS%2oASSESSMENT%2oOF%2oSITUATION%2oOF%2oINTERNALLY%2oDISPLACED%2oPERSONS%2oIN.pdf>.
 - Kenya National Commission on Human Rights, "Economic Interests Versus Social justice: Public Inquiry Into Salt Manufacturing in Magarini, Malindi", 2006. Available at: http://www.knchr.org/Portals/o/Reports/Malindi_Inquiry.pdf.



MALI

Key Words – Pollution, Right to health, Right to food, Right to a healthy environment

Practice – Education, Notices and Evaluations, Prison audits

Relevant criteria – Accessibility, Quality

Website – www.cndhmali.org

LEGAL FRAMEWORK

Article 2 of the Water Code, Law no 02-006 (2002), states that “*Water is part of the public domain. Its use belongs to all provided that it is not contrary to the public interest. It is used in a framework of solidarity between users*”.²²

MANDATE OF THE NATIONAL HUMAN RIGHTS COMMISSION OF MALI [COMMISSION NATIONALE DES DROITS DE L'HOMME]

Law no 09-042 and Degree no 09-641/P-RM established the Commission in 2009. It is a consultative organ mandated to contribute to the promotion and respect of human rights. To achieve this, it may issue advises, propositions and carry out investigations based on complaints or on its own initiative. It is also mandated to make recommendations, as well as undertake or participate in activities for the education, information and communication of human rights.

THE COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

In the context of the Commission's role as the national mechanism for prevention of torture, the institution integrated into its 2012 annual report a chapter on the situation in prisons in Mali. The Commission audited prisons and police stations. It met with the staff, visited the premises and discussed individually and in groups with inmates. In total, the Commission visited detention centres in four municipalities. It focused on the prison population, food, health, dormitories, infrastructure and period of detention.

The right to water and sanitation was assessed within the right to health. It was found that all detention centres except one, in Ségou, had limited access to water and that toilets were in bad conditions. It therefore issued various recommendations to the government and civil society organizations. These included the need to raise awareness on sanitation and hygiene measures among the prison population. It also called on the government to construct

toilets and sanitation facilities which preserve the dignity and privacy of users. Few recommendations were also formulated to the commission itself, such as the need to organize systematic and regular visits of all detention centres, and to offer training on human rights to prison officials.

Within a section on ESC rights, the Commission also discussed the right to food and water in its 2011 annual report. Its focus was on the criteria of accessibility. An overview of the situation in Mali in 2011 demonstrates that only 62% of the population had access to clean drinking water. Sources also differ in rural and urban areas. In the former, 56% of water supply comes from public pits, while in urban areas 72% use public taps. It also highlights that more households use water from rivers in comparison with urban areas and 1/3 does not have access to clean drinking water.

Thus, both quality and access of water are a concern in Mali. Lack of access to drinking water was identified as being one of the causes of high morbidity and mortality rates. It is in addition highlighted that external funding inflicts high labour and equipment costs which on their turn affect the expansion of coverage of drinking water.

Linked to the right to a healthy environment, the right to water was also briefly discussed in the 2010 annual report of the Commission. It mainly addressed it in relation to pollution and its environmental impact. Quality of water is threatened in Mali by industrial wastes dumped in water. This affects the aquatic life as many fish die from the proliferation of water hyacinths, which grow in polluted areas. The report also highlights that there are sanitation problems in holding cells across the country. In addition to the insalubrity of the premises, there is also a lack of toilets.

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22. Commission Nationale des Droits de l'Homme, "Rapport annuel 2012", 2013. Available at (in French): <http://www.cndhmali.org/images/stories/PDF/Rapport2012.pdf>.
 - Commission Nationale des Droits de l'Homme, "Rapport annuel 2011 sur la situation des droits de l'homme au Mali", 2012. Available at (in French): http://www.cndhmali.org/images/stories/PDF/report_2011.pdf.
 - Commission Nationale des Droits de l'Homme, "Rapport annuel 2010 sur la situation des droits de l'homme au Mali", 2011. Available at (in French): http://www.cndhmali.org/images/stories/PDF/report_2010.pdf.
 23. The original text reads: "L'eau est un bien relevant du domaine public. Son usage appartient à tous pourvu qu'il ne soit pas contraire à l'intérêt public. Il s'exerce dans le cadre de la solidarité entre usagers."



NIGERIA²⁴

Key words – Condition of sanitation facilities, Torture, Bucket system, Water tanker, Kuje prison, Kefi prison, Umuahia
Practices – Case compilation, Prison audits, Publications
Relevant criteria – Quality, Access, Availability
Website – www.nhrc.gov.ng

LEGAL FRAMEWORK

The 2003 Child's Rights Act establishes that every government in Nigeria is required to ensure the provision of adequate nutrition and safe drinking water, as well as good hygiene and environmental sanitation. Other instruments involving water in general include the Nigeria National Policy on Water Supply, 2000, and the 2003 Presidential Water Initiative: Water for People, Water for Life, which had for purpose to increase supply of water and sanitation services. The National Water Supply and Sanitation Policy was also adopted in order to address problems arising from poor maintenance of water infrastructures and lack of sanitation facilities.

MANDATE OF THE NATIONAL HUMAN RIGHTS COMMISSION OF NIGERIA

Created in 1995 under the National Human Rights Commission (NHRC) Act of 1995, the institution undertakes activities in three areas: promotion, protection and enforcement of human rights. Its functions include:

- Monitoring, investigation and formulation of recommendations for the prosecution;
- Providing assistance to victims and seeking appropriate redress and remedies;
- Undertaking studies on human rights matters;
- Publishing reports;
- Organizing seminars, conferences and workshops;
- Disseminating materials and information as well as maintaining a library on human rights.

In enforcing fundamental rights, the Commission targets poor and vulnerable groups as well as victims of human rights abuse and violation. In this regard, it offers free, non-technical and more accessible services to the public.

THE COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

1. Prison Audit Reports

Pursuant to its mandate, the National Human Rights Commission carries out audits of prisons across Nigeria. In 2009, the Commission audited 45 prisons located in six geo-political zones of Nigeria. In 2012, it increased to 173 prisons. In addition to 1999, 2004 and 2007, it also undertook nationwide visits of detention centres in 2009 and 2012 following which it published a report on its analysis. The focus in both reports was on the structures of the prisons, the facilities, access to justice, and welfare of detainees as well as of officers.

The 2009 prison audit highlights that there is an urgent need to immediately improve toilet facilities. While some prisons are reported to have good sanitary conditions, other are rather fair, poor or very poor. In the south-south zone, the period between 2007 and 2009 was marked by a decline of the conditions of toilets facilities. In the region, only in Warri prison did the authorities improve the situation by constructing new toilets and bathroom. In some prisons, such as the Enugu in the South-East zone, sanitary conditions improved from very poor to fair in two years. The Commission also formulated recommendations with regard to each prison. At Umuahia for example, there is a need for improvement of all facilities other than the vocational and recreational ones, and the sanitary condition is critical.

The report noted that supply of water also varies throughout the country. Its sources include water tankers, public water supply, wells or pipe-borne supply. Boreholes are also used although some are affected by interruption of power supply. Similarly to the audit of the sanitary conditions, the Commission compared the 2009 situation to the 2007 audit with regard to the supply of water.

The report concludes with recommendations directed to the Federal and the State Governments, the Prison and the Police. In addition to more specific recommendations such as the need to review the Prison Act, the Commission calls on the Federal Government to provide the Nigerian Prison Service with adequate resources in order to improve the living conditions in the prisons.

The structure of the 2012 report is similar to the one published in 2009. The assessment of each prison is laid down following an analysis of the results. In assessing the structures of the prisons, the Commission found that in

general they had poor sanitary conditions. For example, broken water cistern toilets were reported as well as a lack of water to flush toilets after use. Bucket system of toilet was also used in several prisons. Water supply system was also concerning in some prisons where water came directly from streams or rivers. Others however are connected to a public water supply, such as in the prisons located in the North Central zone of the country, or may rely on a water tanker. In addition, due to the failure of the public water supply system, hand dug well and bore holes were common for most of the prisons. To counter such problems, the Commission issued recommendations to the Federal government of Nigeria, the ministry of interior and the Nigerian prison service, calling for the renovation of prison facilities.

2. Case compilations: The State of Human Rights in Nigeria

In its report entitled *The State of Human Rights in Nigeria*, the Commission sought to assess Nigeria's commitment to its treaty obligations by compiling incidents on the human rights situation in the country. Each chapter of the publication is dedicated to a human rights issue, some of which also lay down water-related cases. Each chapter begins with an introduction of the human right(s) issue(s) to be assessed. Relevant provisions of regional and International Conventions pertaining to the theme of the chapter as well as constitutional and statutory provisions are cited. These provisions are used as benchmarks to measure compliance of the government and its agencies with human rights standards and norms. The chapters also contain narratives on incidents of human rights violations and abuses monitored during the period under review. At the end of each chapter, specific recommendations on the thematic areas discussed are proffered.

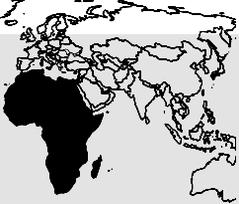
In chapter one on extra-judicial, summary and arbitrary executions, the report describes the treatment inflicted to two inmates at the Kuje prison. It reports that prisoners complained that they were served dirty water, which was not suitable for human consumption. As a consequence for their participation in a protest on this issue, the two prisoners were tortured and later died from their injuries. At the Kefi prison, prisoners were also provided with poor quality of water. Diarrhea, malaria, scabies and dysentery resulted from such conditions.

The Commission also formulated recommendations on the human rights situation. Although it did not directly call upon the State to realize the human right to water and sanitation, it nevertheless recommended a nationwide audit of prisons in order to ensure that the infrastructure of all prisons are in conformity with the United Nations Standard Minimum Rules for the

Treatment of Prisoners. This instrument specifies that prisoners shall be provided with water for their personal hygiene, adequate sanitary installations, as well as drinking water whenever needed.

Finally, chapter fifteen identifies several environmental problems that Nigeria is facing. Some of them have also an impact on access to water. For example, oil spillages that result from exploration renders access to water very difficult. In addition, the lack of access to water in the north-east and north-west resulted in the increase of the number of season migrants in north central and southern States. As the chapter targets the right to clean environment, its recommendations focus on the control of desertification, tree planting and affordable alternative sources of energy.

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24. National Human Rights Commission Nigeria, "Report of Prison Audit", 2009.
- National Human Rights Commission Nigeria, "Harmonized Report of 2012 Prison Audit", 2012.
 - National human Rights Commission, "The State of Human Rights in Nigeria", 2007.
 - United Nations, "Standard Minimum Rules for the Treatment of Prisoners", 30 August 1955.



SIERRA LEONE²⁵

Key words – Mining, Ebola outbreak, Bumbuna, Grievance mechanism

Practices – Monitoring, Inquiry, Promotion

Relevant criteria – Availability, Quality, Accessibility, Affordability

Website – www.hrcsl.org

LEGAL FRAMEWORK

The Sierra Leone Electricity and Water Regulatory Commission Act, 2011, established the Sierra Leone Electricity and Water Regulatory Commission to regulate the provision of electricity and water services and to provide for other related matters. The Sierra Leone Water Company Act, 2001, incorporates the Sierra Leone Water Company, to provide for the supply of water in specified areas and for other related matters.

MANDATE OF THE HUMAN RIGHTS COMMISSION OF SIERRA LEONE (HRCSL)

The Human Rights Commission of Sierra Leone was enacted by the Human Rights Commission of Sierra Leone Act 2004 and became operational in 2007. It promotes respect for human rights through public awareness programs, information on human rights, publications and cooperation. It also reviews national legislation and provides advice on compliance with international obligations and on reporting tasks required by international instruments. Moreover, the Commission has monitoring and investigative tasks. A complaint may be lodged in writing, following which the HRCSL may investigate an alleged human rights violation. It may also undertake an inquiry on its own initiative.

THE COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

1. Water related statements

In the context of the Ebola outbreak in Sierra Leone, the Human Rights Commission undertook a monitoring activity in Ebola centres following which it stressed in a press report the importance to observe and respect the right to safe drinking water. In another press report it also called on utility service providers, the Guma Valley Water Company and the Sierra Leone Water Company, to ensure access and availability of safe drinking water.

2. Inquiry – The Bumbuna Inquiry Report (2012)

The Commission undertook an inquiry report on gross human rights violations that occurred in Bumbuna in April 2012. Between 16 and 18 April 2012, the workers of African Minerals Ltd (AML) protested in relation to their working conditions. They were also joined by other members of the community who were not satisfied with the company. The inquiry investigated the police intervention that occurred in response to the strike, as well as the state of labour rights at AML, the response of the government and the role of the media. More specifically, the report sought to find whether “AML was unresponsive to their workers grievances leading to frustration and despondency”.

Since the strike involved the entire community, the inquiry also addressed their complaints. For example, water was an issue for women who held that the activities of the company interfered with the water source. In this regard, the Commission found that the community has long standing grievances against the company. It therefore called on the company to strengthen and review its grievance mechanism that may be used by the community. It also recommended to AML to adopt mechanisms which would ensure speedy and effective response to complaints from community people.

Personal statements from victims helped identify specific human rights violation faced by individual residents. In this context, the Commission also took statements from the officer commanding Bumbuna Police Station and the Paramount Chief. The Commission also issued a Public Notice to call for the submission of written memoranda or other documents that provide relevant information for the inquiry. The Commission received reports from organizations that conducted initial investigations into the Bumbuna incidents and reports of previous inquiries into similar issues. The documents received at the Public Hearing also served to corroborate information through other methods. In addition, focus group discussions were carried out to confirm the description of the events “as experienced by the people of Bumbuna”. It focused on the perspectives of the community, its view on the causes and impacts on the different segments of the population, as well as the solutions to prevent a recurrence of similar events.

3. Annual Reports and the right to water

Pursuant to its functions, the Commission is required to publish annual reports on the state of human rights in Sierra Leone.

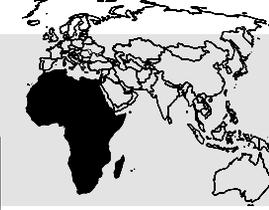
In its 2011 report, the Commission devoted a section of the report to economic, social and cultural rights. In this context, the right to water was briefly addressed. It revealed issues of availability as the severe lack of clean and safe drinking water resulted in children fetching water already as early as 5am. The right to water was also threatened by non-payment of bills, which raises concerns over affordability of water. In addition to problems with regard to physical access to water in the Eastern mountainous areas of Sierra Leone, the inhabitants also confront difficulties to access clean and safe drinking water. The report thus calls on the government to undertake actions to supply all the districts and the Western Area with pipe borne water.

Water was also a concern in 2011 in the mining sector where it was found that abandoned mining pits were filled with stagnant water which consequently led to public health concerns arising from infestation of mosquitoes and spread of waterborne diseases such as malaria. Following this finding, the Commission made recommendations to the Ministries of Mines, Labour, and Health and Sanitation to take actions to ensure compliance with health and safety laws and regulations. It also called upon the government to enact and implement the Operational Regulations for the Mining Sector.

The Commission presented the report to the public through workshops, public lectures, radio programmes and other activities and events. In addition to regional and district headquarters towns, it also disseminated the report to local communities to reach a wider population.

The Commission's 2013 annual report identified access to clean and safe drinking water as a challenge for Sierra Leone and in particular the Western Area.

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25. Human Rights Commission of Sierra Leone, "HRCSL visits Ebola centres during 3 days 'Ose-To-Ose' campaign", <http://www.hrsl.org/content/hrsl-visits-ebola-centres-during-3-days-%E2%80%98ose-ose%E2%80%99-campaign>.
 - Human Rights Commission of Sierra Leone, Press Release, 17 September 2014. Available at: <http://www.hrsl.org/content/press-release-17th-september-2014>.
 - Human Rights Commission of Sierra Leone, "Bumbuna Inquiry Report", 2012. Available at: <http://www.hrsl.org/sites/default/files/HRCSL%20Bubuna%20Public%20Inquiry%20Report.pdf>.
 - Human Rights Commission of Sierra Leone, "The State of Human Rights in Sierra Leone", 2011. Available at: <http://www.hrsl.org/content/state-human-rights-sierra-leone-2011>.
 - Human Rights Commission of Sierra Leone, 'Human Rights Commission of Sierra Leone Launched its 7th Edition of The State of Human Rights Report 2013', Press release, 23 October 2014. Available at: <http://www.hrsl.org/content/human-rights-commission-sierra-leone-launched-its-7th-edition-state-human-rights-report-2013>.



Key words – Right to health, Rights of Children, Internally Displaced People, Military detention centres

Practices – Monitoring, Reporting, Investigation

Relevant criteria – Availability, Accessibility, Acceptability, Affordability, Quality

Website – www.uhrc.ug

LEGAL FRAMEWORK

Water Act 1997; Constitution of Uganda 1995. The Constitution explicitly refers to water in relation to the protection of natural resources and has a separate part devoted to clean and safe water. In line with this part of the Constitution, the “*State shall take all practical measures to promote a good water management system at all levels*”. In addition, the Constitution includes clean and safe water into the general social and economic objectives: “*The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that – [...] (b) all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.*”

Mandate of the Uganda Human Rights Commission (UHRC)

Established under Article 51(1) of the 1995 Constitution of the Republic of Uganda, the Uganda Human Rights Commission promotes and protects human rights and freedoms in the country. Its functions and powers were operationalized under the 2007 Uganda Human Rights Act. Its functions are the following:

- To investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right.
- To visit jails, prisons, and places of detention or related facilities with a view of assessing and inspecting conditions of the inmates and make recommendations.
- To establish a continuing programme of research, education and information to enhance respect of human rights.
- To recommend to parliament effective measures to promote human rights including provision of compensation to victims of violations of human rights or their families.

- To create and sustain within society the awareness of the provisions of this constitution as the fundamental law of the people of Uganda.
- To educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation.
- To formulate, implement, and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people.
- To monitor the government's compliance with intentional treaty and convention obligations on human rights; and
- To perform such other functions as may be provided by law.

Article 52 (2) also requires the Commission to publish periodical reports and submit annual reports to parliament on the state of human rights and freedoms in the country.

THE UGANDA HUMAN RIGHTS COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

Availability, Accessibility, Acceptability, Affordability and Quality are some of the water and sanitation related criteria that the UHRC addresses in its work. For example, availability issues are reviewed by the Commission while carrying out its mandatory visits to detention centres in 2013. Prisoners, along with refugees in refugee camps and ethnic minorities, were in fact identified as a group whose rights have been particularly and disproportionately affected. For example, the Commission noted water shortages but also raised that there was a lack of sanitary towels in prisons with wards for females.

Quality was assessed by the Commission for example when it carried monitoring visits in areas that were affected by floods and landslides. Sanitation facilities were reported to be submerged in the flood water. This therefore raised the issue of water source contamination. The UHRC also pays attention to affordability and acceptability. Among others, it noted that among other reasons, the high costs of water impacted on health centres as they could not afford high water bills and therefore did not have running water.

1. Annual Reports to the parliament of Uganda and the right to water and sanitation

The Uganda Human Rights Commission is mandated to publish an annual report to the parliament containing its findings and recommendations on the state of human rights in the country. In its reports to the parliament, the Uganda Human Rights Commission lays down the activities it has carried out during the target year and incorporates a critical analysis of the state of

human rights in the country. Among other reports, the 9th (2006) and 13th (2013) reports addressed water and sanitation in relation to various issues.

In assessing the conditions in military detention centres in Uganda in 2006, the Commission highlighted that the detention facility at Mbuya GMH had running water, indoor toilets and bathrooms but the toilets did not flush. As a consequence, the detainees had to fill a large metallic drum with water in which they had to dip their basins or buckets and pour water into the toilets. The drum was in addition very old and had multiple holes in it, making it cumbersome to keep water in.

In relation to Uganda's prisons, the 9th annual report raised some of the recommendations it had issued in its previous reports. It urged for the implementation of some but also noted those that have been implemented. Among others, it noted that all new prisons that were under construction at the time of the report have made provisions for improvements in water and sanitation. Similarly, the 2010 report laid down the findings of the inspections of places of detention carried out in 2010. Water and sanitation was discussed in relation to personal hygiene and health issues. Affordability was also tackled. The UHRC reported that there was shortage of water at Bugango Police Post where a jerry can of water cost 700/-. At Semuto Police Station in Luwero, the price was at 100/-.

Another issue analysed by the Commission in its annual reports is the resettlement of Internally Displaced People (IDP). In 2007 it observed that some areas threatened by Karacuna raids have received no deployments of police or judicial personnel, due to a serious lack of basic services such as road infrastructure and water. The 2006 report mentioned that Karacuna-induced displacement was likely to remain a more significant problem than Lord's Resistance Army-induced displacement.

In relation to the prospects and challenges of the IDP Return Programme, the Commission pointed out that schools, health centres and water sources collapsed during the time IDP were in displacement. It reported that before they resettle in their villages, they feel that basic social services should first be put in place. In this regard, the Commission recommended to the government to move faster to support returning IDPs by improving conditions and quality of life in the IDP camps and the areas of return by supplying good, health facilities, and clean water among others.

In its 13th annual report, the Commission addressed the return, resettlement and reintegration of IDP particularly with regard to the Acholi Sub Region. It was concerned with the inadequate access to water, health facilities and services. In discussing the right to health, the Commission noted that the camp at Bulecheke did not have sufficient safe water. In addition, the pit-latrines were inadequate, poorly maintained and did not cater for gender variations.

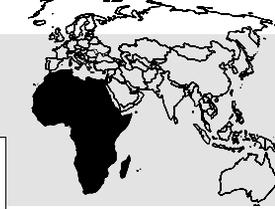
Water related issues were also reviewed in relation to children's rights in UHRC's 9th Annual Report. In Northern Uganda, it is reported that children lack water in addition to proper shelter and food. Moreover, children miss school due to acute water shortages which make them queue for long hours.

Chapter 8 of the 2010 annual report concerns the right to health and mental illness in Uganda. It relates to the right to water and sanitation as safe water and sanitation as well as clean and healthy environment were identified as vital health determinants. After briefly explaining the framework of each of them, the Commission reviewed their progress in the country. In relation to safe water and sanitation, it found that access to improved water sources was limited although latrine coverage in the majority of districts had improved. In monitoring health facilities, it also noted that only 49% of the population used pit latrines in Buliisa, while the rest preferred going to the bush. Due to the poor soils in the district, it is very expensive to construct a firm pit latrine. Many people who had constructed pit latrines sank into the ground within a short period of time.

As for the 'health, a clean and healthy environment' determinant, the Commission found that the use, protection and management of interrelated resources such as water and forests that contribute to a clean and healthy environment has been hindered due to limited knowledge and understanding of environmental rights.

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26. Uganda Human Rights Commission, 'About us: UHRC Mandate', <http://www.uhrc.ug/mandate>.
- Uganda Human Rights Commission, "The 13th Annual Report 2010 to the parliament of the Republic of Uganda", 2010. Available at: <http://www.rwi.lu.se/NHRIDB/Africa/Uganda/13thAnnualReport2010.pdf>.
 - Uganda Human Rights Commission, "9th Annual Report to the Parliament of Uganda of the Uganda Human Rights Commission", 2006. Available at: <http://www.rwi.lu.se/NHRIDB/Africa/Uganda/Annual%20Report%2006.pdf>.
 - OHCHR, "Question for the Purpose of Informing the Thematic Report to the Human Rights Council from the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation". Available at: www.ohchr.org/documents/issues/water/hrviolations/ugandanhr.doc.

TANZANIA²⁷



Key words – Internally Displaced Persons, Prisoners and remandees, Voice of Haki

Practices – Inquiry, Promotion, Research

Relevant criteria – Accessibility, Availability

Website – www.chragg.go.tz

LEGAL FRAMEWORK

The National Water Policy of 2002 mentions that safe drinking water and good sanitation practices are basic considerations for human health. Water as a basic need and right is recognized as a component of social principles for the formulation of the rural water policy objectives. The component is understood as recognizing that *“access to clean and safe water is a basic need and right for all human beings, efficient management and equitable use of water in the rural areas will be promoted”*. In relation to water resources management, the policy states that: *“Laws and Regulations will be put in place to ensure that, like many other natural resources, by constitution and law, all the water in the country is vested in the United Republic of Tanzania and every citizen has an equal right to access and use of the nation’s natural water resources for his and the nations benefit”*.

Water Utilization Act, 1974, Article 10: *“Any person having lawful access to any water may abstract and use the same for domestic purposes”*.

Tanzania Vision 2025 includes universal access to safe water as a specific target.

MANDATE OF THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE (CHRAGG)

The Tanzania Commission for Human Rights and Good Governance was established under Article 129(1) of the Constitution of the United Republic of Tanzania of 1977 as amended by Act No. 3 of 2000. It became operational on 1 July 2001 pursuant to Act No 7 of 2001. It was officially inaugurated in March 2002. Its mandate encompasses the following:

- To promote within the country the protection and the preservation of all human rights and the duties to the society in accordance with the Constitution and the laws of the land;

- To receive allegations and complaints in the violation of human rights;
- To conduct enquiries into matters involving the violation of human rights and the contravention of the principles of administrative justice;
- To conduct research into human rights, administrative justice and good governance issues and to educate the public about such issues;
- When necessary, to institute the proceedings in court designed to terminate activities involving the violation of human rights or redress the right or rights so violated, or the contravention of the principles administrative justice.

THE COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

1. Report on Public Inquiry on Displacement of People from Their Lands in the Tanzania

The Commission conducted a public inquiry in 2012 on internally displaced persons, following which it published its findings in *Report on Public Inquiry on Displacement of People from Their Lands in the Tanzania*. Among others, the CHRAGG was concerned over the lack of clean and safe water that had been reported to the Commission. In discussing the effects of internal displacement of persons, the NHRI noted that citizens in Singida Region complained that they were moved to other places where there were no essential social services like health centres, water and schools. Moreover, the report points out that the eviction processes in Tanzania have been accompanied by incidents of human rights violations. Citizens were mistreated by both government officials and investors. Among others, “women and children who went to fetch water in the area for domestic use were made to frog jump and sometimes were chased by vehicles and their containers were confiscated”.

The report also focuses more specifically on access to clean water, health and education services in their new settlements. It first recalls the international framework in regard to these rights before assessing how these obligations were put into practice among the displaced population. The investigators found that health care, education and clean water were not yet installed in most of the new settlements where the people had been moved. The report also lays down recommendations in relation to the challenged that have been raised by the Commission.

2. Visit to Zanzibar

The Tanzania Commission made its first official working visit to Zanzibar in 2007. The purpose of its visit was among others to introduce the

Commission to the Tanzanian public. A summary of its visit was published in “Voice of Haki”, the Newsletter of the Commission for Human Rights & Good Governance. CHRAGG formulated comments which included recommendations. For example, it mentioned that social amenities such as medical care, meals, as well clean toilet facility should be provided to prisoners and remandees.

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27. Commission for Human Rights and Good Governance, “Report on Public Inquiry on Displacement of People from Their Lands in the Tanzania”, 2012. Available at: <http://www.chragg.go.tz/docs/Internal%20Displaced%20Persons%20-%20%20Report%20English%20version.pdf>
 - Voice of Haki, “CHRAGG makes first tour to Zanzibar”, p. 4, Vol I Issue 4, December 2007. Available at: http://www.chragg.go.tz/docs/news%20letter/dec_2007_sw.pdf.

CHALLENGES
AND OBSTACLES
TO NHRIS' WATER
GOVERNANCE
RELATED ACTIVITIES

PART III

OVERVIEW OF CHALLENGES AND OBSTACLES

One of the main objectives of the compilation of good practices is to contribute towards creating a community of practice of NHRIs wishing to enhance their role in water governance for the realization of human rights. The previous chapters have thus allowed to identify good practices that may serve as examples for other NHRIs in their promotion, protection and monitoring activities. The current chapter presents experienced challenges and obstacles that NHRIs have been facing during their water governance related activities. In addition, the last part will also present areas identified by NHRIs where they would be interested in receiving further information from peers.

A. EXPERIENCED CHALLENGES IN RELATION TO WATER GOVERNANCE

The majority of NHRIs interviewed for the present compilation were familiar with water governance and its importance to the realization of the human rights. Yet, regardless of the extent of their previous on this regard, many NHRIs have been facing challenges in their work in relation to the right to water and sanitation. These are identified in this section in relation to promotion, protection and monitoring of human rights.²⁸

1. Promotion of water governance related human rights

Several NHRIs are facing challenges in relation to the promotion of water governance. Although some have established a national action plan which mentions the right to water and sanitation, they were not in a position to take any action in this regard yet. Others are mandated by the State's Constitution to carry out promotional activities through various means, such as by establishing a continuing programme of research, education and information to enhance human rights, or by educating and encouraging the public to defend the Constitution and the rights contained therein. In spite of such provisions, they have not been able to carry out promotional activities with a specific focus on the right to water. The absence of specific promotional

28. The core content of this section is entirely based on the answers provided by participating NHRIs to the questionnaires. In addition to detailing the challenges they have faced, some NHRIs have also explained the actions they have triggered to overcome the challenges. These are illustrating the section on good practices.

programmes on the right to water, sanitation and healthy environment have thus been identified as a challenge.

Another challenge faced by some NHRIs is that in addition to a poor regional framework on the promotion of the right to water and sanitation, there is sometimes also an absence of regional recognition of the power of the NHRIs to work on this right. Moreover, human rights institutions but also local government authorities or ministries may need education concerning water governance in relation to human rights.

Other institutions face additional challenges in relation to their ongoing work in promoting the right to water and sanitation. Even when an NHRI has a mandate which encompasses the protection of natural resources, including the right to water, it may become sometimes challenging to find a topic which is sufficiently interesting to be dealt with and distributed by the media.

Future challenge

Citizens often lack proper, holistic education on the natural characteristics of water resources, and thus the link between pollution and water supplies is often unclear. This becomes evident for instance in cases of illegal drilling for water wells, where residents have a tendency to underestimate the negative effects of illegal pumping on the groundwater base. Permission for establishing new water wells is required for the proper assessment of the quantity and quality of the water base, as well as for the use of best available technologies for drilling and pumping, limiting or preventing the pollution of groundwater. Without more widespread environmental education on various water-related mechanisms, and without a shift in the consciousness of the people, the NHRIs' recommendations will not make much of a difference in the long run.

2. Protection of water governance related human rights

Concerning the protection of human rights, many NHRIs face a lack of clear remedies for victims of violations of the right to water and sanitation as well as an absence of facilities to enforce this right. In addition, due to the principle of progressive realization with mechanisms for measuring progression, NHRIs find it sometimes challenging to fulfil their role in terms of protection of this right.

As illustrated in the first chapter, many institutions issue reports and adopt recommendations in relation to their protection activities. The strength of such actions plays however a role in NHRIs' capacity to protect the right

to water and sanitation. For example, the fact that reports and resolutions issued by some NHRIs are not binding may be challenging. Sometimes, the legislator is not required to integrate the opinion or suggestions of the NHRI. On the one hand, it may be beneficial as it helps the human rights institution to form its established opinion while preserving its independence from the legislative and decision-making bodies. On the other hand, however, it may become difficult to form suggestions in a cogent and well-founded manner which would be taken up by the legislator or the decision-maker.

3. Monitoring of water governance related human rights

Monitoring the various aspects of water governance related human rights has proven challenging for many participating NHRIs. This is due, among others, to the various aspects that need to be contextualized at the local level, especially when looking at the criteria of availability, accessibility, acceptability, affordability and quality of water and sanitation. It is sometimes also due to the disproportionate impact on certain vulnerable groups of people such as women, girls and people with disabilities. Linked to this, the interrelated nature of the right to water to other rights such as the right to housing or the right to health makes the right even more challenging to monitor. In some occasions, NHRIs have had to prioritize which aspects to concentrate on during a given year which is a complex process. One institution also raised that they have other priority areas based on the complaints they receive, which are mainly related to civil and political rights. Insufficient staff and geographical difficulties are thus major challenges to NHRIs monitoring functions in relation to the right to water and sanitation. The limited governmental resources also play a role in this regard.

While some NHRIs may investigate the failure *ex officio* and call for a revision of the law if found necessary, they may often encounter a lack of cooperation of various authorities when trying to tie up the issue. Resistance of different authorities to cooperate and provide adequate information can significantly delay the monitoring and revision process. Similarly, monitoring becomes challenging when there is a poor political will to engage State actors for the implementation of the right. Many NHRIs face a lack of response to complaints by ward councillors and other government officials. Other challenges in relation to monitoring are the lack of a human rights-based approach to service delivery; a lack of access to water; poor maintenance; dysfunctional infrastructure; lack of public participation and access to information; poor monitoring of adherence with service delivery contracts; corruption; and money allocated to water and sanitation service delivery being spent on other projects/line items.

Future challenge

Poor funding of NHRIs and low allocation of resources to training and monitoring/investigation is a major issue that needs to be tackled by some institutions. It was raised that institutional funders do not see this area as attractive for funding and assistance. In some States, while funds are available for common civil and political rights, not much is available for issues around social and economic rights.

B. OBSTACLES IN NHRIS' ACTIVITIES AND PROJECTS

Whilst several water governance related good practices have been identified and presented in the previous chapter, many of these institutions have been facing various obstacles when undertaking these projects. This section offers an overview of the obstacles, as raised by the NHRIs that participated in this project. These obstacles mainly relate to deficiencies in the enabling environment, lack of capacity and various stumbling blocks in cooperating with stakeholders.

1. Legal Framework

NHRIs may be hindered in their work due to the legal framework they are facing. When the right to water is not guaranteed in the Constitution, or in water related laws, it creates an obstacle for NHRIs in relation to the realization of this right in the country. Furthermore, in some cases there is not only a poor legal framework at the country level, but also at the regional levels which creates a difficulty for NHRIs in their water governance related projects. In such circumstances, NHRIs are either without legal capacity or lack clear legal or statutory mandate to work in this area.

Future challenge

The poor legal framework of many NHRIs will remain an important challenge that many human rights institutions will likely be facing in the future.

2. Capacity

Despite of an legal framework, many NHRIs have identified their low capacity as an obstacle to their work on the right to water and sanitation. In fact, numerous institutions are interested in ensuring and protecting the right to water, sanitation and healthy environment but the low capacity to deliver programmes hinders the work even for those that have a legal

framework on the right to water and sanitation. Many institutions also lack the ability to acquire that capacity for the purpose of realizing these rights. A similar obstacle is faced in relation to delivery of services at the local level and sometimes mostly with regard to the efficiency of monitoring activities on the right to water and sanitation. In addition, this obstacle may be also translated in a lack of scientific studies carried out by the NHRIs themselves. Such studies play a role by strengthening the institution's positions which aim at preventing future harm to water resources.

Finally, despite the ratification of the ICESCR by most of the States where NHRIs are operating, some institutions are fully engaged only with civil and political rights due to past armed conflicts that occurred in the country. As these institutions are moving towards taking an enhanced role in water governance for the realization of human rights, they need to build knowledge and capacity on how to work exactly on this right. Subsequently, they will be able to work further to formulate strategic plans or programs on the right to water and sanitation. Finally, another reasons for the lack of capacity is poor funding. This is in fact a major factor affecting the delivery of programs in some regions.

Future challenge

In relation to capacity building, some institutions have raised that it may become challenging to train the staff in charge of solving cases on access to water and pollution of water sources.

3. Liaison with the government and authorities

In carrying out their water governance related projects NHRIs are also facing obstacles which emanate from their relationship with the government and the specific role of some governmental organs. For example, NHRIs may face a lack of cooperation by government departments, such as with regard to requests for information and responses in relation to reports or publications. In addition, some government officials, including at the local level, have a lack of understanding of the human rights-based approach.

In the same vein, one institution mentioned that one of the most prevalent obstacles that it faces is the delay of the authorities to respond to its requests which can sometimes cause the aggravation of the problem of the complainant. For this NHRI, it is not only the slow bureaucratic structure that makes it difficult to investigate cases in a proper manner, but water related issues themselves often originate from protracted environmental risk assessment

for instance. Authorities are often requested to provide information about the reasons for delaying their assessment obligations.

Future challenge

Structure and institutional hierarchy of the various ministries can determine political orientation and trends. Whether an authority takes into account the recommendations of an NHRI can depend on where the given authority is placed in this structure. For instance, notifications and responses may be received within or outside the legal timeframe, depending on the department or governmental organ working on water issues.

NHRIs may also face challenges when a change in leadership at different levels of government occurs. In such situations, any inroads made at building relationships might be lost.

4. Key actors in water governance related human rights

The multi-faceted nature of water governance related human rights imposes a constant challenge for some NHRIs. As there are many actors working within the area of water governance with various interventions, it might be challenging to have a holistic focus on the promotion and protection of this right. Lastly, contextualizing the domestic standards developed in regard to the right to water and the lack of access to credible sources of information have created an obstacles to the work of many NHRIs.

Future challenge

Creating coordinated interventions with other agencies and stakeholders is a challenge that NHRIs may likely face in the future. This may include forming a water group so as to form a coordinated approach in water governance, or join regional institutions to work on water governance related human rights.

C. LEARNING FROM OTHER NATIONAL HUMAN RIGHTS INSTITUTIONS

In addition to contributing by sharing their practices, the participating NHRIs have also raised an interest in learning from their peers in relation to their experience on water governance. In this regard, the following elements were identified by the institutions:

- Training and capacity building of staff (Namibia)
- Specific promotional activities (Uganda)
- Complaint mechanism and the template for affording remedies for violation; Possible remedies and the multiple avenues for accessing them (Namibia; West African Network)
- Comprehensive investigation processes, as well as investigation practices, tools and capacity (Namibia; West African Network, Nepal, Uganda)
- How to protect the right despite its progressive nature (Nepal)
- Innovative ways of monitoring the right to water; new monitoring tools and mechanisms, also in circumstances where the State does not regard the right to water and sanitation as human rights (Namibia; West African Network, Nepal, Uganda)
- How to make the government more accountable and responsible (Nepal)
- The International human rights framework of the water right and water governance (Nepal)
- The legal and institutional framework used in implementing the right to water and sanitation (West African Network)
- How to ensure conservation of essential resources, like water, without compromising one's access to its human rights (South Africa)
- How to build a human rights culture in society, and ensure and understand human rights-based service delivery (South Africa)
- Gain knowledge on specific promotional activities carried in respect to water governance as well as their implementation (Tanzania)
- Knowing if there are mechanisms for changing people's awareness on water issues and governance, and if the mechanisms are successful in creating a paradigm shift (Hungary)
- How other NHRIs are handling lobby and economic interests; Can these interests be integrated into water-related decisions, and if so, how? (Hungary).

This publication was prepared in the context of the National Human Rights Institutions' Water Initiative. Launched by the Hungarian Ombudsman for Future Generations (Hungarian NHRI) in cooperation with WaterLex in 2013, it envisages a more prominent role of NHRIs in water governance for the realisation of human rights. By compiling and disseminating good practices among NHRIs, the current publication is intended to serve as a contribution towards creating a community of practice of NHRIs wishing to enhance their role in driving and monitoring the implementation of water governance for the realisation of human rights.

WaterLex is an international public interest development organization based in Geneva, Switzerland. It is a UN-Water Partner with UN ECOSOC special consultative status. Its mission is to develop sustainable solutions based on human rights to improve water governance worldwide, particularly in regard to consistent and integrated water law and policy frameworks.

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WaterLex
International Secretariat
83, rue de Montbrillant
1202 Geneva – Switzerland
info@waterlex.org
www.waterlex.org

