

## **POLICY GUIDANCE WORKSHOP:**

*THE HUMAN RIGHT TO WATER AND SANITATION*

*“TRANSLATING THEORY INTO PRACTICE”*

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## **A HUMAN RIGHTS-BASED APPROACH TO WATER SUPPLY AND SANITATION**

### **Background Paper for the Workshop**

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*"[T]he roots of the crisis in water can be traced to poverty, inequality and unequal power relationships, as well as flawed water management policies that exacerbate scarcity. Access to water for life is a basic human need and a fundamental human right."*

(UNDP Human Development Report, 2006, p. v)

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## EXECUTIVE SUMMARY

The facts are well known: 2.5 billion people do not have access to improved sanitation and close to a billion people lack access to an improved drinking water source. These figures reflect tremendous inequalities: poor and marginalised groups are affected the most by lack of access and its negative impacts on health, education and livelihoods. As stated by the UNDP 2006 Human Development Report, the scarcity at the heart of the water and sanitation crisis is rooted in power, poverty and inequality, not in physical availability.

It has been argued that a Human Rights-based Approach (HRBA) can act as a forceful tool for addressing these issues. Focusing on the human right to water and sanitation provides communities and development organisations with a valuable advocacy tool for strengthening the accountability of State authorities for their commitments. It places a greater emphasis on the need to strengthen democratic institutions and to address the underlying structural causes for lack of access. Equally, abiding by human rights principles ensures that the needs of the poor and marginalised are not subverted in economic and political decisions over water and sanitation.

The workshop aims to explore how the HRBA and human right to water and sanitation can be translated into practice. Specifically it will focus on what is the added value of an HRBA to addressing the crisis in water supply and sanitation and what are the challenges in applying this approach. In these efforts the workshop will provide an opportunity to hear from some of the first experiences in implementing the HRBA in the water sector and to consider where additional guidance may be needed.

## **I) INTRODUCTION – THE CRISIS IN WATER SUPPLY AND SANITATION**

The facts are well known: 2.5 billion people do not have access to improved sanitation, out of which 1.2 billion people do not have access to sanitation facilities at all. Close to a billion people do not have access to an improved drinking water source.

These figures reflect tremendous inequalities in access to water and sanitation. In many cities in Latin America, Sub-Saharan Africa and Asia, people living in high income areas are supplied with large amounts of water at low prices, whereas people living in informal settlements and other deprived urban areas have access to less than 20 litres per day, an amount insufficient to meet their basic human needs. At the same time, the poor pay prices that are much higher than in high-income areas, often 5 to 10 times more. Rural areas are also disadvantaged in regard to access to water and sanitation services with access rates often considerably lower than those for urban areas. Moreover, women and girls carry a disproportionate burden related to the lack of access to water and sanitation; they are responsible for collecting water and often girls not attend school due to lack of or inadequate sanitation facilities, which is one reason for the lower primary school completion rates for girls than boys – one in four girls do not complete primary school compared to one in seven boys.

The effects of the lack of access to water and sanitation on human development are enormous: 1.8 million children die every year as a result of diarrhoea; almost half of all people living in the developing world suffer from a health problem related to deficits in water supply and sanitation; 443 million school days are lost each year; and millions of women spend several hours per day collecting water – time that they cannot use for any productive activity. Overcoming the water and sanitation crisis would thus not only have direct benefits, but would also act as a catalyst for progress in public health, education and poverty reduction.

The UNDP 2006 Human Development Report stated that “the scarcity at the heart of the global water crisis is rooted in power, poverty and inequality, not in physical availability”. This view confirms the growing international recognition that the poor and marginalised are often systematically excluded from access to water due to unequal power relations. Addressing the structural obstacles found in policies, legislations and social practices that prevent these groups from accessing water and sanitation services is crucial for achieving improved and equal access to water and sanitation.

A human rights framework does not automatically resolve difficult policy issues about financing, delivery and regulation of water and sanitation services. However, human rights can act as a compelling tool to mobilise and empower people, in particular poor and marginalised groups. They translate needs into rightful claims: Providing access to water is no longer perceived as charity, but as realising an entitlement. Human rights provide international standards to guide political and economic decisions over the allocation of water resources, and can enable people’s voice to be heard in decisions over water management. As such, human rights can strengthen State accountability for the delivery of water and sanitation services.

## **II) OBJECTIVES OF THE WORKSHOP**

The main objective of the workshop is to explore how an HRBA the human right to water and sanitation can be translated into practice. Whether and how applying a human rights-based approach (HRBA) adds value to addressing the practical difficulties in the area of water

governance will be among the chief questions to be discussed. The workshop seeks to exchange experience to date and to provide a first step to developing guidance on applying an HRBA to water supply and sanitation in the UN development context.

An HRBA to water and sanitation programming has an impact in four main elements of the policy cycle and areas of intervention:

- (1) Policy & Enabling Environment
- (2) Institutional Development
- (3) Planning & Implementation
- (4) Financing – Investments & Service Delivery

The first area relates to the question of how policies and legislation have to be framed to meet the standards of international human rights law – not only the right to water and sanitation, but other rights that are fundamentally related to access to water and sanitation, such as the right to education, health and freedom from discrimination. It also takes into account the broader enabling environment – social and political factors beyond the water sector that have an impact on access to water and sanitation such as a functioning judiciary. The second area addresses the institutional capacity to achieve access to water and sanitation for all. It focuses on developing the capacity of both state officials to meet their obligations and of individuals to claim their rights. The area of Planning & Implementation looks at the implications of the HRBA for action and programming in the water and sanitation sector. Lastly, the area of Financing relates to both necessary investments in the water sector as well as ensuring service delivery and how these financing needs can be reconciled with affordability for the poor and marginalised.

The workshop aims to follow-up to the International Conference on the Human Right to Water and Sanitation (26-27 November, Oslo) by providing a more practical focus to the issues at hand. It will focus on an HRBA to water supply and sanitation instead of dealing with the entire – and broad – field of water governance and water resources management. A related initiative on Human Rights-Based Approaches and Integrated Water Resources Management by UNDP and the Global Water Partnership is complementary.<sup>1</sup> The workshop will consider integrated water resources management only so far as it relates to water as domestic water supply (or multiple use).

More specifically, the workshop aims to:

- Reflect on the issues brought up in the preceding conference on the human right to water and sanitation and examine their implications for specific development interventions in the water and sanitation sector.
- Exchange experiences, review initiatives emerging at regional and country level on applying an HRBA to water and sanitation and discuss lessons learned and potentials for replicating and scaling up the approaches.
- Promote dialogue and establish common ground and understanding amongst development partners of the practical implications of applying an HRBA to water supply and sanitation.
- Formulate recommendations and inputs for methodological guidance on applying an HRBA to water supply and sanitation in the UN development context.

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<sup>1</sup> This initiative aims to explore synergies and potential conflicts between the two approaches. Its outputs will be an analytical paper, a policy brief and practical guidance materials.

This background paper will introduce and explain the main concepts relevant for the workshop: The HRBA to development and its application in the water sector as well as the human right to water and sanitation. While these issues are interlinked, it is important not to confuse them: The HRBA is an approach taken in development cooperation, whereas the right to water and sanitation is a substantive human right that is increasingly gaining recognition. The paper will also identify the main areas and questions to be addressed in the workshop. It will move on to identify some of the challenges in applying an HRBA in the water and sanitation sector. Finally, it tentatively summarises the benefits of applying an HRBA to water and sanitation.

### III) INSTRUMENTS TO ADDRESS THE CRISIS: EMPOWERMENT BY HUMAN RIGHTS

#### 1) The UN Common Understanding as a Starting Point

Since the call of the Secretary General to mainstream human rights into all the work of the UN in 1997,<sup>2</sup> a growing number of development agencies have been applying an HRBA to their work. In 2003, various agencies met to develop a ‘Common Understanding’ on an HRBA. This UN Common Understanding provides a first step in reaching conceptual clarity on an HRBA within the UN and the wider development community.

#### UN Common Understanding on a Human Rights-Based Approach<sup>3</sup>

1. All programmes of development co-operation, policies and technical assistance should further the *realisation of human rights* as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights *standards* contained in, and *principles* derived from, the Universal Declaration of Human Rights and other international human rights instruments *guide all development cooperation and programming* in all sectors and in all phases of the programming process.\*
3. Development cooperation contributes to the *development of the capacities* of ‘*duty-bearers*’ to meet their obligations and/or of ‘*rights-holders*’ to claim their rights.

\* The human rights principles to guide development programming identified in the UN Common Understanding are:

- universality and inalienability
- indivisibility
- inter-dependence and inter-relatedness
- equality and non-discrimination
- participation and inclusion
- accountability and rule of law

Box 1: The UN Common Understanding on the Human Rights Based Approach to Development Cooperation.

<sup>2</sup> While the UN Common Understanding is based on an interagency agreement, the basis for mainstreaming human rights in development work has been reinforced by the 2005 World Summit Outcome Document. It reads: “We resolve to integrate the promotion and protection of human rights into national policies and to support the further mainstreaming of human rights throughout the United Nations system.” Cf. A/Res/60/1, 20 October 2005, Paragraph 126. Available at: [www.un.org/summit2005/documents.html](http://www.un.org/summit2005/documents.html). In so far, the UN Common Understanding can be regarded as a first step to translate this call for mainstreaming human rights into practice.

<sup>3</sup> The Stamford Inter-Agency Workshop statement of ‘Common Understanding’ on a human rights-based approach to development cooperation. Available at: [www.undg.org/documents/3069-Common\\_understanding\\_of\\_a\\_rights-based\\_approach.doc](http://www.undg.org/documents/3069-Common_understanding_of_a_rights-based_approach.doc).

The first guiding principle of the UN Common Understanding relates to the goal of development programmes and policies: the *ultimate objective* must be the greater realization of rights. The second relates to the *process* of development programmes: these should be guided by human rights principles and standards, and this should happen for all development strategies, in all sectors and phases of the programming cycle. The third principle refers to the underlying structure that characterises an HRBA: As human rights give rise to corresponding obligations, a relationship between the State as the primary duty-bearer and the people as rights-holders can be established. Both, *capacity development of rights-holders* to claim their rights as well as of *duty-bearers* to fulfil their obligations are the focus of strategies. Human rights thus influence both the objectives and process of development cooperation.

Using the framework of the UN Common Understanding, the following sections will first explore the relevant human rights in the context of development cooperation in the water and sanitation sector. It will then outline the implications of applying human rights principles to the water and sanitation sector.

## **2) Furthering the Realisation of Human Rights – The Human Right to Water and Sanitation**

Applying an HRBA would further the realisation of human rights. In the water sector, this relates to the human right to water that has become increasingly recognised in recent years. However, it is not only the right to water and sanitation itself that will be furthered through improving access to water and sanitation, but also other rights, such as the right to education, health, food, housing, an adequate standard of living and freedom from discrimination. The standards enshrined in all of these rights can help set criteria for what programmes and policies in the water and sanitation sector should aim to achieve.

### **a) Recent Developments and Trends**

While the right to water was already mentioned in 1977 in the Mar del Plata Action Plan,<sup>4</sup> its recognition only gained momentum in the early 2000s. The issuance of the General Comment No. 15 by the UN Committee on Economic, Social and Cultural Rights in November 2002 acted as catalyst in that regard. In March 2008, the Human Rights Council decided on the mandate for an Independent Expert on the Issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation – Catarina de Albuquerque was appointed in September.

While General Comment No. 15 is not legally binding, it carries significant legal weight as an authoritative interpretation of the legally binding International Covenant on Economic Social and Cultural Rights (ICESCR) with currently 159 States parties. The General Comment derives the right to water from the right to an adequate standard of living and the right to health, which are explicitly guaranteed in the ICESCR. This interpretation is increasingly acknowledged by States. For example, the Final Document of the 14<sup>th</sup> Summit Conference of the Non-Alignment Movement – consisting of 116 member states – from 11-16 September 2006 in Havana endorses General Comment No. 15. Moreover, a number of States explicitly recognise the right to water (and to a lesser extent sanitation) in their national constitutions and legislation.

The legal basis for the right to sanitation is not yet clearly established. While the General Comment No. 15 only marginally touches upon the issue, it does provide basic guidance for

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<sup>4</sup> The Mar del Plata Action Plan was adopted as the outcome of the United Nations Conference on Water (Mar del Plata, 1977) that was part of a number of world conferences dealing with major global problems.

human rights based programming in this sector. A first attempt to define the right to sanitation has been undertaken by UN-Habitat, Centre on Housing Rights and Evictions, the Swiss Agency for Development and Cooperation and WaterAid.<sup>5</sup> They argue that the right to sanitation also has a legal basis in the right to an adequate standard of living and the right to health as guaranteed in the ICESCR.

### **b) Content of the Human Right to Water and Sanitation**

The human right to water as formulated by General Comment No. 15 focuses *on water for personal and domestic use*. Its content can be determined by using four criteria: available quantity, quality, accessibility and affordability. In the case of sanitation, cultural acceptability is another important criterion.

- The guaranteed **quantity** has to be sufficient on a continuous basis to meet drinking purposes and other basic human needs, i.e. personal and domestic uses such as cooking, personal hygiene and sanitation purposes. International recommendations by the WHO and other international organisations consider 20 l/c/d as the absolutely necessary minimum standard. To fully realise the right to water a larger quantity – the WHO assumes 100 litres – has to be provided progressively.
- In terms of water **quality**, it is required that water is free from hazardous substances that could endanger human health, and that its colour, odour and taste are acceptable to users. Moreover, sanitation facilities have to be safe.
- Water and sanitation services and facilities have to be **physically accessible** within households, educational institutions and workplaces or in their immediate vicinity. They must be usable by all, including women, disabled, children and elderly, without threats to physical security.
- Water and sanitation services must be **affordable** and not negatively impact on the ability to pay for other essential needs, such as food, housing and medical care. Affordability can thus be assessed by considering the percentage of household income spent on water and sanitation services. International recommendations determining the threshold that would exceed water affordability are in the range of 3 to 5 percent of household income. Importantly, the human right to water does not require that water is provided free. Only if people have no income, does affordability entail that States provide a basic amount of water for free.
- Finally, sanitation facilities have to be **culturally acceptable**. This will often require separate male and female facilities. Most importantly, facilities should be constructed in a way that ensures privacy and dignity.

### **3) Guidance by Human Rights Principles – Implications for Development Interventions in the Water and Sanitation Sector**

Following the framework of the UN Common Understanding, this section outlines the implications of applying human rights principles to water and sanitation. It aims to convey the necessary background to enable further discussion in the workshop. This discussion will be structured along different types of development interventions: (1) Policy & Enabling Environment, (2) Institutional Development, (3) Planning & Implementation and (4) Financing. For each area a number of questions for discussion are identified.

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<sup>5</sup> COHRE, WaterAid, SDC and UN-HABITAT, Sanitation: A human rights imperative, Geneva 2008.

From the human rights principles identified by the UN Common Understanding non-discrimination and equality, participation and inclusion as well as accountability and the rule of law are the most relevant for development interventions. These will be considered in more detail.

#### **a) Equality and Non-discrimination**

The twin principles of equality and non discrimination are among the most fundamental elements of the international human rights framework. They are of particular importance in the water sector where control over water resources often reflects existing power structures. Integrating these principles into policy and programmes requires a specific effort to identify the individuals and groups most marginalised and vulnerable in regard to access to water and sanitation. It also requires that proactive measures are taken to ensure that programmes include these groups and make them the focus of interventions.

Groups that are potentially vulnerable or marginalised include: women, children, inhabitants of rural and deprived urban areas as well as other poor people, nomadic and traveller communities, refugees, elderly, indigenous groups, persons living with disabilities, people living in water scarce-regions and persons living with HIV/AIDS. Developing thoroughly *disaggregated data* on access to water and sanitation according to specific groups is essential to identify which groups are most marginalised in a given context and to ensure that they are targeted in programming. Special measures may also be required in the programming process, such as making planning information available in accessible formats or minority languages, affirmative action programmes for women, and focusing programme activities on areas hardest to reach.

To address the structural reasons that lie behind the lack of access to water, it may be necessary to tackle broader social, cultural, political and legal issues by taking an integrated approach that reaches beyond the water sector. For example, women's discrimination in other sectors such as land rights, inheritance, education and access to employment impact their access to water.

A particular concern for some marginalised groups – especially poor people in rural and deprived urban areas – is the affordability of water services. Regardless of whether water is supplied by public or private providers, States have the responsibility to ensure that water is affordable to all people, even those who do not have the capacity to pay for water services. States have to put into place the necessary regulatory framework if water services are privatised. Measures to achieve affordability can include the provision of a minimum amount of water for free, a rising block tariff system, other cross-subsidisation mechanisms and targeted subsidies.

In the workshop, we aim to discuss the potential benefits of an HRBA. In the context of non-discrimination this relates to the issues identified in the table below. How does an HRBA inform and / or benefit ...?

Policy & Enabling Environment	Institutional Development	Planning & Implementation	Financing
<ul style="list-style-type: none"> <li>• ... according priority to the basic needs of women, the poor, vulnerable and marginalised groups in water policy?</li> <li>• ... reviewing existing legislation and policies in the reform process to ensure that these are not discriminatory?</li> </ul>	<ul style="list-style-type: none"> <li>• ... identifying necessary proactive measures to redress or prevent discrimination?</li> <li>• ... identifying institutional mechanisms and structures to ensure inclusiveness?</li> </ul>	<ul style="list-style-type: none"> <li>• ... shifting the focus in budget allocation, service delivery and infrastructure to rural areas and deprived urban areas?</li> <li>• ... the need for accurate and disaggregated data and indicators to assess accessibility for marginalised groups?</li> </ul>	<ul style="list-style-type: none"> <li>• ... tariffs structures to ensure affordability for people living in (extreme) poverty? Which measures have worked? Which have not? (Targeted subsidies, rising block tariffs, cross-subsidisation or the provision of an essential amount for free)</li> </ul>

Table 1: Issues and questions for discussion on non-discrimination and equality.

**b) Participation**

Participation is a basic operational principle of development programmes and projects. It is also a fundamental human right.<sup>6</sup> Such participation has to be active, free and meaningful. It provides for all persons to be given a genuine opportunity to influence and enhance policy formulation and improvements in the water and sanitation sector. Different participatory instruments and processes will have to be employed on different levels, ranging from overall policy decisions to, for example, decisions on community level on the type of infrastructure. In any case, it is essential that civil society organisations and communities are involved early in the process instead of simply being informed at too late a stage to influence any position already adopted. Leaving affected groups out of decision making and planning brings the risk that when services are provided, they do not match the needs and priorities of the people, are technically inappropriate, too costly or that payment options are unrealistic. Participation is thus not only a human rights principle and goal per se, but also supports the effectiveness of development intervention.

To allow for active participation, people must be provided with correct, timely and transparent information on (draft) programmes, policies, regulations and legislation. Marginalised and vulnerable groups might also need training and capacity development in communication and negotiation skills as well as education on their rights. Linking activities in the water sector with activities related to strengthening democratic systems and institutions will therefore be necessary.

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<sup>6</sup> Art. 25 of the International Covenant on Civil and Political Rights, states that: ‘every citizen has the right to take part in the conduct of public affairs ... and the right to have access to public service.’ Also a number of procedural rights as well as freedom of expression, freedom of association, freedom of press and access to information show close links to participation.

In regard to the potential added value of an HRBA the following issues will require further discussion in the workshop. How does an HRBA inform and / or benefit ...?

Policy & Enabling Environment	Institutional Development	Planning & Implementation	Financing
<ul style="list-style-type: none"> <li>... achieving active, free and meaningful participation in policy decisions? Which instruments are useful?</li> <li>... ensuring access to relevant information?</li> <li>... empowering poor, marginalised and vulnerable groups as well as women to take part in the decision-making process and mitigating power imbalances?</li> </ul>	<ul style="list-style-type: none"> <li>... strengthening the capacity of rights-holders? – Human rights education, capacity building and training, communication and negotiation skills</li> <li>...strengthening institutions' responsiveness and ability to engage in participatory processes?</li> </ul>	<ul style="list-style-type: none"> <li>... ensuring active, free and meaningful participation in water supply and sanitation services provision in all stages of programming cycle?</li> </ul>	<ul style="list-style-type: none"> <li>... participation in decisions on type of service provision (public / private / community based)?</li> <li>... participation in fiscal instruments such as tariff structures?</li> </ul>

Table 2: Issues and questions for discussion on participation.

**c) Accountability**

A core feature of HRBA is its focus on accountability. States are legally responsible for keeping to the obligations they have committed to under international human rights treaties and their own national constitutions and legislation. By focusing on the explicit link between rights-holders and their entitlements and duty-bearers and their obligations, an HRBA underlines the accountability of States for lack of access to water and sanitation services. And it aims to develop the capacity of the state to be held to account (more accessible and responsive public officials or institutions) and strengthening the capacity of right holders to claim their rights.

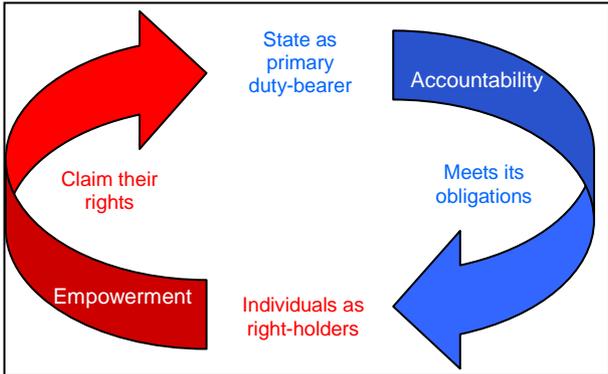


Fig. 1: The relationship between rights-holders and duty-bearers.

The human right to water and sanitation (and the criteria of quantity, quality, accessibility, affordability and acceptability) act as standards against which the State’s and development agencies’ efforts to realise access to water for all people can be measured and evaluated. To measure progress, specific indicators and benchmarks related to these standards can be established.<sup>7</sup>

<sup>7</sup> Cf. Virginia Roaf, Ashfaq Khalfan and Malcolm Langford, Monitoring Implementation of the Right to Water: A Framework for Developing Indicators, Global Issue Paper No. 14, Heinrich Boell Foundation, October 2004.

- **Situational Analysis – Identification of Rights-holders and Duty-bearers**

To address the issue of accountability, the first step is identifying the relevant rights-holders and duty-bearers. Competencies, roles and responsibilities have to be clearly assigned and clarified.

- **Developing the Capacity of Rights-Holders and Duty-Bearers**

Once rights-holder and duty-bearers have been identified, emphasis has to be put on building capacity at both levels: communities, individuals and civil society (right-holders) as well as institutions, authorities and State officials (duty-bearers).

On the side of rights-holders, there is a need to develop their capacity to claim their entitlements, through education on their rights, information on the project, opportunities to participate in the policy making and management process, training in negotiation and advocacy skills and familiarisation with different accountability mechanisms.

Rights-holders can use a wide array of measures to hold the State accountable for improving access to water and sanitation, such as lobbying, advocacy, public campaigns and political mobilisation. The human right to water and sanitation can act as a powerful advocacy tool that legitimates claims to access water and sanitation. Residents in Kathmandu, Nepal, succeeded in having several standpipes installed by approaching the local authorities with a copy of General Comment No. 15. Other complaint mechanisms can also be used, such as working with national human rights institutions and ombudsmen. The knowledge that claims for improved access to water and sanitation are based on legal entitlements greatly strengthens their legitimacy. While UN agencies may not be able to support all of these accountability mechanisms directly, they can collaborate with NGOs, community-based organisations and national human rights institutions that support such capacity building activities.

To ensure that duty-bearers are responsive to the claims and views of right-holders, strengthening their capacity (in terms of skills, authority, resources and knowledge) at the same time as working with right-holders, is essential. In these efforts, it is important that attention is also given to *macro-level reform*: to the institutions and systems that shape government response.

### **Addressing Corruption in the Water Sector through an HRBA in Kenya**

The pilot programme supported by UNDP's Water Governance Facility aims to demonstrate the practical impact of an HRBA in addressing corruption in the water sector. Applying an HRBA to addressing corruption in water has been strengthened at ministry level and there is improved coordination between Kenya National Commission on Human Rights (KNCHR) and the Ministry for Water and Irrigation. The two entities perceive the programme as a valuable contribution to how water as a human right can be operationalised in Kenya.

The programme also seeks to strengthen the capacity of communities and civil society organisations and has specifically targeted the strengthening of consumers and local water services providers in addressing issues of integrity and transparency to promote equitable and more efficient water services provision. A complaints redress mechanism has been developed that allows consumers to voice their dissatisfaction in cases of corruption or mismanagement as one possible accountability mechanism.

Box 2: Applying an HRBA in fighting corruption in the water sector of Kenya.

- **Accountability of UN and Other Development Agencies**

Not only the accountability of States, but also that of the UN and other development agencies is important. Their process of decision making has to be transparent and information on the project accessible. Benchmarks and indicators have to be identified from the outset to help monitor and evaluate the project. The different groups involved and affected by the project should also be part of the M&E process.

A number of the practical issues and questions in the context of accountability will require further discussion in the workshop. How does an HRBA inform ... and / or benefit ...?

Policy & Enabling Environment	Institutional Development	Planning & Implementation	Financing
<ul style="list-style-type: none"> <li>• ... including substantive human rights standards on the right to water and sanitation in legislation and policy as basis to assess progress and hold duty-bearers accountable?</li> <li>• ... anchoring accountability mechanisms (such as national human rights commission) in legislation and policies?</li> </ul>	<ul style="list-style-type: none"> <li>• ... the identification and clarification of roles and responsibilities as well as the coordination between different authorities (cross sectoral as well as national / local)?</li> <li>• ... strengthening the capacity of duty-bearers to be held to account? – Raising human rights awareness and building institutional capacity</li> <li>• ... strengthening rights-holders in their capacity to hold duty-bearers accountable?</li> </ul>	<ul style="list-style-type: none"> <li>• Given the range of accountability mechanisms, what are entry points for UN agencies? – E.g. working with human rights commissions, the media, supporting advocacy...</li> <li>• ... strengthening the accountability of UN agencies themselves? E.g. by involving stakeholders in monitoring &amp; evaluation?</li> </ul>	<ul style="list-style-type: none"> <li>• ... the regulatory role of government: what is required to facilitate and oversee investments as well as service delivery with equitable outcomes?</li> <li>• ... identifying useful accountability mechanisms to ensure transparency and service delivery? – E.g. recourse bodies for user complaints</li> </ul>

Table 3: Issues and questions for discussion on accountability.

## V) THE CHALLENGES AND LIMITATIONS OF A HUMAN RIGHTS-BASED APPROACH

It is important to be realistic about the limits of an HRBA. It will not resolve all the difficulties and complexities in ensuring water and sanitation for all. However, it can complement and strengthen existing development strategies. Some of the major practical challenges in adopting an HRBA to water and sanitation include:

- **Overload of ‘Mainstreaming’ Activities**

Human rights are not the only cross cutting issue in development programming. Others include gender and capacity development. So as not to overload development practitioners it is important that human rights are not perceived as an add-on, but as an overarching framework that addresses these issues. Gender aspects can be addressed under the human rights framework as women’s rights are also human rights and the *Convention on the Elimination of All Forms of Discrimination against Women* is central to the HRBA framework. Moreover, an HRBA aims to challenge power imbalances that result in the unequal access to water and sanitation and to ensure that women play a central part in water management. Capacity development is also at the heart of HRBA. Unless the capacity of rights-holders to claim their rights and duty-bearers to fulfil their obligations is developed, human rights will go unrealised.

- Synergies between Integrated Water Resources Management (IWRM) and HRBA**  
 IWRM promotes the coordinated development and management of water, land and related resources with a view to maximising economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems. In IWRM, water is recognised both as a social and economic good, and effective water governance is a central aspect of the approach. As such, it is based inter alia on principles of equity, participation, transparency and accountability. IWRM is an approach that may help to inform and address HRBA to water. It can do this by helping to balance issues of (human) rights with efficiency and sustainability through practical opportunities and measures leading to an environment within which rights to water can better be realized. Similarly, an HRBA may contribute to the IWRM approach by institutionalising approaches to participation, clarifying key social/equity aims as well as environmental goals, and putting a focus on building the capacity of States and other entities to fulfil their obligations as well as on citizens to know and claim their rights. Linking and gaining synergies between the two approaches poses some challenges of clarifying perceived conflicts between the approaches and identifying ways to align them in practice. Exploring the potential synergies and alignment of the two paradigms is one objective of the aforementioned UNDP-GWP Rights-Based Approaches and Integrated Water Resources Management Initiative.
- Practical Issues of Meaningful Implementation**  
 An HRBA to water and sanitation, and recognising the right to water and sanitation, can have significant positive influence on water-relevant policy, advocacy and development efforts, as discussed above. But questions about practical mechanisms and operational measures for effective implementation still remain. Translating an HRBA and the right to water and sanitation into practice is tied to complex water governance reform processes, and more broadly the governance environment beyond the water sector.
- Time**  
 Addressing not only the symptoms, but also the underlying causes for the lack of access to water and sanitation takes time. Changing behaviour, attitudes and cultural norms is a long term process. And institutional capacities and awareness of human rights in some contexts can be very low. Moreover, addressing these issues might be politically sensitive. Hence, tackling the crisis in water and sanitation has to be linked to long term improvements in governance and interventions that aim to strengthen democratic processes and institutions.

## **VI) CONCLUSION – THE BENEFITS OF A HUMAN RIGHTS-BASED APPROACH**

It has been argued that empowerment, participation as well as non-discrimination and equality are among the criteria for effective water governance and are already part of good programming practice. So does an HRBA to water supply and sanitation go beyond mere ‘repackaging’ of these terms? And what is its ‘added value’?

While it is too early to conclude on the practical benefits of an HRBA for development interventions in the water and sanitation sector, some lessons are emerging from the practice to date:

- **A Coherent Normative Framework for Ensuring Participation, Non-discrimination and Equality**

While principles such as participation and non-discrimination are not new to development interventions, anchoring these practices in the human rights framework strengthens and extends these practices. Recognising these as rights makes them *non-negotiable, consistent and legitimate*.

- **Increasing Accountability**

Sharpening accountability is central to the HRBA. The human right to water and sanitation can act as a performance standard against which progress in realising access to water and sanitation can be measured and evaluated. It also clearly identifies who is responsible for providing these services and focuses on strengthening their capacity to meet these obligations. Through strengthening participatory mechanisms, access to information, human rights awareness and capacities of poor and marginalized groups, it further strengthens the lines of accountability between the duty-bearers and right-holders.

- **Creating Ownership to Ensure Sustainability of Results**

Active, free and meaningful participation from the beginning of the decision-making process increases the sustainability of water interventions. Programmes are more likely to meet local preferences and needs, use local knowledge and technology and match local capabilities to sustain the projects. As informed citizens and genuine stakeholders, individuals feel committed to maintaining the services when the development agencies have left.

- **Prioritising Vulnerable and Marginalised Groups**

Vulnerable and marginalised groups often suffer disproportionately from unequal access to water and sanitation. An HRBA focuses on the situation of the most poor and marginalised and thus contributes significantly to the broader aim of poverty reduction and equality in rights.

- **Empowerment by Human Rights: Addressing the Structural Causes**

Human rights lend legitimacy to demands to access to water and sanitation. As such they have the potential to empower people. Moreover, analysing water and sanitation issues through the human rights lens allows for a better understanding of how laws, social norms, traditional practices and institutional actions positively or negatively affect access to water and sanitation. This leads to more focused strategic interventions, which address the underlying systemic biases and causes for the lack of access to water supply and sanitation: issues such as power, poverty and inequality.

This workshop presents a further opportunity to discuss, explore and challenge the practical benefits of an HRBA in the water and sanitation sector.