

Brussels, March 31, 2011

Human Rights Council
Special Rapporteur on the human right to safe drinking water and sanitation

Consultation on National planning
in the delivery of water and sanitation services
and the human right to safe drinking and sanitation

**Implementation of the Right to Water and Sanitation
National Planning
A contribution by private water operators
AquaFed's submission**

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1. Executive summary

The Right to safe Drinking Water and Sanitation [RDWS or the Right] can only be satisfied through effectively harnessing the resources of several public entities and all service providers and stakeholders, including public and private operators, in an integrated, organised and coherent manner. This necessitates action by the State such as establishing overall policy goals and targets, quality standards, regulatory frameworks and the like. Today, billions of individuals have their Right unsatisfied. The world is not organized to achieve universal access to satisfactory drinking water and sanitation. The full realisation of the Right will not be achieved by chance. It is an organisational and operational challenge.

This submission describes the pieces of organisation that we perceive as necessary to put the State in the position of being able to implement the Right. Obviously organisation is a prerequisite but is not sufficient to make things happen in the field. A further step is for the various responsible public bodies either to take action themselves, or through public or private entities that they mandate and control.

To meet the organisational challenge, society must be organized with appropriate institutions that have the capacity to act. Adequate public policies and legislation must mandate these institutions with appropriate means and clear missions to implement the RDWS progressively. It is important to recognize, however, that great diversity exists throughout the world with regard to the current state of the provision of these essential services, available economic and technological resources, political institutions, and many other factors. Therefore, while this submission describes the pieces of organization that will facilitate achievement of the Right for all, how those pieces are arranged – the actual elements of the program will undoubtedly differ, perhaps markedly, based on local circumstances. Furthermore, as will be discussed in more detail later, achieving the Right for all cannot be achieved overnight and will involve progressive efforts over an extended period of time and difficult trade-offs between the economic and social costs of fully achieving the Right and the need to meet other important societal and human needs. It is, therefore, also important that governments or service providers should not be considered as being in violation of the Right because the goal has not yet been fully achieved or the level or rate of progress in one area is different from another.

Institutional framework - responsibilities

The Right includes several independent components such as water safety, accessibility, acceptability, availability, affordability, etc. Each of these components requires elements of regulation and oversight by public authorities. However, this may be by different sets of bodies. Organising the implementation of State duties with respect to the RDWS requires the State to define which entities are responsible for each component of the Right in each situation. This means that it must define the respective roles, missions and obligations of many public entities such as the central government, the local public authorities responsible for the effective delivery of water and/or sanitation services in a territory. The state must also organise the different regulators or public agencies that take part in the regulation of the water sector (either at national level or at local level) and the public authorities (local, regional or national) responsible for social policies and therefore concerned by affordability of access to water.

Setting rules and adopting policies

Once the responsibilities of the different public bodies have been identified two complementary approaches are necessary for the State organising its public authorities: firstly to “protect” and “respect” the components of the Right that has already been satisfied and secondly to ensure that those elements that have not been satisfied are “fulfilled” as rapidly as possible.

1. In all cases where some components of the Right have already been satisfied and in order to “protect” and “respect” the Right:
 - regulations need to be set up at national and local level that describe precisely the rights and obligations of the State with respect to individuals and, conversely, the rights and obligations of individuals with respect to public authorities, their agents and other users (see § 5.1 and 5.2 below);
 - the State needs to organise the public service accordingly (see §4);
 - the State must adopt policies and mobilise means that:

- ensure that all parties contributing to the Right comply sustainably with these regulations even if they are not mandated by the State to do so. (see paragraphs 5.1 and 5.2 below)
 - aim at delivering the expected benefit to 100% of rights-holders even in specific or transitional situations;
 - monitoring mechanisms are necessary to check that the targeted components of the Right are implemented effectively at the individual level and in a sustainable way.
2. In situations where components of the Right have not yet been satisfied and in order to “fulfil” the Right progressively:
- the State must adopt a national policy and local action plans (see section 7). These policies and action plans should include:
 - Realistic targets and the related timeframes that are needed to satisfy the remaining elements of the Right.
 - The intermediate steps that responsible institutions should aim at achieving.
 - Monitoring mechanisms to assess progress and check that the targeted components of the Right are implemented effectively for every individual in a sustainable way.
 - the State must define ways to address the potential conflicts between a) laws and regulations that protect the Right, b) laws and regulations that protect the rights of land-owners and building owners and c) the policies for urban planning.
 - the State must mobilise appropriate legal, institutional, operational and financial means (see chapter 6).

The organisational challenge requires precise regulations, policies, organisation, operational means and monitoring mechanisms. Private water operators contribute all the more to the human right to safe drinking water and sanitation when they are given appropriate operational guidance as well as pricing and regulatory structures to ensure long term financial and operational viability.

2. Introduction

Today, billions of individuals do not have satisfactory access to drinking water and/or sanitation. The water they use may be unsafe, not protected from contamination by animals or neighbours. The water source may be far from their homes and that forces them to carry water. The source may be insufficient for all families in the neighbourhood. Those who are lucky enough to benefit from a water tap, either at home or in the immediate vicinity, may suffer from their taps running dry most of the time, etc. The number of people having unsatisfactory access to water is estimated around 4 billion worldwide¹. Significant progress is being made with, for example, 100 million people having gained access to “improved water sources” and nearly 70 million people having gained access to tapwater every year between 2000 and 2008. However, progress is hindered by demographic growth² and lack of ambitious policies.

The Special Rapporteur on the human right to safe drinking water and sanitation is preparing a report to the UN Human Rights Council on National Planning with respect to this right [RDWS or the Right]. Through this submission, AquaFed, the International Federation of Private Operators, would like to answer to the Special Rapporteur’s request dated January 4th, 2011 and contribute to her report.

¹ See AquaFed’s statement on http://www.aquafed.org/pdf/UNGA-RTWS_AquaFed_Press%20Release_Pc_Rev1_EN_2010-07-29.pdf

² See AquaFed’s statement on http://www.aquafed.org/pdf/AquaFed_UrbanTrends_PressRelease_Stockholm_EN_Pd_2010-09-07.pdf

Private water operators contribute to the Right

Every day throughout the world, private operators deliver reliable and high quality water services to hundreds of millions of people in developing and developed countries. In the past fifteen years they have provided sustainable access to affordable safe water to tens of millions people, mostly poor, in the areas designated by the responsible public authorities. They have increased the quality and the availability of the water used by hundreds of millions of people³. They have provided connections to sewerage systems to tens of millions of people. Implementing the Right to safe Drinking Water and Sanitation [RDWS or the Right] is at the heart of their business⁴. They make this Right effective in real terms. They do this under the direction and control of public authorities. They are instruments of public policy that ensure that the right is implemented on the ground. It is their job.

For many years, as practitioners of drinking water and sanitation services, private water operators have consistently supported the Right to Drinking Water and Sanitation. They have stressed the need for this human right to be practical and to be implemented on the ground.

Need for appropriate organisation

In March 2006, during the third World Water Forum, their international federation, AquaFed, contributed to the international thinking on this matter through issuing a statement⁵ that highlighted the need to do more than only recognising the RDWS in legislation. This statement highlighted 3 essential steps necessary for the Right to Water and Sanitation to be implemented locally and to make this right real and useful to all individuals:

Step1. Acknowledge the Human Right to Water and Sanitation and its content and obligations (Recognise)

Step2. Identify and empower the public authority in charge of overseeing and administering the local implementation of the Right to Water and Sanitation, its related duties and its means of action. (Organise)

Step3. Having a capable field operator, mandated and controlled⁶ by this public authority, to ensure delivery of the right to each individual concerned. (Implement)

The 2010 resolutions by the UN General Assembly⁷ and the UN Human Rights Council⁸ are major contributions to the first step - recognising the RDWS - in international law. At national level, there are already a number of countries that have included the RDWS in their national constitution or legislation.

The second step about empowering public authorities to administer the implementation of the Right is a key constituent of National Planning, the topic of the report being prepared by the Special Rapporteur on the human right to safe drinking water and sanitation.

This step requires each State to organise itself to ensure that the RDWS can be *respected, fulfilled and protected⁹* within its own territory. The distance between State obligations at national level and the effectiveness of the implementation of the Right for each individual means that it is essential to organise many steps and processes. These are necessary to assure the Legislator and the Central Government that the Right can be implemented. They are also essential to make it possible to implement, protect and fulfil the RDWS to each individual rights-holder.

Today, the world is not organized to achieve universal access to satisfactory drinking water and sanitation. The full realisation of the Right will not be achieved by chance. It is an organisational challenge.

³ See *PPPs for urban water utilities*, Philippe Marin, World Bank, 2009,

⁴ See reference 9, part 1

⁵ *"Private water operators call to turn the right to water into a reality for all people"*, http://www.aquafed.org/pdf/Operators_Right-to-Water_PR_Pc_2006-03-19.pdf

⁶ With appropriate regulatory oversight.

⁷ A/RES/64/292 on www.un.org/en/ga/64/resolutions.shtml

⁸ A/HRC/15/L.14 on http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/15/L.14

⁹ *Respect, fulfil and protect* are the 3 core State obligations defined in the General Comment 15 to the International Covenant on Economic, Social and Cultural Rights [ICESCR], ref. 1

We believe that it is legitimate and constructive for the UN Special Rapporteur on the human rights to safe drinking water and sanitation to examine and clarify these needs and to make a report to the Human Rights Council on “*National Planning for the Implementation of the Right to Water and Sanitation*”.

This submission is to provide our contribution on the matter, taking advantage of our members’ experience.

In this submission we use the RDWS acronym or “the Right” to mean the Right to drinking water and sanitation. As this submission is not specific to any one country, the RDWS that we consider is the component of the right to adequate standard of living that is included in the International Covenant on Economic, Social and Cultural Rights [ICESCR] and that has been clarified in the General Comment #15 to this Covenant. Most of the examples that we propose are about water supply. This is because the operational content of the Right is operationally clear for safe drinking water, but that for sanitation is still imprecise.

3. Filling the gap between States’ obligations and rights-holders enjoyment: an organisational issue

The Right to Drinking Water and Sanitation is a Right to which all human beings are entitled. However, it is not a freedom for one group to act unilaterally to the detriment of others. In many places, due to increasing water uses which result in growing water scarcity and exacerbated by the urbanisation of the world, the Right can only be satisfied through a more integrated approach that involves some action by the State. Today, billions of people suffer because their Right is unsatisfied. This unsatisfactory situation is the result of the lack of public policies that aim at achieving satisfactory access to drinking water or sanitation to all.

As mentioned in §2, the world is not yet organised to achieve universal access to water and sanitation.

To meet this organisational challenge, society must be organised with appropriate institutions that have the capacity to act. Public policies must mandate these institutions with appropriate missions and allocate adequate means to implement the RDWS progressively.

The diversity of local situations and individual capacities and needs means that there is no one-size-fits-all or best type of organisation. The fact that the Right includes several independent components such as water safety, accessibility, acceptability, availability, affordability, etc. adds to this diversity. This may also mean that each component may be handled by a different set of bodies. Some organisations can target the implementation of certain components of the right specifically, while other components can be satisfied by other policies that do not focus on the Right, but that support it anyway. Thus some elements can be RDWS-specific while others are not.

It is essential that the many pieces of organisational and operational structure that contribute to the implementation of the Right, work together to ensure the progressive effectiveness of the Right.

Considerable time will be needed to achieve a right that is denied to billions of individuals. It cannot be satisfied overnight. This is why the international law (ICESCR) states that the obligation of the State to fulfil the Right is progressive over time. Timelines and methods of implementation will differ from country to country and even potentially from region to region within the same country

Once the responsibilities of the different public bodies have been identified, two complementary approaches are necessary for the State in organising its public authorities: firstly to “protect” and “respect” the components of the Right that has been already been satisfied and secondly to ensure that those elements that have not been satisfied are “fulfilled” as rapidly as possible.

1. In all cases where some components of the Right have already been satisfied and in order to “protect” and “respect” the Right:

- regulations need to be set up at national and local level that describe precisely the rights and obligations of the State with respect to individuals and, conversely, the rights and obligations

- of individuals with respect to public authorities, their agents and other users (see § 5.1 and 5.2 below);
 - the State needs to organise the public service accordingly (see §4):
 - the State must adopt policies and mobilise means that:
 - ensure that all parties contributing to the Right comply sustainably with these regulations even if they are not mandated by the State to do so. (see paragraphs 5.1 and 5.2 below)
 - aim at delivering the expected benefit to 100% of rights-holders even in specific or transitional situations:
 - monitoring mechanisms are necessary to check that the targeted components of the Right are implemented effectively at the individual level and in a sustainable way.
2. In situations where components of the Right have not yet been satisfied and in order to “fulfil” the Right progressively:
- the State must adopt a national policy and local action plans (see section 7). These policies and action plans should include:
 - Realistic targets and the related timeframes that are needed to satisfy the remaining elements of the Right.
 - The intermediate steps that responsible institutions should aim at achieving.
 - Monitoring mechanisms to assess progress and check that the targeted components of the Right are implemented effectively for every individual in a sustainable way.
 - the State must define ways to address the potential conflicts between a) laws and regulations that protect the Right, b) laws and regulations that protect the rights of land-owners and building owners and c) the policies for urban planning.
 - the State must mobilise appropriate legal, institutional, operational and financial means (see section 6).

We describe below different elements of the organization that needs to be set up by the central level (central government + legislator) to ensure a progressive implementation of the RDWS to all.

4. Institutional framework

As we described in our submission to the Independent Expert on “The roles of governments in relation to the different water operators with respect to the Right to Water and Sanitation” dated 22 March 2010, the organisation of local access to drinking water or sanitation can be made by different entities with different responsibilities. One of these entities can be responsible for ensuring one or several components of the RDWS to a certain part of the population.

4.1. Diversity of bodies contributing to access to water/sanitation services

Different public bodies have responsibilities in the delivery of water and sanitation services and in guaranteeing access to these services. Typically these public bodies are:

- The *central government* which comprises the policy makers and the lawmakers that are responsible for the orientation and organisation of the water sector in the country
- The *local public authority (usually a local government)* responsible for the effective delivery of water and/or sanitation services in a territory
- The *different regulators* or public agencies that take part in the regulation of the water sector, either at national level or at local level. There are usually distinct bodies to enforce the law or regulations for health (water quality), environment (water resources) and for economic characteristics of water services delivery. This pattern varies in detail from country to country.
- The *public authorities*, local, regional or national, responsible for social policies and therefore concerned by affordability of access to water.

Each of these institutions can use implementing agents. For example, they may use public and private operators to ensure the physical supply of water and municipal social services to apply

affordability mechanisms. Which of these bodies will be utilised and for which purposes, will differ based on local circumstances, political infrastructures and the like.

It needs to be recognised that some States have not yet established all of the entities needed, or if they have, these may not possess the skills and resources needed for them to function properly.

4.2. Identification of the respective roles of the different entities

Organising the implementation of State duties with respect to the RDWS makes it necessary for the State to define which entity is responsible for which component of the Right in which situation.

Examples

- Sufficient quantity. In case of accidental disruption of water supply, temporary supply facilities may be mobilised by municipal security forces or the utility.
- Safety. The local municipality may be responsible for ensuring a good water quality to the general population, while hospitals might be responsible to immuno-depressed individuals.
- Affordability. Affordability may be ensured by the water authority through the tariff structure, or by the local government through social subsidies or even by the national government (in Chile. a specific central budget is used by local governments without intervention of the centrally-regulated water utilities) Affordability issues, however should not detract from the importance of pricing access to these services in a manner that reflects their true value and provides a sound financial basis to assure long term sustainability of service. In addition, while social subsidies may be necessary, care should be taken that such subsidies are directed to those that have a true need and not to those who do not have an affordability issue.
- Sufficient quantity. Mobilisation of water resources in sufficient quantity may be the responsibility of a regional body, while supply to individual users may be the responsibility of a local government (Portugal, South Africa).
- Public institutions and large public places like hospitals, schools, universities, railway stations, stadiums, etc. Here the duty to make safe water and sanitation available to the general public may lie with the public authorities or private owners specifically responsible for these places and not with the authority responsible for general delivery of water services to all users in the vicinity.

5. **Setting the rules, clarifying rights and obligations**

Recognising the Right to Water and Sanitation in the constitution or the legislation is not sufficient to define precisely what individual rights-holders are entitled to and the timeframe for them to be satisfied.

The national targets for each component of the RDWS have to be clarified. The implementing agencies, those public bodies that are mandated to implement one or more of the components of the Right, have to know what they must do in each of the numerous different individual situations. They must be clear about their own right to enforce their own actions. Individual rights-holders have rights but also obligations that are necessary to make the collective organisation possible, cost-effective and non-discriminatory (avoiding wastage, not damaging infrastructure, accepting supply reductions in case of water shortage, etc). These obligations of individuals must also be clarified.

5.1. Rights and obligations

Implementing the RDWS represents a cost to the community. Furthermore, water resources are limited. Therefore, it is legitimate that rights-holders also have obligations with respect to water. These obligations are necessary to make the collective organisation cost-effective and sustainable. For example, rights-holders that benefit from a public service usually have a fee to pay, must respect the public infrastructure and are not entitled to waste the water that is supplied to them. Pricing water service helps ensure that the resource is used wisely and not wasted. Furthermore, they cannot claim more water than others if resources are insufficient to satisfy all demands. The entity that is responsible for water supply must have the capacity to enforce the rules and ensure that some

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individuals cannot threaten the service supplied to others. All this must be clarified to allow action of implementing bodies.

Examples of rules to be set up for organizing the relationship between institutions and individuals

- A municipality cannot be forced to bring good quality water supply up to the top of a high mountain where only sportsmen go. Geographical criteria are necessary to define where the institution must organize water supply.
- An individual user is not entitled to damage a water-meter or to take water from a water main without authorization. This is to prevent him from putting the Right of the neighbouring population at risk.
- A municipality must be entitled to restrain the water supply to those who can pay the public service but cheat the community by not-paying their water bills.
- Rules are necessary to decide when and where the water authority must extend the public network and reciprocally when and where an individual household must connect itself to the public networks (water or sewerage).
- While tariffs should contribute to the financial sustainability of service through payment by the majority of water-users, subsidies may need to be carefully crafted to those that need them to ensure affordability of both connection to the public service and water consumption.

5.2. Regulations

In many countries there are water-related regulations at national level. For example the quality of the water that should be supplied through networks is usually fixed at national level. At local level local service regulations fix the practical ways through which the local utility interacts with individuals. These regulations contribute to ensuring delivery of the benefit of components of the RDWS. However, they may have existed before the recognition of this Right and therefore are not Right-specific.

Example

- In all countries there are regulations that fix the quality of the water to be supplied for water being considered as drinkable. They are usually under the responsibility of the health ministry that monitor them without referring to the Right

Other regulations may be needed to address the needs of rights-holders that are not covered by the existing water regulations. For example, the tariff structures may be adapted to the majority of the population while creating unaffordable cost to some very poor individuals. In such cases an additional regulation that targets specifically the affordability of access to drinking water for a certain category of rights-holders may be necessary.

Example

- In France, individuals who are unable to pay their water bills are entitled to request assistance from solidarity funds administered by a local government while being protected against cut-offs

Regulations must take into account that some individual right-holders or groups may seek to abuse individual human rights such as the Right to drinking water and sanitation, in ways that are harmful to the collective interest and threaten the Right of others. It is necessary for States to recognise these potential difficulties when they establish their Rights to water policies and regulations. It is also necessary for them, for their legislatures and judiciaries, to pay great attention to the way in which they control such behaviour that hampers the implementation of the Right.

Examples of behaviours to be addressed by regulations and public authorities

- Users who break their water-meter to decrease their water bills thereby adding a financial burden on the other water-users
- Individuals who connect themselves directly to water mains through illegal connections thereby adding a financial burden and a supply risk to the other users

- Individuals who can pay their bills but refuse to do so. Regulations must address the sensitive issue of cut-offs for bad payments and establish clear rules that make the necessary difference between those who cannot pay and must be assisted and those who can pay but won't pay, putting the public service at risk. The latter do not deserve the same service as their neighbours.
- Users who connect a private unsafe water network to the public infrastructure putting the quality of water supplied at risk.
- Vested interests that incite others to commit infringements for a variety of reasons.

6. Mobilising resources and means of implementation

When an institution has been given the responsibility of one component of the Right to Water in certain conditions and situations, it has to mobilize resources to make it effective. Among the various resources needed, the following seem particularly important:

- Identifying needs. The institution must identify the rights-holders whose rights are insufficiently satisfied and design appropriate solutions.
- Mobilising adequate financing means to enable the institution to perform, and the individuals to benefit from, the collective organisation.
- Mobilising operators (implementing agents) to perform for each and every individual what the institution is responsible for.
- Monitoring results both for checking the work of its implementing agents and for measuring progress in the case of progressive implementation.

6.1. Identifying needs

Water institutions are often organized to contribute to supplying water services. They might not be aware of the needs of or the way the individuals get access to water.

This may require surveys and pro-active approaches since the rights-holders may not express their needs spontaneously.

Examples

- When a slum is connected to a public water network, the utility provides mains and proposes to the people that they connect to them. If only a part of the population connects its dwelling, the other part may decide to buy water from neighbours. The reselling price may be very high, but will be unknown to the water utility and the local government.
- Public standpipes may be an effective way to provide access to water. However, they may be broken, they may supply insufficient quantities, and users may be obliged to queue for hours or to organize rotations during the night-time, etc. Surveys are necessary to know how people use these facilities effectively.
- In all areas where people do not benefit from water networks, it is necessary to assess the quality of the water they use.

In countries where many people do not benefit yet from a satisfactory access to water, it is necessary to number and localise the people according to different parameters. Surveys should inform the decision-makers about:

- Who is using water of insufficient quality
- Who is forced to store water for days because of irregular supplies
- How much time is necessary for people to fetch water every day
- Who does not benefit from public services
- What is the cost of water for them
- Etc.

6.2. Mobilising adequate finance

Organising the responsibilities, the rights and duties of the different institutions is not sufficient to allow them to contribute to the implementation of the Right to Drinking Water and Sanitation. They must have the capacity to act according to these responsibilities with respect to every individual. This includes having the appropriate financial means.

Examples

- The central government or the legislator may decide that the local implementation of the Right is the responsibility of local governments. This decision is useless if the local government does not have access to the financial resources necessary. This is a frequent issue in countries where water supply is decentralized while local public budgets depend heavily on subsidies from the central government.
- Many water utilities in developing countries do not have access to sufficient financial means. Their resources enable them either, to deliver and maintain a good quality service to part of the population while ignoring the other part, or to expand the public network progressively to everybody. In this second case they have no other option than to deliver a poor service to all. None of these options is satisfactory.
- Where public budgets allocations are sufficient to provide sustainable water supply in part of a city and to expand progressively the public water network to un-served areas, it may be necessary to organise additional subsidies to help the un-served people to connect themselves to the network.
- Many urban water utilities have very poor customers who are unable to pay water bills. The State must organise targeted financial means that allow the cost of water supply to these users to be borne by the community.
- In all cases where revenues from tariffs are insufficient to cover all operation, maintenance and investment costs, the State must organise a Sustainable Cost-Recovery through allocating predictable public subsidies that enable the water utility to plan and implement the necessary physical investments.

6.3. Mobilising implementing agents

Institutions that have received a mission to contribute to the Right and have access to the appropriate means to do so must organise the delivery of the Right through people interacting with each individual rights-holder. This may be through internal administration or through third parties, public or private. These implementing agents act according to the instructions they receive from the institution. They also have to respect the legislation. In case of progressive implementation, the instructions given by the institutions must convey to these agents the targets and means of the water policy that has been decided by the institution. Without such instructions, these agents are unable to perform according to the expectations.

7. Policy for including all individuals in all situations

As mentioned in §3 above, in all cases where some components of the Right have already been satisfied, in order to “protect” and “respect” the Right, the State must adopt policies and mobilise means that:

- ensure that all parties contributing to the Right comply sustainably with these regulations even if they are not mandated by the State to do so,
- aim at securing the expected benefit to 100% of rights-holders even in specific or transitional situations (all-inclusive policies);

This means that public policies should not limit themselves to services delivered by the State but should also cover action by others, and make sure that they comply with the requirements of the Right so that nobody is forgotten and left in an unsatisfactory situation

Examples

- In developed countries public policies should aim at detecting the few individuals who do not benefit from satisfactory access to drinking water because they have no property right, are unable to pay bills, have no fixed home, etc.
- Where households get water from private wells, public policies should organise monitoring and information mechanisms to prevent individuals from using dangerous water sources.

8. Policy for progressive implementation

National policies and local action plans are necessary to organize the progressive implementation of the components of the Right that are not yet satisfied. This is for progressively “fulfilling” the Right.

A country should aim to improve the situation progressively through the following complementary processes:

- Defining policy objectives for water and sanitation access in relation to its needs and subsequently using these to monitor and report its progress in meeting them.
- Creating a specific programme for collecting reliable statistical information on a well defined basis that links with the specific national status of access to water and sanitation
- Regularly following and reporting on the same indicators to ensure that, once the goal has been met and access has been provided, it continues to deliver effective service to the people
- Reviewing the information generated in this way, and comparing it with the forecasts.

It will only be possible to set meaningful targets and to monitor progress when clear policies and precise information is made available at a level that is operationally useful.

Therefore policies and action plans should include:

- Realistic targets and the related timeframes that are envisaged.
- The intermediate steps that responsible institutions should aim at achieving.
- The financial, legal and institutional resources to be used to reach these targets.
- Organisation and means to ensure sustainability of access
- Monitoring mechanisms to assess progress and check that the targeted components of the Right are effectively implemented at the individual level.
-

8.1. Targets and timeframe

Many governments have policies aiming at improving access to drinking water and sanitation. Not all these policies may be considered as Rights-based water policies.

This is the case if they define means for action without defining the results that are expected.

This is also the case if governments do not include themselves in a long term programme that aims at providing and maintaining universal coverage. In such case, they cannot be considered as organising the expected progressive implementation of the Right.

For example, while rights-based policies must accept temporary differences in the level of water services between different geographical areas in a city, they must clarify the various steps of improvement in all the different areas. Policies that target only some geographical areas and ignore others where access to water is not satisfactory are probably not comprehensive enough to be considered as right to water policies.

Examples

- In Morocco, the PAGER Programme was designed a decade ago to organise access to water in rural areas. Organised as a national project with an implementing agency and appropriate financial means it aimed at providing every year additional access to safe water to hundreds of thousands of rural Moroccans and has been successful in achieving this target.
- In South Africa, the ANC government has assigned to a Ministry the task to organise the improvement of access to water throughout the country. A detailed and comprehensive strategy was set up. The central government mobilised local governments, public utilities, private operators and NGOs. It organised appropriate funding resources. This resulted in spectacular outcomes over more than a decade with about one additional million of South Africans having access to water every year.

8.2. Intermediate steps

The Right to Drinking Water and Sanitation is different from a freedom to act as mentioned in para 3 above. It requires costly action by the public authorities. There is another difference which creates many ambiguities and difficulties. This is the fact that an individual cannot expect his right to be satisfied immediately. Realistically it has to be recognised that the action by public authorities takes time and can only be progressive. Therefore each individual is entitled to expect that the State will act as fast as reasonably possible, giving due consideration to the costs of progress toward the Right balanced with other important and potentially competing social and human needs.

In practice, the public authorities cannot act simultaneously everywhere. Building water infrastructure takes time and requires mobilisation of considerable financial resources. As a result, when a rights-based water policy aims at universal coverage there is a period during which different categories of users get different levels of public service. In some areas there is no public service, in others it is limited to public standpipes, while in others it reaches every household but only irregularly. These time and geographical differences are unavoidable even in a right-based policy. They are inequalities. They may not be inequities even though the rights-holders themselves might perceive their waiting period as discrimination.

Combining capacities to improve the service and the expectations of the different users is one of the most-difficult challenges in the areas where access to water is unsatisfactory for many individuals.

There is probably no best solution. In theory, decision-makers have to choose between either, improving the access to water to some categories of users significantly, while asking the others to wait for improvement, or improving the level of service to all but with an intermediate step that is not fully satisfactory. In practice, even in the second option there are time and geographical discrepancies.

Setting the priorities within progressive implementation is the responsibility of political decision-makers. The national policy should decide the priorities at national level. The local authorities have to decide the best local option on a case-by-case basis.

8.3. Ensuring sustainability of access through operations, maintenance and renewal

The rights to water and sanitation require an "active" process of delivery. In the first instance this requires the establishment of the physical (hard) and institutional (soft) infrastructure. The initial physical and institutional infrastructure alone however is insufficient. The service also requires ongoing day-to-day operation and the infrastructure requires maintenance and renewal. This means that, once the Right to water and sanitation has been realised for the first time for each rights-holder, continued and continuous effort is essential to ensure that the rights continue to be delivered.

8.4. Monitoring mechanisms

Policies should include mechanisms for checking that the results are in accordance with the expectations. This must not be confused with the control of the action of implementing agents that is obviously necessary but that is not sufficient to assess that the Right is satisfied. Checking results means verifying how people get access to water and use it. This also means that policies, processes

and resources need to be monitored and reviewed on a permanent basis. If this is not done there can be a real danger that once satisfied rights holders find themselves no longer in a position to benefit from the right to drinking water and sanitation.

Examples

- building a new water treatment plant and connecting households to the water network contributes to the Right. However, if in the area the electric power supply works for only a few days a week, people may be forced to use water of dubious quality from wells or even surface water when the pumps are unable to operate.
- many tariffs structures are decided by governments in view of being pro-poor. This has to be checked when they are implemented. For example, it is common that Increasing Block Tariff structures have a lower block with a subsidised tariff that applies to the first m3 used. These are supposedly pro-poor. However, in developing countries, poor families often have more members than wealthier ones and often share the same tap with several other families. In such case, they may have to pay the sur-charged price that applies to the third or the fourth tariff blocks. The 2006 Human Development Report provides examples of so-called pro-poor policies that benefit the wealthier population more than to the poorest people¹⁰.

9. Solving conflicts between regulations

A national policy that aims at implementing the RDWS must address the potential conflict between laws and regulations that protect this Right, laws and regulations that protect the rights of land-owners and building owners and the policy for urban planning.

Indeed, a major obstacle to expanding and improving public water services in slums is that public authorities are often reluctant to build water infrastructure in areas where the inhabitants do not have the right to settle. They fear that providing them this essential public service would induce them to stay forever in an area that can be flooded or that the land-owner or the city would like to use for other purposes.

Solving this potential conflict should be a major component of the national policy.

10. Synthesis

The world is not yet organised to achieve universal access to satisfactory drinking water and sanitation. The full realisation of the human right to safe drinking water and sanitation will not be achieved by chance. This is an organisational challenge that requires precise regulations, policies, organisation, operational means and monitoring mechanisms. Private water operators contribute all the more to the human right to safe drinking water and sanitation when they are given appropriate operational instructions and adequate means.

¹⁰ See *Beyond scarcity : power, poverty and the global water crisis*, Human Development Report 2006, UNDP, figure 2.4 page 99

11. References / Links to relevant documents

11.1. UN documents

1. General Comment 15 to the International Covenant on Economic, Social and Cultural Rights, the basic document that defines the normative content of the right to water and sanitation in international law.
http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf

11.2. AquaFed documents on the Right to Safe Drinking Water and Sanitation

2. Sept 2010 - AquaFed's statement on the Right to Water after recognition of the Right in international law by the United Nations Human Rights Council
http://www.aquafed.org/pdf/UNHRC-RTWS_AquaFed_PressRelease_Pd_EN_rev1_2010-10-01.pdf
3. July 2010 - AquaFed's statement on the Right to Water after recognition of the Right by the United Nations General Assembly.
http://www.aquafed.org/pdf/UNGA-RTWS_AquaFed_Press%20Release_Pc_Rev1_EN_2010-07-29.pdf
4. AquaFed 's submissions on the Right to Water and Sanitation and private operators to the UN Independent Expert (2010)
http://www2.ohchr.org/english/issues/water/iexpert/written_contributions.htm
<http://www2.ohchr.org/english/issues/water/iexpert/docs/written-contributions/Aquafed-1.pdf>
<http://www2.ohchr.org/english/issues/water/iexpert/docs/written-contributions/Aquafed-2.pdf>
<http://www2.ohchr.org/english/issues/water/iexpert/docs/written-contributions/Aquafed-3.pdf>
<http://www2.ohchr.org/english/issues/water/iexpert/docs/written-contributions/Aquafed-4.pdf>
<http://www2.ohchr.org/english/issues/water/iexpert/docs/written-contributions/Aquafed5.pdf>
<http://www2.ohchr.org/english/issues/water/iexpert/docs/written-contributions/Aquafed6.pdf>
5. "More ambition, better organisation to succeed in making universal access to water a reality", G.Payen, IWA Development Congress, Mexico City, 17 November 2009
http://www.aquafed.org/pdf/Payen_IWA_Mexico_speech_final_2009-09-17.pdf
6. Contribution of Private Water operators to access to water in developing countries – Press release – Sept 2009
http://www.aquafed.org/pdf/WBreport%20on%20PPPs_AquaFedPressRelease_EN_Pd_2009-09-30.pdf
7. AquaFed 's submission on the content of the Right to Sanitation to the UN-Independent Expert (2009)
<http://www2.ohchr.org/english/issues/water/iexpert/docs/Aquafed.pdf>
8. AquaFed's statement on the need for more ambitious water policies (Istanbul World Water Forum – 2009)
http://www.aquafed.org/pdf/BridgingtheRealWaterDivide_AquaFed_Press%20Release_Final_Pd_ENG_2009-03-17.pdf
9. AquaFed 's submission on the Right to Water and Sanitation to the UN-OHCHR (2007)
http://www.aquafed.org/pdf/OHCHR_AquaFedSubmission1_20070412.pdf
http://www.aquafed.org/pdf/OHCHR_AquaFed_additionalcontribution_20070531.pdf
10. AquaFed's statement on the Right to Water (Mexico World Water Forum - 2006)
http://www.aquafed.org/pdf/Operators_Right-to-Water_PR_Pc_2006-03-19.pdf