

CENTRE ON
HOUSING RIGHTS
AND EVICTIONS



Operational Guidelines for Implementing Rights Based Approaches to Water and Sanitation Programming

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8 April 2008

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These Operational Guidelines address ways to promote human rights based approaches (RBA) in water and sanitation programming through means other than legal and policy reform. They are designed primarily for UN-HABITAT, but will also be useful for water and sanitation providers, other UN Agencies and NGOs implementing water and sanitation programmes. They focus on the developing country context.

These Operational Guidelines supplement the *Manual on the Right to Water and Sanitation* produced by UN-HABITAT, COHRE, SDC and AAAS, which was designed primarily for governments, and which focused mainly on legal and policy reform.¹ Readers are referred to the *Manual* for detailed information on:

- Legal basis for the right to water and sanitation in international law (Sections 3.1-3.3),
- List of countries recognising the right to water and sanitation in national law (Section 4.1.2),
- Detailed description of the obligations of governments (Sections 2.1-2.5).
- Means through which governments can ensure the substantive aspects of the right to water and sanitation (Sections 4.1-4.2).
- The relevant international standards and policy challenges relating to discrimination and attention to vulnerable and marginalised groups (Chapter 5), participation and access to information (Chapter 6), water availability, allocation and sustainability (Chapter 7), water quality and hygiene (Chapter 8), physical accessibility (Chapter 9) and Affordability (Chapter 10).

1. The rights based approach to water and sanitation development cooperation

The concept of the human rights based approach emerged primarily in the context of development cooperation. The approach gained currency in 1997 with the launch of the UN Programme of Reform that called for the mainstreaming of human rights principles into all programmes and activities. The adoption of the human rights based approach was premised on the notion that all programs should be based explicitly on the norms and values set out in international human rights law. In 2003, various UN agencies met to develop a Common Understanding on Human Rights Based Approaches to Development Co-operation.² It was agreed that:

1. All programs of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights (UDHR) 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.

¹ Available at www.cohre.org/manualrtws

² Report: The Second Interagency Workshop on Implementing a Human Rights-based Approach in the Context of UN Reform, Attachment 1: The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies' (Stamford 5-7 May 2003).

Human rights principles which are to guide all development programming include:

Universality and inalienability: All people everywhere in the world are entitled to human rights. They cannot be given up or taken away.

Indivisibility: Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.

Inter-dependence and Inter-relatedness: The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on the realization of the right to education, or of the right to information.

Equality and Non-discrimination: All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.

Participation and Inclusion: Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural, and political development in which human rights and fundamental freedoms can be realized.

Accountability and the Rule of Law: States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

Each of these human rights principles contributes to development cooperation. As they are based on an international normative framework set out in international law, these agreed values and norms can be utilised to shape practise at the national and local levels.

The principle of equality and non-discrimination emphasises the need to address situations in which water and sanitation programmes exclude any groups, in particular those who are marginalised, vulnerable or poor. Specific emphasis is laid on ensuring that discrimination against these groups is acknowledged and dealt with and that priority is given to those projects that will accelerate access to water and sanitation to the poor.

The principle of participation in decision-making emphasises genuine participation of communities, particularly the poor, in decision-making on water and sanitation formulation, implementation and monitoring, thereby ensuring that water and sanitation programmes are demand-driven and can make a tangible difference to the lives of the relevant users.

The principle of improved accountability emphasizes obligations and requires that all duty-holders, including external actors as well as States, are held to account for their conduct and that monitoring mechanisms are transparent and accessible. Where implemented, this improves the possibility that human rights are realised in practise. The effect of implementing these principles is to empower individuals and communities and to strengthen their struggles for access to water and sanitation.

However, it is important to be realistic about the limits of rights-based approaches. First, rights-based approaches will not, on their own, help to address the difficulties of ensuring water and sanitation. Rights-based approaches need to be used to strengthen other development strategies. In addition, rights-based approaches are often not well understood, and thus require significant levels of training and education. Rights-based approaches and human rights in general, are often used in a rather arbitrary and imprecise manner, thus leading to situations where various actors are using these terms differently. It is therefore important that all actors define their rights-based approaches work with reference to the applicable United Nations relevant United Nations standards.

The definition of the right to water and sanitation, which should guide rights-based programming to water and sanitation is provided by the *General Comment 15: The Right to Water* adopted by the United Nations Committee on Economic, Social and Cultural Rights in 2002 and the *Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation* adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights.³ These two documents, taken together, indicate that the right comprises the following:

Sufficient water: Water supply for each person that is sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.

Clean water: Safe water that in particular, is free from hazardous substances that could endanger human health, and whose colour, odour and taste are acceptable to users.

Accessible water and sanitation: Water and sanitation services and facilities are accessible within, or in the immediate vicinity, of each household, educational institution and workplace. Sanitation is safe, adequate and conducive to the protection of public health and the environment.

Affordable water and sanitation: Water and sanitation that can be secured without reducing any person's capacity to acquire other essential goods and services, including food, housing, health services and education.

General Comment 15 and the Sub-Commission Guidelines indicate that States are obliged to ensure non-discrimination and inclusion of vulnerable and marginalised groups, access to information and participation and accountability. These obligations are similar to the human rights principles listed above under the 'UN Common Understanding on Human Rights Based Approaches to Development Co-operation.'

General Comment 15 and the Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation are not legally binding. However, they are based on interpretations of legally binding human rights treaties, in particular, the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by 157 States as of October 2007.

³ See also the *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, (2007) UN Doc. A/HRC/6/3, available at: www.ohchr.org ('Your Human Rights' > 'Human Rights Issues'>Water).

Misconceptions regarding the right to water and sanitation	
Misconception	Clarification
The right entitles people to free water and sanitation.	Water and sanitation services need to be affordable for all. People are expected to contribute financially or otherwise to the extent that they can do so.
The right allows for unlimited use of water.	The right entitles everyone to sufficient water for personal and domestic uses and is to be realised in a sustainable manner for present and future generations.
The right entitles everyone to a household connection.	Water and sanitation facilities need to be within, or in the immediate vicinity of the household, and can comprise facilities such as wells and pit latrines.

2. Applying rights based approaches to programming

Increasingly the rights based approach is being incorporated into programmes more proactively. Programme formulation against the framework of a rights based approach will include concrete input into the programmes objectives and strategies. The following are some of the strategies that may be utilised.

Mainstreaming rights based approach to water and sanitation in all programmes

Water and sanitation are intrinsically linked to a number of basic human rights and are necessary components of sustained development. Mainstreaming the right to water and sanitation in overall programming not only serves to enhance a focus on these rights but contributes to the realisation of one or more human rights. Mainstreaming the right to water and sanitation can be achieved at two basic levels. The first approach is by ensuring that country teams have the capacity and knowledge on the right to water and sanitation. This requires commitment and attitude changes by staff that have internalised and recognised the central role of the right to water and sanitation. The second approach is through strategic inclusion of the right to water and sanitation in programmes and activities.

Assessing Programme Impact

The rights based approach focuses on outcomes and processes. In identifying the desired programme impact, country teams should focus on addressing among others the following issues. The impact of the programme should be measured against its ability and success in responding to the identified needs of the beneficiaries. This can only be achieved if the country team is able to understand the needs of the community. While programmes have limited mandates, it is important to identify all the needs of the community even where they may fall out of the scope of the programme. In doing so the country teams gains a holistic appreciation of the local conditions and priorities of the community shape the programme.

Resource allocation should be premised on the understanding of the broader and structural needs of the communities. In assessing the programmes impact, resource allocation becomes a crucial component. Programmes will need to justify expenditure in projects and risk failing where resources are irresponsibly allocated without regard to the immediate or long term needs of the community.

A usual first step in project activities is a needs assessment and mapping of actors within the project area. In assessing impact, it is necessary to undertake periodic reviews to establish any changes in the interests or situations of mapped actors. Situations particularly within informal

settlements are constantly changing; actors assume new roles, are given new responsibilities and may assume new powers. This continuing shift in power or circumstances has a significant impact on the actors. In assessing programme impact, it is therefore necessary to consider mapped actors.

Water and sanitation projects are usually resource intensive and incorporate short, medium and long term plans. Assessment of impact should be based on these same parameters. It is therefore important to ensure that projects are not undertaken in a vacuum and fail to take account of other complementary developmental projects in the area. The primary function here is to ensure that the project can remain sustainable within the broader context of the project area.

Recent developments in the human rights sphere have reaffirmed the right to water and sanitation as a legal right capable of enforcement. This has however happened with a framework that had witnessed traditionally development organisations undertake water and sanitation projects as “services” to the poor. In time there has been greater attention to fostering empowerment of communities, by accelerating the right to water utilising legal processes and tools. Programmes should be formulated to ensure that projects address the empowerment of communities.

Programme Formulation

Under the rights based approach, all rights are interrelated and indivisible. Programme formulation should therefore not be limited to immediate gains such as taps with running clean water or a number of toilets erected. The programme should be sensitive to and take into consideration related issues such as available income generation activities that can be derived from the project; the factors limiting access of marginalised and vulnerable groups to facilities and even the presence of water cartels that may jeopardise sustainability. Inevitably the denial of other rights such as the right to work, may affect the ability of communities to afford water and sanitation facilities. Cultural practices that are discriminatory will result in limited access as well.

The participation of mapped groups such as community based organisations (CBOs) and faith-based organisations (FBOs) is necessary in conforming to a rights based approach. Programmes should be formulated and implemented in ways that seek to build the capacity of existing groups and not aim to create new ones.

For water and sanitation projects, programmes should be formulated to include core elements of water availability and allocation, water quality and hygiene, physical accessibility of water and sanitation and affordability of water and sanitation. The programmes nonetheless should build the capacity of communities to respond to these core issues and identify development opportunities that can be achieved through their implementation.

The evaluation of the programme should include an evaluation of its formulation. This is will ensure that the project is evaluated on the basis of performance and impact.

Programme Strategies

The rights based approach offers a useful framework for the development of programme strategies. Adopted strategies must nonetheless be flexible to allow the programme to be responsive to the changes that may take place at the project level. This is particularly true for projects within informal settlements and in conflict areas.

Generally the programme strategy should include an identifiable programme that takes into consideration

- An overview of the water and sanitation situation within the project area
- Country assessment on the status of the right to water and sanitation.
- Technical options available.
- An overview of other basic human rights that communities are denied.
- Specifies the short, medium and long term objectives of the programme and practicality in achieving the desired objectives.
- Short, medium and long term impact (both positive and negative) of project objectives and activities on communities.
- Assessment of short, medium and long term opportunities open to stakeholders.

Questionnaire for cross-cutting aspects of rights based programming

- Are beneficiaries recognised as key partners and actors in programmes, rather than passive recipients? How is this operationalised?
- Is the empowerment of project beneficiaries a key output in programme formulation, with measures to minimise dependency?
- Do project beneficiaries participate in project formulation, implementation and evaluation?
- Does the needs assessment consider underlying and structural causes to the denial of relevant human rights?
- Does the programme, in addition to promoting the right to water and sanitation, contribute to realisation of other human rights?
- Does the programme prioritise implementation for poor, vulnerable and marginalised groups?
- Does the programme utilise local information, know-how and resources?
- Does the programme promote decentralisation and democratisation of resource allocation?
- Does the programme address all stakeholders and identify the political, social, economic and cultural dynamics between them?
- Are strategic partnerships developed and sustained between local partners and beneficiaries?
- Does the programme have measurable goals and targets with applicable timeframes?
- Does the programme recognise and guard against inequality?
- Does the programme hold accountable its implementers and all other stakeholders?
- Does the programme include a dispute resolution mechanism that is efficient, transparent and accessible?
- Does the programme monitor and evaluate outcomes and processes?

3. Application of the rights based approach to water and sanitation

3.1. Equality and non-discrimination

The right to equality and the principle of non-discrimination are among the most fundamental elements of international human rights law. A crucial aspect of the human rights framework is that everybody is ensured access to water and sanitation, including the most vulnerable or marginalised groups, without discrimination.

Non-discrimination means that there is no distinction, exclusion, restriction or preference, which is based on any ground (e.g. race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) that differentiates without legitimate reason. Non-discrimination also includes proactive measures to ensure that government policies and programmes exclude particular groups, including by failing to address the particular needs of vulnerable or marginalised groups.

Groups that are potentially vulnerable or marginalised include: women, children, inhabitants of rural and urban deprived areas, indigenous peoples, nomadic and traveller communities, refugees,

asylum seekers, internally displaced persons and returnees, older persons, people with disabilities and people with serious or chronic illnesses, victims of natural disasters and persons living in disaster-prone areas, people living in water scarce-regions (arid and semi-arid areas and some small islands) and persons under custody.

Questionnaire for rights based programming relating to non-discrimination and inclusion

- Does the principle of non-discrimination inform the formulation and implementation of the programme?
- Is the programme designed to address the needs of vulnerable and marginalised groups?
- Are projects able to identify overt and covert discriminatory practices and does the outcome include remedies for such practices?
- Is the programme designed to identify explicit and implicit inequalities in status and entitlements?
- Is the needs assessment able to capture social distinctions and exclusions and other forms of indirect discrimination?
- Do participation processes require particular attention to inclusion and empowerment of vulnerable and marginalised groups in decision-making?
- Does the review of programmes and projects consider the impact on the needs of the vulnerable and marginalised?

3.2. Participation and inclusion

The right to water and sanitation, in common with all human rights, is linked to the right to participate in decision-making. Thus, 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.

Poor people and members of vulnerable or marginalised groups are frequently excluded from decision-making regarding water and sanitation, and hence their needs are seldom prioritised. This results in their inequitable access to water and sanitation facilities and services. Information regarding how to access water and sanitation services is often not publicly available in an easily understood format. Where services are provided, the lack of adequate participation can lead to inappropriate technical solutions, prohibitive financial costs or unrealistic payment options.

Questionnaire for rights based programming relating to participation and inclusion

- Is there a programme communication strategy, and does it include means to reach marginalised and vulnerable groups.
- Does the programme identify all actors and is able to engage and link all actors.
- Has sufficient financial and administrative resource allocation been made to support participatory processes?
- Does the programme utilise local or community resources (including human resource) in implementation?
- Does the programme include a component for capacity building for local partner organisations and beneficiaries?
- Are beneficiaries involved in planning, needs analysis and information gathering and decision making?
- Is the programme designed to identify beneficiaries and map their immediate and long term needs?
- Does the programme promote community partnership and put in place means to ensure future cost recovery (or alternative means to ensure that communities can retain active influence over the programme)?
- Does the programme operate in a transparent and accountable manner in regard to the beneficiaries?
- Is there an agreed monitoring protocol with the beneficiaries that provides time frames?
- Are participatory efforts scheduled at times and dates suitable to a wide range of beneficiaries?
- Are the lessons learned and good practices developed disseminated to all involved actors?
- Where a Memorandum of Understanding is concluded by country team, are the terms made public to beneficiaries?
- Are there sufficient funds to cover the local partner organisations intervention at the community level?

3.3 Water availability

Ensuring availability of water in order to meet the right to water and sanitation requires greater prioritisation of essential domestic uses over other uses, significant improvements in water resource management, equitable allocation of water resources and assistance to vulnerable and marginalised communities.

Questionnaire for rights based programming relating to availability of water

- Does the programme promote prioritising the allocation of water resources for essential domestic uses over other uses?
- Does the programme aim to ensure a minimum quantity of sufficient and continuous water for personal and domestic uses for all members of the community?
- Does the programme aim to ensure equitable allocation of water, based on meeting essential needs for all?
- Does the programme assist users in conserving and storing available sources of water?
- Are steps taken to ensure sustainability of water resources?
- Does the programme guard against appropriation of water resources by any individual or group?

3.4. Water quality and hygiene

The right to water and sanitation requires that all users access safe water that, in particular, is free from hazardous substances that could endanger human health, and whose colour, odour and taste are acceptable to users. Water and sanitation programmes should as far as their mandates allow focus on the provision of information on hygiene practices, in order to ensure the prevention of disease linked to inadequately-stored water and inadequate sanitation.

Questionnaire for rights based programming relating to water quality and hygiene

- Does the programme emphasise hygiene awareness, among households and any small-scale providers, including promoting the safe handling of water for domestic uses and promoting sanitation?
- Does the programme focus on the pollutants with the most significant health effects, including on vulnerable groups. Does the programme ensure that users are provided with information on any threats to water quality?

3.5. Physical accessibility of water and sanitation

For the realisation of the right to water and sanitation, water-points and toilets should be accessible within, or in the immediate vicinity, of each household, educational institution, health institution and workplace.

Human rights standards related to adequacy of water and sanitation state that services and facilities should be of sufficient quality, culturally acceptable, take into account gender and privacy requirements and are in a location that ensures physical security. Human rights standards also state that sanitation should be adequate, safe and conducive to the protection of public health and the environment.

Questionnaire for rights based programming relating to physical accessibility of water and sanitation

- Does the programme aim to ensure access to basic water and sanitation (consistent with international standards) for all members of the target community? Are resources invested towards households with the greatest need?
- Does the programme focus on the needs of vulnerable and marginalised groups, especially women and the girl child?
- Does the programme build capacity for service providers to provide services for the poor?
- Does the programme promote the provision of services by communities where adequate public services are not provided?
- Is the programme able to identify direct and indirect factors that hinder access.
- Does the programme prioritise the provision of services to informal settlements?
- Does the programme ensure that users are given relevant information and can participate in decision making on the design and maintenance of public water and sanitation services and on land use relevant to these services.
- Does the programme address security concerns when selecting locations for water supply and sanitation facilities in project sites?
- Does the programme ensure that response systems are in place for the provision of basic water and sanitation services in emergencies?
- Is adequate provision made for the maintenance and improvement of water and sanitation facilities?

3.6. Affordability of water and sanitation

Affordability of water and sanitation services is crucial to accessibility, but is all too often ignored, both in project implementation and in data collection on access to water and sanitation. Unless water and sanitation services are affordable to all, access to an adequate quantity of safe water and to safe toilet is threatened.

Questionnaire for rights based programming relating to affordability of water and sanitation

- Does the programme aim to ensure that all members of the community have access to affordable water and sanitation (taking into account the ability to pay for water, sanitation and other basic necessities)?
- Does the programme make special provision for the poorest of the poor who cannot afford services?
- Is technical and financial assistance to service providers tied to conditions to provide affordable services?
- Does the programme require public display of prices and a monitoring mechanism?
- Does the programme aim to ensure a broad range of levels of services and facilities are available in order to ensure affordability?
- Does the programme identify both direct and indirect factors that hinder affordability of services?
- Does the programme promote or provide flexible payment terms, such as phased connection charges, grace periods and contributions in-kind, based on user participation?
- Does the programme consider ability to pay prior to disconnections or exclusions from access to water and sanitation? Is denial of access to the minimum essential amount of water permitted?

4. Further development of the *Operational Guidelines*

The current draft of the Guidelines could be strengthened by addition of text based on input from UN-HABITAT staff, based on the following questions:

1. What challenges have been experienced in implementing rights-based approaches in water and sanitation programming? How were these addressed? Were these successful and why?
2. What mistakes have been made in implementing rights-based approaches?
3. Are there examples of successful implementation of rights-based approaches that have been documented, and which can be referred to in these guidelines? What were the successful ingredients?
4. What are the key obstacles undermining provision of access to water and sanitation in development programmes? Which of these obstacles may be addressed through greater focus on equality and non-discrimination, participation and inclusion and accountability?
5. How has UN-HABITAT addressed situations in which there was little or no political will on the part of the government to provide water and sanitation, such as in informal settlements?

Note that examples can also be provided from programmes that did not explicitly adopt a rights-based approach, but which used similar or overlapping approaches. Certain elements of work that is aimed to implement pro-poor programming, gender mainstreaming, participatory approaches and anti-corruption may be relevant. However, it is important to maintain focus on the core elements of the rights-based approach (entitlements, non-discrimination, participation, accountability), as these constitute the primary value-added of rights-based approaches to the field of development.