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Many development NGOs, international organizations, and donors work alongside national governments and local authorities to improve access to water, including for the world's most marginalized and vulnerable individuals and communities. However, the reality is that more than 700 million people still lack access to improved water sources.

A human rights-based approach to water can provide a tool for practitioners and activists to improve communities' access to water.

This approach differs from a needs-based approach by highlighting human rights principles and carrying legal weight that holds duty-bearers responsible for meeting their obligations under human rights law.



A Human Rights-Based Approach to Water in Informal Settlements

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Human Rights-Based Approach to Water in Informal Settlements: A Guide for Practitioners

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Executive Summary

Water is necessary for life. Many development NGOs, international organizations, and donors work alongside national governments and local authorities to improve access to water, including for the world's most marginalized and vulnerable individuals and communities. However, the reality is that more than 700 million people still lack access to improved water sources (JMP, 2014). Moreover, the available data do not indicate, for instance, whether the water people use, is actually of safe quality, so the numbers of people without access to safe water are likely to be much higher (Onda, LoBuglio, and Bartram, 2012). The consequences of the lack of access are vast and severe. There are huge inequalities in access to water and disparities along socio-economic, ethnic and other divides. Women and children are particularly affected, often despite the fact that legislation may exist to protect them. Rural dwellers experience difficulty in realizing their right to water, and access in rural areas is much lower than in urban centers. However, what is less well-known are intra-urban disparities: those living in informal settlements face unique challenges in service delivery and will be in the focus on this guide.

The human right to water is now firmly established. Article 25 of the *Universal Declaration of Human Rights (UDHR)* (1948) entitles everyone to a standard of living adequate for health and wellbeing, and several international treaties and pronouncements either explicitly or implicitly guarantee the human right to water. The most specific information regarding the content of the human right to water is offered by the United Nations Committee on Economic, Social and Cultural Rights' (CESCR) *General Comment No. 15* (CESCR, 2003), which is not legally binding in itself, but provides an authoritative interpretation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It provides the following definition: "The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." These criteria of availability, accessibility, affordability, and quality are detailed in section 2 of this Practitioners Guide.

Since the adoption of *General Comment No. 15*, the human right to water has been explicitly recognized at the political level by the United Nations General Assembly in 2010 and subsequently by the Human Rights Council.

Case studies from Kenya, Brazil and Bangladesh focus on the challenges of making the human right to water a reality in informal settlements. They demonstrate that there are common obstacles pertaining to technical, situational, socio-cultural and legal dimensions. The case studies also demonstrate the uses and advantages of the human rights-based approach, and highlight challenges and successes related to implementing such an approach to access to water in informal settlements.

1. HUMAN RIGHTS-BASED APPROACH

In 1997, the United Nations Secretary-General launched a Program for Reform that called for mainstreaming human rights into all programs and activities of the United Nations system (OHCHR, n.d.). Since then, a growing number of development agencies have begun to apply a human rights-based approach in their work. In 2003, a *“Common Understanding on a Human Rights-Based Approach”* was developed within the UN agencies, which helps UN agencies approach the integration of human rights into development programs in a coherent manner. While not being directly applicable to other organizations, the Common Understanding also provides useful guidance for bilateral donors and non-governmental organizations. It states:

All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments. 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. Programmes of 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.

-A Common Understanding, 2003

As recognized by the Common Understanding, human rights principles provide guidance in all phases of the programming process, including assessment and analysis, program planning and design (including setting of goals, objectives and strategies), implementation, and monitoring and evaluation. Human rights principles also provide legal obligations on States to respect, protect and fulfill those principles.

Among these human rights principles are: universality and inalienability; indivisibility; inter-dependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law.

- ***Universality and inalienability:*** Human rights are universal and inalienable. All people everywhere in the world are entitled to them. As stated in Article 1 of the UDHR, “All human beings are born free and equal in dignity and rights”.
- ***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 partially, upon the realization of other rights. For instance, the 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, color, 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 such as the CESCR. To achieve substantive equality, the needs of marginalized or vulnerable individuals and groups must be prioritized in order to redress past discrimination.
- ***Participation and inclusion:*** Every person is entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, cultural, economic, political and social development in which human rights and fundamental freedoms can be realized.
- ***Accountability and rule of law:*** States and other duty-bearers are answerable for meeting their human rights obligations. 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 access to justice and to institute proceedings for appropriate redress before a competent court or other adjudicator.

2. THE RELEVANT HUMAN RIGHTS GUARANTEES AND THEIR MEANING

The human right to water in international human rights law

The right to water has been both implicitly and explicitly referenced in a number of human rights treaties and declarations.

Though the ICESCR does not explicitly include the right to water, it has been affirmed that the Covenant recognizes the right to water implicitly. Evidence can be found in Article 11, which ensures “the right of everyone to an adequate standard of living” and Article 12, which recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. The CESCR adopted *General Comment No. 15* specifically on the right to water in 2002, which interprets the ICESCR to include the right to water implicitly and is considered the authoritative definition of the right to water.

The Committee found that the right to water is implicit in the right to an adequate standard of living and inextricably linked to the rights to health, adequate housing and food (CESCR, 2003).

The *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, the *Convention on the Rights of the Child (CRC)*, and the *Convention on the Rights of Persons with Disabilities (CRPD)* explicitly reference water as a right. CEDAW obliges states to ensure that rural women “enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication”. The CRC obliges states to recognize the right of the child to the “enjoyment of the highest attainable standard of health” and to take appropriate measures to “combat disease and malnutrition, including ... through the provision of ... clean

drinking-water.” In this treaty, water is a means to attain the right to the highest standard of health. In the CRPD, clean water services are mentioned in the context of the right to social protection. In addition to these global human rights instruments, some regional human rights treaties, such as the *Maputo Protocol on the Rights of Women in Africa*, also include guarantees on access to water.

Apart from these explicit guarantees of water as a human right, access to water is also necessary for the realization of a number of other human rights and inextricably linked to these human rights guarantees, as shown in the table below.

Right to life	Life cannot be sustained without water
Right to health	Unsafe or lack of drinking water causes serious illnesses and preventable deaths
Right to education	Children, and girls in particular, miss school because they spend their time collecting water
Right to housing	Access to water is necessary for realizing the right to adequate housing
Right to food	Water is necessary to produce food
Right to gain a living by work	Water is necessary for many productive and livelihood activities
Right to take part in cultural life	Water is used for many cultural activities, including by indigenous peoples

Misconceptions

There are many misconceptions about what the right to water guarantees to individuals and communities.

Some people presume that the right to water...	Requirements of the human right to water
... requires water be provided free of charge	Water must be affordable. This may mean that water needs to be provided free of charge to those unable to pay, but it by no means indicates that those who can pay do not have to.
... guarantees access to unlimited water.	The right to water guarantees water for personal and domestic needs. It does not cover luxury uses such as filling swimming pools or water lawns.
... requires that States put a tap in everyone’s home.	The right to water requires access to water in the home or its immediate vicinity. Moreover, the human rights framework requires people to contribute with their own means. Only in certain conditions, such as extreme poverty or natural disasters, when people, for reasons beyond their control, are genuinely unable to access water through their own means, is the State obliged to actually provide direct services.

... can be guaranteed with 20 liters per capita per day.	The standard to be achieved is that of an “adequate standard of living”. 20 liters of water per day cover the absolute minimum to ensure survival, but significant health risks remain.
... rules out private sector participation in service provision.	The human right to water is “agnostic” to the modalities of service provision. What the human rights framework does require is that States adopt measures to regulate and monitor service providers and adopt measures to ensure that water is safe, accessible, and affordable for everyone on the basis of equality.
... requires States to realize everyone’s right immediately.	The human rights framework requires States to realize the right to water progressively recognizing that it would be impossible to fully realize everyone’s human right to water immediately. However, this does not leave realization to the States’ discretion. It requires them to move as expeditiously and effectively as possible toward full realization and to take targeted steps to prioritize the most disadvantaged such as people living in informal settlements.

Criteria to define the right to water

The criteria that define the human right to water are very useful in providing a clearer understanding of what the right to water does entail and does not entail. *General Comment No. 15* (2003) lays out four criteria that define the right to water. These criteria are availability, accessibility, affordability and quality.

□ **Availability** means that a sufficient and continuous supply of water must be available for personal and domestic uses that include “drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene” (CESCR, 2003, p. 5). What amount is required to meet this standard depends on the climatic, geographic and individual conditions. Frequently, 20 liters per person per day is referenced as the absolute minimum amount needed but this quantity still has high health risks; 50 to 100 liters per person per day meet the standard of the right to water (Howard and Bartram, 2003) under most circumstances.

□ Water must be **accessible** to everyone. Water sources must be within safe physical reach for all individuals, which entails different requirements for different individuals. The WHO estimates that when people spend more than 30 minutes collecting water (including waiting times), they will probably take home less than the minimum amount of water necessary for consumption and personal hygiene (Howard and Bartram, 2003).

- Water must be **affordable** for all and the costs of securing water must not affect a person's ability to buy other essential goods and services (CESCR, 2003). What affordability means in concrete terms depends on the circumstances. As a general threshold, the UNDP suggests 3 percent of household income (UNDP, 2006).
- The **quality** of water must be safe for consumption and it must have an acceptable color, smell and taste (CESCR, 2003).

Obligations of the State

The right to water imposes obligations on states to realize the human rights that can be categorized as the obligation to respect, the obligation to protect and the obligation to fulfill.

Obligation to Respect

- Requires that the state refrain from interfering directly or indirectly with the enjoyment of the right to water. For instance, the state cannot engage in activities that pollute water supplies (CESCR, 2003).

Obligation to Protect

- Requires that the state protect each person's right to water from being harmed by third parties such as individuals, groups, corporations and other entities. This means that the state must adopt legislation or other measures that prevent third parties from activities such as denying equal access to adequate water or polluting water sources (CESCR, 2003).

Obligation to Fulfill

- Requires that the state facilitate, promote and provide the right to water. In other words, the state must take positive steps to ensure that individuals and communities enjoy the right to water, there is education on subjects like the hygienic use of water, water sources are protected, wasting water is minimized and water is provided when individuals or groups are unable to realize the right to water themselves (CESCR, 2003).

States parties to the ICESCR must take reasonable and concrete steps to **work progressively towards the full realization** of the right to water using their maximum available resources. This does not relegate the right to water to an aspirational policy goal. States have the obligation to take concrete, deliberate and targeted steps to realize this right. They also have immediate obligations to adopt a national water strategy and plan of action that is transparent and participatory that outlines how to achieve full realization of the right to water (CESCR, 2003). As a matter of priority, states must take measures to realize the right to water for those who currently do not have access. Their actions have to start and focus first on the un- and underserved. This means that basic access for all must be achieved before moving to higher levels of service.

A state violates the human right to water if it fails to meet its obligations to respect, protect and fulfill this right even though it has the ability to do so. If a state fails to provide minimum essential levels of the right to water, it must prove that it has effectively used all available resources to do so; otherwise, it breaches its obligations. If a state takes retrogressive measures that limit a person's access to water, there is an assumption that the state violates the human rights to water unless it can prove that it could not have taken any alternative action (SR Water and Sanitation, 2014a).

States also have **extra-territorial obligations** related to the right to water. States have to respect the enjoyment of the right to water in other countries and not take any actions that will compromise this right. They also have extra-territorial obligations to protect the right to water of residents in other countries and ensure that individuals and companies under their jurisdiction do not violate the right to water in other countries and, if such violations occur, provide access to justice for victims of those violations. Finally, to the best of their ability, states should work to fulfill the right to water in other countries through development cooperation, decisions they take in the governing bodies of intergovernmental organizations and other relevant means (CESCR, 2003).

Obligations of local authorities - In most countries, local governments have the responsibility of supplying water; thus, they have a large role in fulfilling the right to water. Local authorities, as a part of the government, must also meet human rights obligations. At the national level, the state must monitor local governments to ensure that they perform their duties and it must ensure that they have the resources to perform their duties (OHCHR, 2010).

Key human rights principles

The realization of the right to water must be carried out in accordance with key human rights principles. These principles include, but are not limited to, non-discrimination and substantive equality; participation, transparency, and access to information; and accountability and access to justice. These principles give rise to obligations that cut across the obligations to respect, protect and fulfill the human right to water.

a) Non-discrimination and substantive equality

States must not discriminate and must realize the human right to water on the basis of equality. The ICESCR specifies that the rights will be extended “without discrimination of any kind as to race, colour, sex, language,

religion, political or other opinion, national or social origin, property, birth or other status.” Other human rights treaties such as CEDAW specifically protect certain individuals and groups against discrimination.

In order to address disparities and to remedy discrimination, states must prioritize the needs of marginalized and vulnerable individuals and groups. They may need to adopt measures to treat certain groups and individuals preferably to redress past discrimination.

People living in informal settlements often experience marginalization, exclusion and discrimination. Informal settlements are often not integrated in urban planning processes, and due to the lack of security of tenure, many local authorities and service providers refuse to provide water services fearing that such provision would formalize settlements. However, all residents of a state have a human right to water, regardless of their status. Human rights treaties list prohibited grounds of discrimination, i.e. factors that states are not allowed to rely on to treat certain groups impermissibly different. These grounds include property status, including land tenure, socio-economic status, and place of residence. The CESCR has explicitly stated that “access to water services ... should not be made conditional on a person’s land tenure status, such as living in an informal settlement.” (CESCR, 2009, Para. 25).

Gender inequalities are pervasive in the water sector. Women and girls are overwhelmingly tasked with collecting water. A study on 25 countries in sub-Saharan Africa found that in 71 per cent of households without direct access to water, women and girls had the responsibility to collect water collection (JMP, 2012, p. 31).

Women and girls will therefore benefit particularly from improved access to water. Where women gain access to water on a reliable basis, this can enable them to also use water for productive uses and livelihood activities. While going beyond uses guaranteed by the human right to water as such, uses for small-scale industrial activities, services or urban-agriculture can be a means to lift women out of poverty and as such contribute to achieving greater equality. CEDAW requires States to take measures “to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”

At the same time, achieving equality requires challenging and changing the very social norms, patterns, gender roles and stereotypes that assign women and girls the task of collecting water. In this regard, Art. 5 CEDAW specifically commits states to take measures “[t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

b) Participation, transparency and access to information

Ensuring participation has an instrumental value – participation leads to more sustainable results and community ownership. However, participation is also a human right in itself. In order for participation to be human rights-based, it must go beyond superficial consultation: it must be active, free and meaningful. Individuals and communities must be involved in decision-making processes and the formulation of

strategies, plans, budgets, policies and measures related to water. Importantly, this goes much beyond involvement at the local or even project level, such as decisions on the siting of a water point or kiosk. Participation is also required in processes at the national level that often have a much broader impact, shaping the direction of policies and the distribution of resources.

Specific measures are needed to ensure that participation is inclusive. Communities must not be considered a coherent whole, but where participatory processes are carried out, they must pay attention to entrenched hierarchies, processes of marginalization and patriarchal gender roles. Modes of communication, times and dates of meetings, and other modalities all impact on who will be able to participate and specific measures must be taken to ensure that those whose views tend to be forgotten or overlooked, not only gain voice in such processes, but also influence the decision-making process.

As a pre-condition of taking part in participatory processes in a meaningful way, but also as a right in itself, people must have access to information on water-related issues held by the State and by third parties.

c) Accountability and access to justice

The human rights framework stresses that states as duty-bearers are accountable to people for realizing their human right to water. Access to water is not dependent on charity, but in fact a legal entitlement. Accountability also implies that people must have access to justice where violations of the right to water occur. States must put in place appropriate mechanisms and ultimately ensure access to the courts so that people can claim the right to water.

3. CASE STUDIES OF HUMAN RIGHTS-BASED APPROACHES TO THE PROVISION OF WATER SERVICES

The following section examines three case studies, which illustrate how governments, NGOs and communities have used a human rights-based approach to improve access to water in informal settlements in Kenya, Brazil and Bangladesh. The outcomes and impact of these attempts are assessed against the human rights standards and principles of the right to water. These case studies demonstrate that there are a number of common obstacles to ensure access to water in informal settlements, often at the systemic and structural level. They also show how the human rights framework can be used to address these challenges, but that progress depends on long-term commitments and concerted efforts at all levels.

Kenya: Making the constitutional right to water a reality in Kibera

Kenya is often cited as an example of a country championing the human right to water explicitly providing for the right to water in its Constitution and reforming the water sector with the objective of improving service provision. However, long-term efforts are needed before these rights become a reality for all in Kenya, in particular for people living in informal settlements. This case study analyzes the achievements and challenges in providing services in informal settlements in Nairobi in order to realize the human right to water.

Obstacles to providing services in Kibera. There are several barriers to securing the human right to water in Kibera. First, there are **legal obstacles**. Most of the people living in Kibera do not have legal titles to the land they occupy. The government often ignores informal settlements, thus limiting service provision in such areas (Harding, 2002). Such legal obstacles are closely related to **socio-cultural barriers** resulting in a perception that service provision to people of low socio-economic status living in informal settlements is not a priority. In addition, **situational obstacles** exist due to the density of the population, the geographical conditions, the soil quality and the unsystematic layout of Kibera (Schouten & Mathenge, 2010). Finally, there are **technical obstacles** caused by the infrastructure of the settlement. For instance, frequent power interruptions make it difficult to pump water and there is not a formal road in Kibera, making it hard to place water pipes and deliver other services to residents (Schouten & Mathenge, 2010).

Attempts to overcome obstacles. Both the Kenyan government and NGOs work towards the realization of the right to water in Kibera. In the process of constitutional reform, the right to water was included in the 2010 Constitution, and already since the early 2000s the water sector in Kenya has been undergoing reform with the objective of improving service provision, inter alia through clarifying institutional roles and responsibilities and strengthening regulation. Even before the right to water was included in the Constitution, national policies and strategies reflected the right to water and its principles. In terms of financing, the Water Services Trust Fund was established in 2002 to focus on informal settlements providing incentives for service providers to extend services into slums (de Albuquerque and Roaf, 2012, 65).

Mapping initiatives have played an important role in improving services in Kibera. Processes initiated by residents have generated rich data and provide a powerful tool for identifying disadvantaged areas. They also provide an effective tool to show that the lack of data in informal settlements can be overcome, providing the basis for planning and the extension of service provision to informal settlements (SR Water and Sanitation, 2014b, para. 82). Some mapping initiatives resulted in the large-scale MajiData program used by the Water Services Trust Fund for project proposals for service provision, while also being accessible to all residents (de Albuquerque and Roaf, 2012, 191).

In 2004, kiosk operators started formalizing services and cooperating with the utility to ensure regular water supply to Kibera and better services (WSP, 2009, p. 25). Subsequently, in 2008, the utility, Nairobi City Water and Sewerage Company, established an Informal Settlements Department that focuses on the expansion of the system into slums. While being a positive sign and a recognition of the particular challenges in informal settlements, the department does not have the capacity to rapidly expand services into all slums given that more than half of Nairobi's population is estimated to live in informal settlements (de Albuquerque, 2014, 4: 27).

There are also several NGOs attempting to overcome **situational** and **technical obstacles** in Kibera. Water and Sanitation for the Urban Poor (WSUP) is working in one village in Kibera, Gatwikera, to help solve its problem of inadequate water supply. They are currently building secondary and tertiary water networks and constructing water kiosks, so that those who are not served by the Nairobi Water and Sewage Company have access to water (WSUP, 2012).

How do authorities in Kenya and in Nairobi meet human rights principles and standards? – The Constitution and the legislative and policy framework clearly guarantee the right to water. Kenya has also made significant efforts at the institutional level to build institutions that are meant to deliver on the right to water. For the purpose of streamlining the human rights to water, the Ministry has resulted in the following:

- Published National Strategies such as the National Resources Management Strategy, the National Water Services Strategy and elaborated the Pro-poor Implementation Plan.
- The Government and the Development Partners are working together through the reform process to fulfill the human rights criteria.
- Created an enabling framework such as creating structures that have transferred functions to the local level,
- Separation of key functions, ,
- Participation and empowerment of users,
- Annual audits to enhance transparency and accountability
- Pro-poor regulation through service provision agreements with Water Service providers, and
- Establishment of minimum standards by the Regulator for access and service delivery With a strong civil society in the country, civil society organizations and communities have been strong advocates for change demanding spaces for **participation**, such as witnessed in mapping initiatives. There is also significant commitment to **addressing discrimination** and to target informal settlements and other marginalized and disadvantaged individuals and groups through the Water Services Trust Fund.

However, given the scale of the challenges, more efforts are needed. A recent study highlights the **disparities** in **access** to water in Nairobi showing that only 12 percent of households in informal settlements have direct connection to the network (compared to an overall 63 % in Nairobi) relying on water kiosks and communal taps instead and often having to walk long distances and to wait to collect water. In terms of **quantity**, slum dwellers often use only 15 liters per capita per day while residents in better-off neighborhoods consume 200-300 liters per day (GWOPA and IFRA, 2013). The study also shows that slum dwellers pay a very high price for water. Likewise, the Special Rapporteur observed that many people in slums pay as 5 KES for 20 liters of water at unregulated kiosks, while the approved rate has been set at 2 KES as such being **unaffordable** to many people (Special Rapporteur, 2014c). To progressively realize the right to water for all, the authorities are working towards increasing more bottom-up approaches, increased financing, stronger governance structures, targeting the poor and marginalized, data collection and more participation of stakeholders. The greatest challenge being to ensure that they indeed prioritize to reach the most disadvantaged, including people living in informal settlements, sustainably and through formalized solutions. This is expected to be done through the expansion of the activities of the Water Services Trust Fund which is focusing on the urban slums and rural areas.

Brazil: Translating strong commitment at the legal and policy level into action in favelas

In Brazil, the federal government has adopted a strong legal and policy framework that reflects the right to water. Institutions, such as the Council of Cities, are in place to ensure continuous priority for water and sanitation. The challenges lie in translating this framework into practice to respond to the reality of millions of people in favelas who continue to live without access to safe and affordable water.

Obstacles to providing services in informal settlements in São Paulo. All major cities in Brazil have informal settlements, called favelas in Brazil. In São Paulo, it is estimated that 11 percent of the population live in favelas (SR Water and Sanitation, 2014d, para. 53). Like the authorities in many other countries, the São Paulo State and local governments have been resistant to extending water services to informal settlements since extending public services to people without **security of tenure** to their land could be seen as formalizing such status and encourage further growth (Dagdeviern and Robertson, 2009). Because water companies are not legally obligated to serve people without a **legal title** to their land, they often do not readily provide services to these areas (Dagdeviern and Robertson, 2009). In addition, local governments and water companies face **technical obstacles** in extending water supply to informal settlements because haphazard layouts of these areas and often the location on steep hills make installing pipes difficult (Dagdeviern and Robertson, 2009).

Attempts to overcome these obstacles. The Brazilian Constitution from 1988 guarantees social rights and recognizes that every resident has the right to a healthy environment. Subsequent laws and institutions regarding water and sanitation were grounded in this Constitution (Levenzon et al., 2008). The creation of the Council of Cities, the Law on Environmental Sanitation from 2007, and the adoption of the National Sanitation Plan in 2013 are significant advances at the legal, policy and institutional levels. The law and the plan cover water, sanitation and solid waste.

At the technical level, Brazil has pioneered a system of simplified sewerage that allows building a sewerage network in hard-to-reach settlements. It involves pipes that are smaller in diameter than usual and laying the pipes in the shortest route possible in settlements, as such being more affordable (de Albuquerque and Roaf, 2012, p. 135). Based on such solutions, some progress has been made in providing services to previously unserved areas.

However, the most persistent challenges may be the ones associated with the lack of tenure. Service provision was authorized by the courts in some areas of the city of São Paulo arguing explicitly that land tenure must not be made a pre-condition for service provision (SR Water and Sanitation, 2014d, para. 54). In Porto Alegre, another large Brazilian city, the authorities use provisional networks until settlements are formalized (de Albuquerque, 2014, 4:26). However, many service providers in São Paulo continue to fear that service provision in informal settlements is illegal. In many instances, services providers, simply do not consider residents in favelas as part of the residents of the city they are supposed to serve (SR Water and Sanitation, 2014d, para. 54, 70).

Moreover, based on her country visit in 2013, the UN Special Rapporteur on the Human Rights to Water and Sanitation has voiced concerns about the affordability of services as some residents of São Paulo spend 10 to 25 of their income on water and sanitation (SR Water and Sanitation, 2014d, para. 67, 70). She criticized SABESP, the public company that provides services in the city of São Paulo, for distributing 25 percent of its profits as dividends to its shareholders rather than investing these profits in the extension of the network to the most disadvantaged communities (SR Water and Sanitation, 2014d, para. 68, 69).

How do authorities in Brazil and in São Paulo meet human rights principles and standards? -

Brazil has made water and sanitation a national priority. At the federal level, there is political will resulting in significant advances in the legal, institutional and policy framework. The framework reflects the criteria of the right to water. In terms of **availability**, one of the stated goals of the state of São Paulo is to bring water and sanitation services to as many areas as it can afford (Levenzon et al., 2008; Bueno & Sedeh, n.d). Furthermore, under Law 11445, the city of São Paulo is obligated to set short, medium and long-term goals regarding increased **physical access** to water so that universal access can eventually be achieved (Levenzon et al., 2008). The law also addresses **affordability** stating that tariffs must take into account several factors including the user's ability to pay (Levenzon et al., 2008). However, there is no concrete affordability standard (SR Water and Sanitation, 2014d, para. 67). Finally, Law 11445, requires water companies to establish minimum standards related to water **quality** (Levenzon et al., 2008). However, despite this framework, millions of people, including and in particular in informal settlements, continue to live without access to safe and affordable water and greater efforts are needed to prioritize them.

The Brazilian government has also demonstrated its commitment to human rights principles. The right to **access to information** is established at the national level in Law 11445 which requires that all necessary information related to water services needs to be provided to the public (Levenzon et al., 2008). Most recently, the elaboration of the National Sanitation Plan was based on a broad **participatory process** that sought inputs through various channels and provided feedback to those who contributed to what extent and how their proposals have been incorporated, as such going far beyond a formalistic exercise (SR Water and Sanitation, 2014d, para. 93).

Moreover, all levels of government have started to work to **reverse previous discrimination** against residents of informal settlements. However, even at the level of policy, the National Plan on Sanitation could have a stronger focus on the elimination of inequalities in access to water and giving priority to providing services to the most marginalized and disadvantaged, including people living in informal settlements (SR Water and Sanitation, 2014d, para. 38). At the level of implementation, this lack of prioritization is reflected in the persistent obstacles to service provision in favelas, either because of neglect or because of a perception that service provision is illegal. However, in some areas there are promising steps of invalidating such arguments and delinking service provision from tenure status. Based on such promising initiatives, it is essential to turn the political commitment at the federal level as reflected in laws and policies into reality for millions of people living in favelas.

Bangladesh: Empowerment through an NGO acting as intermediary

This case study looks at how residents of informal settlements in the city of Dhaka, Bangladesh, gained access to water services. The model developed by the NGO 'Dushtha Shasthya Kendra (DSK)' played an instrumental role in this. It is "based on the belief that the urban poor can manage a formal water supply, such as a community water point, if someone such as an NGO guides them in an appropriate direction" (Akbar, Minnery, Horen & Smith, 2007, p.26). The DSK model has led to the successful implementation of community-managed water points that now benefit roughly 100,000 people.

Obstacles to providing services in informal settlements in Dhaka. Bangladesh has a severe problem with arsenic-contaminated water supply, particularly in rural areas served by shallow aquifers. It is estimated that more than a quarter of the population suffers from the effects of arsenic in drinking water, and more than one million people are at risk of dying from being exposed to arsenic (IE Water and Sanitation, 2010, para. 60). It is therefore particularly vital to ensure access to safe water for all residents. Apart from arsenic contamination, there are several obstacles to the achievement of this goal in informal settlements, both on a national and local level. Official policies have sought to deal with the presence of informal settlements, but these policies are difficult to implement because there is **no specific legislation** to support them (Akbar et al, 2007). The Dhaka Water Supply and Sewage Authority (DWASA) expressed concerns pertaining to the ability of residents to pay for water services citing it as a reason not to extend services to informal settlements. They were also concerned that the provision of services would imply a formalization of the informal settlement. Their policy, like many others, required land **ownership documentation** to connect households, leaving millions of residents of informal settlements without access to water (PBS, 2011). However, in 2007 the DWASA adopted a gazette system which allowed households living in informal settlements to apply for legal community taps not tied to ownership of land or housing.

Overcoming these obstacles. A significant step towards connecting informal settlements in Dhaka came through DSK, which helped facilitate the gazette system. The organization also helped to initiate a dialogue between the utility agency and the residents, who formed small community organizations. After **community mobilization**, DSK helped with specified skills that the residents did not have: system design, assistance in grant applications, and **negotiation** with water authorities. They also trained the communities in operation and maintenance (Akbar et al, 2007). Initially, DSK also provided financial guarantees to the local authorities should the community fail to pay (de Albuquerque and Roaf, 2012, p. 124). Then they stepped out in order to enable the residents to participate directly in decisions related to water and sanitation. The residents became **responsible** for maintenance of their water points, collecting service fees, and paying bills. In some instances, community organizations were able to enter directly into contracts with service providers (de Albuquerque and Roaf, 2012, p. 124). With a growing sense of **empowerment**, residents may now be able to more effectively lobby authorities for change.

How do authorities in Dhaka meet human rights principles and standards? The community water points in Dhaka are a significant step towards the **availability, quality, and physical accessibility** of water. Residents were previously purchasing water from illegal vendors or gathering water from ponds, rivers, and swamps (Akbar et al, 2007). The water points provide a reliable, improved source for domestic use.

Additionally, the community-managed water points ensure greater **affordability**: water is free of charge for those unable to pay if they provide physical work or maintenance.

The Dhaka example also shows that efforts to realize human rights can begin at the community level. Initially, the role of DSK as an intermediary was essential in overcoming the obstacle of the lack of security of tenure. The DSK model puts a strong focus on cooperation between communities and local authorities. It ensures public **participation** throughout the process. Planners meet with the communities to determine their needs. **Women** are involved in decision-making. They also increase **personal security** for women who no longer have to spend hours gathering water. As such, the DSK model provides a viable route to delink service provision from tenure status.

4. RECOMMENDATIONS

Governments:

- Create and revise national and local legislation to include the right to water
- Develop strategies and action, based on participatory processes, that includes short, medium and long term goals as well as independent monitoring mechanisms
- National governments should ensure that local governments responsible for water and sanitation services have the resources and the capacity to provide these services
- Ensure that the public has access to information and can participate in decision-making
- Prioritize providing water and sanitation services to marginalized and vulnerable populations, including in informal settlements
- Strengthen reporting systems to track progress
- Ensure services to informal settlements despite tenure status by disassociating legal tenure from service provision
- Repeal and amend laws that prohibit service provision in informal settlements
- Require service providers to provide services in informal settlements as part of servicing a city
- Consider steps to formalizing informal settlements
- Where formalization is deemed impossible, consider providing guarantees that people will not face forced evictions as a short-term solution providing some security
- Find short term solutions to service provision in situations where people do not have security of tenure
- Combine short-term solutions with long-term planning to find lasting and sustainable solutions for informal settlements
- Set national minimum standards for quantity of water, quality of water, distance to water sources (accessibility), and affordability
- Price water according to ability to pay.
- Put in place accountability mechanisms
- Ensure that independent and impartial judiciary mechanisms are available as a last resort for those seeking a redress before the court
- Coordinate activities of NGOs to focus on marginalized and disadvantaged groups

NGOs:

- Understand the importance of government in development work and cooperate with government authorities
- Support and seek to ensure that governments meet their obligations to realize the right to water and monitor government activities.
- Cooperate with other sectors to improve efficiency
- Empower and strengthen the capacity of individuals and groups to realize and claim their rights; assist local communities to demand the realization of their rights from state authorities.
- Consider acting as intermediary between communities and local authorities
- Be aware of the different roles from directly providing services to communities to advocating on behalf of communities and carefully navigate or separate these roles
- Consider direct provision to communities as an immediate, short-term solution
- Combine such short-term solutions with long-term planning that involve local authorities and the government to ensure sustainable solutions

Communities:

- Be sensitized to and Learn about human rights
- Look to small, local organizations for mobilization, capacity building and advocacy.
- Use human rights as a basis to hold local authorities and service providers accountable
- Acknowledge entrenched hierarchies in communities and ensure inclusiveness in participatory processes
- Engage women in planning and implementation as possible because they are most often concerned.
- Consider combining different routes for advocacy including social mobilization, mapping initiatives, and strategic litigation where appropriate
- Demand accountability from leaders

5. ALLIES AND SUPPORT

NGOs

[Global Initiative for Economic, Social and Cultural Rights](#); [WASH United](#); [WaterLex](#); [WaterAid](#); [Brot für die Welt](#); [Freshwater Action Network](#); [Centre on Housing Rights and Evictions \(COHRE\) archives](#); [FIAN International](#); [End Water Poverty](#); [Shack & Slum Dwellers International](#); [Dushtha Shasthya Kendra \(DSK\)](#); [Water and Sanitation for the Urban Poor \(WSUP\)](#); [Building Partnerships for Development](#); [Umande](#)

International Organizations

[Office of High Commissioner on Human Rights](#); [United Nations Committee on Economic, Social and Cultural Rights](#); [World Health Organization](#); [United Nations Human Settlements Programme \(UN-Habitat\)](#); [UNICEF](#); [UN Special Rapporteur on the human right to safe drinking water and sanitation](#); [The World Bank-Water and Sanitation Program](#)

Internet Resources

<http://www.righttowater.info>

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The Global Initiative
for Economic, Social and Cultural Rights

Website: <http://globalinitiative-escr.org/>

Email: globalinitiative@globalinitiative-escr.org