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MANUAL ON THE HUMAN RIGHTS TO SAFE DRINKING WATER AND SANITATION FOR PRACTITIONERS

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Published by IWA Publishing
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First published 2016
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ISBN: 9781780407432 (Hardback)
ISBN: 9781780407449 (eBook)
DOI: 10.2166/9781780407449



Manila, The Philippines © Robert Bos, IWA

Chapter 2 Main operational principles

SYNOPSIS

This chapter presents the operational principles for including human rights considerations into the daily routine of formal and informal service providers and of regulators. It provides the readership with a condensed overview of key concepts, themes, issues and actions that are of immediate relevance to them in their efforts to contribute to the HRWS. It focuses on Chapter 3, and on the main operational chapters of the Manual: 4, 5 and 6.

2.1 INCORPORATING HUMAN RIGHTS CRITERIA AND PRINCIPLES INTO WATER AND SANITATION OPERATIONS

Five principles form the basis for the economic, social and cultural rights: equality and non-discrimination; accountability; sustainability; participation; and access to information/transparency. Both for drinking water supply and for sanitation services the same normative human rights criteria apply: availability, quality, acceptability, accessibility and affordability.

Translating the criteria into operational terms is a challenge, with a different scope and focus for drinking water supply and for sanitation. It applies to formal and informal service provision.

In relation to drinking water supply, availability refers to sufficient quantities and reliability of service provision; quality refers to the need for drinking-water to be free from pathogens and toxic levels of chemicals, in routine and emergency situations; acceptability (which includes appearance, taste and odour) is a highly variable concept, depending on perceptions related to local ecology, culture, education and experience; accessibility refers to the distance or time to a reliable water supply (from the house, but also from the workplace, school or other public places) and whether the services can be accessed by, for example, people with disabilities; affordability refers to the cost of connection and the cost of consumption, and requires concomitant cost recovery and the application of mechanisms to ensure affordability for all.

In relation to sanitation services, facilities must be available to everyone, everywhere, at all times: at home, at the workplace and in public places. Whether private, shared or public, they should be designed at least to basic standards; collection and treatment services should function at an adequate capacity at all times. Quality standards for sanitation facilities refer mainly to the safeguards addressing potential risks of their use; they extend to the safe collection, transport, treatment and disposal of human waste. Acceptability refers to cleanliness and hygiene, and therefore has important public health overtones. It also refers to the type of technology proposed. Standards for accessibility should ensure access to all: women, men, children, the elderly and the disabled; schools require particular attention to separating their

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sanitation facilities for boys and girls. Affordability of sanitation services requires a consistent regulatory framework for the range of services, and pro-poor policies and mechanisms to ensure no-one is excluded for financial reasons.

There are no absolute values for any of these criteria that apply globally. Governments will have to establish national standards in line with local natural resource situations, the affordability of risk management measures and local social acceptability, adjusting them as new evidence becomes available.

Clear instructions are needed from public authorities responsible for specifying what is required of regulators and operators, in order to make the human rights principles operational.

- Equality and non-discrimination: within the established legal/regulatory frameworks public authorities/service providers have to ensure that no barriers exist to access by marginalised or vulnerable individuals or population groups, in a consultative process with such individuals/groups and government authorities.
- Accountability: providers' monitoring systems, complaints mechanisms, options for dispute resolution and transparency of budget and operations need to comply with legal requirements.
- Sustainability: drinking water and sanitation services should be economically, socially and environmentally sustainable, and this requires a long-term vision on investment and resource use in operation and maintenance, and the use of early-warning indicators for risks to sustainability that would imply regression in the human rights status.
- Participation: all actions must provide meaningful opportunities for community engagement, in particular for those usually under-represented. Information is only the start of community engagement, which is essential to comply with the human rights criteria.
- Access to information and transparency: public participation can only be meaningful in the presence of full access to information on the relevant technical details of water and sanitation services, and on budget and operations.

Putting the human rights principles and criteria into operation requires that within the legal and regulatory frameworks established by the legislative and executive branches of government, many practical details need to be sorted out in the negotiations and standard contractual agreements between public authorities, services providers and clients. These details include the aspects of rights and responsibilities of individuals and institutions. Progressive realisation of the rights is a task of multiple dimensions that requires monitoring of a series of indicators. In the development of indicators that will be used to monitor progress towards meeting the drinking water, sanitation and wastewater management targets in the framework of the Sustainable Development Goals (SDGs; see Annex B) the HRWS criteria have been considered.

2.2 CREATING AN ENABLING ENVIRONMENT

An enabling environment for the progressive realisation of the HRWS requires enforceable legal and regulatory frameworks (with independent compliance monitoring) and effective institutional arrangements. Steps in the process of creating an enabling environment include the following:

- mapping existing legislation at all levels;
- reform of the legal framework to accommodate HRWS, defining roles, responsibilities and accountability;
- establishing institutional arrangements, including a clear allocation of responsibility to identified public entities for each HRWS principle or criterion;
- creating or strengthening a regulatory framework, supported by agreed standards and norms;

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- developing decision-making criteria for resource needs assessment, allocation and use;
- developing guidance on legal and regulatory requirements for monitoring HRWS indicators;
- designing modes of periodic reporting.

It is fundamental that there is a national body mandated to coordinate issues relating to the HRWS, and service providers and regulators should be represented, through their national associations or through national IWA committees, where present. Such coordinating bodies should work closely with national human rights institutions where these exist, and include in their functions a normative role, the identification of gaps and needs in existing legal and institutional frameworks, and the provision of oversight in the harmonisation of monitoring HRWS indicators.

Another important initial step is to make an inventory of and reconcile existing statistical information on drinking water and sanitation. There is a key role for formal service providers and regulators in this connection. They will also be well aware of the existing laws governing water supply and sanitation; in most cases, legislation for the former will be better developed than that for the latter. One objective of legal reform will be to bring the informal service providers into the regulatory framework.

In addition to the need to unambiguously reflect human rights principles and criteria in existing and new legal texts, it will be important to go beyond water and sanitation laws and consider issues like land tenure, gender mainstreaming or development impact assessment from a legal perspective to see how access to and availability of services can be improved. Incorporating the HRWS into national constitutions will enhance legal reform and support a more coherent approach to promoting the rights in all legislation, and, in this respect, service providers and regulators can perform a lobbying role aimed at parliamentarians. The establishment of pro-poor policies and strategies stand out in this context. In high-income countries, they can assist in reviewing international cooperation policies through a human rights lens. From their background of practical experience, they can also signal at an early stage how proposals for legal reform may have unintended adverse effects. At the end of the process of legal reform, institutional arrangements should be put in place that confirm roles and responsibilities and help bridge gaps in the often-fragmented water and sanitation domain.

The HRWS does not express itself in favour of any business model for drinking water supply and sanitation services. Whatever the model is, service delivery must take place under licence conditions or contractual arrangements that will need to have been assessed from a human rights perspective. Regulators have an important role to play in ensuring that human rights are addressed within these licences or contractual arrangements, by assessing performance, efficiency, governance and the quality of services. Indicators under regulator surveillance will need to reflect human rights principles and criteria in a direct way.

The adoption of a collectively agreed code of practice focused on human rights issues would also help to rally service providers and regulators for joint action in support of the HRWS.

2.3 INCORPORATING THE HRWS INTO INSTITUTIONAL FRAMEWORKS

The concept of progressive realisation implies continuous tangible improvements in service provision together with a reduction in discriminatory practices and inequalities in access to water and sanitation, and it also implies maximum resource allocations to actions in its support.

Formal operators (public or private entities operating under the mandate of a public authority) show considerable diversity in terms of their legal status, organisational models, and levels of scale and decentralisation. Yet, this diversity is unified within the legal framework within which they operate. This comes to expression in the mandates and contractual arrangements, licences or concessions under which they operate. A checklist of HRWS considerations for service providers to raise at the negotiating table

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where these are worked out intends to ensure that all essential human rights issues are adequately addressed. Among the points on the list feature the adoption of HRWS-relevant performance standards and indicators, an organisation-wide review of structure and functions to identify options for pro-HRWS modifications, stratified baseline surveys of coverage in the mandated area, provisions for information and consultation of the users and strengthening of essential support functions to ensure optimal resource use towards progressive realisation.

Essentially, the institutional set-up for drinking water supply and sanitation regulation should reflect the State's obligations with respect to the HRWS. In many cases, existing standards, criteria, rules and requirements will already support the concept of progressive realisation, but these needs to be systematically checked rule by rule. The example of drinking water quality regulation, as it is in place in several countries, presents the case for how standards and criteria, basically in support of public health, access and collective use, can be strengthened to address all the human rights principles and criteria. Both the WHO-hosted International Regulators Network (RegNet) and the IWA Regulators Forum have provided guidance on the theme of the HRWS. The IWA Lisbon Charter for Guiding Public Policy and Regulation of Drinking Water Supply, Sanitation and Wastewater Management Services lists actions that regulatory authorities can undertake in support of HRWS.

2.4 THE HRWS IN ESSENTIAL FUNCTIONS OF SERVICE PROVIDERS AND REGULATORS

Eight essential functions of service providers and regulators are reviewed for the options to include HRWS principles and criteria: planning and management; legal support; budget, finance and accounts; operation and maintenance; monitoring and evaluation; customer services; communications; and human resources management.

The core concept of progressive realisation of the HRWS has its foundations in proper planning. Public authorities and service providers translate the results of assessing and monitoring developments and trends into targets for coverage, water quality, service levels, cost recovery, operation and maintenance (O&M) and emergency preparedness. The requirement to include the human rights principles and criteria in this process should be incorporated into licences and contracts. There is an important opportunity to include them in masterplans and investment plans for service expansion. The engagement of a dedicated human rights professional as a member of the management team is one option recommended to make this happen.

Core legal functions will relate to contractual arrangements with customers, with suppliers and with the mandating authorities. Monitoring compliance with laws and regulations is one important aspect, and this will need to be reviewed as human rights legislation evolves. This covers customer and supplier contracts, but goes beyond the strict boundaries of service delivery per se: for example, pollution of source water by industry, agriculture or individuals affects the human right to safe drinking water and calls for litigation. Such impacts should be addressed in water safety plans proposing stakeholders' risk management activities from source to tap. Liaising with human rights authorities will be a new addition to legal functions, and they will now have to address the translation of HRWS principles into organisation-wide good practice guidance, in terms of accountability rules, the need for transparency, participatory approaches in customer relations and the introduction of sustainability criteria.

In the area of budget and finance, a review of financial flows should help identify options to allocate funds to specific HRWS activities. Different departments will have to be invited to propose new HRWS activities, and the possibility of creating a dedicated fund for HRWS activities should be explored. Costs must remain within reasonable limits and efficiency must be maximised; funding HRWS activities should not be at the expense of investment needed for infrastructure development and service quality supporting

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progressive realisation. Community engagement is another way of strengthening the resource base for HRWS activities. Moreover, most importantly, tariff structures need to be evaluated from the HRWS perspective.

With respect to the HRWS there remains a disconnect between water and sanitation policy makers, and those in charge of operation and maintenance. The relevance of HRWS to routine water and sanitation practice is frequently questioned, which is partly explained by the already considerable pressures and challenges service providers are faced with. Yet, the opportunities to contribute to progressive realisation in O&M are great. One starting point may be the development of a compendium of technologies, materials and practices that are compliant with the human rights principles and criteria. Proper asset management and the establishment of realistic maintenance schedules are crucial in the prevention of regression in access and other HRWS criteria. O&M staff can play a vital role in customer relations, and can pick up early-warning signals of risks of regression for lack of adequate maintenance.

Coordination and harmonisation of in-house monitoring activities with national monitoring will not only strengthen the information base at the country level, but also add value to the information on which service providers base their forecasts and plans. It can also be an opportunity to engage constructively with service users. The monitoring of specific human rights indicators may be best placed in an independent national body, such as the national statistics bureau. A service provider's customer base is a unique source of information, and modern technology allows for a range of data collection opportunities. Regular publication of monitoring reports is in line with the human rights transparency principle.

Dealing with complaints in a serious and timely manner is the responsibility of customer services—and in handling complaints, the human rights criteria now also have to be taken into account. Protocols should be readily available to deal with customers in cases of service disruptions or emergencies, and these should explicitly address the needs of vulnerable individuals, households and communities so they are not disproportionately affected.

Incorporating the HRWS into service provision and regulation will require an enhanced communications strategy, aimed at the staff as well as at the customers. Customers should be informed about the nature of the HRWS, about the rights and responsibilities pertaining to them and about complaint procedures. Communications with the human rights community are important to ensure that the organisation stays informed about new developments, and about relevant experiences elsewhere.

The new functions related to the promotion of the HRWS will require an assessment of staff needs, including the formulation of post descriptions and staff performance indicators. The human resources department may need to recruit new staff and will have to develop a human rights staff development and training programme for existing employees.

To conclude, several challenges are addressed briefly: how to include considerations arising from the HRWS in the selection of technical options; how to deal with affordability mechanisms; the correct way to handle credit control; debt collection and service cut-offs; how to achieve simultaneous progressive realisation against the five criteria; how to set geographic priorities for network extension; the issue of land tenure; the use of pre-paid meters; the use of interim standards; and the issue of continuity of supply.