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Realising the Human Right to Water and Sanitation

Sida Reference Paper

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Cover photo: UN Photo/Albert Gonzalez
Students of al-Um Secondary School for Girls in El Fasher, Sudan, receive water delivered by tanker by the UN African Union-United Nations Hybrid Operation in Darfur (UNAMID). At the request of the North Darfur State Ministry of Education, UNAMID is providing 100,000 litres of potable water each day to nearly 12,000 students at examination centres and dormitories during the State's month-long secondary examination period. Many of the students have to travel to El Fasher from smaller villages for a chance to take the exams.

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What is the problem?

Despite decades of global economic growth and advances in technology and science, more than two billion people do not have access to a decent toilet. In addition, over 800 million people can't get enough water to satisfy basic personal needs for drinking and hygiene, and the quality of the water they use is often not safe. Not only does the lack of water and sanitation services imply high social costs through lower productivity in society. At the individual level, it undermines the ability of people to create a better life through work, entrepreneurship, studies and community interaction. It exposes people to easily preventable diseases, and it deprives them of their dignity.

The links between access to water and sanitation, health and well-being, development and poverty reduction are strong. This is the reason why the United Nations member states agreed to have a target for water and sanitation included in the Millennium Development Goals (MDG), together with a few other essential public services such as education and health services. The progress made towards the target on water coverage is very encouraging. Already in 2010, the target for halving the proportion of people in the world without water was met, five years ahead of schedule. This global success-story shows that significant improvements can be made over a short time.

But progress has been uneven. Vast inequalities persist between regions, between rich and poor, urban and rural areas, and between men and women. While middle-to-low income countries in Asia have taken great strides, much less progress has been made in poor countries in Africa. Within the low-income countries, the poorest are still lacking services. On sanitation, progress has fallen far short of targets in all parts of the developing world.¹ Poor women and girls are disproportionately affected, as they are often faced with additional challenges of

Photo: UN Photo/Stuart



A mother looks at her malnourished and dehydrated child lying on a bed in Banadir Hospital in the Somali capital Mogadishu. Somalia is gripped by a devastating drought and famine that has already killed tens of thousands and is leaving many hundreds of thousands more, particularly young children and babies, in desperate need of emergency life-saving humanitarian assistance from the outside world.

menstrual hygiene, personal safety, sexual harassment and violence.² These gender-based inequalities are often made invisible in debates and in cultural norms through stigmatisation, thus perpetuating the differences.³

The MDGs paved the way for collective action at the global level. But individuals and disadvantaged groups still trapped in poverty without decent water and sanitation cannot easily be seen in the aggregated picture. Another way of putting it: we have made a lot of progress, but the hardest part remains. Since the Millennium Declaration was made in the year 2000, a consensus has emerged on water and sanitation as human rights. This alters “the rules of the game” for poverty reduction and development of WSS services. It enables an approach where the powerless become visible. It implies developing service systems that include previously marginalised groups.

Sida’s mission is to contribute to poverty reduction through empowering people to create a better life. This Sida Reference Paper is intended to communicate to international partners Sweden’s position and ambitions for the realisation of the human right to water and sanitation. The paper is also a first step in a longer process that aims at concretising how Sida will contribute in a practical manner.

What’s so special about WSS?

Fifteen years ago, some African countries seemed destined for catastrophe. But thanks to global efforts and investments, the AIDS epidemic has been contained. Is a similar trajectory possible for diarrheal diseases, through better water and sanitation? Impressive gains in WSS have been made in middle income countries. But there are important differences, for instance in transmission pathways. Moreover, the technical systems for WSS are capital intensive, durable and require special skills for operation. All this imply high recurrent costs for a long period. A major international study on Disease Control Priorities (World Bank 2006), found that from a public health point of view, many WSS investments are expensive compared to e.g. distribution of malaria nets and vaccinations campaigns. However, it also showed that interventions like promotion campaigns and low-cost technology can be highly cost efficient. Investing in the right thing is clearly important, not just investing more.

² Amnesty International (2010) Risking rape to reach a toilet.

³ UN OHCHR (2012), Stigma and the realisation of the human right to water and sanitation.

A global consensus

Already in the Universal Declaration of the Human Rights, adopted by the United Nations in 1948, the fundamental rights to life and to an adequate standard of living were included. In the International Covenant on Economic, Social and Cultural Rights (ICESCR) from 1966 these rights were further elaborated to mean “adequate food, clothing and housing” and “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. Water and sanitation were not explicitly mentioned in the ICESCR. But in 2002 the UN Committee on Economic, Social and Cultural Rights issued an interpretation of the Covenant, stating that:

“The human right to water is indispensable for leading a life in human dignity [...] entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

In accordance with the rights to health and adequate housing [...] States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.”⁴

This interpretation gained a wide recognition in 2010 through declaration 64/92 in the United Nations General Assembly, and declaration 15/9 in the UN Human Rights Council. It is therefore possible to say there is a global political consensus on the human right to water and sanitation. States are the ‘duty bearers’, and are supposed to ensure a realisation of rights for the ‘claimholders’; their citizens.

Can I expect the government to build my toilet?

Although the important role of the private sector in service provision has been acknowledged world-wide, the state is clearly the ‘duty bearer’ for realising right to water and sanitation. Yet in many parts of the world – and especially in rural areas – local communities bear a large part of the responsibility in practice. Moreover; for the two billion people lacking proper sanitation, “the loo” is typically considered a private affair, not a government responsibility. The low involvement of the state in household sanitation is a paradox, as sanitation services have high positive externalities in terms of health and environment gains. Without state involvement the public good nature of sanitation services can result in the under-investment. So what can we expect from the state? Experience from decades of Swedish support show that communities and the private sector contribute better if the state provides a clear institutional framework and a committed leadership. Sanitation must have a clear “institutional home” in government, underscoring responsibility and accountability. Furthermore, the state could provide targeted subsidies for sanitation investments, either in the form of cross-subsidies within the sector or from other revenue sources, including aid allocations.

The Government of Sweden has declared its full support for the human right to water and sanitation, and concludes that all State parties to



Photo: UN Photo/Eskinder

Primary school children in class, in Harar, Ethiopia.

4 Committee on Economic, Social and Cultural Rights (2002), General Comment no.15.

ICESCR must now take immediate steps towards the fulfilment of these rights. Furthermore, the Government notes that all states have a duty to provide – at all times – a minimum access to water without any form of discrimination, and that in case of water shortages, water for domestic purposes must always have the highest priority. Sweden has also underscored that richer states have an obligation to assist other states to fulfil the right to WSS.⁵ In this spirit, the Swedish Government has raised Sweden's level of ambition for international cooperation on water and sanitation, including an increased support in its annual budget bill for 2012 as well as 2013. A key priority for the Swedish Government in global development is to work for gender equality and women's rights, and this also applies to co-operation on water and sanitation.

While there is consensus on water and sanitation as human rights, what this means in practice and how these rights can be monitored, fulfilled and enforced, is still a subject for debate and interpretation. To move the process forward, the UN has created the function of the "Special Rapporteur on the human right to safe drinking water and sanitation", based at the Office of the High Commissioner for Human Rights in Geneva. The Special Rapporteur is not a policing organ but works as an advisor and facilitator and has, among other things, assisted the international process of formulating new development targets and indicators for the period beyond 2015.

The human rights approach is now embedded in the formulation of post-2015 targets and indicators for water, sanitation and hygiene, led by the Joint Monitoring Programme (JMP) of UNICEF and WHO. But to effectively monitor how rights to water and sanitation are progressively realised will require more work, both for fine-tuning the indicators and for putting in place good data collection systems.⁶ Alignment with the post-2015 JMP process will thus be very important for Sida in its ambitions to promote a realisation of the human right to water and sanitation.

What about all the other waters?

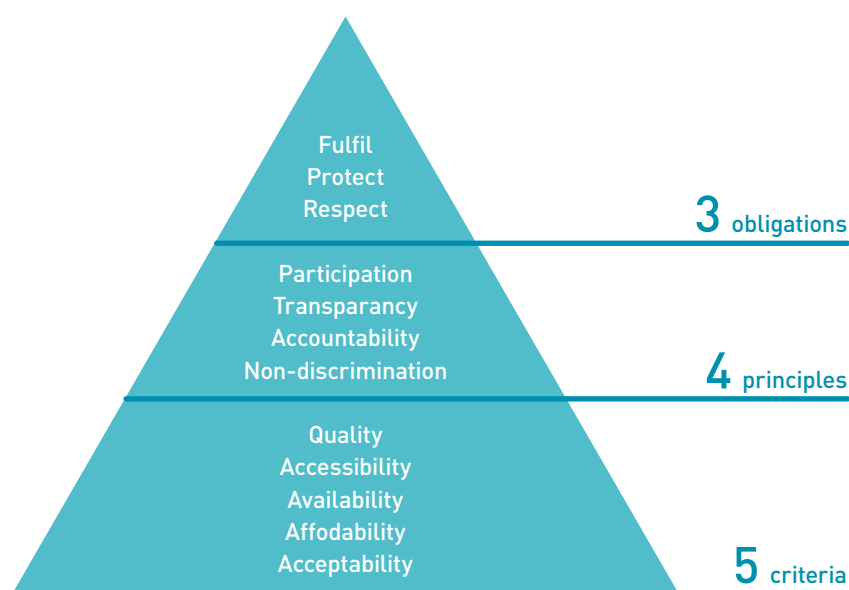
The consensus on the right to water relates to water for human consumption. The global human rights derived from the ICESCR do not include water for agriculture and livestock, energy production, industrial use and all the other ways that humans use and appropriate water. Most countries have established their own institutions – such as formal legislation or common law – to regulate rights and obligations for other water uses. In some cases it is necessary to regulate other water uses in an international context; in particular where several countries share a common fresh water body. In 1997, the United Nations established a convention for Non-navigable use of international watercourses. In this convention, a number of principles are laid down on how states should co-operate around shared fresh water resources. To enter into force, the 1997 convention still needs another five states to ratify the convention. Despite this, the convention has had an effect on international law and normative 'best practice'. More indirectly, the human right to drinking water can also have an effect on other uses, as it states that water for human consumption is superior to all other needs. The General Comment 15 also underscores States' responsibilities to protect the quality of water resources. In this broader context, the human right to water and sanitation contributes to a more sustainable management of water resources.

⁵ Utrikesdepartementet, Rätten till vatten och sanitet: normativ utveckling och svensk position. 2011-03-09.

⁶ UNICEF and WHO (2013), Report of the second consultation on post-2015 monitoring of drinking-water, sanitation and hygiene, The Hague, 3-5 December 2012.

What the human right to water and sanitation means

The Human Right to WSS “The 3-4-5 pyramid”



The normative content of the human right to water and sanitation can be illustrated using the ‘3-4-5 pyramid’ above. This schematic presentation summarises what the international community think is right when it comes to implementation. As with all human rights, the States are the ‘duty bearers’ and they have three obligations: to fulfil, protect and respect these rights. With respect to fulfilment of rights, there are considerable cost implications. Universal access to water and sanitation typically has to be realised progressively. But governments are ultimately responsible. They must demonstrate how they work towards fulfilment and they need to create an enabling environment.

When governments create and maintain systems for public water supply and sanitation, they should follow four human rights-based principles. First; consumers should be allowed to participate in design and decision-making processes through consultations, public hearings etc. The state could also look for partnerships with communities and private providers, actively drawing on resources among the non-state actors. Second; the public WSS sectors should be characterised by transparency and openness. People have a right to know what is going on, and information on WSS policies, plans and procurements should be made accessible to the public. Third; it is crucial that governments (including local government) are held accountable for what they do and what they don’t do. This applies also when service provision is

Photo: UN Photo/Paul Banks



A Southern Sudanese woman washes her child in the Udhaba/Apada area near Aweil, Northern Bahr el Ghazal State, South Sudan.

outsourced to the private sector. Accountability can be demanded directly in the consumer-provider relationship, and indirectly through the political representation. Fourth; plans, strategies and service provision systems must be non-discriminatory and should be designed to provide service for everyone, regardless of ethnicity, income group, age, sex and so on. Particular attention must be given to equal rights for women and girls, taking women's needs and preferences seriously and avoiding stigma.

At a more technical level, five normative criteria must be satisfied for the rights to be considered fulfilled. These criteria define the minimum or basic service level that everyone should enjoy. There is an increasing recognition in the international discourse that the criteria should not be seen as fixed and absolute over time. Instead, it can be useful to talk about a “service ladder”. States should strive for climbing the ladder and – over time – raise the level of service that is deemed acceptable. The ladder concept is a key element in the preparations of new global development goals and indicators after 2015.

Based on international good practice and the proposed JMP indicators, Sida believes that the normative criteria outlined below are practical to use in the coming ten-year period. Individual countries may of course set more ambitious criteria, either upfront or as it progresses up the ‘service ladder’. The United Nations may also adopt criteria which are more far-reaching for the post-2015 period. Sida will therefore continuously follow the international debate and normative work on how best to define and monitor realisation of human rights.

⁷ As a proxy for quality, basic service means water from an “improved source” (e.g. piped water, borehole or – in rural areas – a protected spring/well). In the long-term, water quality shall meet WHO standards.

Quality	Water safe to drink ⁷ . Toilets hygienic and can be safely accessed. Hand washing available
Accessibility	<30 minutes roundtrip to water supply point. <30 people sharing toilet. No open defecation.
Availability	At least 20 litres per person and day. Sanitation facilities available 24/7.
Affordability	Less than 5% of household income spent on WSS services.
Acceptability	Provision of services culturally acceptable and gender sensitive.

The question of cost recovery and financial sustainability has evoked much debate in relation to the rights-based approach to water and sanitation. If everyone has a right to access these services, does this mean that services should be free for all? No, it does not. But the human right to WSS means that costs and charges associated with securing services must be affordable for all. To ensure affordability, State parties must adopt necessary measures, such as:

- (a) use of a range of appropriate low-cost techniques and technologies;
- (b) appropriate pricing policies such as free or low-cost water; and
- (c) income supplements.

Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.⁸

In some cases, basic service of water and sanitation may have to be provided for free to those who are unable to pay, as is being done in South Africa. However, it will be for each State to chart its own road towards realisation of rights. By using a sound combination of measures, cost recovery can still be met on the whole. A core principle should always be equity in provision; ensuring that public service systems and tariffs are not designed in such a way that they marginalise poor and disadvantaged groups.

Photo: Johanna Palmberg/Sida



⁸ UN Committee on Economic Social and Cultural Rights (2002), General Comment no. 15.

What Sida does

Sida sees no inherent contradiction between sustainability goals and a human rights based approach. The global consensus on the human right to water and sanitation is an opportunity and an important vehicle to reach out with water and sanitation to disadvantaged groups in the post-2015 period. The human rights based perspective is entirely embedded in Sida's approach to WSS and poverty reduction and is not an 'add-on' to ongoing support and policies. Already in 2002, Sida established a "Rights Perspective" to guide all operations, which led to an early mainstreaming of a human rights based approach in country programmes.⁹

Demanding rights from below: the case of Kenya

Sweden has supported the WSS sector in Kenya since 1968. In 2010, Kenya adopted a new constitution that makes access to "safe water in adequate quantities" and "reasonable standards of sanitation" a constitutional right. While this is a great stride forward, the situation on the ground is bleaker. Around half of the 40 million Kenyans lack basic water and sanitation. Apart from prioritising pro-poor investments in its sector support, Sweden also offers grants to civil society organisations and non-state actor networks for advocacy and civil monitoring of services. Public debate initiated by grassroots organisations increases accountability, brings up equity aspects, and reminds state organs of the constitutional rights to water and sanitation in Kenya.

Sida contributes to the achievement of the MDGs on water and sanitation through support to actors and programmes on global – as well as national – level. Currently, WSS programmes feature in the development cooperation with Bangladesh, Bolivia, Burkina Faso, Kenya and Mali. It can be noted that two of the countries where Sida supports WSS – Bolivia and Kenya – are both among the few countries in the world that have made access to WSS a constitutional right. Furthermore, a new strategic platform for all Swedish development co-operation – in place from 2013 – enables a sector-transcending approach which may stimulate synergies between key sectors such as water, sanitation, hygiene, health and education.

In Sida's countries of operation, there is cooperation directly with the governments and with non-state actors. A substantial part of Sida's support in the sector is channelled through the UN system, especially for global programmes. In addition, Sida offers credits and guarantees for WSS investments as well as international training programs, and also participates in normative policy processes on the international arena. As Sida works in many contexts and through a multitude of actors, it would be possible to address several of the levels in the "3-4-5 pyramid".

However, resources are limited and Swedish support to WSS also needs to focus on where it makes a difference and where Sweden has comparative advantage. Below, some focus areas are outlined that may strengthen Sweden's contribution to realisation of human right to water and sanitation.

⁹ The HRBA integration in Kenya was evaluated in: SADEV (2008), Integrating the Rights Perspective in Programming

A cross-cutting priority: women's rights to water and sanitation

No woman and no girl should be without access to safe and adequate water supply and sanitation services. Sida will focus on poor women's right to water and sanitation as a vehicle to promote everyone's right to these basic services, and as a key contribution to the global development goals beyond 2015. A fulfilment of the rights of the most marginalised (poor women and girls in low-income countries) implies actively closing the inequality gap. To do this in practice, more transparency, active participation, and strengthened accountability mechanisms in the formal provision systems will be needed, alongside investments. For meaningful participation, stakeholders must both have the possibility (i.e. be invited) to participate as well as the capacity to process information and confidence to act on it. Transparency and accountability in turn require better data management and more detailed and robust monitoring mechanisms. Sida will therefore afford higher priority to initiatives that are results-oriented and evidence-based, allowing our partners and us to keep better track of the progress of the human right to water and sanitation. It must however be acknowledged that gender-based inequalities at the level of the individual are difficult to detect and monitor, as monitoring efforts normally does not go beyond the household level. Sida could therefore also support initiatives that visualise and bring attention to women's and girls' needs and preferences in water, sanitation and hygiene, for example through advocacy. Priority should also be given to initiatives that bring services closer to people's homes, as the transport burden, as well as the safety problems associated with accessing water and toilets at a greater distance – affect women and girls disproportionately.

Women's right to water and sanitation need to be contextually adapted in Sida's bilateral and global programmes and in normative work. Below, we provide some examples of how this priority can be promoted in practice in the different contexts.

Photo: Ruby Cup



Bilateral long-term co-operation

Dialogue with governments. Focus on fulfilment of rights through expanding basic service first, in a non-discriminatory manner and with particular focus on women.

Support initiatives that improve transparency and accountability, including sector reforms that strengthen openness and inclusive governance. In countries where rights to WSS are inscribed in national legislation, Sida could contribute to stronger regulatory and legal enforcement mechanisms. Complementary support could be provided to civil society watchdogs that promote human rights – especially rights of women and girls – to WSS.

Support initiatives that strengthen data management and evidence-based monitoring as a means for tracking inequalities in WSS. This could include strengthening national data management by public authorities or by non-state actors. Promote collection of disaggregated data that describe access to service for different groups (urban/rural, men/women, rich/poor etc) which allows tracking of equity gap. Initiate peer-reviews with like-minded donors and provide knowledge and links to global normative processes.

Photo: Elisabeth Lorenz/Sida



Multilateral programmes

Dialogue with global normative organisations. Sida contributes to programmes and initiatives of regional banks, UN organisations and large NGOs that also typically have an important normative role. Sida can take this as a dialogue entry point to promote women's rights to WSS within these partner organisations.

Knowledge on Human Rights to WSS. Multilateral organisations have a key role to play in developing the global knowledge base on how human right to water and sanitation can be realised, e.g. through reforms and accountability mechanisms. Multilaterals can contribute good practices and examples to the normative global dialogue and raise awareness among rights holders globally.

Data management, evidence-based monitoring and reporting. Promote and support multilateral programmes that can strengthen national capacity for evidence-based monitoring of human rights to WSS, improved structures for data management and global reporting procedures. This should be closely connected to the post-2015 MDG processes for monitoring and reporting.

WSS in fragile states. In a weak governance context and in areas affected of conflict, multilateral organisations have a special role since the primary duty bearer may be incapable of realising basic human rights. Sida can therefore continue to support multilateral organisations that enable a basic and safe access to services also in fragile environments.

Photo: Helen Holm



Global policy / normative dialogue

Promoting women's right to water and sanitation in global policy development. Sida can use its cumulative experience and good reputation on a human rights based approach to ensure a high visibility of women's rights to WSS as a vehicle for realising water and sanitation for all.

Promote sanitation for all. Experience so far shows that sanitation services attract the lowest priority from national and local authorities as well as from donors, despite its importance from a health perspective. Sida could therefore promote sanitation and hygiene in global policy dialogue.

Global monitoring of progress and results. Sida is already actively contributing to the process led by the Joint Monitoring Programme on developing targets and indicators for the post-2015 period. The JMP platform is an example of an important avenue for Sida to exchange experience and knowledge on how to track progress based on credible and robust monitoring mechanisms. In this process, Sida will be able to make use of experience from bilateral and global programmes.

Other Key processes

Continuous learning and methods development. Sida will continue to harness the experience gained in programmes supported which will feed in to internal normative processes as well as external dialogue. With respect to water and sanitation, Sida will continue to gather lessons learnt and best practices, and will develop occasional Issue Briefs to synthesis and disseminate knowledge generated.

Cooperation/results strategies. The new process for preparing co-operation strategies requires focussing on results areas rather than on interventions in specific sectors. This will require new approaches and capacities among Sida's staff and organisation.

Partners' capacity strengthening. Sida should also continuously support capacity building among its partners in the field of human rights and WSS. This can for example be done through International Training Programmes and other forms of technical co-operation.

The world has made tremendous progress since the year 2000 on access to water supply. The target on halving the proportion of people in the world without access to safe water was met five years ahead of schedule. Despite this success-story, the hard part remains. The poorer countries are lagging behind and access to sanitation is falling far short of targets. Thousands of children die every day due to unsafe water and lack of sanitation. The new global consensus that water and sanitation is a human right puts the responsibility on governments to reach out with services to the previously marginalised, in the post-2015 period. Sida is working with a human rights based approach as an integral part of its international development cooperation on water, sanitation and hygiene.

Through support to national and multilateral programmes as well as global normative processes, Sida wants to:

- Promote the rights of women in the area of water supply, sanitation and hygiene as a means to secure everyone's right to services and closing the inequality gap
- Strengthen routes of accountability through supporting inclusive governance, transparency in public service and an active civil society
- Contribute to better data management and a more coherent monitoring at national and global level that allows tracking the equity of services.

Further reading

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Sida works according to directives of the Swedish Parliament and Government to reduce poverty in the world, a task that requires cooperation and persistence. Through development cooperation, Sweden assists countries in Africa, Asia, Europe and Latin America. Each country is responsible for its own development. Sida provides resources and develops knowledge, skills and expertise. This increases the world's prosperity.

Realising the Human right to water and Sanitation

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