

Human Rights To Water and Sanitation Advocacy Toolkit



Foreword

Safe drinking water and sanitation are fundamental human rights. They are essential to life and all other rights. As we mark the 10th anniversary of the recognition of the human right to safe water and sanitation by the United Nations, it is tragic that austerity, underfunding and privatisation continue to undermine these rights for billions of people.

Decades of evidence demonstrates that quality, publically provided water and sanitation services provide the most efficient and effective way to achieve the human rights to water, sanitation and hygiene (WASH). When governments attempt to outsource their responsibility for these rights to private companies, whose primary motive is profit, it is the poorest and most vulnerable who suffer. Tariffs inevitably increase, whilst water quality, access, availability and workers' rights are eroded.

This guide is published at a time when the urgency of universal access to safe, publically owned and managed water and sanitation cannot be overstated. The COVID 19 pandemic has exposed how these critical services continue to be denied to billions of the world's poorest and most vulnerable people and the catastrophic impact this has on public health.

The right to safe water and sanitation for all depends on governments making the right political and economic choices. This guide, produced in partnership with End Water Poverty, provides the tools for trade unions, NGOs and other campaigners to ensure that these rights are reflected in domestic law, and demand and defend quality publically provided water and sanitation services.

We hope this guide makes a useful contribution to the realisation of the rights to safe water and sanitation for all.

Dave Prentis
General Secretary
UNISON

Contents

INTRODUCTION	XX
1. THE HUMAN RIGHTS TO WATER AND SANITATION	XX
1.1 Human rights and the rights to water and sanitation in international law.....	XX
1.2 The human rights to water and sanitation: from international to regional and domestic law.....	XX
1.3 Obligations of States regarding the human rights to water and sanitation.....	XX
1.4 Assessing State compliance with economic, social and cultural rights (ESCR).....	XX
1.5 Funding water and sanitation: a necessity for the realisation of human rights.....	XX
1.6 Human rights mechanisms.....	XX
1.7 Human rights monitoring and reporting and the Universal Periodic Review (UPR).....	XX
2. THE PRIVATE SECTOR AND RIGHTS TO WATER AND SANITATION	XX
2.1 Global trends toward privatisation of water and sanitation.....	XX
2.2 Private sector participation (PSP) in water and sanitation: myth and reality.....	XX
2.3 Investment treaties and the human rights to water and sanitation.....	XX
3. THE CASE FOR QUALITY PUBLIC MANAGEMENT OF WATER AND SANITATION	XX
3.1 The growth of remunicipalisation.....	XX
3.2 Public–public partnerships: an alternative to privatisation.....	XX
4. PUTTING HUMAN RIGHTS INTO PRACTICE: ENGAGING IN NATIONAL ADVOCACY	XX
4.1 Using human rights as a tool to ensure access and oppose privatisation.....	XX
4.2 Key steps in planning and implementing advocacy strategies.....	XX
4.3 The security of human rights defenders.....	XX
5. CONNECTING MOVEMENTS AND UNIONS TO SCALE UP IMPACT GLOBALLY	XX
5.1 Building coalitions.....	XX
TOOLS	
Human rights to water and sanitation checklist for State actors.....	XX
Conducting a PESTLE analysis.....	XX
Developing a theory of change.....	XX

List of acronyms

ASEAN	Association of Southeast Asian Nations
CCJ	Caribbean Court of Justice
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CEEAC	Economic Community of Central African States
CERD	Committee on the Elimination of Racial Discrimination
CoE	The Council of Europe
ECHR	European Court of Human Rights
ECOWAS	Economic Commission for West African States
ESCR	Economic, Social and Cultural Rights
GDP	Gross domestic product
GLAAS	Global Analysis and Assessment of Sanitation and Drinking-Water
HRC	Human Rights Council
IACtHR	Inter-American Court of Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICSID	International Centre for Settlement of Investment Disputes
IFC	International Finance Corporation
IMF	International Monetary Fund
IPHRC	Independent Permanent Human Rights Commission
ISDS	Investor-State Dispute Settlement
MWSS	Metropolitan Waterworks and Sewerage System (Metropolitan Manila)
NGO	Non-governmental organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organisation of Islamic Countries
OP-ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
PPP	Public-private partnership
PPWSA	Phnom Penh Water Supply Authority
PSP	Private sector participation
UN	United Nations
UNICEF	The United Nations Children's Fund
UPR	Universal Periodic Review
SAARC	South Asian Association for Regional Cooperation
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
WASH	Water, sanitation and hygiene

Introduction

Having access to safe drinking water and sanitation are fundamental human rights.

When individuals, families and communities cannot access these rights, this can have devastating consequences on their health, safety, prosperity and dignity.

Waterborne diarrhoeal diseases are responsible for 2 million deaths globally each year, with the majority occurring in children under five.¹ In fact, UNICEF found that, on average, children under five around the world are [more than 20 times](#) more likely to die from illnesses linked to unsafe water and bad sanitation than from conflict. Unsafe water can also result in malnutrition, stunting, and increased diarrhoeal diseases, and other negative impacts, preventing children from learning and adults from earning a livelihood.

When it comes to water and sanitation, a rights violation can take many forms. It can look like a mother collecting unsafe water next to an open sewer. It can look like ineffective septic tanks, shoddily constructed and flooded pit latrines, and open sewers that expose people to disease. It can look like the millions of people who are forced to defecate and urinate in the open because they lack access to a toilet. What's more, when households lack access to clean water and sanitation, the effects can ripple throughout a community, as diseases can quickly spread through polluted water and contact with faecal matter.

Despite these devastating consequences, the global crisis continues. A majority of the world's population still lacks safe sanitation, and three in ten lack safe drinking water.² The world remains off track to meet Sustainable Development Goal 6, a commitment established by the United Nations (UN) General Assembly in 2015 and adopted by all UN Member States to "[ensure] availability and sustainable management of water and sanitation for all" by 2030. Progress globally has been slow and uneven, and in some instances, there have



Quite simply, water is a matter of life and death... The growing water crisis should be much higher on the world's radar."

António Guterres, Secretary-General of the United Nations (2018)

even been setbacks. For instance, in cities around the world, the number of urban residents who lack safely managed sanitation has increased from 1.9 billion in 2000 to 2.3 billion in 2015, costing \$223 billion a year in health costs, lost productivity and wages.³

It is important to stress that a lack of access to safe water and sanitation isn't a question of resource scarcity, but rather a result of bad social, political and economic choices. A 2006 UN report stated that "water insufficiency is often due to mismanagement, corruption, lack of appropriate institutions, bureaucratic inertia and a shortage of investment in both human capacity and physical infrastructure."⁴ Systemic marginalisation and discrimination can deprive some groups of their rights and not others. Economic decisions resulting in the privatisation of water services, failure to regulate private companies that prioritise profits and lack of adequate public investment in essential infrastructure and services can also result in rights violations. Poor resource management can cause a shortage of water for household use. For instance, water usage in industries such as agriculture has ballooned, causing water use to grow at more than twice the rate of the human population over the last century. Agriculture now accounts for 70% of global freshwater use.⁵

1. The human rights to water and sanitation

That's why using human rights as a tool and language for advocacy can be so effective. It sets out clearly the obligations of States and other actors in ensuring these rights and includes mechanisms that provide recourse to those who have experienced a violation of their rights. Because it makes clear the basic norms and standards that all must have access to, the implementation of the Sustainable Development Goals (SDGs) and other development projects cannot be complete without considering the international human rights framework. What's more, it is up to human rights defenders to define what these rights look like in a changing world: one in which climate crises, political upheaval and other developments threaten to disrupt life in many areas of the planet.

While acknowledging these multiple barriers, this handbook will emphasise one in particular: the privatisation of water and sanitation services. Private providers put profits before people, are not legally bound to deliver services to people who cannot pay, and often provide sub-par service that leaves the poorest and most marginalised communities behind. By addressing the human rights to water and sanitation through the lens of protecting public services, this handbook aims to capitalise on the strengths and shared values of labour movements around the world.

Moreover, while water privatisation has impacted communities and come under scrutiny in both developed and developing countries, this toolkit will mainly focus on cases in the Global South. As a result, it does not go into detail into case studies in the Global North or phenomena that can characterise privatisation primarily in developed countries such as the use of private equity to finance water and sanitation systems.

The goal of this toolkit is to equip you with tools to:

- Make the case for quality, publicly provided water and sanitation services
- Campaign for the human rights to safe drinking water and sanitation to be enshrined in national law
- Campaign against privatisation and forms of management and ownership models that threaten service provision based on public solidarity
- Build strong civil society coalitions, particularly with trade unions, to achieve these goals

This toolkit is structured in six sections:

Section one provides an overview of the human rights to water and sanitation, what these rights entail and State responsibilities to ensure these rights.

Sections two and three will discuss the privatisation of water and sanitation services and the importance of publicly owned and funded water and sanitation systems: in other words, it will discuss the economic and political decisions that can impact the rights to water and sanitation.

Sections four, five and six will provide tools for advocacy to ensure rights are enshrined in domestic law, how to use the law to enforce rights and how to scale impact by building coalitions between unions and other movements.

What you will learn from this section:

- ✓ How human rights, and the human rights to water and sanitation, are a part of international law
- ✓ What the human rights to water and sanitation entail
- ✓ What States must do, or refrain from doing, to guarantee these rights
- ✓ Tools for ensuring that the human rights to water and sanitation are adequately reflected in national laws, policies and regulations

1.1 Human rights and the rights to water and sanitation in international law

Human rights are crucial in ensuring that everyone has access to the basic necessities of life, including water and sanitation. Some reasons for which human rights are an important framework for advocacy include:

- establishing an international legal framework that sets out a minimum universal standard and clearly defines rights and obligations
- promoting service provision that is pro-poor and non-discriminatory⁶
- positioning people as active agents, claiming what is rightfully theirs, not merely as victims or recipients of charity

The UN General Assembly first explicitly recognised a right to water and sanitation through the 2010 [Resolution 64/292](#), meaning that 2020 will mark the 10th anniversary of the rights to water and sanitation. The rights to water and sanitation are derived from the right to an adequate standard of living as stipulated in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other international human rights treaties. The UN has recognised that the rights to water and sanitation are required for the realisation of other human rights, including the right to adequate housing, the right to the highest attainable standard of health, and the right to life.

The human rights community recognises the human rights to water and sanitation as distinct rights that are integrally related and equally important. That's because, when seen as a single right, the importance of water tends to take precedence, even though a lack of safe sanitation is a major cause of water contamination, and without it, safe drinking water is impossible. Households that lack adequate, safe and hygienic sanitation can cause health problems to ripple through a community.⁷

Every year, a new resolution on the human rights to water and sanitation is negotiated by States, alternating between the Human Rights Council (HRC) and the UN General Assembly. The most recent resolution at the time of writing was [adopted](#) by the UN General Assembly on December 18, 2019. It calls on States to ensure the realisation of the human rights to safe drinking water and sanitation for all in a non-discriminatory manner; take into consideration the New Urban Agenda⁸, which reiterates the right to adequate housing; ensure access to equitable sanitation and hygiene for all women and girls, as well as for menstrual hygiene management; and address the widespread stigma and shame surrounding menstruation and menstrual hygiene. It also acknowledges the adverse effects of climate crisis on the realisation of the rights to water and sanitation.

What criteria must be met for the enjoyment of the human rights to water and sanitation? The “AAAQ” test:

- **ACCESSIBILITY:** Water and sanitation services must be accessible to everyone within, or in the immediate vicinity of, households, health and educational institutions, public institutions and places and workplaces. Physical security must not be threatened when accessing facilities.
- **AVAILABILITY:** The human right to water entitles everyone to sufficient and continuous water for personal and domestic uses. Likewise, a sufficient number of sanitation facilities has to be available.
- **AFFORDABILITY:** The price of sanitation and water services must be affordable for all without compromising the ability to pay for other essential necessities guaranteed by human rights such as food, housing and health care.
- **QUALITY:** Water has to be safe for consumption and other personal uses, so that it presents no threat to human health. Sanitation facilities must be hygienically and technically safe to use. To ensure hygiene, access to water for cleansing and hand washing at critical times is essential.

Quality also includes ACCEPTABILITY, meaning that sanitation facilities, in particular, have to be culturally acceptable. This will often require gender-specific facilities, constructed in a way that ensures privacy and dignity.

Source: OHCHR, https://www.ohchr.org/Documents/Issues/Water/FAQWater_en.pdf

1.2 The human rights to water and sanitation: from international to regional and domestic law

While international norms can strengthen the legitimacy of rights claims in national courts, the human rights to water and sanitation cannot be enforced if these rights are not included in national and local laws, policies and regulatory frameworks. Without a clear domestic legal framework, the State cannot be held accountable by the individuals, or “rights-holders”, who live within its jurisdiction. Countries that have amended their constitutions to establish the human right to water include the Netherlands, Uruguay, Bolivia, and South Africa.

In 2004, legal aid organisations and non-governmental organisations (NGOs) in Indonesia challenged the Law on Water Resources that allowed private sector companies to sell packaged tap water, on the basis of the Constitution’s guarantee of the right to water. The law was revoked by Indonesia’s Constitutional Court in 2015, and in 2019, the House of Representatives passed a law on water resources to prioritise public access to the country’s fresh water.

Human rights principles must be applied in national legal systems in order to realise any and all human rights, including the rights to water and sanitation. These principles include⁹:

Non-discrimination and equality

In most countries, national constitutions guarantee non-discrimination and equality. This safeguards individuals when discrimination occurs either intentionally or—as is often the case—unintentionally.

Access to information and transparency

The laws of a country should require enough resources to be devoted to ensuring access to information. It should also ensure that everyone can access information regarding water and sanitation services.

Participation

In the process of developing laws, regulations and policy-level instruments, active, free and

meaningful participation must be guaranteed. The more detailed the legal policy frameworks, the higher the chance that meaningful participation will happen.

Accountability

When rights have been violated, there should be laws, systems and institutions in place that allow people to claim these rights. When service providers are unable to fix problems, quasi-judicial institutions, such as national human rights institutions or ombudspersons, should be able to step in. In addition, everyone should be able to legally enforce their rights through a court.

Meanwhile, the way in which national courts interpret the rights to water and sanitation can have a ripple effect in those of other countries. For example, courts in Pakistan and Bangladesh have drawn from the way that Indian courts have interpreted the right to water.¹⁰



Human rights to water and sanitation checklist for State actors

Use the table below to conduct an audit of how well the human rights to water and sanitation are reflected in the constitution, laws, regulations and policies. The table has been reproduced from “Realizing the human rights to water and sanitation: A Handbook” (OHCHR, 2014).

	Yes	In progress	No
CONSTITUTION			
Does the Constitution guarantee water and sanitation as clearly defined human rights that can be claimed by all?			
Does the Constitution guarantee that equality and non-discrimination have the status of overarching legal principles? Does the Constitution also include the concept of affirmative action?			
Is the right to a remedy and/or access to justice enshrined in the Constitution?			
Are independent oversight bodies established by the Constitution? Are these bodies competent to hear individual complaints?			
LAWS AND/OR REGULATIONS			
Please note: The elements in the checklist may figure in laws and/or in regulations, depending on the constitutional or legal framework.			
Do laws and/or regulations define the human rights to water and sanitation, using the legal content of availability, accessibility, quality, affordability and acceptability, as guaranteed under international human rights law, as a basis to give substance to these rights?			
Are standards regularly reviewed, and do standards progressively improve over time?			
Does standard-setting take account of the barriers facing particular individuals?			
Do standards take into account which type of service would be most efficient in the context of the local situation?			
Are there building requirements and regulations in place that cover general standards for water and sanitation facilities; for example, toilets in rented accommodation, the provision of single-sex toilets in public places?			
Is there an independent regulatory body in place that operates on the basis of human rights and is tasked to set standards based on the legal content of the human rights to water and sanitation?			
Has the State undertaken any measures to regulate water supply by informal vendors?			
Do the State and/or providers give access to formal water and sanitation services to households regardless of their tenure status?			
NON-DISCRIMINATION AND EQUALITY			
Are there laws and/or regulations in place that prohibit direct and indirect discrimination and promote equality in access to human rights?			
Are there laws and/or regulations in place to ensure that everyone, including people who live far from centres of information and people who cannot read, is able to access information relating to water and sanitation services, in relevant languages and formats?			
PARTICIPATION			
Are there laws and/or regulations in place that guarantee that full, free and meaningful participation takes place before any decision is finalised, including participation in the process of developing any laws, regulations or policy level documents?			
Do laws and/or regulations set out precise rules on participation in matters of infrastructure, service levels, tariffs, and the operation and maintenance of water and sanitation services?			

	Yes	In progress	No
ACCOUNTABILITY			
Are there effective complaint mechanisms at the level of the service provider?			
Are there quasi-judicial bodies available that can resolve conflicts?			
Can individuals enforce their rights against both the State and private actors?			
Are remedies provided by law; for example, restitution, compensation, legally binding assurances of non-repetition, and corrective action?			
Do laws and/or regulations provide for mechanisms that ensure individual complaints are effectively heard and processed in a timely way?			
AVAILABILITY			
Where people do not have access to a networked water supply system, do laws and/or regulations provide for the right of everyone to use natural resources for domestic and personal uses?			
Do laws and/or regulations prioritise water for personal and domestic uses over other uses?			
Does the legal definition of sanitation include not only the instalment of the toilet, but also the collection, transport, treatment, disposal or reuse of human excreta, and associated hygiene? Do regulations include guidance on safe construction, regular cleaning, and emptying of pits or other places that collect human excreta?			
Do laws and/or regulations clearly spell out what “availability of water and sanitation” means in different settings where people spend significant amounts of time, including homes, workplaces, schools and kindergartens, hospitals and health care centres, places of detention and public places?			
Do laws and/or regulations specify that facilities allowing for hand-washing, and for women and girls to practise good menstrual hygiene, must be available in schools and other public institutions?			
Do standards include a minimum amount of water to be available, and a maximum permitted interruption of services?			
ACCESSIBILITY			
Do laws and/or regulations take into account the maximum distance and time it takes to reach a facility, as well as the location of the facility, in order to ensure the physical security of users; do these standards consider the barriers faced by particular individuals and groups?			
Are the State and/or service providers obliged to give access to formal water and sanitation services to households regardless of their tenure status?			
QUALITY AND SAFETY			
Are there laws and/or regulations in place that protect the quality of water resources; for example, by prohibiting the dumping of sewage and waste and demanding the containment of any seepage of fertilisers, industrial effluents and other pollutants?			
Do regulations set standards on water quality and wastewater treatment, and are they relevant for both public and private service providers?			
Are water quality standards set according to the national and local contexts, considering contaminants that occur only in specific regions?			
Are there regulations on householders’ arrangements for waste collection and disposal?			
AFFORDABILITY			
Do regulations provide for mechanisms that ensure the affordability of services for all, while considering connection costs, operation and maintenance; do regulations establish subsidies, payment waivers and other mechanisms to ensure affordability?			
Do regulations provide opportunities for users to pay their arrears, or to receive services for free, when they are unable to pay?			

	Yes	In progress	No
Is there an independent regulatory body in place that operates on the basis of human rights and is tasked to determine the affordability of services, including the setting of tariffs?			
POLICIES			
Is there a comprehensive water and sanitation policy in force that integrates the human rights to water and sanitation and their legal content?			
Is the policy reviewed regularly to track discriminatory effects; if it is found to discriminate, is it repealed or amended?			
Are existing inequalities in accessing water and sanitation currently assessed? Are there plans and policies developed that use indicators and benchmarks to assess both the steps taken and the results achieved in the elimination of inequalities in water and sanitation service provision?			
Are there enough public facilities in place and planned to ensure that people without domestic access to water and sanitation can use these as intermediate solutions?			
Does the State provide for measures raising awareness of the possibility of obtaining information; for example, information about water and sanitation services, management and infrastructure?			
Are there programmes and policies in place that guarantee and encourage the participation of all stakeholders?			
Do policy-level documents plan for clear assessments of current accessibility standards?			
Are there any mechanisms or programmes to train local authorities in how to manage budgets, tariffs and the operation and maintenance of facilities?			
Is there a policy that outlines processes for ensuring water safety?			
Are the people who are least able to pay identified, and are there specific targeted programmes to ensure that water and sanitation services are made affordable for them?			
Are there policy-level documents that outline methods and plans for raising awareness and changing behaviour, especially with regard to hygiene practices?			
Do policy level-documents set clear targets and timelines for reaching a basic level of service for all?			
Do policy-level documents set clear targets and responsibilities for meeting general acceptability standards?			
Are there policies in place that effectively organise awareness raising and education programmes to eliminate unacceptable practices; for example, manual scavenging, and the exclusion of women from daily life during menstruation?			
Are there policies in place that plan to improve services continually over time?			

Now that you've completed the checklist, are you ready to begin planning an advocacy campaign to ensure that the human rights to water and sanitation are adequately reflected in national laws, policies and regulations? Turn to section 4

Additional resources:

- [Realizing the human rights to water and sanitation: A Handbook](#) by the former UN Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, on behalf of the OHCHR
- [Making Human Rights Work for People Living in Extreme Poverty](#) by International Movement ATD Fourth World and Franciscans International

1.3 Obligations of States regarding the human rights to water and sanitation

If the human rights to water and sanitation exist, who is responsible for them? Under international human rights law, States have the primary responsibility to ensure the full realisation of all human rights—in other words, they are the primary “duty-bearers”. When it comes to the realisation of the human rights to water and sanitation, their primary obligation is to create an environment conducive to the realisation of these rights, while also fulfilling the following obligations:

- **To respect** – States must refrain from interfering with the enjoyment of economic, social and cultural rights (e.g., by disconnecting the water supply when people are unable to pay, polluting or depleting water resources, or depriving detainees or those in emergency situations from accessing water and sanitation).
- **To protect** – States must prevent violations of such rights by third parties (i.e., States must therefore ensure that the involvement of other actors, like private corporations, do not result in human rights violations, for example because of disconnections or unaffordable tariffs, by adopting necessary safeguards¹¹).
- **To fulfill** – States must take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realisation of such rights, including developing, implementing and monitoring strategies, plans and programmes and raising, allocating and utilising a sufficient amount of public funds (e.g., States must develop water management plans to ensure that other demands on available freshwater, including for industrial and agricultural use, do not prevent personal and domestic needs from being met¹²).

These categories of obligations are taken from the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, adopted in 1997.

States are often more willing to focus on the positive steps they have taken to realise these rights through their policies and legislation, such as formally recognising rights in their constitutions and laws and putting processes in place to ensure that services are affordable and of good quality. However, they also have an obligation to recognise and address violations of the human rights to water and sanitation—something that they are often less willing or able to do.¹³

1.4 Assessing State compliance with economic, social and cultural rights (ESCR)

There are various key criteria for evaluating how well States comply with their obligations to protect, respect and fulfill ESCR, keeping in mind that States are encouraged to prepare national legislation, regulations and policies that go beyond the minimum legal requirements set by international human rights law:

- ✓ **Progressive realisation**¹⁴ implies that every State must demonstrate that it is making continual progress toward the goal of universal coverage for water and sanitation, even given the reality that the resources at the disposal of a government are limited, and that fulfilling economic and social rights will take time.
- ✓ The principle of **maximum available resources**¹⁵ mandates that governments must use every resource at their disposal in the pursuit of human rights goals. This not only includes setting aside public funds specifically for water and sanitation, but also raising the amount of government revenue collected in the event of a funding gap—in other words, improving domestic resource mobilisation.

- ✓ States that are parties to the ICESCR are also under a **“minimum core” obligation**¹⁶ to ensure the satisfaction of, at the very least, “minimum essential levels of each of the rights” in the ICESCR. This means that it is the duty of the state to prioritise the rights of the poorest and most vulnerable people.
 - ✓ Governments must abide by the principle of **non-retrogression**¹⁷: in other words, they must refrain from actions that lead to a deterioration in the enjoyment of economic and social rights.
 - ✓ Governments must respect the principles of **non-discrimination and equality** by abiding by their human rights obligations without discriminating—intentionally or unintentionally—based on race¹⁸, colour, gender¹⁹, language, religion, political or other opinion, national or social origin, property²⁰, birth or other status.²¹
- The principle of non-discrimination and equality requires more than just legal recognition, but also the redistribution of resources to marginalised or specially oppressed groups.
- ✓ The principle of transparency, participation and accountability means that governments must give people formal ways to hold the state accountable, participate in policy-making, and access the information required to do so.
 - ✓ Extraterritorial obligations refer to obligations that States have with regards to complying with human rights obligations outside of its territory and “[taking] action, separately, and jointly through international cooperation, to realise human rights universally”²². This includes matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.

While the following human rights treaties do not explicitly mention water and sanitation, they outline basic human rights obligations underlying the rights to water and sanitation as economic, social and cultural rights:

- [Universal Declaration of Human Rights](#)
- [International Covenant on Economic, Social and Cultural Rights](#)
- [International Convention on the Elimination of All Forms of Racial Discrimination](#)

Water and/or sanitation are mentioned in the following international human rights treaties and regional instruments:

- [The Convention on the Rights of the Child \(arts. 24 and 27 \(3\)\)](#)
- [The Convention on the Rights of Persons with Disabilities \(art. 28\)](#)
- [The Convention on the Elimination of All Forms of Discrimination against Women \(art. 14 \(2\)\)](#)
- [International Labour Organization \(ILO\) Convention No. 161 concerning Occupational Health Services \(art. 5\)](#)
- [The African Charter on the Rights and Welfare of the Child](#)
- [The Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa](#)
- [The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights \(art. 11.1\)](#)
- [The Arab Charter on Human Rights \(art. 39\)](#)

1.5 Funding water and sanitation: a necessity for the realisation of human rights

As States must use maximum available resources toward the realisation of human rights, the rights to water and sanitation—and indeed, all ECSR—are strongly influenced by the macroeconomic policies of governments. This includes the ways in which public funds are raised and spent, including taxes, cross-subsidies from other public services (for example, levying a special tax on telecommunications services to be transferred to the public water company), bonds, public banks, external aid, and user tariffs (although, as mentioned above, they must be set at an affordable rate without compromising households’ ability to pay for other essential needs).

To properly meet their obligations where there is a funding gap for public services, governments must act to improve domestic resource mobilisation. This can include:

- increasing tax rates
- introducing new taxes
- improving tax collection
- addressing tax avoidance, illicit financial flows and corruption, which reduce the resources available to government to support the realisation of rights

Primarily as a result of increases in domestic resource mobilisation and Government decisions to invest in essential services to reduce poverty, **Ethiopia** almost **tripled** its funding for WASH in real terms from 2008 to 2016 (from \$200 million to \$600 million).

Water and sanitation funding gaps are a major challenge to providing quality services. A 2017 report released by UN-Water²³ found that:

- 80% of countries report insufficient financing to meet national WASH targets
- Over 70% of countries use data when deciding how and where to allocate funds, though only one-third have financial plans that are defined, agreed and consistently followed
- While 70% of countries have specific plans to reach low-income communities with WASH, in practice only 25% of WASH aid was spent on basic systems, which is a proxy for aid targeted to the unserved, particularly in rural areas



In **Mali**, less than 50% of the national cost estimate for infrastructure between 2012 to 2015 was spent. During the 2014 Sanitation and Water for All High-Level Meeting, the Ministry of Economy and Finance pledged, from 2015, to allocate at least 0.2% of the Gross Domestic Product (GDP) to health and sanitation and 5% of the national budget to sanitation and water.

In **Burkina Faso**, about 80% of the of the national cost estimate for water and sanitation was spent between 2013 to 2015. Nevertheless, while still 38 billion FCFA (US\$ 64 million) short, this helped the country to reach the Millennium Development Goal target for drinking-water.



For **Senegal** to achieve its WASH objectives in its 2017 Sector Development Policy Letter, spending for WASH will need to more than double (+119%). Levels of expenditures for similar budget lines in 2016 were around 82 billion FCFA (US\$140 million), whereas estimated financial needs for the period 2016–2025 amount to an average of 180 billion FCFA (US\$310 million) per year.

Sources: “UN-Water GLAAS 2019: National Systems to Support Drinking-Water, Sanitation and Hygiene – Global Status Report 2019,” (World Health Organization, UN-Water, 2019), https://www.who.int/water_sanitation_health/publications/glaas-report-2019/en/; Mali: Country Highlights, World Health Organization, 2015, https://www.who.int/water_sanitation_health/glaas/2008_pilot/mali-3-dec.pdf

On a global level, how to finance the SDGs, including access to safe water and sanitation, is a major question underlying the international development agenda. In 2015, the [Addis Ababa Action Agenda](#) was adopted out of the UN Conference on Financing for Development, outlining commitments by States to fund global development and prominently features public-private partnerships (PPPs). The Addis Agenda has been criticised by some civil society groups

for “[allowing] aid commitments to dry up” and “merely [handing] over development to the private sector without adequate safeguards”, allowing them to generate profits at the expense of the poorest communities.²⁴ Meanwhile, civil society has [called](#) for fundamental changes to the global financial system to ensure proper wealth redistribution, including multilateral solutions to strengthen the legal framework for debt crisis prevention and resolution.

PPPs and blended finance: two failed models of leveraging private financing for development

One priority of the financing for development agenda promoted by international financial institutions, such as the World Bank, and business-orientated groups, such as the Business and Sustainable Development Commission launched in Davos, has been to mobilise more private capital using public resources. Considering the extent of privately-held wealth across the world, the assumption is that redirecting a small portion of this private investment into funding the SDGs would sufficiently close the funding gap.

Two ways of doing so include PPPs, or the provision of a public service through a long-term contract between a private party and a government entity, and blended finance, in which governments offer up public funding in the form of subsidies or guarantees to make private investment more appealing. However, both models have proven to be unsuccessful, in addition to diverting funding from where the need is greatest. In the last decade, low-income countries have received less than 2% of total private investment financing for infrastructure, compared to upper middle-income countries that have received more than two-thirds.

When it comes to **blended finance**, the World Bank has championed its so-called “billions to trillions” agenda that aimed to use official assistance to raise trillions in total blended financing. However, research has shown that the potential of blended finance to bridge the SDG financing gap is overblown: on average, for every \$1 of multilateral development bank and development finance institution resources invested, only \$0.37 private finance was mobilised in low-income countries. What’s more, evidence [suggests](#) that blended finance fails to mitigate risk and instead, in the words of the secretariat of the United Nations Conference on Trade and Development, “boomerangs back to the public purse and the tax payer”.

Sources: “Trade and Development Report 2019: Financing a Global Green New Deal” (United Nations Conference on Trade and Development, 2019), https://unctad.org/en/PublicationsLibrary/trd2019_en.pdf; Bassam Sebti, “From Billions to Trillions: Converting Billions of Official Assistance to Trillions in Total Financing,” World Bank Blogs, October 5, 2016, <https://blogs.worldbank.org/voices/from-billions-to-trillions>; Samantha Attridge and Lars Engen, “Blended Finance in the Poorest Countries: the Need for a Better Approach” (Overseas Development Institute, April 2019), <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12666.pdf>.

Want to learn more about how private sector participation in the water and sanitation sector can undermine the human rights to water and sanitation? Skip ahead to section 2.

Government budgets are political documents: they are the result of choices and priorities. That's why an active civil society is crucial to ensuring that government budgets serve the population by allocating resources toward supplying services needed to satisfy the right to an adequate standard of living, including funds for operations and investment. Meaningful civil society participation hinges on a transparent and accountable budget process that allows the public to verify whether adequate funds have been earmarked for water and sanitation. In the 2019 Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS), three out of four countries did not report disaggregated budget or expenditure data for drinking-water and sanitation, making it difficult to track spending and to effectively and sufficiently allocate budgets to WASH.²⁵

What's more, underfunding does not only have an impact on service quality and availability, but also on the management of the water and sanitation sector. Underfunding can weaken institutions tasked with regulatory oversight for WASH service delivery by depriving them of the resources to undertake the required surveillance. GLAAS 2019 also showed that only 12% of countries reported that urban drinking-water surveillance is conducted at the required frequency. Underfunding can also result in the absence of publicly-available reports on water and sanitation, lack of surveillance and oversight and an inability to follow up when there is a problem with service provision.

Additional resources:

- [Auditing Economic Policy for Human Rights: A guide for activists and advocates](#) by the Center for Women's Global Leadership

1.6 Human rights mechanisms

Regional human rights systems, consisting of regional instruments and mechanisms, play an increasingly important role in the promotion and protection of human rights. Regional Human Rights Mechanisms and Arrangements include the following:

A. Africa

- [African Commission on Human and People's Rights](#)
- [African Committee of Experts on the Rights and Welfare of the Child](#)
- [African Court on Human and People's Rights](#)
- [East African Court of Justice](#)
- [Economic Commission for West African States \(ECOWAS\) Court](#)
- [Economic Community of Central African States \(CEEAC\)](#)
- [Southern African Development Community \(SADC\) Tribunal](#)

B. Americas

- [Inter-American Commission on Human Rights](#)
- [Inter-American Court of Human Rights \(IACtHR\)](#)
- [Caribbean Court of Justice \(CCJ\)](#)

C. Arab

- [Organisation of Islamic Cooperation \(OIC\) Independent Permanent Human Rights Commission \(IPHRC\)](#)
- [Arab Human Rights Committee](#)

D. Asia

- [South Asian Association for Regional Cooperation \(SAARC\)](#)
- [Association of Southeast Asian Nations \(ASEAN\)](#)

E. Europe

- [The Council of Europe \(CoE\)](#)
- [Commissioner for Human Rights](#)
- [European Court of Human Rights \(ECHR\)](#)
- [European Union Agency for Fundamental Rights](#)
- [OSCE Office for Democratic Institutions and Human Rights](#)

At the international level, the **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights** (OP-ICESCR) entered into force in 2013. A complaint mechanism created through the Protocol allows individuals or groups to file formal complaints on violations of ESCR if their country has become a party to the OP-ICESCR treaty through ratification or accession. This provides recourse for those who cannot access justice through domestic courts.

Additional resources

- [Toolkit for Action for the OP-ICESCR](#) by the International NGO Coalition for an Optional Protocol
- [Claiming ESCR at the UN: a manual on utilizing the OP-ICESCR in strategic litigation](#) by the International Network for Economic, Social and Cultural Rights

The **UN Special Rapporteur on the human rights to safe drinking water and sanitation** is part of a group of Special Procedures mandate-holders (called Special Rapporteurs, Independent Experts, Special Representatives of the Secretary General, and Working Groups). These are human rights experts who report to the Human Rights Council, and often also to the UN General Assembly, on a particular human right or a particular country's human rights situation, as well as advocate for these rights.²⁶ Special rapporteurs can:

- Conduct fact-finding missions
- Advocate for the recognition and realisation of human rights
- Promote human rights and clarify what they mean in practice
- Send Allegation Letters and Urgent Appeals to States that are alleged to be violating human rights
- Issue press releases and make statements on issues related to the human rights to water and sanitation
- Prepare thematic reports

1.7 Human rights monitoring and reporting and the Universal Periodic Review (UPR)

The UPR reviews the fulfillment of human rights obligations and commitments of all 193 UN Member States once every four and a half years. It provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. Its purpose is to improve the human rights situation and support States in making progress toward the fulfillment of human rights, and each State under review submits a written report as a central part of the process.

Governments are expected and encouraged to conduct national consultations with stakeholders, including civil society, prior to the UPR. In addition to participating in these consultations, civil society organisations can send information on the human rights situation in the country via the UPR database (<https://uprdoc.ohchr.org>), take the floor at the Human Rights Council during the adoption of the report, and monitor and participate in the implementation by the government of the UPR recommendations.

2. The private sector and rights to water and sanitation

More information on how to engage with the UPR can be found below:

- [Universal Periodic Review](#) official OHCHR website
- [The Civil Society Compendium](#) (2017) by UPR Info
- [Using the Universal Periodic Review for Human Rights Online](#) (2016) by Global Partners Digital and the Association for Progressive Communications
- [A Practical Guide for Civil Society: UPR](#) by OHCHR
- [Civil Society Follow up Kit](#) (2015) by UPR Info
- [Technical Guideline for Stakeholder Submissions for the 3rd cycle](#) (2017) by OHCHR

Sources

"Addis Ababa Outcome: Milestone or Millstone for the World's Poor?." *The Guardian*, July 16, 2015. <https://www.theguardian.com/global-development/2015/jul/16/financing-for-development-summit-outcome-addis-ababa-milestone-millstone-poverty>.

Attridge, Samantha, and Lars Engen. "Blended Finance in the Poorest Countries: the Need for a Better Approach." Overseas Development Institute, April 2019. <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12666.pdf>.

de Albuquerque, Catarina. "Common Violations of the Human Rights to Water and Sanitation." *Report of the Special Rapporteur on the human right to safe drinking water and sanitation*. OHCHR, June 30, 2014. <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/CommonHRViolations.aspx>.

FAQ. *Special Rapporteur on the Human Rights to Water and Sanitation*, n.d. https://www.ohchr.org/Documents/Issues/Water/FAQWater_en.pdf.

"Financing the SDGs: Domestic Resources, International Public Finance, and Increased Accountability to Leave No One Behind." 2019. https://washmatters.wateraid.org/sites/g/files/jkxooof256/files/financing-the-sdgs-domestic-resources-international-public-finance-and-increased-accountability-to-leave-no-one-behind_1.pdf.

McGraw, George S. "Defining and Defending the Human Right to Water and Its Minimum Core: Legal Construction and the Role of National Jurisprudence." *SSRN Electronic Journal*, 2010. <https://doi.org/10.2139/ssrn.1721029>.

Mali: Country Highlights. World Health Organization, 2015. https://www.who.int/water_sanitation_health/glaas/2008_pilot/mali-3-dec.pdf.

"Realizing the human rights to water and sanitation: A Handbook." OHCHR, 2014. <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>.

Sebti, Bassam. "From Billions to Trillions: Converting Billions of Official Assistance to Trillions in Total Financing." *World Bank Blogs*, October 5, 2016. <https://blogs.worldbank.org/voices/from-billions-to-trillions>.

"Trade and Development Report 2019: Financing a Global Green New Deal." United Nations Conference on Trade and Development, 2019. https://unctad.org/en/PublicationsLibrary/tdr2019_en.pdf.

"UN-Water GLAAS 2019: National Systems to Support Drinking-Water, Sanitation and Hygiene – Global Status Report 2019." World Health Organization, UN-Water, 2019. https://www.who.int/water_sanitation_health/publications/glaas-report-2019/en/.

Winkler, Inga. "The Human Right to Sanitation." *University of Pennsylvania Journal of International Law*, 2016, 1331–1406.

What you will learn from this section:

- ✓ How neoliberal policies and global trends have led to the normalisation of privatised water and sanitation services
- ✓ How privatisation has weakened water and sanitation services, eroding access, diminishing quality and endangering human rights
- ✓ Types of private-sector involvement in the water and sanitation sector

The privatisation of water and sanitation services poses a threat to the full realisation of human rights. The main reason for this is because when water is seen as a commercial good to be exploited by the private sector, companies run services to maximise profits for shareholders. What's more, to recover the high upfront costs of water and sanitation infrastructure, the private sector must either hike rates or cut corners over the long-run, affecting the quality of services, environmental standards and labour rights.²⁷

To recover costs, privately-run systems generally operate through a **full cost recovery model**, in which all costs of providing services, including operating and investment costs, are paid for through user tariffs. This can cause conditions that deprive communities of safe water and safely managed sanitation, especially when rates increase and households can no longer afford to pay.

2.1 Global trends toward privatisation of water and sanitation

Neoliberalism, and its corresponding promotion of free market trade, deregulation of financial markets, individualisation, and the shift away from public welfare provision, took hold around the world in the 1980s. It normalised the idea that public goods such as education, water and health care can be better provided by private investors,

based on a rationale that reliance on the free market was preferable to reliance on the public sector. This led to the promotion of public–private partnerships (PPPs), arrangements under which the private sector supplies infrastructure assets and infrastructure-based services that traditionally have been provided by the government.



Who are some of the major players in the global campaign to privatise water?

The **World Bank** is the largest funder of water management in the developing world. The World Bank's **International Finance Corporation (IFC)** is responsible for loans and financing. Since the 1980s, the IFC has promoted the privatisation of water as a broader set of policies designed to shrink governments, with States being forced to adopt austerity measures before being able to receive loans and financing, including the use of PPPs.

At the same time, the International Monetary Fund (IMF), while expressing concerns about the cost and sustainability of PPPs, continues to push for PPPs at the country level. For instance, the IMF loan for Tunisia in 2016 attached a specific conditionality calling for the implementation of a comprehensive PPP law together with a package of austerity measures.

The world's three largest water companies are France's Suez and Veolia, and the UK's Thames Water. Suez and Veolia, along with Saur, another French conglomerate, have captured [more than two-thirds](#) of the international private water market, expanding into every region of the world. These companies have worked closely with the World Bank to lobby governments and international trade and standards organisations for pro-privatisation changes in legislation and trade agreements.

Various water crises of the 1990s caused a wave of privatisations to occur around the globe, with more than 260 contracts having been awarded to private operators for the management of urban water and sanitation utilities in the developing world between 1990 and 2006.²⁸ International financial institutions providing assistance to developing States have been active proponents of the privatisation agenda, including the World Bank and the IMF. In 2002, for instance, the IMF issued 12 loan agreements containing conditions for water privatisation and/or cost recovery, to States with high levels of poverty including Rwanda, Honduras and Angola²⁹; in Portugal, the European Central Bank, the IMF and the European Commission called on the government to “accelerate its privatisation programme” of water and sanitation services as a condition for bail-out funding.³⁰ The privatisation of water and sanitation does not just increase inequalities within countries: it also contributes to global disparities between rich and poor countries. Profits that result from privatisation contracts often

serve to fill the coffers of multinational companies based in wealthy countries, channelling wealth away from governments and people living in some of the world's poorest regions. Its direct consequences on the human rights of individuals around the world have been devastating, from causing cholera outbreaks and other life-threatening health outcomes to erecting sanitation systems where workers are required to clean excrement by hand.

The drive to maximise profitability and **full cost recovery**, or the idea that all costs must be recovered through tariffs, are the primary reason that PPPs fail in developing countries.³¹ Households are incapable of bearing the full burden of financing the water and sanitation system. Over 50% of countries say that household tariffs are insufficient to recover operation and maintenance costs, leading to an increase in disrepair and service failure ([GLAAS 2017](#)). Moreover, subscribing to a full cost recovery model often results in the poor becoming cut off from

water and sanitation services. That's why services should be funded not only through user fees (or household incomes) but also public funds (and in some cases, official development assistance (ODA)). Plans for funding water and sanitation services should include targeted measures to ensure affordability for low-income users.

In 2014, three UN water experts [stated](#): “Disconnection of water services because of failure to pay due to lack of means constitutes a violation of the human right to water and other international human rights”—even though this is something that often occurs when private companies take control of water and sanitation provision on terms that allow them to set and collect tariffs. In 2015, the European Parliament acknowledged that the “privatisation of basic utilities in sub-Saharan Africa in the 1990s has, inter alia, hampered the achievement of MDGs on both water and sanitation, as the focus of investors on cost recovery has, among other things, intensified inequalities in the provision of such services”.³²

Around the world, private-sector involvement in water and sanitation has resulted in:

- Poor performance and service quality
- Skyrocketing water bills that penalise the poor
- Limited access to water services
- Underinvestment in services and infrastructure
- Disputes over operational costs and price increases
- Difficulties and high costs associated with monitoring and regulating private operators
- Lack of financial transparency, anti-trust activities on the part of large private utilities and corruption
- Workforce cuts, poor working conditions and labour violations
- More discrimination and lack of equality, with negative impacts disproportionately impacting groups including the poor, rural communities and women

Once privatisation contracts are signed, any disputes that arise can be extremely costly for the government. Arbitration pits multinational companies with large financial resources against States that often do not have millions of dollars to spend on court battles. For instance, when the Bolivian Government considered cancelling a contract with Aguas del Illimani, a subsidiary of Suez, the company had operating revenues almost six times Bolivia's entire GDP that year.

See section 2.4 for more on the Investor-State Dispute Settlement (ISDS) mechanism, which gives companies the right to file complaints against governments.

While the results of private-sector participation in the water and sanitation sector can vary widely from context to context, the negative consequences it yields can harm millions. Even in cases that are seen as more or less successful, such as Metropolitan Manila, concession contracts put governments at a disadvantage and prevent them from making decisions that put public interest first, without resulting in conclusive evidence that the private sector did a better job of overhauling and improving service than the government could have.

While proponents of privatisation laud the case of **Metropolitan Manila** as a model of success, many locals would disagree. In 1995, the Philippine National Water Crisis Act addressing Metropolitan Manila's failing water system allowed the President to privatise the operation of the indebted government agency Metropolitan Waterworks and Sewerage System (MWSS) and the Local Water Utilities Administration. Even though there were some limits to how rates could be adjusted in the concession contract, the Asian financial crisis allowed for tariffs to be hiked, rising to a rate equal to the salary a vendor would [receive](#) for a full day of work. In 2001, the private utility Maynilad stopped paying its concession fees, and went bankrupt in 2003, requiring a temporary takeover by the government. Ten years later, tariffs were around 50 and 100% higher compared to the pre-concession period.

While improvements were made, including an increase in coverage, a reduction of non-revenue water distribution, and better water quality, many argue that the government could have achieved the same under a publicly-run system. In 2019, the PPP arrangement once again came under heavy criticism after Maynilad and Manila Water won a roughly US\$145 million arbitration ruling against the Government for rejecting rate increases (a second ruling after a 2017 case penalised the Government for also refusing to hike tariffs). Most recently, the MWSS has revoked the extension of the concession contract ending in 2022 based on advice from the Department of Justice, which found that 12 provisions in the original 1997 contract put the Government at a disadvantage. The Government is currently developing new draft agreements for future negotiations with the two water companies.

2.2 Private sector participation (PSP) in water and sanitation: myth and reality

While the types of concession contracts and their content vary from context to context, and other factors may impact the success of PSP, below are some common myths associated with the promise of private-sector participation.

MYTH: Injections of private capital and entrepreneurship, customer-orientation and management efficiency, and independence from political pressures and patronage resulting from PSP, will result in improved services.

REALITY: Examples abound of instances in which the quality, availability, coverage and safety of water services have decreased or shown no improvement as a result of the failure of a profit-driven private sector to prioritise the interests and needs of users. Additionally, profits made by private operators are often distributed among shareholders rather than being reinvested in maintaining and extending service provision. The results are higher rates, a continued need for public investment, and potentially unsustainable services.

The privatisation of water in **Jakarta**, Indonesia, is widely cited as a failure of PSP. While prices rose to be among the highest in Asia, service remained poor and unreliable, even though, in 2016, the private water supplier Aetra earned profits of more than [US\\$79,000](#) per day. After privatisation in 1988, the 70% of residents who received their water from private wells were forced to shut them down and buy from the private companies, restricting their access to water.

In **Argentina**, Aguas del Aconquija was granted a concession to provide water and sanitation in the highly impoverished province of Tucumán, which caused water prices to soar, with no significant service improvements. Users reported receiving black, undrinkable water over a period of many weeks.

In **Gabon**, the French conglomerate Veolia provided years of poor service, as some sites became [decades](#) out of date. In 2018,

the Government cancelled its concession and seized the electricity and water utility. Government inspectors found that nearly all utility sites operated by Veolia were contaminated by petroleum waste.

In **Cameroon**, users have experienced water shortages, rationing, poor coverage, and high pricing following privatisation, as investments in infrastructure [lag behind](#) the rising demand for the utility.

Types of private sector participation models

Private sector participation models can vary. Below are a few:

Full privatisation entails a complete transfer of the entire publicly run water and/or sanitation provider, including all relevant infrastructure, to the private company on a permanent basis. That means that the private company assumes full responsibility over asset management, capital investment, operations/maintenance and human resource of entire water or wastewater systems. The government oversees the activities of the private provider through the introduction of legislation and regulations.

Concession contracts result in the government retaining ownership of all water and sanitation assets, while a private entity assumes responsibility for providing water and/or sanitation services for a limited period of time (usually 25-30 years). These are one of the most common types of public-private partnerships.

Joint ventures entail arrangements whereby public and private sectors join together in a single entity to provide water and sanitation services. Under this arrangement, risks related to maintenance costs are typically the responsibility of the government, whereas the private sector only invests in initial infrastructure.

In **build-operate-transfer contracts**, private actors may be in charge of activities including building and operating new water and sanitation facilities. At the end of the contract (usually lasting 20-30 years), the facilities are transferred to the government. The private sector can generate revenues through tariffs to cover operating costs, maintenance, debt principal repayment, financing costs and returns for shareholders. (This guide focuses on projects where a private operator is introduced to run the utility.)

MYTH: The profit-driven nature of private companies incentivises them to find ways to be more productive, reducing operating costs while increasing the volume of services.

REALITY: The profit-driven nature of private companies creates many perverse incentives, causing companies to hike user tariffs, fail to invest in the long-term sustainability of infrastructure, and under-serve less profitable communities.

In **Senegal**, privatisation resulted in access to water and sanitation being improved in urban, but not in less profitable rural areas: an example of private-sector priorities trumping public interests.

MYTH: The best way of funding water and sanitation is to charge users the full cost of the service (using a full cost recovery approach) as endorsed by the private sector, thus allowing the costs to be recovered.

REALITY: The private sector's focus on full cost recovery and profit generation prevents the poor and marginalised from accessing essential services, as has been shown time and time again in instances where the policy has been implemented. In sub-Saharan Africa, projections estimate that water services could become too expensive for about 70% of households if providers were to seek full cost recovery.³³

In **South Africa**, privatisation in the 1990s ushered in full cost recovery tariff policies and the introduction of pre-paid water meters, with which users must pay for services upfront. Millions of people living in poverty who were unable to afford fees had their water supply cut and turned to contaminated sources for their drinking water out of necessity, leading to the worst cholera outbreak in South Africa's history. At its end in early 2002, 250,000 people had been infected and 300 had died.

When water was privatised in **Bolivia** in 2000, a Cayman Islands corporation called Aguas del Tunari hiked rates by 35% within the first two months of operation, whereas the concession contract guaranteed a 15% profit for the private company. To pay for large-scale repairs, water rates increased by 400% over the course of the concession, sparking the creation of the movement Coordinadora por la Defensa del Agua y la Vida in the city of Cochabamba. At one point, protests numbered up to 100,000 workers, peasants, environmentalists and professionals.

MYTH: The poor will be able to adapt to higher user tariffs if they are raised progressively.

REALITY: Tariffs increases, even progressive ones, frequently result in water being shut off for households living in poverty, and government need-based subsidies can exclude the neediest residents who lack a utility connection. Even the World Bank has noted that “getting the private sector to focus on the alleviation of poverty and to design tariffs in a way that does not discriminate against the poor has proved hard to achieve in practice.”³⁴

When a lease contract was enacted in **Guinea** in 1990, a government subsidy for water tariff to be phased out over a six-year period was enacted to assist households with higher tariffs. Immediately after privatisation, rates more than **doubled** to cover the operators' daily costs. In 1996, at the end of the subsidy, prices had increased by 1,467% from the rate prior to privatisation (from GNF 60/m³ to 880 GNF/m³), exceeding the target of 1,100%. Moreover, the connection costs amounted to 90,000 GNF, or US\$90—too expensive for even the middle class. The sector became once again publicly-run in 2001.

MYTH: Water must be priced to reflect its value as an increasingly precious commodity to reduce wasteful consumption.

REALITY: In fact, household use of water accounts for only 12% of total water use, whereas agriculture accounts for 69% of annual water withdrawals globally (and in some arid countries, up to 90%) and industry accounts for 19%.³⁵ Adopting better approaches to managing and allocating water resources in these sectors and protecting ecosystems could go much further in alleviating water stress. When water restructuring programs involve PSP, private companies have also been shown to engage in non-sustainable water usage practices³⁶ as well as deplete watersheds.³⁷

MYTH: Due to the budget constraints of the public sector, governments have no choice but to turn to the private sector to alleviate public coffers.

REALITY:

- Private capital is not a substitute for public funding. By nature, it is more volatile, and since private financing is riskier than government borrowing, significantly more expensive. This extra cost is typically passed on to households.
- Concession contracts are commonly structured to guarantee a rate of return, which means that risks are still borne by the public sector. What's more, the private sector frequently relies on public funds to pay for investments in infrastructure, which correspond to about 3/4 of the cost of delivering water.
- Relying on private, external finance leads to currency risk, as multinational corporations usually insist on fixing water rates in US dollars. This can be extremely disadvantageous in the event of currency devaluation, as was the case in Manila during the Asian financial crisis.
- Properly monitoring and regulating the private sector also entails high costs and resources that can greatly surpass those needed for a publicly-owned and operated service.

When the government of Tanzania signed an agreement to lease **Dar es Salaam's** water supply infrastructure to a joint venture between British, German and Tanzanian companies, it was expected to be a model for services that could be expanded and improved through PSP. Instead, the 10-year contract beginning in 2003 was terminated only two years after, with the private sector only contributing a fraction of the amount needed for infrastructure repair and leaving lending agencies and the government to bear responsibility for investment risks. The British company Biwater **failed** to install new domestic pipework and carry out promised spending, while water quality declined, rates skyrocketed and revenue decreased. Since the creation of a new public water operator in 2005, coverage has been extended and some aspects of service delivery have improved—showing that a public operator can outperform private companies.

Due to pressure from the World Bank and the IMF, **Ghana** privatised its water utilities in 2006. To reduce its risks, the private sector sought an arrangement in the form of a management contract that could allow the private sector to carry out operations and receive guaranteed profits without making any direct investment. As a result of poor performance and unmet targets, the Government did not extend the contract with Aqua Vitens Rand Ltd that expired in 2011, and the water sector returned to public ownership and operation.

MYTH: Private-sector involvement is necessary to guarantee long-term, sustainable investment in the sector.

REALITY: The private sector has no incentive to invest to sustain services beyond the duration of their concession period. Moreover, as mentioned above, the drive for increased profits can impact the sustainability of services when investment is not made to improve services or repair infrastructure at risk of failing.

In **Chile**, the water privatisation that began in 1981 under General Pinochet would become emblematic of neoliberal reforms heavily promoted by the World Bank and IMF. It established a model for water management that strengthened private water rights, adopted a market-based allocation system and reduced government oversight. Privatisation has kept prices unnecessarily high, delivered poor service and done little to address concerns over insufficient supply in the future.

MYTH: Private sector involvement results in greater accountability.

REALITY: Regulatory agencies are often incapable of holding the private sector to account and of monitoring, evaluating, and inspecting water quality and rates, due to lack of resources or powers. For instance, in the Philippines, the concession contract has [prevented](#) the Commission on Audit from examining the accounting records of private companies Maynilad and Manila Water to determine where revenue goes. In Buenos Aires, a concession agreement was negotiated without consulting the regulatory agency. As a result of the agency also being rarely consulted in subsequent concession-related matters, it was incapable of protecting consumers' interests.³⁸

2.3 Investment treaties and the human rights to water and sanitation

Bilateral investment treaties are signed between States—typically a rich country and a developing nation, though agreements between countries of similar economic status are becoming more common. Their purpose is to give commercial companies certain guarantees when they invest overseas, such as fair treatment and protection from expropriation. Their number has exploded over the past 30 years—while in 1989, there were only 385 bilateral investment treaties, today, there are more than [2,500](#).

The private sector and sanitation workers' rights

When services normally provided by the government are carried out through private sector contracts, this tends to have a negative effect on pay, job security and social security—accentuating a trend since the 1980s of a decline in workers' bargaining power, the rise of temporary and casual employment, and a stagnation in real wages. This is equally true for sanitation workers, who empty pit latrines and septic tanks, maintain sewers and drains, and operate faecal sludge and waste water treatment plants. In developing countries, this often means manually emptying septic pits or tanks, frequently without proper equipment or protective gear. Private companies may also fail to invest in infrastructure where workers do not come into contact with faecal matter. The problem is not only that costs are often cut at the expense of workers, but that outdated sanitation infrastructure that the private sector fails to maintain or properly upgrade can make work less safe.

These treaties give companies the right to file complaints against governments, and the rate at which this mechanism has been used has accelerated in the last decade. The ISDS mechanism, for instance, allows foreign investors to sue governments and provides disproportionate privileges to foreign investors at the expense of universal and good public services.

Over the past two decades, as the human rights to water and sanitation have gained increasing prominence and legitimacy with governments around the world, investors have increasingly been using ISDS during this same period to challenge public interest measures to address water pollution

or to reduce water tariffs. ISDS is inscribed in most of the 3,400 international investment agreements that exist worldwide.³⁹ This means that when governments decide to reclaim control over public services from the private sector or make decisions regarding the water and sanitation sector, investor protection found in treaties can undermine their ability to do so.

What's more, most of the international agreements giving investors access to these tribunals have sunset clauses, under which their provisions remain in force for a further 10 or even 20 years, even if the treaties themselves are cancelled.

For instance, in **Argentina**, a bilateral investment treaty between Argentina and France allowed French multinational water companies to sue the government when it refused to raise rates in the wake of the 2001-2002 financial crisis, leading to a 10-year legal battle. After authorities terminated Vivendi's contract to supply water to Tucumán province when the company increased rates by 104% and failed to invest adequately in the system, resulting in low water quality, a 2007 ruling ordered Argentina to pay \$105 million to the private company. Since then, it has lost two additional cases, against Azurix (an Enron subsidiary) and Suez, AGBAR and Vivendi. Examples such as these demonstrate that the risk of litigation resulting from privatisation puts governments in a lose-lose situation.

Sources

Conca, Ken. *Governing Water: Contentious Transnational Politics and Global Institution Building*. MIT Press, 2013.

Estache A., Philippe C.. 2012. "The Impact of Private Participation in Infrastructure in Developing Countries: Taking Stock of about 20 Years of Experience." ECARES Working Paper, 2012-043, Université Libre de Bruxelles, Brussels.

European Parliament resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water, http://www.europarl.europa.eu/doceo/document/TA-8-2015-0294_EN.html.

Gassner, Katharina, Alexander A. Popov, and Nataliya Pushak. *Does Private Participation Improve Performance in Electricity and Water Distribution? Trends and Policy Options No. 6*. Washington DC: World Bank (2009). www.ppiaf.org.

Hall, David, and Emanuele Lobina. "Public Policy Options for Financing Sewerage Systems." In *Water and Sanitation Services: Public Policy and Management*, 104-21. London, UK: Earthscan, 2009.

Hughes, Richard A. "Pro-Justice Ethics, Water Scarcity, Human Rights." *Journal of Law and Religion* (25:2, 2009-2010): 521-540.

Kapoor, Tanya. "Is Successful Water Privatisation a Pipe Dream?: An Analysis of Three Global Case Studies." *Yale Journal of International Law* 40, no. 1 (2015): 158-92.

Irwin, Timothy, Samah Mazraani, and Sandeep Saxena. "How to Control the Fiscal Costs of Public-Private Partnerships." IMF, October 16, 2018. <https://www.imf.org/en/Publications/Fiscal-Affairs-Department-How-To-Notes/Issues/2018/10/17/How-to-Control-the-Fiscal-Costs-of-Public-Private-Partnerships-46294>.

Marin, Philippe. "Public-Private Partnerships for Urban Water Utilities A Review of Experiences in Developing Countries." World Bank, 2009. https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/ppp_testdumb/documents/FINAL-PPPsforUrbanWaterUtilities-PhMarin.pdf.

"Public Financing: Ensuring Just and Sustainable Water Infrastructure." Public Financing: Ensuring Just and Sustainable Water Infrastructure. Blue Planet Project, 2016. <http://www.blueplanetproject.net/waterjustice/wp-content/uploads/TK-PublicWater-Dec8-Finance.pdf>.

Renaldi, Adi. "Months After Court Rules to End Private Control of Jakarta's Water, City Is Still Stalling." *Vice*, April 6, 2018. https://www.vice.com/en_asia/article/8xkmyk/months-after-court-rules-to-end-private-control-of-jakartas-water-city-is-still-stalling.

"SDG 6 Synthesis Report 2018 on Water and Sanitation." UN-Water, May 2018. <https://www.unwater.org/publications/executive-summary-sdg-6-synthesis-report-2018-on-water-and-sanitation/>.

The United Nations World Water Development Report 2019: Leaving No One Behind (UNESCO WWAP 2019) <https://unesdoc.unesco.org/ark:/48223/pf0000367306>.

Varghese, Shiney. "Investor-State Dispute Settlement Millstone around the Right to Water?" Investor-State Dispute Settlement Millstone around the Right to Water? Institute for Agriculture and Trade Policy, December 2017. https://www.iatp.org/sites/default/files/2017-12/2017_12_11_ISDSWaterRights_SV_f_0.pdf.

Verougstraete, Mathieu, and Isabelle Enders. "Efficiency Gains: the Case of Water Services in Manila." UNESCAP, April 2014. <https://www.unescap.org/sites/default/files/Case%20%20-%20Efficiency%20Gains%20-%20Manila%20Water.pdf>

"Why Did City Water Fail?" WaterAid, May 28, 2008. <https://washmatters.wateraid.org/publications/why-did-city-water-fail-the-rise-and-fall-of-private-sector-participation-in-dar-es>

3. The case for quality public management of water and sanitation

What you will learn from this section:

- ✓ Why the public management of water and sanitation is preferable to privatisation
- ✓ Alternatives to privatisation, including:
 - the recovery of the public management of water through remunicipalisation
 - the implementation of new models of democratic and participatory management such as public-public partnerships

Attracting private investment and full cost recovery regimes have failed to fix the water infrastructure funding gap, which is why strong public investment is the only sustainable and equitable way to invest in basic services. That means that governments must step up to increase public-sector capacity, expertise and funding. The goal of governments should be to develop a sustainable water policy based on human rights: in other words, people must be able to claim their rights to water and sanitation services that are guaranteed by public administration.

Want a refresher on States' human rights obligations are when it comes to funding water and sanitation? Flip back to section 1.4.

The benefits of publicly owned, financed and operated services are multiple. For instance:

- Publicly-operated services are more effective, efficient and responsive to public need, and more effective at reducing poverty and inequality by allowing the government to enact policies that are pro-poor and anti-discriminatory
- In addition to helping achieve its social justice goals, public management can help governments achieve environmental objectives, including good watershed management

- Strong public management systems are capable of promoting institutions and governance structures that guarantee transparency, information, accountability and effective citizen participation
- The State can borrow more cheaply than the private sector if it needs to supplement tax revenue

Even when services are publicly operated, people must remain vigilant in ensuring that the government implements public services that truly serve the interests of all. When it comes to opposing privatisation, returning water supply to public management is only the first step—subsequent public management must also guarantee citizen and democratic control, transparency and accountability.

That's because, with the wrong approach, the public sector can also reproduce some of the inequalities caused by the corporatised model of the private sector. For instance, in the absence of private-sector participation, public utilities in some cities in the Global South have been restructured so that they behave more like private enterprises and provide services on a cost recovery basis, at the urging of multilateral and bilateral development agencies⁴⁰, restricting access for the poor. What's more, shrinking public budgets and de-investment can lead to the deterioration of public assets and services.

3.1 The growth of remunicipalisation

Remunicipalisation is far more common than we tend to believe. There have been at least 267 cases of water remunicipalisation in 37 countries since 2005, affecting more than 100 million people.

In **Phnom Penh, Cambodia**, the public operator Phnom Penh Water Supply Authority (PPWSA) has expanded access to water supply at a pace and to an extent unmatched by private models anywhere in the world. As a result of the in-house restructuring of public operator PPWSA after the downfall of the Khmer Rouge regime, service coverage reached 90% in 2007 and prices have been lowered **dramatically**.

In **Japan**, a mix of public finance, public operations and domestic public-public partnerships, mainly in the form of technical and financial assistance provided by a central governmental agency to local authorities, expanded sewerage coverage from 8% in 1965 to 69% in 2006.

Remunicipalisation is often a local response to austerity, and the reasons driving it can include ending private sector abuse or labour violations, regaining control over the local economy and resources, or providing people with affordable services. Social democratic water remunicipalisation involves robust State involvement and tends to have explicit aims of promoting social, economic and environmental justice. It can also have positive fiscal impacts: remunicipalisation in Paris allowed the city to save €35 million while reducing tariffs by 8% in the first year.⁴¹

3.2 Public–public partnerships: an alternative to privatisation

Public-public partnerships are a way to drive cheaper water projects that are more accountable and at least as efficient as one run by the private sector. This involves cities partnering with non-profit organisations to keep prices low by taking advantage of the economies of scale and sidestepping many of the legal and corporate hurdles that accompany PPPs. Eau de Paris, a vanguard in remunicipalisation, for instance, has developed public–public partnerships with service providers in Morocco, Mauritania and Cambodia.

Other institutional arrangements that present an alternative to privatisation include public community partnerships, management by local autonomous urban water utilities and community self-help systems.

In Santa Cruz, **Bolivia**, water and sanitation services are provided by multiple cooperatives, and its largest, SAGUAPAC, has successfully provided services to more than a million residents since the 1970s. In **Malawi**, technical and financial management of water utilities have improved since a public-community partnership was implemented after a period of mismanagement by private water operators.⁴² Public-community partnerships have also emerged in other Sub-Saharan African countries including **Ghana, Kenya, Tanzania** and **Zambia**.

Additional resources

- [Remunicipalisation: a practical guide for communities and policy makers](#) by Blue Planet Project

4. Putting human rights into practice: engaging in national advocacy

Sources

Adams, Ellis Adjei, and Leo Charles Zulu. "Participants or Customers in Water Governance? Community-Public Partnerships for Peri-Urban Water Supply." *Geoforum* 65 (2015): 112–24. <https://doi.org/10.1016/j.geoforum.2015.07.017>.

"Cambodia: Phnom Penh Poor Get Access to City's Clean Water." World Bank, September 1, 2010. <https://www.worldbank.org/en/news/feature/2010/09/01/cambodia-phnom-penh-poor-access-citys-clean-water>.

Castro, Jose Esteban., and Heller Léo. *Water and Sanitation Services: Public Policy and Management*. Routledge, 2012.

Mitlin, Diana, and Anna Walnycki. "Informality as Experimentation: Water Utilities' Strategies for Cost Recovery and Their Consequences for Universal Access." *The Journal of Development Studies* 56, no. 2 (2019): 259–77. <https://doi.org/10.1080/00220388.2019.1577383>.

"Remunicipalisation: a Practical Guide for Communities and Policy Makers." Blue Planet Project, 2016. <http://www.blueplanetproject.net/waterjustice/wp-content/uploads/TK-PublicWater-Dec8-Remun.pdf>.

United Nations, Inter-agency Task Force on Financing for Development, *Financing for Sustainable Development Report 2019* (New York: United Nations, 2019), available from: <https://developmentfinance.un.org/fsdr2019>.

"Encuentro De Ciudades Por El Agua Pública' Outcome Document," November 2016. https://www.tni.org/files/article-downloads/outcome_madrid_2016nov.pdf.



What you will learn from this section:

- ✓ How to use human rights legislation to ensure universal access to safe water and sanitation
- ✓ Steps that can be taken to oppose privatisation and call for the remunicipalisation of services
- ✓ Steps for planning and executing advocacy at the national and local levels

Civil society plays a crucial role in ensuring that governments take a pro-rights approach to providing water and sanitation services, ensuring public accountability and ensuring that laws, policies and regulations are enacted. In fact, one fundamental blockage in getting universal access to water and sanitation is weak accountability among government institutions, providers and sector agencies responsible for services planning, policy-making, investment and delivery. Civil society can also advocate that the government reject private sector participation (PSP) in water and sanitation services, while presenting alternatives, such as remunicipalisation or public-public partnerships.

Since 2002, human rights have been **integral** to the messages and tactics used by the pro-remunicipalisation coalition in Indonesia. The private concessions were annulled by a Jakarta district court in 2015, which argued that private sector failures resulted in violations of the human rights to water and sanitation. In 2017, in a landmark case, the Supreme Court of Indonesia ruled that services should be handed back to a public water utility because the private companies had **"failed to protect"** the right to water, and two years later, the city administration announced a plan to retake control of the tap water service.

What's more, recent years have seen an upsurge in popular movements across the world calling for respect for water rights and the de-privatisation of

water, from the protestors in **Mexico** who marched on the office of the National Water Commission on World Water Day in 2015, to citizens in **Chile**, where groups continue to campaign for public ownership of water in the context of ongoing, nation-wide protests on the cost of living, and community organisers in **Nigeria** who launched the 'Our Water, Our Right' campaign calling for the termination of a PPP agreement between Lagos and foreign private firms.

In the past year, citizens around the world have also taken to the streets to make broader demands for democratic rights, affordability and a basic standard of living—to which adequate access to water and sanitation is an essential part. One global movement consists of calling for a **Green New Deal** for sustainable development to address the key, urgent issues of climate change and economic inequality: both of which threaten the realisation of the human rights to water and sanitation.

4.1 Using human rights as a tool to ensure access and oppose privatisation

The articulation of human rights and the fight against water privatisation have often gone hand-in-hand, because the human rights framework allows people to demand that basic services be treated as something to which they are universally owed, and not as a commodity. For instance, human rights were central to efforts to oppose privatisation in Cochabamba, Bolivia and in Ghana, the government's decision not to renew a

management contract with the private company AVRL was thanks in large part to the National Coalition Against Privatisation of Water (NCAP).

National courts and other national and regional human rights mechanisms have also been used to enforce human rights around the world, to varying degrees of success. For instance, in a high-profile court case pitching poor residents of Phiri, Soweto, against the city of Johannesburg, South Africa, residents demanded an increase to allocations under the Johannesburg’s Free Basic Water policy to the minimum prescribed by the World Health Organization and to stop installation of prepaid meters. While the Johannesburg High Court ruled in favour of the residents, the city appealed, and the Constitutional Court overturned earlier decisions.

4.2 Key steps in planning and implementing advocacy strategies

There is no one-size-fits-all template for successful advocacy, because grassroots campaigns must be rooted in the realities and aspirations of local communities. While there are many different approaches, it is important to choose the one that is most likely to achieve your advocacy goals.

Advocacy can range from cooperative to confrontational, and approaches can be seen as falling on the inter-related continuum below:



Actions that tend to be more cooperative include providing information, lobbying, giving advice and sharing knowledge, whereas actions that can be more confrontational can include public campaigning, lobbying and media work. Most civil society organisations do a combination of these activities, and/or adapt their activities depending on the issue at hand.

Below, you’ll find some key steps that can help you develop a successful advocacy strategy based on your specific context.

✓ Define the issue by identifying the underlying problems, issues and surrounding factors and gathering supporting evidence

Review and analyse the government’s current position and identify how the proposed change relates to the government’s strategic objectives—if applicable—and how it addresses existing challenges. Some questions you can ask include:

- What are existing government strategies or laws relating to safe water and sanitation, and how effectively have they been implemented?
- What are the direct and wider impacts of maintaining the status quo, i.e. if the policy was not implemented, or if there was minimal change (e.g. media and/or public pressure, safety concerns, standards of living concerns, deterioration in service offerings, etc.)?
- Is the problem expected to further evolve and aggravate in the future (e.g. result in deterioration of infrastructure or have negative consequence that will multiply over generations)?
- What is the estimated number of persons disadvantaged or benefitting from the policy?
- What official statistics and data are publicly available? Is data disaggregated for disadvantaged groups (e.g., by gender, by location, by socio-economic status)?
- What is the high-level initial estimate of the financial and human resource requirements to address the problem?

Conducting a PESTLE analysis

PESTLE is an analytical tool used to identify and assess the policy external environment. A PESTLE analysis involves identifying characteristics of the

surrounding environment that fall into the following categories and that impact the proposed advocacy change: “P” for Political, “E” for Economic, “S” for Socio-Cultural, “T” for Technological, “L” for Legal, and “E” for Environmental.

Political	Economic	Socio-cultural
What are the policy’s current and potential influences from the political environment? What are the government’s strategic directions? What are previous and current related policy interventions?	What are the historical and current economic trends affecting the policy? What are their economic impacts on the local and national levels (e.g. inflation, GDP, trade regulations, etc.)? On the government and the private sectors? On the short, medium and long-terms?	How does the proposed change impact society (e.g. poverty, education, culture, demographics, mobility, inclusion, etc.)? What groups does it target most? How are they impacted?
Technological	Legal	Environmental
What technological innovations are likely to affect the policy? Do appropriate technologies exist at the government and private sector levels to support technological change (e.g. systems, patents and licenses, intellectual property, etc.)?	What laws and regulations govern the policy? Is the policy determined by a federal or a local law? Are there opportunities to improve or amend the laws?	What are the environmental concerns of the policy? How does the policy support or contradict environmental policies?

✓ Set advocacy objectives

Developing a theory of change

A theory of change sets out a roadmap for how change is to be achieved. It includes the following basic components:

Objectives: Where do we want to end up?	→	Statement of purpose or intent that can be linked to impacts, outcomes or outputs		
Impacts: What do we want to change?	→	Indicators (what are we measuring?)	Baselines (what was the original state of the indicators?)	Targets (Where do we want the indicators to end up?)
Outcomes: What do we want to achieve?	→	Indicators	Baselines	Targets
Activities: What do we need to do?				
Inputs: What resources do we need?				

✓ Identify the target and target audiences

Identifying the target audience will impact the way you approach your advocacy strategy. For example, direct advocacy with parliamentarians will be necessary if you are concerned about discriminatory legislation and want to suggest amending it. Some questions to ask include:

- Who has the authority to bring about the desired change? What influence or power do they have over the issue?
- What do they know about the issue? What is their attitude towards the issue? What do they really care about?
- Who are the groups or individuals that influence target decision-makers?

✓ Define the message

Defining a core set of messages is helpful in ensuring that advocates have strong arguments to make the case for change, as well as speak with a united voice. Familiarise yourself with the international and national norms and laws that support your case. Some questions to ask include:

- Who are you trying to reach with the message?
- What do you want to achieve with the message?
- What action do you want the recipient of the message to take?
- How can you anticipate and plan for opposition?

In early 2005, the international NGOs ActionAid and the World Development Movement initiated a campaign to oppose PSP in **Dar es Salaam**, Tanzania. Since privatisation was financed in large part by the World Bank, the campaign focused on aid conditionality, in addition to highlighting increases in tariffs under the British company Biwater and the deterioration of water services. The government terminated the lease contract with the private companies the same year due to breach of contract.

✓ Access resources

The resources you have available for advocacy work will be a mix of financial, human capacity and common or shared knowledge. While, in practice, assessing and allocating resources before you begin advocacy is not always possible, evaluating resources at the beginning of the project will help you identify any gaps that need filling before you can begin a particular action. Some questions to ask include:

- What money do you have available for this advocacy project? Where is money coming from: your organisation, partners, other funders? Are there likely to be cashflow problems, or difficulties getting authorisation for spend? Roughly how much do you think you will need to implement the activities you are considering? Is your budget realistic, and based on actual costs or quotes?
- Who will be available to work on the different aspects of the project? Do the key people have the right skills and experience? If not, can you train them or get other people involved? Do you have access to other people who can help? Do you have volunteers to distribute leaflets, campaign supporters to write letters, community members to attend meetings? What could potential partners deliver?
- Have you been able to do enough research and analysis on the issue, on your objectives and solutions, and to identify your targets? What relationships do you, your staff, volunteers and partners have that you will be able to use?
- Do you or your partners have a strong reputation among the target audiences, with the public or the media? If not, how will you address this (e.g., working with other organisations)?
- Are there deadlines that you have to meet to ensure the success of the campaign?

✓ Choose advocacy approaches and activities

Some questions to ask include:

- What opportunities are there to contribute formally to the decision-making process or to influence it informally?
- Are there external events that you wish to use, such as elections, national or local political meetings, government planning cycles (e.g., national budget cycles), advocacy days (e.g., World Toilet Day) or international summits?
To keep track of key advocacy moments, make a calendar or timeline of key moments that may provide opportunities for advocacy to help plan and schedule activities accordingly.

✓ Identify stakeholders and work with allies

A stakeholder is any person or a group who has something to gain or lose through the outcomes of a planning process or project. Stakeholders can include national institutions, technical and financial partners, global organisations (such as philanthropic trusts), civil society groups, academics and the private sector. It is important to anticipate the positions of various stakeholders vis-à-vis your advocacy objectives.

Some questions to ask include:

- Which stakeholders are involved in the issue and how do they stand to gain or lose from proposed changes?
- How much influence do they have and how are they involved in the decision-making process, formally or informally?
- What is their position or attitude towards the issue? Do they agree or disagree with your position?

Want to learn more about setting up a successful advocacy coalition? Skip ahead to section 5.

✓ Draw up an advocacy action plan

Draw up a list of activities that will be carried out in the context of your advocacy campaign and assign responsibility for each task. Make sure that all the crucial players in your campaign are on the same page about roles and responsibilities.

✓ Review advocacy for lessons learned

Throughout the campaign, remain aware of lessons that can be drawn from successes and failures. Because trying to bring about social change often involves challenging the powerful, which means that there are often many factors out your control, advocacy will always rest on some untested assumptions. Being reflective about why particular strategies were successful or failed will help you make smarter assumptions in the future.

Examples of advocacy activities include:

✓ Engaging in national elections

In every election, human rights matter. Campaigns are a key moment to hold incumbent and future elected representatives accountable.

Ask candidates questions about how they will ensure access to safe water and sanitation; develop a “water and sanitation scorecard” to evaluate the platforms of parties; as election rules allow, share information about the issue with the general public as it relates to the campaign.

✓ **Conducting an audit of economic policy and publishing conclusions**

Use a human rights approach to analysing national and local budgets dedicated to water and sanitation utilities. For more on how to conduct an audit of economic policy, see:

- [Auditing Economic Policy for Human Rights: A Guide for Activists and Advocates](#) by the Center for Women's Global Leadership

✓ **Lobbying elected officials or decision-makers through one-on-one meetings**

During the lobby meeting, make sure to very clearly identify and discuss the 'policy ask' that the decision-maker is capable of delivering. To do so, ensure that you are prepared for these meetings with the key messages that you want to convey, supporting evidence, any existing information on the decision-maker's positions and what the decision-maker stands to gain from adopting your position. Try to see the issue from their point of view in order to persuade them to support your position based on their interests and priorities.

✓ **Building grassroots support by raising public awareness**

Educating individuals about their rights can empower them to claim them. Public campaigning can take various forms, such as holding events, circulating petitions, meeting with citizens groups or putting on street theatre. You can also build a list of supporters from the general public by collecting contact information, such as emails, so that you can contact them the next time an activity or action is organised.

✓ **Obtaining earned media**

Obtaining media coverage is one way to raise awareness for your campaign, both among the public and decision-makers. One way to do so is

to research journalists who have covered similar issues in the past, and to contact them when you organise and activity or make an announcement. You can also produce communications materials, such as a press release or an open letter, and circulate it to journalists at target media outlets. Building a media contacts list enables you to rapidly pass your messages on to all relevant media when you have a news story. If you use your contacts list like a database, recording any contact you have with a journalist, it will assist you in building and maintaining relationships with them.

✓ **Using mechanisms like regulatory bodies or courts to enforce complaints**

Human rights can be provided for in complaints procedures administered either by service providers or by regulators or equivalent bodies, as well as by ensuring people with access to justice for violations.

In **Jakarta, Indonesia**, the Coalition of Jakarta Residents Opposing Water Privatisation (KMMSAJ) which united residents, water workers and civil society organisations was pivotal in the popular movement that contributed to the cancelling of the concessions and eventual Supreme Court ruling in 2017. In 2012, KMMSAJ filed a class action lawsuit arguing that the companies deliberately underserved lower-income consumers to prioritise higher-revenue service to wealthier consumers. As a result of the citizen lawsuit, in October 2014, then-deputy governor of Jakarta Basuki Tjahaja Purnama confirmed that the Government would consider the acquisition of the private firms' shares through Jakarta's public water utility PAM Jaya.

4.3 The security of human rights defenders

Human rights defenders all over the world can sometimes face risks due to the work they carry out. That's why it's important to take actions to reduce any security threats that may be present. Being prepared and vigilant with regards to security threats is a question of ensuring that activists and campaigners can continue their work to advance human rights—and is a critical part of human rights work.

For information on how to hold governments accountable for their domestic human rights record at the Human Rights Council using the UPR, flip back to Section 1.6.

The resources below provide further advice on how to assess the security situation in a systematic way, develop strategies and tactics suited for your unique environment, and take steps to manage security.

Additional resources

- [Holistic Security: A Strategy Manual for Human Rights Defenders](#) by the Tactical Technology Collective
- [Workbook on Security: Practical Steps for Human Rights Defenders at Risk](#) by Front Line Defenders
- [Digital Security Resources](#) compiled by Front Line Defenders

Sources

"Auditing Economic Policy for Human Rights: A Guide for Activists and Advocates," URPE, Center for Women's Global Leadership (accessed January 8, 2020), <https://urpe.org/2019/12/16/auditing-economic-policy-for-human-rights-a-guide-for-activists-and-advocates>.

5. Connecting movements and unions to scale up impact globally

What you will learn from this section:

- ✓ Tools for building effective coalitions, especially between labour unions and other civil society movements

Coalition-building and cooperation between unions, popular movements, neighbourhood associations and NGOs have been common in activism for water rights. Within these coalitions, public employees' unions have historically played important roles⁴³ as democratic civic organisations that enact the decisions of their members. What's more, public employee unions play an important part of economic, civic and political life and social movements and, as democratically-governed organisations, can develop clear policy positions formulated and endorsed by its members.

Broad coalitions are more likely to achieve its goals, since groups acting alone are often easier to defeat or ignore. Successful coalition-building can achieve more and have more credibility than any single organisation. What's more, coalitions can help organisations engage simultaneously on multiple levels from global and local, facilitate the sharing of information, foster cooperation, and help members understand how their work contributes to a broader advocacy landscape. Coalitions are also able to carry out a more wide-ranging set of advocacy actions, such as a combination of public mobilisation, lobbying, education and information provision, where one organisation alone might not be able to do so.⁴⁴

Successful coalitions shape political outcomes, contribute to shaping the broader political climate, result in sustainable relationships between member organisations and result in increased internal capacity, including by strengthening the advocacy skills within member organisations and supporting organisation leaders in developing a political vision.⁴⁵ The strength of a coalition

is normally not determined by the quantity of participating organisations, but by the quality of their capacity and commitment.⁴⁶

There are many ways in which movements can work together to achieve common goals. These include:

- sharing information, capacities and/or resources
- organising joint activities or events
- publishing joint statements or letters
- ensuring coordination of advocacy activities and eliminating duplication
- mutually amplifying advocacy activities and messages

In early 2006, global pressure from activists forced the American company Bechtel to abandon an ICSID case brought against the Government for terminating their concession in **El Alto-La Paz and Cochabamba, Bolivia**, for a token payment of two bolivianos. This was the first time a large corporation had ever dropped a major international trade case and set a precedent for global public pressure in support of challenging corporate violations of fundamental rights.

5.1 Building coalitions

Here are some key coalition-building steps:

SETTING UP A COALITION

- Research existing coalitions, networks and organisations

- Clarify objectives and scope of activities
Ask the following questions: What is the purpose of the coalition? What is the scope of the coalition's activities? What are the costs and benefits of a coalition to the lead organisation? How will the coalition's objectives dictate its longevity?
- Anticipate the necessary resources
These may involve staff time for operational tasks, resources devoted to research and evidence-gathering, the development of communications materials and other resources.

RECRUIT MEMBER ORGANISATIONS

- Draw up a list of stakeholders
Ask the following questions: Will the coalition function through consensus, or through opting in? What are the strengths and weaknesses of the advocacy community? How diverse should membership be? Coalitions with a few members that are similar can communicate and work more efficiently, however they can be less representative or lack perspectives that fall outside the purview of member organisations.
- Choose stakeholders to engage and consult in developing an advocacy strategy
Identify organisations that already work on the identified issue and look broadly for other organisations that should be involved.
- Approach organisational leaders to be part of a coalition steering group or project team

CONVENE THE COALITION

- Set up an initial meeting to discuss and decide upon the mandate and activities of the coalition
Will the coalition function through consensus or will members opt-in to activities on a case-by-case basis? This will determine the extent

to which you engage other stakeholders early on in the development of your advocacy objectives, positions and messages. It will also determine whether you address sensitive issues that may not be subject to consensus from all participants.

- Decide on methods of communication (e.g., monthly conference call, email listserv, social media)
How will meetings be structured? How can engaged participation from all coalition members be encouraged during meetings?
- Ensure the healthy functioning of the coalition
How will power and leadership be shared? How will the coalition address disagreements between its members? How will activities of the coalition be carried out between meetings (e.g., through task forces or working groups)? How will new members be recruited and accepted? How will successes be celebrated and shared?

Tips for successful coalition-building:

- Ensure that coalitions are representative and include a diversity of voices, including voices that are directly representative of the communities being served
- Communicate regularly with member organisations, including through regularly-scheduled conference calls and by email

Sources

Nelson, Paul. "Citizens, Consumers, Workers, and Activists: Civil Society during and after Water Privatisation Struggles." *Journal of Civil Society* 13, no. 2 (March 2017): 202–21. <https://doi.org/10.1080/17448689.2017.1320865>.

Provost, Claire, and Matt Kennard. "The Obscure Legal System That Lets Corporations Sue Countries." *The Guardian*, June 10, 2015. <https://www.theguardian.com/business/2015/jun/10/obscure-legal-system-lets-corporations-sue-states-ttip-icsid>.

Tattersall, Amanda. "Power in Coalition: Strategies for Strong Unions and Social Change." Ithaca: ILR Press/Cornell University Press, 2010.

WaterAid. "The Advocacy Sourcebook," September 2007. <http://waterwiki.net/images/e/ec/AdvocacySourcebookWaterAid.pdf>.

Endnotes

1. "Waterborne Disease Related to Unsafe Water and Sanitation," World Health Organization (World Health Organization, August 4, 2016), <https://www.who.int/sustainable-development/housing/health-risks/waterborne-disease/en/>
2. "Financing for Sustainable Development Report 2019," (Inter-agency Task Force on Financing for Development, 2019), <https://developmentfinance.un.org/sites/developmentfinance.un.org/files/FSDR2019.pdf>
3. David Satterthwaite et al., "Untreated and Unsafe: Solving the Urban Sanitation Crisis in the Global South," World Resources Institute, December 18, 2019, <https://www.wri.org/wri-citiesforall/publication/untreated-and-unsafe>
4. "Water: a Shared Responsibility; the United Nations World Water Development Report" (WWAP, 2006), <http://www.unesco.org/new/en/natural-sciences/environment/water/wwap/wwdr/wwdr2-2006>
5. Gitika Bhardwaj et al., "Exploring the Looming Water Crisis," Chatham House, January 6, 2020, <https://www.chathamhouse.org/expert/comment/exploring-looming-water-crisis>; Hannah Ritchie and Max Roser, "Water Use and Stress," Our World in Data, November 20, 2017, <https://ourworldindata.org/water-use-stress>
6. FAQ (Special Rapporteur on the Human Rights to Water and Sanitation, n.d.), https://www.ohchr.org/Documents/Issues/Water/FAQWater_en.pdf
7. "Realizing the human rights to water and sanitation: A Handbook" (OHCHR, 2014), <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>
8. Available at <http://habitat3.org/the-new-urban-agenda/>.
9. "Realizing the human rights to water and sanitation: A Handbook" (OHCHR, 2014), <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>.
10. George S. McGraw, "Defining and Defending the Human Right to Water and Its Minimum Core: Legal Construction and the Role of National Jurisprudence", SSRN Electronic Journal, 2010, <https://doi.org/10.2139/ssrn.1721029>.
11. OHCHR, 2014.
12. FAQ (Special Rapporteur on the Human Rights to Water and Sanitation).
13. See Catarina de Albuquerque, "Common Violations of the Human Rights to Water and Sanitation," Report of the Special Rapporteur on the human right to safe drinking water and sanitation (OHCHR, June 30, 2014), <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/CommonHRViolations.aspx>
14. See the International Covenant on Economic Social and Cultural Rights (1966), Article 2.
15. See General Comment 3 of the Committee on Economic, Social and Cultural Rights (14 December 1990).
16. See CESCR 1990, General Comment 3.
17. See CESCR General Comment 3, paragraph 9.
18. See the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
19. See the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
20. As outlined in the UDHR and ICESCR, in which "property" refers to the wealth or poverty status of people.
21. See UDHR, Article 2.
22. See the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011).
23. "UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS) 2017 Report" (World Health Organization, UN-Water, 2017), https://www.who.int/water_sanitation_health/publications/glaas-report-2017/en/.
24. "Addis Ababa Outcome: Milestone or Millstone for the World's Poor?" The Guardian, July 16, 2015, <https://www.theguardian.com/global-development/2015/jul/16/financing-for-development-summit-outcome-addis-ababa-milestone-millstone-poverty>
25. "UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS) 2019 Global Status Report," (WHO, UN Water, 2019), https://www.who.int/water_sanitation_health/publications/glaas-report-2019/en/
26. OHCHR, 2014.
27. "Public Financing: Ensuring Just and Sustainable Water Infrastructure" (Blue Planet Project, 2016), <http://www.blueplanetproject.net/waterjustice/wp-content/uploads/TK-PublicWater-Dec8-Finance.pdf>
28. Philippe Marin, "Public-Private Partnerships for Urban Water Utilities A Review of Experiences in Developing Countries" (World Bank, 2009), https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/ppp_testdumb/documents/FINAL-PPPsforUrbanWaterUtilities-PhMarin.pdf
29. Ken Conca, "Governing Water: Contentious transnational politics and global institution building," Cambridge: MIT Press (2013), 221.
30. A/HRC/36/45/Add. 1 (report on mission to Portugal), para 38
31. Xun Wu and Leong Ching, "The French model and water challenges in developing countries: Evidence from Jakarta and Manila," Policy and Society, Volume 32, 2013 - Issue 2: East-West Policy Transfer, <https://www.tandfonline.com/doi/full/10.1016/j.polsoc.2013.05.004>
32. European Parliament resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water, http://www.europarl.europa.eu/doceo/document/TA-8-2015-0294_EN.html.
33. Jessica Budds and Gordon McGranahan, "Are the debates on water privatisation missing the point? Experiences from Africa, Asia and Latin America" (2003) 15:2 Environment and Urbanisation 87, 95.
34. Implementing the World Bank Group infrastructure action plan, 13 September 2003, page 25.
35. "The United Nations World Water Development Report 2019: Leaving No One Behind", (UNESCO WWAP, 2019), 13, <https://unesdoc.unesco.org/ark:/48223/pf0000367306>.
36. Richard A. Hughes, "Pro-Justice Ethics, Water Scarcity, Human Rights", Journal of Law and Religion (25:2, 2009-2010), 526.
37. Hughes, 535.
38. Tanya Kapoor, "Is Successful Water Privatisation a Pipe Dream?: An Analysis of Three Global Case Studies," Yale Journal of International Law 40, no. 1 (2015): pp. 158-192
39. Shiney Varghese, "Investor-State Dispute Settlement Millstone around the Right to Water?," Investor-State Dispute Settlement Millstone around the Right to Water? (Institute for Agriculture and Trade Policy, December 2017), https://www.iatp.org/sites/default/files/2017-12/2017_12_11_ISDSWaterRights_SV_f_0.pdf
40. Diana Mitlin and Anna Walnycki, "Informality as Experimentation: Water Utilities' Strategies for Cost Recovery and Their Consequences for Universal Access," The Journal of Development Studies 56, no. 2 (2019): pp. 259-277, <https://doi.org/10.1080/00220388.2019.1577383>
41. Martin Pigeon, "Une eau publique pour Paris: symbolism and success in the heartland of private water," N.p.: Municipal Services Project, <http://www.municipalservicesproject.org/sites/municipalservicesproject.org/files/uploadsfile/remunicipalisation-chap2-Paris.pdf>
42. Ellis Adjei Adams and Leo Charles Zulu, "Participants or Customers in Water Governance? Community-Public Partnerships for Peri-Urban Water Supply," Geoforum 65 (2015): pp. 112-124, <https://doi.org/10.1016/j.geoforum.2015.07.017>.
43. Paul Nelson, "Citizens, Consumers, Workers, and Activists: Civil Society during and after Water Privatisation Struggles," Journal of Civil Society 13, no. 2 (March 2017): pp. 202-221, <https://doi.org/10.1080/17448689.2017.1320865>.
44. WaterAid, "The Advocacy Sourcebook," September 2007, <http://waterwiki.net/images/e/ec/AdvocacySourcebookWaterAid.pdf>.
45. Amanda Tattersall, "Power in Coalition: Strategies for Strong Unions and Social Change." Ithaca: ILR Press/Cornell University Press, 2010.
46. Ibid., p. 94.

End Water Poverty,
c/o WaterAid,
2nd floor,
47-49 Durham Street,
London, SE11 5JD, UK

Tel: +44 (0) 845 6000 433
info@endwaterpoverty.org
www.endwaterpoverty.org

Produced by:



In partnership with:

