

NATIONAL HUMAN RIGHTS  
INSTITUTIONS AND WATER  
GOVERNANCE

COMPILATION OF  
GOOD PRACTICES

2nd Edition / 2020



**H**uman  
Right   
2 water

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# FOREWORD

As we celebrate the 10-year anniversary of the UN General Assembly’s resolution that access to water and sanitation is a human right, it is important to reflect on the role of National Human Rights Institutions in helping people realise their human rights to water and sanitation. This report does so in a way that is accessible to readers without sacrificing content for brevity.

The report’s researchers have done an excellent job by undertaking this important but challenging job. At End Water Poverty, we are of the view that National Human Rights Institutions are one of the most overlooked channels of accountability within the sector. End Water Poverty welcomes the best practices laid out in this report and encourages civil society to share this report widely to support the work of national human rights institutions in furthering the cause of securing access to water and sanitation to meet human rights standards.

The Claim Your Water Rights campaign from End Water Poverty will work with our members to use this report to engage in their respective countries to support National Human Rights Institutions and national governments to improve their practices on promoting and defending human rights to water and sanitation.

End Water Poverty would like to recommend this report to civil society, research organisations and governments.

## #CLAIMYOURWATERRIGHTS



# EXECUTIVE SUMMARY

This Compilation of Good Practices for National Human Rights Institutions (NHRIs) and Water Governance (the ‘Compilation’) identifies good practices on water governance and seeks to strengthen the capacity of these institutions in realising water governance related human rights. It intends to identify, gather and document important information about the best practices, along with the challenges, key factors in success and important lessons to be learnt in activities undertaken by NHRIs in relation to water governance. Based on the work already accomplished in the First Edition of the Compilation and the many success stories covered in 2014, this Second Edition aims to update and follow up on the practices already covered. It also seeks to build on innovative experiences that have been shared by a new and wider range of NHRIs. By compiling and disseminating good practices among NHRIs, the current publication is intended to serve as a contribution towards creating a community of practice of NHRIs wishing to enhance their role in water governance for the realisation of human rights.

The Compilation is divided into three parts. Section 1 on *Good Practices* gathers examples of water governance practices adopted by various NHRIs worldwide with reference to specific cases. This first section includes a general classification and conceptualisation of good practices grouped according to the following themes:

- ▶ promotion of water governance related human rights;
- ▶ protection of water governance related human rights;
- ▶ monitoring water governance related human rights;
- ▶ advising the government and parliament
- ▶ cooperation and coordination in water governance related NHRI activities.

*Section 2 on Summaries of NHRIs’ water governance activities* provides an outline of several institutions’ work in relation to water governance. This section offers concrete examples to illustrate in detail how the good practices mentioned in the first section are carried out in practice by NHRIs.

*Section 3 on Challenges and Obstacles* sheds light on both existing and future challenges along with obstacles encountered by participating NHRIs.

This Compilation covers eleven NHRIs. Human Right 2 Water is thankful to all participating institutions who have contributed by sharing their practices. The Compilation is disseminated to NHRIs worldwide to facilitate exchange of information among peers on water governance for the realisation of human rights.

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# LIST OF ACRONYMS AND ABBREVIATIONS

<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CFR</b>	Commissioner for Fundamental Rights
<b>CHRP</b>	Commission on Human Rights of the Philippines
<b>CJE</b>	Chancellor of Justice of Estonia
<b>CoCT</b>	City of Cape Town
<b>CSO</b>	Civil Society Organisations
<b>CNDH</b>	Council National des Droits de l’Homme de Côte d’Ivoire
<b>DDHPO</b>	Defensoría de los Derechos Humanos del Pueblo de Oaxaca
<b>DPE</b>	Defensoría del Pueblo of Ecuador
<b>DWS</b>	Department of Water and Sanitation
<b>ECtHR</b>	European Court of Human Rights
<b>ESC</b>	Economic, Social and Cultural
<b>ESCR</b>	Economic, Social and Cultural Rights
<b>ESCRC</b>	Economic, Social and Cultural Rights Centre
<b>FGO</b>	Hungarian Ombudsman for Future Generations
<b>GDP</b>	Gross Domestic Product
<b>HOFG</b>	Hungarian Ombudsman for Future Generations
<b>HRBA</b>	Human Rights-Based Approach
<b>HRWS</b>	Human Rights to Water and Sanitation
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>INGOs</b>	International Non-Governmental Organisations
<b>KESAMA</b>	Kenya Salt Manufacturer’s Association
<b>KEWASNET</b>	Kenya Water & Sanitation Civil Society Network
<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>MACA</b>	Maison d’Arrêt et de Correction d’Abidjan
<b>MDA</b>	Government Ministries, Departments and Agencies
<b>NGO</b>	Non-Governmental Organisation
<b>NHRIs</b>	National Human Rights Institutions
<b>NW&amp;SMP</b>	National Water and Sanitation Master Plan
<b>OORS</b>	Office of the Protector of Citizens (Ombudsman) of the Republic of Serbia
<b>ORS</b>	Human Rights Ombudsman of the Republic of Slovenia
<b>OPERA</b>	Outcomes, Policy Efforts, Resources, and Assessment
<b>PDHG</b>	Procuraduría de los Derechos Humanos of Guatemala
<b>SAHRC</b>	South African Human Rights Commission
<b>SCA</b>	Supreme Court of Appeal
<b>SDG</b>	Sustainable Development Goal
<b>UN</b>	United Nations
<b>UNECE</b>	United Nations Economic Commission for Europe
<b>WASREB</b>	Water Services Regulatory Board
<b>WHO</b>	World Health Organization
<b>WRMA</b>	Water Resources Management Authority (in Kenya)

# INTRODUCTION

In 2010, through resolutions at the United Nations' General Assembly<sup>1</sup> and the Human Rights Council<sup>2</sup>, access to safe drinking water and sanitation were recognised as human rights. However, in most countries the implementation of the right to water is still in its early stages.

More than a hundred countries currently have National Human Rights Institutions (NHRIs) in the form of Human Rights Commissions or Ombudspersons charged with investigating, promoting and protecting human rights. Nevertheless, in several cases NHRIs do not have a history of monitoring water governance related human rights despite the unique powers conferred upon them in relation to human rights protection in general. A core function of these institutions is to independently review the implementation of a nation's human rights commitments and make recommendations for improvement. Another role is to address grievances or complaints alleging violations of national law.

Seen in this light, NHRIs' should play a central role in contributing to the implementation of human rights based water governance and can provide civil society with an avenue to improve their human rights related expertise (legal framework, protection mechanisms, complaints etc.). NHRIs may be in a unique position to play an active role in securing the implementation and protection of human rights to water and other water related rights.

A major contributor to enhancing the role of NHRIs in relation to the right to water is the adoption of General Comment No. 15. This General Comment on the "Right to Water" adopted in 2002 by the United Nations Committee on Economic, Social and Cultural Rights<sup>3</sup> explicitly refers to national ombudsmen, human rights commissions and similar institutions that should be permitted to address violations of the right to water. Against this backdrop, NHRIs need to take their place amongst mainstream water governance institutions.

It is also important to note that, in 2015, the UN General Assembly recognised the distinction between the rights to water and to sanitation; thus identifying them as two separate rights.<sup>4</sup> For this reason, all references prior to 2015 refer to the right to water, which also included reference to sanitation. As such, we have endeavoured to include the right to sanitation as a separate right in the new edition, where appropriate.

There is an emerging set of NHRIs worldwide whose work has made real world improvements in water governance, serving as an encouraging example to their compatriots. Thus, they can pave the way for other NHRIs that would like to play an enhanced role in human rights-based water governance. It is in this vein that this Compilation of Good Practices of NHRIs and Water Governance was developed.

## "GOOD" PRACTICES: A DEFINITION

For the purpose of this Compilation, practice is defined widely. It encompasses both policy and implementation. Therefore, practices include diverse initiatives that encompass one or more of the following: legislation (at the national, subnational and local levels), regulations, policies, strategies, institutional frameworks, planning and coordination procedures, international cooperation policies, programmes, projects, campaigns, complaints procedures, investigation methods, non-judicial decisions, etc.

For the purposes of this Compilation, a practice of an NHRI is considered “good” if it **contributes to the realisation of human rights in the context of water governance**. Notably, it must contribute to the realisation of the following human rights in the context of water governance:

- ▶ human rights to water and sanitation
- ▶ human right to a healthy environment
- ▶ human right to food
- ▶ human right to health
- ▶ human rights of indigenous peoples
- ▶ human rights of future generations

In addition, the following non-exhaustive list of criteria can be applied to identify good practices: effectiveness, efficiency, creativeness and ease of implementation.

The following themes are covered by good practices:

<b>PROMOTION</b> of water related human rights	Documenting different ways in which human rights have been promoted (for example through public awareness campaigns, publications, media interventions)
<b>PROTECTION</b> of water related human rights	Documenting different ways in which complaints or other sources have been investigated and have triggered action by NHRIs to protect citizens’ rights and to find remedies
<b>MONITORING</b> of water related human rights	Documenting different ways in which allegations of violations and state performance towards progress have been monitored (for example using different monitoring methodologies and ways of collecting data)
<b>ADVISING</b> governments and parliaments	Documenting different ways in which NHRIs provided recommendations, advice to different governmental institutions or to parliaments
<b>COOPERATION AND COORDINATION</b>	Documenting different ways in which NHRIs cooperated with various stakeholders during their activities in relation to water governance

It is to be noted that the above-mentioned classification is only one possible classification of various NHRI practices, and it should not be considered a complete catalogue of possible NHRI actions in relation to water governance. In addition, practices included in this publication may fall into several categories at the same time. Therefore, the classification proposed in the Compilation is to be regarded as one possible method to collate NHRI water governance related activities.

# METHODOLOGY

The process to identify and gather good practices included several steps. The first was desk research of NHRI practices, policies and programmes via collection and collation of available information. The main source of information was NHRIs' public websites.

The second step was to talk with NHRIs willing to participate in the Compilation. Discussion was based on an initial questionnaire, sent in advance. Participating NHRIs either sent written responses to the questionnaire or commented on and reviewed documentation published by Human Right 2 Water. The outcome of this dialogue, including the analysis of written responses in addition to desk research on each NHRI, forms the basis of this publication. In order to enhance the credibility of the Compilation, the NHRIs concerned participated in a peer review process of it.

The final step includes the dissemination of the Compilation among NHRIs to facilitate exchange of information among peers on water governance. The current publication will be available to NHRIs in electronic version.

## PARTICIPATING NATIONAL HUMAN RIGHTS INSTITUTIONS

Human Right 2 Water proceeded to identify NHRIs who already have experience in water governance related human rights and were willing to participate. The selection criteria for NHRIs included geographical balance and experience in water governance related human rights activities.

The following NHRIs are included in the current version of the Compilation:

EUROPE	AFRICA	LATIN AMERICA	ASIA-PACIFIC
Estonia Hungary Serbia Slovenia	Côte d'Ivoire Kenya South Africa	Ecuador Guatemala Mexico	Philippines

This edition builds on some of the good practices covered by the First Edition of the Compilation of Good Practices for National Human Rights Institutions (NHRIs) and Water Governance (the 'First Edition'). In the latter, information can be found on the following countries:

EUROPE	AFRICA		LATIN AMERICA	ASIA-PACIFIC
Denmark Hungary	Côte d'Ivoire Ghana Kenya Mali Namibia Nigeria	Sierra Leone South Africa Tanzania Uganda West African Network	Argentina Colombia El Salvador Panama Peru	Bangladesh India Nepal New Zealand

### **Disclaimer**

The content of this publication is largely dependent on the availability of information, the willingness of NHRIs to participate in the Compilation and the level of dialogue reached with NHRIs. Due to these differences in approach, the current publication does not intend to provide an exhaustive picture of NHRIs' activities, but rather to highlight good practices and relevant case studies in a concise manner.

# SECTION 1 – OVERVIEW OF GOOD PRACTICES

This chapter presents examples of practices that can be and have been adopted by various NHRIs worldwide. Practices are organised into sections according to the following themes: a) promotion of water governance related human rights; b) protection of water governance related human rights; c) monitoring water governance related human rights; d) advising the government and parliament; e) cooperation and coordination in water governance related NHRI activities.

For a complete overview, the practices included in this section are to be considered together with the detailed summaries of NHRI activities described in the following section. The proposed classification is only one possible way of grouping various NHRI practices and, naturally, individual examples may fall into several groups at the same time.

## 1.1 PROMOTION OF WATER GOVERNANCE RELATED HUMAN RIGHTS

The promotional activities carried out by NHRIs may result in numerous beneficial outcomes including informing citizens about and empowering them to influence water governance. This section puts forth specific promotional activities delivered by NHRIs, which have played a role in changing people's awareness on water governance related human rights issues.

### PRACTICE 1: CONSIDER THE INTERDEPENDENCE AND INDIVISIBILITY OF HUMAN RIGHTS IN NHRIs' PROMOTIONAL ACTIVITIES

NHRIs may consider the interdependence and indivisibility of human rights in their promotional activities. In the context of water governance, this is put in practice by considering the rights to water and sanitation together with other related rights such as the right to food, the right to housing, the right to health or the right to a healthy environment.

#### Right to Food and Water:

COUNTRY	NHRI	ACTIVITIES	PAGE
Guatemala	Procuraduría de los Derechos Humanos of Guatemala (PDHG)	Annual reports on Food and Nutritional Security highlighting the importance of having access to safe drinking water	p.44

#### Right to Housing and Water:

COUNTRY	NHRI	ACTIVITIES	PAGE
Ecuador	Defensoría del Pueblo de Ecuador (DPE)	Importance of rights to water and sanitation highlighted in efforts to provide adequate housing for all	p.45

## Right to Health and Water:

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	Hungarian Ombudsman for Future Generations (FGO)	Volunteer assessment of water, sanitation and hygiene systems and services (WASH) as part of the UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water monitoring	p.30
<b>Côte d'Ivoire</b>	Conseil National des Droits de l'Homme (CNDH)	Results of prison audits in annual reports following visits to detention centres	p.52

## Right to a Healthy Environment and Water:

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Contribution to securing environmental information, including information essential to sustainable water management, through proposal to amend data management regulations  2016 General opinion of correlation between soil and water regulation  2018 Open letter of concern regarding the modification of spatial development legislation and emphasising strong links between nature protection and water quality in Lake Balaton	p.30 & p.31
<b>Serbia</b>	Office of the Protector of Citizens (Ombudsman) of the Republic of Serbia (OORS)	General opinion and recommendations regarding the construction of small hydropower plants  Annual reports on environmental protection including water management	p.33 & p.34
<b>Mexico (Oaxaca)</b>	Defensoría de los Derechos Humanos del Pueblo de Oaxaca (DDHPO)	Promotion of the rights to water and sanitation through promotional activities linked to the right to a healthy environment	p.42
<b>South Africa</b>	South African Human Rights Commission (SAHRC)	Inclusion of the rights to water and sanitation in activities focussed on the environment, natural resources and rural development	p.48

## PRACTICE 2: PUBLICATION OF SPECIALISED HUMAN RIGHTS MATERIAL ON WATER GOVERNANCE RELATED HUMAN RIGHTS

Assessment and documentation of water governance related human rights incidents frequently form a sub-section in a more general report on human rights though they may occur in a publication specifically dedicated to the rights to water and sanitation. Although the latter practice is not yet widespread, there are already inspiring examples of dedicated NHRI publications on the human rights to water and sanitation.

### Specialised publications on the right to water and sanitation:

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Publication: <i>Towards a Human Rights Based Water Governance: The Challenges for the post 2015 Thematic Consultation on Water</i> published in collaboration with WaterLex  2017 General opinion on groundwater protection	p.29 & p.31
<b>South Africa</b>	SAHRC	2014 Report on <i>The Rights to Access Sufficient Water and Decent Sanitation in South Africa</i>  2018 Research brief building on 2014 Report to evaluate effect of recommendations in report and providing new set of recommendations	p.50-51

### Other types of publications containing information on water governance related human rights:

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	2017 General opinion on the implementation of the UN SDGs containing recommendations	p.31
<b>Estonia</b>	CJE	2018-2019 Annual Report	p.35
<b>Guatemala</b>	PDHG	Annual reports related to the state of human rights in Guatemala with separate paragraph exclusively dedicated to the right to water	p.44
<b>South Africa</b>	SAHRC	2018 Report on the Underlying Socio-economic Challenges in Mining-affected Communities in South Africa (mining report)	p.49
<b>Kenya</b>	KNCHR	Publication: <i>The Third State of Human Rights Report</i>	p.55

## PRACTICE 3: PROMOTE WATER GOVERNANCE RELATED HUMAN RIGHTS PRIORITISING MARGINALISED AND VULNERABLE GROUPS OF PEOPLE

Many National Human Rights Institutions have paid special attention to vulnerable and marginalised groups of people in promoting human rights. In the context of the rights to water and sanitation, indigenous peoples, internally displaced persons, persons with disabilities, elderly people, women and children are all examples of people that may require special attention. NHRI promotional activity may include the publication of dedicated thematic reports and annual reports containing sections on water governance related human rights with special focus on marginalized and vulnerable groups.

### Indigenous Peoples and Water:

COUNTRY	NHRI	ACTIVITIES	PAGE
Mexico (Oaxaca)	DDHPO	Participation in consultation process with indigenous peoples and promotion of dialogue	p.42

### Women's Rights and Water:

COUNTRY	NHRI	ACTIVITIES	PAGE
South Africa	SAHRC	Publication of set of recommendations to improve access to water and sanitation following provincial hearings with particular focus on young girls	p.50

### Prisoners and Water:

COUNTRY	NHRI	ACTIVITIES	PAGE
Côte d'Ivoire	CNDH	Campaign for providing access to water for inmates at the MACA after the facility suffered from floods	p.52

### Marginalised Communities and Water:

COUNTRY	NHRI	ACTIVITIES	PAGE
Hungary	FGO	Investigation into discriminatory policies against the Roma Population in the City of Ózd	p.29
Slovenia	ORS	Annual Reports addressing problems affecting Roma populations	p.37

## PRACTICE 4: RAISE PUBLIC AWARENESS OF WATER GOVERNANCE RELATED RIGHTS THROUGH PROMOTIONAL ACTIVITIES

NHRIs organise or participate in public awareness raising activities, which either focus directly on the rights to water and sanitation or are related to it through an interrelated issue. The activities may take the form of conferences, workshops, webinars, or other events that could also present publications in order to reach wider populations. Fact sheets, promotional videos and statements also contribute to promoting water governance related human rights to the wider public.

### Conferences:

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Participation in the Fundamental Rights Forum the European Union Agency for Fundamental Rights in Vienna in September 2018  Engagement in the 2019 Budapest Water Summit	p.32
<b>Philippines</b>	CHRP	Case conference December 2019 on construction of Kaliwa Dam Project	p.40

### Statements and press releases:

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	2019 open letter of concern related to a bill on irrigation	p.31
<b>Côte d'Ivoire</b>	CNDH	Public declarations on the water cuts in the city of Abidjan after 2018	p.52

### Fact sheets, promotional videos and presentations of publications:

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Presentation of the FGO's experience at a panel discussion of the Regional Forum on Sustainable Development for the United Nations Economic Commission for Europe in 2020	p.32
<b>South Africa</b>	SAHRC	Creation of a revised pamphlet on the right to water and sanitation by the Commission's Advocacy Unit	p.51

### Importance of the Media:

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Kenya</b>	KNCHR	Publicised the opening of an investigation into allegations of human rights violations in salt manufacturing on radio and in newspapers in order to attract interested parties to participate	p.56

## PRACTICE 5: PUBLIC EDUCATION RELATED ACTIVITIES ON WATER GOVERNANCE RELATED HUMAN RIGHTS

Developing human rights education in relation to water governance is key to the promotional angle of NHRIs’ work. NHRI practices show that several institutions have already made considerable efforts to educate both the wider public and their own staff in this regard. This involves participation in capacity building and other similar activities.

COUNTRY	NHRI	ACTIVITIES	PAGE
Ecuador	DPE	Capacity building and education programmes for the sustainable use of water services and sewerage systems in partnership with international organisations	p.46
Kenya	KNCHR	Training state actors and the community	p.56
South Africa	SAHRC	Promotional activities such as presentations, speeches and training on the right to water	p.51

## PRACTICE 6: COMMUNITY-BASED INITIATIVES TO PROMOTE WATER GOVERNANCE RELATED HUMAN RIGHTS

NHRIs may also organise community-based activities that directly involve local communities or sub-sectors to promote water governance related human rights.

COUNTRY	NHRI	ACTIVITIES	PAGE
Philippines	CHRP	Co-sponsored forum-discussions on the right to water with Civil Society Organisations following water shortages in Manila in 2019	p.40



## I.2 PROTECTION OF WATER GOVERNANCE RELATED HUMAN RIGHTS

The protection of the rights to water and sanitation and other water governance related rights may be challenging for NHRIs, inter alia, due to the progressive nature of social, economic and cultural rights. In addition, in several countries it is reported that key actors believe that the rights to water and sanitation cannot be protected in court. This section presents practices adopted by various National Human Rights Institutions with a view to protecting water governance related human rights. Investigating human rights violations is central to this role. In addition, examples of NHRI actions seeking possible remedies for victims of human rights violations and possible avenues to access them are included. As a result of their protection activities, some NHRIs observed the enhanced respect of the right to water by state actors and third parties alike.

### PRACTICE I: PROTECT HUMAN RIGHTS IN THE CONTEXT OF WATER GOVERNANCE BY INTERVENING IN ENVIRONMENTAL ISSUES

Water governance may be addressed in the context of various environmental issues. Pursuant to their function of protection, NHRIs may also intervene in such issues through investigations and inquiries.

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Handling of complaints about sewage; protection of water from human polluting activities; investigation of damage to nature in the Nagyberek Fehérvíz Nature Reserve; investigation relating to the protection of groundwater loss from abandoned mine lakes; ex officio investigations 2020 (on vulnerable groups' access to water in the context of COVID 19 and on the fundamental right related to access to water and sanitation)	p.29-31
<b>Serbia</b>	OORS	Own-initiative investigations launched in 2019 on: pollution of the Zapadna Morava and Lupnjača rivers, pollution of the Veliki Bački canal and the emergence of 10 tonnes of dead fish from Srbobran to Bečej	p.33
<b>South Africa</b>	SAHRC	Complaints management (e.g. engagement in litigation against the Madiben Local Municipality; monitoring complaints regarding unclean water in Hammanskraal)  Investigative reports (e.g. 2019 on municipalities in Mpumalanga)	p.48-49
<b>Guatemala</b>	PDHG	Regular investigations on public administration	p.44
<b>Kenya</b>	KNCHR	2018 Audit of the 2006 Malindi Inquiry Report	p.56

## PRACTICE 2: PAY PARTICULAR ATTENTION TO VULNERABLE AND MARGINALISED GROUPS OF PEOPLE

Marginalized and vulnerable groups may experience increased difficulties in seeking remedies to alleged human rights violations. This section shows good examples of NHRIs paying special attention to these groups (e.g.: indigenous peoples, minorities etc.) during investigations of alleged violations.

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Investigation of governmental measure suspected to violate the rights of a city's Roma population to healthy drinking water, human dignity and right to equal treatment  Ex officio investigations regarding access to water for vulnerable groups, with special attention to thorough handwashing requirements related to COVID 19	p.29 & p.31
<b>Slovenia</b>	ORS	2012 special report on the situation of Roma Settlements	p.37
<b>Côte d'Ivoire</b>	CNDH	Investigation in partnership with the Ministry of Education regarding water points in schools	p.52

## PRACTICE 3: TRIGGER PARTICIPATION OF COMMUNITIES TO INVESTIGATE WATER GOVERNANCE RELATED HUMAN RIGHTS VIOLATIONS

Comprehension of the local picture in addition to the national situation is of utmost importance as local realities and challenges may often be masked by aggregated national statistics. Practices confirm that by holding public hearings during investigations and inquiries, along with gathering testimonies from a wide range of stakeholders (residents and civil society organisations in addition to governmental bodies), many NHRIs have succeeded in mobilising local and other communities during investigations. These techniques allowed an increased understanding of the human rights situation.

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>South Africa</b>	SAHRC	Use of provincial and nationwide public hearings to trigger community participation in the context of a broader investigation into the rights to water and sanitation	p.49

## PRACTICE 4: LINK WATER GOVERNANCE RELATED HUMAN RIGHTS TO INVESTIGATIONS CONDUCTED IN RELATION TO SPECIFIC SECTORS

Several National Human Rights Institutions have carried out investigations and published findings on the human rights situation of specific sectors (for example, mining, investigations into labour rights of specific sectors), some of which also included issues related to the rights to water and sanitation and other water governance related rights.

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Comprehensive and strategic investigations relating to unlicensed water wells and the impact of the extractive industry on water sources etc.	p.29
<b>Serbia</b>	OORS	Control investigation of the construction of small hydropower plants	p.33-34
<b>South Africa</b>	SAHRC	Investigative 2018 Mining Report	p.51

## PRACTICE 5: AGGREGATE SUBMITTED COMPLAINTS TO BETTER PROTECT WATER GOVERNANCE RELATED HUMAN RIGHTS

Water governance related human rights violations often reveal system-level failures and legislative gaps. Addressing individual water governance related human rights violations may offer effective remedy to victims individually. However, by aggregating violations, NHRIs are in a better position to offer protection against systematic violations and might even prevent future malfunctioning of legislative and governance systems in general. There are several good examples of such practices by NHRIs that have eventually contributed to an improved water governance at national level.

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Practice of regrouping complaints and petitions submitted by different individuals into categories reflecting the overarching nature of a problem and then taking appropriate action	p.31
<b>South Africa</b>	SAHRC	Strategic decision to link individual complaints on access to sanitation to a broader investigation on the right to water and sanitation in the country	p.48-50

## **PRACTICE 6: SEEK REMEDIES WITH THE APPROPRIATE GOVERNMENTAL OR JUDICIAL BODY FOLLOWING A COMPLAINT**

Bringing identified human rights violations to justice, seeking remedy and redress are key roles of NHRIs in protecting human rights. In addition to offering a complementary mechanism to the judiciary, NHRIs also have access to the government and policymakers whilst having the right to turn to the wider public (e.g. by publishing findings). Depending on their mandate, NHRIs use various avenues to disseminate the results of their investigations, formulate recommendations and employ governmental and other bodies to offer redress to victims.

**Note:** Thematic chapters have additional good practices to complement the following:

### **Address and engage with governmental and other bodies**

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Estonia</b>	CJE	Recommendations to state agencies to include and advise applicants in mining permit proceedings	p.35
<b>Slovenia</b>	ORS	Recommendations to government and parliament to adopt required regulations to implement right to drinking water	p.38
<b>Côte d'Ivoire</b>	CNDH	Advocacy alongside the ICRC at the Ministry of Justice regarding the condition of inmates	p.52

### **Prior to the publication of reports, address findings and recommendations to the government to seek detailed responses**

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>South Africa</b>	SAHRC	Following national and provincial hearings on the right to water and sanitation, recommendations to government representatives prior to the publication of its 2014 Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa	p.50

### **Issue recommendations to various stakeholders following investigations and inquiries**

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Kenya</b>	KNCHR	Formulation of short-term and long-term actions that should be taken by various key actors (for example, the Ministry of Water and Irrigation, Malindi County Council, Kenya Salt Manufacturers Association and the Ministry of Environment and Natural Resources) in regard to the environmental impacts addressed in the Malindi inquiry report	p.56

## PRACTICE 7: MONITOR COMPLIANCE WITH JUDICIAL ORDERS AND FOLLOW UP ON THE FINDINGS FOLLOWING INQUIRIES AND INVESTIGATIONS

NHRI participation in monitoring the implementation of recommendations and other remedies may contribute towards compliance. In this context, NHRIs may offer a unique complementary avenue in enforcing and, thereby, protecting rights.

COUNTRY	NHRI	ACTIVITIES	PAGE
South Africa	SAHRC	Site inspections and meetings in Rammulotsi and Makhaza to assess progress made towards implementing the findings made in those communities  Monitoring adherence by government departments to the recommendations presented in its report on water and sanitation	p.49 & p.50
Kenya	KNCHR	2012 Meetings with local communities to follow up on recommendations made in relation to the salt manufacturing industry in Magarini  2018 Audit on the 2006 Malindi Inquiry Report	p.56

### 1.3 MONITORING WATER GOVERNANCE RELATED HUMAN RIGHTS

Monitoring is a key aspect of the general protection mandate justifying a separate chapter devoted to various NHRI monitoring practices. The practices below seek to highlight innovative monitoring tools, techniques and mechanisms which may inspire other NHRIs in monitoring water governance related human rights.

#### PRACTICE 1: DIVERSIFY THE SOURCES OF INFORMATION DURING INVESTIGATIONS AND MONITORING ACTIVITIES

Lack of credible sources is an obstacle that NHRIs may face regarding water governance related human rights violations. This issue has been tackled by various institutions by diversifying their sources of information, including local communities, other stakeholders and international bodies.

##### KEY FACTORS FOR SUCCESS

- ▶ Credibility enjoyed by the institution
- ▶ Strong relationships with relevant government departments at a national, provincial and local level
- ▶ Network of specialists and resources built by working closely with civil society organisations involved in associated projects and studies
- ▶ Understanding the impact of a lack of service delivery on various groups of people
- ▶ Working closely with national statistics bodies to ensure the rigorous collection of relevant information on the level of access to water

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Slovenia</b>	ORS	Cooperation with international monitoring bodies (for example, the CE Commissioner for Human Rights, ECRI and CERD) regarding the situation of the Roma Population	p.37
<b>Côte d'Ivoire</b>	CNDH	Interviews with inmates during visits to detention centres	p.52

## **PRACTICE 2: ADDRESS HUMAN RIGHTS MONITORING BY CONSIDERING THE INTERDEPENDENCE AND INDIVISIBILITY OF HUMAN RIGHTS**

The ability to address the rights to water and sanitation and other water governance related rights from different angles may be a key factor to success in improving water governance as it allows NHRIs to monitor, promote and protect the rights to water and sanitation in its various aspects. NHRI monitoring may take place in context, considering the interdependence of human rights and paying special attention to marginalised and vulnerable people.

### **The right to food, the right to housing and the right to health**

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Guatemala</b>	PDHG	Annual reports on Food and Nutritional Security	p.44
<b>South Africa</b>	SAHRC	Individual Deprivation Index (IDM)  OPERA framework (Outcomes, Policy Efforts, Resources, and Assessment)	p.51

### **Special consideration for marginalised and vulnerable groups**

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Continuous monitoring of access to water and related measures taken by the authorities, with a special focus on the situation of Roma communities	p.31-32
<b>Slovenia</b>	ORS	Monitoring visits in Roma settlements to assess access to public water infrastructure	p.37

### **PRACTICE 3: SPECIAL MECHANISMS FOR MONITORING STATE PERFORMANCE IN RELATION TO WATER GOVERNANCE RELATED HUMAN RIGHTS**

There are several National Human Rights Institutions which have developed a specialized monitoring methodology, providing them with tools to perform country monitoring in relation to the human rights to water and sanitation and other related rights. These examples offer unique methodologies that can pave the way for other NHRIs envisaging an enhanced role in water governance in realising human rights.

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Participation in the <i>UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water</i> monitoring, organised by the WHO	p.30
<b>Kenya</b>	KNCHR	Framework for monitoring the realisation of the rights to water and sanitation in partnership with the WHO and with the Kenya Water & Sanitation Civil Society Network (KEWASNET)	p.56

### **PRACTICE 4: UNDERTAKE PERIODIC VISITS TO INSTITUTIONS TO ASSESS WATER RELATED HUMAN RIGHTS CONDITIONS**

Several NHRIs in the African continent have significant experience in assessing the situation of the human rights to water and sanitation during monitoring of the general human rights situation in detention centres. Others also monitor the human rights to water and sanitation situation in schools, child development centres and hospitals. By undertaking periodic visits to various centres, the NHRI is able to review progress on the human rights situation, including the rights to water and sanitation. Findings from these visits are generally reported by NHRIs in their annual reports, separate reports for each visit or in compilations of monitoring activities.

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Côte d'Ivoire</b>	CNDHCI	Visits to detention centres, specifically at the <i>Maison d'Arrêt et de Correction d'Abidjan (MACA)</i>  Investigation in partnership with the Ministry of Education which identified that some schools did not have access to water points that were sufficiently close	p.52



## I.4 ADVISING THE GOVERNMENT AND PARLIAMENT

National Human Rights Institutions are responsible for advising their government on human rights issues. This role contributes to making governmental bodies more accountable and addresses systematic violations and legislative gaps. Reporting, providing recommendations and issuing opinions to parliament additionally offers NHRIs the opportunity to receive a hearing in the country's representative and elected body.

### PRACTICE 1: REVIEW LEGISLATION WHICH HAS AN IMPACT ON WATER GOVERNANCE RELATED HUMAN RIGHTS

National Human Rights Institutions systematically review existing law, policy and practice, and their mandate usually allows them to review proposed legislation, policy or practice. Advocating compliance of national legislation with the international framework in relation to the human rights to water and sanitation is of utmost importance. NHRI practices reveal that some of these institutions are instrumental in supporting recognition of the human rights to water and sanitation in writing constitutions and reviewing subsequent national legislation with regard to compliance.

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Contribution to scrutiny of the constitution and annulment of amendments to the Water Act  Contribution to amendment of the Water Act to secure environmental information and protect data in water management	p.29 & p.30
<b>Estonia</b>	CJE	Contribution to change of legislation in the town of Loksa to regulate the price for water services in accordance with the constitution	p.35
<b>Slovenia</b>	ORS	Contribution to constitutional amendment and inclusion of the right to water (art 70.a)	p.38

### PRACTICE 2: INFORM, ASSIST AND ENGAGE WITH THE GOVERNMENT ON LEGISLATION AND POLICY FORMULATION

NHRIs have taken up various forms of engagement with governmental bodies with a view to protecting water governance related human rights. These examples may concern involvement in policy formulation, requesting from and providing information to various bodies.

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Legislative proposal on environmental liability covering prevention, treatment and liability for environmental damage caused by human activity including water pollution	p.30

## PRACTICE 3: ISSUE RECOMMENDATIONS TO THE GOVERNMENT FOLLOWING REPORTS, INVESTIGATIONS, INQUIRIES AND PUBLIC HEARINGS

Issuing recommendations to the government following investigations, identifying violations and seeking remedy and redress also lay at the heart of the protection role of NHRIs. These recommendations may effectively influence decision-making and public opinion as well.

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Recommendations contained in report related to the human rights to water and sanitation in the context of promoting the UNECE Equitable Access Scorecard	p.30
<b>Serbia</b>	OORS	Opinion with Recommendations to the Ministry of Environmental Protection, the Ministry of Agriculture, Forestry and Water Management and the Ministry of Mining and Energy with regard to the construction of small hydropower plants	p.34
<b>Slovenia</b>	ORS	Recommendations to prepare and adopt in due time all the required regulations to safeguard the right to drinking water enshrined in the constitution  Recommendation to improve the conditions for obtaining EU cohesion funding for smaller municipalities to build public water infrastructure	p.38
<b>South Africa</b>	SAHRC	Publication of set of recommendations addressed to government departments to improve access to water and sanitation following provincial hearings, with particular focus on schools and girls  2018 Research brief building on 2014 Report to evaluate effect of recommendations in report and providing new set of recommendations	p.49-51
<b>Côte d'Ivoire</b>	CNDH	Following floods in Abidjan in 2018, report containing several recommendations for governmental authorities	p.52

### 1.5 COORDINATION AND COOPERATION

NHRIs are of major importance in the human rights protection mechanism but they need to work alongside various bodies and stakeholders to effectively protect and promote human rights. Thus, coordination and cooperation can be a key element of success for NHRIs. This section shows concrete examples of how cooperation and coordination has enabled NHRIs to better address water governance related human rights violations through their good practices.

**PRACTICE 1: MAINTAIN CLOSE PARTNERSHIPS WITH GOVERNMENTAL AGENCIES AND ENGAGE WITH STAKEHOLDERS THROUGH VARIOUS MEANS**

Building and maintaining close partnership with ministries, prisons or other governmental agencies facilitates the role of human rights institutions in monitoring the state.

COUNTRY	NHRI	ACTIVITIES	PAGE
Serbia	OORS	Meetings with representatives from the Ministry of Environmental Protection in order to strengthen cooperation and improve the situation in relation to the construction of small hydropower plants	p.34
South Africa	SAHRC	On-going liaison with government departments and other stakeholders in monitoring adherence with the recommendations made in its water and sanitation report  Engagement with government departments through national hearings, written communications, subpoena hearings, roundtable discussions and presence in various stakeholder committees, advisory forums and task teams  On-going liaison with government departments regarding service delivery	p.49-51

**PRACTICE 2: COOPERATE WITH EXTERNAL GROUPS AND EXPERTS ON PUBLICATIONS, STUDIES AND OTHER WATER RELATED PROJECTS**

Establishing active and on-going engagement with various stakeholders allows NHRIs to seek information from wide-ranging sources. Access to independent and reliable sources of information is essential for comprehensive planning and monitoring of water governance related human rights. In addition, civil society organisations desiring to participate effectively in the planning, implementation and review of water governance have an important point of entry via National Human Rights Institutions.



## Cooperation with universities, researchers and other experts

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Cooperation with experts and scientists from diverse fields, notably with the Hungarian Academy of Sciences	p.32
<b>South Africa</b>	SAHRC	Close cooperation with the Australian National University on an Individual Deprivation Index (IDM)  Engagement with the Centre for Economic and Social Rights in New York on the OPERA framework  Engagement with the International Commission of Jurists and the Office of the High Commissioner for Human Rights in Pretoria on questions of economic and social rights	p.51
<b>Kenya</b>	KNCHR	Close partnership with the WHO and with the Kenya Water & Sanitation Civil Society Network (KEWASNET) leading to the creation of a framework for monitoring the realisation of the rights to water and sanitation	p.56

## Cooperation with civil society

COUNTRY	NHRI	ACTIVITIES	PAGE
<b>Hungary</b>	FGO	Cooperation with WaterLex for its publication <i>Towards a Human Rights Based Water Governance: The Challenges for the post 2015 Thematic Consultation on Water</i> and for the launch of the National Human Rights Institutions Water Initiative	p.29
<b>Philippines</b>	CHRP	Co-sponsored forum discussions on the right to water in partnership with civil society organisations (CSOs)	p.40
<b>Mexico (Oaxaca)</b>	DDHPO	Participation in consultation processes and promotion of dialogue with the Zapotecos people	p.42
<b>South Africa</b>	SAHRC	Discussions with civil society organisations following 2012 provincial hearings	p.49
<b>Kenya</b>	KNCHR	Close partnership with the WHO and with the Kenya Water & Sanitation Civil Society Network (KEWASNET) leading to the creation of a framework for monitoring the realisation of the rights to water and sanitation	p.56

# SECTION 2 – SUMMARIES OF NHRI ACTIVITIES

## A. EUROPE

### COUNTRY - HUNGARY<sup>5</sup>

- ▶ **Key words** Fundamental Law, Rights of Future generations, SDGs, Nature protection
- ▶ **Practices** Promotion, Investigation, Review of legislation, Monitoring, Publication
- ▶ **Relevant criteria** Accessibility, Non-discrimination, Affordability, Quality
- ▶ **Website** [www.ajbh.hu](http://www.ajbh.hu)

### LEGAL FRAMEWORK

The right to water is not explicitly recognised in the Hungarian Constitution. However, it can be inferred from the Fundamental Law of Hungary (Arts P and XX), the Hungarian Constitutional Court decision No 28/ 1994, Article 30 of the Fundamental Law of Hungary and Act CXI (2011) of the Commission for Fundamental Rights. As an EU member state, Hungary is also bound by European Union water related laws. In addition, Act No. LVII (1995) on water management established the main rights and duties regarding the use and conservation of water as well as the prevention of damage caused by water.

### INTERNATIONAL FRAMEWORK

Hungary signed the International Covenant on Economic Social and Cultural Rights on 25 March 1969 and ratified it on 17 January 1974. This country has not adopted the Optional Protocol to the Covenant.

### MANDATE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS

Anyone can submit a complaint to the Commissioner for Fundamental Rights (CFR) if, through omission or commission, the public and/or other organs performing public duties infringe the fundamental rights of the person submitting the petition, or present an imminent danger. This also applies when the person reporting has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or if no legal remedy is available to him or her. On this basis, the Commissioner for Fundamental Rights conducts an investigation and presents a proposal to the authority concerned to remedy the violation. The Commissioner can also pass recommendations in relation to laws and amendments.

### THE OMBUDSMAN FOR FUTURE GENERATIONS

The need for an Ombudsman for Future Generations was recognized and accepted by the Hungarian Parliament in 2007. The main task of the Hungarian Ombudsman for Future Generations (HOFG) was to protect the constitutional right to a healthy environment. In this capacity, the HOFG could investigate citizen complaints on environmental issues, monitor policy developments and legislative proposals, bring cases to the Constitutional Court, intervene in administrative court cases and issue general opinions.

In 2011 the parliament recognised the need to protect natural resources at the constitutional level by stating in the Fundamental Law that: "*Natural resources, in particular agricultural land, forests and drinking water supplies, biodiversity – in particular native plant and animal species – and cultural assets are part of the nation's common heritage.*" The law stated that the state and every individual citizen is obliged to protect, sustain and preserve these resources for future generations. It established a direct link between the environment, the interest of future generations and basic constitutional rights such as the right to a healthy environment and the right to physical and mental health. This strong relationship was first established by the Constitutional Court when in 1994 it emphasised the link between the right to a healthy environment and the state's duty to establish an institutional system that provides substantive and procedural legal guarantees in this respect.

As of January 2012, the Hungarian Commissioner's system was revised. The offices of the Ombudsman were merged and a new legal entity was established. To reflect the institutional changes, the Ombudsman for Future Generations would be referred to as FGO from then on. Under the new legal framework, being involved in the work of the Commissioner for Fundamental Rights (CFR), the FGO may, in its own capacity: (i) publish general opinions and open letters of concern; (ii) elaborate legislative proposals; (iii) initiate CFR's investigations, (iv) ask the CFR to file cases before the Constitutional Court, or (v) intervene in administrative court cases when the protection of the interest of future generations is hurt or at risk.

## **THE OMBUDSMAN FOR FUTURE GENERATIONS AND WATER GOVERNANCE RELATED HUMAN RIGHTS**

In the First Edition of this Compilation, some of the major water governance related activities carried out by the HOFG and of its successor, the FGO, were extensively covered. The First Edition notably mentioned the handling of complaints received in 2011 by the HOFG concerning such issues as sewage treatment, its work in relation to the impact of the extractive industry on water sources and the numerous investigations it conducted. For example, the assessment by the HOFG of the enforcement of water protection requirements in water licensing proceedings in the Nagybereki Fehérvíz Nature Protection Area, and the work of the FGO on the discriminatory policies of the government of the city of Ózd against the Roma population in 2013. The First Edition also referenced its publications, most notably *Towards a Human Rights Based Water Governance: The Challenges for the post 2015 Thematic Consultation on Water*, published in collaboration with WaterLex, which outlined the emergence of the Human Rights Based Approach (HRBA) to water governance in the post-2015 framework.

## **CONTRIBUTING TO CONSTITUTIONAL SCRUTINY AND ANNULMENT OF AMENDMENTS TO THE WATER ACT**

In 2017, the FGO proactively opposed amendments to the Water Act in order to protect natural resources for future generations. The proposed amendment would remove the need to apply for permits and notifications for drilling wells down to 80 metres. Many environmentalists and human rights experts were concerned by this legislative change as it reduced the protection of groundwater resources. Accordingly, the FGO, as a Deputy to the Commissioner for Fundamental Rights, contributed to the publication of a General Opinion detailing why the legislation would violate constitutional provisions and endanger groundwater resources and public health. These arguments were subsequently raised in Parliamentary Committees, contributing to an initial refusal of the amendment. Nonetheless, after the parliamentary elections of 2018, the draft amendment was submitted again and it was enacted. The President of Hungary therefore initiated an ex-ante constitutional review of the amendment before the Constitutional Court. The Hungarian NHRI committed to stopping this legislative change and provided an amicus brief to the Constitutional Court that highlighted the anti-constitutional nature of the amendment. The Constitutional Court, through its Decision No. 13/2018 (4. IX.), finally decided to annul the proposed amendment, stressing that the termination of granting permits would negatively affect access to healthy drinking water and the right to physical and mental health, thus echoing the arguments of the FGO. Moreover, the Constitutional Court highlighted that the protection of natural resources for future

generations includes the preservation of choice, quality and accessibility. It also highlighted that the state, having ownership of groundwater, has specific constitutional duties and responsibilities for water protection originating from the Fundamental Law.

## ASSESSMENT OF WATER, SANITATION AND HYGIENE SYSTEMS (WASH)

In 2018/2019 the FGO participated in the voluntary assessment of water, sanitation and hygiene systems and services (WASH) as part of the *UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water* monitoring, organised by the World Health Organization (WHO). It did so by taking part in national and international working groups, emphasising the fundamental rights aspects of access to water and sanitation. These experiences contributed to shaping the opinions formed by the FGO in its advisory role on legislative developments on the topic of the right to water and sanitation.

## PROMOTING THE UNECE EQUITABLE ACCESS SCORECARD

In 2017 the FGO invited relevant stakeholders (ministries, other regulatory bodies and civil organisations) to a roundtable discussion to introduce the investigations into and human rights aspects of access to water and sanitation, as well as to promote the use of the UNECE's analytic tool, the Equitable Access Score-card. This analytical tool is designed to help governments and other stakeholders establish a baseline measure of the equity of access to water and sanitation, identify related priorities, discuss further actions to be taken and evaluate progress through a process of self-assessment.<sup>6</sup> The FGO's staff actively participated in the stakeholder working group filling out the questionnaire and finalising the report (2016-2017). The report was submitted to the Hungarian government together with policy recommendations.

## DATA AVAILABILITY FOR WATER MANAGEMENT

Besides handling citizen complaints and advising on legislative developments, the FGO has been closely following legal developments in the area of collection, handling, preservation and accessibility of data and information. After the amendment of the Water Act to comply with the EU General Data Protection Regulation, certain pieces of information were to be deleted after a predetermined period. Without continuous availability of data describing water infrastructures, instalments, facilities and the impact of human activities on the quantity and quality of water bodies, no well-substantiated decisions can be made on water governance and land use. Proper adaptation to the changes in the condition of the water bodies becomes difficult. Therefore, the FGO turned to the Minister of the Interior with a legislative proposal regarding the amendment of data management regulations. The National Authority for Data Protection and Freedom of Information and the Ministry of the Interior gave a positive response to this initiative. The Water Act was then amended by the National Assembly in line with this proposal, thus securing the availability of environmental information.

## PUBLICATION ON ENVIRONMENTAL LIABILITY

The FGO prepared and published a complex legislative proposal on environmental liability covering prevention, treatment and liability for environmental damage caused by human activity including water pollution. The package was positively received by the relevant ministries.

## EX OFFICIO INVESTIGATIONS

Two ex officio investigations are currently underway. First, the Hungarian NHRI initiated an ex officio investigation in April 2020 with special attention to thorough handwashing requirements related to COVID 19. It involved several departments that are concerned with access to water for vulnerable groups. This included the Department of General Investigations, the Secretariat of the FGO and the Secretariat of the Deputy Commissioner for the Protection of the Rights of Nationalities Living in Hungary. The FGO also initiated a complex ex officio investigation

in 2020 on the fundamental rights related to access to water and sanitation. This will focus on accessibility and fundamental guarantees relating to access to water bearing in mind the principle of equal opportunities.

## **GENERAL OPINIONS: FOR PROTECTING WATER SOURCES**

The FGO publishes General Opinions aimed at disseminating important messages and raising awareness. One of them, in 2016, focused on the correlation between soil and water regulation<sup>7</sup>. In 2017 the protection of groundwater quality<sup>8</sup> was in focus, calling attention to the need for sustainable water governance, and another General Opinion was published on SDGs including SDG 6 on water and sanitation. In 2018 the FGO published an open letter expressing concern regarding the modification of spatial development legislation<sup>9</sup>, drawing attention to the strong link between nature protection and water quality in Lake Balaton. In 2019 another open letter was published expressing concern about a bill on irrigation before the parliament, emphasising among others the need (i) to adapt agricultural production to local conditions including availability and scarcity of water; (ii) to take into account all water demands; (iii) to keep permitting procedures for determining the requirements for irrigation systems; and, (iv) to provide for procedural rules guaranteeing stakeholder participation.<sup>10</sup> Some of the concerns were acknowledged and the bill was modified accordingly.

## **REGARDING THE NAGYBEREKI FEHÉRVÍZ NATURE PROTECTION AREA**

The FGO continued the HOFG's work by regularly visiting national parks and holding in-depth discussions on water governance issues with relevance to nature protection, particularly in the Nagybereki Fehérvíz Nature Protection Area.

The FGO consistently argues for policy development that takes into account (i) local conditions, including not just economic and environmental but also social conditions, by financially supporting the connection to existing public infrastructure; (ii) the emerging need for the use of new water saving technologies in buildings, especially in housing; (iii) the need for enforcement of existing laws and regulations; (iv) the constitutional duties and obligations of the state as the exclusive owner of groundwater and most of the surface water bodies; (v) the need to keep and upgrade monitoring and data analysis of sewage treatment, and the environmental and related health impacts.

Government programmes are in place in urban wastewater treatment as part of the implementation of the Urban Wastewater Treatment Directive (91/271/EEC).<sup>11</sup>

## **PROTECT VULNERABLE GROUPS OF NATIONALITIES LIVING IN HUNGARY**

The Deputy Commissioner for the Protection of the Rights of Nationalities Living in Hungary continuously monitors access to water and related measures taken by the authorities, with a special focus on the situation of Roma communities living in segregated areas and concentrated living environments. Every year, between five and ten specific complaints from different settlements are received by the Deputy Commissioner for Nationalities, who investigates each of them and emphasises the importance of continuous access to water for all citizens. No report has been issued in these cases, as the situations were resolved in co-operation with the authorities and municipalities.

The introduction of a fair and proportionate water tariff has been raised at several conferences, but there are currently no plans to introduce it systematically. Prepaid water meter equipment has been gradually introduced since 2013, mainly in the case of municipally owned properties (for example, Tettye Forrásház Zrt., Érd és Térség Víziközmű Kft.). The Ministry of Human Capacities, together with the Charity Service of the Catholic Church, launched an aid program called "Lak 6", providing families in need with prepaid water meter equipment and a similar programme is also underway in the framework of the "Jelenlét" program of the Charity Service of the Order of Malta.

The Deputy Commissioner for Nationalities also pays attention to monitoring this issue and has highlighted its importance during the continuous review of the Hungarian National Social Cohesion Strategy II as well as in discussions with government stakeholders. It is also raised in the Thematic Working Groups on ‘Nationalities of the Human Rights Working Group of the Ministry of Justice’ and on ‘Roma Issues of the Human Rights Working Group of the Ministry of Justice’.

## RECENT PUBLICATIONS RELATED TO THE RIGHT TO WATER

The FGO issued a General Opinion in 2017 on the implementation of the UN Sustainable Development Goals (SDGs) in Hungary emphasising the interlinkages between the SDGs and fundamental rights. The General Opinion zoomed in on five goals that were the focus of the review at the 2018 session of the UN High-Level Political Forum: Goal 6 on clean water and sanitation, goal 7 on energy, goal 11 on cities and other communities, goal 12 that requires the elaboration of sustainable consumption and production patterns, and goal 15 on continental ecosystems. The General Opinion contained specific recommendations for the individual goals related to legislative measures and the conduct of public authorities and suggested specific national indicators beyond the UN global SDG indicator list. The Hungarian government presented a Voluntary National Review on the implementation of Agenda 2030 in Hungary at the UN’s High-level Political Forum held in New York in July 2018, to which a summary of the FGO’s General Opinion was attached<sup>12</sup>.

The General Opinion on Groundwater protection from 2017, is also worth noting here. After the involvement of several stakeholders, the FGO summarised scientific arguments and constitutional concerns regarding protection of groundwater. These were also later used in its amicus brief submitted to the Constitutional Court which served as a useful legal foundation for the annulment of a planned amendment endangering groundwater quality and quantity.<sup>13</sup>

## COOPERATION WITH FOREIGN INSTITUTIONS

The [Network of Institutions for Future Generations](#), an international cooperation between institutions mandated to safeguard the rights of future generations issued a policy paper in 2019 entitled: *Looking to 2030 and beyond – how Institutions for Future generations can assist in SDG implementation*. In this paper, the case study of the FGO contributing to the annulment of the amendment to the Water Act endangering groundwater resources was included as a best practice.

This same case study was also presented at a panel discussion of the Regional Forum on Sustainable Development for the United Nations Economic Commission for Europe and was incorporated into the summary prepared for the United Nations High-level Political Forum.

The FGO participated at the Fundamental Rights Forum three-day conference of the European Union Agency for Fundamental Rights in Vienna in September 2018. Besides organising and leading a panel discussion entitled “Means and methods of protecting the environment through human rights and promoting the rights of future generations”, the FGO also described its SDG-related activities, encompassing SDG 6 on water and sanitation at an SDG-focused panel discussion.

- ▶ **Key words** Water pollution, Hydropower plants, Water management
- ▶ **Practices** Investigation, Recommendations, Reports
- ▶ **Relevant criteria** Acceptability, Quality
- ▶ **Website** <https://www.ombudsman.rs/>

### LEGAL FRAMEWORK

Although the right to water is not part of the Serbian Constitution there are other human rights closely linked to the right to water found in the constitution such as the right to a healthy environment (Art 74). It is also worth noting that a Water Law has provided for water regulation and rules to protect and control waters in the Republic of Serbia since 1991.

### INTERNATIONAL FRAMEWORK:

Serbia accessed the International Covenant on Economic Social and Cultural Rights on 12 March 2001 as a successor. This country has not adopted the Optional Protocol to the Covenant.

### MANDATE OF THE PROTECTOR OF CITIZENS (OMBUDSMAN) OF THE REPUBLIC OF SERBIA

The Protector of Citizens has the responsibility of protecting and promoting all types of human rights. More specifically, this includes protecting and promoting the rights to water and sanitation, the right to a healthy environment and the right to health.

Regarding water governance, the Protector of Citizens undertakes various activities in terms of promotion, protection and monitoring, and has the capacity to advise governmental bodies as well as cooperating with other national or foreign institutions. These activities can include promoting public education campaigns, preparing and contributing to international reports, investigating and following up complaints, monitoring how legislation is being implemented and reviewing changes in legislation, advising and meeting with government officials, and cooperating with other NHRIs

### THE PROTECTOR OF CITIZENS (OMBUDSMAN) OF THE REPUBLIC OF SERBIA AND WATER GOVERNANCE RELATED HUMAN RIGHTS

During 2019, the Protector of Citizens launched, on his own initiative, two investigations to control the regularity and legality of competent authorities' work due to water pollution. One of the investigations concerns pollution related to the appearance of greasy spots of undetermined origin on the surface of the Zapadna Morava and Lupnjača rivers, identified by locals who sent an open letter to the competent institutions. The Protector of Citizens learnt about it during a reception for citizens in Čačak, after which it was decided to launch an own-initiative investigation.

Based on media information, the Protector of Citizens discovered that the pollution of the Veliki Bački canal was related to the dumping of ten tonnes of dead fish between Srbobran and Bečej. Considering the extent of pollution and the fact that it has not been specifically determined who was the responsible polluter, the Protector of Citizens addressed the competent authorities. The investigations are still ongoing, providing a need for a detailed and comprehensive review of all relevant information in order to take proper measures.

In the control investigation related to the construction of small hydropower plants, the Protector of Citizens determined that current analysis of the environmental impacts indicated that their

construction may have negative consequences for the environment. In order to prevent further negative consequences and to preserve natural diversity, it was necessary to reconsider their construction, particularly in protected areas. Accordingly, an Opinion was issued to the competent authorities, paired with recommendations to the Ministry of Environmental Protection. These recommended that supervision should occur, determining ex officio whether there were reasons to reopen closed procedures for giving consent to surveys on environmental impact assessment and ordering compensatory measures. They also enacted a Bylaw to regulate the minimum sustainable flow of watercourses on which construction is planned.

In late 2019, it was planned to adopt amendments to the Law on Nature Protection and to the Law on Environmental Impact Assessment which would regulate the ban on construction of small hydropower plants in all protected zones, as well as tightening the requirements and criteria for construction of small hydropower plants. The legal amendments announced have not yet been adopted, nor has the Ministry of Environmental Protection fully complied with the recommendations issued by the time this Report was completed.

The Protector of Citizens holds meetings with the representatives of the Ministry of Environmental Protection in order to strengthen cooperation and improve the situation in this area.

Through its Annual Reports, the Protector of Citizens has been paying close attention to environmental protection, including water management, as well as raising awareness of the importance of these issues with a view to protecting and promoting environmental and human rights protection.

In 2019, the Protector of Citizens, inter alia, using the legal provision to act preventively by providing advice and opinions on issues within its competence in order to improve the work of administrative authorities and the protection of human rights and freedoms, issued an opinion with recommendations for the construction of small hydropower plants. This was sent to the Ministry of Environmental Protection, the Ministry of Agriculture, Forestry and Water Management and the Ministry of Mining and Energy.

## COUNTRY - ESTONIA

- ▶ **Key words** Water supply, Price formation, Sustainability
- ▶ **Practices** Handling of complaints, Recommendations
- ▶ **Relevant Criteria** Quality, Affordability
- ▶ **Website** <https://www.oiguskantsler.ee/en>

## LEGAL FRAMEWORK

The right to water is not part of the Estonian Constitution. However, as an EU member state, Estonia is bound by European Union water related laws. Moreover, in 1994, the Water Act was passed to regulate “the use and protection of water, relations between landowners and water users and the use of public water bodies and water bodies designated for public use” (§ 1(2)).

## INTERNATIONAL FRAMEWORK

Estonia became a member of the International Covenant on Economic Social and Cultural Rights on 21 October 1991. This country has not adopted the Optional Protocol to the Covenant.

## MANDATE OF THE CHANCELLOR OF JUSTICE OF ESTONIA

The Chancellor of Justice of Estonia has responsibility for protecting and promoting all types of human rights. More specifically, this includes protecting and promoting the rights to water and sanitation, the right to a healthy environment, the rights of future generations, the rights of children, the rights of women, the right to food and the right to health.

With regard to water governance, the Chancellor of Justice undertakes various activities in terms of promotion, protection and monitoring, and has the capacity to advise governmental bodies as well as cooperating with other national or foreign institutions. These activities can include promoting public education campaigns; conducting research and preparing reports and publications; providing training and capacity building to other bodies; preparing and contributing to international reports; investigating and following up complaints; monitoring how legislation is being implemented and reviewing changes in legislation; meeting with government officials; advocating for ratification of international treaties and cooperating with other NHRIs etc.

### THE CHANCELLOR OF JUSTICE OF ESTONIA AND WATER GOVERNANCE RELATED HUMAN RIGHTS

In recent years, the Chancellor of Justice has received several individual complaints regarding drinking water from wells across the country. These complaints have primarily raised quality issues, but also issues of quantity in some cases (i.e. whether the wells are near-dry). In order to address these concerns, the Chancellor has guided the relevant state agencies to include and advise applicants in mining permit proceedings. The Chancellor of justice has also dealt with the question of public water supply, distinguishing between cases in which people should join the public water supply systems and cases where citizens could dig a separate well for themselves. Finally, the office of the chancellor has also been monitoring price changes and directed questions to the Estonian Competition Authority where necessary.

In its 2018-2019 [Annual Report](#), the Chancellor made a proposal to Loksa town to regulate the price for water services in accordance with the constitution. Indeed, Loksa Council had previously stipulated that a client connected to the town's public water supply and sewerage system had to pay a basic fee to the water authority. This fee was to be set by the water authority and had to be approved by the local government. According to Estonian Law, a local authority cannot regulate price formation by a legislative act of general application. Price formation for water services is laid down in § 141 and § 142 of the Public Water Supply and Sewerage Act under which a water authority can set the price only after it has obtained approval for its application to set the price. If the licensed territory of a water authority is situated in a wastewater collection area with a pollution load equivalent to a population of 2000 or more, the water authority must obtain approval from the Competition Authority for its price application. Loksa is a wastewater collection area in which the pollution load fits within these parameters. As such, the approval of the Competition Authority must be obtained for regulating the price of water services (including changing the price structure and setting a basic fee). The local government had therefore set the basic fee without a legal basis under the law. As a result, and on the advice of the Chancellor, Loksa Council complied with the Chancellor's proposal and changed the regulation.

Moreover, regarding water governance in Viimsi Parish (from February 2020), the office of the Chancellor explained the reasons behind restrictions on using groundwater for garden watering purposes, and referred to sustainability principles enshrined in domestic law (the [Water Act](#) and the [Estonian Constitution](#), paragraph 5) and international law (the UN Resolution 64/292 "The human right to water and sanitation" and the International Covenant on Economic, Social and Cultural Rights art. 11).

- ▶ **Key words** Constitutional right, Implementation, Roma settlements, Infrastructure
- ▶ **Practices** Advocacy, Monitoring, Reports, Cooperation, Publications, Recommendations
- ▶ **Relevant criteria** Non-discrimination, Accessibility, Quality
- ▶ **Website** [www.varuh-rs.si/en/](http://www.varuh-rs.si/en/)

### LEGAL FRAMEWORK

Slovenia is the first European Union Country to include the right to water in its constitution (Art 70a). As an EU member state, Slovenia is also bound by European Union water related laws. Moreover, the Slovenian Waters Act (2002) provides, among other things, for the management of inland and groundwaters to ensure the equitable and sustainable use of waters for various types of use.

### INTERNATIONAL FRAMEWORK

Slovenia accessed the International Covenant on Economic Social and Cultural Rights on 6 July 1992 as a successor. This country has also signed, although not yet ratified, the Optional Protocol to the Covenant on 24 September 2009.

### MANDATE OF THE HUMAN RIGHTS OMBUDSMAN OF REPUBLIC OF SLOVENIA

The mandate of the Human Rights Ombudsman of the Republic of Slovenia to respond to human rights violations is limited to violations committed by state bodies, local government bodies, or holders of public authority. The Ombudsman investigates activities-based complaints received from the public and at his own initiative. The Human Rights Ombudsman Act gives him broad investigative powers. If violations of human rights or other irregularities are discovered, the ombudsman asks the relevant authority to rectify them. The Ombudsman also addresses systemic shortcomings and makes broader suggestions to the government for legislative and policy changes. Ombudsman recommendations are not binding, but nevertheless they often lead to a systematic improvement in individual cases.

The Ombudsman has no statutory powers in relation to the private sector—in such cases he can put pressure on state bodies, local government bodies and holders of public authority responsible for supervising the work of the private company or individual. However, Ombudsman activities related to research and promotion of human rights in Slovenia have a broader scope and cover both the public and the private sector. Thus, in principle, the Ombudsman could carry out these duties in relation to any human right. However, in recent years, the Ombudsman has more specifically focused on the rights to water and sanitation, the right to a healthy environment and the rights of future generations, children and women.

Regarding water governance, the Protector of Citizens undertakes a wide range of activities in terms of promotion, protection and monitoring, and has the capacity to advise governmental bodies as well as cooperating with other national or foreign institutions. These activities can include conducting research and preparing reports, preparing and contributing to international reports, investigating and following up complaints, monitoring how legislation is being implemented, meeting with and making recommendations to government officials, cooperating with other NHRIs etc.

# THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA AND WATER GOVERNANCE RELATED HUMAN RIGHTS

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## ► 1. Roma settlements

In the South-East Slovenia region, most of the Roma population lives in segregated Roma settlements that often lack basic living conditions, including access to drinking water, sanitation and electricity. The absence or insufficiency of municipal infrastructure endangers prospects for integration of the Roma population into the community on the one hand, but also hinders the fulfilment of human rights and fundamental freedoms of the Roma community and other communities living in the vicinity of illegal Roma settlements on the other. This situation has been affecting the dignity, as well as the personal and property rights of the affected groups but has also reinforced the distrust of these communities in a state governed by the rule of law and in promises of equality before the law.

Furthermore, the lack of access to public water infrastructure is not limited to the Roma population. It is estimated that it altogether affects around 130,000 residents of Slovenia. Populations that live in mountainous and remote regions are also vulnerable, and they need to rely on private reservoirs. Nonetheless, the problems affecting Roma settlements are particularly acute, since the issue is closely linked to the settlements not having proper legal arrangements (land and construction permits) and the history of discrimination against and segregation of the Roma community.

Over the years, the Ombudsman has been very active in advocating for access to infrastructure services in Roma settlements. Monitoring visits have been carried out to affected locations and the issue has been continuously addressed in the Ombudsman's annual reports<sup>14</sup> and other communications with authorities. In 2012, a special report was prepared.<sup>15</sup> The Ombudsman also cooperated with international monitoring bodies, including the CE Commissioner for Human Rights, ECRI and CERD, who also urged the Slovenian government to act in this area. In 2019, the Ombudsman drew attention to the issue in his submission for the purpose of a Universal Periodic Review.<sup>16</sup>

Among the recommendations made to the government the Ombudsman urged the enhancement of the state's role in implementing the National Programme of Measures for Roma. The Ombudsman suggested that, due to the ineffectiveness of municipalities, which are primarily responsible for providing water and sanitation infrastructure, the government should become actively and directly involved in the regulation of Roma settlements. The basis for this is Article 5 of the constitution of the Republic of Slovenia and paragraph 3 of Article 5 of the Roma Community Act.

Despite the continuous efforts of the Ombudsman and other stakeholders in advocating for change, little progress has been achieved in these settlements, and the Ombudsman's recommendations are yet to be implemented by the government. In 2016, the government installed plastic water tanks in two Roma settlements, which the Ombudsman warned could only act as a temporary measure and would not be suitable in times of particularly high or low temperatures. The Ombudsman saw this measure of providing drinking water via a water tank as a step backwards with regard to the government statement from 2011, which declared that the observance of the right to drinking water arising from Slovenian and international legislation required the provision of access through a public water supply system. In the government's opinion, Article 5 of the Roma Community Act does not constitute legal grounds for the state to interfere with municipal jurisdiction relating to the construction of community infrastructure or the organisation of various water supply methods.

According to the Ombudsman, the main obstacle to resolving the issue seems to be a lack of political will, both at the municipal and government level. Despite the legally grounded recommendations of the Ombudsman, the government does not accept responsibility for arranging access to water in Roma settlements when the municipalities fail to do so.

On 10 March 2020, the European Court of Human Rights (ECtHR) delivered its judgment in *Hudorovic et al. v. Slovenia*, finding that Slovenia did not violate its positive obligation to provide access to drinking water and sanitation for the applicants living in Roma settlements. While the decision is not helpful in achieving the commitment of the authorities to resolve the problems described, it should be noted that it concerns only the specific situation of the applicants and the settlements where they live. Other violations may still be confirmed in future judicial decisions regarding living in Roma settlements in Slovenia. Also, the ECtHR judgment may still be reversed in an appeals procedure in front of the Grand Chamber.

## ► **2. Water as a constitutional right**

In 2016, the Slovenian parliament amended the Constitution of the Republic of Slovenia to add the right to drinking water as a fundamental right (Article 70.a), becoming the first EU member state to do so. The amendment was supported by the Ombudsman, who had been persistently advocating for this constitutional change for over a decade. The Ombudsman has also been making explicit recommendations to the government and parliament to prepare and adopt in due course all the required regulations to safeguard the right to drinking water, as stipulated by the Constitution of the Republic of Slovenia. Most importantly, these recommendations have centred around themes of environmental protection, public utilities, local self-government and public-private partnerships.

The state was supposed to adapt the legislation implementing the constitutional right to water by 25 May 2018 (as per the Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia itself) but failed to do so. The issue of harmonising legislation and regulations with the said constitutional provision therefore remains open, despite continuous advocacy by the Ombudsman and other stakeholders.

Similar to the Roma settlements issue, the office of the ombudsman seems to have been dealing with unresponsiveness from and slow decision-making by the responsible authorities. While the inclusion of the right into the constitution was an important stepping-stone, much more needs to be done for its implementation in law to bring about tangible changes. So far the government, in office from 2016 until March this year, had been postponing this necessary work.

## ► **3. Other projects**

Apart from the two main areas of work highlighted above, the Ombudsman has also been active in relation to other problems detected relating to water governance. Indeed, the Ombudsman has addressed the issue of water quality monitoring, which is currently not carried out for around 130,000 residents of Slovenia that are not connected to public water infrastructure. In response, the responsible authorities acknowledged the shortcomings of the current monitoring system and promised to improve it while implementing the recast EU Drinking Water Directive.

The responsible authorities have also accepted, but not yet implemented, the Ombudsman's recommendation to improve the conditions for obtaining EU cohesion funding for smaller municipalities to build public water infrastructure (so far participation in funding has been limited to water infrastructure servicing more than 10,000 inhabitants).

The new Slovenian government, which assumed office in March 2020, recently introduced legislative amendments which reduce legal protections in the field of environmental protection and nature conservation, particularly by limiting the role of environmental NGOs in official procedures. The issue may affect the exercise of the right to water in relation to the human right to a healthy environment.

# B. ASIA-PACIFIC

## COUNTRY - PHILIPPINES

- ▶ **Key words** Shortage of water supply, Dam project, Strategy map, Outcome indicators
- ▶ **Practices** Forum discussions, Monitoring, Training plans
- ▶ **Relevant criteria** Availability, Accessibility
- ▶ **Website** <http://www.chr.gov.ph/>

### LEGAL FRAMEWORK

The right to water is not part of the Constitution of the Philippines. The main legislation regulating the use, conservation and protection of water resources in the country is the Presidential Decree No. 1067 of 1976, which instituted the Water Code of the Philippines to “establish the basic principles and framework relating to the appropriation, control and conservation of water resources to achieve the optimum development and rational utilization of these resources” (Art 2(a)).

### INTERNATIONAL FRAMEWORK

The Philippines signed the International Covenant on Economic Social and Cultural Rights on 19 December 1966 and ratified it on 7 June 1974. This country has not adopted the Optional Protocol to the Covenant.

### MANDATE OF THE COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES

The Commission on Human Rights of the Philippines (CHRP) has responsibility for protecting and promoting all types of human rights. More specifically, this includes protecting and promoting the right to a healthy environment, the rights of indigenous people, the rights of children, the rights of women, the rights of persons with disabilities and the right to food.

Regarding water governance, the Protector of Citizens undertakes various activities in terms of promotion, protection and monitoring, and has the capacity to advise governmental bodies. These activities can include promoting public education campaigns, conducting research and preparing reports and publication, investigating and following up complaints, as well as advising and meeting with government officials.

The Commission on Human Rights has 16 regional offices and one national office.<sup>17</sup> Each office is responsible for receiving reports alleging violations of the right to water. According to the CHRP, these violations are often related to or subsumed by complaints of harassment, land grabbing, internal displacement and violations of other rights such as the rights to an adequate standard of living, housing, property, freedom of movement and health. As such, CHRP's experience in being involved in advocacy for the right to water, including water governance, is primarily case-specific with the purpose of resolving conflicts among the parties involved in the case, or redressing grievances through legal action. In order to resolve water-related conflicts the CHRP can directly provide legal assistance or it can also refer the case to other government agencies or lawyers' groups.

## THE COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES AND WATER GOVERNANCE RELATED HUMAN RIGHTS

Due to water shortages in Metro Manila since the first quarter of 2019, CHRP, in partnership with civil society organisations (CSOs), co-sponsored forums on the right to water.<sup>18</sup> CSOs have unique ways to evaluate information provided in state reports pertaining to water governance that are also helpful to the CHRP in considering alternative views on human rights situations.

Moreover, the CHRP, through the Economic, Social and Cultural Rights Centre (ESCRC), also initiated monitoring the impact of the construction of the Kaliwa Dam Project. A preliminary case conference was held on 9 December 2019.<sup>19</sup> As a result of the case conference, the ESCRC has proposed a monitoring framework to the CHR Commission en Banc, which is pending approval.



Every project and program of the CHRP related to water governance adheres to the detailed strategy map and the indicators.

### HUMAN RIGHTS PROTECTION PROGRAM

#### **Outcome Indicators**

- ▶ Percentage of resolved human rights violation cases resulting in victims' access to remedies
- ▶ Percentage of clients who are satisfied with the quality and timeliness of the delivery of protection services

#### **Output Indicators**

- ▶ Percentage of human rights cases resolved within the prescribed period
- ▶ Percentage of claims for financial assistance processed within the prescribed period
- ▶ Percentage of cases of human rights violations investigated
- ▶ Percentage of programmed visits to jails/detention centres implemented

## HUMAN RIGHTS PROMOTION PROGRAM

### **Outcome Indicators**

- ▶ Percentage of participants who passed the post training test

### **Output Indicators**

- ▶ Percentage of programmed trainings, education activities and information campaigns implemented
- ▶ Percentage of programmed IEC materials developed and disseminated

## HUMAN RIGHTS POLICY ADVISORY PROGRAM

### **Outcome Indicators**

- ▶ Percentage of policy issuances that have incorporated or used human rights policy issuances

### **Output Indicators**

- ▶ Number of programmed policy issuances submitted/released according to target
- ▶ Percentage of treaty reports and human rights situation reports issued/submitted on or before prescribed date

One of the challenges identified by the Commission that may hinder the realisation of the rights to water and sanitation is the heterogeneity of practices adopted and constraints faced by the CHRP's regional offices. Indeed, these offices have different experiences in handling cases of economic, social and cultural rights (ESCR), particularly on water governance. Some regional offices are more exposed to the rigours of ESCR monitoring and hence have more confidence in promoting ESCR than others. Given this challenge, the ESCRC sets up an annual capacity-building activity for designated focal persons from all regional CHRP offices. The ESCRC developed a template for monitoring the right to water that was shared with regional focal persons during the February 2020 Training. A training plan is also being prepared to fully mainstream the work in ESCR in the regional offices, given the current trends.



# C. LATIN AMERICA

## COUNTRY - MÉXICO (OAXACA)

- ▶ **Key words** Zapotecos people, Indigenous
- ▶ **Practices** Promotion, Consultation
- ▶ **Relevant criteria** Accessibility, Non-discrimination
- ▶ **Website** [www.derechoshumanosoaxaca.org](http://www.derechoshumanosoaxaca.org)

### LEGAL FRAMEWORK

The right to water is explicitly recognised in the Mexican Constitution (Art 4). In Mexico the National Water Law of 1992 (*Ley de Aguas Nacionales*) is the main law governing water resources.

### INTERNATIONAL FRAMEWORK

Mexico became a member to the International Covenant on Economic Social and Cultural Rights on 23 March 1981. However, this country has neither signed nor ratified the Treaty. Mexico has not adopted the Optional Protocol to the Covenant either.

### MANDATE OF THE “DEFENSORÍA DE LOS DERECHOS HUMANOS DEL PUEBLO DE OAXACA”

The Defensoría has responsibility for protecting and promoting all types of human rights. In terms of water governance related human rights, this institution focuses primarily on the rights of indigenous people

The Defensoría undertakes various activities in promotion, protection and monitoring, and has the capacity to advise governmental bodies as well as cooperating with other institutions. These activities can include providing training and capacity enhancement programmes, investigating and following up complaints, advising and meeting with government officials, advocating for the ratification of international treaties, and ensuring the rights of citizens to prior, free and informed consultation.

### THE “DEFENSORÍA DE LOS DERECHOS HUMANOS DEL PUEBLO DE OAXACA” (MÉXICO) AND WATER GOVERNANCE RELATED HUMAN RIGHTS

The *Defensoría de los Derechos Humanos del Pueblo de Oaxaca* actively participates in peaceful processes of consultation, promoting dialogue and ensuring that the fundamental rights of indigenous people are respected. Indeed, this was illustrated by the actions of the institution, when it intervened as the body responsible for consulting with the Zapotecos people from the Valleys of Ocotlán y Zimatlán, Oax before modification of a presidential decree from 1967. For 50 years, this decree had been precluding indigenous farmers from using their own water resources. This came to light in 2005, when many of these communities suffered from droughts. As water fees started to rise and water supply was restricted, indigenous communities realised they had no rights over groundwater resources according to the 1967 decree. It was against this backdrop that sixteen indigenous communities started claiming their rights to life and water and asked for the modification of the decree. The indigenous consultation process that has been undertaken since is very likely to become the first successful consultation process carried out according to national and international law, as it is close to being concluded with the modification of the decree and the protection of indigenous rights.

Amongst the activities carried out by this institution, the *Defensoría* strives to promote and raise awareness regarding the right to a healthy environment, particularly amongst indigenous groups, but also amongst the general public, public servants and officials and civil society organisations.

- ▶ **Key words** Annual reports, Food and Nutritional Security, Water law
- ▶ **Practices** Private or public recommendations, Investigations, Reports, Monitoring, Promotional activities
- ▶ **Relevant criteria** Availability, Accessibility, Quality, Non-discrimination
- ▶ **Website** [www.pdh.org.gt](http://www.pdh.org.gt)

### LEGAL FRAMEWORK

In Guatemala, the right to water is not explicitly recognised in the constitution. However, article 97 stresses the duty of the state to adopt the necessary measures to ensure the protection of water resources, among others.

There is no general law exclusively dedicated to water governance, nor a high authority responsible for ensuring the realisation of the human right to water. Several ministries and municipalities share institutional capacities and responsibilities linked to drinking water, water for irrigation, water quality, residual waters etc. However, several decrees have been issued to protect certain water sources.

### INTERNATIONAL FRAMEWORK

Guatemala became a member of the International Covenant on Economic Social and Cultural Rights on 19 May 1988. However, this country has neither signed nor ratified the Treaty. Guatemala has not adopted the Optional Protocol to the Covenant either.

### THE “PROCURADURÍA DE LOS DERECHOS HUMANOS” OF GUATEMALA

The constitutional mandate of the *Procuraduría* includes the supervision and monitoring of public administrations. This mandate centres around two main pillars: first, the supervision and monitoring of public administration and second, the promotion of human rights through such activities as campaigns and education.

In terms of protection, the *Procuraduría*, based on its investigative and monitoring work, formulates a series of recommendations to public institutions through the Procurador de los Derechos Humanos in order to ensure that human rights are guaranteed. The legal mandate of the *Procuraduría* allows this institution to order the termination of a violation and the restitution of the rights affected. Depending on the gravity of the violation, it can support a disciplinary process, notably the dismissal of a public servant, and any other punitive process. If the investigation shows that an offence or fault has been committed, the *Procuraduría* can formulate a demand before the competent jurisdictional body, and if a human right has been violated by an individual, the latter will be subject to the relevant sanction.

Regarding its advisory role, the *Procurador* can formulate private or public recommendations for the relevant government institutions. Indeed, the *Procuraduría* has issued recommendations to all 340 Guatemalan municipalities, which have the obligation to guarantee access to water for their population. It has also advised the Ministry of Public Health and Social Assistance, which has the duty to supervise and monitor the quality of water for human consumption and is responsible for governing the National Policy of Water and Sanitation. The *Procuraduría* also influences the Ministry of Environment and Natural Resources to ensure that resources are protected, amongst other things. Every recommendation is based on independent and well documented reports.

Based on its constitutional and legal mandate, the *Procuraduría* is able to and does regularly carry out investigations on public administration, in order to ensure that every entity respects and carries out their functions and duties as required by law, so that every citizen can have access to water

## THE “PROCURADURÍA DE LOS DERECHOS HUMANOS” OF GUATEMALA AND WATER GOVERNANCE RELATED HUMAN RIGHTS

Every year, the *Procurador* issues an Annual Report on the state of human rights in Guatemala. These reports always include a separate paragraph exclusively linked to the right to water in which are included the following: data and statistics; surveys and monitoring activities carried out by the *Procuraduría*; every promotional activity linked to the human right to water carried out by the different administrative units of the *Procuraduría*.

Since 2018, the *Procuraduría* has reiterated the pressing need for a law exclusively dedicated to water to be brought to Congress. This is because, despite art. 127 of the 1985 constitution expressly stating that a specific law must be established to cover this area, there has been no such law implemented. This law should address the integrated management of hydrological resources, it should establish a superior authority and cover every aspect of the human right to water and the rights of every Guatemalan to access safe and sufficient water, acceptable, accessible and affordable without discrimination. An adequate supply of water should be guaranteed to avoid deaths by dehydration or by gastrointestinal diseases and to ensure that other rights such as the right to health, to food and to life are realised.

The *Procuraduría* also submits annual reports on Food and Nutritional Security. The 2019 edition focused on analysing municipal actions aimed at realising the right to adequate food and nutritional security. One of the main findings highlighted a direct correlation between the poor quality of water in several households (polluted with faecal coliform bacteria) and the high prevalence of diseases transmitted through water and food. This investigation provided evidence that municipalities were not respecting their duty to chlorinate water. Moreover, the investigation showed that this phenomenon occurs mostly in rural areas, revealing that the state may be guilty of discrimination.

Regarding the monitoring actions linked to water governance carried out by the *Defensoría Socio Ambiental*, the importance of adopting a law on water has been highlighted. They have also re-emphasised the duty of municipalities to ensure the proper functioning of drinking water supply for human consumption, stressing the importance of water quality as a fundamental element for the survival of consumers. These investigations have also stressed the importance of implementing the “Acuerdo Gubernativo 236-2006” related to the construction of residual water treatment plants by generating entities to avoid the violation of the right to food security. Indeed, residual water is mainly used for agriculture and it is the responsibility of each generating entity to return water to the same state from which they receive it.

It is interesting to note that the Promotion Department has not carried out any action related to the work of NHRIs on water governance.

## COUNTRY - ECUADOR

- ▶ **Key words** Constitution, Civil society, Empowerment, Sustainable management
- ▶ **Practices** Capacity building, Education programmes, Cooperation, Monitoring, Promotion, Handling of complaints
- ▶ **Relevant criteria** Accessibility, Availability, Non-discrimination
- ▶ **Website** [www.defensoria.gob.ec](http://www.defensoria.gob.ec)

### LEGAL FRAMEWORK

The right to water is explicitly recognised in the Constitution of Ecuador (Art. 12). The main law linked to water governance in Ecuador is the 2014 Organic Law on Water Resources, Uses and Utilisation of Water (*Ley Orgánica de Recursos Hídricos Usos y Aprovechamiento del Agua*). This Law seeks to guarantee the human right to water and it aims to regulate and control the authorisation, management, preservation and conservation of water resources in accordance with the constitution.

### INTERNATIONAL FRAMEWORK

Ecuador signed the International Covenant on Economic Social and Cultural Rights on 29 September 1967 and ratified it on 6 March 1969. This country also signed the Optional Protocol to the Covenant on 24 September 2009, and ratified it on 11 June 2010.

### MANDATE OF THE “DEFENSORÍA DEL PUEBLO”

The *Defensoría del Pueblo* has responsibility for protecting and promoting all types of human rights. More specifically, this includes protecting and promoting the rights to water and sanitation, the right to a healthy environment, the rights of indigenous people, the rights of future generations, the rights of children, the rights of women, the rights of persons with disabilities, the rights of workers, the rights of the elderly, the rights of consumers and the right to food. The *Defensoría* also focuses on the prevention of torture and inhumane treatment.

As regards water governance, the *Defensoría del Pueblo* undertakes a wide range of activities in terms of promotion, protection and monitoring, and has the capacity to advise governmental bodies. These activities can include promoting public education campaigns, conducting research and preparing reports and publications, providing training and capacity enhancement programmes, preparing and contributing to international reports, investigating and following up complaints, monitoring how legislation is being implemented and revising existing legislation, advising and meeting with government officials, advocating for the ratification of international treaties, designing projects that contribute to the realisation of SDGs, and cooperating with foreign institutions.

### THE “DEFENSORÍA DEL PUEBLO” AND WATER GOVERNANCE RELATED HUMAN RIGHTS

In recent years, the *Defensoría* has carried out a series of projects in the following areas: capacity building and education programmes for the sustainable use of water services and sewage systems in partnership with international organisations (for example, capacity building workshops); efforts to build cooperation and enhance the relationship with regulating authorities in the sector of water management; monitoring water services through local governments; and efforts to provide adequate housing for all, including effective services of water and sanitation.

According to the *Defensoría*, monitoring activities have had a considerable impact on local governments in guiding them to comply with established norms. In terms of promotion, the impact on local governments is lower despite numerous capacity building activities. However, activities linked to the promotion of the HRWS seem to have a greater impact on civil society, as is shown by the empowerment of social organisations that are increasingly pressing for the full realisation of these rights. Finally, the handling of complaints and demands is generally efficient and meetings are held regularly to propose actions that must be taken to improve access to and the quality and sustainable management of water services.



# D. AFRICA

## COUNTRY - SOUTH AFRICA<sup>20</sup>

- ▶ Key words - Hearings, Rammulotsi, Makhaza
- ▶ Practices - Monitoring implementation, Thematic reporting, Advocacy, Public education, Provincial and National hearings
- ▶ Relevant criteria - Accessibility, Accountability, Participation
- ▶ Website - [www.sahrc.org.za](http://www.sahrc.org.za)

### LEGAL FRAMEWORK

The National Constitution of South Africa (section 27(1)) explicitly provides for the human right to water. The two main laws linked to water governance in South Africa are the 1997 Water Services Act and the 1998 National Water Act. The former regulates municipal water supply and sanitation services and the latter sets out the legal framework governing the management, the use and the control of water resources.

### INTERNATIONAL FRAMEWORK

In 2015, South Africa ratified the International Covenant on Economic, Social and Cultural Rights (ICECSR) – twenty years after signing it. This ratification has implications for the provision of an adequate standard of living, which is widely accepted to include the rights to water and sanitation. General Comment 15 of the ICESCR states “*the human right to water is indispensable from leading a life in human dignity. It is a prerequisite for the realisation of other human rights*”.

### POLICY DEVELOPMENTS

Since the First Edition of this Compilation, a series of policies have been adopted by the South African government, shaping the framework of water governance in the country. In 2015, the state adopted the National Sanitation Policy, which recognises sanitation as a public good that extends beyond the household boundary. However, the National Sanitation policy does not expressly recognise sanitation as a human right to which everyone is entitled. This is contradictory to international declarations and South African jurisprudence.

At the United Nations Sustainable Development Summit in September 2015, South Africa adopted the 2030 agenda, which consists of the Sustainable Development Goals (SDGs). The SDGs recognise that access to water and sanitation constitutes services that are essential to poverty and inequality alleviation and survival. SDG 6 calls on states and peoples to “ensure availability and sustainable management of water and sanitation for all”.

In 2019, the Department of Water and Sanitation (DWS) launched the National Water and Sanitation Master Plan (NW&SMP) which identifies key actions required to ensure water security and equitable access to water and sanitation services for everyone by the year 2030 and beyond. The NW&SMP is based on five key objectives that define a ‘new normal’ for water and sanitation management in South Africa, namely, resilient and fit-for-use water supply; universal water and sanitation provision; equitable sharing and allocation of water resources; effective infrastructure management, operation and maintenance; and reduction in future water demand.

## JURISPRUDENTIAL DEVELOPMENTS

The 2012 City of Cape Town (CoCT) v Strümpher (The Strümpher Case) illustrated the importance of the judicial system in protecting and promoting social and economic rights, especially the right to water. The respondent's (Strümpher) water was disconnected by the CoCT. The Supreme Court of Appeal (SCA) ordered the CoCT to restore his water connection, which it had disconnected pursuant to by-laws and debt collection laws. The applicant argued that water provision was a contractual arrangement and that the contract had been breached as Mr. Strümpher's account was in arrears, even though there was a dispute in relation to how the rates were calculated. The SCA noted that the CoCT had a "*constitutional and statutory obligation to supply water to users*" and that the rights of the respondent were underpinned by constitutional and statutory provisions, and not just personal rights. The respondent's use of water was likened to "*an incident of possession of property*" and the CoCT's actions were likened to "deprivation of possession of property", which required a court order.

## MANDATE OF SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC)

Under Section 184 of the Constitution of South Africa, the South African Human Rights Commission has the mandate to promote, protect, monitor and assess the observance of human rights, including monitoring the realisation of socio-economic rights. The Human Rights Commission Act of 1994 specifically empowers the Commission to investigate and report on the observance of human rights and to take steps to secure appropriate redress where human rights have been violated.

## SAHRC AND WATER GOVERNANCE RELATED HUMAN RIGHTS

The South Africa Human Rights Commission has been actively engaging in activities related to the right to water and sanitation. One of the six Commissioners' focus areas is Environment, Natural resources and Rural Development specially mandated in following up the implementation of the International Covenant on Economic, Social and Cultural Rights.

## COMPLAINTS MANAGEMENT AND INVESTIGATIVE REPORTS

The SAHRC has offices in all nine provinces in the country and receives and processes complaints on human rights violations. Generally, over the past five years, complaints received by the Commission reveal systemic challenges regarding the provision of sufficient, clean and potable water. For instance, the SAHRC is currently engaged in litigation against the Madibeng Local Municipality in the North West Province following failure by the Municipality to comply with a High Court order which ordered the Municipality to provide the Klipgat community with a reliable and sufficient supply of potable clean water. The SAHRC has also received complaints regarding the quality of water provided by some municipalities. Currently, the Commission is monitoring a complaint regarding unclean water in the area of Hammanskraal in the jurisdiction of Tshwane Metropolitan Municipality.

The SAHRC has also received complaints around the wastewater treatment works' infrastructure which poses a serious environmental degradation risk and a violation of the rights enshrined in section 24 of the constitution. According to statistics, of the 824 wastewater treatment works, 248 (30.1%) were assessed in 2013 to be in a critical condition and in need of regulatory action. A further 161 (19.5%) of the treatment works were in a poor condition and warranted urgent attention.

In 2019 the SAHRC, through its Mpumalanga Provincial Office, issued an [investigative report](#) which found that the municipalities in Mpumalanga—namely Nkomazi Local Municipality, Lekwa Local Municipality and Govan Mbeki Local Municipality—had failed in their constitutional and legislative obligations to ensure their citizens had an environment that was not harmful to their health and well-being, by their continued failure to effectively address the challenges of sewage spillages and the inadequate treatment of effluent within their jurisdictions. The SAHRC, through

its office in Gauteng, instituted an inquiry as a result of complaints that the Vaal River was being polluted due to systemic challenges with the functionality of wastewater treatment plants within the jurisdiction of the Emfuleni Local Municipality. The report is currently being drafted.

In its 2018 report on the [Underlying Socio-economic Challenges in Mining-affected Communities in South Africa](#) (mining report), the Commission found that operating mines, including disused mines, has severe and adverse impacts on water sources—including the depreciation of water sources and water contamination. Mining-affected communities thus struggle to access safe and clean water. There are mining operations taking place across South Africa's nine provinces.

## I. CASE STUDY: RAMMULOTSI AND MAKHAZA

The South African NRHI had received complaints in 2010 indicating that toilets had been built without enclosures in two local communities: Makhaza and Rammulotsi. Upon further investigation, the NHRI ruled that the facilities violated the rights to dignity, privacy and a clean and healthy environment. In both findings, the NHRI addressed the responsibility of local municipalities to immediately enclose the toilets. At the same time, residents of Makhaza approached the Western Cape High Court for relief as the toilets remained unenclosed. The Court found in favour of the applicants, ruling that the toilets violated the right to dignity and privacy and that no provision was made for vulnerable groups such as the elderly, people with disabilities and women. Both cases were ultimately successfully resolved.

Despite the toilets being finally enclosed and multiple efforts to realise the human rights to water and sanitation, multiple challenges concerning water and sanitation still exist in Makhaza (which is a part of Khayelitsha) and Khayelitsha generally. The Social Justice Coalition reports that in Khayelitsha one in three households have no access to water and one in four households have no access to a flush toilet connected to a sewage system. Residents complain that, at times, communal toilets are not serviced for months which often causes toilet blockages. In the region, there are also challenges around the provision of water and services to new informal settlements which have not been declared 'settlements' by the City of Cape Town for the purposes of providing services.

In Moqhaka Local Municipality, where Rammulotsi is located, it was reported that 10.3% of households did not have a flush toilet connected to sewerage and 51.4% of households did not have piped water inside their dwelling in 2016. The DWS has undertaken to eradicate bucket toilets in the Free State province by August 2020. The Commission is working with both state and civil society organisations to identify communities in need of water and sanitation services and to ensure provision thereof.

The South African NHRI recognised the fact that these cases were part of a wider problem facing millions of people who are poor: the lack of access to sanitation and the lack of a human rights-based approach to service delivery. So, they made the decision to conduct a broader investigation and embark on a series of provincial hearings on the status of the human rights to water and sanitation in South Africa. They visited rural communities in all nine provinces and asked these communities to highlight the problems they were experiencing in accessing water and sanitation. Following the results of this investigation, the South African NHRI developed a set of comprehensive recommendations to improve the state of access to water and sanitation in the country. These recommendations addressed *inter alia* improving institutional arrangements, enhancing a human rights-based approach to service delivery and improving access to services in schools, particularly for girls. In order to hold government to account, the Commission engaged extensively with government departments on these recommendations (a national hearing, written communication, subpoena hearings, roundtable discussions). These recommendations were also discussed with civil society organisations, and their comments were incorporated.

As a result of the SAHRC's actions, there have since been several positive outcomes:

1. The research and findings of the report exposed the issues experienced in South Africa around access to water and sanitation.
2. The identification of these issues and the associated recommendations prompted civil society organisations to hold the government to account on these issues.
3. Information gained from the research gave the NHRI hard evidence to provide to government departments and inter-ministerial committees.
4. The NHRI recommended that the competency of sanitation be moved from the Department of Human Settlements to the Department of Water Affairs, to ensure an efficient streamlined provision of water and sanitation services.

## 2. THE 2014 SAHRC REPORT ON THE RIGHT TO ACCESS SUFFICIENT WATER AND DECENT SANITATION IN SOUTH AFRICA

SAHRC released a report on the overall situation of the right to water and sanitation in South Africa following national and provincial hearings held to assess the South African government's efforts to realise the human rights to water and sanitation. This report was extensively covered in the First Edition of the Compilation.

The 2014 SAHRC report is still the primary reference point for the overall HRWS. Building on the 2014 report, the Commission published a water and sanitation research [brief](#) in 2018<sup>21</sup> which sought to evaluate the extent to which the recommendations contained in the 2014 report had been implemented. The 2018 research brief also provided a new set of recommendations based on the findings of the brief. The 2018 research brief found, for instance, that although reports on the provision of basic services, such as water and sanitation, may indicate an improvement, large numbers of people may be experiencing a different reality. The lived reality for those in impoverished communities, particularly in informal settlements, is that of lack of access to sufficient water and the right to decent sanitation.

Developments regarding the main issues identified in the 2014 Report:

### **1. The concept of water as a commodity instead of as a human right**

At a national level, South Africa's constitutional imperative suggests that water is a right. In practice, however, the privatisation of water services and the new trend of tenders for the provision of water tankers, has led to the commodification of water. The Commission continues to raise this issue with the relevant state department and parliament.

### **2. Lack of infrastructure or infrastructure that is not functional**

The lack of management and maintenance of water and wastewater facilities is a dire problem in South Africa. Approximately 9.3% of available portable water is lost through pipe and tap leakages. Myriad site visits by Commissioner Mohamed Shafie Ameerma have confirmed that water and wastewater facilities are either not operational or at capacity in various sites around the country, particularly in rural and outlying areas. The Commission is engaging with the DWS and the Inter-Ministerial Committee on Water and Sanitation to put in place plans with timeframes to address this.

### **3. Poor water and sanitation quality and the impact on other rights**

While quality has improved, of great concern (as indicated above) is the lack of access to decent and safe sanitation facilities in schools. The Commission is engaging regularly with the Department of Basic Education on plans and timeframes for the improvement of sanitation. This problem has been thrown into sharp relief with the outbreak of the novel coronavirus and the capacity of the state to respond is likely to be more effective today than it has been in the last decade.

#### **4. Lack of monitoring projects and corruption**

The Commission has not conducted significant research in relation to this since the publication of the 2014 report.

#### **5. Impact on the most vulnerable**

The DWS has placed notable focus on the building of bulk water infrastructure projects in provinces that had previously been underserved and are largely rural (Free State, North West, Northern Cape and Limpopo) and Gauteng, whose population is dense as a result of migration. The DWS reports that a total of 2019 bucket toilets in the urban areas of the Free State and Northern Cape were eradicated and 5012 sanitation backlogs in rural households eradicated. The provision of water and sanitation services to households living in traditional dwellings in rural areas and informal settlements remains a significant challenge in South Africa. Many of these households still use pit and bucket toilets. South Africa statistics report that three million households do not have access to reliable drinking water and 14.1 million households in South Africa do not have access to safe sanitation.

The Commission's 2018 research brief also stresses the lack of implementation of recommendations made in the 2014 report. The implementation of the recommendations concerning the provision of water and sanitation services in schools remains a significant challenge. There are two known cases of children who have fallen into pit toilets at schools and died. In the report monitoring the implementation of the recommendations issued in their 2014 report on water and sanitation, the SAHRC found that the Department of Education has failed to implement their recommendation to address water and sanitation backlogs in schools.

### **OTHER ACTIVITIES**

In 2018, the Commission conducted a national hearing and published a report on the Underlying Socio-Economic Challenges of Mining-affected Communities in South Africa with recommendations to the DWS, on *inter alia* water use monitoring.

Additionally, the Commission's Advocacy Unit created a revised pamphlet on the right to water and sanitation. The pamphlet outlines all relevant national, regional and international laws on the right to water and sanitation and also informs the public of where they can seek assistance if their right to water and sanitation has been violated. The pamphlets are available at all the Commission's offices and are also handed out to members of the public during provincial roadshows.

### **INTERNATIONAL COOPERATION**

1. The Commission has previously engaged with the CEO Water Mandate, which falls under the UN Global Compact, and continues to receive updates and engage periodically with it.
2. The Commission has worked closely with the Australian National University over the last 3 years on an Individual Deprivation Index (IDM) study in South Africa. The study focused on an assessment of deprivation in 15 categories, including water and sanitation. The results have been used to illustrate the levels of deprivation in relation to water and sanitation to the DWS and will be used in a future presentation to the Inter-Ministerial Committee on Water and Sanitation.
3. The Commission went through a period of engagement with the Centre for Economic and Social Rights in New York on monitoring systems for economic and social rights—called the OPERA framework (Outcomes, Policy Efforts, Resources, and Assessment).
4. As detailed above, the Commission has engaged with the CESCR.
5. The Commission has also engaged with the International Commission of Jurists and the Office of the High Commissioner for Human Rights in Pretoria, generally on economic and social rights matters.

- ▶ **Key words** Dignity, Privacy, Environment, Right to housing, Post-electoral crisis, Lomé, Declaration on Climate Change and Protection of Civilians in West Africa, Water cuts, Floods, COVID-19
- ▶ **Practices** Monitoring, Reporting, Visits, Statements, Conferences
- ▶ **Relevant criteria** Accessibility, Quality, Availability
- ▶ **Website** [www.cndh.ci](http://www.cndh.ci)

### LEGAL FRAMEWORK

The rights to water and sanitation are not included in the Constitution of Côte d'Ivoire but the state guarantees the provision of drinking water in its 1998 Water Code.

A Ministry of Water was established on 10 July 2018. Moreover, other agencies such as the National Office of Drinking Water (ONEP) and the National Office of Sanitation and Drainage also play a role in water policies in the country.

### INTERNATIONAL FRAMEWORK

Côte d'Ivoire accessed the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 26 March 1992. This country has not adopted the Optional Protocol to the Covenant.

#### MANDATE OF THE NATIONAL HUMAN RIGHTS COUNCIL [CONSEIL NATIONAL DES DROITS DE L'HOMME DE CÔTE D'IVOIRE (CNDH)]

The Council was established on 30 November 2018 by Law No 2018-900 which replaced Law no 2012-1132 under which the previous National Commission of Human Rights of Côte d'Ivoire was operating. The institution has four main functions in terms of protection, promotion and defence of human rights. These are: conciliation, consultation, evaluation and proposition. In order to fulfil its mandate, the CNDH is responsible, among other things, for ensuring the harmonisation of national law with international law, issuing notices, visiting detention centres and analysing any other issue related to the promotion, protection and defence of human rights. It may, furthermore, receive complaints of violations of human rights and carry out non-judicial investigations. Complaints may be received from the victim or any other person. They may be lodged orally or in writing.

### THE COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

#### **Detention Centres**

One context in which the right to sanitation has been addressed by the National Human Rights Council of Côte d'Ivoire is in prisons. Following visits to detention centres, an analysis of the living conditions of prisoners demonstrates that sanitary installations in the detention premises are not always clean and well maintained. There are also concerns relating to the dignity of the prisoners as there is no privacy when using toilets and showers. At the Maison d'Arrêt et de Correction d'Abidjan (MACA) it was also reported that prisoners were affected by frequent interruptions in the supply of water. Moreover, since 2015 the CNDH has led a campaign for providing access to water for inmates at the MACA after the facility suffered from floods. In order to restore access to water, the CNDH used advocacy with the ICRC and the Ministry of Justice

### OTHER ACTIVITIES

The CNDH has been carrying out a series of actions since 2014; notably, they issued declarations

on water cuts in the city of Abidjan. Regarding the floods that occurred in Abidjan on 19 June 2018, the CNDH issued a report containing several recommendations for the authorities. Finally, the CNDH has undertaken an investigation, in partnership with the Ministry of Education, which identified that some schools did not have access to water points that were sufficiently close. Following this study, recommendations were issued to improve water services for students.

The main challenges faced by the CNDH in recent years in terms of water governance have been linked to raising awareness amongst the general population and government institutions to reduce water waste; providing access to safe water for communities living in remote areas; tackling the worst impacts of climate change and other factors affecting ground water; and improving water quality. This is exacerbated by the fact that often, governmental authorities do not take the CNDH recommendations into account.

The CNDH water governance mandate appears to be the key factor in creating change despite the lack of government structure regarding water policy and the fact that the issue of water is not treated as a separate issue in their action plans.

A few challenges are yet to be faced by the CNDH in terms of water governance. The COVID-19 pandemic has brought new issues in terms of water and sanitation. The CNDH has also highlighted issues relating to the lack of capacity of its workers on WASH. Raising public awareness on issues such as climate change also appears to be a challenge to come. In order to achieve real change, government officials, communities and other political leaders will have to join the efforts of the CNDH to consider and realise the rights to water and sanitation of the population.

## COUNTRY - KENYA

- ▶ **Key words** Salt mines, Displaced persons, Cooperation, Public awareness, Investigation, Participation, National Water Master Plan 2030
- ▶ **Practices** Monitoring, Investigation, Education, Training, Campaigns and Advocacy on human rights facilitation
- ▶ **Relevant criteria** Quality, Accessibility, Accountability, Participation
- ▶ **Website** [www.knchr.org](http://www.knchr.org)

## LEGAL FRAMEWORK

The constitution encompasses the right of everyone to clean and safe water in adequate quantities, and to reasonable standards of sanitation (Art 43). Kenya also adopted a new Water Bill in 2014, which restates the right of every person to those rights. The 2016 Water Act has also recently been revised. This has led to some advancements in the sector, such as the improvement of service delivery for connected consumers; and the increase of distribution coverage linked to the engagement of commercially oriented providers by the water service boards.

## INTERNATIONAL FRAMEWORK

Kenya adopted the International Covenant on Economic Social and Cultural Rights on 16 December 1966 and ratified it on 1 May 1972. This country has not adopted the Optional Protocol to the Covenant.

## POLICY DEVELOPMENTS

The National Water Services Strategy (2007–2015) mentioned in the First Edition of the Compilation is yet to be revised. Nonetheless, Kenya launched a National Water Master Plan 2030 in order to achieve Kenya’s Vision 2030 and to facilitate planning for development and management of its water resources. The main objectives of the plan are the following:

- ▶ To assess and evaluate availability, reliability, quality and vulnerability of the country’s water resources up to around the year 2050 taking into consideration the effects of climate change
- ▶ To renew the National Water Master Plan toward the year 2030 taking into consideration climate change
- ▶ To formulate an action plan for WRMA up to 2022 to strengthen their capability
- ▶ To strengthen the capacity of water resources management through transfer of technology

The policies mentioned in the First Edition—such as the National Environmental Sanitation and Hygiene Policy and the Pro-Poor Implementation Plan for Water Supply and Sanitation—are still in place and are being revised from time to time to respond to the changing needs of society. Indeed, there is a current 2016-2020 revised version of the National Environmental Sanitation and Hygiene Policy.

The main challenge posed by these instruments has been their application in informal settlements where the installation of water distribution and sanitation pipes has often been hindered by a lack of planning. This has benefitted some cartels, who are able to make the cost of water prohibitive and charge between Kshs 30 and Kshs 100 per 20L jerrycan.



## THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)

The legal basis for the Kenya National Commission on Human Rights is article 59 of the 2010 constitution. The Kenya National Commission on Human Rights Act of 2011 further details the powers of the Commission. The core mandate of the KNCHR is to enhance the promotion and protection of human rights in Kenya. This is carried out in two ways:

- ▶ by acting as a watchdog over the government in the area of human rights
- ▶ by providing key leadership in moving the country towards a human rights state.

The Commission investigates, monitors and reports on the observance of human rights, and conducts human rights education. It may also investigate, or research matters related to the respect of human rights and make recommendations to the government. This may be done on the basis of complaints or on its own initiative. The institution is also mandated with the function of ensuring compliance with human rights treaties and conventions. The KNCHR adopts redress mechanisms. Among others, it may conduct litigation in cases which encompass issues of interpretation of the Bill of Rights. It focuses on cases that are of a broad public interest in Kenya. Another redress mechanism consists of public inquiries. The Commission is also involved in alternative dispute resolution through mechanisms such as mediation, negotiations and arbitration.

Every person whose right or fundamental freedom in the Bill of Rights has been violated, denied, infringed or threatened may complain to the Commission. Complaints are also received from civil society, community or faith-based organisations. They may be lodged verbally or in writing, an online form is also available on the website. Complaints of a civil nature are not part of the Commission's mandate.

### THE COMMISSION AND WATER GOVERNANCE RELATED HUMAN RIGHTS

#### I. REPORT: A HUMAN RIGHTS ASSESSMENT OF KENYA'S VISION 2030

In 2011, the Commission published *The Third State of Human Rights Report* which assesses how Kenya implemented the first half of the Medium-Term Plan of Kenya Vision 2030. The report responds to the Commission's reporting function as found in the constitution and the Kenya National Commission on the Human Rights Act. Section 6 of Chapter 6 of the report is devoted to the right to water and sanitation. To know more about the content of the report, please refer to the First Edition.

Since the publication of the report, several policies have been put in place to ensure inclusivity and accountability in the water sector. For instance, in 2019, the Water Services Regulatory Board (WASREB) launched 4 guidelines: the Guideline for Provision of Water and Sanitation Services in Rural and Underserved Areas; the Guideline on Water Safety; the Guideline on Water Vending and the Guideline on Corporate Governance. These guidelines heavily featured human rights-based approaches to service delivery due to the KNCHR's consistent engagement with the Board to promote inclusivity and ensure that no one is left behind. In order to lessen the distance travelled to fetch water, the government has also invested in and increased last-mile infrastructure using low-cost technologies, including water kiosks, yard taps and sanitation facilities.

## 2. CASE STUDY: THE MALINDI INQUIRY REPORT 2006

In 2006, the Kenya National Commission on Human Rights undertook an inquiry into allegations by the community of Magarini that salt manufacturing companies operating in the area had committed human rights violations against the community. It was claimed, among other things, that salt manufacturers carried out activities in that area which damaged the environment and, as a result, denied access to fresh water for the surrounding communities. Complaints on salinisation of freshwater wells and springs were also investigated. Sanitation facilities were also allegedly inadequate for workers. The report lays down the findings, decisions and recommendations made by the inquiry for each of the issues addressed (land, public administration, labour, the environment and corporate citizenship). To know more about the details of this investigation, please refer to the First Edition.

In 2018, the KNCHR conducted an audit of the 2006 public inquiry and established that the salt companies had since provided water passage and access routes for the local community to access the coastline, as well as free water to the community for both human and livestock consumption. However, the report found that the salt companies need to adopt appropriate waste treatment systems in accordance with the Environmental Management and Coordination Act. The Water Resources Management Authority, a state agency, has also taken samples of water from community areas to determine whether it is fit for consumption. Feedback on the results is yet to be received.

### OTHER ACTIVITIES

The Kenya National Commission for Human Rights has been involved in several activities related to promotion of the right to water and sanitation. The KNCHR has notably been receiving and processing complaints on violations of the rights to water and sanitation; supporting accountability and advocacy platforms through holding and participating in partner meetings; training state actors and the community; developing a framework for monitoring the realisation of the rights to water and sanitation; monitoring and reporting on the implementation by the state of the rights to water and sanitation to relevant state agencies and treaty body mechanisms.

Moreover, in order to ensure deliberate planning and budgeting for Economic, Social and Cultural Rights (including water and sanitation), the KNCHR drafted a model county legislation for enforcing socio-economic rights. KNCHR has managed to reach 35 counties out of 47, as they responded positively towards adoption of the Bill.

Internationally, with support from WHO, the KNCHR worked closely with state and non-state actors to finalise a framework for monitoring the realisation of the human rights to water and sanitation.

# SECTION 3 - CHALLENGES AND RESILIENCE TO EMERGENCIES FOR NHRIs

## OVERVIEW OF CHALLENGES

One of the main objectives of both this Second Edition and the First Edition of the Compilation is to contribute towards creating a community of NHRIs wishing to enhance their role in water governance for the realisation of human rights through sharing good practice. The previous chapters have thus allowed the identification of good practices that may serve as examples for other NHRIs in their promotion, protection and monitoring activities. The current chapter presents challenges that NHRIs have experienced during their water governance related activities and, especially, during the recent pandemic. Many relate to deficiencies in the enabling environment, lack of capacity and various stumbling blocks in cooperating with stakeholders.

In addition, the last chapter will also present areas identified by NHRIs where they would be interested in receiving further information from peers. The majority of NHRIs interviewed for the Compilation were familiar with water governance and its importance to the realisation of human rights. Yet, regardless of the extent of their previous experience, many NHRIs have been facing challenges in their work in relation to the rights to water and sanitation. These are identified in this section in relation to promotion, protection and monitoring of human rights.<sup>23</sup>

## A. GENERAL CHALLENGES

### I. PROMOTION OF WATER GOVERNANCE RELATED HUMAN RIGHTS

#### **i. Promotional Programmes**

Some NHRIs have established a national action plan which mentions the human rights to water and sanitation but have not been able to take any action towards implementation yet. Others are mandated by their constitution to carry out promotional activities to enhance human rights through various means, such as by establishing a continuing programme of research, education and information, or by educating and encouraging the public to defend the constitution and the rights contained therein. Despite such provisions, some NHRIs have not been able to carry out promotional activities with a specific focus on the rights to water and sanitation. The absence of specific promotional programmes on the right to water, sanitation and a healthy environment have thus been identified as a challenge.

#### **ii. Regional Recognition**

Another challenge faced by some NHRIs is that in addition to a poor regional framework on the promotion of the human rights to water and sanitation, there is sometimes also an absence of regional recognition of the power of the NHRIs to work on these rights. Moreover, human rights institutions, but also local government authorities or ministries, may need capacity building and sensitisation education concerning water governance in relation to human rights.

#### **iii. Media Interest**

Other institutions face additional challenges in relation to their ongoing work in promoting the HRWS. Even when an NHRI has a mandate which encompasses the protection of natural resources, including the right to water, it can be challenging to find a topic which catches the media's attention. Based on its domestic experience, the NHRI of Ecuador observes that, despite capacity building activities, promotional work appears to have little impact on local government. However, activities linked to the promotion of the HRWS seem to have a

greater impact on civil society, as is shown by the empowerment of social organisations that are increasingly pressing for the full realisation of these rights.

#### **iv. Tailored approach needed**

To build on this last point, several NHRIs have found it necessary to understand the socio-political and cultural context when targeting communities in the context of promotional activities. The heterogeneity of practices adopted has been highlighted as a hindrance to the development and strengthening of the awareness of all citizens on the importance of human rights and nature preservation. One institution (Philippines) has identified this challenge and so carries out annual capacity-building activities in this area for regional offices.

## **2. PROTECTION OF WATER GOVERNANCE RELATED HUMAN RIGHTS**

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### **i. Lack of Clear Remedies**

Concerning the protection of human rights, many NHRIs face a lack of clear remedies for victims of violations of the human rights to water and sanitation as well as an absence of facilities to enforce this right. In addition, due to the principle of progressive realisation with mechanisms for measuring progression, NHRIs sometimes find it challenging to fulfil their role to protect these rights. Indeed, because they are not recognised as courts or judicial bodies, they are constrained in the extent to which they can provide the remedies sought by the complainants (for example, temporary restraining orders, writs or injunctions). In order to obtain such remedies, these institutions are often limited to submitting their recommendations to the government or other qualified bodies.

### **ii. Non-binding nature of reports**

As illustrated in the first chapter, many institutions issue reports and adopt recommendations in relation to their protection activities, but these are not strong enough actions to enable NHRIs to fulfill their goals. For example, several NHRIs that were interviewed mentioned that the non-binding nature of their reports and resolutions may be challenging at times, as the legislator is not required to integrate the opinions or suggestions of the NHRI. On the one hand, this was seen by some NHRIs as beneficial as it helps the human rights institution to form its established opinion while preserving its independence from the legislative and decision-making bodies. On the other hand, however, they also talked about how difficult it is to write reports persuasive enough to influence legislators and decision-makers.

### **iii. Political Forces**

Finally, access to water is often related to the interplay of market and political forces. Specific cases that reach NHRIs may only be symptoms of a systemic problem that emphasises the importance of policy advocacy and cooperation in terms of human rights protection.

## **3. MONITORING OF WATER GOVERNANCE RELATED HUMAN RIGHTS**

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### **i. Difficulty to monitor at local level**

Monitoring the various aspects of water governance related human rights has proven challenging for many participating NHRIs. This is due, among other things, to the various aspects that need to be contextualised at the local level, especially when looking at the criteria of availability, accessibility, acceptability, affordability and quality of water and sanitation. It is sometimes also due to the disproportionate impact on certain vulnerable groups of people such as women, girls and people with disabilities. Linked to this, the interrelated nature of the human rights to water and sanitation to other rights such as the right to housing or the right to health makes these rights even more challenging to monitor. On some occasions, NHRIs have had to prioritise which aspects to concentrate on during a given year, which is a complex process. Insufficient staff and geographical difficulties are thus major challenges to NHRI's monitoring functions in relation to the right to water and sanitation. Limited governmental resources also play a role in this regard.

Some institutions also raised that they have other priority areas based on the complaints they receive, which are mainly related to civil and political rights. This last argument was also highlighted by Leo Heller, the UN Special Rapporteur on the human rights to safe drinking water and sanitation, following his official visit to Mexico from 2 to 12 May 2017. Indeed, in his *End of Mission Statement*<sup>24</sup>, the Special Rapporteur was concerned with the fact that “the rights to drinking water and sanitation were not among the highest priorities of the Government in the context of its human rights obligations”. While noting the importance of addressing civil and political rights (for example, allegations of torture, forced disappearances etc.) as high priorities, he made it clear that, under international human rights law and standards, it is required “to give equal and appropriate attention and to provide necessary resources to addressing critical economic, social and cultural rights, including the rights to safe drinking water and sanitation”.

## ii. Cooperation of Authorities

While some NHRIs may investigate the failure ex officio and call for a revision of the law if found necessary, they may often encounter a lack of cooperation from various authorities when trying to tie up the issue. Resistance from different authorities to cooperating and providing adequate information can significantly delay the monitoring and revision process. Similarly, monitoring is challenging when the political will to engage is weak. Many NHRIs face a lack of response to complaints by ward councillors and other government officials. Other challenges for monitoring are the lack of a human rights-based approach to service delivery; a lack of access to water; poor maintenance; dysfunctional infrastructure; lack of public participation and access to information; poor monitoring of adherence with service delivery contracts; corruption; and money allocated to water and sanitation service delivery being spent on other projects/line items.

## 4. LEGAL FRAMEWORK

### i. Recognition in law

NHRIs may be hindered in their work by the legal framework they have to operate within. When the right to water is not guaranteed in the constitution, or in water related laws, it creates an obstacle for the NHRI in realising this right in the country. Various NHRIs have pointed to the need for laws exclusively dedicated to water governance. Where such laws exist, the lack of implementation has been pointed out as a serious challenge. Unresponsiveness and slow decision-making are often associated with this lack of implementation. Furthermore, in some cases there is not only a poor legal framework at the country level, but also at the regional level, which creates a difficulty for NHRIs in their water governance related projects. In such circumstances, NHRIs are either without legal capacity or lack a clear legal or statutory mandate to work in this area. Finally, the risk of legislative amendments which reduce the role of civil society actors (e.g. NGOs) in official procedures adds another difficulty to the realisation of the right to water, particularly in relation to the human right to a healthy environment.

## 5. CAPACITY

### i. Funding

Despite an existing legal framework, many NHRIs have identified their low capacity as an obstacle to their work on the human rights to water and sanitation. In fact, numerous institutions are interested in ensuring and protecting the right to water, sanitation and a healthy environment but the low capacity to deliver programmes hinders the work even for those that have a legal framework on the HRWS. Indeed, the lack of financial capacities, governmental funding and infrastructure is a recurrent obstacle for NHRIs. Moreover, there is a need for a well-thought out allocation of funds, as the preservation of the right to water is inextricably linked with other factors such as the preservation of the environment.

## ii. Technical capacity

Many institutions also lack the ability to acquire the technical capacity needed for the purpose of realising these rights. A similar obstacle is faced in relation to delivery of services at the local level, particularly in relation to the efficiency of monitoring activities on the right to water and sanitation. In addition, this obstacle can also translate into a lack of scientific studies carried out by the NHRIs themselves. Such studies play a role in strengthening future harm prevention. A recurrent theme amongst the challenges identified by NHRIs is the need for expertise and specialised employees, not only in the field of human rights, but also in other fields such as engineering, hydraulics, ecology and environmental sciences. Experts in these areas are not at the regular disposal of every NHRI. As such, NHRIs are often heavily dependent on governmental bodies and other civil society actors.

## iii. Role in Water Governance

Finally, despite the ratification of the ICESCR by most of the states where NHRIs are operating, some institutions are fully engaged only with civil and political rights due to past armed conflicts that occurred in the country. Where these institutions are moving towards taking an enhanced role in water governance for the realisation of human rights, they need to build knowledge and capacity on how to work exactly on this right. Subsequently, they will be able to work further to formulate strategic plans or programs for the human rights to water and sanitation.

## 6. LIAISON WITH THE GOVERNMENT AND AUTHORITIES

### i. Lack of Cooperation with Government

In carrying out their water governance related projects NHRIs are also facing obstacles which emanate from their relationship with the government and the specific role of some government departments. For example, NHRIs may face a lack of cooperation, notably when requesting information and responses in relation to reports or publications. In addition, some government officials, including at the local level, have a lack of understanding of a human rights-based approach. There is also often a lack of mutual understanding between NHRIs and some governmental institutions in terms of defining their respective regulatory and policy capacities.

### ii. Delays in Responses

In the same vein, NHRI answers to the questionnaire also mentioned that one of the most prevalent obstacles they face is delayed government responses to requests, which sometimes aggravate the problems being experienced by complainants. According to these NHRIs, it appears that it is not only the slow bureaucratic structure that makes it difficult to investigate cases in a proper manner, but water related issues themselves often originate from protracted environmental risk assessment. Authorities are often asked to provide information about the reasons for delaying their assessment obligations.

## 7. KEY ACTORS IN WATER GOVERNANCE RELATED HUMAN RIGHTS

### i. Difficulty in having a holistic view

The multi-faceted nature of water governance related human rights imposes a constant challenge for some NHRIs. As there are many actors working within the area of water governance with various interventions, it might be challenging to have a holistic focus on the promotion and protection of these rights. Lastly, contextualising the domestic standards developed according to the right to water and the lack of access to credible sources of information have created an obstacle to the work of many NHRIs.

### I. COVID-19 AND THE HUMAN RIGHTS TO WATER AND SANITATION

The COVID-19 pandemic has brought with it new issues in terms of water and sanitation. This worldwide crisis has added another burden on authorities and has highlighted the primacy of protecting and realising the human rights to water and sanitation, and the interdependence of these rights with the right to health. The most vulnerable and socially excluded groups are at most risk, as they do not always have access to adequate infrastructure and basic hygiene facilities.

As highlighted by the interviews with NHRIs in this Compilation, the importance of hygiene in creating resilience to pandemics cannot be understated and it gives an opportunity for NHRIs to promote the connection between the human rights to water and sanitation. Accordingly, NHRIs, often with the help of other national institutions, have started taking action by conducting investigations to ensure that the standards of access to water, thorough handwashing, sanitation and hygiene were met to protect the most vulnerable against the spread of the pandemic.

### 2. CHALLENGES IN TIME OF EMERGENCIES

In times of emergency, the general challenges mentioned above in terms of realising the human rights to water and sanitation, especially the rights of the most vulnerable, are often accentuated. As the Executive Director of the International Water Resources Association, Callum Clench, pointed out: “One of the clear messages that has come out of the covid crisis is that it has exacerbated the pre-existing need to realise the human rights to water and sanitation for minimum hygiene, such as washing hands.”<sup>25</sup>

It is crises like these that pinpoint the imperative need to make change, and some NHRIs have notably highlighted the lack of capacity building and training of their workers, specifically on WASH solutions, to efficiently respond to such crises. In a report published on 7 March 2020 by the WHO,<sup>26</sup> it was made clear that preparedness and transparency are essential to efficiently tackle the spread of the virus, and that “it is essential to communicate to the public what is known, what is unknown, and what is being done to prevent and control transmission”.

## C. LEARNING FROM OTHER NATIONAL HUMAN RIGHTS INSTITUTIONS

In addition to contributing by sharing their practices, the participating NHRIs have also shown interest in learning from their peers in relation to their experience on water governance. In this regard, the following areas of interest were identified by the institutions:

### i. Learning about complaint mechanisms and how other NHRIs handle complaints

NHRIs are often looking for more in-depth information on how complaints are received and managed by other institutions, from the investigation stage to evaluating the final outcomes.

### ii. Innovative ways of monitoring the right to water

Several Institutions have shown interest in knowing how other NHRIs control and monitor the implementation of procedures and how they ensure that duty-bearers adopt their policy recommendations. NHRIs seem particularly interested in discovering new monitoring tools and mechanisms.

### iii. How to handle diverging interests

Some institutions have also raised the challenge of dealing with the diversity of interests surrounding water governance. For example, how are other NHRIs handling lobbyists and those with an economic interest in affecting outcomes? Can these interests be integrated into water-related decisions, and if so, how? These concerns often come hand in hand with calls for innovative tools and methodologies to resolve water conflicts.

### iv. Raising Awareness and triggering change

One of the recurring concerns raised by several NHRIs during our interviews was how to build a human rights culture in society and ensure an understanding of human rights-based service delivery. Several institutions have shown interest in gaining knowledge on specific promotional activities and how to implement them; what mechanisms there are for changing people's awareness on water issues and governance and whether the mechanisms are successful in creating a paradigm shift.



# CONCLUSION

**B**efore drawing any conclusions from the content of this Compilation, it is important to reiterate that this manual does not intend to present an exhaustive display of NHRIs' activities and good practices. This publication can only provide a glimpse of the efforts that have been and are being deployed by NHRIs worldwide and, therefore, the lessons and conclusions that may be drawn from this guide must be put into context and carefully analysed. Notably, it has been difficult to gather relevant information about certain regions where access to water and sanitation remains critical, and where issues surrounding water governance remain low priorities.

Nonetheless, with the precious help provided by all the NHRIs that contributed to this project, this Compilation has managed to shed light on a wide range of concrete examples of good practices carried out by different Human Rights institutions across the globe and it has highlighted some of the positive developments at a domestic level that have enhanced the realisation of water governance related human rights. These experiences ought to provide Human Rights practitioners and NHRIs worldwide with some important knowledge about what legislative changes and activities have been carried out in different contexts, and what policies, law, frameworks and strategies have or have not worked in different settings. This Compilation is also helpful in consolidating a community of practice of NHRIs willing to foster their role in water governance. Gaining knowledge on how other NHRIs handle complaints, learning about new perspectives on how to handle diverging interests, exchanging different monitoring methods and tools, and sharing information on how to efficiently raise awareness, are only some of the positive effects that may arise from this guide and from increased cooperation. The exchange of knowledge can potentially be used to critically think about what could be done and remains to be done in the future to enhance the role of NHRIs in efficiently protecting the HRWS and implementing a human rights-based water governance.

Despite these joint efforts and encouraging experiences, much remains to be done in terms of promotion, protection, monitoring, advising governments and cooperation in relation to the HRWS, as has been shown by the several structural, legal, technical and capacity-related challenges and limitations NHRIs face in their daily activities. It is worth remembering that many obstacles prevent NHRIs from fulfilling their true potential, especially in light of the new challenges brought by the COVID-19 pandemic. From a systemic perspective, the fact that the HRWS are often not conceived as distinct and specific rights that require special focus and the persistence of structural obstacles linked to economic and political pressures, have been recurrent issues raised by NHRIs. The work of these institutions is also often hindered by a lack of recognition of their power to play a decisive role in legislative change and decision-making, although some of the examples raised in this Compilation prove otherwise. The absence or limited development of legal frameworks on water governance and HRWS also remains one of the main obstacles preventing NHRIs from efficiently promoting, protecting and monitoring these rights. Finally, the lack of funding, of technical capacity and of efficient communication with authorities are some of the practical issues that NHRIs must deal with in their daily activities.

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Human Right 2 Water is an international public interest development organisation based in Switzerland. It's mission is to use and share expert knowledge on how the human rights to water and sanitation should be integrated into law, policy and practice to realise safe and sustainable access to water and sanitation for all, including the most vulnerable and marginalised.

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