

30 January 2016

OHCHR Mandate of the Special Rapporteur on the human right to safe drinking water and sanitation

AquaFed contribution on questions for the report on Development Cooperation

“Nothing avails but perfection” may be spelt shorter, “Paralysis”.

Winston Churchill - The war diaries

1 Preamble

AquaFed, the International Federation of Private Water Operators, is honoured to be invited to contribute to the proposed report, by commenting on the questions posed in the consultation document.

Assuming that the Special Rapporteur may be using different teams to work on each of the proposed reports, we have opted to submit our answers in two separate but related papers. This leads to some duplication in parts of our submissions, but hopefully is a helpful approach to the two issues.

2 Introduction

Billions of people are waiting for their Human rights to safe drinking water and sanitation to be satisfied. The only sustainable way to ensure equality, tackle discrimination and eliminate abuses is to achieve the total satisfaction of the Human Rights to Water and Sanitation for everyone, everywhere and at all times. All international, national and local efforts need to be focussed to achieve this objective as quickly as possible.

2.1 The Global Scale of Human Rights Deficiencies concerning Water and Sanitation

The grave deficiencies of the current status quo present by far the most serious violations of the conditions required to satisfy these Human rights. We believe that the official statistics under-estimate by a large margin the number of people worldwide who do not have the full terms of their rights satisfied. The official estimates¹ suggest that 1.8 billion people do not have access to water that is safe bacteriologically and 2.5 billion do not have access to adequate sanitation. However, if the full human rights lens is applied, we assess that the number of

¹ Joint Monitoring Programme 2015 Page 43, <http://www.wssinfo.org/> “In 2012 the JMP commissioned a systematic review that estimated that at least 1.8 billion people globally used a source of drinking water that was faecally contaminated.”

people who do not have their right to water satisfied is of the order of 3 to 3.5 billion and for sanitation it may be as much as 4 to 4.5 billion².

The conditions that prevail behind these deficiencies vary from country to country and from place to place. These range from those settlements that have never had any satisfactory service provision, through areas where expansion has not been able to keep pace with population growth, locations where conditions have changed significantly, to places where urban decay or underinvestment has led to degraded services that have partly or completely failed. These categories can be found in most parts of the world, but the most serious deficiencies in terms of numbers of people effected are located in the emerging and developing countries. It is in these countries that development cooperation is the most relevant. For that reason, we concur with the framing of the proposed report that suggests it should concentrate on developing countries.

2.2 Urgent need to accelerate progress

Given this background, there is a very urgent need to accelerate progress. This means that everything possible must be done to encourage, enable and assist states, responsible public authorities and other actors to make real and sustained progress. As the population of most of those emerging and developing countries with the biggest needs continues to grow and urbanise the realisation of the rights is a real and practical imperative and not a theoretical question.

The human rights concept of progressive realisation is very helpful in this respect. There are now two ways of regarding progressive realisation³. Both are helpful and are mutually compatible. The first concerns the progressive realisation of access to a first time service of a minimum acceptable level and the second, progressing from that point with the extension of quality and reliability of services to the highest level that fully satisfies all the human rights dimensions.

Both these interpretations of progressive implementation imply a realistic recognition and acceptance of a transitory “less than best” situation, where, so long as progress is being made, the fact that some dimensions are not being fully satisfied initially should not be seen as permanent or serious violations. This is a longstanding and practical approach to implementation of human rights policy in general and needs to be maintained.

There is a very urgent need to accelerate progress to full realisation in both senses. Effective development cooperation is one of the tools available to help achieve this. The international community, bilateral and multilateral donors and recipient countries all need to work together to ensure that their actions provide the most effective help and avoid applying any breaks to progress.

2.3 SDGs should provide a real and practical impetus

The 2030 Agenda for Sustainable Development⁴ with the attendant Sustainable Development Goals present an opportunity, and also highlights, a real need to accelerate progress. It is very

² Link AquaFed - <http://www.aquafed.org/page-5-106.html>

³ July 2015 OHCHR: A/70/203 Report of the Special Rapporteur on the human right to safe drinking water and sanitation

⁴ General Assembly resolution 70/1, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015), available from undocs.org/A/RES/70/1.

satisfactory that they embrace a human rights approach and even more that the preamble makes specific reference to the Human Rights to Water and Sanitation.

SDG #6 on water combined with the Rights to Water and Sanitation underpin the realisation of many other SDG objectives and the human rights that relate to them. It is also useful to note that several, other SDGs can contribute to a successful outcome for the Human Rights to Water and Sanitation, notably #5 on gender equality, #9 on infrastructure, #11 on cities and human settlements, #16 on inclusive societies and #17 on means of implementation.

The water SDG #6 has a well-designed set of targets and indicators that deliberately embrace many of the Human Rights requirements.

Nevertheless, implementation of this SDG and the others will require the optimum use of all available resources, which includes the use of international aid programmes, in country public finance (user charges and taxation), as well as both national and international private finance. Maximising the impacts of money and expertise that can be made available through aid programmes alongside all other available sources, including the private sector is going to be essential.

2.4 AquaFed⁵

AquaFed shares a strong concern for this issue with the human rights and development communities for the same reasons they do. We are also concerned because the prime reason our member companies exist is to provide high quality water and sanitation services to communities under the direction and control of their public authorities. Delivering water and sanitation in a fully sustainable way is the core of their business.

Our Federation has an established record of contribution to the works of the OHCHR and Special Rapporteur⁶ on water and sanitation and our contribution to this enquiry is submitted as a continuation of that effort.

3 Observations on Development Cooperation

In the context of these very real needs we believe that it is essential that the report takes and encourages a pragmatic and a practical approach. This means that great care is needed to avoid creating constraints or over-legalisation that could slow progress or divert scarce resources. To quote the saying of Professor Tony Allen, “it is better to progress imperfectly than to achieve nothing perfectly”.

There is no doubt that development cooperation and human rights approaches are very useful and have an important role to play. However, there is also scope for “excesses of zeal” to have counterproductive and unintended consequences. For this reason, before making our observations and suggestions on the specific questions raised, we believe it is important to make some general observations based on our practical experience and that of our members.

⁵ www.aquafed.org

⁶ See AquaFed web page related to the Human Rights to Water and Sanitation <http://www.aquafed.org/page-5-59.html>

3.1 The 'value chain' of international development cooperation

It is useful to identify the key participants in the international development cooperation value chain. Figure i) is a simplified presentation that helps to understand the different institutional interfaces and responsibilities that need to be considered. Donor countries allocate part of the money collected from taxpayers into their public budgets to either their bilateral aid programmes or to multinational institutions such as the World Bank, regional development banks or joint initiatives. This money is then used by these agencies to fund aid programmes. Today, the largest part of this money still passes from the donor agency to a sovereign recipient (state) in the form of grants or soft loans. However, there is a growing trend for these kinds of transfers to be made to sub-sovereign institutions as well. This is an interesting and appropriate development given the local nature of many water projects. The money is then allocated as financial or technical support for specific programmes or projects, which in turn are expected to deliver improved services to the final beneficiaries, including satisfying their human rights.

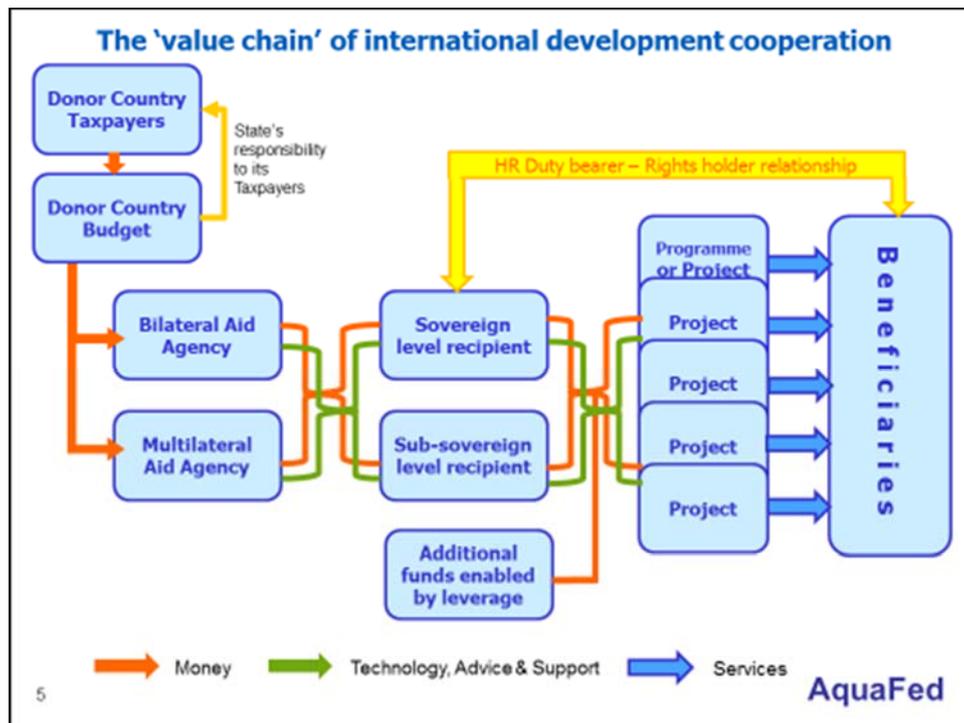


Fig i) The main elements of the international development cooperation value chain

The diagram also highlights that the human rights relationship between the duty bearer and the rights holders is one between the sovereign state and individual people. At the other end of the value chain, the donor states have a different kind of responsibility to each of their taxpayers. There is a need to ensure alignment between these donor and recipient positions.

Human rights obligations are not the only obligations that either donors or recipients have to respect. The intermediaries between the donor country taxpayers and the recipient country rights holders/service beneficiaries therefore need to reconcile these responsibilities across their activities and have transparent and effective governance structures to enable this to happen. This is already quite difficult in theory and more so in actual practice.

3.2 Development cooperation: a tool in the toolbox

Development cooperation needs to be seen as part of a continuum of options that are available for extending services in developing countries. It can catalyse and support other tools, but it is not the only solution and should be used judiciously to enable, and not 'crowd out', other tools.

In the long run, aid is not a permanent or sustainable solution for basic infrastructure services such as water supply and sanitation. Development cooperation and aid financing is often referred to as 'Transfers' or T3 in the OECD parlance⁷ and should be combined with revenues from user charges (T1) or local/national taxes (T2). Aid is important because it can help to overcome the barrier of the high costs of initial investment. These initial investment costs are often seen to be beyond the means of the sub-sovereign communities and even the sovereign state itself.

The value of international aid transfers (T3) is to kick start change that would not occur quickly enough if projects had to rely only on tariffs (T1) or taxes (T2). In addition, it can create the conditions and leverage to enable other sources of funds such as commercial loans and private investment⁸. Conversely, the long term economic sustainability of the service necessitates, the recovery of at least the operational costs from the tariffs and taxes. When this does not happen, the lack of direct funding has been shown to severely compromise the service.

This is one of the reasons it is important to avoid over restrictive constraints that might restrict or slow this catalytic effect of aid programmes. It is therefore essential that the application of human rights principles and safeguards are applied to development aid, but in doing so some trade-offs need to be balanced carefully between progress and perfection.

Well-designed international aid can also extend beyond the provision of aid finance so as to stimulate transfers of technology, know-how and know why. It does this in large part because it enhances stability and good governance in ways that make it possible for a variety of technology providers, investors and operators to engage in water and sanitation service delivery within the recipient country.

3.3 The challenge of implementation at sub sovereign level

Water and sanitation services are usually conducted at the sub-sovereign, municipal or local government level. There are good reasons for this, but it does mean that the size of the project and the level of expertise available to manage and supervise them become limiting factors. This is an additional reason why, for many aid projects, overcomplicated constraints can end up being counter-productive. Systems of planning, regulation, reporting and control need to be proportionately "light handed" to avoid consuming scarce financial and human resources in ways that do not make an immediate and positive impact on the service provision required.

3.4 Individual questions of the OHCHR questionnaire

Each question needs to recognise the respective roles, responsibilities etc. of both donors and recipients. In particular, which organisations have the real capacity to control outcomes at what levels?

⁷ 2009, OECD *Studies on Water Managing Water for All: An OECD Perspective on Pricing and financing*

⁸ 2015, OECD Innovative Financing Mechanisms for the Water Sector.

There is a high degree of interconnection between many of the questions. We have tried to keep a focus on the way the questions are formulated, but even so, the responses should be read as a whole and in conjunction with this part 3 of our submission.

4 OHCHR question #1: What measures can be taken to ensure that development cooperation does not risk violating human rights? What safeguards can be put in place?

4.1 All WATSAN projects contribute to and do not violate human rights

It is hard to see how water and sanitation development cooperation can contribute to human rights violations. The idea itself seems to be an anathema. The central objective of water and sanitation related aid and cooperation programmes is to improve service provision and thereby improve compliance with all the dimensions of the human right to water and sanitation. In this sense, they contribute actively to progressive realisation of all the main human rights criteria in the two senses outlined above.

In this context, it is important to ascertain who determines what is a violation and what is their legitimacy to do so. It is important to guard against intervention by vested interests that might “hijack” human rights concepts for ends that hinder rather than help progressive realisation. Water and sanitation programs frequently disturb the current status quo that operates at a variety of levels and is often a root cause of poor services and also the slow rate of development of water and sanitation services in many locations⁹. It is therefore essential for those designing aid programmes to be conscious of these vested interests and the impediments they can create and to guard against them.

There is also the possibility that donor funds, and money collected from tariffs and taxes, are misappropriated or diverted from their intended objective. This is a real risk of this in locations where governance is weak and local vested interests are powerful. Unfortunately, these issues are often endemic in emerging and developing economies and are indeed among the root causes of the failure of water and sanitation services. They can certainly give rise to human rights violations, but these violations are not themselves the consequences of development cooperation. They do mean that measures to protect against this happening, such as Output-based-aid or other mechanisms should be considered in the design of aid programmes.

One potential human rights violation in WATSAN projects is that some projects may be conducted without enabling the participation of public and other stakeholders to the appropriate level. This is not specific to aided projects alone.

Various international sanctions or trade restrictions can limit the opportunities for international aid to be directed to particular states.¹⁰ This can be one of the reasons why aid cannot be given to some of the communities that are most in need. This is probably an unintended consequence of the use of sanctions and trade restrictions and highlights the difficulty of making political or policy trade-offs in situations where there are clear conflicts between objectives.

⁹ See for example: Ranganathan, M. 2014. 'Mafias' in the waterscape: Urban informality and everyday public authority in Bangalore. *Water Alternatives* 7(1): 89-105

¹⁰ See Columbia Center on Sustainable Investment No. 164: "[International investment law and decentralized targeted sanctions: an uneasy relationship](#)," by Anne van Aaken

It can be envisaged that non-water projects, such as mining or large scale land development, could potentially have negative impacts on the Human rights to access to water and sanitation. This means that international aid agencies should be sensitive to water and sanitation issues in their other aid programmes.

4.2 Clear and aligned policy objectives

An overarching safeguard is to have clear policy objectives in both donor and recipient countries to advance towards the full realisation of the human rights within a specified time frame. In this sense, the recent adoption of the Sustainable Development Goals should provide useful common ground. They themselves are internationally agreed policy objectives.

Alignment between these policies should be agreed between an individual donor and recipient as an initial step in developing water and sanitation projects. This would enable them to define a common view of progressive implementation and the way they prioritise different elements of the human rights. It should also help to make sure local politics are not discriminating and assist national and local authorities to build robust Human rights standards and practices.

This approach would also ensure that the Human rights framework for water and sanitation is in itself a safeguard. One then needs to ask if anything else needed.

4.3 The role of conditionality in international aid

Generally, it is believed that it is best to discourage conditionality as it probably tends to slow the development process, but we do recognise that some conditionality may be needed and may even be helpful. In particular, conditionalities that encourage good governance and protect the use of taxpayers' funds could be useful or even necessary.

A conditionality requiring recipient countries or programmes to report to donors and the public on Human rights compliance might be helpful. However, the capacity of the recipient to do this would need to be assessed by the donor to ensure that such reporting would be feasible and reliable without requiring the diversion of significant funds to this activity.

It could also help the Human right objective of public participation for this to be included in progressive policies.

Conditionalities that promote donor states self-interests such as the use of their own consultants or suppliers should be avoided. Conditionalities that restrict the flexibility of the donor in the kind of projects it can support can slow the rate of progress and are therefore unhelpful. (See box 1 below). In the same vein, conditionalities that restrict the freedom of choice of methods of project implementation available to the body responsible for project delivery should also be avoided.

Box 1: The EUWI: An illustration of the limits of conditionalities and constraints

The EU Water Initiative (EUWI) was established in 2002 to improve donor coordination, raise political attention for water in development and improve multistakeholder participation. It was translated into the EU-ACP Water Facility (EUWF), one of several EU tools for water sector development aid. The EUWF has been in operation for over 10 years and provides an interesting case of how conditionality and constraints can hold back development cooperation.

GOVERNANCE & TRANSPARENCY

Stakeholders were invited to participate in the governing body comprising the Commission, EU Member States, bilateral agencies, stakeholders from civil society, trade unions and the private sector. This mechanism stalled on many occasions due to lack of clarity so that stakeholders felt tolerated but excluded from formal decision-making. There was criticism that the EUWI spent a lot of time and money on its internal process rather than on disbursement of funds leading to action on the ground.

During coordination meetings, and working groups NGOs and the private sector argued for more transparency in the decision-making processes of the EUWI itself, the selection and approval of proposals and for more flexibility in the project application processes.

CONDITIONALITIES

Conditionalities applied to EUWI funds excluded a range of potentially interesting projects. The EUWF highlighted the “lack of proposals” in the first facility and spent time trying to mobilize actors to engage. The first funding round showed the difficulty of combining the conditionalities of various types of funding. Some co-funding was restricted by the “matching” process.

RED TAPE

The process required real specialists to understand the guidelines for applications. Non-EU NGOs had great difficulties in accessing the procedures and lacked capacity to engage in the complex application processes.

NGOs and the European Court of Auditors criticized the EUWI and EUWF for several reasons, including inadequate governance mechanisms, lack of communication, not enough donor ownership, insufficient funding and unsustainability of the projects.

The Commission responded over time, partially opening the decision-making process, and trying to be more inclusive. However, some donor countries backed out and the limited reforms led to great disenchantment within the stakeholder community.

CONCLUSION

What could have been a big boost for water development consumed significant resources and time, resulting in the slow and under-disbursement of the funds. Conditionality and constraints clearly had adverse impacts on delivering aid to where it is needed. The European Court of Auditors review in 2012 highlighted lack of sustainability, ineffective use of resources and limited benefits of the projects.

Sources:

Wateraid & Tearfund “An empty glass”, 2005 - www.wateraid.org/~media/.../eu-water-discussion.pdf

European Court of Auditors, Special Report No 13 2012

http://www.eca.europa.eu/Lists/ECADocuments/SR12_13/SR12_13_EN.PDF

EU Websites including: <http://capacity4dev.ec.europa.eu/euwi-community-space/minisite/euwi-policy/water-facilities>

http://www.welcomeurope.com/eu-fonds/eu-ACP-eu-water-facility-564+464.html#tab=onglet_details

AquaFed internal analysis

5 OHCHR question #2: What role is there for human rights impact assessments in development cooperation programmes?

Our understanding is that human rights impact assessments have really been conceived for large scale projects in fields such as mining, irrigation, power and similar activities. When applied to water and sanitation projects we are concerned that they may be good in theory, but can they cope with the necessary level of granularity required by the multiplicity of small-scale projects in this sector?

We believe that they may have a contribution to make at the sovereign to sovereign level, where they might be useful to determine policy but they are unlikely to be appropriate for individual WATSAN projects. In the situation of urgency that we have described above, we are concerned that it may be an unrealistic expectation for sub-sovereign entities that lack expertise and resources to conduct HRIAs in a meaningful or useful way. Asking them to do so raises a real danger of slowing progress and raising costs.

6 OHCHR question #3: What measures can be used to ensure that human rights obligations are followed in the process of determining priorities and deciding which countries and programmes will receive financial and other support?

6.1 Practical dilemma

In addressing this question, it is necessary to distinguish between countries, programmes and projects. All people should enjoy the same Human Rights and there should be no discrimination between or within countries. However, donor countries may not realistically be able to define the most appropriate targeting within a country. They should certainly establish principles for such an allocation within any recipient country they decide to support, but it might be too constraining to expect them to go into precise detail on every small project.

There are challenges to be faced in determining allocation of funds and resources between countries that relate to the issues of lack of governance or state failure as indicated above. Donor countries should therefore be aware of this practical conflict when making their decisions. In some cases, it will be very hard if not impossible for donor countries to justify allocating funds or resources to countries they could consider to be in this category, even though in practice these may be the very countries where the needs are greatest.

There is a need to consider how to allocate and design aid programmes that incite 'curative' actions, in countries or locations where there are significant Human Rights or service delivery failings, and avoid them being punitive on 'laggards'.

This dilemma underlines the need for accurate and reliable data to determine needs. Unfortunately, such data is frequently non-existent or is so inaccurate as to be of no value. In addition, the biggest data deficiencies also occur in those states or locations where governance is weak and the needs for water and sanitation are great. The lack or paucity of data in the water sector is an indication of low levels of political attention given to, and poor management, in the sector. Good management creates good data while poor management tends to the opposite.

6.2 Practical processes

As indicated in the previous section, clear policy objectives in both donor and recipient countries to advance towards the full realisation of the human rights within a specified time frame would be an essential starting point.

6.3 Transparency is essential

Donors need to show how their prioritisation is made, and do this in a way that is transparent to all stakeholders on a regular basis. Equally, recipients must be clear on how they allocate funds to both programme and project level.

7 OHCHR question #4: What measures can be used to ensure that human rights obligations are followed in the process of designing programmes and projects?

The policy objectives of both donor and recipient countries to advance towards the full realisation of the human rights within a specified time frame need to be built into each programme and project in ways that are agreed and are fully transparent to all parties.

Donors should assist recipients to establish national policy that embodies an inclusive work plan orientated towards progressive implementation. The recent work by the Special Rapporteurs on Human rights criteria provide very useful guidance on this. The Special Rapporteur could consider the usefulness of working with donors and other sector practitioners and operators to design a simple, indicative, standardised checklist approach that could be applied consistently in development cooperation and related projects. Such a checklist would need to be very practical and sufficiently flexible to facilitate rapid project development and if well designed could avoid the pitfalls of an over-normative approach.

8 OHCHR question #5: What measures can be used to ensure that development cooperation promotes equality and tackles discrimination?

As stated in our introduction, the only sustainable way to ensure equality, tackle discrimination and eliminate abuses is to achieve the total satisfaction of the Human rights to Water and Sanitation for everyone, everywhere and at all times. For water and sanitation projects this is the central objective and therefore a significant measure in itself. As indicated above, building the Human Rights principles into policy and planning is essential.

Similarly, applying Human Rights criteria to the performance of the whole water sector, and not just new aid projects, in a country is important. To achieve this, it is important to have accurate definition of Human Rights performance indicators and effective systems for measuring, monitoring and reporting progress that can be achieved with sufficient regularity and transparency. The indicative checklist approach referred to above could assist in this, and the indicators need to be designed with these objectives in mind. This approach is developed further in our response to question 8 in section 10 below.

9 OHCHR question #6: What mechanisms can be used to ensure that development cooperation promotes transparency and access to information?

Transparency and access to information are clearly important Human Rights principles and therefore need to be included in the sector performance requirements and indicators. Once again, we believe that the starting point is in the definition of both donors and recipients policies.

All Bodies responsible for implementation of programmes for water, sanitation and hygiene services must have transparent reporting responsibilities set out clearly in their mandate. They need to have the practical and administrative means and powers to collect, compile and communicate the data they are required to report.

Bodies that execute all or part of an implementation programme for the responsible body must have the necessary obligations to provide the data accurately to the body responsible for the overall implementation.

Reporting needs to be conducted from the lowest coherent implementation level and consolidated upwards via the monitoring body. However, it is also important that there is coherence in the reporting architecture. Responsibilities need to be defined in ways that avoid confusion, duplication or competing communication. It is also important that the information required to be communicated by any organisation in the value chain falls clearly in the remit and powers of that organisation.

Systems and methods of communication must take account of the linguistic, literacy and related constraints of the community concerned.

It is important to recognise that the information and data required is unlikely to exist at the beginning of new projects and that it is likely to take time and be costly to develop the systems necessary. This is an area where the principles of progressive improvement need to be applied.

10 OHCHR question #7: What measures can be used to ensure that development cooperation programmes and projects are based on participatory processes?

Participatory processes are another important Human Rights dimension that need to be built into both policy and implementation processes. Participation implies "meaningful participation", which means that those people most directly concerned need to be given the opportunity to be involved.

It is nevertheless important to recognise the cultural difficulties of participation in many of the cultures and places where the needs are greatest and to seek to find a satisfactory compromise between the needs for speed of implementation and total participation.

Meaningful participation also means that the people directly concerned should not be allowed to be "swamped" or their interests overridden by activists, who may be well meaning or otherwise. This can present some very difficult situations for project implementers at all levels and needs to be guarded against.

Participatory processes are the responsibility of projects' owners. They may usefully describe their intents to those who are requested to fund the project.

11 OHCHR question #8: What monitoring mechanisms can be put in place to assess development cooperation programmes and projects with respect to human rights obligations?

This question could suppose the creation of a Human Rights monitoring, controlling or regulating body. In that case it is necessary to ask: i) who is in a position to do this for Bilateral and Multilateral donors, and ii) how to do this without imposing yet another monitoring mechanism which would be in danger of duplicating work done elsewhere? Implementing the 2030 Vision for Sustainable Development is already requiring the creation of both national and international monitoring and reporting systems. Many of these will automatically include a significant component of Human Rights. We therefore believe that great care should be taken to avoid adding an additional strata of monitoring and reporting with the associated danger that it would divert considerable resources and expertise from the prime focus of improving sustainable service delivery.

We do believe that it would be very beneficial if each aid agency reported annually on the number of active water and sanitation connections its programmes have created each year. This would enable the real effectiveness of their aid activities to be compared with the monetary value and objectives of the aid given. This information could be collated at the international level using the existing OECD DAC international aid reporting mechanism¹¹. Ideally, this information could be completed by a review of each project after 5 and 10 years to assess how many of the connexions are still operative and how much additional 'infill' or increased extension has occurred in the areas supported.

As implied above, we believe that local monitoring of projects and national monitoring of programmes is necessary to ensure progressive implementation and absence of violations. Monitoring processes and indicators should be designed to meet these objectives. We believe that ideally it involves elements of reporting by the various bodies in the value chain and an appropriate monitoring organisation at the sovereign level.

A monitoring organisation needs to have adequate skills and resources and to be independent of all parties. Especially in the early stages of an aid programme, there will be a trade-off to be made between effectiveness and cost. However, as progress is made and experience is gained this challenge should diminish.

To be fully effective, monitoring should apply right across the sector and not be limited to aid projects alone. All work in the sector should be judged by the same criteria irrespective of the method of service delivery and the organisation delivering it. This requirement should be taken into account in designing the indicators to ensure that they can be built into the performance and operating criteria of all kinds of service delivery agents, be they public sector, contracts or licences, benevolent actors and others.

The indicative checklist approach suggested in section 7 above can help in this, as could the "radar" systems that have already been proposed by AquaFed. See figure ii) below.

¹¹ See: OECD International Development Statistics (IDS) online databases; <http://www.oecd.org/dac/stats/idsonline.htm>

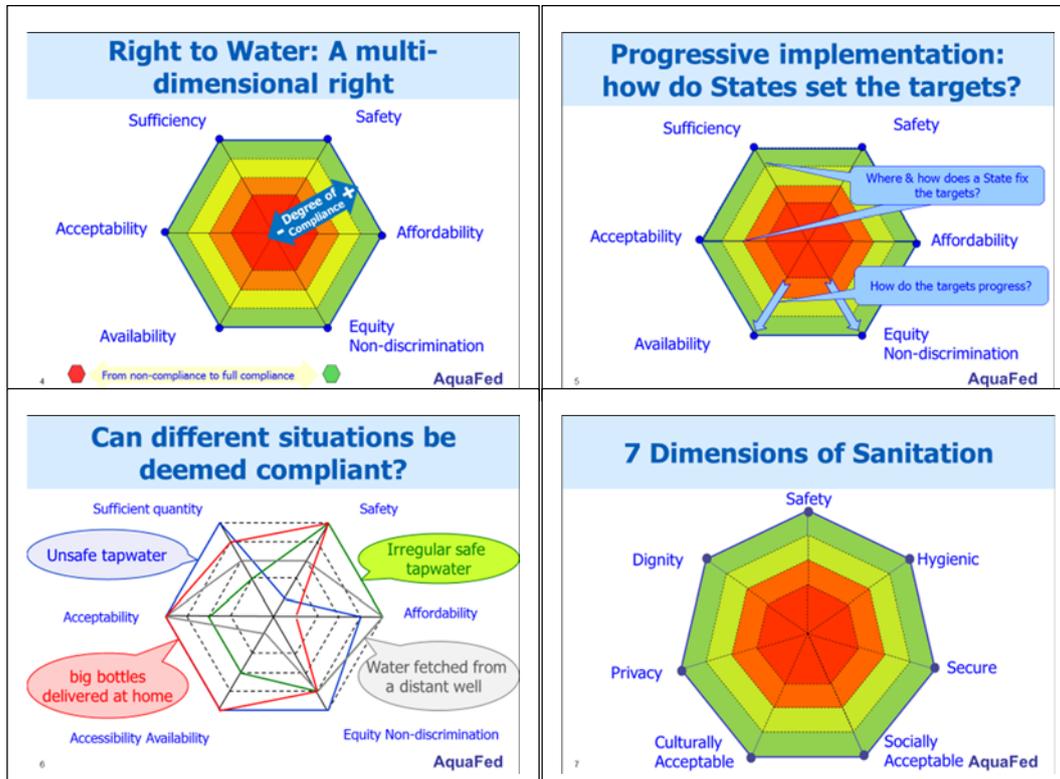


Fig ii: The concept of radar diagrams to monitor progressive implementation of the dimensions of the rights to water and sanitation.

An additional approach could be to encourage countries to make a voluntary report to OHCHR say on a 5 yearly interval. These could provide useful information and could also guide the process of field visits by the Special Rapporteur. In addition, the Special Rapporteur could possibly do some sample monitoring as part of his site/country visits.

12 OHCHR question #9: What accountability mechanisms can be put in place so that people affected by development cooperation programmes or projects can effectively have complaints addressed?

We understand that multilateral donor organisations already have in place policies and procedures that provide answers to most, if not all, of the questions raised in the context of this report. These include complaints procedures. See for example the World Bank Grievance Redress Service ¹²

We also believe that most of the major unilateral aid agencies also have complaints procedures in place. Several of these procedures also include the opportunity to appeal to an ombudsperson.

¹² <http://www.worldbank.org/en/projects-operations/products-and-services/grievance-redress-service#1>

The UN system also has extensive information and procedures that cover both complaints at the international level and at national level. These are explained in useful layman's language in chapter 6 of the handbook by the former Special Rapporteur, Catarina de Albuquerque.¹³

As a general principle, we believe that legal complaints of alleged human rights violations with relation to water and sanitation are most appropriately filed and resolved in the recipient country and if possible at a local level. Appropriate mechanisms may be provided for by a regulator. Accountability can be enhanced if an independent branch of government such as a human rights commission, an ombudsperson institution or the judiciary, monitors the performance of public institutions.

There appears to be an increasing tendency towards using Human Rights to launch ideological motivated political or advocacy complaints with regard to water and sanitation projects. Many of these are in fact an abusive use of Human Rights principles and do not require specific Human Rights complaints mechanisms.

13 OHCHR question #10: what measures can be taken to ensure the sustainability of development cooperation in line with human rights principles?

The question of sustainability in a general sense in water projects is a subject that has been dealt with in the report of the former Special Rapporteur A/HRC/24/44 of 11th July 2013¹⁴.

Whilst this report is not specifically directed to development cooperation, it does make useful recommendations, many of which are consistent with the suggestions included in our responses.

However, we are concerned that many of the report's recommendations relating to such matters as consistency in financing and ensuring continual emphasis on operation and maintenance of the long-term, will not be enacted until and unless states give higher priority to water and sanitation in their planning, budgeting and implementation. It is for this reason that we stress the important role of the SDGs and the 2030 Agenda for Sustainable Development.

Ensuring that these higher priorities are given can certainly be assisted by the Human Rights to water and sanitation framework and the advocacy of the Special Rapporteur and interested groups from civil society and the private sector. In all cases, great care will be necessary to maximise the efforts of international aid and at the same time to keep constraints and unproductive procedures to the minimum to ensure that these do not slow progress or increase costs.

¹³ 2014, Realising the human rights to water and sanitation: A Handbook by the UN Special Rapporteur Catarina de Albuquerque, downloadable from: <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWWater/Pages/Handbook.aspx>

¹⁴ Human Rights Council resolution 24/44, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, 11 July 2013.