

Center for Women's  Global Leadership

Macroeconomics and the Human Rights to Water and Sanitation

Meeting Report

March 31 – April 1, 2011

Macroeconomics and the Human Rights to Water and Sanitation
March 31 – April 1, 2011
Meeting Report

Written by Savitri Bisnath
Many thanks to James Heintz and Inga Winkler for their review.

First printing: November 2011

Center for Women's Global Leadership
Rutgers, The State University of New Jersey
160 Ryders Lane
New Brunswick, NJ 08901-8555 USA
Tel: 1-732-932-8782
Fax: 1-732-932-1180
Email: cwgl@rci.rutgers.edu
Website: <http://www.cwgl.rutgers.edu>

© 2011 Center for Women's Global Leadership

Table of Contents

<u>INTRODUCTION</u>	<u>4</u>
<u>BACKGROUND</u>	<u>4</u>
<u>HOW IS MACROECONOMIC POLICY RELEVANT TO HUMAN RIGHTS?</u>	<u>7</u>
<u>EXPENDITURE POLICIES</u>	<u>8</u>
<u>TARIFFS AND SUBSIDIES</u>	<u>10</u>
<u>NON-DISCRIMINATION AND INEQUALITY</u>	<u>10</u>
<u>MAXIMUM AVAILABLE RESOURCES AND PROGRESSIVE REALIZATION</u>	<u>12</u>
<u>BORROWING: DEFICITS AND DEBT</u>	<u>13</u>
<u>NON-STATE ACTORS</u>	<u>13</u>
<u>RECOMMENDATIONS</u>	<u>15</u>
<u>APPENDIX 1: PARTICIPANTS LIST</u>	<u>16</u>

Introduction

This report is the culmination of a two-day experts meeting, “Macroeconomics and the Rights to Water and Sanitation,” which took place in Lisbon, Portugal from March 31 to April 1, 2011. The meeting was organized as a means to contribute to the United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation’s work on gender equality and macroeconomics. To this end the Center for Women’s Global Leadership (CWGL) in collaboration with the Special Rapporteur brought together economists, researchers and advocacy specialists working from a feminist perspective to offer analyses and recommendations.

The consultations were guided by the following objectives: to (i) examine the ways in which macroeconomic policies can effectively comply with human rights obligations related to the rights to water and sanitation; and (ii) address the intersections between human rights and public expenditure management in the fields of water and sanitation services from a feminist perspective.

This report aims to inform the work of advocates monitoring States’ compliance with obligations to realize the rights to water and sanitation, as well as economic, social and cultural rights more generally.

Background

Worldwide, close to one billion people lack access to safe drinking water and more than 2.6 billion do not have access to improved sanitation services. This is both a human rights issue and a key development challenge that has profound gender implications. Women and girls are typically responsible for managing water and sanitation at the household level, often walking several hours per day to collect water, which increases their unpaid work hours and hinders their ability to engage in income-generating work, or attend school. Despite their clear responsibilities for, and work in, the collection, maintenance and use of water and sanitation services, women remain largely excluded from the decision-making processes about the types of water and sanitation services they receive.

In recent years, the human rights dimensions of water and sanitation have been increasingly acknowledged. In 2002, the Committee on Economic, Social and Cultural Rights (CESCR) framed water as a human right.¹ In 2008, the Human Rights Council (HRC) appointed Catarina de Albuquerque as the first United Nations (UN) Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. During the 64th session of the UN General Assembly (GA) in July 2010, States adopted a resolution recognizing “the right to safe and clean drinking water and sanitation is a human right that is essential for the full enjoyment of life and all human rights,” and called upon States and international organizations to “provide financial resources, capacity-building and technology

¹ General Comment 15 of the CESCR stresses that “the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.” It interprets the right to water within the scope of ICESCR Article 11, on the right to an adequate standard of living, and Article 12, on the right to health.

<http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94?Opendocument>

transfer through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.”

The HRC reaffirmed this decision in a resolution adopted in September 2010.² Beyond demonstrating a strong political commitment among Member States, this resolution places the human rights to water and sanitation in the context of binding international human rights law (IHRL). The resolution also puts sanitation on par with water. In March 2011, the HRC renewed de Albuquerque’s mandate and changed her title to Special Rapporteur on the human right to safe drinking water and sanitation.

The rights to water and sanitation are defined by the following criteria: **availability; quality; acceptability; accessibility; and affordability**, developed by the CESCR regarding the right to water³ and by the Special Rapporteur regarding the right to sanitation.⁴

Availability: The human right to water is limited to personal and domestic uses and foresees a supply for each person that must be sufficient for these purposes. Likewise, a sufficient number of sanitation facilities have to be available.

Quality: Water has to be safe for consumption and other uses, so that it is no threat to human health. Sanitation facilities must be hygienically and technically safe to use. To ensure hygiene, access to water for cleansing and hand washing after use is essential.

Acceptability: Sanitation facilities, in particular, have to be culturally acceptable. This will often require gender-specific facilities, constructed in a way that ensures privacy and dignity.

Accessibility: Water and sanitation services must be accessible to everyone in the household or its vicinity on a continuous basis. Physical security must not be threatened when accessing facilities.

Affordability: Access to sanitation and water must not compromise the ability to pay for other essential necessities guaranteed by human rights, such as food, housing and health care.

A human rights based approach to water and sanitation services promotes national and international approaches that facilitate accountability and transparency, and enables civil society to advocate for national and local mechanisms that assist States in ensuring access to water and sanitation services. It also facilitates participation in, and information about, people’s access to decision-making forums that influence access to water and sanitation services.

² See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/33/PDF/G1016633.pdf?OpenElement>

³ Committee on ESCR: General Comment No. 15, The right to water (arts. 11 and 12 of the ICESCR), UN Doc. E/C.12/2002/11, January 20, 2003.

⁴ Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, UN Doc. A/HRC/12/24, July 1, 2009.

Human rights norms, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), impose legal obligations on States. As a result, the protection and fulfillment of the rights to water and sanitation require specific measures. The ICESCR requires States to both formally recognize such rights within national legislation and provide laws, regulations and implementing measures to fulfill them. Hence, States party to human rights treaties, including the ICESCR, bear three key duties regarding the rights to water and sanitation:

1. **Obligation to Respect** e.g., a State will fail to comply with this obligation if it arbitrarily disconnects people from the water supply despite their inability to pay
2. **Obligation to Protect** requires States to *prevent* the abuse of rights by third parties. A State's failure to ensure that private water and sanitation providers comply with human rights standards would amount to a failure to meet this obligation
3. **Obligation to Fulfill** requires States to *facilitate, provide* and *promote* rights through appropriate legislative, administrative, budgetary, judicial and other measures. The failure of States to progressively realize the rights to water and sanitation to the maximum of their available resources amounts to a violation.

The human rights approach also has the following core underlying principles:

Non-discrimination and Equality applies to *de jure* and *de facto* discrimination, formal and substantive discrimination, and direct and indirect discrimination. Non-discrimination entails more than mere avoidance of active discrimination against particular groups; it includes proactive measures to ensure that the specific needs of vulnerable and/or marginalized groups, women, people living in informal settlements, and excluded minorities are addressed. It also obliges States to abolish or amend laws, policies and practices that appear neutral at face value, but have a disproportionate impact on the exercise of the rights to water and sanitation services for specific population groups.

Accountability, Participation and Transparency governments are obliged to provide mechanisms through which citizens can hold the State accountable, participate in policy-making, and access information required to do so. Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) refer to the right to receive and impart information. Accountability and participation are emphasized by the CESCR in its General Comment No. 15 on the right to water as well as by the Special Rapporteur in her report on the right to sanitation. Participation is required at all stages, including the formulation, application and review of national and local policies concerning water and sanitation. Additionally, in cases where the rights to water and/or sanitation have been violated, people must have access to remedies.

The Requirement of Progressive Realization States must take specific steps to ensure that people's rights to water and sanitation improve over time.

The Use of Maximum Available Resources requires States to show that they are using the maximum of their available resources to ensure affordable access to water and sanitation

services. Resource availability depends on the level of economic output, growth rate, the level and growth of inflows of resources from other economies and the ways in which States mobilize resources from citizens to fund its obligation to fulfill human rights, e.g., if a government generates little tax revenue, its ability to provide water and sanitation services may be limited.

Non-Retrogression once a particular level of enjoyment of rights has been realized, it should be maintained.

Minimum Core Obligations/Minimum Essential Levels there is a threshold within which States must comply.

These obligations and principles provide a basis for individuals and groups to hold States and other actors to account.

Highlighting the links between human rights and the Millennium Development Goals (MDGs),⁵ the Special Rapporteur calls on States to adopt a comprehensive strategy to fully realize the rights to water and sanitation for all, focusing in particular on the poorest and most marginalized communities. Within this context she examines the obligations of non-state service providers in realizing the rights to water and sanitation.

How Is Macroeconomic Policy Relevant to Human Rights?

Macroeconomic policies affect the operation of the economy as a whole, shaping the availability and distribution of resources. Within the human rights framework, governments are expected to use their maximum available resources to formulate policies and implement programs that effectively contribute to the achievement of social and economic rights and achieve equality. To do this, States obligations arising from the human rights framework must be linked to their macroeconomic policy instruments.

Macroeconomic policy refers to fiscal (public revenue and public expenditure) and monetary policies (including policies on interest and exchange rates and the money supply) which impact on the economy and living standards, including the levels of employment and growth and the prices and availability of basic social services, such as water and sanitation. Ministries of Finance and Central Banks are key actors in macroeconomic policymaking, with each playing different roles. In addition to government actors, the formulation of macroeconomic policies are influenced by other actors, such as the International Monetary Fund (IMF) and the World Bank. However, civil society's access to macroeconomic policy making bodies is limited. 'Human rights expenditures' are often thought of exclusively in terms of social sector spending (such as health and education).

In general, States tend to favor macroeconomic policies that are assumed to lead to increases in Gross National Product (GNP) and low inflation rates, such as fiscal policies that reduce budget deficits through expenditure cuts and austerity programs. A majority of public spending on water services falls within the category of capital expenditures which,

⁵ See Catarina de Albuquerque, "Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation." A/65/254. August 6, 2010.

when governments are faced with limited fiscal resources, are often cut first (partially also because it is politically expedient).

Financing in the water and sanitation services sectors is complex and depends on a variety of different sources. Understanding financing requires in part the consideration of capital investments as well as operation and maintenance expenditures. Water and sanitation service provision is often decentralized, requiring adequate financing to be assured at the local levels. Apart from revenue raised at the local level, through tariffs and user fees, transfers from the national to the local level often contribute to financing. These transfers can take the form of conditional or block grants.

Conditional grants are used for specific purposes, e.g., water infrastructure, while block or unconditional grants are not intended for specific sectors or projects; the recipient typically decides how they are to be spent, including for water and/or sanitation services. Transfers from the national to the local level have to consider existing inequalities and unequal resource endowments among different regions of the country in question in order to fulfill human rights obligations.

Human rights require national governments to adopt a system of transfers that ensures an equitable distribution of, and makes additional resources available to, disadvantaged regions. Without specific attention to disadvantaged groups, often living in poorer regions, government transfers could result in widening regional disparities and perpetuate discrimination. To ensure that targeting is in line with the human rights framework, governments can use formulae for distribution that take into account population differences among the various recipient areas and poverty levels.

Expenditure Policies

Expenditure policies include debt servicing charges and government programs, such as public services, infrastructure and income transfers. The proportion that States devote to each category varies, e.g., poor, highly indebted countries spend more money paying interest on foreign debt than they do on financing public services.

Government borrowing can be a useful tool for realizing rights. However, debt has also undermined the realization of rights, e.g., in Africa and Latin America. Neo-liberal policies view public expenditures as competing with private spending, including private investment, using up resources that could be used more productively in the private sector. As a result, neoliberals are often of the view that public expenditures should be kept to a minimum.

Alternatively, feminist economists view public expenditure as complementing private investment by providing public facilities, like water and sanitation services, that enhance the productivity of private investment. In addition, they are concerned about the ways in which public expenditure affects well-being and how such expenditures help support the non-market portions of the economy, e.g., water infrastructure reduces the time that women spend collecting water for their families and enhances well-being. In addition, they generally argue that expenditures should be prioritized with regard to the social returns associated with government spending, e.g., large expenditures on defense are not desirable, particularly when they come at the expense of basic social services, such as water and sanitation.

Public expenditure policies and practice can also have discriminatory effects. Public expenditure is often not targeted to marginalized/vulnerable groups. Given that economic policies are not neutral, expenditures that are not mindful of the specificities of communities, e.g., in terms of marginalization, poverty levels, etc., can have differentiated effects and fail to promote equality. In the case of public services and infrastructure, including water and sanitation, the issue is not only discriminatory rules of access, but failures in the design, delivery and funding of programs.

Expenditures on infrastructure development are notoriously affected by leakages and corruption, which undermine budgets and States' capacity to provide services. Expenditures in the areas of water and sanitation services in particular are often insufficient and need to be protected and enhanced. There are several benefits associated with improved water and sanitation services, ranging from the easily identifiable and quantifiable to the intangible and difficult to measure. They include reductions in costs associated with poor water supply and sanitation, such as health care costs, and development benefits, including increasing productive and leisure time available to women.⁶ Given these positive externalities (in economic terms) and important effects in human terms, it is beneficial for States to protect and increase their public expenditures in water and sanitation services.

To facilitate this, citizens can track expenditures and identify misallocations. In monitoring resources allocation and use, transparency and access to information on budgets are especially important. Within this context, social spending audits and gender audits are invaluable tools that also serve to improve efficiency and address the differentiated needs of women and men. Monitoring budgets from a human rights perspective is challenging since expenditures are typically divided between several ministries rather than consolidated by sector. Moreover, while States assume human rights obligations at the national level, sub-national and local governments are often also involved in their implementation.

Over the last 20 years, private sector participation in water and sanitation service provision has been encouraged. As the September 2010 report on Non-State Service Provision by the Special Rapporteur to the HRC stressed, private sector participation can contribute to the realization of the rights to water and sanitation, as long as States meet their obligations to protect the human rights to water and sanitation, inter alia by putting in place strong, independent and accountable regulatory bodies. In assessing the effectiveness of private sector investments and public-private partnerships for water and sanitation services, it is essential to take a human rights based approach to policies and practices to determine the extent to which States ensure adequate regulatory frameworks and processes to reach their marginalized/vulnerable populations.

International budget partnerships are bringing together human rights experts and civil society organizations engaged in monitoring. Within this context, the civil society organizations working on budget monitoring are using the right to information as a practical

⁶ See "Economic and health effects of increasing coverage of low cost household drinking-water supply and sanitation interventions to countries off-track to meet MDG target 10," Background document to the **Human Development Report 2006**, Hutton, Guy; Laurence Haller and Jamie Bartram, World Health Organization, Geneva, Switzerland.

tool to demand information. It also emphasizes the importance of obtaining location-specific data to determine whether expenditure is targeting the communities that need it the most.

Tariffs and Subsidies

Tariffs or user fees are sources of revenue in the water and sanitation services sector. As noted earlier, water and sanitation services should be both affordable in addition to sustainably financed. It does not mean that services must be provided for free, but rather that people who can afford to pay should pay, and those who cannot should receive assistance. In this regard, one can broadly distinguish between income support measures and tariff adjustments. Income support measures are related to welfare systems, and can include connection subsidies and vouchers.

In a number of countries subsidies and tariff adjustment measures are developed on a means-testing basis. Tariff adjustment measures aim to lower the tariffs for water or sanitation services paid by low-income households and are incorporated into the tariff structure. This can either take the form of social tariffs, where low-income households are charged lower rates, or lifeline tariffs that provide a minimum amount of water free to low-income households.

Cross subsidies can take various forms, such as between different sectors of water users or from high to low volume use, as in rising block tariffs. Cross subsidies only function in network systems and require a sufficient number of wealthy households in the area of operation. Where on-site sanitation is used, hardware subsidies are significant in facilitating necessary investments.

Cost-recovery is necessary in the water and sanitation services sectors, at least for operations and maintenance. While the concept of full cost recovery enjoyed some degree of popularity in past, viz that user fees should be sufficient to cover the costs of operating and maintaining water and sanitation services networks, more recent discussions have concluded that user fees alone are insufficient, especially in the context of developing countries with resource constraints. Thus, the focus has increasingly shifted to sustainable cost-recovery, which implies that not everyone needs to pay the same, but that there is a need for subsidies.

Non-Discrimination and Inequality

Non-discrimination is an essential and crosscutting element of the realization of the rights to water and sanitation services. While non-discrimination is a more negative paradigm that is frequently understood as merely refraining from active discrimination against women, substantive equality emphasizes the need to take proactive measures to address socially constructed disadvantages. ***Substantive equality means that the same right in theory may require different implementation in substance for different people.*** It requires States to examine the concrete impacts of their policies on women, but also appreciates that women are a heterogeneous category experiencing intersectional forms of marginalization and opportunities. For instance, while building toilets, the fact that women and girls are more likely to endure violence should be taken into account.

Macroeconomic policy can produce discriminatory outcomes by adopting policies that perpetuate inequality among various groups, requiring those groups to carry an unequal burden of the costs of adjustment to recession, high rates of inflation, and financial crises. However, debates on macroeconomic strategy rarely examine or prioritize its non-discrimination dimensions. For example, budget deficits are generally reduced by cutting expenditures rather than increasing tax revenues, with vulnerable/marginalized groups bearing the disproportionate burden. In addition, the risk that women will disproportionately experience the impacts of expenditure cuts is heightened due to the social pressure for women to compensate for service cuts with their unpaid work, e.g., by undertaking increased water collection activities if the government cuts expenditure on water and sanitation services.

Within the context of markets and the human rights framework, it is important to consider the ways in which regulations are designed and enforced. Neo-liberal economists tend to argue that markets and property should be regulated in ways that promote flexibility and make it easier for businesses to invest and make profits (often referred to as deregulation). For example, private sector provision of water and sanitation services could be regulated in such a way that it protects the rights of the company, instead of consumers, when profit is lost. Regulation is critical to ensure that the private sector reinvests profits into systems that reach deprived and under-served populations.

Feminist economists argue that markets need to be regulated in ways that serve social goals, thus recognizing people as more than just inputs to production processes or outlets for sales. In addition, feminist economists posit that important aspects of the economy are NOT coordinated through markets, yet are essential for the economy to function—such as unpaid care work and the maintenance of the society. Markets cannot fully substitute for institutions, such as households, communities and families, to give an extreme example, young children cannot contract with their parents for decent care.

More specifically, value-added taxes (VAT) can affect governments' ability to comply with their human rights obligations to uphold the principles of equality and non-discrimination. Although VAT is popular in many countries, and advocated by the IMF, subjecting water services to VAT would have a disproportionate impact on the poorest and most marginalized groups, notably because it applies a flat rate. These effects must be taken into account in the design of the VAT, or by raising revenues through other tax policies that do not have similar discriminatory outcomes.

The concept of substantive equality is rooted in IHRL. It was developed by the Committee on the Elimination of Discrimination Against Women (CEDAW) and integrated into the ESCR framework through General Comments 16 and 20 of the CESCR. CEDAW requires States to take temporary special measures in order to rectify structural gender inequalities.⁷ Temporary special measures such as access quotas can help rectify structural power imbalances. Evidence from India demonstrates the effectiveness of temporary special measures: after quotas mandated that 1/3 of local village council chairs be women, female chairs displayed a greater propensity to prioritize funding on water.

⁷ CEDAW's General Recommendation 25 specifies that non-identical treatment is sometimes required in order to redistribute resources and power between men and women.

The significance of the public/private divide in relegating women to caretaking and water collection roles must be taken into account when instituting special measures. In addition, data should be disaggregated according to sex and other factors, such as race, ethnicity, age and geographic location. Using substantive equality rather than non-discrimination can prevent slippage into a civil and political rights analysis of ESCR and enable advocates to hold States accountable.

Maximum Available Resources and Progressive Realization

When assessing the extent to which States are using their maximum available resources for the progressive realization of the rights to water and sanitation services, it is important to consider public expenditures, revenues, official development assistance (ODA), borrowing and budget deficits, resources leveraged from corporations and communities, and the role of monetary policy and central banks therein. Monetary policy and central banks are linked to the rights to water and sanitation because they influence interest rates and investments, which impacts on States' borrowing patterns and employment and in turn affects access to water and sanitation services.

Taxation is important for the long-term sustainability of revenues. Neo-classical economics tends to regard taxation as distorting prices, harming competitiveness and creating disincentives for people and businesses by altering their financial incentives. Hence, neoclassical economists often argue for tax cuts. Feminist economics tend to view taxation as capable of getting incentives right when markets do not work according to theory, and raising revenues to finance services and infrastructure, including water and sanitation. In other words, the effect of taxation much be considered along with the benefits associated with government spending. Feminist economists often argue for more just taxation policies.

Revenue refers to the amount of resources a government raises to pay for public expenses, including, direct taxes (personal income tax or taxes paid directly to the tax authority), indirect taxes (excise tax, VAT), import duties, royalties (for the use of mining or logging rights), sales of public assets (such as privatization of water systems), and ODA. Revenue raising measures often have differential effects on different groups within the State. Revenue-raising practices often, explicitly or implicitly, discriminate against vulnerable and/or marginalized groups. However, used positively, States can use its redistributive function as a tool to both redress discrimination against vulnerable and/or marginalized groups and promote equality.

With the onset of the financial crisis, retrogression has become a key area of concern in the Global North as well as in many middle- and low-income countries. States prematurely replaced initial stimulus measures with fiscal austerity, which affects the progressive realization of economic and social rights, including the delivery and maintenance of water and sanitation services. The CESCR stresses that non-retrogression requires prioritizing the most disadvantaged groups. Since women comprise the bulk of the world's poor, this means prioritizing women.

Borrowing: Deficits and Debt

In times of economic downturn and increased government spending, borrowing can have a counter-cyclical role since to be effective stimulus packages have to be financed through borrowing. In addition, if austerity measures are taken too soon it can be more difficult to pay back debt, which can result in the retrogression of human rights.

The debt issue can be understood through three types of sustainability: (i) social; (ii) fiscal; and (iii) political. In terms of social sustainability, borrowing may be justified when future social returns and human rights achievements are at least as large as the investment. With regards to fiscal sustainability, if the interest rate on the debt is lower than the growth rate of the economy, borrowing is generally considered sustainable. That is, economic growth will support higher government revenues in the future, which allow States to pay off debt; as long as interest rates are not causing the debt to compound faster than the economy is growing. In order to have a more sustainable fiscal policy that allows for borrowing to invest in human rights, monetary authorities need to keep interest rates low. In terms of political sustainability, creditors such as the IMF often place conditionalities on borrowing that serve to undermine the progressive realization of human rights.

Borrowing to realize human rights amounts to using financial intermediation, i.e., entering into financial markets, to realize human rights. This raises issues about the linkages between the realization of human rights and financial concerns. Increasingly this is happening in ways in which the human rights community has not caught up, e.g., some commodities exchanges have proposed a futures market for water resources. As the privatization of water continues, the potential for financial speculation in water is very real, which will in turn impact its affordability and accessibility.

Non-State Actors

The State is the traditional duty bearer under IHRL, which makes it complicated to apply a human rights approach to non-state actor responsibilities. However, non-state actor responsibilities are addressed in a number of soft law instruments and treaties. For example, General Comment 15 of the CESCR highlights States' obligations to prevent third parties from compromising equal affordable access to sufficient, safe and acceptable water. States also have the obligation to establish regulatory frameworks to monitor non-state service provision. Non-state actors constitute a diverse group, including multilateral development banks, such as the International Finance Corporation (IFC), import-export banks, export-credit agencies, transnational corporations, as well as nongovernmental organizations (NGOs), and small-scale service providers.

International trade agreements, such as the General Agreement on Trade and Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), also have the potential to limit States' ability to regulate basic social services, including the provision of water and sanitation. States often attempt to extend their limited budget resources for the provision of basic services, such as water and sanitation, by entering into public-private partnerships.⁸ This strategy is not necessarily a bad thing, but it does raise

⁸ On the participation of the private sector and other non-State actors in the provision of water and sanitation services see "Report of the independent expert on the issue of human rights obligations related to access to

some important questions, including the extent to which economic downturns are pushing States into public-private partnerships within which governments are bargaining from a position of weakness; which may result in provisions that erode human rights.

Markets are regulated and people and businesses have to be able to enter into legally enforceable contracts for markets to operate. Within the context of markets and the human rights framework, it is important to consider the ways in which regulations are designed and enforced. Neo-liberal economists tend to argue that markets and property should be regulated in ways that promote flexibility and make it easier for businesses to invest and make profits (often referred to as deregulation). For example, private sector provision of water and sanitation services could be regulated in such a way that it protects the rights of the company, instead of consumers, when profit is lost.

Feminist economists argue that markets need to be regulated in ways that serve social goals, thus recognizing people as more than just inputs to production processes or outlets for sales. In addition, feminist economists posit that important aspects of the economy are NOT coordinated through markets, yet are essential for the economy to function—such as unpaid care work and the maintenance of the society. Markets cannot fully substitute for institutions, such as households, communities and families, to give an extreme example, young children cannot contract with their parents for decent care.

As water services become increasingly privatized and managed through public-private partnerships, extraterritorial obligations must necessarily be examined. For example, stabilization clauses in bilateral investment treaties are a form of investor protection that either insulate investors from environmental or human rights policy changes or compensate them for compliance with such regulation. Effectively, these clauses act as disincentives to human rights regulation.⁹

Although the human rights framework is constantly evolving, it has been slow to adapt to the shifting global economic context. Notably while IHRL recognizes that non-state actors can commit human rights abuses, accountability mechanisms are insufficient to fully address such abuses. This raises questions about what happens to States' obligations in a global economy that lacks accountability mechanisms for non-state actors? How can international financial institutions (IFIs) be held accountable for human rights abuses?

Regulation is key to improving accountability and access to justice. Markers are also being developed for responsible contracting, prioritizing human rights criteria. As the UN Special Representative for Business and Human Rights emphasized, in line with States' extraterritorial obligations under human rights treaties, expenditure on regulation should be devoted to developing complaints mechanisms for rights violations, including those committed by businesses, such as the bottled water industry.¹⁰ The OECD Guidelines for Multinational Enterprises, though nonbinding, is one of the most comprehensive

safe drinking water and sanitation", C. de Albuquerque, UN Doc. A/HRC/15/31, June 29, 2010.

⁹ See: <http://www.business-humanrights.org/media/documents/stabilization-clauses-and-human-rights-27-may-2009.pdf>

¹⁰ Report of the UN Special Representative on Business and Human Rights: <http://www.reports-and-materials.org/Ruggie-report-2010.pdf>

multilateral intergovernmental instruments on corporate responsibility. They “provide voluntary principles and standards for responsible business conduct in areas such as ... human rights ... and taxation.”¹¹

There is also a recent trend within regional economic bodies, e.g., Economic Community of West African States (ECOWAS) and Southern African Development Community (SADC), to analyze human rights obligations of States. Regional economic blocs might become a bigger player in the right to water and sanitation services because of the trans-boundary character of water resources. This also suggests that States may be held accountable for their human rights obligations in the context of their actions within international and regional bodies.¹²

Recommendations

A country's overall development strategy and use of macroeconomic policies—fiscal, monetary and trade policies—directly and indirectly affect demand for, investments in, and the realization of the rights to water and sanitation services. Mindful of the ways in which water and sanitation services are used within the overall economy, linked to the well-being of communities and households, and connected to gender roles and responsibilities, attempts to realize the rights to water and sanitation from a feminist perspective requires:

- Being mindful of the burdens of the co-responsibilities approach, which while championing the active participation of local communities, may place additional burdens on female community members because of the unpaid work it requires;
- Conducting human rights impact assessments as a means for holding States accountable to fulfilling their obligations;
- A comprehensive analysis of water and sanitation services, issues such as trade agreements and extraterritorial obligations should be analyzed to alert governments to the wide variety of issues that have direct bearings on the rights to water and sanitation;
- Critically assessing the extent to which contributions of agribusiness and industry are proportionate to their water use; and
- Establishing benchmarks and indicators, using concepts such as water poverty,¹³ to enable States to better identify those communities and regions within which they need targeted interventions to fulfill their obligations.

¹¹ See http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html

¹² International cooperation has been emphasized in a number of IHRL instruments. Article 2(1) of the ICESCR specifies that human rights must be realized within the framework of international cooperation.

¹³ Water poverty is related to access and affordability. The gendered dimensions of water poverty are apparent as most often women and girls are responsible for collecting water.

Appendix 1: Participants List

Catarina de Albuquerque

UN Independent Expert on human rights obligations related to access to safe drinking water and sanitation, Office of the United Nations High Commissioner for Human Rights

Radhika Balakrishnan

Center for Women's Global Leadership (CWGL), and Professor, Women's and Gender Studies, Rutgers University

Margot Baruch

Center for Women's Global Leadership (CWGL)

Rebecca Brown

International Network for Economic, Social and Cultural Rights (ESCR-Net)

Natalia Cardona

Center for Women's Global Leadership (CWGL)

Jenina Joy Chavez

Focus on the Global South

Lilian Chenwi

Socio-Economic Rights Project of the Community Law Centre, University of the Western Cape, South Africa

Mac Darrow

MDGs Section, Office of the United Nations High Commissioner for Human Rights

Diane Elson

Essex University

Pregs Govender

South Africa Human Rights Commission

James Heintz

Political Economy Research Institute (PERI)

Cindy Kushner

Sanitation and Water for All (SWA) partnership/UNICEF

Mary Ann Manahan

Focus on the Global South

Kuppusamy Nagarajan

Lucinda O'Hanlon

Office of the United Nations High Commissioner for Human Rights

Inga Winkler

German Institute for Human Rights

Rapporteur

Nathalie Margi

Human Rights Clinic, University of Essex