



HUMAN RIGHTS TO
WATER AND SANITATION

A background graphic of a line graph with a grid. Three lines are plotted: a black line that starts high and trends downwards; a red line that starts low and trends upwards; and a blue line that starts very low and trends upwards, crossing the other two lines. The area under the blue line is shaded in a light blue color.

SERVICE REGULATION

and the human
rights to water
and sanitation

A/HRC/36/45

Report to the 36th session of the Human Rights
Council by the Special Rapporteur on the human
rights to water and sanitation

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WHAT IS REGULATION?

Regulation is the monitoring of the performance of services and should be undertaken in a way to ensure the fulfilment of the human rights to water and sanitation, and the principles that underpin it.

Regulation is an essential part of the human rights obligations of States, as dictated by international human rights law.

There is no universal regulatory model. Regulation should be adapted to local circumstances, needs and challenges. International human rights law does not prescribe a particular choice of regulatory framework.

Regardless of the regulatory model chosen, currently most water and sanitation regulatory frameworks typically incorporate aspects of:

- economic regulation
- of quality of service regulation and
- of drinking water quality regulation.

Some may also include aspects of environmental regulation, mainly water abstraction and wastewater discharges, of user interface regulation or of legal and contractual regulation.

WHAT IS THE ROLE OF REGULATION?

Regulation plays a key role in monitoring service providers' compliance with the normative content of the human rights to water and sanitation and in ensuring accountability. Identifying and avoiding violations of these rights and retrogressions in their progressive realization is also key for the regulation of water and sanitation services.

The functions of regulators go beyond mere policing and include supporting and influencing policy changes in line with the human rights framework.



Defining terms:

When the terms “regulatory framework” or “regulation” (in general) are used in the report, they refer to secondary legislation such as norms, rules or standards establishing how services should be provided in a given context and the institutions responsible for monitoring compliance with these norms and standards.

The terms “regulatory body”, “regulatory authority” or “regulator” refer to a separate body to which the State delegates regulatory functions. These bodies are often responsible for setting standards and applying and enforcing them.

The term “regulatory actors” is used in a broad sense, and includes government institutions that exercise regulatory functions (i.e. a department within a ministry) and separate bodies created by the State to carry out regulatory functions.

OBLIGATIONS OF STATES

The State is the primary duty bearer for the realization of the human rights to water and sanitation

While the [International Covenant on Economic, Social and Cultural Rights](#), in article 2, provides for progressive realization and acknowledges the constraints due to limits of available resources, it also imposes on States various obligations of immediate effect.

In the context of service regulation, the obligations under article 2 include:

- (a) the obligation to take deliberate, concrete and targeted steps to put in place a regulatory framework for water and sanitation services provision that is aligned with human rights; and
- (b) the obligation to ensure that the rules and regulations set and the activities of those exercising regulatory functions contribute to the enjoyment of the human rights to water and sanitation without discrimination of any kind

The human rights obligations of States are classified as obligations to respect, to protect, and to fulfil.

The obligation to **respect** requires that States' regulatory framework refrain from interfering directly or indirectly with people's existing access to water and sanitation. States must ensure that their regulatory framework prohibits disconnections from water and sanitation services due to users' inability to pay, as it is a retrogressive measure and violates the human rights to water and sanitation, must ensure, when extending piped networks to informal settlements, that these services are affordable so as not to interfere with people's access, and must avoid discriminatory or unaffordable increases in the price of water and sanitation services due to inadequate regulation.

The obligation to **protect** requires States to prevent third parties from interfering in any way with the enjoyment of the human rights to water and sanitation by establishing an effective regulatory system, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.

The obligation to **fulfil** has three components: the obligation to facilitate, the obligation to promote and the obligation to provide.

- The obligation to facilitate requires States to take positive regulatory measures to create an enabling environment for service providers to respect the human rights to water and sanitation as well as to contribute towards the full realization of these rights.
- The obligation to promote requires States to provide information and guidance for service providers and the population on how to comply with the standards, norms and regulations set.
- The obligation to provide obliges States to fulfil the rights to water and sanitation when individuals are unable, for reasons beyond their control, to realize these rights themselves by the means at their disposal.



OBLIGATIONS OF REGULATORY ACTORS

Regulatory actors' obligations are twofold: ensuring that their policies, procedures and activities are compliant with the State's international human rights obligations in relation to the rights to water and sanitation, ...

The [Committee on Economic, Social and Cultural Rights](#) underscores that the enjoyment of the human rights to water and sanitation without discrimination of any kind can be compromised not only through direct action of omission by States, but also through State institutions or agencies at the national and local levels, which included regulatory actors.

In their key areas of action, which include standard-setting, monitoring and ensuring accountability for service provision, regulatory actors are bound by the principle of progressive realization, but also by the immediate obligation of non-discrimination and the obligation to take steps towards the full realization of these rights.

... and, beyond mere policing, supporting and influencing investment decisions, and policy and legislative changes in line with the human rights framework.

While the existence of national policies and strategies supported by the human rights to water and sanitation contributes greatly to the creation of an enabling regulatory environment, regulatory actors cannot simply dismiss their human rights obligations on the grounds that national policies are inadequate.

Being at the interface between policymakers, service providers and users, and as guarantors of accountability, regulatory actors are best places to assess whether water and sanitation are being progressively met or are being overlooked. They have also the primary role in identifying retrogressions in the realization of the rights and in requiring providers to address the root causes of these violations.

RESPONSIBILITIES OF SERVICE PROVIDERS

All service providers, whether public, State-owned or private, must comply with the State's legal and regulatory framework.

- In cases where the State is the service provider, at central level or often through its municipalities, it must act in compliance with the laws and regulations of the State and in line with its international human rights obligations.
- Where service provision is formally delegated by the State to non-State actors, the State cannot exempt itself from its human rights obligation and retains the obligation to regulate and monitor their activities.
- Non-State service providers (formal and informal), on the other hand, have human rights responsibilities, which include complying with the national regulatory framework and respecting the human rights to water and sanitation.

REGULATION IN WATER AND SANITATION SERVICES

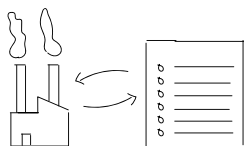
There is no universal regulatory model. Regulation should be adapted to local circumstances, needs and challenges. International human rights law does not prescribe a particular choice of regulatory framework.

In this context, it is essential to emphasize a distinction between fully incorporating the human rights to water and sanitation into regulatory frameworks and choosing some selected aspects of it to comply with.

What is essential from a human rights perspective is that those carrying out regulatory functions be immune to pressures from any illegitimate interests and that the main objectives of regulation be aligned with the human rights to drinking water and sanitation.



TYPES OF REGULATORY FRAMEWORKS

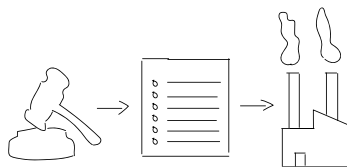


Self-regulation

In some countries, regulatory frameworks include the model of self-regulation, whereby public service providers regulate their own activities, set tariffs and quality standards and monitor their own performance.

What are the weaknesses of self-regulation?

Self-regulation raises significant human rights challenges in terms of guaranteeing independent monitoring and providing reliable accountability mechanisms. Regulatory principles such as impartiality, accountability, transparency and good governance can potentially be compromised.

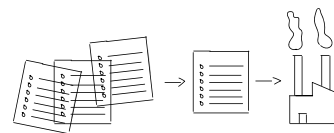


Regulation by contract

Contract between the government and utility sets services standards.

Challenges involved include:

- guaranteeing transparent and democratic decision-making,
- addressing power asymmetries in the bidding and negotiation process,
- ensuring affordable services,
- avoiding disconnections in cases of inability to pay,
- ensuring monitoring and accountability, and
- addressing corruption.



Regulation by a separate regulatory body

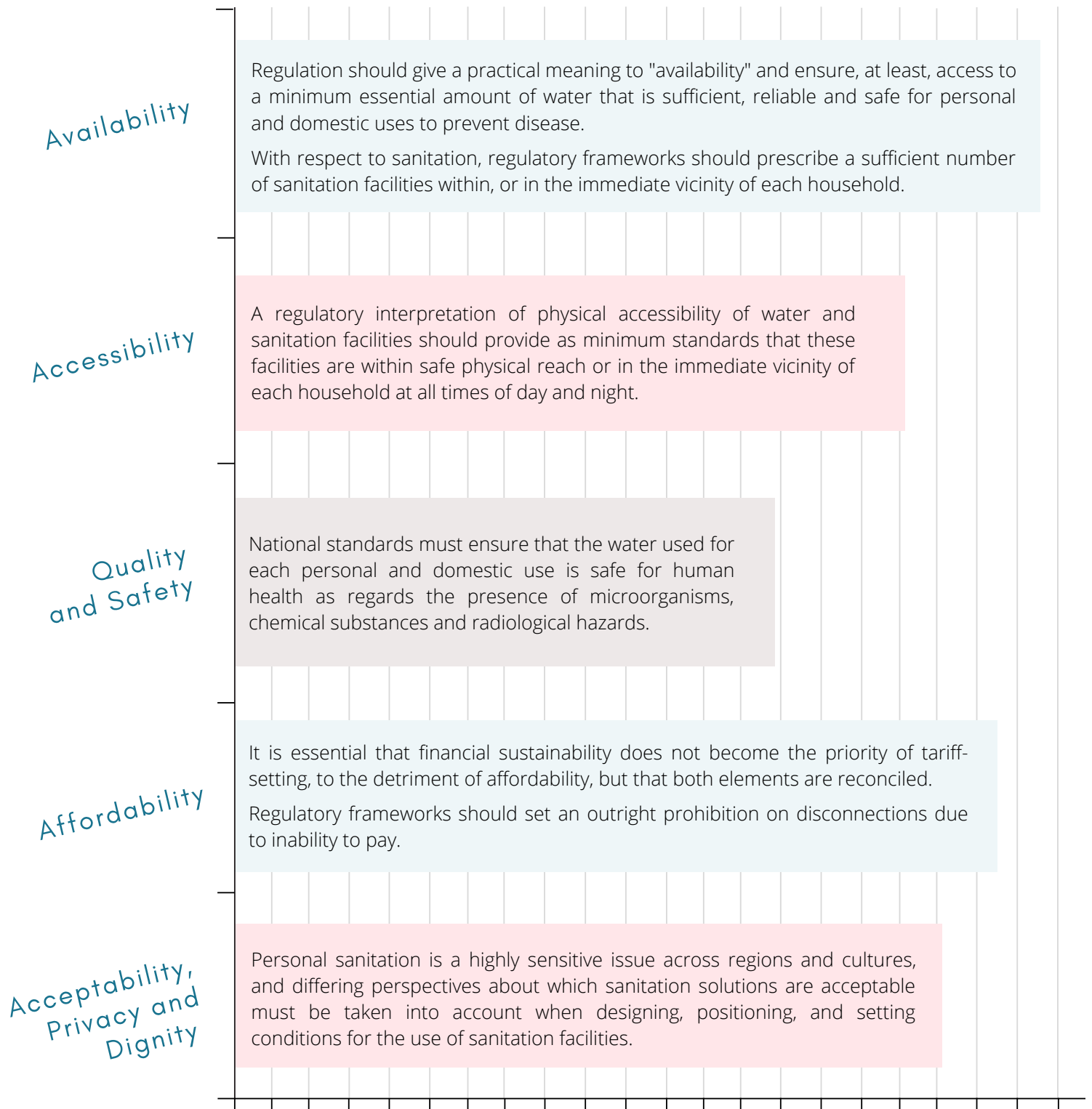
These are public entities that are expected to be independent from providers, governments and the direct administration of the State. When the exercise of these functions is guided by the human rights framework, this regulatory model can contribute significantly to the progressive realization of the human rights to water and sanitation.

However, in the absence of a strong national policy and legal framework on the human rights to water and sanitation, these bodies also face challenges in realizing these rights.

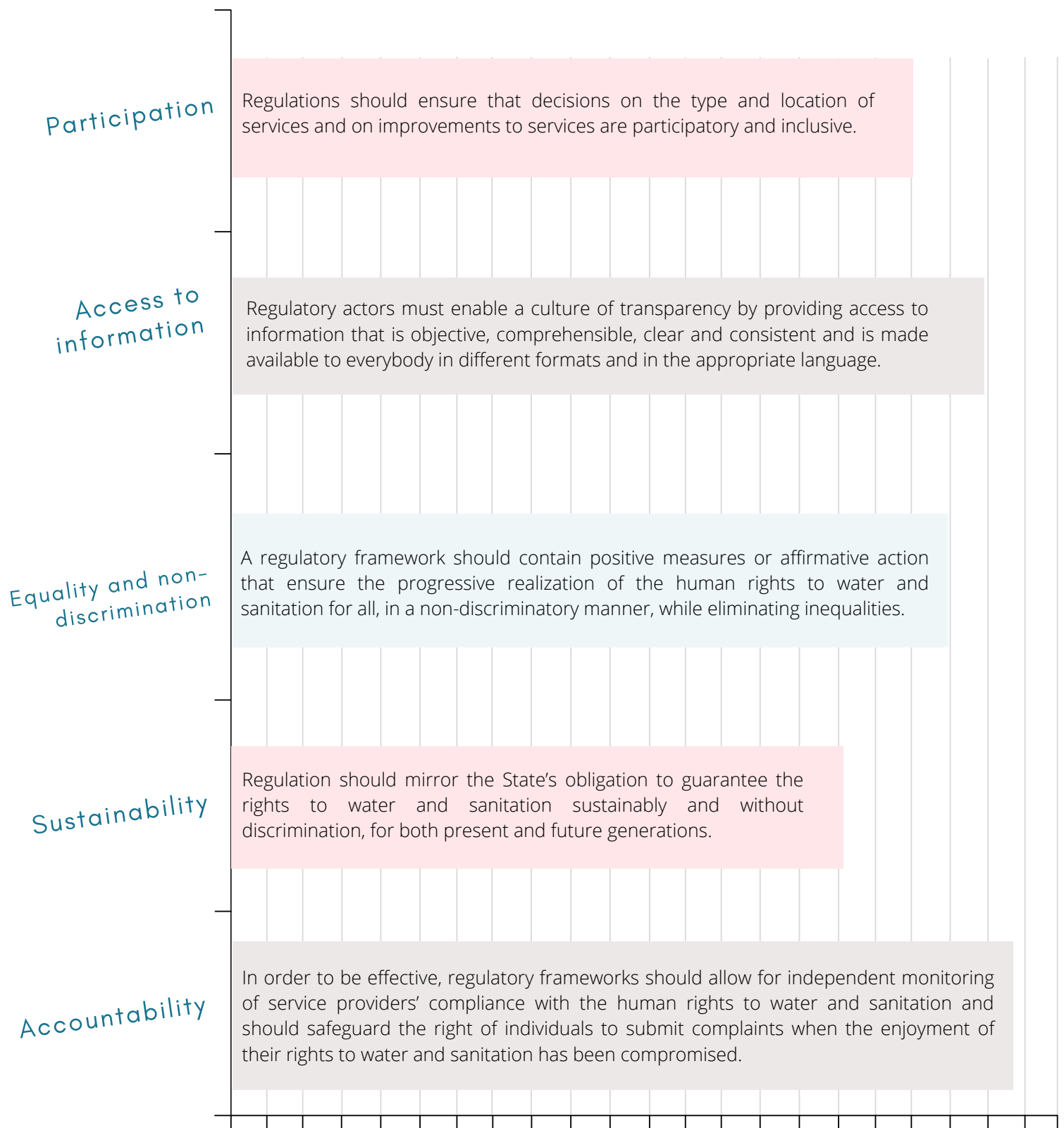
CORE FUNCTIONS OF REGULATORY ACTORS

1. SETTING STANDARDS

From a human rights perspective, the ultimate objective of regulation is to give practical meaning to the normative content of these rights, as follows:



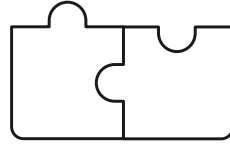
The exercise of regulatory functions in general, and the making of regulation in particular, must comply with the human rights framework regardless of the public or State body that is carrying them out.



2. MONITORING IMPLEMENTATION

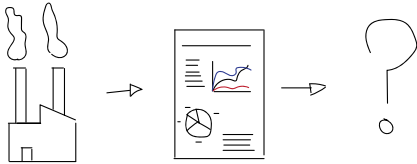
National and local monitoring processes gather information that helps identify drivers and bottlenecks, highlight gaps, and assess strengths and challenges, and as such are essential for the realization of the human rights to water and sanitation.

Regulatory actors must be able to collect, analyse and disseminate accurate information on the performance of all service providers.



Service providers have the responsibility to provide to regulatory actors complete and reliable information on the services, including on their quality, on complaints received from users and on challenges faced in extending services to poorer areas.

Formal Service Providers



How do formal providers (utilities) monitor human rights?

Where formal provision exists, it is expected that there will be available data on standards and targets set, which can be monitored by a regulatory actor. However, small municipal and cooperative providers often have more difficulties in living up to quality standards than large-scale utilities do. Moreover, performance results are not typically made public for a majority of service providers.

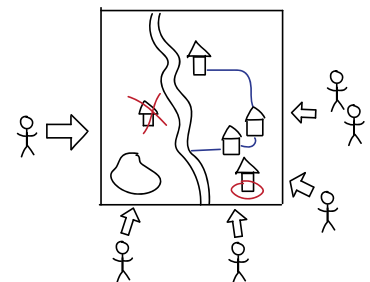
Informal Service Providers

Piped systems are often not available to rural households or to those living in informal settlements in urban areas. In these situations, some types of services, such as informal shared or communal facilities and unregulated individual on-site solutions, are seen as necessary short- to medium-term solutions.

However, without suitable regulation and monitoring, none of these services can be guaranteed to comply with human rights standards. It is important, in these situations, that regulatory instruments and the institutional set-up chosen be adapted to the nature of small-scale service provision.

How do informal providers monitor human rights?

One approach to monitoring in informal settlements that has shown positive results is the use of participatory geographic information systems, which merge technical spatial information with a local community's location-specific knowledge.

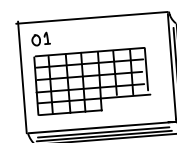


Regulatory Bodies

How do regulatory bodies ensure that they are fulfilling human rights?

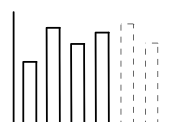
In their plans and activity reports, regulatory bodies should provide clear and relevant information on their policies, procedures and activities and indicate how they contribute to meeting human rights standards progressively.

Regulatory bodies' activities should be controlled and monitored by different entities, such as user councils, parliamentary committees or courts of auditors.



plans and activity reports

information on activities



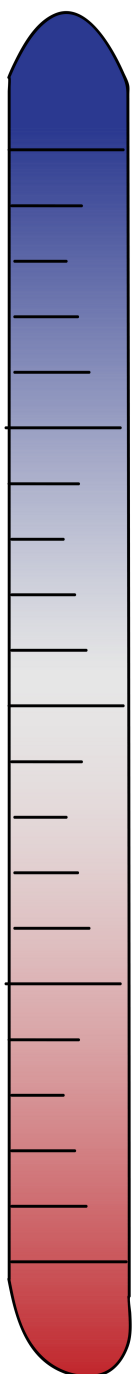
3. ENSURING ACCOUNTABILITY

Accountability at the national level can be achieved through administrative, quasi-judicial and judicial mechanisms. Mechanisms can be based at the level of the service provider or at the level of the State.



For example, when a complaint is not resolved at the level of the service provider, individuals should have the right to address their complaint to an administrative mechanism such as a regulatory body.

Accountability is layered!



Clearly defined roles and responsibilities

To ensure accountability, regulatory frameworks must clearly define the roles and responsibilities of all stakeholders involved in service provision and provide clear and accessible information on the complaint mechanisms available at different levels.

Enforceability and penalties

The regulatory body must also be endowed with the power to enforce existing regulations and contractual agreements. Mechanisms for contract enforcement must include adequate incentives, penalties for non-compliance, such as fines, and the possibility of revocation of the contract.

Independent bodies

In countries where no separate regulatory mechanism exists, but where national human rights institutions or ombudspersons' offices are present, individuals may resort to these independent bodies for redress when their human rights to water and sanitation have been compromised by a service provider.

Judicial mechanisms

When administrative or national quasi-judicial mechanisms do not exist or are not able to successfully resolve a dispute, the right to an effective remedy requires that people whose rights to water and sanitation have been affected be able to turn to a court. In this context, it is critical that judicial systems uphold the justiciability of the human rights to water and sanitation in line with international human rights law.

RECOMMENDATIONS TO STATES

In line with the above, the Special Rapporteur recommends that States:

SETTING STANDARDS

- (a) Adopt water and sanitation policies and strategies incorporating the human rights to water and sanitation, and take deliberate, concrete and targeted steps to establish a regulatory framework informed by these rights and regulatory bodies operating in an impartial, transparent and rights-based manner;
- (b) Clearly define necessary procedures and measures in the regulatory framework to meet the State's obligations to respect, protect and fulfil the human rights to water and sanitation;
- (c) Ensure that the mission, mandate and objectives of regulatory actors incorporate the principle of progressive realization of the human rights to water and sanitation without discrimination of any kind;

MONITORING COMPLIANCE

- (d) Ensure that regulatory frameworks provide a multifaceted and differentiated interpretation of affordability, capturing the specific needs of those living in vulnerable situations;
- (e) Ensure that access to water and sanitation services is not conditioned by land tenure in law and in regulatory frameworks;
- (f) Ensure through adequate regulation that, when extending formal services to informal settlements, these services are affordable and do not interfere with people's access;
- (g) Prohibit disconnections due to inability to pay, in law and in regulatory frameworks;

ENSURING ACCOUNTABILITY

- (h) Ensure that instruments delegating service provision, including contracts, reflect the national regulatory framework and human rights standards;
- (i) Include, in regulatory frameworks, specific requirements ensuring adequate provision of services to, inter alia, homeless people, poor nomadic communities, and victims of situations of armed conflict, emergencies, natural disasters or climate change effects;
- (j) Include, in regulatory frameworks, specific requirements ensuring adequate provision of services to, inter alia, schools, health facilities, prisons, transport hubs and public spaces in general;
- (k) Establish the necessary mechanisms to ensure accountability of regulatory actors;
- (l) Inform and train regulatory actors on the practical implications of the realization of the human rights to water and sanitation in their area of work.

RECOMMENDATIONS TO REGULATORY ACTORS

In addition, the Special Rapporteur recommends that regulatory actors:

SETTING STANDARDS

- (a) Comply with the State's international human rights obligations with regard to the rights to water and sanitation and take targeted steps towards the full realization of these rights;
- (g) Support and influence policy formulation and legislative changes in line with the human rights to water and sanitation;

MONITORING COMPLIANCE

- (d) Ensure non-discriminatory service coverage by service providers, including to poorer neighbourhoods, informal settlements and rural areas;
- (e) Provide access to objective, comprehensible, clear and consistent information and facilitate free, active and meaningful participation in regulatory decision-making processes;
- (f) Ensure that tariff-setting reconciles financial sustainability with affordability, while prioritizing and protecting the needs of those living in poverty;

ENSURING ACCOUNTABILITY

- (b) Carry out independent monitoring of service providers' compliance with the normative content of the human rights to water and sanitation and ensure that in cases of retrogression providers address the root causes of these violations;
- (c) Set and monitor indicators that cover all the elements of the rights and disaggregate them by prohibited grounds of discrimination;
- (h) Provide clear and relevant information on their policies, procedures and activities and indicate how they contribute to the progressive realization of the human rights to water and sanitation;
- (i) Safeguard the right of individuals to submit complaints when the enjoyment of their rights to water and sanitation has been compromised by service providers.