

**Independent Expert on the issue of human rights obligations  
related to access to safe drinking water and sanitation**

**‘GOOD PRACTICES’ RELATED TO ACCESS TO  
SAFE DRINKING WATER AND SANITATION**



**Questionnaire**

**February, 2010  
Geneva**

## **Introduction**

The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Ms. Catarina de Albuquerque, has been mandated by the Human Rights Council in 2008 to:

- Further clarify the content of human rights obligations related to access to safe drinking water and sanitation;
- Make recommendations that could help the realization of the Millennium Development Goals (MDG), and particularly of the Goal 7;
- Prepare a compendium of good practices related to access to safe drinking water and sanitation.

While the work of human rights bodies has often focused on the violations of human rights, the Independent Expert welcomes the opportunity to identify good practices that address the question of how human rights obligations related to sanitation and water can be implemented.

## **Methodology of the Good Practices consultation process**

In a first step, the Independent Expert determine undertook to criteria for identifying ‘good practices’. As ‘good’ is a subjective notion, it seemed critical to first elaborate criteria against which to judge a practice from a human rights perspective, and then apply the same criteria to all practices under consideration. Such criteria for the identification of good practices were discussed with various stakeholders at a workshop convened by the Independent Expert in Lisbon in October 2009. The outcome was the definition of 10 criteria, 5 of which are normative criteria (*availability, accessibility, quality/safety, affordability, acceptability*), and 5 are cross-cutting ones (*non-discrimination, participation, accountability, impact, sustainability*). The Independent Expert and the stakeholders started testing the criteria, but believe that the process of criteria testing is an ongoing one: the criteria should prove their relevance as stakeholders suggest examples of good practices.

After this consultation and the consolidation of the criteria, the Independent Expert wants to use these to identify good practices across all levels and sectors of society. To that end, she will organize stakeholder consultations with governments, civil society organisations, national human rights institutions, development cooperation agencies, the private sector, UN agencies, and perhaps others. By bringing people from the same sector together to talk about good practices related to human rights, water and sanitation, she hopes to facilitate exchange of these good practices. In order to prepare the consultations through the identification of potential good practices, the present questionnaire has been elaborated. The consultations will be held in 2010 and 2011. Based on the answers to this questionnaire, and the stakeholder consultations, the Independent Expert will prepare a report on good practices, to be presented to the Human Rights Council in 2011.

## **The Good Practices Questionnaire**

The questionnaire is structured following the normative and cross-cutting criteria, mentioned above; hence the Independent Expert is looking for good practices in the fields of sanitation and water **from a human rights perspective**. Therefore, the proposed practices do not only have to be judged ‘good’ in light of at least one normative criterion depending on their relevance to the practice in question (*availability, accessibility, quality/safety, affordability, acceptability*), but also in view of all the cross-cutting criteria (*non-discrimination,*

participation, accountability, impact, sustainability). At a minimum, the practice should not undermine or contradict any of the criteria.

#### **Explanatory note: Criteria**

**Criteria 1-5:** Normative criteria (availability, accessibility, quality/safety, affordability, acceptability). All these criteria have to be met for the full realization of the human rights to sanitation and water, but a good practice can be a specific measure focussing on one of the normative criterion, and not necessarily a comprehensive approach aiming at the full realization of the human rights. Hence, not all the criteria are always important for a given practice. E.g., a pro-poor tariff structure can be judged very good in terms of the affordability criterion, whilst the quality-criterion would be less relevant in the context of determining whether that measure should be considered a good practice.

**Criteria 6-10:** Cross-cutting criteria (non-discrimination, participation, accountability, impact, sustainability). In order to be a good practice from a human rights perspective, all of these five criteria have to be met to some degree, and at the very least, the practice must not undermine or contradict these criteria. E.g., a substantial effort to extend access to water to an entire population, but which perpetuates prohibited forms of discrimination by providing separate taps for the majority population and for a marginalized or excluded group, could not be considered a good practice from a human rights perspective.

#### **Actors**

In order to compile the most critical and interesting examples of good practices in the field of sanitation and water from a human rights perspective, the Independent Expert would like to take into consideration practices carried out by a **wide field of actors**, such as *States, regional and municipal authorities, public and private providers, regulators, civil society organisations, the private sector, national human rights institutions, bilateral development agencies, and international organisations.*

#### **Practices**

The Independent Expert has a broad understanding of the term “practice”, encompassing both policy and implementation: Good practice can thus cover **diverse practices** as, e.g., *legislation ( international, regional, national and sub-national ), policies, objectives, strategies, institutional frameworks, projects, programmes, campaigns, planning and coordination procedures, forms of cooperation, subsidies, financing mechanisms, tariff structures, regulation, operators’ contracts, etc.* Any activity that enhances people’s enjoyment of human rights in the fields of sanitation and water or understanding of the rights and obligations (without compromising the basic human rights principles) can be considered a good practice.

The Independent Expert is interested to learn about practices which advance the realization of human rights as they relate to safe drinking water and sanitation. She has explicitly decided to focus on “good” practices rather than “best” practices, in order to appreciate the fact that ensuring full enjoyment of human rights can be a process of taking steps, always in a positive direction. The practices submitted in response to this questionnaire may not yet have reached their ideal goal of universal access to safe, affordable and acceptable drinking sanitation and water, but sharing the steps in the process towards various aspects of that goal is an important contribution to the Independent Expert’s work.

Please describe a good practice **from a human rights perspective** that you know well in the field of

- drinking water; and/or
- sanitation

Please relate the described practice to the ten defined criteria. An explanatory note is provided for each of the criteria.

### **Description of the practice:**

#### **Name of the practice:**

Recommendations of social and family tariffs and a gradual extinction of the set-up costs for connection of water supply and wastewater services networks.

#### **Aim of the practice:**

Ensure universal access to water and sanitation services by promoting affordable and equitable prices in order to facilitate basic human needs and non-discriminatory behavior.

#### **Target group(s):**

- Low income households.
- Large families.
- Non-connected households.

#### **Partners involved:**

- ERSAR
- Operators
- Municipalities
- Other stakeholders (consumers associations, operators associations, sector organizations)

#### **Duration of practice:**

Historically Portuguese operators have defined increasing block tariff structures (the volumetric charge changes according to several blocks depending on volumes consumed) to benefit low income households and to promote efficient use of water resources. Added to this practice, there were several operators which have applied either social or family tariffs which benefitted from lower tariffs.

Recently, ERSAR has published a recommendation on the design of water and waste tariffs by the operators, which among other dispositions aims to promote the creation of social and family tariffs. These tariffs must be applied to consumers which meet some given conditions and are applicable for as long as they meet these criteria. Set-up costs for connections to the network will be gradually reduced in order to be extinguished in a period that ERSAR recommends to be a five-year period.

#### **Financing (short/medium/long term):**

The main source of financing is optimally cross-subsidization between consumers. Tariff charges to those consumers with higher income will be used to subsidize lower income families.

Other tax revenues obtained from municipal activity can complementarily be used to subsidize lower tariff to poorer consumers.

Set-up costs will gradually be incorporated in tariff charges to consumers throughout the contract lifetime, so that these costs will in the long run be diluted in consumers' monthly invoice. This allows a tariff based financing of the service and diminishes the barriers on accessing the service.

Investment in new infrastructures may be subsidized by the existing financial support mechanisms either promoted by national funding or by European funds.

**Brief outline of the practice:**

ERSAR recommendations to operators regarding tariff structures that comply with the practice in analysis are guided by the following principles:

- Creation of a social water and waste services tariff for low income households. These households are defined as those whose annual income (for tax purposes) does not exceed a given value established by the operator, which shall not exceed a value representing twice the national minimum income.

This will be achieved by the exemption to pay the fixed tariff charge and by applying (in an increasing block tariff structure) the first block tariff (for a consumption of 0 - 5 m<sup>3</sup>) to every cubic meter till the 15<sup>th</sup> cubic meter.

- Application of a family water and waste services tariff for larger households. In an increasing block tariff structure large households are penalized when compared with ordinary households, therefore in order to ensure equitable water pricing, the characteristics of the households have to be taken into account. ERSAR recommendation advocates an extension of tariff blocks depending on the number of members of the household.

- Gradual reduction of the set-up costs for connection to water supply and wastewater services networks aiming to abolish these charges in the medium term. ERSAR recommendation assumes a gradual reduction in 20% each year in relation to the first year of application in order to ensure its abolishment in a five year period.

These measures are complemented by several other measures of affordability and accessibility of the services, such as the creation of strategic targets for network extension or the use of affordability indicators to determine subsidization of infrastructure investments.

**1. How does the practice meet the criterion of availability?**

**Explanatory note: Availability**

Availability refers to sufficient quantities, reliability and the continuity of supply. Water must be continuously available in a sufficient quantity for meeting personal and domestic requirements of drinking and personal hygiene as well as further personal and domestic uses such as cooking and food preparation, dish and laundry washing and cleaning. Individual requirements for water consumption vary, for instance due to level of activity, personal and health conditions or climatic and geographic conditions. There must also exist sufficient number of sanitation facilities (with associated services) within, or in the immediate vicinity, of each household, health or educational institution, public institution and place, and the workplace. There must be a sufficient number of sanitation facilities to ensure that waiting times are not unreasonably long.

**Answer:**

The price reduction of tariffs for poor households and large families as well as the progressive abolishing of the set-up costs for network connection will increase the availability of water services in these ways:

- The extinction of set-up costs for network connection ensures that these charges are not a barrier to physical accessibility of the service. It can be observed that in many cases customers do not connect to public networks due to the large set-up costs. This mechanism will gradually ensure that the strategic targets for network extension are met.

- Price reductions to lower income and large families' households ensure that essential consumptions are affordable. Large families and poor households should not restrict their basic needs due to affordability issues.

- Price reductions also ensure indirectly the continuity of supply by avoiding water cut-offs due to invoice debts in households with economic affordability issues.

## 2. How does the practice meet the criterion of accessibility?

### **Explanatory note: Accessibility**

Sanitation and water facilities must be physically accessible for everyone within, or in the immediate vicinity, of each household, health or educational institution, public institution and the workplace. The distance to the water source has been found to have a strong impact on the quantity of water collected. The amount of water collected will vary depending on the terrain, the capacity of the person collecting the water (children, older people, and persons with disabilities may take longer), and other factors. There must be a sufficient number of sanitation and water facilities with associated services to ensure that collection and waiting times are not unreasonably long. Physical accessibility to sanitation facilities must be reliable at day and night, ideally within the home, including for people with special needs. The location of public sanitation and water facilities must ensure minimal risks to the physical security of users.

### **Answer:**

The physical access to water services in Portugal is guaranteed by law (Decree-Law n.º 194/2009 of 20<sup>th</sup> August). Operators must provide water services through public networks when their infrastructure is at a distance equal or less than 20 meters.

The extinction of set-up costs for network connection ensures that these charges are not a barrier to physical accessibility of the service. It can be observed that in many cases customers do not connect to public networks due to the large connection costs. This mechanism will gradually ensure that the strategic targets for network extension are met.

## 3. How does the practice meet the criterion of affordability?

### **Explanatory note: Affordability**

Access to sanitation and water facilities and services must be accessible at a price that is affordable for all people. Paying for services, including construction, cleaning, emptying and maintenance of facilities, as well as treatment and disposal of faecal matter, must not limit people's capacity to acquire other basic goods and services, including food, housing, health and education guaranteed by other human rights. Accordingly, affordability can be estimated by considering the financial means that have to be reserved for the fulfilment of other basic needs and purposes and the means that are available to pay for water and sanitation services.

Charges for services can vary according to type of connection and household income as long as they are affordable. Only for those who are genuinely unable to pay for sanitation and water through their own means, the State is obliged to ensure the provision of services free of charge (e.g. through social tariffs or cross-subsidies).

When water disconnections due to inability to pay are carried out, it must be ensured that individuals still have at least access to minimum essential levels of water. Likewise, when water-borne sanitation is used, water disconnections must not result in denying access to sanitation.

### **Answer:**

These practices are based on the water law – Law n.º 58/2005 of 29<sup>th</sup> December. This law considers the social value of water: universal access to water for human consumption, with a socially acceptable price, without constituting a factor of discrimination or exclusion. Therefore, tariffs must take into account households' economic capacity. Increasing block tariffs promote economic efficiency and a more environmental friendly behavior by penalizing high water consumption, but on the other hand, brings upon equity and affordability issues. Thus, in order to achieve affordable prices to low income and large households a social/family tariff is necessary.



#### 4. How does the practice meet the criterion of quality/safety?

**Explanatory note: Quality/Safety**

Sanitation facilities must be hygienically safe to use, which means that they must effectively prevent human, animal and insect contact with human excreta. They must also be technically safe and take into account the safety needs of peoples with disabilities, as well as of children. Sanitation facilities must further ensure access to safe water and soap for hand-washing. They must allow for anal and genital cleansing as well as menstrual hygiene, and provide mechanisms for the hygienic disposal of sanitary towels, tampons and other menstrual products. Regular maintenance and cleaning (such as emptying of pits or other places that collect human excreta) are essential for ensuring the sustainability of sanitation facilities and continued access. Manual emptying of pit latrines is considered to be unsafe and should be avoided.

Water must be of such a quality that it does not pose a threat to human health. Transmission of water-borne diseases via contaminated water must be avoided.

**Answer:**

Water quality is a crucial issue regarding water for human consumption. There are important health issues that should be considered on the analysis of the benefits of having a universal public network access. As mentioned earlier, there are still a considerable number of households that are not connected to the public water supply and wastewater services network. These use sump pits, water boreholes, fountains or similar because they do not have access to water services or because these are not affordable. This behaviour endangers public health and environment and these practices aim to gradually solve these issues.

The reduction of the connection set-up costs should encourage the connection to the public water supply and wastewater services network which ensure the quality of the water services.

#### 5. How does the practice meet the criterion of acceptability?

**Explanatory note: Acceptability**

Water and sanitation facilities and services must be culturally and socially acceptable. Depending on the culture, acceptability can often require privacy, as well as separate facilities for women and men in public places, and for girls and boys in schools. Facilities will need to accommodate common hygiene practices in specific cultures, such as for anal and genital cleansing. And women's toilets need to accommodate menstruation needs.

In regard to water, apart from safety, water should also be of an acceptable colour, odour and taste. These features indirectly link to water safety as they encourage the consumption from safe sources instead of sources that might provide water that is of a more acceptable taste or colour, but of unsafe quality.

**Answer:**

Portuguese reality has a long tradition of social acceptance of public water and sanitation facilities, therefore these issues are not relevant in the Portuguese case.

#### 6. How does the practice ensure non-discrimination?

**Explanatory note: Non-discrimination**

Non-discrimination is central to human rights. Discrimination on prohibited grounds including race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status or any other civil, political, social or other status must be avoided, both in law and in practice.

In order to address existing discrimination, positive targeted measures may have to be adopted. In this regard, human rights require a focus on the most marginalized and vulnerable to exclusion and discrimination. Individuals and groups that have been identified as potentially vulnerable or marginalized include: women, children, inhabitants of (remote) rural and deprived urban areas as well as other people living in poverty, refugees and IDPs, minority groups, indigenous groups, nomadic and traveller communities, elderly people, persons living with disabilities, persons living with HIV/AIDS or affected by other health conditions, people living in water scarce-regions and sanitation workers amongst others.

**Answer:**

Portuguese law encompasses a wide range of dispositions regarding non-discrimination and universal access to public services. The water law - Law n.º 58/2005 of 29<sup>th</sup> December – advocates that access to water should be universal and should not become a factor for discrimination.

Social/family tariffs prevent discriminatory behaviour, allowing access to water and sanitation services with affordable prices.

These practices ensure that poverty or social status is not a discriminatory factor on access to water and sanitation.

**7. How does the practice ensure active, free and meaningful participation?**

**Explanatory note: Participation**

Processes related to planning, design, construction, maintenance and monitoring of sanitation and water services should be participatory. This requires a genuine opportunity to freely express demands and concerns and influence decisions. Also, it is crucial to include representatives of all concerned individuals, groups and communities in participatory processes.

To allow for participation in that sense, transparency and access to information is essential. To reach people and actually provide accessible information, multiple channels of information have to be used. Moreover, capacity development and training may be required – because only when existing legislation and policies are understood, can they be utilised, challenged or transformed.

**Answer:**

The Portuguese law has several dispositions that guarantee that proper information is given to consumers regarding water and sanitation tariffs. This information is essential for a bigger participation of consumers and stakeholders in the decision process.

**8. How does the practice ensure accountability?**

**Explanatory note: Accountability**

The realization of human rights requires responsive and accountable institutions, a clear designation of responsibilities and coordination between different entities involved. As for the participation of rights-holders, capacity development and training is essential for institutions. Furthermore, while the State has the primary obligation to guarantee human rights, the numerous other actors in the water and sanitation sector also should have accountability mechanisms. In addition to participation and access to information mentioned above, communities should be able to participate in monitoring and evaluation as part of ensuring accountability.

In cases of violations – be it by States or non-State actors –, States have to provide accessible and effective judicial or other appropriate remedies at both national and international levels. Victims of violations should be entitled to adequate reparation, including restitution, compensation, satisfaction and/or guarantees of non-repetition.

Human rights also serve as a valuable advocacy tool in using more informal accountability mechanisms, be it lobbying, advocacy, public campaigns and political mobilization, also by using the press and other media.

**Answer:**

ERSAR is the entity responsible for the collection of customer complaints within water and wastewater services. Its mission involves the analysis and resolution of disputes between consumers and operators which is an important tool to guarantee that public service providers comply with the law and contract dispositions. This represents an important accountability mechanism within the sector.

ERSAR also provides information about the sector through different mechanisms and which enables consumers and other stakeholders to understand their rights and obligations in public service provision.



## 9. What is the impact of the practice?

### **Explanatory note: Impact**

Good practices – e.g. laws, policies, programmes, campaigns and/or subsidies - should demonstrate a positive and tangible impact. It is therefore relevant to examine the degree to which practices result in better enjoyment of human rights, empowerment of rights-holders and accountability of duty bearers. This criterion aims at capturing the impact of practices and the progress achieved in the fulfilment of human rights obligations related to sanitation and water.

### **Answer:**

These practices have several important impacts on the water and wastewater services provision on the human rights perspective. Social/family tariffs, together with the abolishment of set-up costs, improve the access and the affordability of water and sanitation services for low income and large households eliminating existing barriers. This allows the promotion of non-discriminatory behaviours on service provision.

## 10. Is the practice sustainable?

### **Explanatory note: Sustainability**

The human rights obligations related to water and sanitation have to be met in a sustainable manner. This means good practices have to be economically, environmentally and socially sustainable. The achieved impact must be continuous and long-lasting. For instance, accessibility has to be ensured on a continuous basis by adequate maintenance of facilities. Likewise, financing has to be sustainable. In particular, when third parties such as NGOs or development agencies provide funding for initial investments, ongoing financing needs for operation and maintenance have to be met for instance by communities or local governments. Furthermore, it is important to take into account the impact of interventions on the enjoyment of other human rights. Moreover, water quality and availability have to be ensured in a sustainable manner by avoiding water contamination and over-abstraction of water resources. Adaptability may be key to ensure that policies, legislation and implementation withstand the impacts of climate change and changing water availability.

### **Answer:**

Sustainability of this practice can be ensured by guaranteeing that the subsidization of lower income and large families' households are compensated by charges collected amongst the other consumer groups. These instruments can be complemented by the allocation of tax funding or transfers/subsidies. The use of increasing block tariffs also promotes environmental sustainability by penalizing higher water consumption or wastewater production which also aims bigger economic efficiency. The abolishment of connection set-up costs encourages consumers to connect to the public networks which in turn will result on a higher water resources protection, its rational use and environmental sustainability.

## **Final remarks, challenges, lessons learnt**

Identification of good practices related to the access to drinking water and sanitation services is crucial for their development; especially in those countries with a lack of investment on these infrastructures. In that sense, data collection and its subsequent publication is very important.

Regarding to water services in Portugal, ERSAR aims to contribute to this analysis by identifying one of the practices developed, which can be replicated to other countries. There are several other relevant practices which may not meet all these criteria, but which also constitute good practices related to the access to drinking water and sanitation services in a human rights perspective. In any case, every practice must be adapted to each country's reality in order to be effective.

ERSAR believes Portugal has the necessary tools to promote the adequate provision of the water services and their universality. Basic public services are governed by the principles of continuity, universality and quality, principles recognized in the “*Plano Estratégico de Abastecimento de Água e de Saneamento de Águas Residuais (PEAASAR II)*” and in the preamble of the Decree-Law n.º 194/2009 of 20<sup>th</sup> August” related to the legal framework of municipal water supply and wastewater services.

Portuguese institutions with responsibilities on these matters have been incorporating a set of strategic, legislative and regulatory tools that materialize the concerns about the access to water and sanitation services.

We consider that this issue, due to its importance, must be analyzed in a greater depth on a Portuguese cooperation context, primarily with the Portuguese-speaking African countries (PALOP).

## **Submissions**

In order to enable the Independent Expert to consider submissions for discussion in the stakeholder consultations foreseen in 2010 and 2011, all stakeholders are encouraged to submit the answers to the questionnaire at their earliest convenience and no later than 30<sup>th</sup> of June 2010.

Questionnaires can be transmitted electronically to [iewater@ohchr.org](mailto:iewater@ohchr.org) (encouraged) or be addressed to

Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation.  
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Please include in your submissions the name of the organization submitting the practice, as well as contact details in case follow up information is sought.

### **Your contact details**

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The Independent Expert would like to thank you for your efforts!

For more information on the mandate of the Independent Expert, please visit  
<http://www2.ohchr.org/english/issues/water/lexpert/index.htm>