



Report A/HRC/36/45, submitted by the Special Rapporteur to the Human Rights Council in September 2017, focuses on the role regulatory frameworks play in the implementation of the human rights to water and sanitation at national level.

Regulatory frameworks comprise the rules or standards defining how services should be provided to individuals in a given context, and the institutions responsible for monitoring service providers' compliance with these norms and standards.

The number of States with a regulatory framework for water and sanitation services is increasing and so is the contingent of regulatory actors. However, there is no universal regulatory model. Regulation should be adapted to local circumstances, needs and challenges.

States have interpreted the role of regulation in various ways depending largely on the norms applicable to their particular context and corresponding needs, leading to a range of different institutional arrangements and regulatory models including self-regulation, regulation by contract and regulation by a separate regulatory body.

Being at the interface between policy-makers, service providers and users, while acting as guarantors of accountability, regulatory actors play an essential role in the realisation of the human rights to water and sanitation.

Key points in the report

1 International human rights law does not call for a particular choice of regulatory framework. 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 are aligned with the water and sanitation human rights standards and principles.

2 Regulatory frameworks must support all States' obligations with regard to the human rights to water and sanitation.

3 Regulatory actors' role should go beyond monitoring and enforcement. It should support and influence policy changes in line with the human rights framework.

4 A more balanced approach is needed regarding the concept of independence of regulatory bodies. In particular, the involvement of governmental sectors in specific regulatory decision-making processes should be safeguarded when it is legitimate and necessary to ensure compliance with human rights standards.

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TOOLS FOR TRANSFORMATION

SERVICE REGULATION AND THE HUMAN RIGHTS TO WATER AND SANITATION



The human rights to water and sanitation are binding on the State as a whole. All public or governmental authorities, or separate State bodies exercising regulatory functions at national, regional or local levels, have to comply with the State's international human rights obligations with regard to water and sanitation.

HUMAN RIGHTS OBLIGATIONS OF STATES IN THE CONTEXT OF SERVICE REGULATION

Immediate obligations under article 2 ICESCR:*

- » To take deliberate, concrete and targeted steps to establish a regulatory framework for water and sanitation service provision that meets the State's obligations to respect, protect and fulfil the human rights to water and sanitation;
- » To ensure that regulation and regulatory actors contribute to the realisation of the human rights to water and sanitation without discrimination of any kind;

Specific legal obligations under article 11 ICESCR include:*

- » To ensure that regulation provides a multifaceted and differentiated interpretation of affordability, capturing the specific needs of those living in vulnerable situations;
- » To prohibit disconnections due to inability to pay in law and in regulatory frameworks as it is a retrogressive measure and violates the human rights to water and sanitation;
- » To ensure that instruments delegating service provision, including contracts, reflect the national regulatory framework and human rights standards;
- » To safeguard, in regulatory frameworks, adequate provision of services to, inter alia, homeless people, poor nomadic communities, and to victims of situations of armed conflict, emergencies, natural disasters or climate change effects;
- » To include, in regulatory frameworks, specific requirements ensuring adequate provision of services to schools, health facilities, prisons, transport hubs and public spaces in general;
- » To establish the necessary mechanisms to ensure accountability of regulatory actors;

HUMAN RIGHTS OBLIGATIONS OF REGULATORY ACTORS

Progressive realisation and obligations of immediate effect

Regulatory actors are bound by the principle of progressive realisation, but also by the immediate obligation of non-discrimination and the obligation to take steps towards the full realisation of the human rights to water and sanitation.

Equality and non-discrimination

Regulatory actors must take positive measures and affirmative action to ensure the progressive realization of the human rights to water and sanitation in a non-discriminatory manner.

Such measures should target specific challenges including:

- » the prioritisation of service coverage to poorer neighbourhoods, informal settlements and rural areas.
- » the denial of the rights to water and sanitation on the basis of housing or land status.
- » the lack of affordability of services for the poorest.

Access to information and genuine participation

Regulatory actors must provide access to objective, comprehensible, clear, and consistent information and facilitate free, active and meaningful participation in regulatory decision-making processes.

Monitoring and accountability

Regulatory actors have the primary role of identifying retrogressions in the realisation of the rights and to require providers to address the root causes of such violations.

Sustainability

Regulation should reflect the States' obligation to guarantee the rights to water and sanitation sustainably and without discrimination, for both present and future generations.

CORE FUNCTIONS OF REGULATION



SETTING STANDARDS

One of the key roles of regulation is to set performance standards. Regardless of the public or State body carrying out regulatory functions, these standards should reflect and give practical meaning to the normative content of the human rights to water and sanitation with regard to availability, accessibility, quality and safety, affordability, acceptability, privacy and dignity.



MONITORING COMPLIANCE

Regulatory actors play an essential role in monitoring service providers' compliance with the normative content of the human rights to water and sanitation. Access to information is crucial in this process. Regulatory actors must be able to collect, analyse and disseminate accurate information on the performance of all service providers (formal and informal).

They are responsible for setting and monitoring indicators of progress towards the realisation of the human rights to water and sanitation. Indicators should cover all the different elements of the rights to water and sanitation and be disaggregated by information on populations based on characteristics and geographical location.

Monitoring compliance with human rights standards becomes particularly challenging in rural areas and in densely populated informal settlements in urban areas. In such areas, large proportions of the population are frequently not served by a piped network and rely on informal small scale providers, often operating unregulated and, as a result, providing poor quality services at high prices.



ENSURING ACCOUNTABILITY

Regulatory actors play a key role in ensuring service providers' accountability for non-compliance with the human rights to water and sanitation. To ensure accountability, the roles and responsibilities of all stakeholders involved in service provision must be clearly defined, providing clear and accessible information on the complaint mechanisms available at different levels. A growing number of independent regulatory bodies have complaint mechanisms for the resolution of disputes between service providers and users.

* ICESCR: International Covenant on Economic, Social and Cultural Rights