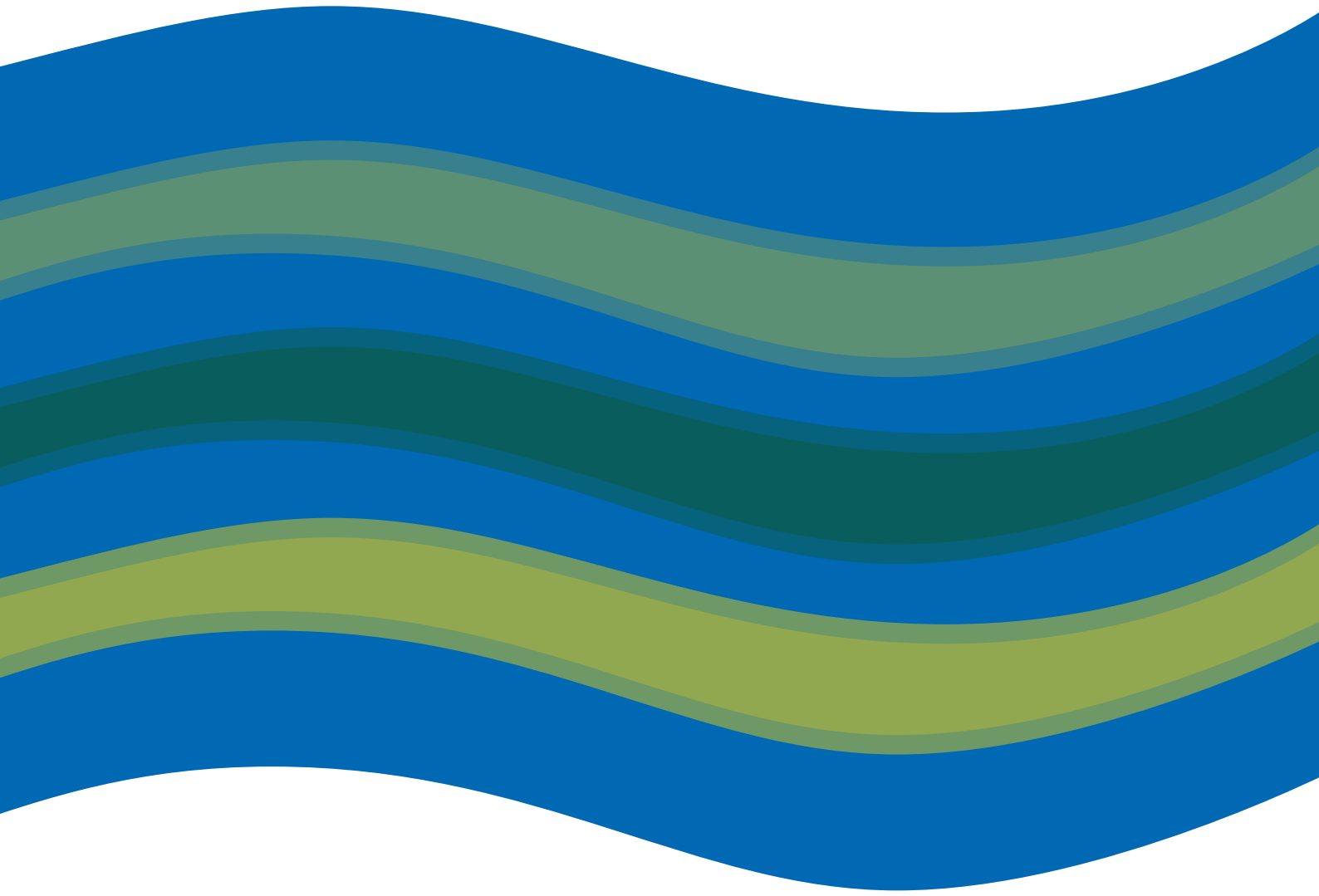


Mutual Rights and Shared Responsibilities in Water Services Management

Enhancing the User – Provider Relation



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About the Water Governance Facility (WGF)

The UNDP Water Governance Facility at SIWI (WGF) provides strategic water governance support to developing countries to advance socially equitable, environmentally sustainable and economically efficient management of water resources and water and sanitation services to improve the livelihood of poor people.

WGF supports developing countries on a demand basis to strengthen water governance reform implementation through:

1. Policy support and technical advisory services;
2. Developing and disseminating water governance knowledge and strengthening capacities
3. Developing and applying water governance assessments at national and global levels

WGF works with water governance in multiple thematic areas such as, integrated water resources management, transboundary water, water supply and sanitation, climate change adaptation, gender and water integrity. It works in several countries in regions such as Central and South Asia, East and Southern Africa and the Middle East.

WGF is a mechanism that contributes to the implementation of the UNDP Water and Oceans Governance Programme. The financial support from UNDP, Swedish International Development Cooperation Agency (Sida) and MDG Achievement Fund (MDG-F) is greatly acknowledged. For more information visit www.watergovernance.org

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Acronyms and Abbreviations

CBO	Community-based organization	LCSC	Localised Customer Service Code (Philippines)
CESCR	Committee on Economic, Social and Cultural Rights	LGU	Local Government Unit
CPC	Consumer Protection Commission (Albania)	MDG-F	Millennium Development Goals Achievement Fund
DEG	Democratic and Economic Governance (MDG-F thematic window)	NEDA	National Economic and Development Authority (Philippines)
DEG-KM	Knowledge Management plan for the Democratic Economic Governance thematic area	PO	Private operator
DILG	Department of the Interior and Local Government (Philippines)	SALINTUBIG	Sagana at Ligtas na Tubig Para sa Lahat (Provision For Water Supply Systems Program in the Philippines)
EU	European Union	SSIP	Small-scale independent providers
HRBA	Human Rights-Based Approach	UNDP	United Nations Development Programme
ICESCR	International Covenant on Economic, Social and Cultural Rights	WD	Water District
KM	Knowledge Management	WGF	UNDP Water Governance Facility at SIWI
lcd	litres per capita per day	WRA	Water Regulatory Authority (of Albania)

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Executive Summary

A Human Rights Based Approach (HRBA) to development co-operation implies that all activities should further the realisation of human rights. It involves the strengthening of the capacities of duty bearers and rights-holders, which has been a central theme in several water and sanitation governance programmes supported by the MDG-F. The present report looks into the specific work to improve the relations between water users and water services providers as a way to improve water services delivery, as supported by programmes in Albania and the Philippines.

In a review of the Albanian water sector it was found that most water companies in the country operated without contractual relations to their customers, and that the few contracts that were in place tended to protect the rights of the suppliers in an unbalanced way. The Water Regulatory Authority of Albania (WRA) hence initiated a consultative process in order to enhance the fairness and legality of the relationship between water consumers and service operators. Through negotiations between Consumer Protection Commission (CPC) and producer organisations; a model service contract for water supply and sewerage was developed. Through WRA's role in licensing water company operations, the model contract is progressively put in place by an increasing number of water companies.

In the Philippines, Localised Customer Service Codes (LCSCs) have been developed through participatory processes with service providers and its customers in village settings. The LCSC is a document which formalises the social contract between water users and water service providers. Based on feasibility studies and consultative meetings, different service options and cost levels are discussed in a series of consultations, aiming to determine the appropriate level of services and tariff. The results of the consultations are written into the LCSCs which are signed by providers and community representatives, and witnessed by whole communities. The LCSCs are supported by Local Government Units (LGUs), forming an integral part of their work to support citizens' rights to access safe water. Self-assessments indicate that the LCSCs have helped achieve more reasonable tariffs and conditions, improved collection efficiency, and several cases of upgrading of water services. Yet, the procedures for renewing and evaluating the effects of the LCSCs need to be instituted.

Although operating in very different settings, it is the emphasis on the mutual understanding on roles and responsibilities between users and providers, within a human rights framework, that brings these two examples together. HRBAs generally focus on the State-citizen relation, and how third-party service providers fit into that context is often unclear. Whereas the State remains the primary duty-bearer, non-State service providers also have responsibilities although accountably lines become more complex. By broadening the State-citizen HRBA framework into a tripartite and multi-role 'accountability' or 'regulation' framework, we more clearly distinguish the social contracts in the water sector: between the citizens and the State, between the politicians and the service providers, and between those suppliers of water services and the water consumers, i.e. the 'user-provider' relation. However, the user-provider relation in many settings becomes reduced to one of commercial transactions without social contents. Moreover, it commonly lies outside of the focus of water sector regulators, which tend to centre on water utility performance. In the work of the programmes in the Philippines and Albania, however, the social contents of user-provider relation have been in focus, and it has been strengthened by regulatory agents within a rights-based approach, in order to build more equitable and sustainable services.

This report highlights the importance of the user-provider relation from a regulatory as well as a human rights perspective. The two cases are presented as innovative and promising approaches for how, by clarifying the mutual understanding of the mutual rights and obligations of water users and service providers, the quality of and access to water services can be improved. It is also suggested as a practical means to further the human right to water.

Introduction

Access to safe water at the household level is fundamental for human health and well-being. In 2002 the UN Commission on Economic, Social and Cultural Rights defined the “right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” (United Nations, 2002, article 2). In 2008, the UN Council of Human Rights decided to establish an Independent Expert (since 2011 named Special Rapporteur) on the issue of human rights obligations related to access to safe drinking water and sanitation. In 2010, the General Assembly acknowledged the “right to water” and the Human Rights Council adopted a binding resolution affirming that the human right to safe drinking water and sanitation are a part of the right to an adequate standard of living and inextricably related to the highest attainable standard of health.

Global progress towards improving the access to safe water has been significant: With over 2 billion people gaining access to improved drinking water sources in the 1990-2010 period, the MDG water target has been achieved five years ahead of time (WHO and UNICEF, 2012). The sanitation challenge remains, with the world still off target towards meeting the MDG target (WHO and UNICEF, 2013). And still, even with the MDG water target met, there are great inequities; only 55 per cent of the world’s population enjoys the convenience of a piped supply on premises, and some 185 million people relied on surface water sources for drinking (WHO and UNICEF, 2013, page 8). The realisation of the human right to water is a challenge that remains.

The MDG Achievement Fund, through its programmatic area of Democratic Economic Governance (DEG), seeks to enhance access to, and provision of, water and sanitation services, increasing their efficiency and affordability at national and/or local levels, and taking into consideration how the poor participate and benefit from these services (Government of Spain-UNDP MDG Achievement Fund (MDG-F), 2007). The eleven Joint Programmes in the DEG theme embrace a pro-poor and human-rights based approach, focusing on inequalities, rights

and obligations. In particular, the structure of DEG programmes strengthens the capacities of the duty bearer and rights-holders, by way of support to State and other institutions involved in the provision of water and sanitation services on the one hand, and awareness campaigns and ways to socio-culturally adapt services to the needs of communities on the other. In addition, the programmes also strive to achieve closer relations between States and citizens through participatory processes, particularly in geographic areas where State presence is weak.

The present paper explores how the human right to water has been furthered by way of enhancing the rights contents and mutuality of the user – provider relation. It looks into the HRBA and sector regulation frameworks, and practical work of two Joint Programmes; the Economic Governance, Regulatory Reform, Public Participation, and Pro-Poor Development in Albania and Enhancing Access to and Provision of Water Services with the Active Participation of the Poor in the Philippines (www.mdg-fund.org/content/democratieconomicgovernance). The role of the WGF as the Knowledge Management focal point is to analyse and document experiences from the MDG-F programmes in the DEG thematic area (www.watergovernance.org/DEG-KM).

The remainder of this chapter introduces the primarily bilateral State-citizen relationship of the HRBA and the human right to water, and the tripartite accountability/regulatory water sector framework, which explicitly includes the user–provider relation. The second chapter outlines the work in Albania towards establishing a model contract, followed by a chapter on the Philippine experience of establishing Localised Customer Service Codes (LCSC). The Discussion chapter compares the two cases and positions the user–provider relation in the human rights and accountability/regulatory frameworks and, in the Conclusions, suggest the focus on mutual understanding in the user-provider relation to be a practical way towards enhancing equity, efficiency and human rights in the water sector.

Human Rights Based Approaches

The UN Reform Programme launched in 1997 called upon all entities of the UN system to mainstream human rights, and many agencies adopted the human rights-based approach. In order to foster consistency, a Common Understanding on Human Rights-Based Approaches to Development was developed in 2003 (UN HRBA Portal, no date) This specifies that all development co-operation should further the realisation of human rights and contribute to the development of the capacities of ‘duty-bearers’ to meet their obligations and of ‘rights-holders’ to claim their rights (United Nations, 2003).

Human rights impose three types of obligations on governments: the obligations to respect, protect and fulfil, see Box 1.

Duty-bearers are States, as represented by their governments. Rights-holders are all citizens. The HRBA is primarily concerned with the strengthening of this dual relation: Duty-bearers are to be strengthened in their role to respect, protect and fulfil their duties, with particular emphasis on accountability, and rights-holders are to be empowered as individuals and communities, particularly marginalised groups, to understand, claim and exercise their rights (WHO and OHCHR, no date, WaterLex, no date).

For many governments, the provision of economic, social and cultural rights are very challenging. In reflection of this, the International Covenant on Economic, Social and Cultural Rights (ICESCR) accepts a progressive realisation of the rights. The progressive realisation recognises that full realisation of the right is a long-term process to be achieved incrementally. Yet, States are obliged to take “deliberate, concrete and targeted steps” and to utilise the “maximum available” resources towards the realisation of the right. Also, the obligation to respect, protect, and fulfil rights in a non-discriminatory, participatory and accountable manner is immediately binding (de Albuquerque, 2012, pages 23-24).

However, the economic, social and cultural rights, beyond that they are to be achieved progressively, also depend on a range of actors other than the State. In her report to the General Assembly on the human rights obligations and responsibilities which apply in cases of non-State service provision of water and sanitation, the Independent Expert Catarina de Albuquerque identified three forms of service provision:

- (a) Direct management; the State provides services itself
- (b) Delegated service provision; the State formally delegates service provision tasks to private or State-owned companies, non-governmental organisations (NGOs) or community-based organisations (CBOs).
- (c) Informal provision; the State has made no intentional decision to involve third actors, but non-State actors, often small-scale entrepreneurs, NGOs or CBOs, de facto participate in service provision (United Nations, 2010, Section

Box 1 – State Obligations in a Human Rights Framework

What Does Human Rights Law Require Of States?

Under international human rights law, States Parties have specific obligations to (i) respect, (ii) protect, and (iii) fulfill the rights contained in the conventions. Failure to perform these obligations constitutes a violation of such rights.

- The obligation to respect requires State Parties to refrain from interfering with the enjoyment of rights. For example, the right to housing is violated if the State Party engages in arbitrary forced evictions.
- The obligation to protect requires State Parties to prevent violations of rights by third parties. For instance, the failure to ensure that private employers comply with basic labor standards may amount to a violation of the right to just and favorable conditions of work. Also, when there is a conflict between culture and women’s rights, the human rights of women prevail.
- The obligation to fulfill requires State Parties to take appropriate legislative, administrative, budgetary, judicial and other measures toward the full realisation of rights. This includes the duty to promote human rights.

Source: UNDP. 2006. *Applying a Human Rights Based Approach to Development Cooperation and Programming*, UNDP. (<http://lencd.com/data/docs/252-Applying%20a%20Human%20Rights-based%20Approach%20to%20Development%20Co.pdf>), page 2

II.4). Informal providers fill an important gap in providing for those excluded from formal services (Kjellén and McGranahan, 2006).

The report establishes that States can opt to involve non-State actors in sanitation and water service provision, but it remains the primary duty bearer, and cannot exempt itself from its human rights obligations. However, the lines of accountability become more complex when a third actor becomes involved (United Nations, 2010, Section III.A.16).

In 2011, the UN Human Rights Council endorsed the Guiding Principles for the Implementation of the Protect, Respect and Remedy Framework. These Principles provide a global

Box 2 – Attributes of the Human Right to Water

Sufficient: While the amount of water required for the right to water to be met varies according to different conditions, 20 litres per capita per day (lcd) is considered a minimum quantity by the World Health Organization and in the 2006 UNDP Human Development Report, although it will not allow laundry and/or bathing on-site. 50 lcd is a quantity where most basic consumption and hygiene requirements are met. Some individuals and groups may also require additional water due to health, climate, and work conditions. The UN Independent Expert de Albuquerque urges states to aim for at least 50 to 100 litres per capita per day to ensure the full realisation of the right.

Safe: Free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.

Acceptable: Of an acceptable colour, odour and taste for each personal or domestic use.

Physically accessible: Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. It must be within safe physical reach for all sections of the population.

Affordable: The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realisation of other Covenant rights.

Source: Björklund, G. & Sjödin, J. (eds.) (2010) The Human Right to Water and Sanitation. Securing Access to Water for Basic Needs. Swedish Water House Policy Brief Nr. 8. Stockholm: Swedish Water House. Box 1 Definitions of "sufficient, safe, acceptable, physically accessible and affordable water." based on: United Nations (2002) Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights. General Comment No. 15 (2002). Economic and Social Council, Committee on Economic, Social and Cultural Rights. (<http://www.citizen.org/documents/ACF2B4B.pdf>)

standard for preventing and addressing the risk of adverse impact on human rights linked to business activity. This involves the responsibility of business actors to perform due diligence to identify, prevent, mitigate and account for how they will address potential adverse human rights impact (United Nations, 2010, United Nations, 2011, Water Governance Facility, 2012).

Full and meaningful participation is another tenet of the human rights framework, and should be a central compo-

nent of implementation efforts (de Albuquerque, 2012). In relation to the delegation of services to non-State actors, the Independent Expert emphasises transparency and participation; sufficient and adequate information should be made available, and the participation should be active, free and meaningful (United Nations, 2010, Section IV. A.1.34). Procedural rights – the rights to participation, non-discrimination and equality, information, accountability, and judicial redress – have the potential to safeguard against elite capture and direct development decisions and resource allocations towards taking the needs of the poor into account (Water Governance Facility, 2012).

The most contentious of the attributes is that of affordability. Whereas the human right to water in no way obliges States to provide water services for free, there are NGOs advocating for water to be provided free of charge. Moreover, the conflation of the 'human right to water' with the 'right to free water' came up as a major obstacle for field implementation of the right at a Water and Sanitation Program workshop on "Human Right to Water and Sanitation: Making It Work in Practice?" (Helsinki, 12 June, 2012) in the field relating to the human right to water. However, the UN Special Rapporteur does not think that the human right to water will lead to demands for free services (de Albuquerque, 2012, page 91). In any case, she is wary of such approaches:

"States that do decide to provide water and sanitation services for free need to consider whether the benefits of this accrue to those who [are] most in need, or whether the benefit is going to people who can well afford to pay for these services. They also need to consider whether this choice is sustainable in the long run or whether, in the near future, it will give rise to a financially unsustainable situation that will inevitably lead to a deterioration of services and infrastructure" (de Albuquerque, 2012, page 91)

Some countries have explicitly included the right to water in their constitutions. This underscores a national commitment, provides a critical reference point for policy makers and ensures a lasting inclusion in domestic law. Displaying belief in the legal power of the human right to water, Winkler (2012) emphasises that it has turned access to it into "a matter of legal entitlements rather than of charitable benevolence" (page 272). Yet, actual implementation depends on adequate legal frameworks being accompanied by visions, policies and standards as "laws, policies and plans are only as good as the environment in which they are implemented and the people who implement them" (de Albuquerque, 2012, page 68).

Advocacy has been the main activity area through which the Joint Programmes of the MDG-F have worked with the human right to water. The awareness campaigns on the right to services are however always accompanied with messages regarding the obligation to pay for them.

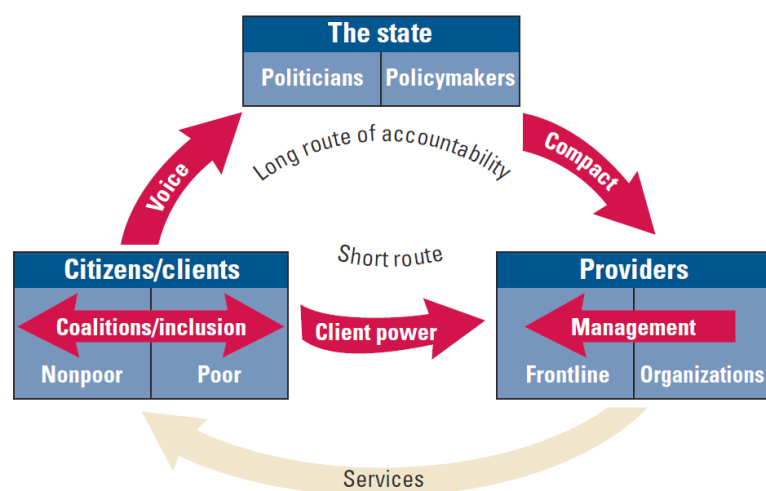
The Water Sector Regulatory-Accountability Framework

Whereas the human rights framework builds on the two pillars composed of duty bearers and rights holders – States and citizens – the water service delivery chain is typically composed of many more actors. The water sector regulatory framework includes also the fundamental role of service providers and can hence be pictured as a triangle of relations rather than the bipartite State-citizen relation.

The accountability framework which features throughout the 2004 World Development Report (World Bank, 2004) on pro-poor service provision pictures citizens/clients as using their voice when voting or making claims towards State actors.

The State is represented by politicians/policy-makers who on the one hand relate to citizens and on the other institute legal and regulatory frameworks – compacts – that create the operating environment for public and private utilities and providers. The utilities/providers in turn deliver water, sanitation

Figure 1 – Water Sector Accountability Framework from World Development Report



Source: World Bank (2004) World Development Report 2004. Making Services Work for Poor People. Washington, D.C., World Bank and Oxford University Press. Figure 3.2 Key relationships of power. Page 49.

and other services to their customers (i.e. clients/citizens who reside within the provider’s designated supply area). Through payments, the client establishes an entitlement to services, referred to as client power, see Figure 1.

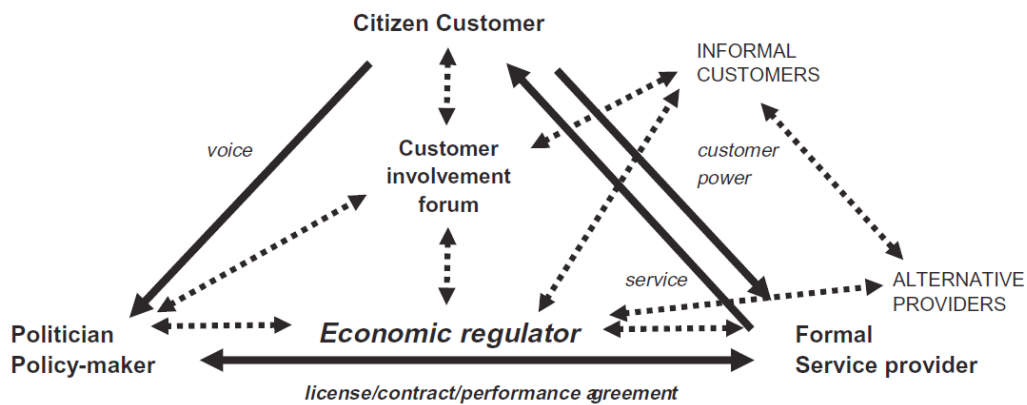
The major use of this framework in the World Development Report (World Bank, 2004) is to highlight the long route of accountability passing via the State, versus the short route – by

way of “client power” directly between customer and provider. The reticence of many public providers in responding to customer demands, and particularly to the needs and demands of the poor, has been used as an argument for privatising water services. Operational difficulties, reluctance and perceived risks in providing formal services to informal or illegal settlements have indeed deterred (or excused) utilities from extending networks. These providers, which even fail to deliver reliable services to formal high-income areas and businesses are ill-equipped to cater for growing populations in low-income areas (Cross and Morel, 2004, Gerlach and Franceys, 2010).

Still, the responsiveness to customer demands of private actors has generally not been conducive to the extension of networks to poor areas. Instead, the great demand for water services in low- as well as high-income areas has spurred informal services, often ferrying water by other means than pipe infrastructure. The informal or alternative providers tend to be the most important ones in many low-income areas (Kjellén and McGranahan, 2006). The great impetus for bringing in private (often transnational) providers onto the urban water scene some decades ago, did not achieve the hoped-for additional investments into piped infrastructure. A remaining feature of the ‘privatization decades,’ however, is the multiple constellation of actors on the provider scene, and the increased attention towards and recognition of the need for water sector regulation – regardless of whether the (front-line) provider is public or private (Kjellén, 2006).

With regard to the scheme of (regulatory) relations in the water sector, Gerlach and Franceys (2010) provide a more comprehensive picture, suggesting that the economic regulator ought to be involved in the public debate with customer forums and potentially also relate to the issues of alternative service providers and informal routes of provision, see Figure 2. In their study of pro-poor water regulation in developing countries, they found that whereas social objectives are high on the political agenda, they are generally absent from the goals of sector regulation. This seeming contradiction is explained by that regulatory frameworks are imported from economies where services are already provided to all citizens, and where coverage or universal access consequently would not be issues for water sector economic regulation (Gerlach and Franceys, 2010).

Figure 2 – Comprehensive Water Sector Regulatory Framework



Source: Gerlach, E. & Franceys, R. (2010) *Regulating Water Services for All in Developing Economies*. *World Development*, 38, 1229–1240. (Figure 1. The extended role of pro-poor regulation, page 1230)

The triangle of relations in the water sector accountability/regulatory framework explicitly includes the role and place of service providers. This role is not explicit in the dual citizen-State relation of the HRBA. Yet, for the realisation of the human right to water, the role and responsibilities of non-State actors, complemented by transparent decision-making, independent regulation and adequate social policies are crucial (United Nations, 2010).

Practical work towards the realisation to the human right to water needs to be greatly concerned with the actions of non-State actors or independent providers. Moreover, this report suggests that the relation between providers and other agents need to be more seriously taken into account. Indeed, the cases presented below involve elements of regulatory entities having broadened their focus from the providers' organizational performance towards one of looking at the joint performance of the sector in providing adequate services for a greater part of the citizenry.

Enhancing Fairness through Model Contracts in Albania

"While Albania's access to safe water has considerably improved in recent years, one of the persistent issues is poor service: the water pipes are old, the quality of water is low and there are frequent water cuts. Ensuring appropriate regulation and access to public utilities is a key issue for the country; to this end, the Joint Programme helped to put legal and institutional mechanisms in place and building the capacities of Government, utility regulators and consumer associations" (MDG-F, no date-a)

Albania is one of the poorest countries in Europe, but with a fast-growing economy and rapidly reduced levels of poverty. Still, poverty remains high in rural areas where many are underemployed. Nonetheless, agriculture remains as the main source of employment and income (The World Bank, 2013, Rural Poverty Portal, no date). Albania has applied for membership in the European Union (EU) and strives to harmonise with and conform to its directives. Moreover, "through its co-sponsoring of the UN Human Rights Council Resolution "The human right to safe drinking water and sanitation" (adopted on 28 September 2011) the Albanian Government has committed itself to adopt a human rights-based approach in the water sector" (Entit Rregulator të Ujit, 2010-2013b).

The MDG-F support to Democratic Economic Governance in the water and electricity sectors was devised to 1) build the capacity of the regulatory agencies, 2) strengthen the role of civic and consumer protection bodies, and 3) to ensure access to service for poor and vulnerable consumers in informal settlements, and protect them from price hikes resulting from utility reforms (Albania Economic Governance, 2008, page 9). The programme was managed by UNDP and the World Bank, with the Ministry of Public Works, Transport and Telecommunications as counterpart for the water sector work. This Joint Programme stimulated and supported the cooperation between the Consumer Protection Commission (CPC) and the Water Regulatory Authority (WRA) in the development of a model contract between providers of water and sewerage services and their consumers (Democratic and Economic Governance – Knowledge Management (DEG-KM), no date).

Water services in Albania

The country has abundant water resources, with high precipitation throughout the country and plentiful groundwater of high quality. Surface waters are unevenly distributed and with insufficient wastewater treatment they have suffered from serious contamination. However, today's six wastewater plants are to be complemented by eight new ones under construction. When completed, they will cover more than half of the population (pers. comm. A. Dervishi, June, 2013). The problems in the water sector can primarily be attributed to management-related factors: There are high water losses and non-revenue water, low technical and institutional capacity of water utilities, resulting in low quality of service and poor quality of construction works (pers.

comm. A. Jovani, June 2013). With abundant water resources and sufficient production capacity, the major challenge for the sector – for servicing the poor – lies in the area of distribution (Rohde *et al.*, 2004).

Most of Albania's water and sewerage infrastructure was constructed during the 1950s and 1970s, and has in many cases deteriorated since then. The water supply responsibility previously rested with the central government, but was in 1992 assigned to State-owned regional enterprises. By decision of the Council of Ministers in 2007, the water utility shares and assets were transferred to the Local Government Units (Council of Ministers, 2011, page 21).

Water sector reforms in the late 1990s and early 2000s (with support from Germany aid the World Bank) emphasised decentralisation, private sector participation and cost recovery (Rohde *et al.*, 2004, Wikipedia, 2011). The National Strategy of Water Supply and Sewerage for period 2011-2017 exhibits plans to expand and improve the quality of water supply and sewerage services, cost recovery, improve governance and regulation in the sector, invest in enhancing the capacities of the sector work force, and move toward convergence of Albanian law with EU Water Directives (Council of Ministers, 2011, pers. comm. A. Dervishi, June 2013). The strategy also includes plans for reducing the number of water utilities (pers. comm. A. Jovani, June 2013).

Population growth, urbanisation, political and economic transformation have led to increased domestic water demands. The water sector faces problems with poorly developed infrastructure, illegal connections, and waste and misuse of water. The consequences are suffered by the poorest in rural and informal urban areas (The World Bank, 2013).

There are 58 water and sewerage companies operating in Albania, together servicing some 80 per cent of the population (Entit Rregulator të Ujit, 2010-2013d). Beyond these companies, of which 54 are licenced by the WRA, local governments also provide service directly in many communes. Moreover, there is a multitude of unlicensed small and rural service providers (Entit Rregulator të Ujit, 2010-2013c). Private sector participation has been tested with Berlinwasser, in one concession which was terminated and re-municipalised after only five years (Wikipedia, 2011). Another arrangement involved a management contract covering four cities. This is considered to have been successfully concluded in 2008, with World Bank support. However, although the necessary legal provisions and policy support is in place in Albania (pers. comm. A. Dervishi and A. Jovani, June 2013), Beddies & De Soto (2006), in their study of decentralisation and privatisation, did not find the water sector governance framework to be ready for private sector participation.

Water sector monitoring and regulation is carried out by the independent WRA. Challenges that preoccupy the regulator relate to the steadily growing population combined with the lack of investment and maintenance. With most systems built

some 40-50 years ago, there is a great need for modernisation. The financial problems of the water companies are exacerbated by their in practice limited independence: More sustainable economics and communications with customers are key objectives in the development of the sector (pers. comm., A. Dervishi, August, 2012). Major challenges with regard to financial sustainability also relate to illegal connections (Entit Rregullator të Ujit, 2010-2013d).

Overall service coverage, or access to water by households, has been estimated to 87 per cent in 2010 (Uka, 2011). A recent though limited review of Citizen's Perceptions of the Quality of Water and Sewerage Services covering the service areas of ten operators across Albania (Institute for Contemporary Studies, 2012b) found 94 per cent of the citizens to have access to the water supply system. Just over 90 per cent of the households also used the public water as their main source of water. However, less than 20 per cent of customers receive continuous running water supply from their utility, as the supply is rationed. In the ten surveyed areas, two thirds of the customers received running water during less than ten hours of running water per day, and 42 per cent during less than four hours (Institute for Contemporary Studies, 2012b). Bigger utilities tend to supply for more hours per day, and according to the 2011 Performance Report (Water Regulatory Authority of Albania, 2012), the national average is around 11 hours of service per day (which is not considered to be an acceptable standard by the WRA).

Water pressure is also an issue: Three quarters of those living in apartments depend on water pumps (connected to the public water system) to actually get water into their homes. Many households also complement their water supply from other sources; water tanks and wells (Institute for Contemporary Studies, 2012a). A significant share of institutions and businesses also prefer alternative sources (Institute for Contemporary Studies, 2012b).

Regarding quality, half of the households do not consider the water fit for drinking, with non-poor resorting to bottled water and others boil before drinking. Whereas some three quarters of the customers had a contract with the water company, only two thirds knew where to turn if needing to raise a complaint regarding interruptions of invoicing (Institute for Contemporary Studies, 2012a). Again, the national average may be different.

The issue of illegal connections finds its origin in the type of urbanisation taking place since the collapse of the communist system in the early 1990s. People could and did move to urban areas, as employment in agriculture and other rural areas was no longer secured by the State. The migrants came to settle in informal settlements within and outside the major cities. (Potsiou, 2010). About a third of the residents of cities like Tirana are informally housed (Tsenkova, 2008, page 299). Whereas houses are built by durable materials, they lack legal connections to water, sewerage and electricity. This way, the housing as well as the consumption of water and electricity is considered to be illegal (Andoni, 2007).

Notwithstanding, there is a recognition that that informality is a response to inefficiency of a State responsibility, and the "government believes that the state cannot punish someone who has provided for him/herself what the State has failed to do" (Potsiou, 2010, page 12). These settlements are hence 'extra-legal' rather than illegal. Moreover, a process of legalisation was initiated in 2006. Over 50,000 buildings have been legalised (Urban Research Institute, 2012). This process of formalisation of settlements in Albania seems to precede the development of connection to public water and sewer systems.

The process of instituting a model contract

Consumer protection in Albania is emerging. While consumers were found to be little aware of their rights and poorly organised, the 56 (now 58) water companies have a monopoly position in their respective areas. During the fall of 2010, WRA assembled information through meetings and workshops with operators, local and central governmental representatives and civil society organisations. They found only 42 utilities to have some sort of contract with their customers. The agreements were all different and not always in the best interest of the citizens (Water Regulatory Authority of Albania, 2012, page 64).

The existing contracts at the time neither integrated the provisions of the country's consumer protection law nor those of the recently adopted water supply and sewerage code which provides quantitative and qualitative guidelines for the provision of water and the environmentally appropriate disposal of wastewater. The poor formulation, or the sheer absence, of contracts opens the way to all sorts of violations of consumer rights (such as inaccurate measurement of consumption and/or over-billing) and may also result in practices which negatively impact on the environment. (Democratic and Economic Governance – Knowledge Management (DEG-KM), no date)

In an effort to address these problems, cooperation was initiated between the CPC and the WRA to develop a "model" contract between the providers of water and sewerage services and their customers. The contract was to integrate the provisions of the consumer protection law and those of the water and sewerage code. The contract was formulated in such a way as to clarify and educate both parties on their rights and obligations, protect consumer rights and encourage a more responsible behaviour with respect to the environment. (Democratic and Economic Governance – Knowledge Management (DEG-KM), no date)

The process for the preparation of the model involved cooperation and consultation with all the concerned stakeholders in order to ensure understanding, ownership and commitment. Cooperation between the CPC and the WRA was essential as each institution brought its own perspective, knowledge and expertise with regards to the two themes; consumer protection and sustainable water management. Other key actors involved were the Ministry of Public Works and Transport, the Ministry of Environment, the Water Utilities Association, and the Municipality and Commune Association. The standard contract that was developed by the stakeholders in the sector covers all

standard elements such as terms of service, fees and payments, metering, service interruptions and complaints handling in a way which is fully compliant with all applicable legislation. Often, there were conflicting interests.

Before the approval of the model contract, WRA and UNDP organised a workshop with all key actors in water sector. was among the key actors in the process. The model for a Standardised Service Contract between Service Providers and their Customers was adopted by the National Regulatory Commission of the WRA on 4 February 2011 (Entit Rregullator të Ujit, 2010-2013a). The model contract is to be put into use by the utilities in their customer relations. Failure to do so will result in tariff changes not to be approved or new licenses not to be issued by the WRA.

By the end of 2011, over 35,000 contracts based on the model one had been signed (including new contracts and old ones replaced), representing around 16 per cent of all customers connected (Water Regulatory Authority of Albania, 2012). In the recent Customer Services study by Valu Add – Sachsen Wasser (2011) almost half of the 46 utilities interviewed indicated that they had started to implement the contract. The plan is that all customers should have formal agreements based on the model contract by the end of 2013 (Entit Rregullator të Ujit, 2010-2013a).

The model contract is available from the WRA website (www.rru.al/doc/Model_Kontrate.pdf) and accompanied by a leaflet which summarises its contents. See Box 3 for an extract regarding the rights and obligation of the consumer as well as the rights and obligations of the provider. Many of the provisions relate to information and payments for the services.

The work towards improving the user-provider relation and greater customer orientation of the water and sewerage companies continues. According to the Valu Add – Sachsen Wasser study (2011) there are some good examples, but considerable shortcomings related to the quality of the interaction between companies and their customers. For this reason, the WRA is in the process of drafting a Customer Service Guideline to set standards and options for utilities to establish good relations with the public (Water Regulatory Authority of Albania, 2012).

Effects and Prospects

An important part of the exercise was the discussion of potentially conflicting interests between consumer protection and water provider organizations, and to come together around a mutually agreed *modus operandi*, as enshrined in the model contract. It is expected that with new contracts in place, these will result in better quality water and sewerage services, higher consumer satisfaction and better environment protection. (Democratic and Economic Governance – Knowledge Management (DEG-KM), no date).

The institution appears to have had some effect, in that the Valu Add - Sachsen Wasser study (2011) on customer services found that particularly among water utilities who have not (yet) adopted the model contract, there is a failure to develop and enforce sound service disconnection procedures, “as well

as the rigorous follow-up with legal actions for customers that refuse to pay water bills” (Valu Add – Sachsen Wasser, 2011, page 8). The type of effect that would be induced by the use of the contract is however not entirely clarified.

Whereas the WRA continues to monitor and push the actual implementation of the contract in the companies’ customer relations, further work is on-going towards greater transparency and “to promote a shift in attitude towards consumers, with the aim to encourage policymakers and utilities to think of consumers less as passive service recipients and more as valued customers” (Water Regulatory Authority of Albania, 2012, page 66).

Whereas the WRA deals directly with the companies, and has the ability to put pressure e.g. by approval/renewal or not of licences and tariff changes, it clearly shows a great concern for the relation between the service providers and their customers. Reverting to the sector models in the introduction, the WRA is working on the client-provider relation at the bottom of Figure 1, with the aim of making the ‘client power’ meaningful. In this sense, the commercial aspect can be seen to be in focus. Yet, with the provision of rights and obligations through the model contract, this relation is to be firmly grounded in mutual rights and responsibilities.

The activities and plans of the WRA also fit with the potential areas of action delineated for an economic regulator at the bottom of Figure 2. Whereas the WRA provides a lot of information to the public, customer involvement forums which are in the process of being instituted, are to be managed by the utilities, although the WRA will demand to be present at all the public hearings (Water Regulatory Authority of Albania, 2012, 65).

Whereas the WRA is presently working towards getting all the 58 water and sewerage companies licenced – goal to be achieved during 2013 – the WRA is also setting itself out to “find a solution for dealing with the multitude of unlicensed small and rural service providers” (Entit Rregullator të Ujit, 2010-2013c). One may thus discern an incipient relation between the formal economic regulator and the informal customers and the alternative providers, though the nature of this relation is yet to be seen.

With regard to informal settlements, there is an on-going process of legalisation. It appears to be a supportive rather than punitive process (Potsiou, 2010). Yet, the provision of services appears to await the legalisation rather than to precede it. The United Nations Special Rapporteur on the Human Rights to Safe Drinking water and Sanitation suggests that “it is the role of a regulator to ensure a fair distribution of service coverage and, where possible, it should ensure a bias towards serving the poorer neighbourhoods” (de Albuquerque, 2012, page 58). However, in line with government policy and the EU Water Directives, the ultimate aim is for the sector to achieve full cost recovery. WRA anticipates allowing service providers to raise their tariffs gradually over the coming years, as long as any tariff increase is also justified and reflected in service performance improvements and water and sewerage coverage (pers. comm. A. Dervishi, June 2013).

Box 3 – Summary of rights and obligations contained in model contract

Rights of the consumer:

- To be informed by the provider of:
 - The daily schedule of water supply if the service is not 24 hours service
 - Interruptions caused by planned maintenance
 - The cause and duration of unexpected interruptions
 - Tariffs and fees for the service
- To be indemnified if you suffer damage due to poor water quality
- To complain to the Provider, the WRA and other legally mandated institutions regarding an invoice or other unfair practice by the Provider
- Not to pay any interest on invoices you contest if the Provider does not respond in time to your complaint

Obligations of the consumer:

- To pay regularly the invoices issued by the Provider
- Not to intervene in the water-sewerage network without the prior approval of the Provider
- To protect the water meter and the water network within your property from damages, abuses and criminal acts
- Not to supply third parties with water
- To save potable water and not waste it

Rights of the provider:

- To issue invoices for the water and sewerage services they provide
- To interrupt the services if these invoices are not paid on time, after written notice to you, where applicable
- To enter your property any day of the week during usual business hours, after scheduling a time that is agreeable to both parties, verify the water quality or interrupting the service according to the terms of the contract

Obligations of the provider:

- To offer the best service possible for the consumer
- To publicize the water and sewage service approved tariffs and implement them correctly
- To administer and maintain the water-sewerage system
- To establish the connection points for the water-sewerage system
- To ensure the quality of water for the public and according to the required hygienic and sanitary standards
- To remove the waste water in order to protect the environment and the water basins
- To install, supervise and replace the water meter according to applicable law and requirements

Source: Regulatory Authority of the Water Supply and Waste Water Disposal and Treatment Sector (no date) *Know Your Rights and Obligations under the New Contract for Water and Sewerage Services [Online]*. Tirana: The Water Regulatory Authority. Available: http://www.erru.al/doc/Leaflet_Contract_Model.pdf

In a recent report that examines services to five rural and informal urban areas (Urban Research Institute, 2012), the WRA states that it has a responsibility for guaranteeing the access of these services even to citizens in informal settlements. One way to do this is to recognise the settlement as legal, but also to include the water sector as an own entity within every local government. In that way local water companies can be better encouraged to expand into these areas.

The Joint Programme support to the WRA has instituted an important shift in the way economic regulation is carried out. As exemplified by the Customer Services study (Valu Add – Sachsen Wasser, 2011, page 4) the interest has been directed towards the customer – going beyond the (business as usual focus on) physical infrastructure. Yet, whereas the focus has been put on the client/user/citizen, the capacity of this rights-holder group to voice claims and secure their rights has only been furthered, as explained in the Final Evaluation of the programme, in as much as additional information about such procedures can help (Bellamy and Rusi, 2012).

The Albanian Joint Programme has focused heavily on capacity development among the institutions responsible for regulating the supply of water and energy services, protection of consumer interests, and civil society organisations that can represent the interests of user groups. The language of the project is framed in a human rights perspective, and water is recognised as a human right. However, the Final Evaluation (Bellamy and Rusi, 2012) shows that the project did not follow the initial design: most of the activities supported capacities on the side of governmental institutions, rather than the consumers/citizen side.

Notwithstanding, on the duty-bearing side, significant achievements are manifest in the development of a consumer complaint management system and the unified model contract which better protects the interests and rights of water consumers. On the rights-holding side, the resources were re-allocated to support a comprehensive public awareness campaign on consumer rights, but no specific support was given to consumer associations. In sum, at the end of the programme, the duty bearers are better equipped to provide an inclusive service, but the right-holders side have not received equal support to be able to claim and monitor these more inclusive services.

Community Water Services and the Human Rights-Based Approach in the Philippines

Some 16 million Filipinos do not have access to safe drinking water. This Joint Programme is improving delivery of water to 122,000 households by encouraging investment in services for poor communities, increasing local capacities to develop, operate and manage water supply utilities and supporting communications campaigns advocating for “water for all.” The programme supports community-based initiatives to enhance and establish the sustainable delivery of water in depressed communities in five regions. It focuses on increasing the capacity of local duty bearers and stakeholders, particularly women, to demand and sustain the delivery of services (MDG-F, no date-b).

The Philippines has a population of nearly 95 million people and comprises over 7,000 islands. It is classified as a lower middle income country, with food manufacturing accounting for a major share of the economy and a third of the land dedicated to agriculture. The country is rich in water resources though dry season insufficiencies are experienced in highly populated areas. 92 per cent of the population is estimated to rely on improved sources of drinking water. However, less than half (43 per cent ranging from 25 per cent in rural areas to 61 per cent in urban areas) enjoy piped water on their premises. (WHO and UNICEF, 2013, page 27).

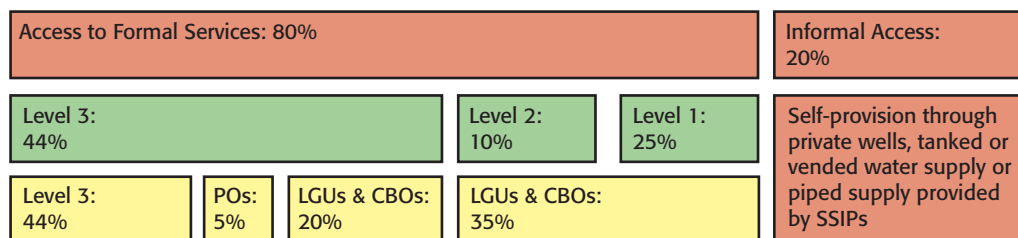
The cooperation between the Philippine government, UNDP and UNICEF within the framework of the Joint Programme Enhancing Access to and Provision of Water Services with the Active Participation of the Poor (also referred to as the MDG-F 1919) has been working in 36 municipalities in five regions of the country. These “waterless” municipalities, i.e. with a service coverage of less than 50 per cent have also been prioritised by the government’s infrastructure programme SALINTUBIG.

The programmes are led by the Department of Interior and Local Government (DILG); implemented through its Office for Project Development Services – Water Supply and Sanitation Unit (OPDS-WSSU) in partnership with DILG Regions and targeted Provinces/Municipalities as implementing partners. The twinning the MDG-F 1919 governance programme and the SALINTUBIG infrastructure programme has produced a fruitful combination of ‘soft’ and ‘hard’ issues. Moreover, the community-based water services developments have consistently linked up with the human rights agenda (Diokno, 2011).

The Water Services Supply Sector

There are some 5,400 providers of public water services in the Philippines (National Economic and Development Authority, 2008). Most households are served by their Local Government Unites (LGUs), either directly through a city or municipal engineering department or through CBOs. Among the nearly 5,000 LGU & CBO-operated systems there are some 3,100 Barangay Water and Sanitation Associations (BWSAs),¹ 500 Rural Water Supply Associations (RWSAs) and 200 cooperatives. There are also nine private operators, including the two Metro Manila concessions (World Bank, 2005, page 110). Their respective shares of the water supply services market in the Philippines are pictured in Figure 3. Access to services through formally registered providers is estimated to around 80 per cent complemented by informal arrangements through small-scale independent providers (SSIPs), vendors and self-provision arrangements.

Figure 3 – Service coverage in the Philippines, by type of system and provider



Adapted from: National Economic and Development Authority (2008) *The Philippine Water Supply Sector Roadmap*. Pasig City, Philippines, National Economic and Development Authority (NEDA). (www.lwua.gov.ph/downloads_10/Philippine%20Water%20Supply%20Sector%20Roadmap%202nd%20Edition.pdf), page 6, in turn updated from World Bank (2005) *Philippines: Meeting Infrastructure Challenges*. Washington, D.C., The World Bank Group in the Philippines. (<http://siteresources.worldbank.org/INTEAPINFRASTRUCTURE/Resources/PHInfra.pdf>), Figure 7.1, page 111.

Notes: WD=Water District, PO=Private Operator, LGU=Local Government Units, CBO=Community-Based Organisations, SSIPs=Small-Scale Independent Providers.

¹ Barangay refers to the lowest of the three administrative levels the local government structure.

Box 4 – Levels of Service in the Philippines

Level 1 (point source)

A protected well or a developed spring with an outlet but without a distribution system as it is generally adaptable for rural areas where the houses are thinly scattered serving an average of 15 households with people having to fetch water from up to 250 meters distance

Level 2 (communal faucet system or stand post)

A piped system with communal or public faucets usually serving 4-6 households within 25 meters distance

Level 3 (waterworks system)

A fully reticulated system with individual house connections based on a daily water demand of more than 100 liters per person.

Source: National Economic and Development Authority (2010) The Philippine Water Supply Sector Roadmap, 2nd Edition. Pasig City, Philippines, National Economic and Development Authority (NEDA) (http://www.lwua.gov.ph/downloads_10/Philippine%20Water%20Supply%20Sector%20Roadmap%202nd%20Edition.pdf), page xvi

Depending on the type of infrastructure and nature of services, water systems in the Philippines are divided into three levels, as defined by the National Economic and Development Authority (NEDA). These definitions range from very basic services of rural supplies (Level 1) to fully reticulated systems (Level 3), see Box 4.

According to the description of service coverage in Figure 3 above, most of the formal systems (44 per cent of total services) are reticulated (Level 3), thus providing piped services to the users. Some 10 per cent are estimated to provide services through communal faucets (Level 2), and a quarter by way of households collecting water from developed and/or protected sources (Level 1). The informal services are not classified.

Many LGU-operated systems are characterised by a severe lack of technical, financial, and management capabilities and rely heavily on government subsidies (World Bank, 2005). With external support, however, many Level 1 and Level 2 water supply systems are converted into Level 3 systems.

In urban areas outside of Metro Manila, water districts are the dominant form of service provider, catering for over 15 million people in nearly half of the 1,500 cities and municipalities. A water district is a government-owned utility that is legally and financially separate from the municipality, with a significant degree of political independence. Water districts and private operators usually provide Level 3 services (World Bank, 2005). Yet, a significant share of the population in urban areas receives services from (unclassified) independent small scale private water service providers.

The Human Rights Based Approach in Government Planning

The Philippines was one of the first countries that voted in favour of the Universal Declaration of Human Rights in 1948 and has since become the signatory to a number of other United Nations human rights treaties. With regard to water, it is recognised that the right to water is crucial to attaining other human rights. But in claiming the right to water, it is also emphasised that there is a responsibility to help ensure continuous access to safe water resources. Moreover, the Indigenous Peoples Rights Act enacted in 1997, recognises, protects and promotes the water rights of indigenous peoples. Traditional water uses, though not mentioned in the Water Code, are protected by the Act, which bestows customary water rights to indigenous communities (UNESCO, 2009).

Through a set of training workshops and the development of a HRBA Development Toolkit, the Philippines pioneers the adoption of HRBA in planning (Human Rights Based Approach Development Toolkit, 2010). In this vein, the country has also developed the framework of a HRBA to local water governance, anchored on human rights standards that seek to guarantee safe, accessible, affordable and acceptable water supply and sanitation services for all, including the most vulnerable people. The approach recognizes that water sustains human life with dignity and that power lies at the heart of water governance (UNDP and DILG, 2012a).

It is recognised that the HRBA in general and the rights to water and sanitation in particular in local water governance have far-reaching effects. Based on this, the Philippine government and the United Nations have cooperated to systematically implement the HRBA to water management. The three main issues in achieving this were: a) the change in perspective and behaviour towards water and sanitation; b) the increased awareness on the issues and concerns relating to water and sanitation; and c) the increased collaboration and partnership among the different stakeholders. These issues are further elaborated in Box 5, based on the inputs from DILG.

The Human Rights Based Local Water Governance Toolbox

The Human Rights Based Local Water Governance Toolbox was established to serve as a tool in capacitating and strengthening local governance capacities not only of LGUs and other water service providers but more importantly of communities to help address water development gaps using a governance and human rights lens. The Toolbox uses the framework of HRBA to Local Water Governance and serves as navigational aid to manuals, training modules, water-related laws and policies, case studies, advocacy and information tools and strategies. It draws heavily from the experience of the MDG-F Joint Programme, including capacity assessments, sector planning, community organising, LCSCs, and investment mechanisms.

Box 5 – Issues in the Process of Implementing a Human Rights-Based Approach to Water Management

Change in perspective and behaviour

The attitude of the LGUs towards water has been one that is taken for granted primarily because they viewed water as free and unending. It was therefore of great importance to initiate the process by changing this attitude towards water and sanitation, acknowledging that water is a basic right, and that protection of water resources through the practice of good hygiene and proper sanitation among others, is needed to preserve the sustainability of the water systems. Through this change LGU beneficiaries came to accept that in order to sustain water availability, there is a need to pay basic fees to maintain water supply facilities, since it was their obligation to conserve water and protect the water resources. At the community level, this approach cultivated ownership and renewed their trust and confidence in water associations, contrary to their previous experience where water systems are politicized being LGU-run.

Increased awareness

It was also important to increase awareness on the issues and concerns related to water and sanitation e.g. the condition of water and sanitation in urban areas, roles and responsibilities of consumers and water service providers, as well as the capacities needed to improve water service delivery. This served as an eye opener for many Local Chief Executives on the real and existing water and sanitation situation of their community, which enabled them to better plan for water and sanitation projects including to identify and prioritize areas where funds should be allocated for the development and/or rehabilitation of water systems. The LGUs have reported that because of the interventions, specifically to conduct a baseline survey and to develop the Municipal Water Supply and Sanitation Sector Plans, the Executives have reviewed their priorities on water and sanitation. This is evident by their support to the expansion of coverage and scaling-up. The communities were also re-educated on the importance of water and its proper use, the roles and responsibility as consumers and providers, and the need to use proper hygiene and sanitation practices.

Increased collaboration and partnership

The third issue to address was increased collaboration and partnership among government agencies, local associations, water services providers, civil society groups and academia. Government agencies such as the Department of the Interior and Local Government (DILG), the National Water Resources Board (NWRB), and National Economic and Development Authority (NEDA) have served not only as implementers to the process but were the major resources for technical and advisory assistance on specific water and sanitation interventions. At the community level, the partnerships established between the local government, barangay associations and water services providers facilitated the implementation of these interventions and provided an atmosphere of trust and confidence, which was a good foundation to continue and sustain earlier initiatives.

Source: pers. comm. F. Banluta, Water Supply and Sanitation Unit, Office of the Project and Development Services, Department of the Interior and Local Government, April-2013.

The Toolbox (downloadable from www.mdgf1919-salintubig.org.ph/lwg/) is composed of two main documents:

- Karapatan at Kaalaman sa Katubigan: Concepts and Challenges of Human Rights Based Local WatSan Governance. (Volume I)
- Karapatan at Kakayanan sa Katubigan. Operationalizing the Human Rights Based Local WatSan Governance Framework. (Volume II)

These are complemented with two supporting documents; a Toolbox Users Guide, and a Handbook on Human Rights Based Local WatSan Governance.

In the Toolbox, the general obligations by the duty bearer are translated into actions related to water provision, as outlined in Box 6. These are the duties which fall upon LGUs as representatives of the State machinery.

Box 6 – Obligations by Local Government Units in Operationalising the Human Rights-Based Local Water Governance Framework

Progressive realisation	<ul style="list-style-type: none"> • Adopt and implement an integrated water resource management and water efficiency plans. • Eliminate depletion of water resources due to unsustainable extraction, diversion and damming. • Conserve and rehabilitate natural resources.
Non-Discrimination	<ul style="list-style-type: none"> • Protect access to traditional water sources in rural areas from unlawful encroachment and pollution. • Provide resources to indigenous peoples to design, deliver and control their access to water resources on ancestral lands.
International assistance and cooperation	<ul style="list-style-type: none"> • Extend and receive disaster relief and humanitarian aid. • Not use water as instrument of political and economic pressure. • Include right to water in international agreements and trade arrangements.
Respect	<ul style="list-style-type: none"> • Provide effective remedies for violations of right to water. • Refrain from unlawfully diminishing or polluting water resources (waste disposal from state run enterprises). • Not destroy or limit access to water services and infrastructure.
Protect	<ul style="list-style-type: none"> • Adopt appropriate water pricing policies including flexible payment schemes and cross subsidies. • Set and enforce water quality standards based on WHO guidelines. • Control pollution of water resources (surveillance, disincentives or pollution penalties). • Keep water prices affordable for all.

Source: UNDP & DILG (2012b) Volume II - *Karapatan at Kakayanan sa Katubigan. Operationalizing the Human Rights Based Local WatSan Governance Framework. A Handbook on Human Rights Based Local WatSan Governance. Quezon City, Philippines.* (<http://www.mdgf1919-salintubig.org.ph/lwg/volume2/>), page 158

Box 7 – Roles, responsibilities and set of actors envisaged in the Handbook on Human Rights Based Local Water Governance

- **LGU as Duty Bearer** - The LGU being the Duty Bearer (as represented by the WatSan Council) shall act as regulator and monitor the performance of the water service provider. It shall ensure that a human rights based framework governs water and sanitation service delivery.
- **Community** - Claimholder as represented by existing Civil Society Organizations in the municipality or through newly formed Water Users' Associations and/or Claimholders' groups shall actively participate in initiatives to define the goals and vision for the sector that will lead to realizing the right to water.
- **Other Actors** - as water service providers, it shall carry out the operation and management of the water utility in accordance with the agreed parameters set out in the LCSC and in full compliance with the human rights principles for good governance.

Source: UNDP & DILG (2012a) Volume I - Karapatan at Kaalaman sa Katubigan: Concepts and Challenges of Human Rights Based Local WatSan Governance. A Handbook on Human Rights Based Local WatSan Governance. Quezon City, Philippines. (<http://www.mdgf1919-salintubig.org.ph/lwg/volume1/>), page 26

The Human Rights Based Local Water Governance Toolbox also takes cognisance of the complex multiplicity of actors involved in the water supply sector in the Philippines. (In this, the framework builds on a tripartite or three-part relation, as discussed in the section about The Triangular Water Sector Regulatory Framework above). The LGU may come to act as the regulator of an entire area or as regulator for a specific water service provider (UNDP and DILG, 2012b, page 101).

The set of actors, as defined in the Toolbox, is described in Box 7.

The Handbook suggests that when it comes to the realisation of the right to water, the water service provider is to take the lead and 1) review organisation and personnel requirements; 2) install appropriate systems and procedures; 3) prepare a business plan and set tariffs, and; 4) adopt a Localized Customer Service Code.

The Development of Localised Customer Service Codes

The LCSC has been developed to improve the capacities of small-scale water service providers, but highlights the joint responsibility of operators and customers in ensuring the sustainability of the service (Paragas, 2011). The LCSC is a document

that serves as a binding social contract for water services between a water service provider and its members or its customers. It specifies the rights and responsibilities of both parties, see Box 8.

The LCSC also includes messages from the Mayor, the Barangay and BWSA Chairs as well as a Profile of the BWSA, with Goals and Objectives, Mission, and Vision of the association along with policies and guidelines regarding membership, service coverage, billing and collection, tariffs, violation and penalties, complaints and dispute resolution, and approval and efficiency of the code and the certification.

36 LCSCs have been developed through the leadership of the National Water Resources Board (NWRB) and DILG, with support of the MDG-F. Accounts from these exercises indicate positive results, including more reasonable tariffs, increased collection efficiency and the upgrading of service levels from communal taps to household connections (MDG Achievement Fund in the Philippines, 2011). Yet, the procedures for both renewing the LCSCs and evaluating the effects of them need to be instituted (Paragas, 2011). The LCSC is based on the right to access to clean and safe water, responsible water use, and the obligation to protect the water infrastructure as well as the resource. The community members are the authors of this social contract which makes them committed to achieve and/or sustain sufficient water supply in their areas. This approach has provided an atmosphere of transparency and accountability to water services delivery and proper management of water supply facilities, which has encouraged LGUs to replicate this practice in other barangays (pers. comm., F. Banluta, April, 2013).

Effects and Prospects

The LCSCs have enhanced the local capacities to develop, operate and manage water supplies by fostering inclusive participation in decisions relating to water service provision. Furthermore it has been instrumental in the establishment of investment support mechanisms to improve efficiency, access, affordability and quality of water services provided at the local level.

However, the water sector is highly fragmented, and there is a need for coordination of the considerable number of LGUs and CBOs managing water services on various levels across the country.

A continuation of the Joint Programme is being channelled into the establishment of Regional Water and Sanitation Hubs. The Hubs, surging from the increased demand at the local level for technical assistance and access to financing, are seen to be the vehicle to scale-up. They will assist the government in providing for the capacity development requirements to National and Local Government bodies and assist water service providers to develop and manage water and sanitation services. The Hubs will also take on the function of monitoring and evaluation of the performance of LGUs and CBOs, and to document and publish good practices in water and sanitation, especially with regard to vulnerable groups (pers. comm. F. Banluta, April 2013).

Box 8 – Generalised Contents of the Localised Customer Service Codes

Features of the LCSC:

1. Rights of the Service Provider:

- Operate and maintain the water system in order to provide water to its customers
- Collect and/or levy water tariff in accordance with agreements with its customers

2. Responsibilities of the Service Provider:

- Comply with existing laws, rules and regulations, including registration with the proper government agency (e.g. water permit)
- Ensure the protection of the water sources
- Appoint appropriate staff to help in the operation and maintenance of the water system
- Make a full and prompt investigation on complaints
- Ensure adequate quality of water and posts results of regular bacteriological tests
- Keep and maintain separate books of accounts and other records in relation to the operation and maintenance of the system
- Properly maintain water sources and facilities at all times
- Undertake information campaign on water conservation

3. Rights of Customers:

- Right to adequate safe water
- Right to participate
- Right to be heard and consulted on water tariffs as well as on matters that have an impact on their well-fare
- Right to information on operator's system and procedures, policies, and guidelines (billing and collection, application procedures, penalties, disconnection, tampering of pipes and vandalism)
- Right to be informed on results of regular bacteriological, physical and chemical tests
- Right to safe and healthy environment

4. Responsibilities of Customers:

- Help operator attain financial viability by paying appropriate tariffs on time and complying with utility rules and policies
- Provide feedback by sending comments and suggestions to the operator, attending and participating in meetings and support activities of the service provider

5. Policies and Guidelines on Violations and Penalties (late payment of water fees, illegal tapping, wasteful usage of water in communal faucets, tampering of meters and other malicious acts)

6. Procedures and timelines for complaints and dispute resolution

7. Other provisions on election of officers and terms of office, conduct of general assemblies and meetings, role of operator's staff, and opening of bank account.

Source: MDG Achievement Fund in the Philippines (2011) Fact Sheet: Bridging Interests of Service Providers and Customers for Sustainable Water Supply Services. National Water Resources Board, MDG-F 1919 Programme Management Office at National Economic and Development Authority, and, Water Supply and Sanitation Unit – OPDS at Department of the Interior and Local Government. (http://www.watergovernance.org/documents/WGF/MDG-F/2011_Experience/Philippines_FACT_SHEET_Bridging_Interests.pdf)

Discussion

The present report includes two illustrative cases of a Human Rights Based Approach to development programming. They have been selected from a larger set of MDG-F-supported programmes because of their emphasis on the relation between water user and water service providers.

Whereas there are similarities in the approach supported through the two programmes, the settings of the cases studies are vastly different: The Philippines in Southeast Asia is home to nearly 95 million people, compared to Southern European Albania with a population of just above 3 million. During the second part of the 20th century, Albania was under Soviet totalitarian rule. The Philippines have been under North American influence. The last decade has seen rapid economic growth in both countries, albeit with inequalities remaining a challenge. Albania has established multi-party democracy and market economy over the last two decades. In the Philippines, poverty remains a great challenge, and the recent focus on anti-corruption there is spurred not only by the need to improve the investment climate, but also to enhance social service delivery and to reduce poverty.

Comparing the Service Codes and the Model Contract

The Model Contract, as developed in Albania, and the Localised Customer Service Codes (LCSC) as developed in the Philippines have many similarities. Above all, they clarify the roles, rights and responsibilities of service providers and water users, related to the level and quality of services to be provided and how they should be remunerated, as well as the ways for recourse or dispute resolution if either of the parties does not fulfil their part of the agreement.

Yet, whereas the generalised contents of the respective agreements is rather similar, they build on different processes: In the case of the Albanian model contract, the stakeholder negotiations took place around the drafting of one model contract for the whole country. Citizens and providers were there represented by their respective interest organisations. The outcome of the process was the model contract which is a standard, with specified and pre-negotiated contents, which the utilities must adhere to in structuring their own contract with their customers.

In the Philippines, the model is not a contract in itself, but a process format where the service provider prepares for a consultation at the village level. The level of service, remuneration and other terms are in this case determined at the negotiation, and formalised in the LCSC, which is witnessed by community members. Whereas the process has given steps, the actual level of service and conditions differ between villages.

Another difference is that the actual customer contracts in Albania are between individual households and the water companies. The LCSCs in the Philippines are community-based service agreements that apply to whole villages. This reflects the different settings of the two cases, with piped services to each

household – though of varying quality and reliability – being the norm in Albania, and community-based supplies the major type of service, particularly in the rural setting, in the Philippines.

Moreover, whereas both governments ostensibly adhere to an HRBA, the human rights arguments have featured more strongly in the programme work in the Philippines. In the Albanian case, the greater need for customer orientation of companies as well as EU requirements has been at the forefront.

Effects, Prospects and Significance

There are indications that the LCSCs in the Philippines have induced more reasonable tariffs, increased collection efficiency and in some cases, an upgrading of services. However, the effects of the LCSC processes are yet to be systematically evaluated. Moreover, a process for regular updating of the LCSCs has been identified as needed.

In Albania, the WRA is continually monitoring the performance of the water and sewerage utilities. As with most sector economic regulation, the focus lies on the individual companies' performance, which is measured and compared nationally and internationally. However, the aggregate sector performance in terms of coverage and universality of services is not as systematically reviewed.

Regarding the contractual developments, the progress in applying customer contracts based on the model is monitored and is progressing steadily. Whereas the use of such customer contracts is a condition for renewed licences to operate, companies are in fact applying the contract at a faster rate than required. The actual effect of the refashioned customer contract per se is not easy to distinguish even though there are studies of customer perceptions on service and performance which provide insights into the user-provider relation.

The most important feature of the two cases is the emphasis on the improved understanding the two-way responsibilities in a constructive manner between water users and service providers. Further, the two examples relate to both to the procedural and substantive contents of the human right to water. As suggested previously, the main contribution – in the way that they have institutionalised new rules and new ways for rule-setting in a transparent and participatory way – pertains mainly to the procedural part of the right. The enhanced efficiency and potentially greater ease for services extension, is a contribution to the substantive contents of the right. Here, by unifying the approach, these examples are a step towards more universal treatment (if not yet universal coverage) of citizens/customers and their non-discriminatory access to services in an equitable ways.

Equality, Non-Discrimination and Extension of Services

With the human right to water being subject to progressive realisation and the duty bearer responsibilities falling far short of

actually providing services, the conduciveness of the right towards extending water services has its limits. However, with great moral weight, the demand for equality and non-discrimination seems to be a more fruitful claim to make than the extension of services to the have-nots. As suggested in the quote from The Rights to Water and Sanitation web-site, the highlighting of contrasts and inequalities make misallocations and violations more apparent:

“Governments spending their water and sanitation budgets on upgrading existing services to middle-class areas, while people in informal settlements or rural areas are left with no access at all, violate their international human rights obligations” (The Rights to Water and Sanitation, no date).

The equality argument also has greater backing in other human rights documents. Since the human right to water is based primarily in the provisions of the economic, social and cultural rights, it is subject to progressive realisation. However, the equal right to services is actually enshrined in the Universal Declaration of Human Rights, whose Article 21 states that “Everyone has the right of equal access to public service in his country” (United Nations, 1948, Article 21(2)).

The extension of services generally requires capital investments. In the governance-oriented programmes applying the HRBA as discussed here, the contribution is one of more sustainable and equitable utilisation of existing systems. Whereas cost recovery in the long run should contribute towards services extension, it is in the direction and better targeting of investments that are done which the human rights work can enhance equity and extension of services to vulnerable groups. Going beyond the user-provider relation, the orientation towards vulnerable groups would speak for, e.g. for the legalisation of informal settlements and supportive ways of improving, potentially formalising, informal service delivery.

Third-Party Service Provision and Primary Duty-Bearer Obligations

Within the human rights discourse the problem of attribution of violations of human rights arise often in relation to the right to life, when people suffer from acts of violence. Who is to blame? Is it the State that failed to protect its citizens from violence (omission)? Or the violent group actually responsible for the unlawful action? There is no easy approach. With water as a human right, then States are attributed the primary responsibility to provide: everyone with water? Or to provide the necessary infrastructure for water services for all? Or is it to ensure the policy environment and legal framework for this to happen?

As suggested before, the provision for economic, social and cultural rights is subject to progressive realization and depends on a range of actors. Whereas the human rights framework is traditionally concerned with the relationship between the State and the individual, to substantively address the situation in the water sector, this dual relation must be broadened. In de Albuquerque’s report to the General Assembly on these matters, she identified three forms of service provision: direct management, delegated service provision, and informal provision (United Nations, 2010).

In neither case can the State liberate itself from its duty-bearer responsibilities. However, the type of actions necessary to meet

the obligations of this primary duty-bearer changes according to the form of service provision. In relation to direct management, there are cases when the State would be obliged to provide water without charge, e.g. in a states of emergency. In the rather common case of delegated provision, the State remains responsible for transparent decision-making and independent regulation, to oversee operations of independent state-owned or private providers.

The arrangements for delegated service provision are all to take place within the national legal framework, but there is also the requirement, on behalf of the service providers, to conduct due diligence in order to proactively attempt to uncover human rights risks in order to prevent adverse human rights impacts. This could involve actions like questioning the mandated service area if it excludes adjacent un-served areas (United Nations, 2010). Hence, serious due diligence would not mean business as usual.

With regard to informal provision, as discussed by de Albuquerque in her report to the General Assembly (United Nations, 2010), States must have a clear strategy with the end goal of providing universal access to services in line with human rights standards. This could imply a regulation of existing alternative forms of service provision, or a gradual replacement with piped networks. However, “States have to ensure that the network actually constitutes an affordable alternative for poor people and that they are not lacking service provision until the formal provider is ready to fill the gap” (Section IV.B.4.53). In addition, ways to address adversities or loss of livelihood of previous informal providers in processes of up-grading would need to be considered.

Again, in the common-place circumstance of delegated service provision, which is also the situation in the two cases presented in this paper, States remain fully accountable. But, States are expected to fulfil their obligation by way of providing the proper regulatory framework. The States also contribute investment funding towards the expansion of infrastructures. In these circumstances, the activities of the parties are far up-stream of assuring that access for each and every individual is secured.

de Albuquerque (2012) suggests that devolution of control closer to communities through decentralization can improve transparency and participation. At the same time she raises the concern that local actors may not have the capacity to manage services. If there are cases with decentralization without capacity it could be a case of “deliberate retrogression” which would be in contravention of the progressive implementation obligation (page 206).

Albanians covered by WRA-approved and regulated water service can file a complaint in court if the service provider fails to meet the agreements, as stated in the service contract, strengthen the intentions with a provider-consumer contract. In this sense, the customer contract provides the security of (national) legal backing. However, there is a low probability that an Albanian court would approve a case of a citizen without a (customer) service contract, especially if the applicant lived in an informal settlement. In any case, litigation would be a last resort. Notwithstanding, de Albuquerque (2012) presents cases where rulings are consistent with the human right to water and where litigation supports its realisation.

Conclusions

This report has shown how elements of a human rights based approach have been used to improve the mutual understanding and rights contents of the water user–provider relation, with examples from the Philippines and Albania. The duty bearer – rights-holder relation, i.e. the dual relationship between States and citizens, is the essential one in the Human Rights Based Approach (HRBA). However, the water service providers, which are key agents for the realisation of the human right to water fit uneasily into the dual HRBA framework of rights-holders and duty-bearers.

In the two cases presented, from the Philippines and Albania, regulatory entities have furthered a focus on the rights and responsibilities, but taken it beyond the usual sphere of operations and supported processes to enhance the relationship between water users and service providers. In this work, the mutual understanding and the two-way nature of rights and obligations of the water users – primarily in their capacity as customers – and the service providers have been emphasised. These rights and responsibilities very concretely relate to the level and quality of services to be provided, and how they should be remunerated, along with the ways for recourse if either of the parties does not fulfil their part of the agreement.

These agreements have been fostered, in the case of Albania through the provision of a model contract which all water companies must apply in order to get their licences renewed, and in the case of the Philippines through a standardised process of public negotiation between service providers and communities, documented in Localised Customer Service Codes (LCSC).

Whereas the contracts in Albania are individual-based, in the case of the Philippines, they are community-based (though in several cases conducive towards individualised piped services). This reflects the different settings of the two cases, with piped services – though of varying quality and reliability – being the norm in Albania, and community-based non-reticulated supplies the major type of service in the rural setting in the Philippines.

Whereas both governments ostensibly adhere to an HRBA, the human rights arguments have featured more strongly in the work in the Philippines. In the Albanian case, the greater need for customer orientation of companies and requirements of the EU has been at the forefront. Still, the type of information of the agreements developed in the two cases is very similar.

An important part of the work on these agreements relate to the consultative process. In the Albanian case of the model contract, the stakeholder negotiations took place at the time of the drafting, with citizens and providers represented by their respective interest organisations. Major stakeholder consultations were engaged in before the model contract was approved by the Water Regulatory Authority.

In the Philippines, there is a consultative process leading up to each of the LCSCs. In this case, it is the process which constitutes the model, while the actual level of service and conditions vary from village to village.

In a human rights framework, the State has furthered the realisation of the human right to water, not only through an expansion and enhanced level of services, featuring strongest in the Philippine case, but also through the greater quality and equity in the service, particularly in the Albanian case. In a framework of water sector regulation, in both cases, the Water Regulatory Authority (in Albania) and the Local Government Unit (acting as regulator in the case of the Philippines) have moved beyond the standard/primary regulatory interest in the corporate performance of providers to take a pro-active interest in the relation between water users (customers) and service providers.

The mutually agreed rights and responsibilities in these two cases relate to very concrete water service conditions. This approach is suggested as a practical way of furthering the human right to water; primarily in the procedural sense by enhancing transparency and meaningful participation, but also substantively, to the extent that quality and levels of services are enhanced. By enhancing the mutuality and rights-contents in the user–provider relation, both equity and efficiency of water services stand to be strengthened.

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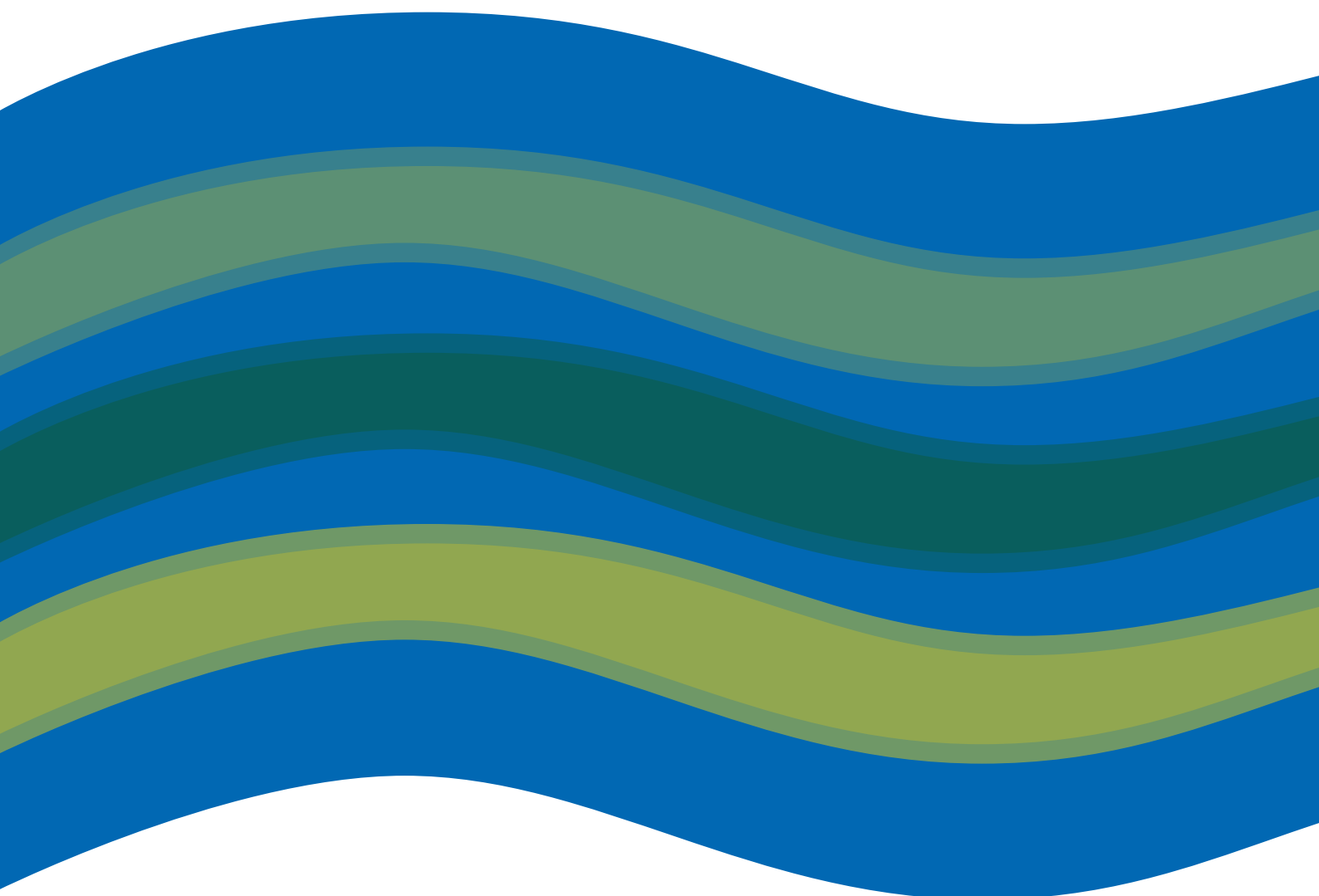
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Mutual Rights and Shared Responsibilities in Water Services Management

Enhancing the User – Provider Relation

This report explores the contents of the relationship between water users and water service providers. Drawing from experiences of interventions in the Philippines and Albania, it looks into how a human rights-based approach can be used for enhancing the mutual understanding of rights and responsibilities. It finds that the water service providers, which are key agents for the realisation of the human right to water fit uneasily into the two-way human rights framework of rights-holders and duty-bearers.

However, this has been overcome in the two cases presented, where the regulatory entities have gone out of their way to institute consultative processes and fostered fairness and documentation of the mutual understanding of the rights and responsibilities of both water users and providers.



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