

A rights-based review of the legal and policy framework of the Ghanaian water and sanitation sector



Executive Summary

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1. Introduction

1.1 Why the rights-based approach?

The rights-based approach is based on a legal foundation of universal entitlement. It provides a basis to hold relevant actors accountable and can generate law and policy reform. It is a useful tool for the evaluation of the water and sanitation framework of Ghana.

1.2 The national water and sanitation picture

In Ghana, water supply, irrigation and livestock watering are the main consumptive uses of water. Available figures indicate that surface water alone can adequately meet present and future needs but deficits in coverage nevertheless persist. Four in ten urban residents have access to piped water at home, with about the same number buying from other sources. Those with access to piped water suffer acute shortages for days. Rural and small town coverage is estimated at 54%. An estimated 40% of the urban population has access to some form of acceptable household sanitation facility, with the majority depending on public toilets and unimproved latrines. In some districts, bucket latrines which were banned about a decade ago are still being used. In rural areas, only about 11% of the population has access to some form of household sanitation.

2. Legal, Policy and Institutional Framework

2.1 Legal Framework

The 1992 Constitution does not explicitly guarantee a human right to water or sanitation, but it guarantees the dignity of all persons. Access to safe water and proper sanitation facilities is indispensable for leading a life in dignity. In this respect, by guaranteeing dignity, the constitution implicitly guarantees the right to water and sanitation.

Other legislation on water and sanitation do not formally recognise a human right to water or sanitation but deal with various water management issues. The Water Resources Commission Act 1996 provides for the management of water resources and the coordination of policy. It defines water rights and stipulates the process of acquiring such rights. The Ghana Water Company Limited Act 1999 provides for overall planning, managing and implementation of urban water supply whilst the Community Water and Sanitation Agency Act 1998 facilitate the provision of safe water and sanitation to rural communities. Matters relating to pollution of air, water, land and other forms of environmental protection are governed by the Environmental Protection Agency Act 1994. The Local Government Act 1993 creates district authorities which are responsible for the development, improvement and management of human settlements and the Public Utilities Regulatory Commission Act 1997 secures the existence of an independent utilities regulator overseeing the provision of services by public utilities.



2.2 Policy Framework

The National Water Policy 2007 aims to enhance the efficiency of producing and utilising water and to re-align key institutions within the sector. It explicitly recognises the fundamental right of all people without discrimination to safe and adequate water to meet basic human needs. However, the National Environmental Sanitation Policy 1994 does not recognise a right to sanitation. It formally establishes environmental sanitation as a subsector within the national development programme and assigns a major part of sanitation service delivery to the private sector. The Revised (Draft) Environmental Sanitation Policy seeks to refocus the priorities of the sector, re-examine and deal more effectively with issues that have led to the persisting underlying causes of poor environmental sanitation. It views environmental sanitation as an essential social service and a major determinant for improving health and living standards. The Growth and Poverty Reduction Strategy 2006-2009, a broad-based strategic document has as a major component the need to ensure the right of everyone to basic social services such as healthcare, safe drinking water, sanitation and protection of the rights of the vulnerable members of society.

2.3 Institutional Framework

The lead government institution on water issues is the Ministry of Water Resources Works and Housing. Its major role is overall water resources and drinking water supply management, policy formulation, coordination and programme evaluation. The Ministry of Local Government, Rural Development and Environment is the lead sanitation sector agency. It formulates, coordinates, monitors and evaluates the environmental sanitation policy. The Water Resources Commission is mandated to regulate and manage the utilisation of water resources and coordinate policies in relation to them. It can also grant water rights and carry out scientific investigations or research into water resources. Ghana Water Company Limited plans, manages and implements urban water supply. It has contracted out the supply of potable water to urban areas to Aqua Vitens Rand Limited, a private concern. This also includes authority to bill and disconnect customers. The Community Water and Sanitation Agency facilitates the provision of safe water and sanitation services to rural communities, provides technical assistance to district assemblies and coordinates the national community water and sanitation programme. The Public Utilities Regulatory Commission regulates and oversees the provision of utility services by public utilities. It provides guidelines on rates, monitors standards of performance, conducts investigations into standards of quality of service and protects the interest of consumers and service providers. The commission also receives complaints from the public in respect of service delivery generally.

2.4 Table of key water and sanitation institutions and their responsibilities

| INSTITUTION | RESPONSIBILITY | ENABLING LAW OR POLICY |
|---|---|--------------------------------------|
| Ministry of Water Resources Works and Housing | Overall water resources management and drinking water supply | Constitution |
| Water Resources Commission | Regulates and manages the utilization of water resources and coordinates policies | Water Resources Commission Act 1996 |
| Ghana Water Company Limited | Manages and implements urban water supply | Ghana Water Company Limited Act 1999 |



| | | |
|---|---|---|
| Community Water and Sanitation Agency | Facilitates rural water supply and sanitation services | Community Water and Sanitation Agency Act 1998 |
| Ministry of Local Government, Rural Development and Environment | Coordinates the National Environmental Sanitation Policy | The Local Government Act 1993 |
| District Assemblies | Plan, implement, operate and maintain water and sanitation facilities in rural communities and small town | The Local Government Act 1993 |
| Public Utilities Regulatory Commission | Regulates standards of services including the quality of drinking water for urban water supply | Public Utilities Regulatory Commission Act 1997 |
| Environmental Protection Agency | Protects water resources and regulates activities within catchment areas | Environmental Protection Agency Act 1994 |
| Water Resources Information Services | Provides data and other water resources related information | No enabling law or policy |

3. Key Aspects of the Right to Water and Sanitation within the Legal and Policy Framework

The right to water and sanitation contains freedoms and entitlements such as the right to access existing water and sanitation services without interference. This section examines the extent to which the legal and policy framework contains these freedoms and entitlements.

3.1 Water availability and allocation

The right to water and sanitation requires that water supply for each person should be sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.

The National Water Policy prioritises water for social needs, while recognising the economic value of water and the services it provides. It identifies the basic right to a level of supplies ('some for all') but does not define that 'some'. High population growth, rural-urban migration and an ailing water supply system negatively affect availability.

3.2 Physical accessibility of water and sanitation

The right to water and sanitation requires that water and sanitation services and facilities should be accessible within, or in the immediate vicinity, of each household, educational institution and workplace and should be in a secure location not posing a threat to physical security.

One of the objectives of the National Water Policy is to facilitate improving access to potable water. The aim is to achieve equity in access to water supply for the urban poor and the provision of basic water and sanitation services for rural communities. The National Environmental Sanitation Policy aims to achieve 90% access to acceptable domestic toilets by assigning delivery of a major proportion of environmental sanitation services to the private sector. The draft Revised Environmental Sanitation Policy however advocates a combination of private sector investment and progressive increase in public sector funding to improve access to sanitation facilities

3.3 Participation and access to information

The right to water and sanitation requires that communities and individuals, including the poor, vulnerable or marginalised, have access to relevant information concerning water and sanitation services and are given a genuine opportunity to participate in decision-making processes related to water and sanitation issues affecting them.

The National Water Policy guarantees participation of all stakeholders including the private sector, local communities, particularly women in decision-making on water related issues. The Social Policy and Strategy for Water Regulation promotes the concept of community participation. Legislation like the Water Resources Commission Act and the Community Water and Sanitation Agency Act also promote participatory decision-making. The draft Revised Environmental Sanitation Policy also embraces the principle of 'subsidiarity' to ensure participatory decision-making at the lowest appropriate level in society.

3.4 Non-discrimination and attention to vulnerable groups

The right to water and sanitation requires that everybody should be ensured access to water and sanitation, including the most vulnerable or marginalised groups, without discrimination.

The 1992 constitution prohibits discrimination on several grounds such as gender, race, colour, social or economic status, etc. One of the objectives of the National Water Policy is to improve access to water without discrimination particularly for the poor and vulnerable. A significant tool to achieve this objective is to formulate tariff structures that pay attention to affordability by the poor and low income earners. The draft Revised Environmental Sanitation Policy aims to meet the needs of vulnerable and physically challenged individuals in the provision of sanitation services by ensuring that adequate options of facilities are available for them.

3.5 Water quality and hygiene

The right to water and sanitation requires that water and sanitation services should be safe and acceptable. Water for basic personal and domestic needs should be free from hazardous substances that could endanger human health.

The National Water Policy admits that the quality of water resources are increasingly being degraded as a result of agriculture, housing, commercial, industrial and mining activities but that government is determined to 'halt the falling trends in water supply quality. The Public Utilities Regulatory Commission is mandated to ensure that the water that is delivered is safe and will not cause any danger to public health. It has established a Water Quality Inspectorate to enforce its water quality regulations.

3.6 Affordability of water and sanitation

The right to water and sanitation requires that the cost of access to a sufficient quantity of safe water and basic sanitation must be at a level that is affordable to all people.

The underlying principle in financing water resources management is prioritising the social needs for water while recognising its economic value. The National Water Policy encourages the adoption of a tiered tariff structure system for water supply and the Public Utilities Regulatory Commission has adopted the rising block tariff which allows for cross subsidisation across different categories of users with non-domestic consumers subsidising domestic consumers. The draft Revised Environmental Sanitation Policy stipulates that essential levels of services should be economically appropriate and that mechanisms for funding them are sustainable.

4. Key Areas Requiring Improvements to Strengthen the Right to Water and Sanitation

4.1 Legislative recognition

National policies do not afford the level of protection that inclusion in the constitution or a statute would provide. It is useful to have some legislative recognition of the right to water and sanitation in addition to the existence of policies or frameworks to ensure legal accountability. Also, the draft Revised Environmental Sanitation Policy needs to be speedily approved to lift the profile of sanitation

4.2 Defining threshold level

It is insufficient to just recognise the basic right to a threshold level of supplies, as is the case in the National Water Policy, without prescribing what the quantity of that threshold level will be, how it will be determined and whether or not it will be affected by disconnection of water supply for non-payment of bills.

4.3 Rethinking quality control approach

The current approach to the monitoring of water quality needs to be revised. As it is, ultimate responsibility rests with the utility which submits regular reports on water quality to the Water Quality Inspectorate of the Public Utilities Regulatory Commission. This approach is reactive, rather than proactive and is particularly unsafe especially where the interval between reports is long.

4.4 Advancing accessibility

The framework does not have a target for universal access to water and sanitation and there is no specific time-bound schedule to achieve equity in access to water supply for peri-urban and urban poor.



4.5 Prioritising access to services by the vulnerable and marginalised

There is need to prioritise the provision of adequate water and sanitation services and facilities to institutions such as schools, hospitals, prisons and refugee camps. In addition, the framework must specifically provide for or give priority to the provision of access to informal settlements.

4.6 Making affordability real

There is no clear commitment by government to, in line with its obligation to use its maximum available resources, provide financial assistance to ensure access to water and sanitation facilities and services to those who are unable to realize the right themselves.

4.7 Regulating rates charged by secondary and tertiary services providers

The refusal to regulate rates charged by secondary and tertiary water and sanitation service providers is in breach of the obligation to ensure that services whether publicly or privately provided are affordable.

5. Recommendations

The legal and policy water and sanitation framework boasts a number of good legislations and policies but a number of concrete actions need to be taken by certain actors to fully recognise and strengthen the right to water and sanitation.

- Parliament should enact a framework legislation formally recognising the right to water and sanitation in compliance with Ghana's human rights obligations.
- To give effect to the basic right to a threshold level of services, the Public Utilities Regulatory Commission should define the quantitative and qualitative value of that threshold level.
- Cabinet should expedite the approval of the draft revised environmental sanitation policy.
- The Public Utilities Regulatory Commission should include in its policy on disconnections, exemptions for those who are genuinely unable to pay their bills.
- The Public Utilities Regulatory Commission should revise its reactive approach to quality control and carry out its own regular periodic tests at various points of the supply network.
- To ensure equity in the payment for water services the Public Utilities Regulatory Commission should regulate the rates charged by secondary and tertiary service providers.

About COHRE

The Centre on Housing Rights and Evictions (COHRE) is an independent, international, non-governmental human rights organization committed to ensuring the full enjoyment of economic, social and cultural rights for everyone, everywhere, with a particular focus on the human right to adequate housing and adequate public services for all. Established in 1992, COHRE is registered as a not-for-profit foundation in the Netherlands and has an international secretariat in Geneva, and regional offices in Africa, North America, South America and Asia/Pacific.

The COHRE Right to Water Programme (RWP) was established in 2002. It advocates for reforms in international, national and local governance to achieve the right to water and sanitation for all, based on research, training and advocacy. COHRE RWP works at the national level in co-operation with national and local groups. At the international level, COHRE RWP aims to catalyse and support action by governments, international agencies and NGOs through publications, training and advocacy for stronger international standards for the right to water and sanitation.

This publication reviews the existing legal and policy framework of the Ghanaian water and sanitation sector using international human rights standards. The objective of this review is to determine the extent to which the framework guarantees the right to water and sanitation in accordance with Ghana's international human rights obligations and make specific recommendations for improvements.

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