

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





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CENTRE ON
HOUSING RIGHTS
AND EVICTIONS





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This publication may be cited as: COHRE, A rights-based review of the legal and policy framework of the Ghanaian water and sanitation sector (Geneva, 2008).

ISBN: 978-92-95004-54-2

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Graphic design: All Class Business Company Limited

Cover photo: COHRE

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Executive Summary

Executive Summary

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 of water services the Public Utilities Regulatory Commission should regulate the rates charged by secondary and tertiary service providers.



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List of Abbreviations

CWSA	Community Water and Sanitation Agency
CWSAA	Community Water and Sanitation Agency Act 1998
DAs	District Assemblies
EPA	Environmental Protection Agency
GPRS II	Growth and Poverty Reduction Strategy 2006-2009
GWCL	Ghana Water Company Limited
GWCLA	Ghana Water Company Limited Act 1999
JMP	Joint Monitoring Programme
LGA	Local Government Act 1993
MDGs	Millennium Development Goals
MWRWH	Ministry of Water Resources, Works and Housing
NEPAD	New Economic Partnership for Africa's Development
NESP	National Environmental Sanitation Policy 1999
NGOs	Non-governmental organisations
NWP	National Water Policy 2007
PURC	Public Utilities Regulatory Commission
PURCA	Public Utilities Regulatory Commission Act 1997
RESP	Revised Environmental Sanitation Policy 2007 (draft)
WRC	Water Resources Commission
WRCA	Water Resources Commission Act 1996

Introduction

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Introduction

1.1 Why the rights-based approach?

The well being and continued existence of humanity is inextricably linked to water, yet one in six people do not have access to a safe water source. Tens of thousands mostly young children and the elderly die daily from water-related diseases. Ironically, there is sufficient clean freshwater in the world for everyone's essential personal and domestic needs. Sanitation is in an even worse situation, with an estimated 2.6 billion people lacking access to adequate sanitation facilities, a leading cause of water contamination and water-related diseases. Reversing this huge deficit demands determined and sustained efforts from all stakeholders particularly with respect to the adoption of approaches to deal with this mammoth challenge. It is in this respect that a rights-based approach to the water and sanitation crises recommends itself.

The right to water and sanitation is based on a universal entitlement held by all humans that is based on a legal foundation. It provides a strong basis to hold all relevant actors accountable. Its capacity to generate substantial reform in law, policy and practice is undeniable though it may obviously be governed by contextual factors and the extent to which it is used as a tool by marginalised groups and those serving their interests. The right can help generate the political will required to make the necessary reforms to policies, to raise resources, to utilise such resources in a manner that focuses on the needs and aspirations of the poor and to monitor performance. The right to water and sanitation is particularly compelling since a variety of technical and institutional solutions for expanding access through cost-effective measures exist and are generally known, but are often not being consistently implemented or with sufficient urgency. Evidently, a rights-based approach can among others provide a useful tool for evaluation of existing water and sanitation frameworks.

This study evaluates the legal and policy framework of the Ghanaian water and sanitation sector guided by key aspects of the right to water and sanitation.¹ It describes relevant laws, policies and frameworks and the various water and sanitation institutions and their functions. The study also highlights areas requiring improvements to guarantee the right to water and sanitation.

Legal basis of the right to water and sanitation

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)** recognises the “right of everyone to an adequate standard of living, including adequate food, clothing and housing”. The UN Committee on Economic, Social and Cultural Rights, the expert body mandated to monitor the implementation of the ICESCR, in 2002 issued **General Comment No. 15** on the Right to Water. It emphasises that the right to water, as well as adequate sanitation is a necessary component of the right to an adequate standard of living and describes the content of the right and the scope of State's obligations. Further, the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** obliges States parties to ensure that rural women have access to water supply and sanitation, while the **Convention on the Rights of the Child (CRC)** states that the right of the child to the enjoyment of the highest attainable standard of health requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking water”.

¹Ghana has ratified the International Covenant on Economic, Social and Cultural Rights 1966, the Convention on the Rights of the Child 1990, the Convention on the Elimination of All Forms of Discrimination Against Women 1979 and is a signatory to the Convention on the Rights of Persons with Disability 2006. At the regional level, Ghana has also ratified the African Charter on the Rights and Welfare of the Child. All of these instruments implicitly or explicitly guarantee the right to water and sanitation.

In addition, the **Convention on the Rights of Persons with Disabilities** establishes that the right to social protection requires that States-parties “ensure equal access by persons with disabilities to clean water services”. At the regional level, the **Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa** requires States parties to ensure that women are provided with access to clean drinking water. Similarly the **African Charter on the Rights and Welfare of the Child** obliges States parties to ensure the provision of safe drinking water for every child. A state that has ratified any or all of these treaties is required under international law to realise the rights contained in them for all persons within its territory. Importantly, every government has recognised the right to water and sanitation in at least one political declaration. These declarations which include the 1994 **Programme of Action of the Cairo Conference on Population and Development**, and the 1996 **Habitat Agenda**, are statements agreed by governments which express political commitment on particular issues. The UN General **Assembly Resolution on the Right to Development** 2000 stated the right to clean water is central for the realisation of the right to development. In March 2008, the Human Rights Council adopted a resolution emphasising that international human rights law instruments entail obligations in relation to access to water and sanitation.

1.2 The national water and sanitation picture

The main consumptive uses of water in Ghana are water supply (37%) and irrigation and livestock watering (48%). Surface water resources alone are sufficient to meet present and future consumptive water demand. Water demand for 2020 has been projected to be 5 billion m³, which is equivalent to about 12% of the total surface water resources. In spite of the availability of water to meet demand, there are deficits in coverage. A national demographic and household survey found that only four out of 10 urban residents had piped water in their homes with a similar number buying water from public taps or neighbours.² According to the Community Water and Sanitation Agency (CWSA), urban water supply coverage is estimated at 59%, while rural and small town coverage is about 54%.³ These numbers belie the fact that there is widespread rationing and an acute shortage of water. In Accra for example, it is estimated that only approximately 25% of residents enjoy a 24 hour water supply. About 30% have an average of 12 hours service every day for five days a week.⁴ Another 35% have service for two days each week while the remaining residents especially those on the outskirts of Accra are completely without access to piped water.⁵ A recent Joint Monitoring Programme (JMP) report estimates that between 76-90% of the urban and 51-75% of the rural population has access to an improved drinking water source, giving a combined national estimate of between 76-90% of the population with access to improved water sources.⁶ These JMP estimates have been challenged by the civil society organisations working on water and sanitation issues in Ghana. They maintain that the CWSA estimates are more factual than the JMP's.⁷

Forty four percent of Ghana's population live in urban areas. Coverage of household human waste facilities is currently very low and worsening. The urban areas include about 174 settlements with populations above 5000 (under district assemblies), 10 large towns classified as municipal assemblies and 4 large cities classified as metropolitan areas. Few cities have any structured ongoing project for promotion of household latrines and an

² National Water Policy, 2007, pg 26.

³ Community Water and Sanitation Agency, 2008 estimates.

⁴ Water Aid-National Water Assessment: Ghana, May 2005 accessible at <http://www.wateraid.org>.

⁵ Country information: Ghana, accessible at <http://www.wateraid.org>.

⁶ *A snapshot of drinking water and sanitation in Africa: A regional perspective based on new data from the WHO/UNICEF Joint Monitoring Programme for water supply and sanitation*, 2008, pg 4 & 8.

⁷ These concerns which had been raised earlier by the coalition were also reiterated at a right to water and sanitation workshop organised by COHRE on 22 October 2008.

estimated 40% of the urban population have access to some form of acceptable household sanitation facility.⁸ The majority of urban households depend on public toilets and unimproved latrines. Bucket latrines which were banned over a decade ago are still widely prevalent and tolerated by district assemblies due to lack of alternatives.⁹ In the rural areas only about 11% of the population have access to some form of household sanitation and progress is slow as evidenced by a paltry total of 32,000 household latrines being constructed between 1994-2004.¹⁰ An estimated 93,000 latrines need to be constructed per year to meet millennium development goals (MDG) targets.¹¹ Again, JMP national sanitation estimates is less than 26%¹²

2. Legal, Policy and Institutional Framework

2.1 Legal Framework

The 1992 Constitution of Ghana

The 1992 Constitution of Ghana does not explicitly recognise a human right to water or sanitation. However, it guarantees the dignity of all persons and provides in article 15 that “... No person shall... be subjected to (a) torture or other cruel, inhuman or degrading treatment or punishment (b) any other condition that detracts or is likely to detract from his dignity and worth as a human being”. Access to safe water and proper sanitation facilities is indispensable for leading a life in human dignity.¹³ In this respect, any condition that hampers access to safe water and sanitation detracts from the dignity and worth of the human person. It can thus be argued that there is an implicit recognition of the right to water and sanitation in article 15 in the sense that lack of access to safe water and proper sanitation “is a condition that detracts or is likely to detract’ from a person’s dignity and human worth. Importantly, article 257(6) stipulates that “... rivers, streams, water courses throughout Ghana... is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana”. This has been interpreted to mean that there is no private ownership of water in Ghana and that water allocation for various uses must be beneficial to the public interest and for the greatest good of society.¹⁴ Article 269 makes provision for parliament to establish commissions responsible for the regulation and management of natural resources and the coordination of policies in relation to them. Pursuant to this power, parliament in 1996 passed the Water Resources Commission Act (WRCA).

The Water Resources Commission Act 1996

This law provides for the regulation and management of the utilisation of the water resources and for the coordination of policy in relation to them. It also defines the process by which water rights can be granted. The act prohibits any person from diverting, damming, storing, abstracting or using water resources or constructing or maintaining any works for the use of water resources unless he applies for the grant of

⁸ Eugene Larbi, “Sanitation in Ghana: A paper on the current state of sanitation in Ghana, the constraints and on-going efforts to improve the situation” Danida International Development Agency, Water Sector Seminar, Accra, February 2006, pg 2.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² See note 6 above, pg. 3. Doubts have also been expressed about this estimate especially as the Ghana Statistical Service put sanitation coverage as at 2006 at 60%. However, a close study of both the JMP report and GSS’s Multiple Indicator Cluster Survey (MICS) show that while the JMP did not consider access to shared latrine facilities as access to improved sanitation facilities, the MICS did. According to the MICS, shared latrines account for 51% of all access to latrines in Ghana.

¹³ General Comment No.15: the right to water (2002).

¹⁴ National Water Policy 2007, pg. 53.

water right.¹⁵ The Water Use Regulations which was adopted pursuant to powers conferred by the WRCA catalogues the permitted uses of water and confers priority on domestic water use.¹⁶ A person who has lawful access to water resources may abstract and use such water for domestic purposes without applying for water right.¹⁷

The Ghana Water Company Limited Act 1999

The 1999 Ghana Water Company Limited Act (GWCLA) provides for overall planning, managing and implementation of urban water supply.

The Community Water and Sanitation Agency Act 1998

The objective of the Community Water and Sanitation Act (CWSAA) is to facilitate the provision of safe water and related sanitation services to rural communities. The act encourages the active involvement of communities and women in the management of water and sanitation projects from inception to implementation as well as private sector participation in the provision of water and sanitation services in rural areas.

The Environmental Protection Agency Act 1994

This act provides for the prescription of standards and guidelines relating to the pollution of air, water, land and other forms of environmental pollution including the discharge of wastes and the control of toxic substances. It seeks to create public awareness of the environment and its importance to the economic and social life of the country

The Local Government Act 1993

The Local Government Act 1993 (LGA) provides for the creation of districts by the President and the existence of district assemblies, the highest political and administrative authority in the district, responsible for the development, improvement and management of human settlements and the environment in the district.¹⁸

The Public Utilities Regulatory Commission Act 1997

The Public Utilities Regulatory Commission Act (PURCA) secures the existence of an independent utilities regulator, which oversees the provision of services by public utilities to consumers. The act also empowers the regulator to provide guidelines on rates and monitor standards of service quality.

2.2 Policy Framework

Several policy documents complement the array of legislation within the water and sanitation sector. These are the National Water Policy 2007 (NWP), the National Environmental Sanitation Policy 1999 (NESP) and the Growth and Poverty Reduction Strategy 2006-2009 (GPRS II).

¹⁵ Secs. 13 & 16, WRCA.

¹⁶ Secs. 1 & 7, Water Use Regulations 2001.

¹⁷ Sec. 14, WRCA.

¹⁸ Sec. 10(3)(d) & (e) LGA.

The National Water Policy 2007

The NWP was the culmination of a series of reforms in the water sector aimed at enhancing the efficiency of the production and utilisation of water and re-aligning the key institutions within the sector. The policy is underpinned by principles in the MDGs, the “Africa Water Vision” of the New Economic Partnership for Africa's Development (NEPAD) and the Ghana Poverty Reduction Strategy (GPRS). It explicitly recognises the 'principle of fundamental right of all people without discrimination to safe and adequate water to meet basic human needs'.¹⁹

The National Environmental Sanitation Policy 1994 and the Revised Environmental Sanitation Policy 2007 (Draft)

The objectives of NESP include formally establishing environmental sanitation as a sub-sector within the national development programmes, assigning delivery of a major proportion of environmental sanitation services to the private sector, developing strong legislative and regulatory framework and capacity for supervising environmental sanitation activities and enforcing standards and adopting the cost recovery principle in the planning and management of environmental sanitation service. NESP has ambitious targets. For example, it aims to provide 90% of the population with access to an acceptable domestic toilet and the remaining 10% access to hygienic public toilets, phase out pan latrines by 2010, regularly collect and dispose of urban solid wastes in adequately controlled landfills and strictly enforce the observance of environmental standards and sanitary regulations.

The draft Revised Environmental Sanitation Policy (RESP), which still awaits cabinet approval, is an updated version of NESP. It 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. Its overall goal is to develop a clear and nationally accepted vision of environmental sanitation as an essential social service and a major determinant for improving health and living standards. Even though it does not expressly recognise a human right to sanitation, it contains important elements of the right to sanitation and is anchored among others, on GPRS II, a policy which explicitly recognises the right of everyone to basic social services such as sanitation.

Growth and Poverty Reduction Strategy 2006-2009

An equally important, but across-the-board strategic document is the GPRS II. The central role of GPRS II is to accelerate the growth of the economy so that Ghana can achieve middle income status within a measurable planning period. An essential component of the strategy is to ensure the right of everyone to basic social services such as health care, safe drinking water and sanitation as well as protect the rights of the vulnerable members of society.²⁰ Improving access to potable water and sanitation is seen as critical to achieving favourable health outcomes, which will in turn facilitate economic growth and sustained poverty reduction.²¹ Adequate sewerage and sanitation facilities are viewed as important for environmental cleanliness and prevention of many infectious diseases like diarrhoea and dysentery.²² GPRS II contains several policy interventions aimed at accelerating the provision of safe water in urban and rural areas. These include provision of new investments in guinea worm endemic rural and urban areas, strengthening public-private and non-governmental organisation (NGO) partnership in water provision, assessing lifeline tariff for poor urban households and introducing the private sector into management and operation of the water supply systems. It also contains strategies to accelerate the provision of adequate sanitation and improve environmental sanitation.

¹⁹ National Water Policy 2007, pg 11.

²⁰ GPRS II, pg. 41.

²¹ GPRS II, pg. 51.

²² Ibid.

2.3 Institutional Framework

Ministry of Water Resources Works and Housing

The lead government institution responsible for water is the Ministry of Water Resources, Works and Housing (MWRWH). Its major role is overall water resources management and drinking water supply, policy formulation, planning, coordination, collaboration, monitoring and evaluation of programmes for water supply and sanitation. Within the MWRWH is the Water Directorate which has responsibility for the coordination of the water and water-related sanitation sector for policy harmonisation, sector-wide monitoring and evaluation of Ghana's poverty reduction strategy outcomes and MDG targets. It also coordinates foreign assistance. Several key agencies of MWRWH carry out specific projects within the ministry's water resources management and drinking water programmes.

Ministry of Local Government, Rural Development and Environment

This ministry is the lead sanitation sector agency. It formulates, coordinates, monitors and evaluates the environmental sanitation policy, develops and issues technical guidelines on environmental sanitation services, promulgates national legislation and model by-laws, directs and supervises the National Environmental Sanitation Policy Coordinating Council and facilitates the mobilisation of funds for sector plans and programmes.

Water Resources Commission

The WRCA established the Water Resources Commission (WRC) with a mandate to regulate and manage the utilization of Ghana's water resources and to coordinate any policy in relation to them.²³ The commission can grant water rights, require water user agencies to carry out scientific investigations or research into water resources and advise the government on any matter likely to have adverse effect on water resources.²⁴ The WRC is required to publish applications for the grant of water rights and consult with the inhabitants of the area of the water resources concerned. The public is entitled to make objections to such applications and the commission is obliged to consider them.²⁵ Members of the commission are appointed by the president in consultation with the Council of State and he may remove them in writing with reasons.²⁶ The commission provides a focal point in promoting collaboration among different actors in the water resources sector. Its powers and functions are set out in the WRCA.

Ghana Water Company Limited

The Ghana Water Company Limited (GWCL) is a limited liability institution responsible for overall planning, managing and implementation of urban water supply. It was formed as part of policy measures to strengthen certain state owned enterprises and is actually a conversion of the former Ghana Water and Sewerage Corporation. Its responsibilities are set out in the GWCLA. In 2005, GWCL signed a management contract with a private entity for urban water service delivery for a period of 5 years. Actual service delivery is now being carried out by Aqua Vitens Rand Limited, a subsidiary company. Known as the 'Operator' Aqua Vitens Rand is entitled to contract with customers for the supply of potable water in the name of GWCL, issue bills, receive payments and disconnect customers.²⁷

²³ Water resources is defined as "all water flowing over the surface of the ground or contained in or flowing from any river, spring, stream or natural lake or part of a swamp or in or beneath a watercourse and all underground water but excluding any stagnant pan or swamp wholly contained within the boundaries of any private land"-sec. 37 WRCA.

²⁴ See sec. 2 (a)-(i) of WRCA for a complete listing of functions.

²⁵ Sec. 16, WRCA.

²⁶ Secs. 3 & 4, WRCA.

²⁷ Clause 3.1.2 of the Management Contract dated 15 June 2005 (on file with author).

Community Water and Sanitation Agency

The Community Water and Sanitation Agency (CWSA) was established by the CWSAA to facilitate the provision of safe water and related sanitation services to rural communities. Section 2 stipulates the functions of the agency, which include supporting District Assemblies (DAs) to promote sustainability of safe water supply and sanitation services in rural communities and small towns, enabling DAs encourage the active involvement of the communities, especially women, in the design, planning, construction and management of water and sanitation projects, encouraging private sector participation in the provision of safe water and sanitation services in the rural areas, providing technical assistance in the planning and execution of water and sanitation projects and prescribing standards and guidelines for safe water supply and sanitation services. It is also responsible for external liaison and coordination of the national community water and sanitation programme. In performing its functions, the CWSA must collaborate with other water institutions like the WRC and the GWCL.²⁸ Its key functions are contained in the CWSAA.

The Public Utilities Regulatory Commission

This is a body corporate established by law to regulate and oversee the provision of utility services by public utilities to consumers. The functions of the commission include providing guidelines on rates chargeable for provision of utility services, examining and approving rates for utility services, monitoring standards of performance, initiating and conducting investigations into standards of quality of service given to consumers and protecting the interest of consumers and service providers.²⁹ Importantly, the act ensures that the Public Utilities Regulatory Commission (PURC) is not subject to the direction or control of any person or authority in the performance of its functions.³⁰ The commission may, depending on population distribution, economic development or other factors, fix a uniform rate throughout the country or fix different rates for different classes of consumers.³¹ Individuals may submit complaints to the commission in respect of rates chargeable for services, service provision generally or any matter under the act.³² The PURCA provides for the establishment by the commission of consumer services committees, whose functions and membership shall be prescribed by the commission.³³ In the event of non-compliance with its direction or decision, the PURC may apply to the High Court for the enforcement of such direction or decision.³⁴

Metropolitan, Municipal and District Assemblies

The basic unit of government at the district level is the district assembly. Created by statute, DAs have legislative powers and deliberate developmental policy objectives for their areas. They are responsible for planning, implementing, operating and maintaining water and sanitation facilities and legally own communal infrastructure in rural communities and small towns. A full listing of their functions and mandate is defined in the LGA. In relation to sanitation, assemblies generally have five distinct functions. These are (i) waste management (collection and sanitary disposal of wastes) (ii) public health management (pest and vector disease control, sanitation education, etc) (iii) environmental monitoring (enforcement of environmental standards and regulations) (iv) provision of works related to environmental sanitation facilities (v) planning, monitoring and public relations.

²⁸ Sec. 2(3), CWSAA.

²⁹ Sec. 3, PURCA.

³⁰ Sec. 4, PURCA.

³¹ Sec. 20, PURCA.

³² Sec. 29, PURCA.

³³ Sec. 31, PURCA.

³⁴ Sec. 32, PURCA.

Other Institutions

These principal water sector institutions are supported in their functions by several allied institutions. The Water Resources Information Services institutions provide data and other water resources related information and services to support planning and decision making.³⁵ The Ghana Standards Board develops and sets quality standards for drinking water and issues certifications in that regard. The Environmental Protection Agency is mandated to inter alia advise the minister responsible for the environment on the formulation of policies on all aspects of the environment and make recommendations for the protection of the environment, prescribe standards and guidelines relating to the pollution of air, water, land and other forms of environmental pollution including the discharge of wastes and the control of toxic substances, create public awareness of the environment and its importance to the economic and social life of the country and conduct investigations into environmental issues.³⁶ The Environmental Protection Agency (EPA) is expected to liaise and cooperate with government agencies, DAs and other relevant institutions.

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

³⁵ The institutions are the Hydrological Services Department, the Water Research Institute and the Ghana Meteorological Agency.

³⁶ Sec. 2, EPAA.

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.³⁷ These include the right to access existing water and sanitation services without interference in the form of arbitrary disconnections or contamination of water sources and the right to a system of water and sanitation services and management that provides equality of opportunity for all to enjoy such services. This section examines whether and to what extent the legal and policy water and sanitation framework as a whole contains these freedoms and entitlements which, notwithstanding the possibility of varying conditions apply in all circumstances.³⁸

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 amount of water available for each person should be consistent with World Health Organization guidelines.³⁹ Provision should also be made for certain groups that may require more water due to health, climate or employment conditions.

The National Water Policy recognises that water is a 'finite and vulnerable resource, given its multiple uses'.⁴⁰ In this respect it advocates meeting the social needs for water as a priority, while recognising the economic value of water and the goods and services it provides.⁴¹ Significantly, the policy takes into account 'the basic right to a threshold level of supplies ("some for all")'⁴² but falls short of spelling out that threshold. On the basis of surface water resources alone, Ghana is able to meet the current and future consumptive water demand of its population. For example, the projected water demand for 2020 has been pegged at 5 billion m³, which is about 12% of total surface water resources.⁴³

However, migration from rural areas to towns and cities, plus persistently high population growth rates is escalating urban growth and it has been projected that if such trends continue half of Ghana's population will be living in towns and cities by 2015.⁴⁴ Clearly, the rate of urbanisation outstrips current levels of urban water supply.

³⁷ General Comment 15 outlines these freedoms and entitlements in relation to the right to water only, but there is ample evidence that they can be applied to sanitation services as well. See for example the UN Sub-Commission's "Guidelines for the realisation of the right to drinking water and sanitation" E/CN.4/Sub.2/2005/25, 11 July 2005.

³⁸ General Comment 15, para 12. For detailed information on the aspects of the right to water and sanitation see COHRE, AAAS, SDC and UN-HABITAT, *Manual on the Right to Water and Sanitation* (2007) available at <http://www.cohre.org/manualrtws>.

³⁹ General Comment No. 15, para 12 (a), Sub-Commission Guidelines, sec. 4. This translates to 50 to 100 litres per person per day, with an absolute minimum of 20 litres per person per day in emergency situations.

⁴⁰ National Water Policy 2007, pg. 11.

⁴¹ Ibid.

⁴² Ibid, pg. 16.

⁴³ Ibid, pg. 5.

⁴⁴ Ibid, pg. 26.

Other factors affecting availability include an ailing water supply system built over three decades ago and the variability of rainfall. In rural areas, figures show that coverage falls far below set targets. Between 1994 and 2003, the national average rose from 30% to 46.3%.⁴⁵ The government declared it is determined to halt the falling trends in water supply coverage and resume a programme of expansion and improvement.⁴⁶ This would obviously require consistently high levels of investment. To reach MDG targets for water and sanitation by 2015, US \$ 160 million must be spent annually compared to the current annual investment of US \$ 52 million of which only 3.5% comes from the government.⁴⁷ It must be pointed out that government's commitment to expansion and improvement of water supply appears to be faltering as performance in the sector still remains well below target. The Centre for Budget Advocacy pointed out that budget performance in 2007 in relation to rural water was 'not encouraging' based on targets in the 2007 budget.⁴⁸ The government has more or less repeated these targets in the 2008 budget but there is no assurance of improved performance.

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.⁴⁹

One of the objectives of the NWP is to 'facilitate improving access to potable water...'.⁵⁰ In urban areas, the aim is to achieve 'equity in access to water supply for peri-urban and urban poor to meet their basic needs...'.⁵¹ In rural areas the policy aims to 'provide basic water and sanitation services for communities that will contribute towards the capital cost and ensure payment for normal operation, repair and replacement costs... mindful of the need to ensure affordability, equity and fairness...'.⁵² To achieve these objectives the government plans to introduce private sector participation in the operations and management of urban water supply, rehabilitate and upgrade reservoirs, prioritise new investments in system extension and expansion of bulk water production and dedicating a fair amount of investment to extending services to low-income communities.⁵³ For rural areas the strategy is to 'promote an equitable demand responsive approach, where communities express demand by participating in making informed decisions on choices of services that fit their needs'.⁵⁴

In spite of this policy commitment and the availability of water to meet water supply, there are major deficits in coverage. GWCL has in operation 82 urban systems with average daily output of 572,012 m³/day as against a daily demand of 1,049,306 m³/day.⁵⁵ As a result water has to be rationed to many consumers, with only a few enjoying 24 hour supply. In peri-urban and densely populated poor urban areas customers receive supplies once a week or get nothing.⁵⁶

⁴⁵ Ibid, pg. 38.

⁴⁶ Ibid, pg. 27.

⁴⁷ See note 4 above.

⁴⁸ The government planned to do the following in 2007: sink 2399 boreholes, did only 283; hand dig 1589 wells did only 63; lay 54 small town pipes, did only 30; lay 52 small town community pipes, 253 piped water schemes, 48 water catchments and 2 spring protection systems, but did nothing. The full analysis of the 2008 budget can be accessed at <http://www.cba.org>.

⁴⁹ General Comment No. 15, para. 12 (c) (i), Sub-Commission Guidelines, sec. 1.3 (a)-(c).

⁵⁰ National Water Policy 2007, pg. 16.

⁵¹ Ibid, pg. 28.

⁵² Ibid, pg. 38.

⁵³ Ibid, pg. 29.

⁵⁴ Ibid, pg. 39.

⁵⁵ Ibid, pg. 26.

⁵⁶ Ibid.

The Social Policy and Strategy for Water Regulation highlights the inequitable access to water supply. It maintains that those with direct piped supply use up to four times more water than those collecting by bucket, but pay approximately the same monthly amount.⁵⁷ A PURC research study discovered that within urban piped system areas only 15% of the poor have access to piped water either directly or via yard taps. The rest are at the mercy of secondary or tertiary suppliers. The data showed that tankered water (used by about 4.6% of poor urban dwellers) costs nine times more than piped water while water from standpipes and communal sources cost double the price of piped water.⁵⁸ The regulation advocates investments in water supply projects that will specifically target the poor and insists on the adoption of pro-poor criteria when the public utility undertakes water supply projects.⁵⁹

With respect to sanitation, the NESP aims to achieve 90% access to acceptable domestic toilets by among others, 'assigning delivery of a major proportion of environmental sanitation services to the private sector, through contract, franchise, concession and other arrangements'. However, nation-wide sanitation coverage figures⁶⁰ indicate a serious deficit possibly due to the over reliance on private sector participation. The draft RESP advocates a combination of private sector investment and progressive increase in public sector funding through greater budgetary allocations 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 and related services and are given a genuine opportunity to participate in and influence decision-making processes related to water and sanitation issues affecting them, including decisions on the types of services that they receive or questions related to the conservation of water resources.⁶¹ Information on water and sanitation and related services should be publicly available in an easily understood format (including a format for illiterate people, such as flip-charts), should be provided in local and minority languages and should be disseminated through various forms of media, ensuring that it reaches marginalised and remote communities. Access to information and public participation is now generally recognised as a right in itself and widely acknowledged as a development best practice.

To ensure proper water resource management and good governance, the NWP recognises the principle of 'subsidiarity in order to ensure participatory decision-making at the lowest appropriate level in society'.⁶² The policy aims to 'ensure participation of all stakeholders, including private sector, local communities, particularly women, in decision-making on water-related issues'.⁶³ Government has undertaken to 'deepen democratisation of society through transparent and accountable leadership,' recognise the role of the press and access to information and 'accelerate women's representation at all levels and in all spheres of water related management'.⁶⁴

⁵⁷ Public Utilities Regulatory Commission, *Social Policy and Strategy for Water Regulation* 2005, pg. 11.

⁵⁸ *Ibid.*, pg. 12.

⁵⁹ *Ibid.*, pg. 13.

⁶⁰ See note 8 above.

⁶¹ General Comment 15, para 12(c)(iv), Sub-Commission Guidelines, sec. 8.

⁶² National Water Policy 2007, pg. 23.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

The Social Policy and Strategy for Water Regulation acknowledges that 'community involvement leads to sustainable access to water' and therefore promotes the concept of community participation especially with regard to the provision of water to poor and peri-urban communities.⁶⁵ Several legislation also promote participatory decision-making. The WRCA provides for members of the public to make objections to applications for water right and the commission is obliged to consider them.⁶⁶ The CWSAA encourages the active involvement of communities, especially women, in the design, planning, construction and management of water and sanitation projects. The draft RESP 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.⁶⁷ Non-discrimination means that there is no distinction, exclusion, restriction or preference, which is based on any ground (e.g. race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) that differentiates without legitimate reason. The reference to 'other status' implies the inclusion of other grounds that lead to unequal enjoyment of the right to water and sanitation. Discrimination on the basis of 'social status' may include residence in remote rural areas and informal settlements, and also refer to people living in under-privileged areas, which can constitute discrimination on the basis of social condition. However, non-discrimination includes more than avoidance of active discrimination against particular groups. It also requires proactive measures to ensure that government policies and programmes provide special attention to addressing the particular needs of vulnerable or marginalised groups.

Article 17 of the 1992 Constitution prohibits discrimination on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status. However, the constitution allows for the 'enactment of laws which are reasonably necessary to provide for the implementation of policies and programmes aimed at redressing social, economic or educational imbalance in the Ghanaian society'.⁶⁸ In relation to access, one of the policy objectives is to improve 'access to water without discrimination' and enhance the management and development of water resources in a manner that safeguards that the entire population, 'particularly the poor and vulnerable will have access to adequate and potable water'.⁶⁹ In meeting this objective, the NWP pledges to 'ensure sustainability through cost recovery, taking into account the basic right to a threshold level of supplies... especially for the segment of the populace who can demonstrably not afford the full cost of supplies'.⁷⁰

Importantly, a focus area for the NWP is 'pro-poor issues'. These include formulating tariff structures that pay 'attention to affordability, particularly by the poor and low income earners and establishing programmes like a social connection fund to support the connection of low-income consumers to the network'.⁷¹ Within rural communities all water and sanitation interventions must take into account and protect 'the specific needs and roles of women, men and children and the physically challenged'.⁷²

One of the primary concerns of the PURC is to address the interest of the poor. To show its commitment to ensuring services to urban poor, the PURC adopted a working definition of the urban poor as

⁶⁵ See note 57 above, pg. 22.

⁶⁶ See note 15 above.

⁶⁷ General Comment 15, para12(c)(iii), Sub-Commission Guidelines, sec 3.

⁶⁸ Art. 17(4)(a).

⁶⁹ National Water Policy 2007, pg. 16.

⁷⁰ Ibid.

⁷¹ Ibid, pg. 36.

⁷² Ibid, pg. 37.

those (i) without direct access to regulated piped supplies (ii) who depend on secondary and tertiary suppliers and (iii) who buy by the bucket.⁷³ The PURC has been authorised to take the lead in forming a working group of stakeholders to address provision of service to the urban poor. The group's role will include targeting any social funding or other relief schemes for the poor.⁷⁴

The draft RESP 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. In this regard, MMDAs should ensure that services meet the needs of specific target groups including vulnerable people, women, children and the poor.

3.5 Water quality and hygiene

The right to water and sanitation requires that water and sanitation services should be safe and acceptable. In particular, water used for basic personal and domestic needs should be free from hazardous substances that could endanger human health, and its colour, odour and taste should be acceptable to users.⁷⁵ Hygiene encompasses personal cleanliness and hygiene of the household and the environment.

The NWP 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...'.⁷⁶ The PURC is mandated to 'ensure that the water that is delivered is safe and will not cause any danger to public health'.⁷⁷ The commission is keen to ensure that the public utility takes all measures that will prevent any disasters and requires the development of emergency relief plans.⁷⁸ To this end, the PURC has established a Water Quality Inspectorate to oversee the enforcement of the commission's policies and regulations.⁷⁹ To ensure the supply of good quality drinking water, the PURC focuses on four main areas: (i) quality of raw water at the intake, which is a function of the way and manner in which the resource is managed (ii) quality of water after treatment, which is a function of the technical processes that are followed by the utility (iii) quality of water fed into the distribution lines and what happens to it before it is delivered to the consumer (iv) quality of water within the consumer's premises, which is a function of the state of the service lines and cleanliness of household storage facilities.⁸⁰

The commission is promoting the concept of Water Quality Management Plans, which involves a number of stakeholders, like the WRC, EPA, GWCL, playing their roles effectively in the water supply and distribution chain.⁸¹ The PURC uses the audit approach in monitoring water quality.⁸² This puts ultimate responsibility for ensuring the supply of good quality water on the utility which then submits regular reports on water quality to the commission. The commission can carry out its own audit to determine the level of compliance and make follow-ups on customer complaints.⁸³ Crucially, the PURC has developed guidelines to safeguard the quality of drinking water supplied by tanker and other secondary and tertiary suppliers.⁸⁴

⁷³ See note 57 above, pg. 2.

⁷⁴ Ibid, pg. 10.

⁷⁵ General Comment No. 15, para. 12 (b), Sub-Commission Guidelines sec 7.

⁷⁶ National Water Policy 2007, pg. 27.

⁷⁷ See note 57 above, pg. 18.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid, pg. 19.

⁸¹ Ibid.

⁸² Ibid, pg. 20.

⁸³ Ibid.

⁸⁴ Water Tanker Service Guidelines.

With respect to hygiene, the PURC will promote consumer awareness of water quality and hygiene issues in urban and peri-urban communities in collaboration with utilities and relevant government institutions.⁸⁵ The draft RESP underscores attitudinal and behavioural change as central to achieving progress in environmental sanitation. It therefore considers environmental sanitation education, effective communication and dissemination of information as integral elements of all environmental sanitation activities.⁸⁶

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. Affordability also means that the cost of obtaining water and sanitation must not reduce the ability of individuals and communities to pay for other essential goods and services, including food, housing, education and health.⁸⁷

Meeting the social needs for water as a priority, while recognising the economic value of water and the goods and services it provides is an underlying principle in financing water resources management in Ghana.⁸⁸ The NWP encourages the adoption of a tiered tariff structure system for water supply.⁸⁹ Section 16 of the PURCA requires the PURC to prepare rate setting guidelines which public utilities are obliged to adhere to in preparing their rate applications. These guidelines should take into account consumer interest, investor interest, costs of production and the financial integrity of the utility.

The PURC may if it thinks proper determine a nation-wide uniform rate structure for the provision of services.⁹⁰ In 2005, the PURC published its Urban Water Tariff Policy with the objective of ensuring that the rates provide an optimum balance between these competing interests and ensure the best possible value, including price and improved quality of service for consumers. Since GWCL is the sole supplier and distributor of water services in the urban areas, it is within the remit of PURC tariff regulation.

However, the PURC believes that rates charged for the provision of water supply services to secondary markets by vendors and tanker services are subject to free market forces and do not warrant regulatory interventions, other than ensuring water quality.⁹¹

The commission has retained the rising block tariff structure. The lowest band of the rising block tariff structure is the lifeline tariff, a rate set to cover the costs of the basic minimum household requirements at a rate that reflects affordability by the poorest section of the served community.⁹² The tariff structure also allows for cross subsidisation between different user categories, with non-domestic consumers subsidising domestic consumers.⁹³ With regards to connection to water service, the policy does not support cross-subsidisation of connection charges, which are set to recover the full cost of a connection from the mains to the customer, including the service pipe, meter and ancillary components.⁹⁴ Despite this position, the commission will promote and support strategies designed to assist the poor to gain access to piped water

⁸⁵ See note 57 above, pg. 21.

⁸⁶ Revised Environmental Sanitation Policy May 2007(draft), pg. 16.

⁸⁷ General Comment 15, para. 12(c)(ii), Sub-Commission Guidelines, sec. 6.

⁸⁸ National Water Policy 2007, pg. 19.

⁸⁹ Ibid, pg. 20.

⁹⁰ Sec. 20 PURCA.

⁹¹ Urban Water Tariff Policy 2005, pg. 5.

⁹² Ibid, pg. 7.

⁹³ Ibid.

⁹⁴ Ibid, pg. 8.

through targeted funding mechanisms.⁹⁵ Reconnection fees are set to recover the cost of reconnection, plus a penalty charge sufficient to act as a deterrent against non-payment.⁹⁶

According to NESP, the majority of environmental sanitation services are provided by the private sector and one of the strategies to promote accelerated development in the sub-sector is the 'adoption of the cost recovery principle in the planning and management of environmental sanitation services'. The draft RESP stipulates that environmental sanitation services should be appropriately designed to suit the demand of different population groups.⁹⁷ It maintains that affordable services which are consistently provided always yield better results than more expensive services provided irregularly and that essential levels of services should be economically appropriate and that mechanisms for funding them are sustainable. It also clarifies that direct cost recovery from users should be applied where it is possible to charge a full commercial price.⁹⁸ Where full cost recovery is not possible, metropolitan, municipal and district assemblies should provide subsidies. They are also responsible for setting tariffs with the full participation of private service providers and users. Tariffs should however be set at levels that will not discourage the use of the services, especially where this would create health risks.⁹⁹

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

4.1 Legislative recognition

It is clear from the foregoing that there is some protection more so of the right to water than of sanitation. Even though there is no formal, explicit mention of a right to water or sanitation in the bill of rights of the constitution or the several laws governing the sector, the new NWP may be seen as a welcome improvement in that it recognises as a guiding principle 'the fundamental right of all people... to safe and adequate water to meet basic human needs' as well as 'the basic right to a threshold level of supplies'. It is useful to point out though that it falls short of GPRS II which recognises 'the right of everyone to basic social services such as health care, safe drinking water and sanitation'.

However, the fact remains that these are just policies and do not afford the level of protection that inclusion in the constitution or a statute would provide. The International Covenant on Economic, Social and Cultural Right (ICESCR) particularly mentions the 'adoption of legislative measures' as one of the appropriate means to achieve progressively the full realisation of the rights recognised by it, which includes the right to water.¹⁰⁰ It is therefore 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 in addition to the political accountability that such policies bestow.

With regards to sanitation, the NESP falls far short of the standard employed in formulating the NWP. Perhaps this is symptomatic of government's sentiments towards sanitation. A dismal 7 pages (compared to the 66 pages of the NWP) the NESP does not contain any rights language and appears to be a total abdication by the government of sanitation responsibilities to the private sector. Legislative recognition and approval of the draft revised environmental sanitation policy are necessary to give sanitation the same [if not a better] profile like water.¹⁰¹ This is most urgent as sanitation lags far behind water in the marathon towards 2015.

4.2 Defining threshold level

Whilst the NWP recognises the 'basic right to a threshold level of supplies' it does not stipulate what the quantity of that threshold level of supplies will be, how it will be determined and whether or not it will be affected by disconnection of water supply for non-payment. A prescription of the minimum standard of the threshold level of supplies needs to be done, perhaps by the PURC. The PURC may find of value the definition

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Revised Environmental Sanitation Policy May 2007(draft), pg. 14.

⁹⁸ Ibid, pg.19.

⁹⁹ Ibid.

¹⁰⁰ Arts. 2(1) & 11(1) of ICESCR.

¹⁰¹ The Revised Environmental Sanitation Policy (draft) is before cabinet for approval.

of minimum standards for basic water supply in the South African Regulations Relating to Compulsory National Standards and Measures to Conserve Water 2001.¹⁰² It would also have to determine how the segment of the populace for whom the right particularly exists, but who are not connected to the water network, benefit from it. In addition it appears that enjoyment of this basic right by those connected to the network is dependent on meeting certain requirements, i.e. 'the segment of the populace who can demonstrably not afford...'. The PURC will need to outline the nature and scope of the test required to qualify.

4.3 Rethinking quality control approach

The need to ensure that water supply is safe for consumption can never be overemphasised as it has a direct effect on the health and well being of the people.¹⁰³ To this end, the approach towards water quality monitoring needs to be revisited. As it is, ultimate responsibility rests with the utility which should submit regular reports on water quality to the Water Quality Inspectorate of the PURC. 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. In addition, the NWP does not make special provision for access to water and sanitation facilities in schools and other educational institutions. Although it recognises severe imbalances in sanitation provision in rural and urban areas, it fails to outline a process to effectively rectify such imbalances. In addition, the framework is silent on the issue of physical security during access to water and sanitation facilities and services.

4.5 Prioritising access to services by the vulnerable and marginalised

While policy documents seek to improve access for all particularly the poor and marginalised, they do not prioritise providing water and sanitation to them, particularly to institutions such as schools, hospitals, prisons and refugee camps. In addition, the framework fails to specifically provide for or give priority to the provision of access to informal settlements.

4.6 Making affordability real

Government is obliged to use its maximum available resources to realise the right to water and sanitation. One of the missing ingredients is a clear commitment by government to provide financial assistance to ensure access to water and sanitation facilities and services to those who are unable to realize the right themselves. Policies relating to disconnections of the water supply for non-payment do not contain an exemption for those who are genuinely unable to pay. There is no clear cut government commitment to allocating public resources for the realization of the right to water and sanitation especially for the vulnerable and marginalized.

4.7 Regulating rates charged by secondary and tertiary service providers

Evidently, a huge number of unserved households rely on tankered and other small-scale private services for their access to water at very great financial cost. Even though the exorbitant cost of these services is common knowledge, the framework however does not regulate rates charged for them, preferring to leave regulation to 'market forces'. This approach is untenable as the government is obliged to ensure that any payment for water services must be based on 'the principle of equity, ensuring that these services whether privately or publicly provided are affordable for all, including socially disadvantaged groups.'¹⁰⁴

¹⁰² Sec. 3 provides as follows: The minimum standard for basic water supply services is- (a) the provision of appropriate education in respect of effective water use; and (b) a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month-(i) at a minimum flow rate of not less than 10 litres per minute; (ii) within 200 metres of a household; and (iii) with an effectiveness such that no consumer is without a supply for more than seven full days in any year.

¹⁰³ In parts of Ghana, cases of guinea-worm infestation due to unsafe water have been reported.

¹⁰⁴ General Comment 15, para 27.

5. Recommendations

On the whole, the legal and policy water and sanitation framework boasts a number of good legislation and policies. However, a number of concrete actions need to be taken by certain actors to fully recognise and strengthen the right to water and sanitation. Like it is the case in many other African countries, sanitation has not fared as well as water, which is itself far from satisfactory. In the excitement of achieving the MDG targets, most governments overlook the importance of a solid rights-based law and policy framework in favour of a purely developmental/economic approach, which is not to say that the latter is inconsequential. The importance of a rights-based approach in relation to water and sanitation is that it confers an entitlement on the people to demand for, participate in, and fully own these services as a matter of right, rather than make them passive recipients of government's benevolence and where the government mis-prioritises its activities, it can legally be held to account by the people.

Recommendation to Parliament

- To 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. Such a law may also include time bound water and sanitation targets, the basis for collaboration with civil society and private sector, mechanisms for monitoring progress in realising the right to water and sanitation as well as remedies and recourse procedures.

Recommendation to Cabinet

- Cabinet should expedite the approval of the vastly improved draft revised environmental sanitation policy.

Recommendations to the Public Utilities Regulatory Commission

- In order 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. It must also clarify whether enjoyment of the threshold level of services can be affected by disconnection for non-payment of bills. In addition, since the basic right to a threshold level of services requires access to 'some for all', the PURC needs to determine how those not connected to the network can benefit.
- In terms of maintaining access to existing services especially by the poor, the Public Utilities Regulatory Commission should include in its policies 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. In addition to the periodic water quality reports by service providers, the Inspectorate should 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, whether or not such services are provided privately or publicly. The responsibility to ensure affordability of services is not limited only to public service providers but extends to all 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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of the legal and policy framework
of the Ghanaian water and sanitation sector**