

April 2007  
CARE USA and CARE Denmark

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## The Human Right to Water – Beyond Access

### Introduction

It is a true and lamentable fact that very few approaches to programming water interventions truly take on a rights-based approach. This is despite universal recognition of the fact that the right to water is linked to and affects other rights and development objectives such as reduced infant mortality and the ability of girls to attend schools.

The tendency in the current discussions on water as a human right is to focus on the realisation of the substantive<sup>1</sup> right to water. The core content of the right to water consists of an expansion of supply to guarantee everyone access to a minimum of 20 litres a day, and less attention is given to the procedural and underlying elements of the right to water, such as the right to be involved and actively participate in the planning, implementation and maintenance of water and sanitation interventions, the right to be informed of processes, to participate and to a remedy in cases of discrimination, and the right to affordable access.

Furthermore, no attention is paid to the fact that an isolated sectoral approach to water may actually jeopardise its full realisation by turning a blind eye to how access is often dependent on access to other strategic resources, most notably that of land.

The recommendations below are drawn from the experiences of CARE USA and CARE Denmark working in the sectors of water and natural resource management in various parts of the world. We cite our programming approach as a best practice from a rights-based perspective and also make recommendations for inclusion of procedural elements into a rights-based approach to water. Finally, we cite the example of a national effort in Ethiopia as a “best-practice” approach to developing a national plan and strategy.

### PART I:

#### BEST PRACTICE APPROACHES TO ACCESS SAFE DRINKING WATER AND SANITATION

#### Experiences with a Rights-Based Approach to Water Programming

That everyone has a right to safe and affordable access to drinking water and adequate sanitation is implicit in the overall goal of CARE’s water programming: “to empower poor people to make claims on their right to water”.

The objectives are to increase economic and social opportunities for households by bringing a safe reliable water supply closer to the household, and to assist households and communities to manage the risks to their health from water and excreta-related diseases.

This goal drives an approach which:

- Involves poor people in integrated water programming through stakeholder dialogue, identification of demand and implementation of priority services
- Engages poor people and particularly women in management of water at the local level
- Requires analysis of the sector situation (including the impact of climate change) to facilitate program design, focus learning, and advocacy for a “vibrant water sector”

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<sup>1</sup> Substantive rights are those which relates to the substance of being human (life, health, shelter) and procedural are mechanisms through which substantive rights are enforced. Procedural rights are necessary complements to a substantive right.

- Does not require CARE “to do everything” but purposely act as convener and facilitator of partnerships with local and international NGOs, academia, the private sector, and government
- Measures outputs and outcomes at the local level but also improvements in the enabling environment at different levels.

Our experience is developed through strong partnership and collaborative approaches both with external actors and with other sectors at CARE, resulting in programs that have both a service delivery as well as policy approach, which reach a range of actors, from individuals and households to policy makers, as evident in the instances below.

For example, the PROPILAS project in Peru was designed to build capacities in rural municipalities and communities to optimize the management and sustainability of the rural water and sanitation services following a national process of decentralization and regionalization. The project helped these municipalities to draw up development and investment plans for supplying water and sanitation services to rural communities; or to improve their existing plans via a medium-to-long term participatory planning process that included a range of relevant stakeholders including community based organizations and local and regional government institutions. A sub-component, EPILAS, was also developed, which is a university course training community members in the operation, maintenance and construction of water systems and hygiene education. The community was thus prepared to be an integral part of the system beyond the scope of the project.

Conflicts with authorities over access to existing systems has also been addressed by CARE USA in El Salvador, where migrant populations were denied access to water even via the existing infrastructure. Access was granted only after discussions were held between the migrants, the government and the system contractors. CARE used this experience to influence the development of El Salvador’s National Water Strategy and suggested elements such as legalization of community water boards and local management of water systems.

## PART II: THE IMPACT OF NATIONAL LAWS, JUDICIAL DECISIONS, PLANS OF ACTION, DEVELOPMENT PROGRAMMES, PUBLIC POLICIES AND OTHER MEASURES IN PROMOTING OR RESTRICTING EQUITABLE ACCESS TO SAFE DRINKING WATER AND SANITATION.

### State Obligations related to the Human Right to Water: Lessons from CARE Denmark’s experience in Niger

The right to water is derived from article 11 and 12 of the Convention of Economic, Social and Cultural (CESCR) rights guaranteeing everyone an adequate standard of living and the right to health. Niger ratified the CESCR in 1986, thereby agreeing to take steps to the maximum of available resources for the progressive full realisation of the right to water, as according to article 2(1) of the Convention.

While Niger has taken a few steps, such as developing national guidelines to govern the installation of water points, *Le guide National d’Animation des Programmes d’Hydraulique Villageoise, edition 1992*), the right is far from realised in the country, with many sections of the population having the most restricted access. The multiple actors working in the water sector tend to focus on water supply for the villages of the south, as water points in the pastoral north have often been the source of conflict. The eastern region of Diffa witnessed particularly violent conflicts until year 2000, when a peace accord was finally established between the different ethnic groups. The history of conflict in Niger has long discouraged donors from investing in water for marginal populations; the example here highlights the effect on one of the most sidelined groups – the pastoralists, among whom water consumption averages only 7 litres a day.

Localised conflicts in the whole of the Sahel around pastoral water points are, among other things, rooted in the insufficient realisation of the procedural rights to information and participation. While the national guidelines are

used to inform the village about the process and increase their level of participation, the main elements of the process are a technical feasibility study (technical and environmental) and identification of the responsibilities of the users, and do not address the fundamental differences between the pastoralists and the villagers.

#### Obligation 1: Appropriate National Water Guidelines to ensure Participation of all Major Population Groups.

The guidelines mentioned previously are based on the assumption that people live sedentary lives in villages, even though, quite a significant proportion of the population are pastoralists (semi or fully nomadic). The only option donors and the government have is to apply the same guidelines for the installation of a pastoral water point as a village water point, which has proved impractical. For example:

- The Water Code requires the formation of a pastoral Steering Committee with permanent members, which is not possible, as large parts of the communities are not present throughout the year. Thus the majority of Steering Committees are non-functional, and require the election of two or three people for each seat on the committee (e.g. three presidents).
- The guidelines assume that the rules for governing the water point can be decided at one village gathering to reach a consensus. As only a few pastoral communities are present at the same time the rules around pastoral wells reflect the will of the few. This is often the source of conflict, as many groups (especially the most mobile) have been excluded from participation in the process of establishing the rules of governance.

Most users therefore do not feel ownership of the rules and often try to circumvent them, creating further conflicts and reducing investments.

General Comment No. 15 on the right to water stipulates that states have an obligation to formulate national strategies, but does not explicitly go into defining the establishment of national guidelines as an obligation. National guidelines are essential to guarantee that the procedural rights to information and participation are realised throughout the process, and need to contain provisions relevant to all the population groups.

#### Obligation 2: Ensure Information to the most Marginalised.

General Comment No. 15 mentions the procedural right to information in terms of stipulating that people should be granted the right to seek information on water issues. The obligation could be extended to a positive obligation on the state to actively ensure that the most marginalised are aware of the opportunities and rights to demand water points. In Niger the state actively provides information (on the radio) to the population if a donor or the government wants to invest in the region and invites community demands. This mode of conveying information does not always reach the most marginalised (often the most mobile without radio). As a result, most wells are located in proximity to the house of the chief, either a village chief or a pastoral chief. This could be prevented by formulation of national quotas ensuring that all ethnic groups are entitled to demand a minimum number of water points after having been fully informed of the options through appropriate mechanisms.

#### Obligation 3: Ensure a Multi-sectoral Approach to Water.

The water sector is generally characterised by a multitude of different actors often with different approaches to how to ensure public participation before, during and after the establishment of a water point. Further, access to water in rural areas is often dependent on access to other strategic resources, such as land. However, the national water legislation in Niger has been developed in separation from other sectors

As a result the Water Code is in conflict with the Rural Code, which governs access to all resources and economic activity in rural areas, including water points. The Rural Code states that pastoralists have a right to use

rangeland in common and have priority right in their homeland. A “homeland” is defined as a strategic place where the herder will return for a number of months each year. In this area the rural code stipulates that the family has priority access to water and grass, which means that all others wanting to use these resources have to negotiate access. These provisions imply that that the creation of modern wells must be associated with priority rights and that open access wells are possible only in no-man’s-land situations. On the other hand the Water Code stipulates that access to water is open to all including outsiders such as transhumance herders. Modern wells are being dug on homelands of herders and outsiders demanding access to the water without negotiation make reference to the Water Code. The situation brought about by legislative conflict is one of the main underlying causes of violent conflict around the wells. Access to water is dependent on access to other resources and compartmentalisation of water legislation and strategies may therefore jeopardise the realisation of the right to water.

These recommendations are necessary to ensure that the main value of a right to water approach are not undermined – maintaining the universality of access rather than allowing the most powerful interest groups do determine water use in ways that premeditatedly or not, deny access to others.

### PART III:

## NATIONAL PLANS OF ACTION, DEVELOPMENT PROGRAMMES, PUBLIC POLICIES OR EMERGENCY RESPONSES RELATED TO ACCESS TO SAFE DRINKING WATER AND SANITATION

### Lessons from Ethiopia’s National Hygiene and Sanitation Protocol and Strategy

We would like to highlight Ethiopia’s approach to develop a national sanitation strategy as an example that reflects several best practices. As a process, it was extremely open, involving a range of stake holders, driven by an ambitious goal of “100% sanitized households within 100% sanitized communities”, and grounded in a framework for national hygiene improvement. The process laid out policies and protocols for every actor working in the water and sanitation sector in the country, in recognition of the partnerships and collaboration needed to achieve this goal. Further, it also recognizes the need for adequate resources allocation and expenditure, and lays out the government structure that will bear responsibility for coordination and emphasize the need for integrated water resources planning.

The process and the related outputs (the national strategy and protocol) lay out a clear framework for any actor wishing to get involved in the sanitation sector in the country, and to its citizens, it defines the space within which their rights – to demand and sustain a hygienic environment - can be realized.

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