

EXECUTIVE SUMMARY

HUMAN RIGHTS AND INTEGRITY

IMPLICATIONS FOR WATER AND SANITATION SERVICES IN INFORMAL SETTLEMENTS



“ From a human rights perspective, informal settlements have a dual nature. On the one hand, they are systemic human rights violations, the effects of State actions, inaction and policies that deprive millions of their fundamental human rights [...] On the other hand, informal settlements are often an incredible accomplishment, a profound expression of individuals, families and communities claiming their place and their right to housing. ”

UN Special Rapporteur on the Right to Adequate Housing, Leilani Farha August 2018.¹

¹ UN Special Rapporteur on the Right to Adequate Housing, Leilani Farha, UN General Assembly, p.2, pp. 5-6, August 2018, A/73/310/Rev.1

Introduction

Despite clear international law on the human right to water and sanitation, and widespread recognition of these rights, people living in informal settlements (slums) typically lack access to essential services. They pay more per litre for precarious, potentially unsafe water than residents in wealthier areas, and have limited access to toilets, relying on shared latrines, self-dug pits or overflowing chemical latrines. The failure to deliver on the human rights to water and sanitation in informal settlements also impacts on other human rights, such as the rights to health, dignity and a safe environment. Household livelihoods are adversely affected by lack of access to water and sanitation services, increasing social, economic and health costs for poor households. Lack of integrity and corruption contribute to the failure to deliver services, reinforcing existing inequalities in access to water and sanitation, diverting resources from where they are most needed, and reducing the quality and availability of services.

A new paper from the Socio-Economic Rights Institute of South Africa (SERI) and the international Water Integrity Network (WIN) discusses these issues based on research conducted by SERI in Siyanda, Marikana and Ratanang, three informal settlements in South Africa, and by partners in Mukuru, an informal settlement in Nairobi, Kenya. The research uses the lens of the human rights to water and sanitation and water integrity to examine water and sanitation issues.

The country case studies reveal significant failures on the part of government in respecting the human rights principles of equality and non-discrimination, transparency and participation. The research also demonstrate how difficult it is for residents in informal settlements to hold government and service providers to account, even though the failure to deliver services in informal settlements is not only against international law, it is against national law, as the human rights to water and sanitation are embedded in national legislation.

Criminalising informal settlement residents impedes rights

State failures place people in the invidious position of needing to access inadequate, unsafe or expensive services or to self-supply. In doing so, further issues of state failure arise, whether through the criminalisation of communities and households (South Africa) or through the lack of regulation of those stepping into the gap for profit (the water cartels in Kenya).

In both South Africa and in Kenya, people are prevented from providing their own services, often with spurious reasoning -such as that the standard of the services cannot be regulated, that the services are of poor quality - while ignoring that in the absence of adequate and affordable services, households must find alternative ways of fulfilling their need for water and sanitation.

However, the cases also show that where people create their own access to services, access becomes discretionary and renders vulnerable groups such as women, the disabled, children or people without access to social networks or social capital, more vulnerable.

Removing the stigma that residents of informal settlements suffer would contribute to the eradication of discriminatory approaches that leave informal settlements out of planning processes.



Corruption and poor integrity invert the human rights to water and sanitation

Outside the water sector, widespread corruption has reduced the state's fiscal resources to respect, protect and fulfil its human rights obligations. Within the water sector, corruption and poor integrity divert resources, protect incompetence and create perverse incentives, for example in South Africa towards installing chemical latrines instead of more sustainable solutions.

There does not have to be a direct case of corrupt action on the part of either the municipality or the service provider to prevent access to services: inaction has an equally negative impact on residents, and is counter to both the human rights to water and sanitation and national legislation and policies. For example, South African municipalities' consistent underspending of grants to upgrade informal settlements and provide basic services indicates an unwillingness to fulfil the obligation to do so.

A culture of improved water integrity is needed, which protects the residents of informal settlements, through enhanced transparency and participation, stronger complaints mechanisms, better monitoring and social monitoring, dedicated engagement by local governments that hold the budgets for service delivery, anti-corruption measures and more effective legal processes that are able to respond to the needs of residents.

Beyond this, many countries, including South Africa and Kenya, have active national human rights commissions, able to respond on economic social and cultural rights such as the rights to water and sanitation. Further, parliaments can hold the government accountable for the delivery of policy and legislative mandates to the poorest and most vulnerable, particularly those in informal settlements.

Conclusion

Despite enabling legislative and policy frameworks, residents of informal settlements continue to live with insecure tenure and inadequate services. In government's efforts to reach those "left behind" or "in the last mile" there is little evident attempt to build on the agency, self-organisation and initiative of local residents. Instead, resources are targeted at "doing too much" by eradicating, relocating or redeveloping informal settlements, or "doing too little" by simply not acting to upgrade services in informal settlements.

Informal settlements exist generally due to state failure to recognise marginalised populations, and to plan for increasing populations and migration. The communities living in informal settlements are resourceful, resilient, creative and often have their own forms of internal organisation. These norms, practices and agency are a valuable resource for upgrading informal settlements through meaningful community participation.

A framework of water integrity, which promotes human rights and protects non-discrimination and equality, participation, transparency, accountability and anti-corruption would support improved delivery of water and sanitation in informal settlements and would allow such communities to more effectively hold government to account for failure to deliver services.

