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**CONCEPT NOTE FOR DEVELOPMENT OF A NATIONAL ACTION PLAN TO  
IMPLEMENT THE RIGHT TO WATER AND SANITATION IN GHANA**

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## 1. Introduction

CONIWAS, COHRE and WaterAid in Ghana have initiated efforts towards the adoption of a national action plan to implement the Right to Water and Sanitation in Ghana. As part of this process CONIWAS has developed this concept note to provide the needed framework to facilitate deliberations in a National stakeholder's meeting (government agencies, private sector, coalition of NGOs, community representatives, development partners and other actors) and serve as the basis for a national action plan for water and sanitation in Ghana to help stakeholders in the WASH sector prepare an actionable plan. This is vital for translating the Human Right to water and sanitation to reality for the millions of Ghanaians lacking access to water and/or sanitation. It also outlines strategies to make sure communities know that this right exists and recommend ways they can engage local governments to assert their rights. The concept note will also be used as a lobby and advocacy document by the Ghanaian water and sanitation sector in providing inputs to the ongoing process of Ghana's constitutional review process and in influencing other policy and legislations as relate to water and sanitation.

## 2. Evolution of the Right to Water and Sanitation

The right to water and sanitation is implicitly included in a range of international human rights treaties. The Convention on the Elimination of All Forms of Discrimination against Women, for example, obliges States parties in article 14 (2) (h) on the specific needs of rural women to ensure "the right to enjoy adequate living conditions, particularly in relation to housing, **sanitation**, electricity and **water supply**, ...". The Convention on the Rights of the Child ("CRC") requires States parties in art. 24 (2) (e) to ensure that all segments of society "are informed, have access to education and are supported in the use of basic knowledge of ... **hygiene and environmental sanitation**." The right to an adequate standard of living recognized under article 11(1) of the the International Covenant on Economic, Social and Cultural Rights (ICESCR) includes the right to water and sanitation. Virtually all States that have ratified the ICESCR have stated twice that the right to an adequate standard of living implicitly includes water and sanitation (COHRE, 2008)<sup>i</sup>.

The most detailed definition of the content of the right to water came in 2002 from an expert body (CESCR) assessing the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) a treaty only recognizing "implicitly" the right to water. This definition is detailed in General Comment number15 (hereafter GC 15), in which the Committee asserts: " The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements. Following the publication of GC

15, several States agreed and formally acknowledged the right to water to be part of their treaty obligations under the ICESCR (cf. e.g. in Europe: Germany-United Kingdom and Netherland).

On September 30, 2010, the U.N. Human Rights Council affirmed the existence of the human rights to safe drinking water and sanitation under international law. In Resolution 15/9, it affirmed that the human rights to water and sanitation derived from the right to an adequate standard of living and was inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity. This Human Rights Council declaration followed General Assembly Resolution 64/292 of

July 28, 2010, in which the Assembly adopted a historic resolution recognizing access to clean water and sanitation as a human right by a vote of 122 in favor, none against, and 41 abstentions. Prior to this resolution, the strongest international legal justification for the human right to water came from the 2002 General Comment No. 15. In Comment 15, the Committee on Economic Social and Cultural Rights determined that a human right to water existed under the International Covenant on Economic, Social and Cultural Rights. The July 28th, 2010, GA Res. 64/292 followed by the September 30th, 2010, Human Rights Council resolution A/HCR/15/L.14 combined to make the human right to water and sanitation legally-binding.

### **Box 1: The Scope of the Right to Water and Sanitation**

General Comment No. 15 and the Sub-Commission Guidelines, taken together, explain that the right to water and sanitation includes the following:

1. **Sufficient water:** Water supply for each person that is sufficient and continuous for personal and domestic uses, which normally include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.
2. **Clean water:** Safe water that, in particular, is free from hazardous substances that could endanger human health, and whose colour, odour and taste are acceptable to users.
3. **Accessible water and sanitation:** Water and sanitation services and facilities that are accessible within, or in the immediate vicinity, of each household, educational institution and workplace, and which are in a secure location and address the needs of different groups, in particular threats to the physical security of women collecting water.
4. **Affordable water and sanitation:** Both the direct and indirect costs of securing water and sanitation should not reduce any person's capacity to acquire other essential goods and services, including food, housing, health services and education. Source: (COHRE, 2008)

A number of countries around the world have begun to recognize that a right to water exists under their national constitutions. It is clearer now that governments are required by international law to ensure that everyone can enjoy this right. The Council's resolution helps those denied the right to water and sanitation to hold governments to account. The right to water 'entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.' The Right to

sanitation entitles everyone to an improved and safe, decent and affordable source of sanitation. Eight countries specifically recognise the right to sanitation in their Constitution, national legislation or in their sanitation policies. These are Uruguay, South Africa, Honduras, Bolivia, Algeria, Bangladesh, Kenya and Sri Lanka. The laws of many countries include specific government obligations to ensure sanitation and hygiene. Examples include

Colombia, Ecuador, Iran, Madagascar, Mauritania, Mozambique, Indonesia, Armenia and Ukraine. The Supreme Courts of India and Bangladesh have held that access to sanitation is part of the right to life.

### **Box 2: A Community's Right to Water Respected**

The Botswana Appeal Court in 2011, quashed a 2010 ruling that denied 650 Bushmen access to water on their ancestral lands in the Kalahari Game Reserve. The court upheld an appeal led by lawyers of the Bushmen and found in their favour on every point, and decided that the Bushmen have the right to use the borehole inside the Kalahari Game reserve. The courts in Botswana had previously ruled against the Bushmen, but that was before the July 28th 2010 vote and before the Human Rights Council resolution which followed on September 30, 2010. This latest ruling affirmed the obligations that member states bear under their international treaty obligations - even those who abstained in the final vote, as Botswana did. A very interesting point about this case is that it seems to focus on a community getting access to water as a human right, as against the traditional focus human rights as individual rights.

## **3. IMPLEMENTING THE RIGHT TO WATER AND SANITATION IN GHANA – KEY ISSUES**

### **3.1 The Ghana situation**

Ghana faces serious constraints to meeting the challenge of providing adequate water for all rural and urban residents. These include the dire and worsening financial condition of the urban utility – the Ghana Water Company Limited (GWCL), insufficient sector investment over the last fifteen years, weak implementation capacity caused by staffing problems and low salary levels.

Approximately 59% of the total population has access to improved water supplies in Ghana as at 2008, and 13% have access to improved sanitation. Latrines which are not connected to sewerage systems account for all improved access to sanitation in rural areas and small towns and are the most common sanitation facility used in large towns and urban centres. 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.

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 constructed between 1994-2004. An estimated 93,000 latrines need to be constructed per year to meet MDG targets.

The ultimate national goal should be to have a flush toilet in every residential premise in the urban areas and a latrine plus a hand washing facility in every household in the rural areas. This can only happen if there is adequate supply of water for household use secured through continuous investment in water and sanitation infrastructure.

Analysis indicate that if the desired coverage levels are to be achieved over time, then about US\$100million per year has to be invested in infrastructural development in the sector. However average inflows over the past several years amount to just about 35% of desired inflows needed to achieve Ghana MDG target of 76% by 2015.

### **3.2 The policy framework**

The National Water Policy explicitly recognizes Water and Sanitation as a Right. The National Environmental Sanitation Policy (NESAP) however, is not explicit about Sanitation being a Right. The Government of Ghana and its Development Partners (DP's) have acknowledged that access to water and sanitation should be treated as a right, with the understanding that right to water does not mean free services. The decision was agreed at a Ministerial and Development Partners Roundtable, during the first Ghana Water Forum held in Accra from 20-22 October 2009. The decision by Ghana and its Development Partners to recognize the right to water and sanitation echoes the same commitment captured in the 2007 water policy document. An explicit provision for Sanitation as a Right should be incorporated in the National Sanitation Policy in line with this acceptance.

### **3.3 Legal Framework - The National Constitution**

The 1992 constitution of the Republic of Ghana does not explicitly provide for the right to water and sanitation. However in chapter five (5) of the constitution-FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS-there are clauses that suggest that water as a basic life support cannot be treated less than a right. For example, in 13 (1) of chapter 5, it is stated that "no person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court..." There cannot be life without water. It goes without saying that any person who is deprived intentionally of his access to water is essentially being deprived of his life and by virtue of section 13(1) that will be unconstitutional. In addition, the constitution 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 living a life in human dignity.

In the light of the above constitutional provisions, in situations where demand driven policies deprive poor citizens of their right to water and sanitation, a violation of the constitution could be said to have occurred. The afore- mentioned provisions cannot in any way substitute for an explicit provision enshrining the right to water and sanitation in our constitution. The WASH sector should take advantage of the ongoing constitutional review process to push for explicit incorporation of the Right to Water and Sanitation in the Constitution.

Providing for this Right can help generate the political will required to make the necessary reforms to policies, to raise resources, to utilize such resources in a manner that focuses on the fundamental needs and aspirations of the citizens to live lives of dignity. Other legal provisions for the smooth implementation of the Right to water and sanitation include:

- ✚ The new Republican constitution should explicitly recognize Water and Sanitation as human rights.
- ✚ The National Council on Civic Education (NCCE) and CSOs should intensify public education on the new constitution
- ✚ Sanitation courts should be established in all districts to enforce issues on sanitation., as being pursued by the Accra Metropolitan Authority.
- ✚ The enforcement of WASH bye-laws by local authorities should be strengthened
- ✚ Reconstitution of Sanitary Inspectors to ensure cleanliness in households.
- ✚ Sanctions should be punitive enough to be deterring
- ✚ Outmoded laws should be revised.

#### **4. Bottlenecks to Implementation of the Right to Water and Sanitation in Ghana**

##### **Financing Gap**

On the average, Ghana is investing only 35% of the resources required annually to meet the Water and Sanitation MDGs targets. Development Partners have contributed a greater portion of these inflows.

##### **Some Misconceptions Concerning The Right To Water And Sanitation**

The following misconceptions on the part of people in authority tend to undermine the official adoption and implementation of the Right to water. Unless these misconceptions are addressed, adopting the Right to Water and Sanitation officially in Ghana would be a challenge. They are:

1. The Right to Water and Sanitation means, services should be provided for free, and this is not sustainable.

2. Government does not have the financial means to fulfill the Right to Water and Sanitation, so why recognize it?
3. Government will open itself to litigation in court if Water and Sanitation are recognized as rights

#### **5. What does the right to water and sanitation mean to the ordinary Ghanaian?**

- It means to get clean water to drink and use as well as a decent place of convenience
- To get uninterrupted water supply and access to sanitation facilities
- One should not be denied potable water and sanitation facilities when needed.
- To be able to afford water and sanitation facilities provided by service providers and government irrespective of one's economic status.
- The government of the day should be able to provide one with water and sanitation needs.
- The right policies and legislation should be enacted to make water and sanitation facilities available.
- One should not queue for water or to use a toilet facility.
- Governments must ensure that landlords make provision for water and toilet facilities in households before renting them out.
- Government and city authorities should ensure that they provide water and toilet facilities in all public places including schools.
- Effective monitoring and maintenance to ensure sustainability.
- No politicisation of WASH issues E.g Seizure of toilet facilities by "foot soldiers" of political parties of the government in power.
- Provision of WASH facilities should not be seen as a favour but an inalienable right

#### **6. What difference does the Right to Water and Sanitation Make for the WASH sector?**

The right to water and sanitation underlines that access to these basic services is a legal entitlement, not charity, and provides a basis for individuals, civil society and the judiciary to hold governments to account. National and local governments must give priority to achieving basic access for all and use resources sustainably. In particular:

- It gives sector players opportunity to advocate for improved WASH services for ordinary citizens.
- It holds the Agencies responsible for the provision of water and sanitation services accountable and keeps them on their toes.

- It puts pressure on government and its agencies to come up with the right policies and legislation on water and sanitation issues.
- Reduction of the country's disease burden if all have equal access to facilities.
- It would lead to improved productivity.
- It restores human dignity.
- It brings about sanity in the WASH sector
- Improved accountability
- Priority for basic access to water and sanitation services
- Prevent discrimination and neglect of vulnerable and marginalized communities
- Participation and access to information
- Individual and community empowerment
- It enhances citizen participation in WASH issues

## **7. Requirements to ensure that citizens are able to access the Right to Water and Sanitation**

- Education and sensitization of the general public about the right.
- Create awareness for the people to know their responsibilities as they demand their rights
- Strong Advocacy by CSOs.
- A vibrant media to champion WASH issues.
- Increased budgetary allocation.
- People having the opportunity to access information on WASH issues
- Formation of pressure groups to push for improvement in the WASH sector at all levels.
- Legislation and policies on WASH rights.
- Strict enforcement of by-laws by local authorities.
- Increased government contribution to the provision of water and sanitation to citizens
- The need to commit service providers to deliver accordingly
- Create awareness for the citizenry to demand accountability
- Increase water governance
- Enable poor and marginalized people and communities to be targeted
- Create awareness on the need to protect the water resources
- Commitment by users to principles of maintenance and sustenance of facilities
- Need to enhance management capacity of the people.

## **8. What could possibly constitute a breach of citizens' rights to water and sanitation in Ghana?**

- Denial of access to WASH facilities by the government and agencies.



- Inability for citizens to afford use of facilities in terms of cost.
- Lack of access to facilities in terms of proximity.
- Non-prioritisation of resources to water.
- Not bringing the right agencies on board eg. GWCL bringing AVRIL to Ghana and many people not having access to water.
- Overlapping responsibilities of multiple agencies in the WASH sector.
- Government's failure to adhere to international treaties and conventions that have been ratified eg. UN General Council Resolution on Human Rights and access to water and sanitation 2008 – 2010 which calls on governments to provide financial resources, capacity building and technology transfer through international assistance and cooperation in particular to developing countries in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.
- Government's inability to make available maximum WASH resources to every community and individual as enshrined in the human rights constitution.
- The exclusion of poor and unpopular minorities like women, children, nomads and people living with disabilities in decision making in consideration of their needs.

## **9. Measures to Minimise these abuses.**

- Adequate funding needed for the provision of WASH facilities.
- Government and public Agencies must recognise inaccessibility of WASH facilities as human rights violations.
- Government must implement fully, conventions and treaties that they have ratified.
- Government should be compelled to push for strong legislations that would streamline the WASH sector.
- The needs of the vulnerable and marginalised should be considered in the human rights and WASH education.
- Individuals should also be educated on conventions so they can hold government to them (Is the NCCE performing its role in this direction?).
- Citizens should not impede government's role to provide WASH facilities, eg illegal connections, stealing of pipes and meters, use of illegal suction pumps to by some urban residents to divert water away from others, etc

## 10. How can citizens mobilise around the right to water and sanitation to assert their entitlements?

- ❖ Citizens should contact their Local Government Authorities to apply for Water and Sanitation services.
- ❖ NGOS can help to build the capacity of community members on how to approach the District Assemblies
- ❖ If the requests cannot be fulfilled immediately, community members can dialogue with duty bearers on an agreeable plan to make water and sanitation facilities available to them;
- ❖ If the dialogue fails, they can then resort to the media, who would then channel their grievances to the duty bearers;
- ❖ When that also fails they can go to the courts to address their problems.
- ❖ If the request is being fulfilled, cash contribution should not be the only deciding factor in the provision of water and sanitation facilities as this might be a barrier. Other methods of paying for facilities such as community labour can be provided.
- ❖ Sanitation and water facilities must be made affordable to all – not everyone must pay at the same price – varying sources of potable water like boreholes can be considered other than pipe borne water.

## 11. What systems of support should be in place to help communities engage effectively with duty bearers on the right to water and sanitation?

- ❖ The Right to Water and Sanitation must be enshrined in the constitution
- ❖ A system of capacity building should be in place to empower people to access their rights.
- ❖ Support communities to organise civic coalitions to unite their efforts
- ❖ Access to legal aid should be made available to communities, eg by linking them to organisations like Centre for Public Interest Law.
- ❖ Capacity building by NGOs
- ❖ Information package on citizens engagement should be produced and distributed to communities
- ❖ CSOs should facilitate meetings between communities and District Assemblies
- ❖ The Justice System should be friendly to the poor.

## **12. The important processes and activities that should be undertaken to successfully mobilise key stakeholders towards the successful implementation of the rights to water and sanitation.**

Stakeholders identified were, government, the judiciary, ministries and agencies, parliament, NGOs, traditional leaders, Faith-Based Organisations, the media, educational institutions and community groups.

Processes to be undertaken are:

- Need to prepare a checklist of all treaties relating to the right to water and sanitation, and ensure that Government signs them
- Need for additional legislation on the right to water and sanitation, following official recognition in the constitution;
- National stakeholders forum should be organised to enable better understanding citizens' rights and responsibilities related to water and sanitation;
- Need for community sensitisation, media discussions, workshops, dialogues;
- Citizens may resort to Law courts to seek redress on infringement of constitutional provisions and legislation;

## **13. General Recommendations:**

1. Government should explicitly include in the constitution the right to water and sanitation into the national constitution to give it a greater recognition and urgency.
2. Government should develop a policy framework to guide the implementation of the Right to Water and Sanitation.
3. Government should create the enabling environment by providing incentives to attract private sector investments in the treatments of surface water and pumping through the GWCL/AVRL network during times the lines are free to increase access to water on regular basis at minimal cost.
4. Promotion of small water systems to ease the pressure on the main networks.
5. Government should institutionalize with commitment a sustainable water and sanitation trust fund similar to the GETFund, NHIS and that of the Talk tax in support of water and sanitation service delivery.
6. Government should increase and commit more funding to the water and sanitation sector as a matter of urgency to increase water and sanitation delivery to mitigate the suffering of needy communities as a result of inadequate access to the life giving resource.
7. CSOs need to assist in following;
  - Mobilizing and sensitizing communities on their right and responsibilities

- Supporting sector efforts to realize the Right to Water and Sanitation
  - Support government in doing poverty profiling and advocacy for pro-poor approach to service delivery.
  - Proper dissemination of information to all categories of stakeholders
8. Private Sector should support in providing funds for water and sanitation programmes as well as support in capacity building.
  9. Individuals and communities in demanding for their rights for services, have to be equally mindful of their roles and obligations.
  10. Industrial and agricultural water users must make conscious efforts to use and dispose of chemical with much emphasis on proper treatment of waste and effluence before disposal/discharge.

## **14. ROLES AND RESPONSIBILITIES OF STAKEHOLDERS**

### **1. GOVERNMENT**

On the role the government, the participants came out with the following recommendations for action.

- Development of policy framework to guide the implementation of the right to water and sanitation and create the needed enabling environment to facilitate the implementation of water and sanitation programmes.
- Facilitating investments for the sector
- Promoting of research and development, which should include planning
- Government should lead the way in the provision of the needed infrastructure for sustainable water and sanitation delivery.
- Government should provide the incentives to make investments in the sector attractive. Local Government Ministry should support assemblies and ensure that bye-laws are implemented;
- Ministry of Water Resources, Works and Housing must form and coordinate policies and programmes for the systematic development of the country's infrastructure requirements;
- Water Resources Commission should regulate and manage Ghana's water resources and coordinate government's policies in relation to them;
- CWSA must provide rural water services;
- Ghana Water Company should improve provision of urban water services;
- Government should invest more in the water and sanitation sector;

### **2. JUDICIARY**

- Judiciary to ensure rights of citizens are not abused;

- Judiciary should establish courts to ensure fairness and equity in the water and sanitation sector

### 3. PARLIAMENT

- Parliament to ensure passage of bills into laws;

### 4. CIVIL SOCIETY ORGANISATIONS

Participants proposed the following as roles of CSOs;

- Holding government accountable
- Mobilizing and sensitizing communities on their rights and responsibilities
- Tracking investments in the sector,
- Provision of facilities/service delivery
- Supporting sector efforts to realize the Right to Water and Sanitation
- Being accountable to the society and their constituents
- Support government in doing poverty profiling and advocacy for pro-poor approach to service delivery.
- Harmonization of efforts of civil society

### 5. PRIVATE SECTOR

For the private sector, participants proposed two key roles as follows;

- Providing funds for water and sanitation programmes
- Supporting in capacity building activities.

### 6. DEVELOPMENT PARTNERS

Participants also proposed two key roles as follows;

- Providing funding and,
- Supporting in capacity building activities.

### 7. INDIVIDUALS AND COMMUNITIES

For individuals and communities, two key roles were also outlined as follows;

- Supporting in the operations and maintenance of the facilities on sustainable basis and,
- Demanding for their rights for services responsibly by also being mindful of their roles and obligations.

### 8. INDUSTRIAL AND AGRICULTURAL WATER USERS

For the above category, participant identified the need for proper usage and disposal chemicals with much emphasis proper treatment of waste and effluence before disposal/discharge.

## 9. INDEPENDENT PUBLIC MONITORING BODIES

On the above category, participants proposed the following roles;

- Non ambiguity in their tariffs settings (with emphasis on equity and proper considerations).
- To have proper pilot interventions
- To ensure proper usage of water resources

## 10. MEDIA

On the media, participant proposed a proper dissemination of information to all categories of stakeholders.

## 11. International CSOs

Strong advocacy and reinforcement of on going Right to Water and Sanitation issues at the National level

## 15. Communication Plan

STAKEHOLDERS	ACTIVITY	OUTCOME	RESPONSIBILITY
<ul style="list-style-type: none"> <li>• GWCL</li> <li>• MLGRD</li> <li>• MWRWH</li> <li>• WRC</li> <li>• CWSA</li> <li>• EHSD</li> <li>• MMDAs</li> <li>• Citizens</li> <li>• Media</li> </ul>	<ul style="list-style-type: none"> <li>• Round Table</li> <li>• I,E,&amp;C Materials – posters,</li> <li>• Brochures/Leaflets/fliers</li> <li>• Sensitizations Workshop</li> <li>• Public Fora</li> <li>• Community Durbars</li> <li>• Community Sensitisation</li> <li>• Communiqués</li> <li>• Publications-articles, press releases</li> <li>• Interviews /talk shows</li> <li>• Peace walk</li> <li>• Writing letters and petitions</li> <li>• Accountability fora</li> <li>• Community score cards</li> </ul>	<ul style="list-style-type: none"> <li>• Sensitised citizens</li> <li>• Changes in behavioral patterns</li> <li>• Media informed to hold government and other agencies accountable</li> <li>• People will have access to WASH facilities</li> </ul>	<ul style="list-style-type: none"> <li>• NCCE</li> <li>• I/NGOs - Water aid</li> <li>• CSO - CONIWAS, GWJN</li> <li>• MDAs</li> <li>• Media</li> <li>• Entertainment industry-Musiga, film industry, WASH Champions – Tic Tac, Grace Ashie</li> <li>• Community Leaders/opinion leaders/Traditional leaders</li> <li>• CBO</li> <li>• Stakeholders</li> </ul>

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<sup>i</sup> COHRE, 2008; The Human Right to Water and Sanitation: Legal basis, Practical Rationale and Definition