

ARTICLE 19

# Cleaning Muddy Waters: Using Freedom of Expression to Claim the Rights to Water and Sanitation

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Policy Brief



# Executive summary

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In this Background report, ARTICLE 19 examines the main issues and concerns that need to be addressed by states and decision makers to allow people to use the right to freedom of expression for claiming their rights to water and sanitation (*hereafter* rights to water and sanitation). It is based on the premise that the right to freedom of expression – the right to seek, receive and impart information and ideas of all kinds without borders - is necessary for the full and effective realisation of these rights.

The paper starts by outlining the applicable international standards on the rights to water and sanitation and the right to freedom of expression and freedom of information (*hereafter* the right to freedom of expression) and demonstrating the links between the rights.

Subsequently, the paper provides an overview of numerous challenges to, and violations of, the right freedom of expression when pursuing the rights to water and sanitation, using numerous examples to illustrate the problems. These challenges are grouped into the three elements of freedom of expression: the right to know, right to speak and the right to be heard. The problems identified in the paper include:

## The right to know

- Limited number of freedom to information laws: Despite a global trend towards adoption of right to information laws, many states still lack dedicated right to information laws, preventing people from access to important information related to their rights to water and sanitation;
- Inadequate freedom of information laws: Even in states which do have such laws, there are further challenges to using the right to information to realise the rights to water and sanitation as many laws are weak and lacking in the necessary detail to effectively guarantee the right;
- Failing to meet obligations under the law: Public authorities are using state secrets or trade secrets legislation or exceptions to avoid disclosing important water and sanitation related information
- Culture of secrecy and structural obstacles (such as poor standards of record-keeping and a lack of reliable, accurate and accessible information on water and sanitation related issues) allow public authorities and other entities to avoid their obligations under information laws;
- Corruption and lack of transparency in the water and sanitation sectors, particularly in regard to the privatisation of water services and hydropower projects, create significant challenges in access to information related to the rights to water and sanitation.

## The right to speak

- Censorship: several cases of censorship of the media when reporting on water and sanitation related issues have been identified.
- Media and rights to water and sanitation: There is evidence of a lack of appreciation for the important role that can be played by the media in realising the rights to water and sanitation and improvement is needed in the capacity of the media to report on such issues.
- Digital technologies can be used effectively to help secure the rights to water and sanitation, however there is currently limited use of this option, due to a range of factors, such as inadequate technical infrastructure, limited capacity of services and high costs of communications equipment.

## The right to be heard

- Attacks and impunity: The report highlights examples of attacks on journalists, human rights defenders and activists investigating water and sanitation related issues as well as attacks on people demanding these rights through peaceful protests. Water-related protests and state censorship of water and sanitation related reporting can also be a problem.
- Public participation in related decision making: The report shows states fail to understand that democracy requires public involvement in decisions affecting them, including those related to water and sanitation. For example, the report provides examples of an absence of public consultations in regards to hydropower projects or only limited and flawed consultations. Common flaws in consultation processes include the exclusion of large proportions of affected groups and communities and limited or no consultation with marginalised, vulnerable and discriminated against groups.

This report is intended to serve as an evidence for the need of development specific recommendations in this area. After the discussion of the report and the draft recommendations, ARTICLE 19 developed [Free Flow Principles on Freedom of Expression and Rights to Water and Sanitation](#) that address the recommendations in great detail.

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# Introduction

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According to World Health Organization, 2.5 billion people, one in three of the world's population, do not have access to adequate sanitation.

<sup>1</sup> This leads to a significant global burden of water-borne diseases<sup>2</sup> and is the third highest cause of death in the developing world (after malnutrition and unsafe sex/HIV/AIDS related deaths).<sup>3</sup>

Lack of safe drinking water leads to numerous other **human rights violations**, in particular violations of the rights of women, children, indigenous people, refugees and other vulnerable groups. For example, many women must walk long distances to collect water and this negatively affects their right to family life or right to work. In some contexts, they face safety and security risks and are vulnerable to sexual assault if no secure sanitation facilities are available for their use. Many children, especially girls, also spend their days collecting water from distant sources rather than going to school, which infringes on their right to education. Individuals or groups demanding respect and protection of their rights to water and sanitation, protesting against the award of a contract, or raising concerns over inadequate water supplies by state or private providers are often prevented from peaceful protests by the authorities or security forces.

Beyond meeting basic needs, various types of **industry**, especially extractive industries, depend on water, so a country's access to water affects development. Internal and Interstate rivalries over water may fuel **conflict and violence**. For example, in Kenya, water related conflicts led to internal tribal conflicts and displacement in the Kano plains, the Tana River district and in the arid and semi arid lands of North Rift Valley, North Eastern, Upper Eastern and Coast provinces.<sup>4</sup> Water disputes have previously contributed to wars, such as the Arab-Israeli War of 1967.<sup>5</sup> It is expected that in the future, the combination of limited global supplies of water, population growth, and increasing water demands from urbanization and industrialization may create or further exacerbate conflicts, especially in regions where political relationships are already fragile or where states have already demonstrated willingness to engage in military conflict over water (e.g. in the Euphrates and Tigris rivers conflict between Turkey, Syria and Iraq; the Jordan River conflict between Israel, Lebanon, Jordan and Palestine; the Nile river related conflict between Egypt, Ethiopia and Sudan; and the Aral Sea conflict between Kazakhstan, Uzbekistan, Turkmenistan, Tajikistan and Kyrgyzstan). Further challenges are also presented by the increasing trend of **privatization** of water services and commoditisation of water. Disagreements over the privatization of water have led to violent protests in several countries.<sup>6</sup>

The rights to water and sanitation are not yet enshrined in a binding treaty. However, several international treaties contain explicit reference to safe drinking water and sanitation. In 2010, two UN Resolutions affirmed that the human right to water is legally binding.<sup>7</sup> However, whilst the right to water has been recognised, significant work is required to ensure its implementation at international, regional and national levels.

The right to water agenda is broader than protection of human rights to water and sanitation. Different functions and approaches to water are typically divided into three complementary levels:<sup>8</sup>

- The **Water for life** approach is based on the basic function of water - providing survival for humans and other beings. This aspect must be recognised as a top priority.
- **Water for citizens** (also water for general interest purposes) concerns the functions of water in preserving public health, social cohesion, and equity.

- **Water for development** (also water for economic growth) refers to the function of legitimate water-based economic activities driven by private interest (e.g. production activities that concern private interests like irrigation, hydroelectricity, industry etc).

ARTICLE 19 believes that freedom of expression– a fundamental human right - is central to a successful implementation of government obligations regarding the rights to water and sanitation and ensuring protection of all free aspect of water functions. The right to freedom of expression lies at the heart of human rights and democratic principles. Good governance and democracy are largely dependent on the growth of an informed citizenry holding their leaders to account, demanding access to essential services and participation in decision-making affecting their lives, including those related to the protection and realisation of the rights to water and sanitation

However, measures to protect and enhance freedom of expression and freedom of the media, implement legislation, ensure effective access to water and sanitation related information, public participation and public debates have not yet been fully appreciated and implemented in the water and sanitation agenda. ARTICLE 19 intends to fill in this gap – both through suggesting a necessary legal and policy framework and through our specific project work in regions where we have a direct presence.



# Applicable international standards

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This section examines the international standards on the rights to water and sanitation and the right to freedom of expression. It emphasises the role freedom of expression plays in the normative interpretation and full realisation of the rights to water and sanitation.

## Rights to water and sanitation

In its General Comment No. 15, the UN Committee on Economic, Social and Cultural Rights declared that the right to water can be derived from an extensive interpretation of Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR):<sup>9</sup>

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.<sup>10</sup>

The legal basis of the right to water were expanded upon by the 2006 Guidelines for the Realization of the Right to Drinking Water Supply and Sanitation, developed by the UN Sub-Commission on the Promotion and Protection of Human Rights.<sup>11</sup>

Although the right to water is not yet enshrined in a binding treaty, it has been recognized in the UN resolutions and other documents, such as:<sup>12</sup>

- The 2000 UN General Assembly **Resolution 54/175**, The right to development;
- The 2010 UN General Assembly **Resolution 64/292**, The human right to water and sanitation;<sup>13</sup>
- The 2010 UN Human Rights Council **Resolution 15/9**, Human rights and access to safe drinking water and sanitation,<sup>14</sup> which affirmed that the right to water is part of existing international law and therefore legally binding upon States.

Several international treaties also contain explicit reference to safe drinking water and sanitation, including:

- The 1972 **UN Convention on the Elimination of All Forms of Discrimination against Women**;<sup>15</sup>
- The 1989 **UN Convention on the Rights of the Child**;<sup>16</sup>
- The 2006 **UN Convention on the Rights of Persons with Disabilities**;<sup>17</sup>
- The 1985 **ILO Occupational Health Services Convention**;<sup>18</sup> and
- Several regional human rights treaties and declarations.<sup>19</sup>

Also, more than 100 countries have the right to a clean and healthy environment in their constitution, including nearly all constitutions adopted since 1992. Many countries have explicitly recognised the right to water in their national legislation in the last decade, including Uruguay (2004), Algeria (2005), Indonesia (2005), Mauritania (2005), Democratic Republic of Congo (2006), Kenya (2007) and Nicaragua (2007).

Some companies and business groups also acknowledge the importance of right to water and several initiatives and tools have been developed to improve the water use of business operations..<sup>20</sup>

## Right to freedom of expression

The right to freedom of expression is guaranteed in Article 19 of the Universal Declaration on Human Rights (UDHR)<sup>21</sup> and in Article 19 of the International Covenant on Civil and Political Rights (ICCPR);<sup>22</sup> as well as in other international and regional human rights instruments.<sup>23</sup>

The guarantee of freedom of expression applies with particular force to the media. As the UN Human Rights Committee has stressed, a free media is essential to the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.<sup>24</sup>

Article 19 ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.<sup>25</sup> States are required to take into account the extent to which developments in information technology, such as Internet and mobile based electronic information dissemination systems, have dramatically changed communication practices around the world.<sup>26</sup> The legal framework regulating the mass media should take into account the differences between the print and broadcast media and the Internet and their convergence.<sup>27</sup>

### ***Restrictions on the right to freedom of expression***

The right to freedom of expression is not absolute. International and regional human rights law, as well as most national constitutions, recognise that it may be restricted under certain circumstances. Nonetheless, any limitations must remain within strictly defined parameters (the three-part test):<sup>28</sup>

- First, the interference must be provided for by law: this condition requires that the law is accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct;”<sup>29</sup>
- Second, the interference must pursue a legitimate aim, provided in Article 19(3) of the ICCPR – namely the protection of the rights or reputations of others, protection of national security or of public order (*ordre public*), or of public health or morals. This list is exhaustive and no other aims are considered to be legitimate grounds for restricting freedom of expression;
- Third, the restriction must be *necessary* to secure one of those aims. This means that there must be a “pressing social need” for the restriction, the reasons given by the State to justify the restriction must be “relevant and sufficient” and the restriction must be proportionate to the aim pursued.<sup>30</sup>

## Right to freedom of information

The right to information is part of the broader fundamental right to freedom of expression, which includes the right to seek, receive and impart information.<sup>31</sup>

The specific meaning and content of freedom of information is laid out in a number of authoritative sources.<sup>32</sup> ARTICLE 19 has also published a standard-setting document on the subject, including *The Public’s Right to Know: Principles on Freedom of Information Legislation*<sup>33</sup>

which encapsulates international best practices in this area. The Principles elaborate on nine crucial elements of the right to information:

1. **Maximum disclosure:** Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; “information” includes all records held by a public body, regardless of the form in which it is stored;
2. **Obligation to publish:** Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public;
3. **Promotion of open government:** At a minimum, the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information; the law should also provide for a number of mechanisms to address the problem of a culture of secrecy within Government;
4. **Limited scope of exceptions:** A refusal to disclose information may not be based on the aim to protect governments from embarrassment or the exposure of wrongdoing; a complete list of the legitimate aims which may justify non-disclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest;
5. **Processes to facilitate access:** All public bodies should be required to establish open, accessible internal systems for ensuring the public’s right to receive information; the law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal(s);
6. **Costs:** The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself;
7. **Open meetings:** The law should establish a presumption that all meetings of governing bodies are open to the public;
8. **Precedence of disclosure:** The law should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions; the regime for exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it;
9. **Protection of whistle-blowers:** Individuals should be protected from any legal, administrative or employment-related sanctions for releasing information on wrongdoing, viz. the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious failures in the administration of a public body.

The public bodies should also disseminate, proactively without waiting for a request, information of key public interest (pro-active disclosure). This presupposes an obligation on governments and public bodies to create, compile or collect information in certain contexts. The principle is not a merely formal requirement: public bodies should be aware of the aim of the principle and should fulfil this obligation through assessment of what kind of information is needed and in which format; the language used when collecting and compiling information should not be overly technical. Moreover, building a system of pro-active disclosure should be an exercise that involves civil society and civil servants, all trying to meaningfully provide information that can be read, reviewed and used by citizens.

The obligation to provide information to the public should apply to all public bodies and authorities, owned or controlled by government (at local, municipal and state level ), as well as other organizations which operate with public funds or which perform public functions.<sup>34</sup> Also, in several countries, state-owned or subsidies companies are subject to right to information laws.<sup>35</sup>

### ***Restrictions on the right to freedom of information***

As noted above, under Article 19 para 3 of the ICCPR, the right to freedom of information can be restricted only under limited circumstances. Information holders must disclose any information which they hold and are asked for, unless:<sup>36</sup>

- The information concerns a **legitimate, protected interest** listed in the law: Freedom of information laws must contain an exhaustive list of all legitimate interests on which a refusal of disclosure can be based. This list should be limited to matters such as law enforcement, the protection of personal information, national security, certain commercial interests, public or individual safety and protecting the effectiveness and integrity of government decision-making processes. Exceptions should be narrowly drawn to avoid capturing information, the disclosure of which would not harm a legitimate interest. Furthermore, exceptions should be based on content, rather than on the type of document sought. In addition, exceptions should, where relevant, be time-limited. For example, the justification for classifying information on the basis of national security may well disappear after a specific national security threat subsides.
- Disclosure threatens **substantial harm** to that interest: Once it has been established that the information falls within the scope of a listed legitimate aim, it must be established that disclosure of the information would cause substantial harm to that legitimate aim. Therefore this part of the test holds that simply because the information falls within the scope of a listed legitimate interest, does not mean non-disclosure is justified. Otherwise a class exception would be created that would seriously undermine the free flow of information to the public. Instead, the public body must demonstrate that the disclosure of the information would cause substantial harm to the protected interest.
- **The harm outweighs public's interest benefit in disclosure:** This part of the test requires the information holder to consider whether, even if disclosure of information would cause serious harm to a protected interest, there is nevertheless a wider public interest in disclosure. For instance, in relation to national security, disclosure of information exposing instances of bribery and corrupt practices may undermine defence interests. However, the disclosure may lead to eradicating corruption and therefore strengthen national security in the long-term. In such cases, information should be disclosed notwithstanding that it may cause harm in the short term.

If applied properly, the three part test would rule out all blanket exclusions and class exceptions as well as any provisions whose real aim may be to protect the government from harassment or criticism, to prevent the exposure of wrongdoing, to avoid the concealment of information from the public or to preclude entrenching a particular ideology.

Law, policies and practices concerning access to information related to the rights to water and sanitation should follow these principles.

## **The relationship between freedom of expression and information and the rights to water and sanitation**

The international legal framework recognizes the importance of the right to freedom of expression and information to all aspects of the realization of the rights to water and sanitation. This link has been explicitly recognised in a number of international standards and documents:

- The **General Comment No. 15** of the Committee on Economic, Social and Cultural Rights, which stipulates that the right to water includes “the right to seek, receive and impart information concerning water issues.”<sup>37</sup> Furthermore, it states that a national water strategy “should be based on the principles of accountability, transparency and independence of the judiciary, since good governance is essential to the effective implementation of all human rights, including the realization of the right to water.”<sup>38</sup> It also requires that the following be instituted before a State or a third party excludes any person from water:
  - Opportunity for genuine consultation with those affected;
  - Timely and full disclosure of information on the proposed measures;
  - Reasonable notice of the proposed actions;
  - Legal recourse and remedies for those affected;
  - Legal assistance for obtaining legal remedies.<sup>39</sup>
- The **Resolution 64/292** called on states “to ensure full transparency of the planning and implementation process in the provision of safe drinking water and sanitation and the active, free and meaningful participation of the concerned local communities and relevant stakeholders.”<sup>40</sup>
- The **Aarhus Convention**<sup>41</sup> stipulates a number of rights that can be used when demanding water related information; such as
  - The right of everyone to receive environmental information that is held by public authorities.
  - The right to participate in environmental decision-making.
  - The right to review procedures to challenge decision making.
- The **UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation** has also acknowledged that the long-term realisation of the right to water demands freedom of expression and a culture of accountability, which can only flourish in a climate of good governance, strong democratic institutions and transparency.<sup>42</sup>
- A **Report of the High-Level Panel of Eminent Persons** on the Post-2015 Development Agenda calls for the post-2015 Millennium Development Goals (MDGs) to drive five big transformative shifts, including effective, open and accountable institutions for all and to recognise peace and good governance as core elements of wellbeing, not optional extras.<sup>43</sup>
- The **London Declaration for Transparency, the Free Flow of Information and Development** asserts the necessity of free flow of information, transparency and civic engagement for achieving the MDGs.<sup>44</sup>

Several international standards also specifically recognize **the right to participate** in the realisation of the rights to water and sanitation, emphasizing the importance of guaranteeing the rights of vulnerable and marginalised populations, such a women, indigenous people, or refugees.<sup>45</sup> This includes also the importance of consulting populations of other states affected by hydropower projects and trans-boundary water issues.<sup>46</sup>

# Freedom of expression and rights to water and sanitation: challenges and problems

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ARTICLE 19 has long argued that the right to freedom of expression is an empowerment right - one that enables other rights to be protected and exercised. As such, its main components - **the right to speak, the right to be heard and the right to know** - can play a crucial role in promoting, enforcing and demanding the full realization of the rights to water and sanitation.

This section provides an overview of key problems, violations and challenges<sup>47</sup> faced by individuals, communities, and society at large when exercising their right of freedom of expression in their pursuit of the rights water and sanitation.

## The right to know

ARTICLE 19's research reveals a broad range of problems that hamper access to information related to the rights to water and sanitation, in particular the following:

### ***Lack of comprehensive and effective legal framework on freedom of information***

There is an important global trend towards adoption of right to information laws: today, nearly 100 countries have adopted dedicated laws, granting individuals a general right to access information held by public bodies, and imposing an obligation on public bodies to proactively disclose key types of information<sup>48</sup> (as compared to 1990, when only 13 countries have such laws). As demonstrated below, many of these laws have been used by individuals and groups in their advocacy for the rights to water and sanitation.

Despite this global recognition, many countries facing serious challenges related to the rights to water and sanitation, especially those in developing world, have no dedicated freedom of information legislation giving practical effect to the right to freedom of information:<sup>49</sup>

- In **Africa**: only 10 countries (out of 55) adopted specific freedom of information legislation;<sup>50</sup> while two countries have executive regulations on the subject (Niger and Tunisia) and some countries having sectorial legislation which guarantees the right to freedom of information on specific subject (for example Kenya's law on internally displaced peoples<sup>51</sup>).
- In the **Americans and the Caribbean**, there are 21 countries (out of 55);<sup>52</sup>
- In **Asia and the Pacific**: only 17 countries (out of 45) adopted access to information laws;<sup>53</sup> and one country (China) with executive regulations.
- In the **Middle East**: only three countries (out of 14) adopted such legislation.<sup>54</sup>

Despite dedicated laws being on the books, many **legislative frameworks are extremely weak**. These weaknesses include limited scope of the access to information laws, unclear or complicated procedures for requesters, extensive list of exceptions to the right, lack of appeal proceeding in cases of refusal to provide the information, failure to guarantee sanctions for authorities failing in their obligations to provide information, lack of promotional measures, the lack of strong oversight bodies and failure to protect whistleblowers.<sup>55</sup>

Also, in some states, although legislation exists, requirements set by the laws **lack necessary detail** to guarantee the freedom of information they aim to protect. For example Cambodian law<sup>56</sup>



mandates that the Environmental Ministry provides information on its activities, including those related to water (such as environmental impact assessment), but does not give further details.

Weak legislative framework is then exploited by the authorities obligated to provide the information. For example, during construction on the Xiaonanhai Dam in China, activists relied on open government information laws to demand from the Ministry of Agriculture a release of an onsite investigation report and details of the boundary change of an endangered fish reserve. The Ministry refused to disclose this information on the grounds that this was procedural information not covered by the China's Regulations on Open Government Information.<sup>57</sup> In Zimbabwe, the Access to Information and Privacy Act has been used more to suppress information in the name of privacy than to make information available.

### States secrets legislation

In addition, many countries also maintain a variety of state **secrets legislation** which actively undermines information disclosure, including those related to water. For example:

- In **China**, information about the water resources of international rivers (including hydrology, water quality, sediment, water, international river conditions and circumstances of the national ecosystems) falls in the category of State Second Level secret issue; and real-time information about international rivers water levels and forecasting results, are State Third Secret-level matters. It has been documented that reliance on the state secrecy legislation have had an impact on communities affected by the Mekong Mainstream dams, who have been unable to obtain real-time knowledge of unseasonal river flows. This has already had devastating effects in Chiang Saen and Chiang Khong Districts, Thailand and these affects are likely to continue<sup>58</sup> In February 2013, a request to publish the findings of a national survey on soil pollution including groundwater contamination was rejected on the grounds of "state secrecy."<sup>59</sup> There are also several examples of the Chinese authorities covering up incidents of water pollution based on state secrecy laws.<sup>60</sup>
- Reliance on the state secrecy legislation in relation to environmental issues were also documented in **India and Pakistan**.<sup>61</sup>
- In the **USA**, a decision in January 2014 by the Court of Appeals for the District of Columbia said that information on dam failures, chemical spills and emergency plans related to such events come within the "law enforcement purposes" exception of the Freedom of Information Act because terrorists could use the information to plan an attack on a dam. Commentators have noted that this could mean residents are not given information on what actions they should take in an emergency.<sup>62</sup>

### Trade secrets

Exceptions on trade and commercial secrets have been also used to deny the right of access to information on water related issues. This includes, in particular, the controversial problem of hydraulic fracturing or "fracking."<sup>63</sup>

- In the **USA**, it has been documented that companies frequently refuse to disclose the identity of chemicals used in the fracking process. A 2011 report released by the Democrats of the Congressional Committee on Energy and Commerce revealed that 29 chemicals known to be used in fracking compounds can cause health problems. A study in 2012 found that only 14 states out of the 29 with fracking activity have disclosure laws and the regulations implementing these laws frequently exempt the disclosure of "trade secrets."<sup>64</sup>

- The Wyoming District Court ruled in April 2013 that the Wyoming Oil and Gas Conservation Commission did not have to disclose the chemicals used because they are considered a “trade secret.”<sup>65</sup>

### ***Failure of authorities and information holders to meet their obligations under the law***

Even in cases where the sufficient framework for freedom of information exists, relevant authorities often fail to meet their minimum obligations under respective legislation:

- **India** has had some very progressive legislation backed up by progressive court judgments, but these laws are often largely confined to the books and fail to be fully implemented, especially in land and environmental cases. For instance, several reports uncovered the failure of authorities to implement this law in the case of the Sardar Sarovar Dam on the Narmada River.<sup>66</sup> The construction of the dam has been mired in a long controversy for being environmentally unsound and for displacing thousands of villagers in a largely indigenous belt (starting with State acquisition of land from the villagers). The availability of information about this important project has been very limited. People affected have been provided with almost no information regarding the construction of the dam, the acquisition of their lands, their own displacement, and compensation or relief packages. The reports also found that the quality and quantity of information given to the villagers had varied from village to village: “some were ill-informed, others were misinformed; but no-one had been informed about the full extent of their rights.”<sup>67</sup>
- In the **USA**, the Safe Drinking Water Act of 1974 sets the maximum level of contaminants safe for drinking water. Under the Act customers must be notified of violations exceeding maximum levels. However in practice notification frequently did not take place. In 1993, it was reported that drinking water in Wisconsin was contaminated with cryptosporidium and 50 people died. In response the Act was amended in 1996 to require water suppliers to provide annual reports on contamination to customers. In 2004, a report showed the safety standards had been exceeded in 27 of 834 water systems servings over 50.000 people since 2000; however, the transparency requirements did not mandate consistent units of measurement and this made it difficult for consumers to use the information. A 2003 report by the National Resources Defense Council also found that some cities buried or did not include information about the health effects of contamination. Additionally under 50% of the reports were available in any language other than English.<sup>68</sup>
- An ARTICLE 19 project in the state of Pernambuco, north-east Brazil, worked with rural communities affected by drought to obtain information about specific water programmes in the state. The aim was to find out about how much money had been allocated to providing water and how it was being spent, including the number of water trucks in operation and to find out the results of water quality tests in the area. The project documented that public authorities and bodies constantly failed to provide information about their roles and responsibilities to rural communities covered by official water programmes. The authorities did not reply to demands for information and those requesting information were sent from one body to another in search of information. The project also verified that civil servants were completely unprepared to answer to the public and most of them had no knowledge of the Brazil Access to Information Law and did not know how to process an information request. They also failed to proactively provide information on water.<sup>69</sup>



### Culture of secrecy

Evidence also shows that refusals to provide access to information are sometimes the result of an intransigent mindset and culture of secrecy. In several developing countries, public officials often rely on and perpetuate this culture in order to engage in personal enrichment; and dedicated legislation without decisive political will is not able to bring about change. For example:

- An ARTICLE 19 report, citing a case study from **India**, documented that the requests for information are frequently met with hostility, apathy or both. This is often the case even where there is no conflict of interest or question of money, and the requester has a right to the information. Examples include people facing outright hostility and blunt refusals when asking for information, being questioned about their 'qualification' to ask for information or even threats.<sup>70</sup>
- In **Brazil**, ARTICLE 19 found that many local authorities actively failing to develop information on and promote water programmes in attempt to conceal federal resources.<sup>71</sup>

### ***Structural obstacles in implementation of freedom of information laws***

Implementation of the freedom of information laws is often lacking because of structural problems on the side of authorities and the failure to remove practical obstacles facing some segments of the population when they seek to rely upon these laws. Three problems should be highlighted.

#### Poor standard of record-keeping

Standard of record keeping, especially in developing countries, is extremely poor. An earlier ARTICLE 19's study found a typical picture of a government office was stacks of dusty files in cupboards, on shelves and on the floor, providing an easy excuse for refusing access to records on the grounds that they have been 'misplaced'. Although recently, digital technology and digitalisation of data is improving the flow of information, it is often inaccessible to disadvantaged communities or local personnel may not be properly trained to use technology to their intended effect, even when they are available.<sup>72</sup>

#### Challenges faced by poor, vulnerable and marginalized individuals and groups

Lack of access to water related information by poor, vulnerable and marginalized individuals and groups has been compounded by illiteracy (or low levels of literacy), reliance on official languages and the absence of effective communication methods. For example:

- ARTICLE 19 research in **Brazil** found several main challenges for vulnerable and marginalized communities in Pernambuco:
  - Many of the communities had no access to the internet and no money to send the information requests by mail or travel to the cities to present their demand;
  - Many did not know how to use the online resources, even if they had access to a computer connected to the internet - the number of places providing internet access in rural areas are very limited and there is a lack of programmes promoting digital inclusion
  - Many of the members of the community were illiterate and had problems articulating their demands in writing;
  - Many of the participants had very limited interaction with the state before and presented difficulties identifying the authorities and public bodies who could reply to their demands for information.<sup>73</sup>

- In **India**, a study showed that methods of communication used by authorities were formalistic, overly dependent on the written word and inappropriate for the large illiterate population. Traditional means of communication such as *munadi* (beating of drums) have not been sufficiently considered. There was also excessive reliance on English and legalise (laws, rules, notifications, orders and other official documents are drafted in an excessively legal style, which the common person cannot comprehend) instead of vernacular languages and. Even notices designed to inform the public were poorly worded, and were not appropriate to the target audience.<sup>74</sup>
- In case of the construction of Lower Sesan 2 Dam in **Cambodia**, reports showed that that there was no written information available in Khmer for local populations.<sup>75</sup>
- In **Kenya**, in 2012, an ARTICLE 19 report showed that structures and mechanisms to convey information to internally displaced people (IDPs) were lacking; and frequently, IDPs rely on informal and inconsistent channels of communication regarding important government programs and policies affecting them, including those related to the rights to water and sanitation. The lack of information also hampered the equitable distribution of humanitarian assistance.<sup>76</sup>

### ***Lack of reliable, accurate and accessible information on water related issues***

Many communities and individuals lack access to reliable, accurate and accessible information about a variety of water related-issues, including quality of water, public health, proposed laws or projects affecting water resources and threats to the environment.<sup>77</sup> This includes:

#### Information about quality of drinking water

Many communities and individuals are lacking access to reliable and accurate information about the quality of water, and issues related to public health and threats to environment.<sup>78</sup> For example:

- A pilot surveys carried out for The Access Initiative showed that the general public rarely has easy access to useful information about the quality of drinking and surface water. A lack of information means that individuals and communities can neither protect themselves from polluted water nor monitor the improvement of its quality.<sup>79</sup>
- ARTICLE 19's project in Pernambuco, **Brazil**, showed that lack of information was identified as one of the biggest problems in the community when it comes to water. The community suffered from unclean and unsafe drinking water. Also, a drought, which had meant that some areas had received no rainfall in over a year, had caused the death of livestock and cattle.<sup>80</sup>

#### Information about water supplies

Lack of information also concerns information about water supplies:

- An initiative to increase rural access to commercial water services in **Kenya's** Bondo District cited a lack of information as one of the primary obstacles to achieving this goal. In response, the initiative started working to educate communities on the rights to water and sanitation and setting up a telephone line for complaints and inquiries related to water issues.<sup>81</sup>

- An ARTILCE 19 project in Pernambuco, **Brazil**, showed that despite the 2011 Water for All programme in Brazil, some communities still receive only limited information about available water supplies.<sup>82</sup>

On a positive note, the access to information on water supplies can lead to positive changes. For example, in India, right to water activist Major General SCN Jatar filed in 2011 a request under the Right to Information Act in Pune, India, to release information on the effectiveness of the municipality's water supply department. The government admitted following the request that they had no systems in place to measure the delivery of water supplies and agreed to set up a committee including civil society to look into reforming the department and developing policies to proactively release information to the community.<sup>83</sup>

#### Information about sanitation

India's Right to Information Act 2001 has proved successful in enforcing the rights to water and sanitation. In one instance, two applications under the Act by local residents and activists successfully resulted in the government installing a sewage system in the slum colony Sundernagari, East Delhi after 20 years of previously unsuccessful requests.<sup>84</sup>

#### Data accessibility

The realisation of the right to freedom of information can be seriously flawed not only in terms of the availability of information but also in the way in which information is delivered to the public.

For example, In the UK, the government routinely makes government data available through a dedicated portal ([data.gov.uk](http://data.gov.uk)). However the data released is often "raw" and difficult to understand. The 2012 amendment to the Freedom of Information Act requires public authorities to release data "in a standardised reusable format."<sup>85</sup> In August 2012, the Public Accounts Committee criticised bodies for putting raw data into the public domain and pretending this fulfils transparency requirements. Their report stated that "large quantities of raw data are released without ensuring that they are fit for purpose." The Local Government Association told the Committee that spending datasets published by local authorities can be difficult to interpret without better explanation of context.<sup>86</sup>

Lack of accessible data also applies to data related to the rights to water and sanitation. Efforts must be made to ensure that necessary information is presented in a way that is accessible, relevant and understandable to a variety of intended users.

#### Failure to pro-actively disclose water and sanitation related information

Public authorities also fail to proactively provide information on commerce related activities and/or ensure that private companies also provide such information:

- In 2012, in the **USA**, TCE, a chemical known to cause cancer, was contaminating the water in the Wake Forest area of North Carolina. The source of the contamination, a local company owner who had dumped the chemical illegally, was uncovered thanks for the reliance on the right to information legislation. The information showed that the North Carolina Department of Environmental and Natural Resources had known about the presence of the chemical in the water for six years but had not warned families of the danger. The investigation also revealed there are at least 200 other sites where the Department of Environmental and Natural Resources knows the chemical to be present.<sup>87</sup>

### ***Corruption and lack of transparency in the water sector***

Various studies document that corruption can seriously impact the realisation of the rights to water and sanitation.<sup>88</sup> Corruption, broadly defined as "the abuse of public power for private gain,"<sup>89</sup> allows inefficiency of policies and measures related to water to persist and distort the potential for change. It can also discourage foreign investment and corrode the budgets allocated to public procurement that enable basic water infrastructure to be built and maintained. High levels of corruption both reduce the effectiveness of aid-funded projects and weaken public support for assistance in donor countries.

Freedom of information constitutes a critical tool in the fight against such corruption and can enable greater transparency and accountability.

- Transparency International's 'Global Corruption Report 2008' claimed that corruption raises the price of connecting a household water network by as much as 30 percent, inflating the cost of achieving the MDG's on water and sanitation by US\$48 billion.<sup>90</sup>
- A Transparency International study in 2005 documented that, in some countries, households must pay a bribe to access water, whether to gain a connection or as part of the regular water bill. In Kenya, for instance, the study also found that two-thirds of those polled reported that they had experienced corruption within the past year and that many felt compelled to pay their water bills regardless of accuracy for fear of losing their water connection.<sup>91</sup>
- There are a number of examples documenting that corruption severely increases the cost of water related projects, including large scale constructions. For example:
  - The Turkwel Hydroelectric Power Station in **Kenya** (built between 1986 -1991) faced numerous claims of corruption. A European commission report found that the "project ended up costing many times its original, already inflated price as a result of kickbacks paid to government officials".<sup>92</sup>
  - Yacyretá Dam on the Paraná River, between Argentina and Paraguay, (partially World Bank funded<sup>93</sup>), was originally budgeted at \$2.5 billion, however the project's total cost has now exceeds £15 billion<sup>94</sup> and it has been called a "monument to corruption."<sup>95</sup>
  - The cost of the Amaila Falls Hydro Project on the Amaila and Kuribrong rivers, has spiralled from an estimated US\$325 million in early 2000's to a recent estimate of US\$915 million, with corruption attributed to the rise of the costs.<sup>96</sup>
  - The Bujagali dam in Uganda, is currently being investigated for corruption by the World Bank and four different governments after a British subsidiary of the Norwegian construction company, Veidekke, admitted paying a bribe to a senior Ugandan civil servant. The cumulative environmental impacts of Bujagali and other dams on the Nile have never been assessed.<sup>97</sup>

#### Lack of transparency in privatisation of public services

As numerous cases attest, the lack of transparency and access to information is serious problem in relation to privatisation of water related services, leading to serious violations of the rights to water and sanitation and undermining democratic accountability and transparency:

- In 1999, the government of **Bolivia** awarded a 40-year contract to multinational company Aguas del Tunari to supply water services in the city of Cochabamba. Inequitable and unfair fixed pricing schemes, and a doubling or tripling of price left many Cochabambinos unable to afford water. February 2000 saw outbreaks of protesters calling for revision of national water policies to take account of public opinion and the cancellation of the contract with Aguas del Tunari. The government responded with severe restrictions; gatherings of more than four people were banned, journalists arrested, and press and radio freedom curbed. Protesters were violently confronted by the army, leading to the death of a 17-year old boy, and leaders calling for the right to water were detained. Eventually under the pressure from the international media and local protesters, the government was forced to concede, cancelling the contract with Aguas del Tunari, releasing detainees and compensation those injured during the “water war.”<sup>98</sup>
- Lack of transparency in privatisation processes has been criticized in **France**. The lack of transparency also prevented some groups, such as labour unions and NGOs from entering and affecting the debate over privatisation.<sup>99</sup>
- In Buenos Aires, **Argentina**, a study showed that water and sanitation concessions, the poor information base and a lack of transparency in regulatory decisions led to an erosion in public confidence, despite improvements in delivery and coverage of services. One striking flaw in the project was the decision to leave in place an inefficient and opaque tariff regime as the government actors did not think that they had time to develop a more transparent regime.<sup>100</sup>
- In 2012, in Indonesia, NGO’s led by the People’s coalition on the right to water called for Jakarta’s public waterworks sector to release the details of its 25-year-long privatised Water Agreement. The Water agreement provides a framework for the production and distribution of clean water in the city. These requests were rejected, in clear infringement of Indonesia’s Freedom of Information Act.<sup>101</sup>
- In 2012, the Allentown City Council, USA, signed off on the mayor’s proposal to institute a massive water privatisation scheme. However, it was reported that the process has not been transparent and public officials and local media have had to hound the mayor’s office to get access to basic information about the process. Food and Water Watch submitted information requests for the names of the companies involved and to see their submissions. The Mayor’s office, after an initial refusal, did release the names of the companies but refused to release any further information.<sup>102</sup>

Freedom of information and subsequent pressure from the activists can shed light onto bad practices and eradicate them. For example, a multi-million dollar contract to decide how to privatise the water supply in New Delhi, India, was awarded to a subsidiary of PricewaterhouseCoopers in 2001. Anti-corruption organisation, Parivatan subsequently requested details of the opaque bidding process under India’s Right to Information Act, revealing that the World Bank had consistently intervened throughout on behalf of PricewaterhouseCoopers, and pressured the government to sign up to unreasonable terms. The released information also showed that the price of water may increase six-fold under the plan, and would only be supplied if local communities installed pipe work themselves. After a public outcry, the government was forced to cancel any privatisation.<sup>103</sup>

### Lack of transparency in relation to large scale dam projects and investments in the water sector

Lack of transparency is especially acute in cases of large scale dam project, affecting large areas and significant parts of population, especially indigenous communities. For example, in **Brazil**, the Belo Monte dam has been criticized for a structural lack of transparency throughout the whole review and assessment process.<sup>104</sup> Lack of transparency has been also criticized in case of Lower Sesan 2 Dam in **Cambodia**.<sup>105</sup>

Multilateral lending agencies have also found that lack of transparency in decisions has played a key role in the failure of many urban infrastructure projects. For example, the World Bank study showed that when decisions in the water sector were not adequately disclosed or publicly vetted, controversy developed around the resulting projects.<sup>106</sup>

At the same time, it has been also argued that international financial institutions sometimes circumvent public scrutiny over their actions and at times sidestep their own performance standards in the funding of water investments globally – by using financial intermediaries, including private-equity, venture and hedge funds.<sup>107</sup> The indirect nature of these investments inherently reduced oversight, transparency and accountability. For instance, a report of the Corporate Accountability International showed that the IFC's investments in private equity funds were classified as “financial investments,” and therefore not required to apply the full suite of performance standards or accountability mechanisms required of direct investments. Transparency and disclosure also suffered and tracking the portfolio of investments made through these indirect means is virtually impossible even for the World Bank, much less for civil society critics and other stakeholders.<sup>108</sup>

## **The right to speak**

Media and digital technologies make possible for people to seek, impart and disseminate information. Thanks to the media, individuals and groups are able to examine, investigate and critically assess a states' implementation of its rights to water and sanitation commitments. The positive impact of scrutiny and monitoring is not limited in individual cases but it extends to preventing further violations of the right by exposing the activities, positions, policies and processes of the state.

However, ARTICLE 19's research shows that ability of journalists, media, human rights defenders and activists to rely on their right to freedom of expression, to expose wrongdoing in the rights to water and sanitation related issues or to voice their opinions or criticism is restricted by numerous measures. The main problems in this respect are summarized below.

### ***Censorship of water related reporting***

ARTICLE 19 also found several examples of journalists, human rights defenders and activists facing dangers of censorship when reporting on issues related to the rights to water and sanitation or must operate under the threat of imprisonment, other legal threats or arrests on trumped up charges. For example:

- In **Venezuela**, in March 2013, a court in Caracas held that the press were forbidden from reporting on issues of water contamination without using the government-approved report. News accounts in the weeks preceding the decision had questioned whether a nearby river, that provides drinking water, was contaminated with chemicals. This report was denied by the government. According to news reports, 24 hours before the ruling, President Chavez



asked the Attorney General's office and the Supreme Court to investigate anyone alleging that the water was contaminated. The Attorney General denied the ruling and the president's statements were related.<sup>109</sup>

- In **Brazil**, ARTICLE 19 found that activists, journalists and media workers have been detained and their equipment inspected by national and private security guards, whilst working on the surroundings of the construction site at Xingu and Madeira Rivers.<sup>110</sup>
- In **China**, in December 1998, Gao Qinrong, exposed that an irrigation system in the drought prone region of Yuncheng, Shanxi Province, was actually an elaborate scam. Qinrong was arrested and charged with bribery and embezzlement and spent 8 years in jail.<sup>111</sup>
- Also, in **China**, "Protestors of the Three Gorges Dam in China have suffered from government oppression. Dai Qing, an active opponent of the project was imprisoned for ten months for editing the book "Yangtze! Yangtze!," which criticised the dam project. The book was also banned in China and remaining copies were collected and burned."<sup>112</sup>
- In **Egypt**, in June 2008, journalist Tamer Mabrouk exposed the practice of dumping chemicals into a lake. He was sued for liable and brought a counter-suit requesting the closure of the source of pollution. The court found that it did not have jurisdiction to hear his counter-suit. The court case on libel found him guilty and he was fined E6000.<sup>113</sup>
- In **Russia**, in December 2012, journalist Svetlana Kravchenko, investigating a water company, was found guilty on "trumped-up criminal assault charges" and fined 10,000 rubles. However, she report that when she came to the water company's office to interview staff, the security guard knocked the camera out of her hands and blocked the door to preventing her from leaving. After a tussle she was able to break free. The security guard alleged she assaulted him by "scratching his ear."<sup>114</sup>

### ***Lack of appreciation for the role of the media in rights to water and sanitation agenda***

In 1990, ARTICLE 19 published a report on famine and censorship<sup>115</sup> analysing the patterns of, and responses to, famine in China in 1959-61 and in Ethiopia and Sudan in the 1980s. It showed that, if timely, information can be collected and if made freely available, the risk of widespread damage and loss of life can be mitigated. The 1990 report went on to demonstrate that a widespread and free media, at national and local level, that reach a substantial percentage of the population, reduces the likelihood of devastating famine. In subsequent reports on access to environmental information in Russia, Ukraine and Malaysia, ARTICLE 19 reached similar conclusions regarding the role of the media.<sup>116</sup>

These findings can also be applied to the rights to water and sanitation. The media, using investigative methods, can play a key a role in providing knowledge on important water-related issues, highlight corruption and develop a culture of criticism where people are less apprehensive about questioning government action related to their rights to water and sanitation. They also ensure that complex messages are translated into a meaningful and understandable form for the public and facilitate discussions on rights to water and sanitation related issues. For example:

- In 2009, an investigative journalist Charles Yates uncovered serious water pollution in **Liberia** coming from the Firestone Rubber Plantation. The pollution caused skin disease, made fish unsafe for consumption and water unsafe for drinking. Yates, who had been

trained by the organisation Journalists for Human Rights, found at least two people had died from the pollution. Through his article in *The Inquirer* and subsequent coverage by Radio UNMIL, a UN station, President Ellen Johnson-Sirleaf ordered audits to be conducted throughout the area.

- In 2011, in **Azerbaijan**, investigative journalist, Elkhan Salahov, pressured the government to address water poverty. Salahov had discovered that water treatment facilities along Kur and Araz rivers had broken pipes and taps and were no longer working. Local communities were being forced to drink untreated and polluted water and the local authorities were failing to deliver support or maintenance.
- In **South Africa**, in August 2012, the *Sunday Times* revealed that Ekurhuleni municipality awarded a R205 million (roughly £11 million) contract to install water meters to improve the municipal water system to Lesira-Teq without following the proper procurement process. The *Sunday Times* were able to establish the flaw in the process based on access to “council minutes, tender documents and internal correspondence.” There has also reportedly been cases of 40% of metres failing compared to a normal 2%. The investigation led to five top officials being suspended.<sup>117</sup>
- In **India**, in January 2014, AAJITAK and *Headlines* media outlets conducted a sting operation to expose corruption in the Water and Energy departments of Delhi’s government. Hidden cameras recorded an officer of the Delhi Jal Board “seeking monetary gratification for issuing a positive report to give approval for using water for construction related purposes.” Three Delhi Jal Board members were suspended following the investigation.<sup>118</sup>

ARTICLE 19 has also showed that the media plays a key role in effective **advanced warning systems**, in particular in areas affected by drought. The mass media are the only means by which messages can be disseminated quickly and widely. This aspect was stressed in the *Yokohama Strategy and Plan of Action for a Safer World*, adopted at the 1994 World Conference on Natural Disaster Reduction,<sup>119</sup> which stressed that early warnings of impending disasters and their effective dissemination using telecommunications, including broadcast services, are key factors to successful disaster prevention and preparedness.<sup>120</sup> There is little doubt that the same principle ought to apply to issues related to the rights to water and sanitation.

The role of the public service media and community media are particularly important in this respect as they help to empower marginalized, vulnerable or rural communities about issues that are not reported in the mainstream media. Local media outlets, including community radios, newspapers and television services, have a central role to play not only in disseminating information from official sources but also in ensuring an effective two-way flow of information that should underpin people’s participation in necessary responses.

Therefore, more effort should be devoted to demonstrating to, and raising awareness and understanding of, the general public and opinion-makers the role played by a free media in realising the rights to water and sanitation. Development of information and the role of the media should also not be restricted to mainstream models- there is an important role for alternative media and informal communications networks. These networks need to be strengthened and included in policies, measures and activities related to the rights to water and sanitation.

### ***Capacity of the media to report on water and sanitation agenda***



There are some studies indicating that journalistic literacy in covering often complex issues related to development issues, including the issues related to the rights to water and sanitation, are often inadequate.

There have also been only limited initiatives to build a capacity of journalist and the media and enable them to play a role in realisation of the rights to water and sanitation (and development issues in general). For example, in 2013, the International Press Institute published a detailed and first-of-its-kind **manual for journalists** on how to cover the MDGs – including the issues related to the right to water.<sup>121</sup> The Guide and accompanied by video guidelines containing advice on how to effectively report on development-related issues; these include not only the “core” MDG themes – but also issues such as corruption, energy poverty and lack of government transparency.

The relevance of journalistic ethics, such as verification and fairness, in relation to the rights to water and sanitation is also important. The media have a professional responsibility to act in an appropriate manner, in accordance with any codes of conduct. This includes obligations to help satisfy the public’s need for information on water related issues and to ensure that information relevant to the rights to water and sanitation disseminated is as accurate as possible in the circumstances. These values should be reflected in many of the professional codes of conduct adopted by journalists and/or media organisations.<sup>122</sup>

### ***Digital technologies and the rights to water and sanitation***

Digital technologies (including the Internet and mobile phone technologies) have a great potential to help improve rural water supplies and address the systemic problems in realisation of the rights to water and sanitation. They are also effective tools in both ensuring wide spread circulation of information related to the rights to water and sanitation and in assisting in the implementation of all measures and responses in this area. They can in particular, provide a voice to local communities, and also portray the actual situation on the ground to national and international actors.

It has been documented that digital technologies are already being used for collecting and disseminating data on water services,<sup>123</sup> for monitoring practices or reporting problems.<sup>124</sup>

#### Limited use

However, studies indicate that the potential of digital technologies has remained largely untapped in many developing countries in relation to the rights to water and sanitation or have led to limited innovations in water sector.<sup>125</sup> In particular, the use of digital technologies has been limited to the monitoring of water, sanitation, and hygiene (WASH) related services. Innovations in this area have been limited to “islands of success’ implemented by pilot projects financed by donors and NGOs and updating of technology-based monitoring WASH data is the exception rather than the rule.<sup>126</sup>

#### Digital divide

There are numerous constraints to the full use of digital technologies for the realisation of the rights to water and sanitation, especially in many developing countries. These include inadequate technical infrastructure, limited capacity to use available services, relatively high cost of communications equipment, and poor policy and regulatory environments.

These issues should be also considered in the planning and implementation of measures related to the rights to water and sanitation as they can limit a potential of individuals to seek and impart

information needed for realization of their rights to water and sanitation and can further increase their exclusion and marginalisation.

## The right to be heard

Engagement of individuals, human rights defenders, independent civil society organisations and the media is central to the realisation of the rights to water and sanitation. They should be able to operate without fear, organise communities, seek information, hold governments or private companies to account, and participate in public debates and decision-making regarding water and sanitation management.

ARTICLE 19 has also long argued that the lack of effective voices of people, especially the most disadvantaged and vulnerable groups, perpetuates inefficient, and often corrupt, forms of governance and service delivery that keep them in a subordinate position. This also applies to the rights to water and sanitation: if the rights to water and sanitation is fully to be realised, individuals and communities must be able to participate in water-related decision making that affects them and their communities, to put forward ideas and potentially have these realised and to demand that governments uphold their obligations.

Unfortunately, there are many examples where governments do not fully realise that democracy extend beyond the ballot box and adopt a variety of measures aimed at preventing individuals and groups to take part in public affairs. This also applies to efforts to combat violations of the rights to water and sanitation. Particular problems have been observed in relation to privatisation of water services and construction of hydropower projects.

### ***Attacks on journalists, human rights defenders and activists investigating rights to water and sanitation related issues***

ARTICLE 19 and other freedom of expression organizations have documented an overall trend of violence against journalists, human rights defenders and activists, reporting on important public interest issues. These range from threats, killings, attempted or actual assaults, abductions, disappearances, and killing. Impunity for aggressors assists in creating a threatening environment which restricts free speech and the free exchange of information.

Although there has not been any dedicated research on targeted violence of those who engage in the fight for the rights to water and sanitation or reporting about related issues, some reports documented such cases:

- In **Bolivia**, journalist Ronald Méndez uncovered alleged embezzlement of one million dollars by a local water company. He was sentenced to one year in prison but was later released and the case closed. One month later was shot in the leg by an unidentified gunman.<sup>127</sup>
- In **Guatemala**, on the 19 August 2013, Carlos Alberto Orellana Chávez who hosted news programs on a cable station Canal Óptimo 23, where he denounced corruption, was abducted by unidentified assailants. His body was later found with a bullet wound to the head. The case is under investigation and it is not clear if the crime is linked to his journalistic work but the day before his murder he had broadcast critical reports on the subject of water contamination and related government corruption.<sup>128</sup>

- On 1 August 2013, in **Sri Lanka**, several journalist - covering demonstrations by residents calling for the closure of a factory accused of polluting local water supplies - were attacked by the law enforcement agencies. Soldiers assaulted a photographer forcing him to get down from the rooftop from which he had been taking photos. Other journalists were threatened and roughed up by soldiers to prevent them covering the protest and its dispersal.<sup>129</sup>

It should be also noted that the UN Plan of Action on the Safety of Journalists and the Issue of Impunity<sup>130</sup> is an important plan in this area and should be considered by international, regional and national agencies implementing the rights to water and sanitation.

### ***Attacks on protesters***

At a number of occasions, the right to freedom of expression has also been undermined through attempts by states to restrict activists and groups demonstrating and protesting on issues related to the rights to water and sanitation. Notable examples include:

- In **India**, in 2011, protests against a dam in the Lakhimpur district were broken up after the district administration prohibited assemblies of five or more persons and declared the gatherings of dam protesters unlawful. Police arrested 200 protesters who were blocking access to the construction site.<sup>131</sup>
- In Sarawak, **Malaysia**, in November 2013, over 100 indigenous people, blocking a road to protest against low compensation levels they will receive after relocating to make way for Murum dam, were cordoned off by armed police. Police blocked human rights groups, the media and convoys carrying food and water from accessing the site and several protesters were arbitrarily arrested.<sup>132</sup>
- There have been a series of protests against the Belo Monte dam in **Brazil**. In 2011 more than 600 protesters had to leave the dam site after a judge ordered their eviction. There were renewed protests in 2012 and 2013. In 2013, an ARTICLE 19 mission to the affected area heard reports that individuals taking part in public demonstrations or meetings were being photographed or filmed by the dam construction company Norte Energia. There were also reports Norte Energia had threatened peoples access to compensation if they continued to protest.<sup>133</sup>
- In **Romania**, in the village of Pungeti, villagers held peaceful protests against fracking for two months. On 2 December 2013, the Romanian police blocked all access to the village and prevented anyone from leaving or entering for over 24 hours. No journalists were allowed to enter but there were allegations that over 30 people had been beaten by police. Several villagers were also fined for blocking a public road.<sup>134</sup>
- Recently, protesters in the **UK** opposing the controversial process of fracking have faced arrest and there have even been allegations of police brutality. In total there have been over 80 arrests and examples of police brutality. For example, Sean O'Donnell shot a video of himself being pushed to the ground by police and he received a "black eye, cuts to the cheek and forehead, a broken metatarsal and a suspected broken rib." His lawyer Simon Pook, from Robert Lizar solicitors, says police refused to let him visit his client in a hospital.<sup>135</sup> Also, Dr Steven Peers was arrested on what he called "trumped up" charges, pulled the ground, and his camera confiscated after he refused a breath test.; the case against him collapsed in court due to lack of evidence.<sup>136</sup>

### ***Absence of public consultations***

Public consultations on important water related issues are often totally lacking. For example:

- The public consultations was completely lacking in the **Lesotho** Highlands water project: consultation was done at the level of central government rather than within the affected communities themselves.<sup>137</sup>
- Similar problems and total lack of communication between the government and affected people were also documented in the Osborne Dam in Zimbabwe.<sup>138</sup>

### ***Limited consultation processes***

Consultation processes on water related issues are frequently conducted merely to comply with legal requirements rather than to genuinely investigate the impact on local communities. For example:

- In **Brazil**, the consultation process for the Belo Monte dam in September 2009 was limited in a number of aspects. For instance, it consisted of only four meetings purely aimed at validating Norte Energia's decisions. The participants had to travel large distances to attend, and no translation was provided into local languages. Records on the meetings were subsequently not translated to local languages.<sup>139</sup>
- In the case of Xiaonanhai Dam in Chongqing, **China**, the public consultations on the initial Environmental Impact Assessment (EIA) for the dam lasted only 10 days and the finished preliminary EIA report was published before the end of the consultation process.<sup>140</sup>
- There was a clear absence of any public participation in the decision and process of building the Pak Mun Dam in **Thailand**: the authorities did not consult affected communities in the early stage of the decision-making process, nor did they attempt to include them in the project mitigation measures.<sup>141</sup>
- The Bakun Dam in **Malaysia** was carried out with a lack of consultation with the affected indigenous people and no public participation in the Environmental Impact Assessment process. As a result, more than 10,000 indigenous people from 15 communities have been forcibly displaced and the project has threatened the traditional economy and resulted in logging, habitat destruction and reservoir flooding. The Government has actively discouraged local debate and prohibited local media reporting on the adverse effects of the project.<sup>142</sup>

### ***Exclusion of affected groups and communities***

The number of people affected by water related decision is often under-estimated in big dam projects. Also, reports show that some consultation processes do not necessarily include a representative sample of the target community, focusing instead on community leadership.

- In **Cambodia** approximately 30,000 people living upstream are negatively affected by construction and operation of the Lower Sesan 2 Dam, and tens of thousands downstream. However, only a few hundred people were consulted, and without proper documentation of

the process.<sup>143</sup> Also, a Transborder Impact Assessment was not carried out even though the dam affects other countries in the region.

- In Brazil, ARTICLE 19 documented that the consultation meetings related to the constructions on the Belo Monte excluded participation of lawyers or representatives of the authorities assisting affected communities. Also private security agents were instructed to prevent the participation of previously-famed activists in negotiation meetings and banned participants to wear traditional ornaments.<sup>144</sup>

### ***Marginalised, vulnerable and discriminated against groups***

Women and marginalized and vulnerable groups (such as refugees and IDPs, indigenous communities and people living in poverty) are often prevented from meaningful participation decision making related to the realisation of the rights to water and sanitation.

As noted above, women suffer from more serious impact when their rights to water and sanitation are impeded. Participation and input of women into water-decision making should be central to all measures related to the realisation of the rights to water and sanitation.

ARTICLE 19 has not been able to identify dedicated studies assessing the gender perspective in water related decision making. However, numerous studies related to development issues in general indicate that they many participatory frameworks fail to understand and address gender realities or failed to take into account multiplicity of interests.<sup>145</sup>

On a positive side, the Kenya National Water Resources Management Strategy and the Draft National Water Services Strategy specifically address the issue of representation of women in decision-making and includes specific measures in this respect.<sup>146</sup>

## Conclusions

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This background paper has demonstrated how the right to freedom of expression and information and the rights to water and sanitation come together in specific legal and policy terms. Following the meeting of international experts in London, in March 2014, ARTICLE 19 released the Free Flow Principles, that accompany this report and elaborate recommendations on how to effectively incorporate the freedom of expression and information into the rights to water and sanitation agenda.

# About the ARTICLE 19

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The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year, comments on legislative proposals, as well as existing laws that affect the right to freedom of expression, and develops policy papers and other documents. This work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All materials developed by the Law Programme are available at <http://www.article19.org/resources.php/legal>.

If you would like to discuss this Background Paper further, please contact Barbora Bukovska, Senior Director for Law and Policy of ARTICLE 19 at [barbora@article19.org](mailto:barbora@article19.org). If you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, please contact us by e-mail at [legal@article19.org](mailto:legal@article19.org).

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<sup>1</sup> WHO and UNICEF, Joint Monitoring Programme (JMP), [Report 2013 update](#), 2013.

<sup>2</sup> Around 700,000 children die every year from diarrhoea caused by unsafe water and poor sanitation, see Child Health Epidemiology Reference Group, 2012 and UNICEF Child Mortality Report, 2012.

<sup>3</sup> UNESCO, World Water Development Report, [Managing Water under Uncertainty and Risk](#), 2012.

<sup>4</sup> ARTICLE 19, [Baseline Report: The right to information for internally displaced persons in Kenya](#), 2012 (*hereinafter*, ARTICLE 19 Kenya IDPs report).

<sup>5</sup> Michael Klare, *Resource Wars: The New Landscape of Global Conflict*, 2002. p. 139.

<sup>6</sup> Recent UN statistics show the Millennium Development Goal to halve the number of people without safe drinking water by 2015 is on track or will be exceeded; however, the goal for sanitation will be missed by 1 billion people.

<sup>7</sup> See below, section on Applicable international standards.

<sup>8</sup> The three components of the right to water were also established in the [European Declaration for a New Water Culture](#), February 2005, p. 9; or in World Water Council, [Right to Water From Concept to Implementation](#), 2006.

<sup>9</sup> [International Covenant on Economic, Social and Cultural Rights](#) (1966). Article 11 guarantees the right of everyone to an adequate standard of living; Article 12 guarantees the right of everyone to the highest attainable standard of physical and mental health. The term "sanitation" is not defined, however, it has been suggested that it comprises, as a minimum, access to excreta disposal facilities which can effectively prevent human, animal and insect contact with excreta, and which ensure privacy and protect dignity, along with associated services such as sewerage or latrine exhaustion; see COHRE, [Legal Resources for the Right to Water and Sanitation](#), 2<sup>nd</sup> edition, 2008.

<sup>10</sup> UN Committee on Economic, Social and Cultural Rights, [General Comment No. 15](#); The right to water (20<sup>th</sup> session, 2002), U.N. Doc. E/C.12/2002/11 (2003).

<sup>11</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, adopting the Draft [Guidelines for the realization of the right to drinking water and sanitation](#), 2006.

<sup>12</sup> These include Mar Del Plata Action Plan of the UN Water Conference (Preamble); Agenda 21, the 1992 Report of the UN Conference on Environment and Development, Rio de Janeiro, A/CONF.151/26/Rev.1 (para 18.47); The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment, A/CONF.151/PC/112 (Principle 3); Programme of Action, the 1994 Report of the UN International Conference on Population and Development, Cairo (Principle 2);



or the Resolution 2002/6 of the UN Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realization of the right to drinking water (paras. 5 and 19).

<sup>13</sup> [Resolution 64/292](#), adopted by the UN General Assembly on 28 July 2010.

<sup>14</sup> [Resolution 15/9](#), A/HRC/15/L.14, adopted by the Human Rights Council on 6 October 2010.

<sup>15</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#), 1979. Article 14(2) requires that state parties shall ensure women the right to “enjoy adequate living conditions, particularly in relation to [...] sanitation, [...] and water supply.”

<sup>16</sup> [Convention on the Rights of the Child](#), 1989. Article 24(1) states that parties must pursue the highest attainable standard of health for children “through the provision of adequate nutritious foods and clean drinking-water.”

<sup>17</sup> [Convention on the Rights of Persons with Disabilities](#), 2006. Article 28 para 2 stipulates: “States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs.”

<sup>18</sup> [Occupational Health Services Convention, 1985](#) (No. 161). Article 5 b) states that “Without prejudice to the responsibility of each employer for the health and safety of the workers in his employment, and with due regard to the necessity for the workers to participate in matters of occupational health and safety, occupational health services shall have such of the following functions as are adequate and appropriate to the occupational risks of the undertaking: ... (b) surveillance of the factors in the working environment and working practices which may affect workers' health, including sanitary installations, canteens and housing where these facilities are provided by the employer.”

<sup>19</sup> For example, the 1990 African Charter on the Rights and Welfare of the Child (Article 14 para 2 c)), Protocol to the African Charter on Human and Peoples' Rights, 2003; Senegal River Water Charter, 2002; London Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes; Recommendation (2001)14 of the Committee of Ministers to Member States on the European Charter on Water Resources; Water management in developing countries”, European Parliament Resolution on the Commission communication on water management in developing countries and priorities for EU development cooperation; and others. The right to water is also provided for in the 1949 Geneva Convention relative to the Treatment of Prisoners of War (Articles 20, 26, 29 and 46) and the 1977 Additional Protocol I (Articles 54 and 55) and II (Articles 5 and 14).

<sup>20</sup> See for example, [World Business Council for Sustainable Development](#) or the [CEO Water Mandate](#) a public-private initiative under the auspices of the UN Global Compact which requires signatories to assess and improve their water performance)

<sup>21</sup> Article 19 of the UDHR states: “Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;” UN General Assembly Resolution 217A(III), adopted 10 December 1948. The UDHR, as a UN General Assembly resolution, is not directly binding on States; however, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948 See, for example, *Filartiga v. Pena-Irala*, 630 F 2d 876 (1980) (US Circuit Court of Appeals, 2<sup>nd</sup> Circuit).

<sup>22</sup> UN General Assembly Resolution 2200A(XI), adopted 16 December 1966, in force 23 March 1976. Article 19 of the ICCPR stipulates:

1. Everyone shall have the right to freedom of opinion.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a. For respect of the rights or reputations of others;
  - b. For the protection of national security or of public order (ordre public), or of public health or morals.

<sup>23</sup> For example, the UN Convention on the Rights of the Child; The European Convention on Human Rights (Article 10), the American Convention on Human Rights (Article 13) and the African Charter on Human and Peoples' (Article 19) Adopted 22 November 1969, in force 18 July 1978.

<sup>24</sup> UN Human Rights Committee, [General Comment No.25](#), 57<sup>th</sup> session, 12 July 1996, para 25.

<sup>25</sup> UN Human Rights Committee, [General Comment No.34](#), 102<sup>nd</sup> session. Geneva, 11-29 July 2011, para. 12.

<sup>26</sup> *Ibid.*, para 15.

<sup>27</sup> *Ibid.*, para 39.

<sup>28</sup> UN Human Rights Committee, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

<sup>29</sup> European Court of Human Rights, *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 49.

<sup>30</sup> European Court of Human Rights, *Lingens v. Austria*, 8 July 1986, Application No. 9815/82, paras. 39-40.

<sup>31</sup> See, e.g. the [UN Convention Against Corruption](#), General Assembly resolution 58/4 of 31 October 2003, which recognizes that States should “[ensure] that the public has effective access to information,” para 13.

<sup>32</sup> See Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/2000/63, 18 January 2000, para 42; or the 2004 [Joint Declaration on Access to Information](#) of three special mandates on freedom of expression at the UN, OSCE and OAS.

<sup>33</sup> ARTICLE 19, [The Public's Right to Know](#): Principles on Freedom of Information Legislation, London, June 1999. The UN Special Rapporteur on the Right to Freedom of Opinion and Expression endorsed these Principles in his 2000 report to the UN Human Rights Commission, who then referenced the Principles in its resolution on the right to freedom of expression.

<sup>34</sup> The Right to Know Principles, *op.cit.*



<sup>35</sup> For example, Bulgaria, the United Kingdom, Armenia, Estonia, Bosnia and Herzegovina, Macedonia, Georgia, Serbia, Sweden, Kyrgyzstan, Jamaica, Australia, USA or Israel; UNESCO, [Freedom of Information A Comparative Legal Survey](#), Second Edition, 2008.

<sup>36</sup> This section is based on ARTICLE 19's Principles, *op.cit.*

<sup>37</sup> General Comment No. 15, *op.cit.*, para 12 c) iv).

<sup>38</sup> *Ibid.*, para 49.

<sup>39</sup> *Ibid.*, para 56.

<sup>40</sup> Resolution 64/292, *op.cit.*, para 8.

<sup>41</sup> [The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#), passed by the UN Economic Commission for Europe, 25 June 1998.

<sup>42</sup> Catarina De Albuquerque, [On the Right Track: Good practices in realising the rights to water and sanitation](#), 2010.

<sup>43</sup> The High Level Panel on the Post-2015 Development Agenda, [A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development](#), 30 May 2013. The MDG Goal No. 7 (to ensure environmental sustainability) includes a target related to the right to water (7C): "By 2015, halve the proportion of people without sustainable access to safe drinking water and basic sanitation."

<sup>44</sup> ARTICLE 19, [London Declaration](#), 2010.

<sup>45</sup> UN [Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa](#), 1994 (Article 19); UN Convention on the [Law of the Non-Navigational Uses of International Watercourses](#), 1997 (not yet in force, Article 5); [Indigenous and Tribal Peoples Convention](#), 1989, (No. 169) (Articles 2, 7 and 15); [Guiding Principles on Internal Displacement](#), 1998 (Principle 18); [Johannesburg Plan of Implementation of the World Summit on Sustainable Development](#), 2002 (para 25).

<sup>46</sup> The [Convention on Environmental Impact Assessment in a Transboundary Context](#) (the Espoo Convention) requires states to "arrange for the distribution of (environmental impact assessment) documents to the authorities and public" of affected areas; currently, there are 48 states party to the Convention. There are also regional instruments and agreements focusing on transboundary assessments such as North American Agreement on Transboundary Environmental Impact Assessment and the Framework Convention for the Protection of the Marine Environment of the Caspian Sea and the Mekong River Commission.

<sup>47</sup> The section is based in particular on results of ARTICLE 19 projects and overall research. ARTICLE 19 carries out specific projects on right to information and the right to water in Brazil, Kenya, Senegal and Bangladesh.

<sup>48</sup> The list of the countries with the right to information legislation, as of September 2013, is available [here](#).

<sup>49</sup> This section is adapted from the Right2Info website, [Access to Information Overview and Statutory Goals](#), September 2013.

<sup>50</sup> These are Angola, Ethiopia, Guinea Conakry, Liberia, Nigeria, Rwanda, Sierra Leone, South Africa, Uganda and Zimbabwe.

<sup>51</sup> ARTICLE 19, [Kenya: Law to protect internally displaced people enacted ahead of election](#), 2013. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act was passed on 31 December 2012 and came into effect on the 18 January 2013.

<sup>52</sup> These countries are Belize, Brazil, Canada, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, Uruguay, USA, Antigua & Barbuda, Dominican Republic, Guyana, Jamaica, St. Vincent & Grenadines, and Trinidad & Tobago.

<sup>53</sup> These are Australia, Bangladesh, Cook Islands, India, Indonesia, Japan, Kyrgyzstan, Maldives, Mongolia, Nepal, New Zealand, Pakistan, South Korea, Taiwan, Tajikistan, Thailand, and Uzbekistan

<sup>54</sup> These are Israel, Jordan and Yemen

<sup>55</sup> See [The Global Right to Information Index](#) which assesses the strengths and weaknesses of the legal framework based on several different categories and rates countries based on their performance under the set criteria.

<sup>56</sup> Article 16 of the E Environmental Protection and Natural Resource Management Law of Cambodia states; "The Ministry of Environment shall, following proposals by the public, provide information on its activities". The draft EIA guidelines provide for "focus group discussions" to "inform the public about development projects."

<sup>57</sup> The Guardian, [China's transparency laws: a death sentence for the Yangtze sturgeon](#), May 2012.

<sup>58</sup> EarthRights International's Mekong Legal Advocacy Institute (MLAI), [Mekong River Dams: National Laws to Address Environmental and Human Rights Issues](#), and Obstacles to Enforcement. 2009), p. 14.

<sup>59</sup> South China Monitor Post, [Report on mainland China's soil pollution a 'state secret'](#), February 013.

<sup>60</sup> Allison Cameron & Luo Wei, [An Environmental Impact Assessment for Hydropower Development in China](#), p. 20.

<sup>61</sup> ARTICLE 19, [Global Trends on the Right to Information: A Survey of South Asia](#), 2001.

<sup>62</sup> RT, [Court ruling shields public safety info due to potential 'terrorists'](#), 2014.

<sup>63</sup> Fracking is the process of drilling and injecting fluid into the ground at a high pressure in order to fracture shale rocks to release natural gas inside and is highly dependent on water resources; see [Dangers of Fracking Online](#).

<sup>64</sup> Georgetown International Law Review, [The Problem with Fracking Trade Secrets](#), April 2013.

<sup>65</sup> *Ibid.*

<sup>66</sup> ARTICLE 19, [Global Trends on the Right to Information](#), *op.cit.*

<sup>67</sup> *Ibid.*, citing Sardar Sarovar Oustees in Madhya Pradesh, What Do they Know?, Multiple Action Research Group.

<sup>68</sup> <http://www.transparencypolicy.net/drinking-water-safety.php>

<sup>69</sup> ARTICLE 19, [ARTICLE 19 supports the struggle for the right to water through the right to public information](#), 2013. More information, in Portuguese, is available upon request from ARTICLE 19.

<sup>70</sup> [Global Trends on the Right to Information](#), *op.cit.*

<sup>71</sup> Article 19 Brazil, Report on the Missions to the Xingu and Madeira Rivers Communities, October – December 2013; available upon request (*hereinafter*, ARTICLE 19 Brazil study).

<sup>72</sup> [Global Trends on the Right to Information: A Survey of South Asia](#), *op.cit.*

<sup>73</sup> ARTICLE 19 Brazil study, *op.cit.*

- <sup>74</sup> ARTICLE 19 Global Trends on the Right to Information, *op.cit.*
- <sup>75</sup> Ian Baird, [Best Practices in Compensation and Resettlement for Large Dams](#): The Case of the Planned Lower Sesan 2 Hydropower Project in North-Eastern Cambodia, 2009, p. 117.
- <sup>76</sup> ARTICLE 19 Kenya IDPs report, *op.cit.*
- <sup>77</sup> See UNICEF, [The Human Right to Water and Sanitation in Emergency Situations: The Legal Framework and Guide to Advocacy](#) (The Global WASH Cluster, 2009) pp. 88.
- <sup>78</sup> See UNICEF, [The Human Right to Water and Sanitation in Emergency Situations: The Legal Framework and Guide to Advocacy](#) (The Global WASH Cluster, 2009) pp. 88.
- <sup>79</sup> Olcay Unver, [Global Governance of Water: A Practitioner's Perspective](#), *Global Governance*, 2008), p. 413.
- <sup>80</sup> ARTICLE 19 Brazil study, *op.cit.*
- <sup>81</sup> De Albuquerque, Albuquerque, On The Right Track, *op.cit.*, pp. 204-205.
- <sup>82</sup> ARTICLE 19 Brazil study, *op.cit.*
- <sup>83</sup> ARTICLE 19, [Bridge Over Troubled Water: Importance of Freedom of Expression and Free Flow of Information in Right to Water Agenda](#), 2011.
- <sup>84</sup> Maria Gonzalez de Asis et al, [Improving Transparency, Integrity and Accountability in Water Supply and Sanitation](#), The World Bank Institute, p. 93.
- <sup>85</sup> See, for example, The Guardian, [Turning raw FOI data into usable information](#), May 2012.
- <sup>86</sup> See, for example, The Guardian, [Government criticised for dumping raw data to fulfil transparency promises](#), August 2012.
- <sup>87</sup> Charlotte Huffman, [Poison in the Water](#), regularly updated.
- <sup>88</sup> Kahlfan, Ashfaq, [Global Water Governance: Implementing General Comment No. 15 on the Right to Water in National and International Law and Policy: Discussion Paper](#), March 2005.
- <sup>89</sup> Transparency International, [FOAQs on Corruption](#), online.
- <sup>90</sup> Global Governance of Water, *op.cit.*, p. 209-417.
- <sup>91</sup> De Albuquerque, On The Right Track, *op.cit.*, p. 201.
- <sup>92</sup> Kimberly Ann Elliott, [Corruption as an International Policy Problem: Overview and Recommendations](#), Institute for International Economics, p. 192.
- <sup>93</sup> See, for example, the World Bank, [Yacyreta Hydroelectric Project](#) (o2).
- <sup>94</sup> See, for example, International Rivers, [Yacyretá Dam](#).
- <sup>95</sup> *Ibid.* See also Jack W. Hopkins, Policymaking for Conservation in Latin America: National Parks, Reserves, and the Environment, p. 132.
- <sup>96</sup> See, for example, Kaieteur News, [Amaila Hydro project...Price jumps to US\\$915M](#), 2013.
- <sup>97</sup> Transparency International, [A world built on bribes? Corruption in construction bankrupts countries and costs lives](#), 2005.
- <sup>98</sup> ARTICLE 19, [Bridge Over Troubled Waters](#), *op.cit.*
- <sup>99</sup> Kimberly, Fitch, Water privatisation in France and Germany: The importance of local interest groups, *Local Government Studies* (2007), p.599.
- <sup>100</sup> Lorena Alcazar et al, The Buenos Aires Water Concession, The World Bank Development Research Group, April 2000.
- <sup>101</sup> ARTICLE 19, [Indonesia: Jakarta's Water Agreement muddied by lack of transparency](#), 2012.
- <sup>102</sup> Food and Watch, [Muddy Waters in Allentown](#), 2012.
- <sup>103</sup> ARTICLE 19, [Bridge Over Troubled Waters](#), *op.cit.*
- <sup>104</sup> Article 19 Brazil report, *op.cit.*
- <sup>105</sup> Ian Baird, [Best Practices in Compensation and Resettlement for Large Dams](#), *op.cit.*, p. 48 and 57.
- <sup>106</sup> The World Bank 2003, *op.cit.*
- <sup>107</sup> Corporate Accountability International, [Shutting the Spigot on Private Water: The case for the World Bank to divest](#), p. 29.
- <sup>108</sup> *Ibid.*
- <sup>109</sup> Committee to Protect Journalists, [Venezuelan court ruling limits coverage of water quality](#), March 2012.
- <sup>110</sup> ARTICLE 19 Brazil report, *op.cit.*
- <sup>111</sup> Committee to Protect Journalists, [Reporter jailed for exposing corruption](#), August 2000.
- <sup>112</sup> MLAI, [Mekong River Dams](#), *op.cit.*, p. 15.
- <sup>113</sup> Reporters Without Borders, [Dangers of Journalists Who Expose Environmental Issues](#), 2009.
- <sup>114</sup> Human Rights Watch, [Russia: Silencing Activists, Journalists ahead of Sochi Games](#), August 2013.
- <sup>115</sup> ARTICLE 19, [Starving in silence, a report on famine and censorship](#), London: ARTICLE 19, 1990..
- <sup>116</sup> ARTICLE 19, [Is Post-Chernobyl Ukraine Ready for Access to Environmental Information](#), January 2008; [A Haze of Secrecy: Access to Environmental Information in Malaysia](#), January 2007; ARTICLE 19, [The Forbidden Zone: Environmental Information Denied in Russia](#), November 2006.
- <sup>117</sup> See, for example, The Sunday Times, [Municipal corruption in spotlight in R614m water scandal](#), August 2012.
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- <sup>119</sup> [Yokohama Strategy and Plan of Action for a Safer World](#), Guidelines for Natural Disaster Prevention, Preparedness and Mitigation, adopted at World Conference on Natural Disaster Reduction in Yokohama, Japan, 23-27 May 1994.
- <sup>120</sup> [Yokohama Strategy and Plan of Action for a Safer World](#), *op.cit.*
- <sup>121</sup> IPI, [The Reporter's Guide to the Millennium Development Goals: Covering Development Commitments for 2015 and Beyond](#), 2013.
- <sup>122</sup> See, for example, the IFJ [Declaration of Principles on the Conduct of Journalists](#).
- <sup>123</sup> J. Hellstroem, The Innovative Use of Mobile Applications in East Africa, *SIDA Review*, 2010.
- <sup>124</sup> D. Taylor, [The failure of Maji Matone phase 1](#).

- <sup>125</sup> For example, Nicolas Dickinson & Kristof Bostoen, *Using ICT for Monitoring Rural Water Services: From Data to Action*, 2013.
- <sup>126</sup> Joseph Pearce et al, *Information and Communication Technologies (ICTs) for monitoring sustainable service delivery*, April 2013.
- <sup>127</sup> Committee to Protect Journalists, [Attacks on the Press 2000](#): Bolivia.
- <sup>128</sup> Committee to Protect Journalists, [Journalists Killed](#); 2013
- <sup>129</sup> Reporters Without Borders, [Soldiers attack journalists covering environmental protest](#), August 2013.
- <sup>130</sup> The [UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#) was endorsed by the UN Chief Executives Board on 12 April 2012. The Plan was prepared during the 1<sup>st</sup> UN Inter-Agency Meeting on this issue, convened by the Director General of UNESCO at the request of the Intergovernmental Council of the International Programme for the Development of Communication.
- <sup>131</sup> See, for example, The Hindu, [Crackdown on anti-mega dam protesters sparks violence in Assam](#), December 2011; and The Times of India, [Police arrest anti-dam protesters in Lakhimpur](#), December 2011.
- <sup>132</sup> See, for example, Mongabay, [Murum dam blockaders may be suffering human rights violations warns NGOs](#), November 2013; or AFP, [Malaysian police arrest tribes people protesting dam](#), November 2013.
- <sup>133</sup> ARTICLE 19 Brazil report, *op.cit.*
- <sup>134</sup> See, for example, The Guardian, [Police remove protesters from Chevron's fracking site in Romania](#), December 2013.
- <sup>135</sup> See, for example, The Guardian, [Police accused of brutality as fracking protester is left 'battered and bruised'](#), January 2014.
- <sup>136</sup> See, for example, International Business Times, [Anti-Fracking Protester to Sue Manchester Police over 'Trumped-up' Drinking Arrest Video](#), February 2014.
- <sup>137</sup> John Kakonge, *Problems with Public Participation in EIA Processes: Examples from Sub-Saharan Africa*, Impact Assessment, 1996.
- <sup>138</sup> *Ibid.*
- <sup>139</sup> ARTICLE 19 Brazil report, *op.cit.*
- <sup>140</sup> International Rivers, [Xiaonanhai Dam](#).
- <sup>141</sup> Ashok Swain & Ang Ming Chee, [Political Structure and 'Dam' Conflicts: Comparing Cases in Southeast Asia](#), p. 99-100. The construction resulted in the loss of heritage, rapids, forest, homes, fishing areas and farms, as well of as a possibly related epidemic of blood fluke
- <sup>142</sup> *Ibid.*, p. 103-104.
- <sup>143</sup> MLAI, *Mekong River Dams*, *op.cit.*, p.7.
- <sup>144</sup> ARTICLE 19 Brazil report, *op.cit.*.
- <sup>145</sup> See, for example, Supriya Akerkar, *Gender and Participation*, Institute for Development Studies, 2001.
- <sup>146</sup> See, COHRE, [Case Studies on Efforts to Implement the Right to Water and Sanitation in Urban Areas: Brazil, Kenya, Sri Lanka and South Africa](#), March 2008.