Strengthening the human right to sanitation as an instrument for inclusive development

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Chapter 8. Architecture of Sanitation Governance in Nigeria

8.1 INTRODUCTION

I now turn to analyse the multi-level architecture of sanitation governance in Nigeria, an emerging economy. The case study investigates the normative framework for sanitation governance and its implementation to understand: How does the human right to sanitation (HRS) influence the normative framework for sanitation governance towards inclusive development (ID) outcomes across different levels of governance in Nigeria? The chapter starts with contextualising the sanitation problem in Nigeria (see 8.2), the legal basis for the HRS including the other principles for sanitation governance (see 8.3), and the HRS and non-HRS instruments used for operationalizing sanitation governance principles (see 8.5.2). Section 8.6 analyses how the sanitation governance framework in Nigeria addresses the drivers of poor domestic sanitation services (see 8.6.1); the impact of the governance framework on ID (see 8.6.2); and the incoherence between sanitation governance framework in Nigeria and the international HRS (see 8.6.3). Section 8.7 highlights the key recommendations for redesign. The methods which I used for my data collection and analysis have been previously discussed in Section 2.3.

8.2 BACKGROUND TO THE CASE STUDY AND THE STATUS OF THE HUMAN RIGHT TO SANITATION

This section sets the background for the rest of the chapter through providing a general overview of Nigeria’s geographic, socio-economic and political context (see 8.2.1), the national development challenges (see 8.2.2), the status of the HRS in terms of actual realisation of the right (see 8.2.3), and the key stakeholders and organisational roles in the sanitation sector across the three levels of government in Nigeria (see 8.2.4).

8.2.1 Geographic, Socio-economic and Political Context

Nigeria is between latitudes 4°16' and 13°53' north and longitudes 2°40' and 14°41' east along the west coast of Africa. It occupies approximately 923,768 square kilometres of land stretching from the Gulf of Guinea on the Atlantic coast in the south to the fringes of the Sahara Desert in the north. Nigeria shares the country borders Niger in the north, Chad and Cameroon in the east, Lake Chad to the northeast, and the Republic of Benin in the west, while its coast lies on the Gulf of Guinea in the south.
Nigeria is the tenth most populous country in the world, and one of the fastest growing countries in Africa with a population growth rate of around 3.2% per annum (National Population Commission (NPC) [Nigeria] and ICF International 2013). In 2015, Nigeria had an estimated population of 183 million inhabitants, calculated based on the projected population estimates from the published figures of the 2006 Population and Housing Census which stood at 140,431,790 (National Bureau of Statistics, 2016). Slightly less than half of the population (49.5%) are female and over half of the population (50.5%) are male (National Bureau of Statistics [NBS], 2016). Nigeria has around 123,240 communities (Federal Ministry of Water Resources [FMWR], European Union, UKAid & UNICEF, 2016).

Nigeria has abundant natural resources that are currently exploited at statistically lower levels than the available deposits, except for oil which is the main foreign exchange earner. Nigeria’s economy has suffered from the fall in international oil prices since the middle of 2014 and the inflation rate was as high as 17.26% (17.24% year-on-year) in March 2017 (National Bureau of Statistics [NBS], 2017), triggering a renewed focus on economic diversification beyond oil exploitation, revenue generation from internal sources through taxation, and the deregulation of the economy. Although there is a high rate of poverty which affects home ownership and access to assets generally (Nwakanma & Nnamdi, 2013), there are no official figures on which areas constitute informal settlements or the population living in such areas. As a result of the high cost of perfecting land ownership titles, people tend to discover the illegal status of their properties on an ad hoc basis when the government either issues eviction notices or embarks on forced evictions and demolitions, mostly in urban areas.  

Nigeria practices a federal system of government and is divided into the Federal Capital Territory, Abuja, and 36 states for political administrative purposes. Each state is further divided into local government areas (LGAs) and there are 774 LGAs across the country within which around 250 different ethnic nationalities can be found. I conducted my household surveys in Benin, the capital city of Edo State in Nigeria. The justifications for my choice of Benin City are specified in Section 2.5.7. Benin City has extended to include four out of the eighteen local governments in Edo. The four local governments are Egor, Ikpoba-Okhan, Oredo and Ovia South-West. During the 2006 national population census, the

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166 Interviewees 10, 17, and 18.
167 The use of “states” in this chapter is not to be confused with the contemporary use “States” in reference to countries in my analysis of international law within this thesis.
168 Interviewee 7.
combined population of the four local governments was 1,224,954 people out of which 49.8% were female and 50.2% were male (National Population Commission [NPC], 2010).

8.2.2 Development Challenges

The current federal government assumed office in May 2015 and made a commitment to address corruption, security challenges, unemployment, environmental degradation and the low living standards resulting from inequities in access to basic amenities, among its policy priorities. The current President, a former Military Head of State, was especially popular for his commitment to fighting corruption (see Box 8.1), maintaining national security and improving the nation’s socio-economic performance. Two years into the four-year tenure of the government, Nigeria faces the same development challenges and the humanitarian situations resulting from the Boko Haram insurgency in the North-East, militancy within the oil-producing communities in the Niger-Delta, and inter-communal conflicts across the Middle-belt region and various parts of the country involving suspected Fulani herdsmen and host communities where they take their cattle to graze persist. The instability in the North-East especially is creating high numbers of internally displaced persons (IDPs) who have to flee to camps for IDPs all across the country. An important policy challenge that arises is how to improve human wellbeing and realisation of the human rights of the IDPs, host communities and the entire population of Nigeria while addressing the myriad development challenges in an inclusive manner. The IDP population is currently dispersed in camps and host communities both within the North-East and other parts of the country, like Benin City, the capital of Edo. This is one of the reasons why I chose Benin City for my household survey and field study of the HRS in humanitarian situations (see 2.3.2).
Box 8.1 Corruption and the human right to sanitation

Nigeria ranked 136 in the 2016 Transparency International (TI) corruption perception ranking, and has maintained the same position since 2014 after dropping from the 144th position in the TI ranking in 2013. Corruption is the abuse of public power for private gains and it persists at various levels of governance in all countries, but the manner in which it is handled has significantly marked the relationship between the global north and the south (Baillat, 2013). During the 1970s and 1980s, corruption was regarded as a cultural phenomenon, and accepted by States in the North as a ‘necessary’ cost of business in the South (Baillat, 2013). Multiple disciplines developed theories on corruption; economists proposed economic reforms to tackle corruption while the social scientists highlighted that the politicians in the South adopted a patron-client relationship model to explain corruption and saw politicians in the South as the main offenders (Baillat, 2013; Theobald, 1999). The United States of America took a bold step to pass the Foreign Corrupt Practices Act which prohibits American companies from bribing foreign officials and there are now several international and regional instruments initiatives that are aimed at tackling the corruption menace, including the African Union Convention on Preventing and Combating Corruption 2003, and the United Nations Convention Against Corruption 2005 (UNCAC).

Beyond the impact of corruption on the economy, there is also an emerging discourse on the relationship between corruption and human rights (HR) (Baillat, 2013; Gathii, 2010; International Council on Human Rights Policy [ICHRP], 2009b). Critics however argue that linking corruption and HR targets countries in the South, and hides neoliberal policies that are the real cause of development failures, and not corruption (Rose-Sender & Goodwin, 2010). Linking corruption and HR may oversimplify the complexities of corruption in practice, such as the complexity that may arise where a corrupt practice (like bribing a public official) ensures access to sanitation for people living in informal settlements or other vulnerable populations without access to sanitation services (Baillat, 2013). Nonetheless, a HR framework offers instruments, including principles, such as participation and accountability, to empower rightsholders to tackle corruption (Baillat, 2013).

Based on the understanding that corruption affects human rights, it is now a pressing concern for both UN Human Rights mechanisms like the special procedures, treaty bodies and the Universal Periodic Review and international organisations like TI, as well (Baillat, 2013; International Council on Human Rights Policy [ICHRP] & Transparency International [TI], 2010; Mbonu, 2009). Linking corruption with HRS gives a human face to the corruption menace and illustrates practically how corruption can reinforces exclusion and exacerbates HR violations. Nonetheless, corruption exacerbates discrimination, inequality and human rights violations (de Beco, 2011; ICHR & TI, 2010); it violates the obligation of a State to apply the maximum available of its resources to progressively achieve the HRS where public resources that are meant for sanitation are mismanaged, misappropriated or diverted for private gains instead; abuse of functions by sanitation service providers or public officials (UNCAC, article 19) violates the obligation to respect; and failure to take appropriate legislative and other measures to prevent corruption that affects access to sanitation violates the obligation to fulfil the HRS (see generally, Baillat (2013)).

8.2.3 Status of the Human Right to Sanitation

National sanitation policies and laws relevant to sanitation governance contain HRS principles relating to sustainable, appropriate, acceptable and affordable sanitation services, as well as non-HR principles that may advance the realisation of the HRS. Table 8.1 illustrates the key national policies and laws relevant to sanitation, with the HRS principles they each contain, while indicating the extent to which the principles are respectively
operationalized within the sanitation sector. This section provides facts and figures from desk research, augmented with the data from my field study, in an attempt to show the status of the HRS in Nigeria, and the instruments through which the principles are operationalized are analysed later in the chapter (see 8.5).

Table 8.1 Principles for sanitation governance in Nigeria

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<td>Extra-territorial obligations</td>
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<td>Gender responsiveness</td>
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National level

Nigeria loses over USD 147 million annually due to poor sanitation services and related impacts on human health and the economy (see Box 8.2) (Lawrence-Agbai, 2016; Oredola, 2016). It is however difficult to objectively assess the number of people who enjoy the HRS in Nigeria. This is because the existing indicators, assessments and data mainly focus on: (a) access to toilets and hand washing facilities; (b) access to solid waste management services;
and (c) the prevalence of malaria (see Figure 8.1). Beyond physical access, the HRS requires that sanitation services are made safe, acceptable, affordable, and available for users at all times during the day and night and the governance process empowers the marginalised and vulnerable populations through accountability, non-discrimination, participation, and access to information *inter alia* (see 5.3). There are discrepancies in the data from different official reports because they apply different measurement criteria and methods; this further compounds the complexity of ascertaining public spending on sanitation services (African Ministerial Conference on Water [AMCOW], 2011). For instance, the Water and Sanitation Monitoring Programme (WSMP) initially classified communal latrines as improved while the World Health Organisation and UNICEF Joint Monitoring Program (JMP) classified it as unimproved (USAID, 2015). The figures from various official datasets are now largely compatible because of the prevalence of the JMP definition of improved sanitation facilities, although the JMP now monitors a different set of criteria under the current Sustainable Development Goals (SDGs) framework (see 3.2 and 3.5.5).

**Box 8.2 Statistics on the sanitation crisis in Nigeria**

- Ranks 3rd globally for being behind on access to sanitation & having the longest toilet queues (WaterAid, 2015)
- Ranks 6th globally among the countries with the most OD per square km (WaterAid, 2015)
- Only about 40% of the total population of women that live in urban areas have access to sanitation services (Interviewee 3, June 5, 2013)
- Maternal mortality rate of 57.7 per 100,000 births due to sepsis, a harmful bacterial infection (WaterAid, 2015)
- 11 per 1,000 child deaths, under 5s due to diarrhoea (WaterAid, 2015)

The data is also mainly disaggregated according to rural and urban areas, without indicating the level of access for specific vulnerable and marginalized groups within each sub-national administrative unit and the challenges they face in realising the HRS. The most recent Nigeria Demographic and Health Survey of 2013 (NDHS), conducted from December 2012 to January 2013, uses the Enumeration Areas (EAs) prepared for the 2006 national population census as a sampling frame to select 40,680 households as a representative sample, with a minimum target of 943 completed interviews for each province (National Population Commission (Nigeria) [NPC] & ICF International, 2013). It shows that only 34% of the population used an improved sanitation facility, not shared; 28.7% practiced open defecation; while 59.6% used an improved drinking water source (NPC & ICF International, 2013). It also shows that 42.7% of the population in urban areas used an improved sanitation facility,
not shared, compared to 28.2% in urban areas. The NDHS additionally shows the manner of disposing faeces for children under 5 years of age (see Figure 8.1). Edo accounts for 37.9% of the population with an improved sanitation facility and 48.7% of children whose faeces are safely managed; there is no further disaggregation of the data for Benin City or the individual EAs.

The final JMP update report shows that Nigeria did not meet the MDGs target for sanitation because only 25% of the population used an improved sanitation facility by 2015, as against 38% in the baseline year, 1990; but Nigeria met the MDGs target for water with 69% of the population relying on an improved water source (World Health Organization [WHO] & UNICEF, 2015). The JMP update further shows that 33% of the population in urban areas use an improved sanitation facility compared to 25% in rural areas, but does not disaggregate the data for the various administrative units in Nigeria. The National Health Policy 2016 further indicates that 30% of households use an improved toilet facility, not shared with other households, and 61% use an improved water source; there is no further disaggregation of the data (Federal Ministry of Health [FMH], 2016).

The SDGs indicators baseline study however states that 60.3% use safely managed sanitation facilities, 69.6% of the population access safe drinking water, 48% access hand washing facilities with soap and water, and 0.04% of wastewater is safely treated (Office of the Senior Special Assistant to the President on SDGs [OSSAP-SDGs] & National Bureau of Statistics [NBS], 2017). The report attributes the drastic improvements to “the possible effect of awareness programmes implemented to educate Nigerians on managing sanitation services in their places of abode” (OSSAP-SDGs & NBS, 2017, p.28). However, awareness programmes are not enough to ensure improvements in sanitation coverage in a situation where people lack physical access to sanitation facilities, to start with. The level of progress that the study suggests is not supported by any other official record, or the data from the sanitation experts, stakeholders and households in the case study (see 2.3.2). Instead it appears to hide the real state of poor access to sanitation in Nigeria (see Figure 8.1). Hence, I do not include it in the compilation of official records on access to sanitation in Figure 8.1.
Datasets like the NDHS and the JMP are therefore indicative of the level of access to sanitation in Nigeria, at best, but do not reflect the status of the HRS because they only measure physical access and apply different methods. Nonetheless, the poor level of physical access to sanitation services which the datasets highlight already indicates a violation of the HRS for a majority of Nigerians at least. Only some parts of Lagos and Abuja have sewerage networks and some households resort to channelling untreated sewage into public drains. Further, despite the broad definition of environmental sanitation in the NESP, there is no formal sanitary inspection of premises except for some private establishments which are visited by environmental health officers for legal formality; sanitation is very poor in most areas, especially in public markets, abattoirs and schools; there is indiscriminate disposal of dead animals especially though dead humans are buried according to cultural rites; no controls for reared and stray animals which leads to animal litter along the roads and clashes between herdsmen and indigenous people; weed and vegetation control is the responsibility of private landowners with little or no regulation except in mega cities like Lagos where the government recently passed a law requiring planting of flowers, and in Abuja parks and gardens are actively maintained through private public partnerships; there is no operational national strategy on hygiene education and promotion.

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The household survey (see 2.3.2) provides valuable empirical insight into the status of the HRS in Nigeria, including the extent to which HRS principles like affordability, accessibility and participation have become localised.

**Benin City**

A majority of the households I surveyed (79.1%) used wet sanitation systems but only 46.5% had access to public water supply and the remaining relied on bore-holes, wells, water vendors or other private alternatives. Only 7.1% employed the services of a waste manager to evacuate their soakaways although a majority employed self-help mechanisms like adding chemicals to the waste (51.2%), transferring to another pit (7.9%), or even manual evacuation using buckets (4.3%). A majority of the households (54.7%) poured their wastewater into the public drainage, and 37% disposed their solid waste through unapproved dumpsites, burning or other unsanitary means. Further, 71.7% of the households surveyed were aware of good health and hygiene behaviours like hand washing and the use of hand sanitizers; this was as a result of public health campaigns following the 2014 Ebola Virus Disease (EVD) health emergency. A majority (98.4%) also practiced what they had learnt from the public health campaigns and this was not affected by household income distribution mainly because the hand sanitizers were often provided for free by the government, politicians, NGOs and some businesses as part of their corporate social responsibility programmes. A majority of the household respondents did not reuse their waste/wastewater and lacked knowledge of safe waste and wastewater management options. The population mostly relied on public waste management services for the collection of their non-degradable solid waste for a fee.

The NWSP recognises cost sharing (see Table 8.1), as a way of ensuring the financial sustainability of the sanitation sector. This requires that users contribute to the cost of operation and maintenance of sanitation infrastructure, including through paying for the services they use while the government also provides counterpart funding for capital investment in sewage, storm water, and on-site sanitation systems. This makes individuals and households directly responsible for the ownership, operation and maintenance of private sanitation facilities. The HRS does not obviate the need for users who have the financial capability to pay for their sanitation services, in order to ensure financial sustainability of the service delivery system, but it requires that the cost is affordable and the poor are not denied access as a result of their inability to pay (see 5.2.3 and 5.3.1). The factors affecting WTP

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170 Interviewees 2, 10 and 11.
among the households surveyed are the cost, quality and regularity of service, and other personal considerations which they may not have disclosed. This corresponds with the evidence in the literature that WTP is influenced by the level of income, perceptions of the benefits derivable from the use of a good or service, the quality of the service, and the level of priority of sanitation. Another important factor affecting WTP which I discovered during my field visits and interactions with experts and stakeholders in Edo and Rivers is the proximity to waste management facilities and the state of the facilities. Residents of Ikhuenirol, Uhunhunode L.G.A (Edo) decried the foul odour and contamination of groundwater and the environment by a government dumpsite in their vicinity and were outraged at being asked to pay for waste collection, in addition to the nuisance they were already suffering. Similarly, residents of Oyigbo L.G.A. (Rivers) decried the foul odour and health risks from a government-owned landfill maintained along the Oyigbo-axis of the Port Harcourt/Aba expressway, until the landfill was eventually closed sometime around 2014.

The average monthly cost of formal solid waste disposal services ranges from ₦200 (≈ USD0.56) to ₦300 (≈ USD0.83) for a one room apartment, irrespective of the actual income of the residents or the amount of waste generated; yet the principles of polluter pays, cost recovery and affordability form part of the sanitation policy framework (see Table 8.1). The figures do not even include the costs of construction, operation and maintenance of sanitation facilities like toilets which could be as high as ₦18,000 (≈ USD50) for digging a pit latrine; ₦30,000 (≈ USD83.3) for the evacuation of a soak away tank; ₦145,450 (≈ USD404) for constructing a pour-flush toilet connected to a septic tank; and between ₦120,000 to 650,000 (≈ USD333-1805.6) for heavy duty borehole drilling or ₦160,000 – 300,000 (≈ USD444.44-833) for manual drilling of a borehole which service wet sanitation systems for about 10 years. These costs are unaffordable for the poor, without subsidies or cross-subsidies for basic sanitation needs. Rather, a majority of the respondents were willing to use clean public toilets and pay between ₦10 and ₦20 per use; and considered paying ₦1,000 monthly or around ₦30 daily to be affordable for household sanitation services. As much as 99% of the respondents were able to access their toilets at all times during the night and day, and 72.8% use a shared facility.

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171 This appears to be lower than the global average of USD 180.8 for basic improved sanitation without faecal sludge management and USD 304.7 per person for faecal sludge management (Hutton and Varughese, 2016).

172 Interviewee 14. The factors affecting the cost include the geology of the environment, type of pump head used, number of casings, and water treatment and analysis.
Only about 40% of the respondents participated in the selection of their facilities and most were unaware of how to go about obtaining information about their sanitation services. Nonetheless, the Freedom of Information Act 2011 makes public records and information freely accessible and the participation principle is enshrined in the NWSP (see Table 8.1). However, the NWSP encourages participation from both rightsholders and the private sector operating sound business principles, as a way of strengthening the sanitation sector.

The households survey showed that the penetration of formal waste collection services is still very low and many households have to either rely on the sparse services offered by public-private partnerships (mainly in the city centres and surrounding wealthy neighbourhoods) or on private facilities. But there is a limit to which individuals and households can invest in public goods like roads and sewer networks for centralised wastewater treatment (see 3.3). School sanitation services are often directly provided, operated and managed by the school authorities, and the most recent available national report shows that on the average, there is only one toilet for every 500 students in schools (Federal Ministry of Education [FMEdu], 2003).

Further, informal settlements are sometimes excluded by the government policy from accessing the formal waste collection services, and the informal service providers may be criminalised on the grounds of poor quality of services rendered and non-compliance with legal requirements for operations despite the immense relevance for augmenting formal service provision. This finding corroborates the findings in the sanitation governance literature that informal services can be mainstreamed to improve sector efficiency in developing countries with weak formal sanitation service provision structures (Ezeah & Roberts, 2014; Nzeadibe & Anyadike, 2012).

Although there were no official figures of sanitation coverage in humanitarian situations at the time of this study, the experts and stakeholders interviewed generally indicated that: (a) IDPs are either sheltered in camps run by the National Emergency Management Agency (NEMA) and the States’ Emergency Management Agencies (SEMA) or other humanitarian actors, in spontaneous settlements, or in local communities; (b) the sanitation facilities in the camps and spontaneous settlements are grossly inadequate; and (c) the influx of IDPs in host communities often creates stress on existing infrastructure. This is supported by the fact that the households in the IDP camps I visited mostly rely on a limited number of pour-flush toilets and pit latrines for their excreta management. For instance one of the camps has only 8

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173 Interviewees 10, 11, 12, 13, 14 and 15.
175 Interviewees 10, 16, 17 and 19.
toilets used by over 2,000 registered inhabitants. Although a recent outbreak of scabies in the camp had triggered donations of additional sanitation and hygiene materials like medicated soaps, the efforts were mainly sporadic and sanitation was still ranked low on the list of priorities, often falling behind shelter, food, and drinking water. This also corresponds with the findings of non-prioritisation of sanitation services in humanitarian situations from the literature review (see Chapter 6). People living in humanitarian situations are generally unable to invest in sanitation and are therefore heavily dependent on humanitarian assistance, for dignity kits which cost between ₦3,000 – 4,000 (≈USD 8.3 - 11.1), depending on the content.

The expert and stakeholder interviews revealed that informal settlements are not prioritised in the government’s sanitation policies. Indeed, government policies only focus on rural, semi-urban and urban areas, while the provision of services to informal settlements is highly politicised. Although the regulators generally agreed on the need for universal coverage, they were divided on the need to provide services to informal settlements (see 8.5.1). One social actor cautioned against the strict distinction between formal and informal settlements in sanitation policy process, because: “[I]f you do that, then you are giving the government an excuse not to act. The people who live in the places where they should be (formal settlements) still do not have (access)…. Just ask the straight question to the relevant government agencies: what are you doing? There are many agencies, just wasting money.”

8.2.4 Key Stakeholders and Organisational Roles

Historically, Nigeria’s water and sanitation policy focus has been on providing the population with access to water and sanitation services, but in most cases the government interventions have focused on providing water infrastructure, like boreholes, and monitoring water quality for public consumption (Akpabio, 2012). The government’s sanitation interventions on the other hand were often reactionary and borne out of a public health emergency, like the outbreak of scabies in one of the IDP camp camps I visited for my field work (see 8.2.3). Further, the interventions were implemented independent of a specialised government ministry, department or agency, resulting in fragmentation and lack of progress on sanitation targets. Following the failure of the interventions and public utilities to ensure full service coverage for the population, the current policy reforms in the water and sanitation sector,

176 Interviewee 18.
177 Interviewees 6, 12 and 18.
178 Interviewee 6.
starting from the 2000s, advance neo-liberal principles like demand responsiveness, cost sharing, full cost recovery, water as an economic good, and private sector participation (see Table 8.1), with timelines for achieving service improvements in urban and rural areas. This is reflected in policies like the National Water Supply and Sanitation Policy 2000 (NWSSP) that lapsed in 2011; the National Water Sanitation Policy 2004 (NWSP) and the National Water Resources Policy 2016 (NWRP) (see Table 8.1). This section specifically identifies the key stakeholders and organisational roles for sanitation across the three tiers of government (federal/national, states and LGAs). Table 8.1 further illustrates the main events in the evolution of sanitation governance in Nigeria.

Federal level: Policy formulation, coordination and advocacy

The National Water Supply and Sanitation Policy 2000 specifies policy making, the regulatory role of the government and appropriate legislation as some of the guiding principles for the coordination of the water and sanitation sector. The National Water Sanitation Policy also emphasises the importance of political will in this regard. Sanitation policy formulation, co-ordination and advocacy are conducted by the federal government.\textsuperscript{179} The main objectives of sanitation governance at this level include: (a) protecting water quality; (b) preventing public health risks; (c) improving service coverage in line with international development goals and human rights obligations; (d) regulating activities in the sector; and (e) advancing the political agenda of the government. The NWSP highlights the need for an integrated approach to sanitation in order to ensure water safety, control of water pollution and increased awareness on water contaminants.\textsuperscript{180} As a result, water and sanitation are still closely linked in the national policy process.

Sanitation governance at the federal level is steered by the Federal Ministry of Water Resources (FMWR), Federal Ministry of Health (FMH), and Federal Ministry of Environment (FMEnv). Within the FMWR, the Department of Water Quality Control and Sanitation conducts: advocacy visits to policy makers at state level; awareness creation/sensitization to stakeholders in the sanitation and hygiene sector; capacity development of States and LGA WASH personnel on the Community Led Total Sanitation approach implementation nationwide; policy development; verification exercise on Open Defecation Free Communities in States implementing Community Led Total Sanitation; production and dissemination of information, education, and communication materials in

\textsuperscript{179} Interviewees 2, 3, 5, and 6.

\textsuperscript{180} Interviewees 2 and 3.
different Nigerian languages and jingles; hand washing campaigns; and promotion of appropriate sanitation technologies. Further, in 2002, the federal government established a National Task Group on Sanitation (NTGS) as an inter-ministerial/agency group to coordinate national efforts for sanitation and hygiene programming and advised that a household toilet may be shared by a maximum of 15 persons, while communal toilets may be shared by 45 persons, though it is not clear how this standard can be enforced (“Group insists 15 persons maximum”, 2017), but this is at odds with the National Environmental (Sanitation and Wastes Control) Regulations of 2009, that recommends 2 toilets for 11 to 20 persons.

Although the NTGS coordinates national efforts for sanitation and hygiene programming, there is no clear definition of the HRS in the policy process. Rather, the members of the NTGS each tend to adopt a meaning of sanitation that aligns most closely with their respective core mandates and their respective targets for sanitation coverage show some level of incoherence (see 8.3.2). For instance, one of the targets of the FMWR authored National Water Sanitation Policy 2004 (NWSP) is: “achieve 100% sanitation coverage by 2025” and the NWSP emphasises improved sanitation technology for households (see 3.2 and 3.5.5). On the other hand, the targets of the FMEnv authored National Environmental Sanitation Policy 2005 (NESP) include to: “increase access to toilet facilities … in public places and … in households by … 75% and 100% respectively by 2010”. Both policies therefore promote universal access to sanitation services but their targets and timelines are incoherent. Both policies also contain different definitions. The NWSP states that “[A]dequate sanitation means access to safe excreta disposal facilities, services to households, public facilities, and disposal of liquid and solid waste without contamination of water sources, health hazards to people or deterioration of the environment” and improved sanitation means “[U]pgrading traditional latrines to reduce flies and odour, and provide superstructures; provision of water flush system (septic tank/soakaway) and sewerage system; and provision of hand washing facilities after use.” On the other hand, the NESP defines environmental sanitation comprehensively, as: “the principles and practice of effecting healthful and hygienic

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181 Interviewee 2.
182 See Regulation 10(1)(b), Guidelines for recommended approved number of toilets.
183 Other members of the NTGS include: (a) the Federal Ministries of Education, Environment, Health, Women’s’ Affairs, and Housing and Urban Development; (b) MDGs Office; (c) National Orientation Agency; (d) National Planning Commission; (e) National Agency for Food, Drug Administration and Control; (f) NGOs like WaterAid; (g) international organisations like UNICEF, World Bank and DfID; (h) the European Commission; and (i) civil society groups and sanitation networks like the Society for Water and Sanitation (NEWSAN).
conditions in the environment to promote public health and welfare, improve quality of life and ensure a sustainable environment” (NESP 2005, paragraph 1.3.1).

Other key stakeholders at the federal level are: (a) the 12 River Basin Development Authorities (RBDAs), responsible for developing, operating and managing the bulk water reservoirs for water supply for irrigation and domestic uses, hydroelectric power generation, navigation, recreation, and fisheries projects; and the (b) National Emergency Management Agency (NEMA) leads on sanitation response in humanitarian situations, in collaboration with the State Emergency Management Agencies (SEMAs) and other local and international humanitarian actors.¹⁸⁴

**States: Policy coordination, adaptation and implementation**

Each state in Nigeria is responsible for policy coordination, adaptation and implementation of the sanitation policies, including federal policies, within their jurisdiction.¹⁸⁵ This responsibility is exercised through the relevant ministry or agency in charge of environment, waste management, or sanitation services, depending on the local political structure. The focus of the states mainly centres on waste management and environmental protection (see 8.3.2). Sometimes, solid waste is regulated by the sanitation ministry or agency while wastewater is regulated by the water resources ministry or agency, similar to the federal level. Newer laws like the Environmental Law of Lagos State of 2017, and the Environmental Management (Miscellaneous Provisions) Law of Ogun State of 2005 integrate both solid and liquid waste under a similar framework for environmental management. The state laws do not define the HRS but generally define waste to include any substance that is scrap material or needs to be disposed of as a result of being damaged, contaminated, or worn out; an unwanted surplus from any process; and anything that is discarded or treated as waste.¹⁸⁶ The states have recently started embarking on donor-driven sector reforms, largely aimed at addressing deficits in rural water and sanitation services and urban water supply (leaving out sanitation services in urban centres).¹⁸⁷ Examples of the reforms include the establishment of a regulatory framework for the sanitation sector and the commercialisation of the public sanitation and water utilities (USAID, 2015).¹⁸⁸ Further, there are task groups on sanitation at

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¹⁸⁴ Interviewee 2.
¹⁸⁵ Interviewees 2, 3, 5, 6, 7 and 8.
¹⁸⁶ See Environmental Law of Lagos State 2017, Section 38(1)(b)(g)(i)-(iii); Abuja Environmental Protection Board Act 1997, Section 46
¹⁸⁷ Interviewees 7 and 8.
¹⁸⁸ Interviewees 8 and 13. See also the National Water Supply and Sanitation Policy 2000.
the state level, and the State Emergency Management Agency coordinates emergency sanitation response in partnership with other stakeholders.\textsuperscript{189}

**Local level: Policy implementation, programme management, co-ownership and sustainability**

The local government is responsible for policy implementation, programme management, co-ownership and sustainability.\textsuperscript{190} Some states have established a full-fledged Rural Water Supply and Sanitation Agency (RUWASSA), and WASH Departments or Units within the LGSs in their jurisdictions, to promote decentralisation, and efficient planning and implementation of WASH governance and advocacy.\textsuperscript{191} This is especially common among the states with funding from donors (Federal Ministry of Environment et al. 2016; USAID 2015). Otherwise, the responsibility for sanitation is delivered by a department of environment or health, or a water and sanitation committee or department.\textsuperscript{192} Other stakeholders at the local level include: (a) private sector service providers who deliver services like waste collection and treatment, supply of sanitation goods and other related services, and construction, drilling, operation and maintenance of facilities; (b) NGOs (like WaterAid) who support local communities to strengthen sanitation governance through initiatives like the community-led total sanitation (see 7.3.3); (c) donors who fund local sanitation programmes; and (d) other international organisations like UNICEF.

**8.3 DRIVERS OF POOR SANITATION SERVICES**

Nigeria has various sanitation targets, policies and programmes in place, towards the progressive realisation of universal coverage. There was a national target of constructing one million household latrines annually, as from the International Year of Sanitation (2008) until 2015, to meet the MDGs target of 65% sanitation coverage, but this failed abysmally by the end of 2015. The failure informed the current Partnership for Expanded Water Supply, Sanitation and Hygiene (PEWASH) strategy, to ensure that Nigeria is open defecation free (ODF) by 2025, and meets the SDGs Targets 6.1 and 6.2 by 2030. This section highlights the direct and indirect drivers of poor access to sanitation services that emerged from the case study.

\textsuperscript{189} Interviewees 2 and 6.
\textsuperscript{190} Interviewee 3.
\textsuperscript{191} Interviewees 2 and 3.
\textsuperscript{192} Interviewees 2 and 3.
Direct

Economic Drivers

Many interviewees identified poverty and high tariffs as important drivers of poor sanitation services for domestic users, in informal settlements for instance. Nonetheless, there was a marked difference between the importance assigned to poverty as a driver among regulators and social actors interviewed; the latter generally attached higher importance to poverty than the regulators. One social actor stated that, “now in renting accommodation, ensuite houses with toilets, and accommodation with toilets outside the house, or those without toilets attract different rents. The choice is all down to poverty! ... If you do not pay, then your waste is uncollected and it is a breeding ground for diseases.” Another similarly stated that “access is also linked to affordability. … Some landlords do not believe in locating toilets in their houses due to trying to cut costs. As a result, there is a lot of open defecation.” Conversely, one of the regulators felt that although poverty may be an issue, it is not the root cause for people who can afford other basic necessities like food for themselves. The feedback from the regulators also suggests that the government may be unwilling to increase the cost of sanitation services due to political considerations; this point is also indicated in the literature (for instance, World Bank (1999)). The stakeholders also revealed that inefficient tariff collection reduces the available funds for sanitation, preference distortion makes some users unwilling to pay for sanitation, and risk aversion makes some private service providers unwilling to cover the informal settlements without any assurance of cost recovery through government-funded bridging or subsidy. Some households complained about being charged for waste collection services even though the waste managers assigned to their areas did not actually collect their waste.

Social Drivers

Many interviewees identified poor design and the siting of facilities in inaccessible locations as some of the reasons for open defecation and urination and the indiscriminate dumping of refuse in unauthorised places. Poor urban planning and the exclusion of the

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193 Interviewees 2, 10, 11, 16, 17 and 19.
194 Interviewee 10.
195 Interviewee 11.
196 Interviewee 2.
197 Interviewees 2, 6 and 8.
198 Interviewees 6 and 8.
199 Interviewee 15.
200 Interviewees 1, 6, 8, 10, 11, 13 and 14.
population are also some of main social drivers identified by stakeholders. One of the regulators interviewed acknowledged that informal settlements were excluded “because they are illegal. Capturing them would amount to sanctioning their existence” and even within formal settlements that are prioritised for service delivery, the “areas with poor access roads receive lower priority because of the difficulty of service delivery” and are sometimes excluded from sanitation service delivery due to poor accessibility. The exclusion of informal settlements also has a political connotation, as noted by a media activist: “the government feels that they (informal settlements) should not be there, like the people are a threat… However, during elections, the government recognises them and installs polling booths in the community but after the elections, nothing happens.” Lack of access to land also inhibits the construction of sanitation facilities and disaster risk preparedness, to the extent that humanitarian actors are unable to construct camps for people who are affected by humanitarian crisis. This is despite the fact that Section 1 of the Land Use Act 1978 vests all land in the government to hold in trust for the citizens, and the government can therefore obtain land for public uses subject to compensating persons holding any private ownership rights in the land. Other social drivers identified by stakeholders are non-prioritisation of sanitation by the government and the population; poor maintenance of existing facilities and a culture of indifference and nonchalance which translates into poor sanitation habits; tenure insecurity in informal settlements; and negative cultural norms which support open defecation. Experts also highlighted that sanitation receives scant attention in development planning and public discourse, because is not a “sexy” topic.

**Environmental Drivers**

Stakeholders highlighted the following environmental drivers: an inaccessible topography or special environmental features like coastal areas which may require specially designed floating toilets; drought; flooding events caused by natural or anthropogenic activities.
which lead to the destruction of sanitation infrastructure;\textsuperscript{214} water pollution from oil exploration activities and faecal contamination;\textsuperscript{215} and low rainfall which affects the generation of hydropower (the main source of electricity in Nigeria) for the operation of sanitation and water infrastructure like pumps.\textsuperscript{216} However, the power supply problem in Nigeria is also due to the weak infrastructure for the transmission and distribution of the available power.\textsuperscript{217}

\textit{Indirect Economic Drivers}

Stakeholders alluded to inadequate funding and the inefficient allocation of available funds for the provision of common goods like sewer networks;\textsuperscript{218} the inefficiencies in public spending are sometimes due to corruption (see 8.2.2).\textsuperscript{219} An estimated annual investment of USD 2.5 billion was required between 2007 and 2015 to attain the MDGs sanitation target while the actual spending though difficult to ascertain was only about a third of the necessary investment (AMCOW, 2011). The investments in sanitation are mainly investments in suasive instruments like trainings and advocacy (OSSAP-SDGs and NBS 2017), whereas investments in water are mostly in the form of hardware components like technologies for water service delivery or rural sanitation only.\textsuperscript{220} For instance, the 2017 Appropriation Budget for the FMA, one of the line ministries in charge of sanitation (see 8.3.3), mentions sanitation only once in connection with rural roads and water sanitation (amounting to Naira (₦) 6,461,935,200), whereas there are four entries for the construction/provision of water facilities, three entries for the rehabilitation/repairs of water facilities, and one for supply/installation of water purification equipment and chemicals, and supply/installation of additional 2 No. 75KVA water pump head, respectively (all nine entries for water supply collectively amount to ₦126,641,333). This indicates more budgetary allocations to water supply than sanitation. The estimated cost of meeting basic WASH needs in the first year under the current SDGs framework is 0.63\% of the national GDP, while the capital costs of meeting SDGs targets 6.1 and 6.2 is 1.7\% of the GDP (Hutton & Varughese, 2016). This is above the eTkwini commitment made by the Nigerian government, under the auspices of the

\begin{footnotesize}
\begin{enumerate}
\item Interviewees 3 and 10.
\item Interviewees 3, 10 and 13.
\item Interviewees 3, 10 and 11.
\item Interviewees 2 and 10.
\item Interviewees 1, 2, 3, 4, 7, 8, 10, 13 and 16.
\item Interviewee 10.
\item Interviewee 2.
\end{enumerate}
\end{footnotesize}
Africa San Conference on Sanitation and Hygiene, Durban, 2008, to allocate a minimum of 0.5% of GDP for sanitation and hygiene programs and monitor the implementation of this commitment. The eTkwini commitment and other similar international commitments for sanitation (see Chapter 5) have not even been met, due to lack of political will, corruption (see Box 8.1) and non-prioritisation of sanitation sector spending.\footnote{Interviewees 1, 10 and 13.} Despite some apparent evidence of political will (particularly, the various policies, strategies and programmes for rural sanitation and the MDGs and SDGs sanitation targets), the stakeholders decried the lead role of donors in the sanitation sector and the failure of the government to finalise the draft NWSP for over a decade since it was prepared (in 2004). The NWSP needs to be approved by the Federal Executive Council, in order for it to become a full-fledged policy, but it is still operational as the most comprehensive national policy on sanitation (including the management of both solid and liquid waste) (FMWR et al., 2016).

**Social Drivers**

Stakeholders highlighted the following indirect social drivers: (a) insurgency and insecurity, leading to retrogression in access to sanitation due to the destruction of sanitation infrastructure and disruption of law and order in the affected parts of Nigeria, particularly in the North East (due to Boko Haram) and the Niger Delta region (as a result of militancy) (see 8.2.2);\footnote{Interviewee 13.} and (b) population growth which puts pressure on the existing sanitation infrastructure.\footnote{Interviewees 2 and 8.} Further, urbanisation and poor planning of cities exacerbates harmful practices like indiscriminate sand filling and dumping of waste for land reclamation.\footnote{Interviewees 8 and 10.} Stakeholders also stated that the lack of awareness and poor access to justice by vulnerable members of the population, such as IDPs and refugees (see for instance, The UN Refugee Agency 2016), also constrain the enforcement of the HRS for the unserved.\footnote{Interviewees 10, 17 and 19.}

**Environmental Drivers**

Some of the interviewees highlighted the effect of climate change and the related weather variability on access to sanitation, through exacerbating environmental hazards and affecting the operation of sanitation infrastructure.\footnote{Interviewees 1, 2 and 11.} This is especially significant because many sanitation and hygiene practices in Nigeria require water (see 3.5.1 – 3.5.4, 8.2.3).
8.4 Legal Basis for the Human Right to Sanitation in Nigeria

This section examines the sources of the human right to sanitation in Nigeria. It does so in order to establish that although the HRS is not expressly recognised as a fundamental right under the Federal Constitution of 1999, there are alternative sources which impose legal obligations for the realisation of the HRS on Nigeria. The section builds on the analysis of the legal bases for the HRS in international law in Chapter 5, and examines treaties to which Nigeria is a party (see 8.4.1), and national laws and judicial decisions (see 8.4.2) that provide the legal basis for the HRS in Nigeria.

8.4.1 Treaties

Nigeria is a State Party to various international and regional treaties which recognise the HRS (Table 8.2). However, treaty ratification does not automatically translate into domestication of the treaty provisions because the CFRN, section 12 requires all international treaties to be enacted into law by the National Assembly in other to take effect in Nigeria. This raises the question of the legal status of the treaties to which Nigeria is a State Party but which are yet to be domesticated by the National Assembly (see Table 8.2).

Arguably, by signing the treaty Nigeria has already expressed its intention to be bound by the provisions based on the principle of pacta sunt servanda, i.e. the principle of good faith. This argument is supported by the Vienna Convention on the Law of Treaties, article 26 which states that “every treaty in force is binding upon the parties to it and must be performed by them in good faith.” The principle was reflected in the judgment of the Court of Appeal in the case of Mojekwu and Ors. v. Ejikeme and Ors, where the court set aside the Ili ekpe custom for contravening the fundamental rights of women as guaranteed under the CFRN, and the Convention for the Elimination of All Forms of Discrimination against Women of 1979 (CEDAW) which had not been domesticated in Nigeria. Although on appeal, the Supreme Court refrained from ruling on the validity of the lower court’s position on the protection of gender rights under the constitution and international law, it nonetheless overturned the earlier decision of the Court of Appeal stating that there was no justification for the lower court to have pronounced the relevant custom to be repugnant to natural justice, equity, and good conscience, as the repugnancy was not an issue before the court and the undermining of customary law in that way was not justifiable (Nwabueze, 2010).

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Therefore, it would appear that HRS provisions in ratified treaties, including treaty provisions that form a part of customary international law, as evidence of a general practice accepted as law,\(^{229}\) and provisions that reflect the general principles of law recognised by civilized nations\(^{230}\) would be justiciable in Nigerian courts.

Table 8.2 Ratification and domestication of international and regional treaties (relevant to Nigeria) recognising the human right to sanitation

<table>
<thead>
<tr>
<th>Year</th>
<th>Treaty</th>
<th>Ratification/accession</th>
<th>Domestication</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949</td>
<td>Geneva Conventions (I, III and IV) &amp; Protocol I</td>
<td>1961 &amp; 1988</td>
<td>N/A</td>
</tr>
<tr>
<td>1966</td>
<td>International Convention on Economic, Social, and Cultural Rights</td>
<td>1993</td>
<td>N/A</td>
</tr>
<tr>
<td>1979</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
<td>1985</td>
<td>Some states have gender laws*</td>
</tr>
<tr>
<td>1989</td>
<td>Convention on the Rights of the Child</td>
<td>1991</td>
<td>21 out of the 36 states currently* have Childs’ Right Laws</td>
</tr>
<tr>
<td>1990</td>
<td>African Charter on the Rights and Welfare of the Child</td>
<td>2001</td>
<td>21 out of the 36 states currently have Childs’ Right Laws</td>
</tr>
<tr>
<td>2000</td>
<td>Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa</td>
<td>2004</td>
<td>N/A</td>
</tr>
<tr>
<td>2006</td>
<td>Convention on the Rights of Persons with Disabilities</td>
<td>2010</td>
<td>N/A</td>
</tr>
</tbody>
</table>

*Issues concerning women and children fall under the residual legislative list within the purview of the House of Assembly of the respective states in Nigeria, by virtue of the provisions of the 1999 Constitution, section 4(7)

8.4.2 National Laws and Judicial Decisions

The NWRP states that: “[A]ccording to the Constitution of the Country, every Nigerian has the right to adequate water supply and sanitation, nutrition, clothing, shelter, basic education, and health care, as well as physical security and the means of making a living” (NWRP, p.2), and one of its strategies for improving the quantity and quality of water supply and sanitation

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\(^{229}\) See the Statute of the International Court of Justice, 1945, article 38(b).

\(^{230}\) See the Statute of the International Court of Justice, 1945, article 38(c).
services is to “promote the right of access to clean water and basic sanitation for all citizens” (NWRP, p.24). However, the HRS is not expressly recognised within the fundamental rights and freedoms contained in the Constitution, but Sections 33 and 34 of the Constitution, respectively guarantee the fundamental human rights to life and human dignity which have been the basis for advocating for access to basic sanitation in other jurisdictions (see 5.2.2). The Constitution also protects persons from entering into or destroying property in order to safeguard sewage services. The provisions are further significant because threats and actual violations of such rights contained in Chapter 4 are justiciable before the Federal High Court.

Chapter 2 (Sections 13-24) of the Constitution also contains fundamental objective and directive principles of State policy that may be linked to the economic, social and cultural rights forming the legal basis for the HRS at the international level (as discussed in Section 5.2). The directive principles essentially represent the high ideal which States aspire to attain; but their enforcement is still largely political (Aguda, 2000). Table 8.3 expounds on the relevant provisions of Chapter 2, linked to the African Charter on Human and Peoples’ Rights 1983 that is domesticated in Nigeria. Although Section 13 of the Constitution makes it: “… the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution,” by virtue of Section 6(6)(c) the provisions of Chapter 2 are only justiciable in connection with other constitutional guarantees. This differentiation between the (justiciable) civil and political rights and freedoms guaranteed in Chapter 4, and the non-justiciable provisions of Chapter 2 that are more closely related to the economic, social and cultural rights, is perhaps because civil and political rights are more relevant for foreign investors, and the country with its relative niche as an oil exporter does not have any additional incentive to engage in the global constitutional race to the top by expanding on socio-economic rights (Agbase, 1998). Nonetheless, due to the high level of poverty and inequities in access to resource in Nigeria the enforceability of Chapter 2 has been increasingly advocated by scholars and human rights activists.

231 Section 44(2)(m) authorises any person or authority to cause damage to buildings, economic trees or crops, in order to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of public facilities or public utilities, including water supply and sewage services.

232 Minerva Mills Ltd & Ors v Union of India & Ors (1980) SCC (3) 625 (India).


<table>
<thead>
<tr>
<th>Chapter 2 Provisions relevant to the HRS (Section)</th>
<th>Details of the Directive Principles</th>
<th>Related economic, social and cultural rights under the African Charter on Human and Peoples’ Rights 1983 (ACHPR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>14(2)(b)</td>
<td>The security and welfare of the people shall be the primary purpose of government</td>
<td>Dignity (ACHPR, article 5); liberty and security (ACHPR, article 6)</td>
</tr>
<tr>
<td>14(2)(c)</td>
<td>Participation by the people in their government shall be ensured in accordance with the Constitution</td>
<td>Participation (ACHPR, article 13(1))</td>
</tr>
<tr>
<td>16(2)(d)</td>
<td>Universal access to suitable and adequate shelter, and food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare for the disabled</td>
<td>Equal access to public services (ACHPR, article 13(2)); non-discrimination (ACHPR, articles 2 and 3); the best attainable state of physical and mental health (ACHPR, article 16)</td>
</tr>
<tr>
<td>17(3)(c)</td>
<td>Just and humane work conditions, adequate facilities for leisure and social, religious and cultural life; State policies to safeguard the health, safety and welfare of all workers</td>
<td>Work under equitable and favourable conditions (ACHPR, article 15)</td>
</tr>
<tr>
<td>17(3)(f)</td>
<td>Children, young persons and the aged are [entitled to be] protected against exploitation, and neglect</td>
<td>Protection of the rights of the child (ACHPR, article 18(3))</td>
</tr>
<tr>
<td>17(3)(g)</td>
<td>Public assistance in conditions of need</td>
<td>Equal access to public services (ACHPR, article 13(2))</td>
</tr>
<tr>
<td>20</td>
<td>The State shall protect and improve the environment and safeguard the water, air, land, forest and wild life</td>
<td>General satisfactory environment favourable to human development (ACHPR, article 24)</td>
</tr>
</tbody>
</table>

Proponents of non-justiciability generally rely on Section 6(6)(c) of the CFRN and the view that the Constitution is intended to state supreme rules of law, without opinions, aspirations, directives and policies (Popoola, 2010). This view by extension could mean expunging Chapter 2 from the constitution if it is not intended to be justiciable. Although Item 60(a) of the Exclusive Legislative List for the exercise of federal legislative powers under the CFRN provides *inter alia* for: “The establishment and regulation of authorities for the Federation or any part thereof - (a) To promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution;” there seems to be a mixed attitude by courts in Nigeria on the justiciability of the directive principles in Chapter 2 largely based on
whether or not the directive principle are further contained in legislation or their enforcement violates Chapter 4 of the CFRN (Fagbohun, 2010; Popoola, 2010).

In cases where the laws hinged on Chapter 2 of the CFRN have been challenged, the attitude of the courts in Nigeria has been to uphold the power of the federal government to give effect to the relevant provisions through legislative enactments. This is because the CFRN is not exhaustive on the measures for enforcing the human rights provisions. In a case involving the right to education which is contained in the African Charter on Human and Peoples’ Rights (ACHPR) already domesticated in Nigeria, the ECOWAS Court has held that the non-justiciability of the right under the CFRN does not oust its jurisdiction because the right is domesticated in municipal law. Indeed, all the rights contained in the ACHPR are justiciable before domestic courts on the basis of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act of 1983 (see Table 8.3 for socio-economic rights provisions under the ACHPR that are relevant to the HRS). Further, in cases where the implementation of the directive principles results in the violation of Chapter 4, the courts also exercise jurisdiction on the directive principles, like the Court of Appeal did in the case of Archbishop Anthony Olubunmi Okogie & Ors v Attorney General of Lagos State, thereby presumably making Chapter 2 justiciable. International human rights mechanisms have also strengthened the justiciability of Chapter 2 provisions. For instance, the ECOWAS Court in the case of Socio-Economic Rights and Accountability Project (SERAP) v. Nigeria, dismissed Nigeria’s contention that education is “a mere directive policy of the government and not a legal entitlement of the citizens” and held that the ECOWAS Court “has jurisdiction over human rights enshrined in the African Charter and the fact that these rights are domesticated in the municipal law of Nigeria cannot oust the jurisdiction of the Court.”

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237 No. ECW/CCJ/APP/0808.


8.5 **Sanitation Governance Instruments**

This section analyses whether the sanitation governance instruments in the case study address the lack of sanitation faced by actors, given the drivers already highlighted (see 8.3). It also proffers specific recommendations for redesign to improve the effectiveness of both the HRS instruments (see 8.5.1) and the non-HRS instruments (see 8.5.2) for sanitation governance, taking into account the drivers that affect the performance of the instruments within the specified context.

8.5.1 Human Rights Instruments

This sub-section discusses regulatory and economic instruments for implementing HRS.

_Regulatory_

**Direct provision of access through public utilities**

The 1999 Constitution, 4th Schedule, requires direct and universal provision and maintenance of public conveniences, sewage and refuse disposal by local governments and there are legal guidelines on the ratio of users to public sanitation facilities in the environmental sanitation laws and regulations.\(^{239}\) There are also environmental health officers from the ministry of environment who monitor sanitation standards in public places.\(^{240}\) International organisations have also been directly involved in improving access to sanitation. For instance, the UN-Habitat Urban Renewal Scheme pursues sustainable upgrading of informal settlements and improving the liveability of the environment by ensuring access to sanitation services, _inter alia_ in selected areas.

However, most local governments lack the financial and technical capacity to deliver this responsibility effectively (Asaju, 2010; Bello-Imam, 2007) and follow-up on sanitation projects in order to avoid retrogression For instance, one interviewee noted that although the UN-Habitat Urban Renewal Scheme has been effective to some extent, “there is more to be done in terms of ensuring sustainability. After the urban renewal project is completed, the responsibility returns to the government and they may be unable to continue providing services in such areas.”\(^{241}\) The environmental health officers who are supposed to conduct

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\(^{239}\) For instance, the Sanitation and Pollution Management Law of Edo State stipulates a ratio of 1:50 persons for mobile toilets at public functions and schools (section 20), and toilets at the ratio of 1:30 persons under other circumstances (section 26).

\(^{240}\) Interviewees 2 and 3.

\(^{241}\) Interviewee 11.
sanitary inspection are too few to cover the entire country. Another constraint is that the involvement of the government in the delivery of sanitation services through public utilities affects the strict separation of politics and the management of services both unrealistic and less efficient (Schwartz and Schouten 2007). This makes the autonomy of service providers all the more important for ensuring that service providers operate without undue external influence, are in control of the resources for sanitation provision, and are accountable for their operations. Although the NWRP recognises the need for autonomy, it does not specify how this can be achieved. I also observed that the existing key performance indicators, which could form an objective quantifiable basis for the independent monitoring of service providers, have been developed by the regulators independently and sometimes in collaboration with international donors, but there is little or no input from the population in the policy process. This weakens the autonomy of the service providers and their accountability to the rightsholders. The direct provision of sanitation services by the government therefore requires political reforms to either strengthen the local governments with the resources that they need to implement their constitutional duties for sanitation services in their local communities or an amendment of the constitution to divest local governments of the role, in favour of the states. The local governments are however better positioned to deliver local sanitation services, based on the principle of subsidiarity and this makes the first option for political reforms more attractive.

Although the process of constitutional amendment is also very cumbersome and may cause unnecessary delays in the progressive implementation of the HRS, the local governments may be supported by the higher tiers of government within the existing legal framework to develop strong local monitoring mechanisms for sanitation to address the shortfall in environmental health officers. It is possible to design a local volunteer corps of environmental health inspectors to also improve the manpower resources for sanitation monitoring. This can be tailored after the National Environmental Standards and Regulations Enforcement Agency (NESREA) Green Corps initiative, through which private individuals are trained to support the enforcement of environmental laws in their communities, on a voluntary basis.

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242 Interviewees 2, 3, 10 and 13.
Human Rights Monitoring Mechanisms

The National Human Rights Commission and NGOs like WaterAid monitor access to sanitation among vulnerable groups like prisoners and residents of informal settlements, respectively (WaterAid, 2015; WaterLex, 2015). This provides additional information on access to sanitation among specific vulnerable groups, beyond the usual focus on access in urban and rural areas, as found in most official reports (see 8.2.3). The HR special procedures and monitoring mechanisms also attract international attention to otherwise local sanitation service problems and thereby pressure politicians, policymakers and technocrats into action, and provides an additional mechanism for HR enforcement after national remedies have been exhausted or where they are inadequate. For instance, in the case of The Social and Economic Rights Action Center [SERAC] and the Center for Economic and Social Rights [CESCR] v. Nigeria, the Social and Economic Rights Action Centre (SERAC) instituted a case to the African Commission on Human and Peoples’ Rights alleging that Nigeria had violated the rights of the Ogoni people through its involvement in Shell Petroleum Development Corporation’s oil exploration activities in their community. The Commission found, on the merits that Nigeria was in violation of the African Charter on Human and Peoples’ Rights of 1981, articles 2, 4, 14, 16, 18(1), 21 and 24. Hence, the international HR enforcement mechanisms may strengthen a State’s accountability towards rightsholders, despite weak national HR enforcement mechanisms.

However, the current monitoring processes mainly focus on physical access to improved sanitation facilities, but do not directly monitor environmental impacts of the sanitation services/facilities (sustainability) or other HRS principles (see Chapter 5), and the most recent official reports on status to sanitation and compliance with the HRS obligations in Nigeria have either been authored by international NGOs like WaterAid, or by national agencies in response to calls by other international organisations or the epistemic community, rather than as an initiative from the government to determine the baseline of access to sanitation in Nigeria. The reports are also often limited to the same three components of sanitation: toilets, hand washing, and solid waste management, leaving out the other components of sanitation that are listed in paragraph 1.3.2 of the NESP (see 8.2.4). Nonetheless, additional components like medical waste management (for instance, Longe & Williams, 2006; Abah & Ohimain, 2011; Ogbonna, Chindah & Ubani, 2012; Nwachukwu, 2006).

243 Interviewee 16.
244 (2001) AHRLR 60 (ACHPR 2001).
Orji & Ugbo, 2013), and school sanitation (Babalobi, 2013) are analysed in the scholarly literature with empirical evidence of the poor level of access to other sanitation components. Further, judicial decisions by themselves do not translate into positive actions from the State and additionally require political will and resources in order to ensure tangible benefit for the rightsholders (Ladan, 2009).

It is therefore important for investments in the sanitation sector to focus not only on behavioural changes and sanitation infrastructure, but also on strengthening local HRS monitoring mechanisms. The HRS monitoring may be linked to the existing sanitation monitoring mechanisms like the NDHS to ensure cross-sectoral learning and improvements in the quality of data on sanitation services. The monitoring process could also cover the full range of sanitation components in the NESP and inform national development strategies and plans.

**Economic**

**Development Finance**

Development finance (see 5.4.2) is an important source of funding for sanitation services; it augments public finance and tariffs from users. The WASH sector in Nigeria, as an emerging economy, attracts low development finance per capita at around USD 1.1, mostly in loans rather than grants (UN-Water, 2014). The available finance is often committed to rural sanitation services and scaling up strategy to meet universal access to sanitation (Federal Ministry of Water Resources [FMWR], 2016), while urban and peri-urban sanitation suffer from fragmented leadership and poor funding *inter alia* (see 8.2.4 and 8.3). Nonetheless, heavy dependence on external funding of national development priorities like sanitation could result in the informal weakening of State structures (Burns et al. 2017). Corruption and political considerations may also affect the efficient utilisation of the available funds (Akpabio 2012).

It is therefore important to explore additional options for funding sanitation services from internal sources, including non-monetary contributions from users. Strong accountability mechanisms and transparent processes can be institutionalised to ensure that available funds are efficiently committed to local sanitation priorities. Quasi-judicial mechanisms (like

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245 Interviewees 2, 3 and 13.
246 Interviewees 10, 17 and 19.
administrative tribunals and petitions) may also be strengthened for the speedy sanctioning of petty corruption cases and to improve access to justice in the sanitation sector.

**Subsidy**

The NWRP provides for water charges to ensure economic efficiency, while guaranteeing affordable access for the poorest through a cross-subsidy. Following the shift away from subsidy approaches for toilets to non-subsidy approaches like community-led total sanitation (see 8.5.2), it is only waste collection services in some urban areas (like Lagos, Benin, and Port Harcourt) that are still subsidised in order to encourage speedy uptake of the services. The subsidy is paid by the regulators to their respective private sector partners, under various public-private partnership (PPP) contract models (see 8.2.4). The PPP can potentially improve the quality and quantity of public sanitation goods and services, enhance the performance orientation and responsiveness of the service providers to the needs of the public, improve creativity and innovation as a result of the combined resources of the different partners; engender greater public participation in the monitoring of the public services; and assist with building social capital and strengthening the capacity of civic groups to take collective action to solve their group problems, which prioritises social development (see generally Fiszbein, 2000; Ayee & Cook, 2003; Hawranek, 2000; Jones, 2000).

However, the beneficial effects of PPPs accrue where the institutional capacity of the State is already highly developed, the private sector well established, and public services were close to achieving full coverage in many cases (Plummer, 2002). Otherwise, there is little incentive for the private sector to make the necessary huge investments in service provision in informal settlements or other vulnerable areas and PPPs inadvertently create inequities in access to sanitation (Devas et al., 2001). In the absence of a strong regulatory framework, improvements in service performance standards are unlikely (Batley, 1996). PPP are also vulnerable to political changes (Fiszbein, 2000), and may collapse where the public sector does not meet its obligations to the private service providers. While subsidised PPPs have improved coverage (in terms of solid waste collection services) in the urban areas, they have failed to reduce the inequality in access to sanitation because of the exclusion of informal settlements. The subsidised services are therefore a form of covert discrimination that

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247 Interviewees 2, 7 and 8.
248 Interviewees 2, 7, 8, 9, 10, 11, 12, 13, 17 and 19.
249 Interviewees 7 and 8.
exacerbates the inequities in access to sanitation within the population. In some cases, even where the regulator had provided additional funding to bridge the shortfall in tariffs and thereby motivate private service providers to extend coverage in informal settlements, the informal settlements were still being excluded. Evidence from the case study, supported by the literature (Kariuki, 2014), also suggests that subsidies may not benefit the poorest due to insistence on other formal requirements like a registered address, or the lack of flexible payment mechanisms (see 8.2.4).

In order to address the limitations of the current system of subsidies, it is preferable to institutionalise public ownership and control of sanitation goods and services with strong downward accountability mechanisms in favour of the population. The PPPs require strong regulatory mechanisms to protect the interests of vulnerable rightsholders. Where non-State actors are engaged as service providers, their operations ought to be regulated and controlled by the State to ensure full respect, protection, and fulfilment of the HRS, and the PPP contracts negotiations process ought to be transparent and involve the local population, including residents of informal settlements, who will depend on the services.

Suasive

Human rights advocacy and training materials

Human rights advocacy elevates improved sanitation from a local policy issue to become a universal priority, with increased opportunities for learning and knowledge transfer on different scales. Advocacy at different levels of governance also places duty bearers under additional pressure to fulfil their HRS obligations and the manuals, reports and other publications of the Special Rapporteur (both former and current) are good examples of how suasive instruments improve the body of knowledge about the meaning, scope and how to implement the HRS. The UN-Water Global Analysis and Assessment of Sanitation and Drinking-Water, for instance, promotes the national WASH sector review process and the results are useful for formulating commitments both nationally (such as changes in policy) and internationally (UN-Water, 2014). Suasive instruments focusing on vulnerable groups, like the Women Leaders for WASH which encourages the participation of women in sanitation governance and the WASH Pledge commitment by the affected corporations to

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250 Interviewees 10, 11, 12, 134, 14, 16, 17 and 19.
251 Interviewees 10 and 15.
252 Interviewee 10.
253 Interviewees 24 and 43.
254 Interviewee 36.
implement safe access to WASH for their employees, highlights vulnerabilities and promotes inclusive sanitation governance.

However, some suasive instruments are written in a highly aspirational language which does not distinguish between the legally binding obligations and good practices. For instance, the manual on the rights to water and sanitation published by the former Special Rapporteur offers remedies for non-implementation of the rights, describes technology for implementing the rights, considers the challenges facing urban and rural areas separately and offers policy recommendations on how to address each context, but, in the analysis there is no distinction between obligations that are already legally binding and those that are evidence of good practice but non-binding. This creates some ambiguity for judicial enforcement. The involvement of a variety of actors and loose application of the HRS language may appear to improve the broad the implementation of the HRS norm or lead to a conflation of values and the hi-jack of the human rights agenda by technocrats in the long run, to the disadvantage of the poor, vulnerable and marginalised groups (Barlow 2009; Mehta, Allouche, Nicol & Walnycki, 2014).

In addition to showcasing examples of good practices for implementing the HRS, it is therefore essential for suasive instruments to clearly highlight the binding nature of HRS obligations at all levels of governance.

8.5.2 Non-human Rights Instruments

I discuss below the regulatory, economic, management, and suasive non-HRS instruments for sanitation governance.

**Regulatory**

**Criminalisation of pollution**

Criminal law is used to regulate the environment and has sanctioned offences against public health, as follows: “[A]ny person who corrupts or fouls the water of any spring, stream, well, tank, reservoir, or place, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour, and is liable to imprisonment for six months.”

Offenders who dump sewage in unauthorized places may also be prosecuted by the relevant agencies. Further, the enforcement agencies are equipped with the power of entry to

255 Criminal Code Act 1916, Section 245.
256 Interviewees 7, 8 and 9.
inspect premises, and the laws sanction open defecation and urination, water and land pollution with waste as well as non-payment of tariffs *inter alia* with punishments like closure of premises, fines and imprisonment terms.\(^{257}\) With the recent reforms in sanitation laws and policies, criminal sanctions have been revised to better reflect the modern realities and improve deterrence. Some states in Nigeria (like Abia, Adamawa, Anambra, Bayelsa, Delta, Edo, Kogi, Lagos, Ondo and Sokoto) have also established special courts to expedite the prosecution of sanitation offences (Ijaiya, 2013). In Lagos, in 2015 alone, 4449 suspects were arrested on suspicion of sanitation related offences (like contravening the restriction of movement during the designated hours for the observance of environmental sanitation day, discussed further under suasive instruments below); 3,178 were convicted and 376 discharged with 839 suspects still awaiting trial by the beginning of 2016 (Oyebade, 2016). Sanctions may also be imposed by a community, based on the collective ethos of the local population, and without recourse to the formal justice system.

However, criminal sanctions are sometimes imposed on small informal sanitation service providers who may not be able to afford the cost and formality of registration, but nonetheless augment the sparse formal sanitation services in many formal and informal settlements.\(^{258}\) The regulatory authorities also often lack the resources to monitor and enforce compliance and prosecute the cases in a timely manner. It is therefore necessary for criminal sanctions to be imposed against acts and omissions which threaten public health and the environment, but informal service providers may be supported with small loans or registration waivers from the state governments to enable them to obtain the necessary licenses for their operations. They could also be trained on best practises by the regulators, so that their operations do not inadvertently constitute an offence against public health. Minor sanitation offences may also be punished through quasi-judicial means, such as fines imposed by the regulators, and judicial mechanisms can be resorted to only in contentious cases or for serious offences, to reduce the pressure on the already stretched courts.

\(^{257}\) Interviewees 4, 7 and 8. See for instance, National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, section 30; Waste Management Agency Bill (Rivers State) 2013, section 53(5)(6)(7)(8)(9) and section 54; Sanitation and Pollution Management Law (Edo State) sections 6, 23, 31.

\(^{258}\) Interviewees 7, 8, 13, 17 and 19.
Environmental protection laws, including licencing exemptions

Nigeria has environmental policies and regulations that are relevant for the HRS. The legal framework for sanitation under the British colonial administration was focused on land reclamation, and waste management for the control of vectors like mosquitoes and the reduction of public health risks, particularly for the Europeans, in order to safeguard British socio-economic interests in the local communities (His Majesty’s Office 1906; 1909; 1910a; 1910b). Post-independence, the sanitation laws and policy reforms in Nigeria have been largely reactive, triggered by either unforeseen local circumstances, treaty obligations, or the international development agenda (Agbase, 1998; Akpabio, 2012). For instance, the discovery of 4,000 tons of toxic waste dumped by an Italian ship on the port of Koko, a city in the south of Nigeria, in 1987, led to the enactment of the Harmful (Toxic) Waste Criminal Provision Decree 42 of 1988. Subsequently, in 1989, the National Policy on the Environment was adopted with the policy goal of sustainable development, soon after sustainable development had emerged as a guiding principle for environmental protection and human development at the international level.

Earlier laws relevant for sanitation (like the Waterworks Act of 1915; Public Health Act of 1917; Oil in Navigable Waters Act of 1968 and Petroleum Act of 1969) focused on preventing the contamination of water resources and the environment by human activities, while subsequent laws (like the Land Use Act of 1978 and Water Resources Act of 2004) established water rights and licensing exemptions to ensure effective water resources management for domestic and socio-economic uses. Licensing exemptions where they cover personal and domestic sanitation and hygiene uses improve access for people who rely on wet sanitation systems without any additional financial costs. The NWRP recognises that no one can own water, but only a right for environmental and basic human needs, and that “…every citizen shall have a right to access water for sustenance while guaranteeing access for controlled socio-economic use.”

The more recent laws (like the National Environmental Standards and Regulation Enforcement Agency 2007) adopt an integrated approach to prevent contamination of the environment by solid and liquid waste; prohibit open defecation or urinating in drains; and require hygienically maintained toilets in commercial buildings, as a way of improving access to sanitation services in public places. The National Environmental (Sanitation and

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260 Environmental Laws Lagos State 2017, Section 69.
Wastes Control) Regulations\textsuperscript{261} regulates effluent discharge, and it contains guidelines for recommended approved number of toilets and septic tank construction.

However, some parts of Nigeria are arid especially in the North and therefore face more challenges in accessing groundwater in sufficient quantity and good quality for their basic needs. Even in the water abundant parts of the country, indiscriminate abstraction may deplete finite water resources and damage environmental sustainability in the long run. There are also legal constraints to consider where the water rights and licensing exemptions only benefit landowners and exclude people living in informal settlements, or rightsholders are charged unaffordable rates for water abstraction without any support to ensure alternative safe public supply options. In Lagos, people are now required to obtain a permit before they can sink a borehole, hydraulic and other similar structures for water supply. Similarly, the Delta state government has imposed a borehole levy on private, commercial and industrial boreholes, respectively. The charges are exclusive of the high cost of manual and heavy duty drilling of boreholes (see 8.2.3). The neo-liberal policy reform is vehemently opposed by the population and even the current Special Rapporteur (with reference to Lagos) as a HR violation in the absence of public water and sanitation services for rightsholders. This is significant for many Nigerians who have to rely on water for their sanitation and hygiene uses. Further, the law enforcement is mostly confined to urban areas due to limited resources;\textsuperscript{262} the survey respondents were mostly unaware of the guidelines for recommended approved number of toilets or the construction of septic tanks, for instance.

To protect access to water for basic sanitation in arid or semi-arid regions and during emergencies that affect the water supply infrastructure, potable water could be used only for satisfying basic human needs in such circumstances, except where there is express approval of regulatory authorities for non-related uses, based on the doctrine of necessity. Water may also be regulated as a common pool resource to check over-exploitation and degradation (Colín-Castillo & Woodward, 2015; Fisher et. al., 2010; Ostrom, 2008), in addition to operationalizing environmental principles like precaution and polluter pays (see 7.2.2). The economic good principle supports the valuation of water services and presumably improves financial sustainability and conservative use of water but it needs to be operationalized through pro-poor instruments (like cross-subsidies) to ensure inclusiveness (Jiménez & Pérez-Foguet, 2010; Obani & Gupta, 2016). The borehole levies can therefore be critically

\textsuperscript{261} 2009 S.I. No. 29.
\textsuperscript{262} Interviewees 7, 8 and 11.
evaluated to prevent the violation of the HRS. This would benefit from a national threshold for affordability (taking into consideration the full the direct and indirect costs of sanitation and the economic realities), as proposed earlier (see 8.2.4). The regulatory capacity may also be expanded through engaging the services of volunteers, in addition to advocacy and awareness campaigns about the provisions of sanitation laws (see 8.5.1).

**Economic**

**Budgeting, emergency programme fund, regular resources & thematic funding in emergencies**

The budgeting process, of international humanitarian agencies especially, is subjected to financial standards which promote accountability, transparency, and better management of corporate financial risks in the humanitarian sector (UNICEF, 2017). This creates an opportunity for learning and improved monitoring of sanitation sector spending even outside humanitarian contexts. The emergency programme fund, regular resources, and thematic funding (see 6.4.1) also offer critical financial resources to augment national funding, and provide basic sanitation and other necessities for the recovery of the affected population.

However, international humanitarian actors may prioritise spending on hygiene promotion through hygiene studies and advertising over the direct provision of sanitation services, whereas the evidence suggests that hygiene awareness is already higher than anticipated among local people and the direct provision of essential hygiene items like soap and water and the use of interactive methods would better enhance learning and positive behaviour change (Fernando, Gunapala & Jayantha, 2009). Beyond the provision of basic sanitation services, sanitation is often not addressed as a first order priority in humanitarian interventions (see generally Breau & Samuel, 2016; Klasing et al., 2011). Due to the perceived temporary nature of emergencies and humanitarian crisis, sanitation interventions are also built with minimal considerations for durability. This is counterproductive in humanitarian crisis situations that become protracted, as often happens with severe natural hazards and conflicts.

To improve their impact, medium and long term economic instruments ought to involve representatives of the target community in the planning process, and reflect local priorities rather than a set of predefined sanitation and hygiene goods and services formulated by the humanitarian actors. The HRS principles (see 5.3) also offer a minimum standard that may be

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263 Interviewees 9, 21 and 22.
264 Interviewee 21.
communicated to humanitarian actors and progressively implemented with the maximum available resources (see 5.2.3).

**Private Investment**

Private investment by individuals and households is the main source of funding for on-site and decentralised sanitation solutions and significantly reduces the funding gap for sanitation infrastructure. It is flexible and can include non-monetary investments like labour, and this empowers the poor. The opportunity for private investments also generates local business interest and enhances service expansion for users who can afford service tariffs. The quality of the infrastructure and management differs widely based on the amount of financial and technical resources invested and the extent of regulation (see 3.5).

However, the recent neo-liberal reforms in the sanitation sector increase the focus on cost recovery, and the private sector being profit-oriented cannot be mandated with the responsibility of providing public goods and fulfilling HR (like sanitation) without strong regulation and downward accountability mechanisms to empower the rightsholders from unaffordable tariffs and poor quality services. Consequently, anti-privatisation campaigns have been hinged on HR (Bakker, 2007; Barlow, 2009; Corporate Accountability International [CAI], 2015; Uwaegbulam, 2016). Corruption and political instability may also hinder the regulation of private service providers (Ayee & Cook, 2003).

The foregoing reiterates the need for enhancing the regulatory and monitoring capacity of the relevant agencies for improved supervision of private investments to comply with the HRS. Similar recommendations under the discussion of subsidies (see Section 8.5.1) also apply to private investments.

**Management**

**Community-Led Total Sanitation (CLTS)**

Community-Led Total Sanitation (CLTS) was introduced in Nigeria in 2005 through triggering random communities, but triggering a complete LGA was considered to be a more effective approach and by 2008 the scope of CLTS in Nigeria was significantly broader in the run-up to the International Year of Sanitation (Federal Ministry of Water Resources et al.

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265 Interviewees 1, 6, 7, 8, 10, 13, 14 and 15.
266 Nigeria Water Sector Road Map, 2011; interviewees 7, 8, 10 and 14.
267 Interviewees 1 and 11.
2016). There is now a wide spread subscription from government at all levels, and all donor assisted rural sanitation projects adopt CLTS as their main approach (Federal Ministry of Water Resources 2016). CLTS has been initiated throughout the 36 states and the FCT Abuja, and by July, 2014, there were 19,467 communities triggered, including 9,728 certified open defecation free (ODF) and 3,276 that were close to being certified (Federal Ministry of Water Resources et al. 2016). Through focusing on triggering effective local participation to eradicate OD in communities, CLTS may promote inclusion. As observed by one of the respondents, CLTS relies on the active participation of local communities to “…assess their sanitation situation, analyse it, and identify the problems they are facing, take action to address the problems and set strategies for reaching their goals … using locally sourced materials.” The relatively low cost of CLTS is considered to be more financially sustainable than other instruments that require subsidies and “end as soon as the subsidies dry up.”

However, while the selection of communities for CLTS was initially based on the level of vulnerability to water and sanitation-related diseases, there is no consistency in the selection criteria for new communities to participate in CLTS across Nigeria (United Nations Children's Fund [UNICEF], 2012). Some of the considerations are based on political factors, or the existence of a WASH department to locally facilitate community entry, a dedicated bank account for WASH, and evidence of local commitment to the CLTS approach (UNICEF, 2012). Some of these criteria (like a dedicated bank account for WASH) disenfranchise poor communities. CLTS may also violate the HRS without standards and resources to ensure quality infrastructure and mechanisms to protect vulnerable people against potential negative impacts of CLTS (like discrimination) (Galvin, 2015; Obani & Gupta, 2016).

It is therefore important for the NTGS to review the selection criteria for local communities participating in CLTS programmes, and publish the same in local languages for all interested communities to be aware. The criteria could be based on a needs assessment and devoid of discriminatory provisions. The NTGS may also commission a detailed meta-analysis of the

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268 Interviewees 2, 3 and 7.
269 Interviewee 2.
270 Ibid.
271 Ibid.
272 Ibid.
HR-impacts of CLTS across all communities that have been triggered, and develop strategies to address any unintended negative consequences.

**Environmental health clubs in schools**

Environmental health clubs in schools promote capacity building for children who may otherwise be unable to influence the sanitation governance process to address their special needs. However, there are concerns that children could be easily exploited or overworked by poorly trained facilitators who do not fully understand the objectives of the programme. Further, the clubs may imbue the children with non-HR values that compete with the HRS except any rules incoherence is addressed to ensure compatibility with the HRS. It is therefore important for the facilitators to be properly trained and the School WASH projects and other child-led sanitation instruments can be carefully evaluated to ensure compliance with HRS norms and child rights standards.

**Suasive**

**Monthly environmental sanitation exercise**

In various parts of Nigeria, the federal and state government designate the first or last Saturday of every month as the monthly Environmental Sanitation Day (ESD). The practise was initially designed to compel citizens to remain at home during the designated hours and actively clean their homes, drains, and the surrounding environment. This could improve opportunities for local sanitation mapping initiatives, collective action for sanitation at the community level, and free access for sanitation service trucks; such local mapping initiatives have been an important source of WASH data and very useful for identifying vulnerable groups (de Albuquerque, 2014; dos Santos & Gupta, 2017).

Nonetheless, the household survey uncovered a general apathy amongst a vast majority of the population who see the practise as an infringement on their constitutionally guaranteed fundamental right of free movement. In 2016, the restriction was successfully challenged before the Court of Appeal, sitting in Lagos in the case of *Faith Okafor v. Attorney General of Lagos State*. The courts held that the restriction of movement was a violation of sections 34, 35 and 41 of the 1999 Constitution, which respectively preserve the rights to respect for the dignity of a person, personal liberty and freedom of movement. The failure of regulatory

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273 Interviewee 7.
authorities to conduct house inspections, due to limited resources, has also been a disincentive for the public to comply with the ESD.\textsuperscript{274}

Hence, there needs to be a public reorientation on the importance of good sanitation and hygiene practices both during and beyond designated ESD. The enforcement capacity of regulatory agencies also needs to be strengthened through some of the measures already suggested (like establishing a well-trained volunteer sanitation enforcement corps), in addition to designing incentives for self-regulation within local communities.

**Advocacy, Training, Assessment and Reporting Mechanisms**

The NWSP recognises effective hygiene education and promotion as necessary for positive behavioural change and full sanitation coverage. Electronic and print media are useful for disseminating information on good sanitation and hygiene practices, publicising sanitation news and facts, and engaging in open discussion with the public on sanitation issues, particularly where the message is transmitted in the local language.\textsuperscript{275} Advocacy may compel the government to prioritise sanitation investments due to internal pressure from the population.\textsuperscript{276} Additionally, Nigeria has many domestic assessment and reporting mechanisms that cover access to sanitation services, *inter alia*, including the Water and Sanitation Monitoring Programme (WSMP); Core Welfare Indicator Survey (CWIS), and the National Demographic Health Survey (NDHS). However, there are inherent limitations in the various mechanisms which has resulted in the paucity of reliable data on the status of the HRS (see 8.2) The WSMP lacks a lead agency and has been plagued by tensions between the priorities of government, donors, and personnel, making it a weak and ineffective monitoring instrument (Odhiambo, 2010). The CWIS ought to be conducted by the government once every decade, as part of the national census, but the national population census figures have been historically controversial and the last census national population census was conducted in 2006. The most recent assessment is the NDHS already covered in Section 8.2. In addition, international mechanisms like the JMP also provide useful insight into sanitation access, subject to the limitations highlighted in Section 8.2 (see also 7.3.4) However, this does not fulfil the requirements of the HRS where the data is not disaggregated to show the situation of vulnerable and marginalised people, or where the data only measures one or a few HRS principles (like access) but other principles are being violated (like affordability),

\textsuperscript{274} Interviewee 14.

\textsuperscript{275} Interviewee 1, 2, 3, 4, 6, 7, 8, 12 and 15.

\textsuperscript{276} Interviewees 1, 2, 6, 10, 11, 12, 13, 14, 16, 17, 18 and 19.
despite increased coverage. However, the new SDGs sanitation target shows the possibility of adapting non-HR mechanisms to integrate HRS principles; such integration may be pursued by all stakeholders in the sanitation sector towards improving knowledge transfer between the HRS and other disciplines and governance frameworks relevant for sanitation.

8.6 SANITATION GOVERNANCE PRINCIPLES, DRIVERS, INCLUSIVE DEVELOPMENT AND LEGAL PLURALISM

This section analyses whether the principles and instruments address the drivers of poor sanitation services (see 8.6.1), and their ability to achieve ID (see 8.6.2), and incoherence in the sanitation governance framework, using legal pluralism theory (see 8.6.3).

8.6.1 Sanitation Governance Principles, Instruments and Drivers

The sanitation governance framework contains a mix of twenty-seven HRS and non-HRS principles, including: (i) acceptability; (ii) access to information; (iii) accessibility; (iv) accountability; (v) affordability; (vi) autonomy of the service providers; (vii) availability; (viii) capacity building; (ix) cost sharing; (x) demand responsiveness; (xi) economic good; (xii) environmental offsetting; (xiii) equitable access and poverty reduction; (xiv) extra-territorial obligations; (xv) gender responsiveness; (xvi) integration; (xvii) participation; (xviii) polluter pays; (xix) precaution; (xx) prevention; (xxi) private sector participation; (xxii) right to a healthy environment; (xxiii) safety; (xxiv) social good; (xxv) subsidiarity; (xxvi) sustainability; and (xxvii) water rights for sustenance. The relevance of these principles are already covered in Chapter 5 (see 5.6.1) and Chapter 7 (see 7.4.1), and will not be repeated here. The case study further highlights an additional five principles for sanitation governance, namely: (a) autonomy of service providers; (b) policy making and regulatory role of the government; (c) respect for constitutional law; (d) demand responsiveness; and (e) no ownership, only a right to use water. These five principles have been covered in the discussion of key stakeholder roles (see 8.2.4) and governance instruments (see 8.5). This section therefore focuses on the extent to which the principles are effective in tackling the drivers of poor sanitation by briefly analysing the extent to which they are operationalized in practise (elaborating on Table 8.1).

The foregoing principles focus mainly on water, and address sanitation governance mainly in connection with water quality and quantity. Hence, the principles are poorly developed with reference to sanitation governance specifically. While water is recognised under the NWRP
as a second order priority (following after minimum stream flow requirement as a first order priority), sanitation is not clearly assigned any priority of use. The prioritisation of water alone falls short of addressing the sanitation needs of users who rely on dry systems; and the case study did not show any significant evidence of prioritisation of sanitation in the allocation of maximum available resources as required under HR law (see 5.2.2 and 8.4.1), nor a strong HR-based approach in the delivery of services. Rather, the central goal of sanitation governance appears to be to improve financial flows to the sector with a goal to ensuring that households can in the long term, cover the full cost of their sanitation services (FMWR et al., 2016). This is essential for financial sustainability but requires safeguards to ensure that the HRS is not violated for the poor and vulnerable people who cannot make financial contributions for their basic needs.

Although the policy process mostly focuses on rural, semi-urban and urban areas, the government and stakeholders in the sector have instituted strategies like the Partnership for Expanded Water Supply, Sanitation and Hygiene (PEWASH), launched in 2016, designed to achieve universal sanitation coverage in rural areas, without an equivalent programme for other contexts with significant sanitation problems (like urban areas, humanitarian situations and informal settlements). Hence, the problem of lack of leadership for sanitation governance in urban areas (especially highlighted by the experts and stakeholders I interviewed, see 8.3) still persists. Further, it is the neo-liberal principles (like economic good, cost recovery and demand responsiveness) which have been the bases for recent sanitation sector reforms at various levels of governance, while the HRS principles and participatory governance instruments like the sanitation ladder and participatory budgeting are yet to be operationalized across Nigeria (FMWR et al., 2016).

The foregoing shows that though there is some potential for addressing the drivers of poor sanitation governance through the existing sanitation governance framework, there is a further need to redesign and strengthen the policy implementation process. This is in addition to the recommendations already made on redesigning the sanitation governance instruments in Section 8.5 and addressing specific drivers (in the next paragraph). The next sub-section further evaluates the impact of the existing principles and instruments on ID (see 8.5.2).

**Instruments for addressing the drivers**

In theory, the HRS can be satisfied through right-based instruments that impose an obligation on the State as primary duty bearer to respect, protect and fulfil the sanitation needs of the
population, especially the poor, vulnerable and marginalised. In a society with high income levels, this can easily be achieved for households with the capacity to pay for their sanitation services. Otherwise, the HRS offers instruments like progressive pricing, cross-subsidy, and regulatory safeguards to protect the rights of the poor, vulnerable and marginalised. However, where there are scarce resources for expanding the sanitation network and a myriad of environmental, economic and social drivers, imposing a duty to respect, protect and fulfil the HRS together with accountability mechanisms are essential but not enough. Rather, tackling the drivers of poor sanitation services require a broad range of both HRS instruments and complementary non-HR instruments (including technology) to ensure progressive realisation of universal access to sanitation services that satisfy the HRS principles.

**Challenging topography, space constraints and system failures like erratic power supply** require the substitution of sanitation infrastructure with more suitable alternative technologies for the local context, and incentives for users to adapt the alternatives. Space constraint may also require the construction of shared facilities, where this does not offend local customs. It is therefore also important for sanitation regulations to accommodate shared facilities that meet sanitary standards, to improve the chances of external funding. It is further important to approach sanitation service delivery as a complete value chain which requires utilities as well as small service providers who may be better equipped with small equipment that can access small lanes than the big trucks used by utilities.

**Climate change-related and natural hazards, weather variability, and high temperatures and turbidity** require efficient disaster risk management to strengthen systems’ resilience and prioritising sanitation services in emergency response planning. A reduction in greenhouse gas emissions and climate finance can also generally improve sanitation systems and climate-resilient communities (United Nations Development Program [UNDP], 2016). Additionally, climate change requires a strong regulatory regime for a legally binding obligation to reduce greenhouse gas emissions globally, in line with the precautionary principle and support for poor States to employ adaptation measures for climate-change induced hazards based on common but differentiated responsibility. The regulatory regime may integrate the latest scientific evidence on safe levels of CO₂ emissions, for instance and relevant indicators like the level of atmospheric CO₂ concentration, top-of-atmosphere radiative forcing (Rockström et al., 2009; Steffen et al., 2015) and wider developmental concerns in the regulation of economic activities contributing to climate change (Obani & Gupta 2016c; Stern 2011).
Discounting the future, especially among poor people and preference distortion affecting willingness to pay require educating the poor on the health, social and economic costs of OD and other unsanitary practices and protecting their property rights and investments in sanitation infrastructure. The legal protection of sanitation investments can be distinct from the question of informality because sanitation is a human right that imposes legal obligations to provide services to everyone in need (see 4.2.2 and 5.2.3). Sanitation is also a public good and the negative externalities from non-users cannot be confined easily; it is therefore essential to ensure universal access irrespective of the legal status of the users (see 3.3). The case study also highlighted an additional factor affecting WTP, proximity to waste management facilities. This requires regulators to ensure that waste management facilities are sited away from residential areas and well managed wherever they may be located, to avoid public nuisance. Waste managers may also be penalised for failure to meet the regulatory standards for the operation of their facilities.

**Distance to the facility** makes it necessary to provide sanitation facilities within a reasonable distance of the vicinity of users. What constitutes a reasonable distance is contextual and depends on both the physiology and circumstances of the users, as well as the environment where the facility is needed? For instance, children may be unable to use sanitation facilities that are far away from home unaccompanied at night, and an adult confined to a wheelchair may be unable to use a toilet right inside the room that lacks disability access. Hence, the suitability of the available facility is also important and this needs to be reflected in an indicator for measuring access.

**Exclusion of minorities and other negative social practices** that hamper access to sanitation services require all stakeholders to be educated on the public good nature of sanitation and the inefficiencies of excluding some members of the population from accessing services, because the negative externalities that result cannot be easily confined to the non-users alone. In addition to suasive instruments, addressing the sanitation laws can be expanded to protect vulnerable populations from discrimination, ensure equal access to sanitation resources and services and promote the effective participation of vulnerable people in the sanitation governance process.

**Household poverty and unaffordable tariffs and connection fees** require integrating sanitation service provision in poverty alleviation strategies, developing low-cost technology options (at the local level of governance) that advance the HRS principles and progressively deliver higher social, health and environmental functions (see 3.5.5), and building a strong
sanitation marketing mechanism that is informed by a needs assessment for the vulnerable population and integrates non-monetary contributions, payments in instalment and cross-subsidies for the poor. Household poverty may also be addressed through micro-finance loans or other loans with minimal interest rates and flexible requirements for collateral. Although household poverty does not directly affect access for people living in humanitarian situations, the increasing number of humanitarian crisis situations and the limited resources for humanitarian assistance for sanitation raises questions of whether or not refugees and internally displaced persons can pay for their sanitation needs, and how (see Chapter 9).

**Inefficient tariff collection system, including unaffordable tariffs and connection fees** further require the depoliticising sanitation tariffs, understanding the economic capacity of users, developing a variety of HRS-compatible technology options to suit different wealth quintiles, and setting the right cost for services. Nonetheless, the proportion of the cost to be borne by the rightsholders needs to be affordable and flexible economic instruments like progressive pricing and cross-subsidy may be relevant. Otherwise, the current practise of imposing flat rates, irrespective of the quantity of waste generated, may impose additional cost on poor users even though they may not generate much waste.

**Insecurity and conflict** also make it expedient to strengthen systems’ resilience and prioritising sanitation services in emergency response planning. **Poor social cohesion** further requires moving away from an emphasis on individual behavioural changes, prescription of a pre-defined sanitation technology, and the marketing of private sanitation goods, towards a social marketing model that addresses the structural causes of poor sanitation services, and markets technology options that are demanded by the community (based on a participatory mechanism like a functional sanitation ladder) and addresses communal concern. With improved social cohesion, there is likely to be a higher sense of commitment among the population to address the sanitation problem and maintain facilities. The success of management instruments like the CLTS (see 7.3. and 8.5.2) is evidence of the power of collective action for addressing poor sanitation services.

**Insufficient funds** require a baseline study to clarify how much is currently being spent, on what component of sanitation, and by whom? The different stakeholders in the sanitation sector, including government ministries, departments and agencies services can be encouraged to establish a clear heading for sanitation services within their budgets to improve the tracking of sanitation funds. The government can also be pressured into complying with its international funding commitments like the eTkwini (see 8.3) (for instance, through
international and local advocacy efforts) and establish transparency and anti-corruption strategies to ensure the efficient utilisation of funds in the sector. Poorly targeted funds also require subsidiarity, participatory budgeting and a strong accountability mechanism through which the vulnerable population can express their sanitation needs and thereby influence the expenditure of sanitation funds for those who need it the most.

**Low awareness** makes it important to educate rightsholders on the design, functionality, use, operation and maintenance of different sanitation technology options; sources of information and technical advice about their sanitation services; and what to do if they have any problems with their sanitation services or providers, including judicial and non-judicial mechanisms for resolving disputes over services. Such education can be transmitted using different media and languages, including local languages and signs; displayed in public places like markets; and taught to children, to ensure that the message reaches a wider audience.

**National poverty** requires improved mechanisms for coordinated planning and financing of sanitation projects by different stakeholders at scale. The case study also supports the need for external partners to align their development finance and programmes with national priorities to ensure local ownership of the development agenda or programmes supported by the external partners. Consequently, it is important to integrate the aid effectiveness principles adopted in 2005 as part of the Paris Declaration on Aid Effectiveness and reaffirmed in the 2008 Accra Agenda for Action, which include: ownership, alignment, harmonization, result-based management and mutual accountability, while institutionalising safeguards against the eroding of national democratic processes by the donors (Bissio, 2013; McCourt, 2017). The HRS principles of affordability, equality and non-discrimination, transparency and access to information about public expenditure on sanitation, and extra-territorial obligations imposed on rich States to support the poorer States in realising the HRS can further mitigate national poverty and therefore need to be strengthened in the policy framework.

**Non-acceptance based on culture** require an understanding of cultural sanitation practices and how these interact with the HRS principles, investing in suasive instruments to improve good sanitation and hygiene practices as required, and imposing sanctions to deter negative practices. It further requires a negotiation of acceptable sanitation standards and technology, between the local community and the regulators, and enforcement of the negotiated standards without making the cost of sanitation unaffordable. Otherwise, poor sanitation standards may
lead to informality, a vicious cycle of poor sanitation services despite the high technical standards specified in the legal framework, and discrimination against the poor.

Other social drivers require population planning measures and sexual and reproductive health awareness to manage population growth and density; urban planning and the upgrading of informal settlements and rural areas to address mass migration and uncontrolled urbanisation; mainstreaming of the HRS and the protection of sanitation infrastructure in the national security agenda; and complementary humanitarian principles which assure access to basic needs for vulnerable populations in humanitarian situations.

**Pollution/water scarcity** requires: (a) incorporating emission limits in sanitation governance rules, backed up with strong enforcement mechanisms to prevent pollution and ensure reparation where violations occur, based on the polluter pays principle; (b) replacing harmful components of the sanitation system with alternatives that are more environmentally sustainable; (c) promoting dry sanitation systems in the arid regions and wet systems in the more water abundant regions, and where wet sanitation systems are used, (d) adapting measures to protect against indiscriminate abstraction and the unsustainable of water or other natural resources for sanitation, in furtherance of the protection of ecosystems and water as a finite resource, heritage and common pool resource (CPR); and (e) water conservation through water efficiency standards for water-borne sanitation systems and retrofitting of existing water borne systems in arid integrated water resources management. To improve the uptake of conservation programmes, there needs to be incentives for the end-users and additional technical and financial support based on a needs assessment. It is also important for the sanitation ladder used in national strategies like PEWASH to be revised, by the regulators in conjunction with local communities and other stakeholders, and delinked from water. Rather, the stakeholders may jointly develop a variety of sanitation technology options that are suitable for the local environmental conditions and use locally available materials and skills. Further, the sustainability of sanitation systems may be enhanced through incorporating pollution prevention and Integrated Water Resource Management (IWRM) by integrating environmental functions in the design of sanitation policies and infrastructure, and enlisting the cooperation of communities in setting up sanitation service targets and the implementation of governance strategies through community-based (management/participatory) governance instruments.
Poor maintenance culture needs to be addressed by focusing on the root causes. For instance, where poor maintenance is as a result of lack of knowledge about how to operate and maintain the facility, the users need to be given the necessary training; if it is because of lack of resources like cleaning agents, low-cost alternative cleaning agents can be provided for users; and if it is due to general non-challans, then sanctions may be imposed for failure to maintain good sanitary standards and enforced against offenders.

Risk aversion was partly addressed in the case study through good practices like government-funded subsidies to private sector, in order to encourage private service providers to cover vulnerable populations. It also requires the State to retain its regulatory role and ensure compliance of service providers with HRS obligations through the mandatory extension of basic sanitation services to vulnerable populations, for instance.

Tenure insecurity requires guaranteed universal access to sanitation, as a public good, irrespective of legal title to property; and protecting property rights and investments in sanitation infrastructure from forced eviction or capture. In addition, communities in informal settlements can also explore on-site sanitation technology options to reduce the dependence on utilities.

8.6.2 Sanitation Governance Framework and Inclusive Development

In Section 8.6.1, I have made the case for effective operationalization of the sanitation governance principles contained in the legal and regulatory framework, towards the realisation of the HRS in Nigeria. Nonetheless, the implementation of these principles can lead to different outcomes for ID (i.e. see different results in different quadrants of Figure 8.2) and therefore requires further careful consideration. Figure 8.2 illustrates how the principle of cost recovery may either promote ID (Q4 in Figure 8.2) or exacerbate one or more forms of exclusion (Q1-Q3 in Figure 8.2); the outcome depends on whether or not there is a well-targeted cross-subsidy to ensure affordability for the poor and vulnerable people, and whether the sanitation services prevent environmental pollution. Figure 8.2 uses ODF as an indicator of the effectiveness of the instrument, showing that the separation of excreta from the immediate environment does not necessarily address social relational or ecological inclusion (for instance if the excreta is disposed of in a water source, without treatment or if poor people who cannot afford the cost of sanitation services are subjected to inhuman treatment in the process of executing CLTS).
Social and relational inclusion

Although the HRS is recognised by regulators, experts and other stakeholders in the sanitation sector in Nigeria, some of the existing sanitation governance instruments, including principles, may entrench overt discrimination against the poor and vulnerable populations like people living in informal settlements.\textsuperscript{277} For instance, the exclusion of informal settlements from sanitation coverage (see 8.4.2) exacerbates social and relational exclusion, despite increasing coverage in the formal settlements that benefit from the services. Other regulatory instruments like the technical guidelines for constructing sanitation facilities would only contribute to social and relational inclusion where the maximum available resources are applied to support compliance by the vulnerable (that is, Q3 or Q4 in Figure 8.2 based on the environmental impact of the instrument). Generally, instruments promoting individual or communal responsibility for meeting the full cost of their sanitation needs, without support for the poor and vulnerable, fall within Q1 or Q2 in Figure 8.3, depending on the integration of environmental sustainability.

The increasing implementation of neo-liberal policies without cross-subsidies to cushion the effect on the poor and without effective public participation in the policy process has also entrenched structural inequities and weak downward accountability, in favour of the rightsholders. Nonetheless, exempting the private sector from participating in the sanitation sector or totally expunging economic principles would amount to throwing out the baby with the bath water because of the evidence from the case study that where properly regulated to ensure quality and affordability of services, the private sector can provide resources for the expansion of sanitation services.

The delivery of sanitation and hygiene awareness campaigns in local languages (see 8.5.2) strengthens participation and access to information. The disaggregation of data on access to sanitation could also highlight covert discrimination and the needs of vulnerable and marginalised groups, and is therefore preferable to monitoring the average increase in coverage, generally.\textsuperscript{278}

Ecological inclusion

The right to abstract water without charge, for domestic purposes, may lead to environmental degradation and requires better regulation and enforcement of checks (see 8.5.2). In cases

\textsuperscript{277} Interviewees 8, 10, 14, 16, 17, 18 and 19.

\textsuperscript{278} Interviewee 3.
where economic instruments are used to regulate abstraction, it is important that these do not
make services unaffordable. Further, given the ecological diversity of Nigeria, it may be
necessary for the government to differentiate the regulatory standards (in terms of the
quantity and quality) of water abstracted for socio-economic purposes. The NWSP requires
that “[E]ach household in urban areas (population above 20,000) must own and have access
to safe sanitary facility that uses suitable and affordable water conveyance systems (at least
pour-flush toilet)” (NWSP, p. 7). However, such prescription does not take into account the
geological differences and local environmental conditions in the arid parts of Nigeria with
water scarcity and may hamper ecological inclusion (in Q1 or Q3 of Figure 8.2, depending on
the further impact of the facility and governance process on social and relational inclusion).
The non-HRS principles like common pool resource, cost sharing, economic good,
integration and pollution prevention, in addition to economic instruments like pollution
permits can potentially stimulate a green economy and environmental sustainability.279
Nonetheless, this may not improve social and relational inclusion except where the revenue
generated is used to cross subsidise the poor (see Q4 in Figure 8.2).

279 Interviewee 1.
Figure 8.2 Assessing the principle of cost recovery for inclusive development

### 8.6.3 Legal Pluralism in the Nigerian Sanitation Governance Architecture

The objective of the NWSP is to ensure access to adequate, affordable and sustainable sanitation for all Nigerians, through the participation of various stakeholders, including the government, development partners and other international organisations, NGOs, the private sector, communities, households and individuals. There are also non-HRS principles contained in the NWSP and other relevant policies on sanitation governance (like the NEP and the NWRP). The plurality makes it important to analyse the interactions between the HRS principles and non-HRS principles, towards resolving any incoherence and fostering support for the progressive realisation of the HRS. This section shows that the introduction of the HRS into the policy framework for sanitation governance in Nigeria, *vis-a-vis* non-HR principles may result in accommodation, competition, indifference, or mutual support (see Table 8.4). Table 8.4 illustrates the four legal pluralism typologies, as they operate across the three tiers of government in Nigeria (federal level, and the states and local levels).
**Competition**

The case study shows that competition could result in any of the following three instances, where: (a) the policy process does not expressly prioritise the use of water to satisfy human sanitation needs, even though wet sanitation systems are at the top of the sanitation ladder, but drinking water is clearly prioritised as a second order water use; (b) neo-liberal policies like cost recovery and demand responsiveness are institutionalised, without cross-subsidy to protect the poor from being denied access because they cannot afford the cost of basic services; and (c) citizens are denied their rights to access water resources for their basic needs, due to high water abstraction charges or the criminalisation of service provision to vulnerable groups like residents of informal settlements. Competition also exists where the economic, social and cultural rights (forming the basis for the HRS in international law) are non-justiciable within the national system (see 8.4.2). Similarly, competition exists when various stakeholders, like the members of the NTGS, approach sanitation governance with different priorities that are primarily based on their respective core mandate areas. This is reflected in the lack of a common definition of sanitation or uniform data on coverage, for instance (see 8.2.3 and 8.2.4). Excluding the informal settlements from accessing subsidised sanitation services and criminalising the informal service sector also competes with universal access. At the sub-national levels (states and local), the exclusion of informal settlements from accessing sanitation services competes with the realisation of the HRS.

**Indifference**

The lack of formal recognition of the HRS in the Constitution (see 8.4.2) amounts to indifference. The HRS principles are also poorly developed and implemented in the policy process, even when compared to water. As a result, despite Nigeria’s participation in various political processes and United Nations General Assembly and Human Rights Council resolutions that uphold the HRS, the HRS norm has not brought about a significant shift in the sanitation policy discourse. Rather, there is a continuity in practise wherein both HRS and non-HR instruments continue to operate in two parallel unconnected tracks. This is compounded by plurality because, as noted by one stakeholder: “sector policies and approaches are multiple and incoherent and are located with different government actors with no leadership and shared ownership of the problem.” Although many stakeholders have adopted a right-based language in discussing access to sanitation, their operations are largely

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280 Interviewees 1, 2, 4 and 9.
281 Interviewees 17 and 19.
282 Interviewee 16.
based on non-HRS principles like cost recovery. Indifference in sanitation governance is further marked by the limited application of the cost sharing principle to capital investment for sewerage, storm water, on-site sanitation systems in public places and rural sanitation, without covering vulnerable groups in urban areas; and situations where although the government policy is to ensure universal access to sanitation, the informal settlements are not covered by formal service providers in practice (a form of covert discrimination). Overall, there is lack of political will to progressively realise the HRS.\textsuperscript{283} Most states do not expressly recognise the HRS in their sanitation laws, strategies and programmes, and are therefore indifferent to the HRS commitment in national sanitation policies.

\textbf{Accommodation}

The NWSP recognises participation as a guiding principle for the delivery of sanitation services; the principle is similarly recognised under the NWRP, and the NPES (see Table 8.1). The participation principle however applies equally to all stakeholders, including private businesses, based on the assumption that the sound business principles of the private sector will strengthen the sector. Accommodation exists where efforts are made to promote participation and access to information in the policy process; this offers opportunities for stakeholders to contribute their unique perspectives to the sanitation governance process, try to resolve any incoherence between the HRS and non-HR principles, and strengthening accountability (Obani \& Gupta, 2014b; 2016a). Accommodation results where the regulators make an effort to promote cooperation in the management of transboundary waters and increase the mutual benefits of shared water resources, both within Nigeria and transboundary waters (NWRP), in order to promote access to water for domestic uses (including sanitation and hygiene).

At the sub-national levels, sanitation programmes which try to encourage the participation of the local population in the ownership and management of sanitation infrastructure thereby promote accommodation. It also encourages the participation of non-governmental organisations and other civil society groups because they contribute to improving the technical capacity and development skills of local communities and thereby strengthen the sanitation sector. Further, the NEP seeks to create public awareness on environmental matters and improve participation in the policy process. The Freedom of Information Act 2011 may support this objective by ensuring transparency in the sanitation governance, making public

\textsuperscript{283} Interviewees 3, 10, 11, 13, 14 and 16.
records and information freely accessible, protecting public records and information to the extent consistent with the public interest, and protecting serving public officers from adverse consequences of disclosing certain kinds of official information without authorization. Nonetheless, the households surveyed were hardly aware of judicial and non-judicial mechanisms for obtaining information about their sanitation services, held by either public authorities or private entities, or seeking redress when they had complaints about the services. They mostly rely on the local media, particularly a radio programme called “Man around Town”, hosted on ITV radio 92.3 FM, to air their grievances and contact the relevant authorities on their behalf. This is yielding positive results by empowering the local population to seek remedy against their waste managers, and the Commissioner of Environment in Edo state has established an open door policy for people with complaints about the services from their waste managers to contact him directly.

Mutual support

The national sanitation policies and regulatory framework includes the principles of pollution prevention, IWRM, integration of environmental management in the delivery of sanitation services, access to information, licensing and monitoring, and guidelines for safe sanitation facilities, inter alia, thereby supporting the HRS. The SDGs also supports the HRS (subject to the limitations discussed in Section 7.3.4) by further elevating the local sanitation problems on the international development agenda and providing a strong monitoring mechanism for tracking progressive realization of improvements in access to safely managed sanitation facilities (through the JMP). Similarly, CLTS supports the HRS through instigating communities to be ODF, provided that the vulnerable are afforded the additional resources that they need to realise ODF status (see 8.6.2).

Mutual support also results where international or regional organisations (like the African Commission) and courts (like the ECOWAS Court) promote the realisation of the socio-economic rights of Nigerians, which can further strengthen the enforcement of the HRS despite the limited justiciability of socio-economic rights within the Nigerian legal system (see 8.4.2). Further, the ICESCR prohibits denying people access to the Covenant rights due to their land tenure status and this protects informal settlements from discrimination.284 At the sub-national levels, the regulation of open defecation and urination (ODR) supports the HR including the HRS and the right to a healthy environment. However, it is equally important

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284 CESCR, General Comment No. 20, 2009 (E/C.12/GC /20), paragraph 25
for the population to be provided with safer alternatives for their sanitation needs, such as hygienically maintained public sanitation facilities.

Table 8.4 Typology of relationships between the human right to sanitation and non-human rights principles for sanitation governance in Nigeria

<table>
<thead>
<tr>
<th>Type of Relationship</th>
<th>Federal Level</th>
<th>States and Local Levels</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Competition</strong></td>
<td>The NWRP does not expressly recognise human sanitation and hygiene needs as a priority use of water, and it contains neo-liberal principles like cost recovery which can lead to the exclusion of poor and vulnerable rightsholders who cannot afford to pay for their basic needs without a subsidy</td>
<td>Where some states regulators exclude informal settlements from accessing public sanitation services, and criminalise the informal sanitation services (see 8.5.1 and 8.5.2)</td>
</tr>
<tr>
<td><strong>Indifference</strong></td>
<td>Environmental sanitation policies emphasize universal coverage although informal settlements continue to be excluded from services in practice</td>
<td>Where the sanitation laws, and strategies and programmes at the sub-national levels do not capture the HRS</td>
</tr>
<tr>
<td><strong>Accommodation</strong></td>
<td>The NWSP and the NWRP contain the participation principle to try to involve users, and all other stakeholders in the sanitation governance process, including the private sector</td>
<td>Where sanitation programmes, like the CLTS, try to encourage local ownership and management of sanitation facilities, with support for the effective participation of the local population (see 8.5.2)</td>
</tr>
<tr>
<td><strong>Mutual Support</strong></td>
<td>International quasi-judicial bodies and courts have upheld the socio-economic rights of citizens, whereas the rights may be non-justiciable based on the constitutional law, but are supported by national laws</td>
<td>Where sanitation laws, like the Sanitation and Pollution Management Law (Edo State), regulate open defecation and require operators of commercial buildings to provide public toilets (see 8.5.2)</td>
</tr>
</tbody>
</table>
8.7 Implications and Recommendations for the Inclusive Realisation of the Human Right to Sanitation

Although Nigeria is a State Party to the ICESCR (which is the main legal basis for the HRS in international law) and international instruments (like the UNGA and HRC Resolutions recognising the HRS), this has not translated into an express recognition of the right in the 1999 Constitution of the Federal Republic of Nigeria. Remarkably, although the policy and regulatory framework generally support the HRS de facto, there are inherent contradictions which affect the practical realization of the right. The case study, including the household survey conducted in Benin City, highlights the practical complexities of realizing the HRS in an emerging economy which might not have been evident from a traditional desk review of the national policy and regulatory framework. It also showcases the performance of HRS and non-HR instruments for sanitation governance, including their impact on actors, given the prevailing drivers in the case study. It further proves that the HRS can be subject to the predominant discourses and governance approaches at any given level of governance, its formal recognition policies does not unequivocally assure ID, and the realisation of the HRS may require different instruments depending on the given context. Nonetheless, progressive implementation of the HRS towards the realisation of the SDGs sanitation target within the next 12 years means that the HRS needs to be fully institutionalised by 2030 and any inconsistencies between the HRS and other principles for sanitation governance would need to be resolved, in favour of universal access to safe and affordable sanitation services. Therefore, to address the question: how does the human right to sanitation (HRS) influence the normative framework for sanitation governance towards inclusive development (ID) outcomes across different levels of governance in Nigeria?, this section covers the harmonisation of the national sanitation policy process, formal recognition of the HRS, including the resolution of rules incoherence in the legal system, and the operationalization of the HRS norm.

Harmonisation of the national sanitation policy process

The case study reveals a high level of incoherence within the sanitation policy process. Sanitation governance remains strongly linked with water and the water-flush system is at the top of the sanitation ladder used for sanitation programmes, like PEWASH. The continued linking of sanitation and water is good for ensuring water quality, but it is not expedient for the development of the HRS norm specifically. The prescription of a wet sanitation system at
the top of the sanitation ladder also does not reflect the wide geological differences and poor access to water either due to economic, environmental or socio-legal drivers. I therefore suggest that a national sanitation policy could be formulated to harmonise the existing sanitation policies and mainstream the HRS. At a minimum, the policy reform process may:

(a) Finalise the draft National Water-Sanitation policy pending the formulation of a sanitation policy by local stakeholders;

(b) Develop a new national sanitation policy that mutually supports but is not intricately linked with the water sector policy, define the scope of the HRS and the service levels and indications that are required to realise the right in different parts of the country (outlined in Chapter 5), and makes the HRS applicable to all persons, irrespective of their legal title to property or other social status;

(c) Require the effective participation of users in the budgeting and planning process for sanitation services, including the choice of technology. This would further improve accountability and transparency at various levels of governance;

(d) Establish an independent agency, made up of rightsholders and other stakeholders in the sanitation sector, to monitor public revenue and allocations to the sanitation sector, and harmonise the sanitation services monitoring systems to improve data validity for measuring the status of access to sanitation, based on the HRS principles;

(e) Align the implementation of international organisations’ and donors’ sanitation programmes for sanitation with local policies and priorities, in order not to erode the government’s legitimacy for failure to deliver on local priorities;

(f) Develop a common formula for determining the full direct and indirect costs of basic sanitation services and setting a national threshold for affordability of services, taking into consideration any special local circumstances and individual vulnerabilities. In this regard, a threshold of $≤3\%$ of a household’s disposable income can be applied to people in the higher wealth quintiles, to cross-subsidise the basic sanitation needs of the poor, who can also make non-monetary contributions like labour. Progressive pricing and mechanisms for instalment payment could also be used to promote affordability for the poor.
Formal recognition of the human right to sanitation and resolution of incoherence in the national constitution and states’ sanitation laws

In addition to policy reform, the strongest indication of the prioritisation of the HRS within a federal legal system like Nigeria is a constitutional guarantee (see Obani & Gupta (2015) for a general discussion of the HRS in national constitutions, and Annex I for the details of States with HRS laws). The HRS may also be included in all new sanitation laws across the three tiers of governance.

The formal recognition of the HRS in the constitution, laws and policies, backed with effective instruments for implementation, would go a long way to lending a human face to sanitation governance, providing guiding norms for resolving the current inconsistencies in the policy framework, and improving social and relational inclusion, at the minimum. Although the economic good principle and pollution prevention through the use of economic instruments may generate additional funding for sanitation services, the public good nature of sanitation as a human right requires that: (a) the tariffs do not create a negative incentive for people to resort to open defecation and other unsafe alternatives to formal sanitation services, (b) users effectively participate in the design of the tariff structure and payment modalities, and (c) provisions are made to protect access and use of sanitation services by people who may be unable to pay the standard tariffs. Conversely, the motivations for uptake of market based instruments in the WASH sector include financial status, WASH needs, health goals and social relationships and these can be leveraged upon among users who have the capacity to pay an affordable price for sanitation rather than focusing solely on cost recovery and the marketing of predetermined sanitation goods and services (Barrington et al., 2016). The formal recognition of the HRS is necessary to address the incoherence in the policy framework for sanitation governance (see 8.6).

Further, at the national level, sanitation governance currently retains three parallel objectives, namely: (a) a focus on poverty eradication while eliminating subsidies; (b) promotion of public health and environmental protection while relying on predominantly economic instruments and principles like water as an economic good and cost sharing with beneficiaries without cross-subsidies for the poor; and (c) a recognition of water as a social good without modalities for ensuring public participation in the sanitation governance process in practise. At the sub-national levels, the evolution of sanitation governance has culminated in a shift away from subsidies towards commercialisation and the mainstreaming of human rights only at the policy level without any changes in the delivery of sanitation services to households
and individuals. Therefore, the legal framework for sanitation needs to be reviewed to address inconsistencies between the current neo-liberal principles and HRS principles, and prioritise the satisfaction of the human sanitation needs of people in the lowest income quintiles (more than 50% of the Nigerian population). In addition to ensuring internal consistency, the guarantee of the HRS in legislation would provide a strong legal basis for rightsholders to enforce their right both within the national legal system and through international mechanisms (see 5.4.2 and 8.4.2). Nonetheless, a legislative provision and judicial declaration recognising the HRS would still require operationalization through complementary technology, and economic, management and suasive instruments.

Operationalizing the human right to sanitation principles

The case study highlights both the HRS and non-HR principles encountered in the literature (see Chapters 5, 6 and 7) and additional principles (like the autonomy of service providers, policy making and regulatory role of government and cost sharing with beneficiaries), included in the national sanitation policies and aimed at ensuring the sustainability of the sector. A majority of the HRS principles (all, excluding physical access) are not monitored in practice, and they are mainly operationalized through instruments which may not adequately reflect the HRS principles (see 8.2 and 8.5). For instance, the major sanitation assessments focus on the number of facilities available for users without indicating whether the facilities are conducive for users with special needs (like physical disability, children, or women who are menstruating). Similarly, the policies emphasise affordability for the poor, but there are no safeguards against disconnection from services due to inability to pay; rather, the government prosecutes the offenders irrespective of their reason for non-payment. The existing HRS instruments (like subsidies for waste management services, litigation and quasi-judicial mechanisms), may also be ineffectual against the drivers of poor sanitation services or may compound the existing inequities due to defects in their design or implementation (see 8.6.2). Given the foregoing, the following measures may be considered, in order to improve the implementation of the HRS principles in Nigeria:

(a) Re-educate all the stakeholders, particularly the regulators and service providers on the meaning of the HRS and the obligations its imposes on them to respect, protect and fulfil the right within their operations;

(b) Reallocate the existing subsidies to low-income households; and

(c) Resolve contradictions and incoherence in sanitation governance:
i. competition may be addressed by guaranteeing access to basic sanitation services for poor and vulnerable users, cross-subsidising the poor, assisting the vulnerable populations to access judicial and quasi-judicial mechanisms like the complaint procedure under the ICESCR or regional courts like ECOWAS to enforce their HRS;

ii. indifference would require reporting and monitoring systems to assess the progressive realisation of the HRS generally and its principles respectively, a clear budget line that amounts to at least 1.5% of the national GDP for personal sanitation and hygiene, and sanitation awareness and advocacy to address negative cultural practices. It is further important to institutionalise safeguards against arbitrary disconnection of users from sanitation services and unfair terms in service level agreements and contracts entered into with their service providers (whether in writing or by conduct), by aligning service delivery with the HRS principles;

iii. accommodation needs participatory mechanisms that promote mutual knowledge exchange and empower the vulnerable, consent rules to ensure that the outcomes of consultation processes are implemented, and co-production of sanitation goods and services by all stakeholders; and

iv. mutual support is a desirable position which requires first order learning and greater cohesion to enhance support.