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INCLUSIVE DEVELOPMENT AS AN IMPERATIVE TO REALIZING THE HUMAN RIGHT TO WATER AND SANITATION

Pedi Obani*
Joyeeta Gupta**

ABSTRACT

There are a plethora of governance instruments for operationalizing human rights obligations on water and sanitation at multiple levels of governance. The realization that the human right to water and sanitation depends on the discourses and approaches used in a country to implement it implies that it is not self-evident that implementing the right will lead to inclusive development. The inclusive development aims at not only social inclusion but also ecological and relational inclusion, where the latter aims at ensuring that the structural causes of inequality are also addressed. Relying on an extensive literature review and jurisprudence on the human right to water and sanitation, we develop an ideal-typical conceptual framework for assessing the human right to water and sanitation with inclusive development as an imperative. Our framework is based on the premise that governance instruments are value-laden tools which can steer social changes depending on the contextual political paradigm which can be garnered from the goals, ownership models, accountability mechanisms and incentives of actors involved in the governance process. We, therefore, propose a simple model for assessing whether the governance instruments for operationalizing the human right to water and sanitation will, in fact, lead to inclusive development.

Keywords: Human Rights, Governance, Water and Sanitation

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1. INTRODUCTION

The human right to water and sanitation (HRWS) adopted by the UN General Assembly in 2010 actually refers to two rights – the human right to water and the human right to sanitation, and these have evolved through interconnected trajectories. In this article, therefore, we refer to both as the human right to water and sanitation. The human right to water and sanitation has been increasingly recognized in treaty law, national laws and political declarations at different levels of governance. With the convergence of *opinio juris* and widespread State practice, reflected in political declarations, commitments, and various resolutions of different United Nations bodies, the human right to water and sanitation has arguably been crystallized into customary international law.¹ The reference to human rights principles in Agenda 2030 and the focus of Sustainable Development Goals (SDG) Goal 6, “[E]nsure availability and sustainable management of water and sanitation for all” and its targets which are “[B]y 2030, achieve universal and equitable access to safe and affordable drinking water for all” and “[B]y 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations” is evidence of widespread State support of the human rights to water and sanitation even though the SDG6 does not specifically use the terminology of “human rights” in this specific Goal.

To achieve the potential for human well-being, and to better align with the values of the water and environmental justice struggles at the roots of the recognition of these two rights, there is a pressing need to enrich the political meaning of the HRWS and the international development agenda for universal access to safe, adequate and affordable water and sanitation services with inclusive development as an imperative. The formal recognition of the HRWS, does not in itself translate to full implementation and the literature scarcely covers

1 P. Obani and J. Gupta, “Human Right to Sanitation in the Legal and Non-Legal Literature: The Need for Greater Synergy” [2016] WIREs Water doi:10.1002/wat2.1162; P. Thielbörger, *The Right(S) to Water: The Multi-Level Governance of a Unique Human Right* (Springer 2014). Remarkably, the jurisprudence in relation to the human rights obligations on water and sanitation has mostly centred on the right to water. The increasing recognition of sanitation as a distinct right, especially in recent times, now also raises the question of the legal status of sanitation when separated from the right to water but that is not covered within the scope of this article.

the links between inclusiveness and the dominant technological paradigm for interpreting and implementing the HRWS.

A variety of conceptual approaches have been developed for analysing inclusive development in relation to politics, gender rights, music and various other human endeavours but none yet covers the conditions under which the HRWS can promote inclusive development. This article, therefore, addresses how the human right to water and sanitation can be implemented to promote inclusive development.

This article is divided into five sections. After this introduction, section 2 analyses inclusive development as an imperative for the HRWS. In this section, we also formulate our ideal-typical conceptual framework for an inclusive development (ID) assessment of water and sanitation governance. Section 3 provides an overview of actors involved in water and sanitation governance. Section 4 applies the framework to argue that when the human right to water and sanitation is assessed in different policy contexts, it may be operationalized differently. Only in one specific context can one say that the HRWS may lead to inclusive development. Section 5 presents the main conclusions from our analysis.

2. INCLUSIVE DEVELOPMENT AS AN IMPERATIVE

A fundamental reason behind local advocacy efforts and the eventual adoption of the HRWS at the international level is to enhance human well-being, dignity, and effective engagement in decision making processes on development issues, especially through providing safe, affordable, acceptable, accessible and adequate water and sanitation services to the poorest and the most vulnerable individuals and groups. To achieve this objective, the human rights discourse incorporates equitable access to basic services while safeguarding water resources and other components of the physical environment from contamination.²

2 L. Feris, "The Human Right to Sanitation: A Critique on the Absence of Environmental Considerations" (2015) 24 *Review of European, Comparative & International Environmental Law*16; L. Martin, "International Legal Discourse on the Human Right to Water and Sanitation from the Latin American Point of View" (2011) 4 *Inter-American and European Human Rights Journal*136; P. Obani and J. Gupta, "Human Security and Access to Water, Sanitation, and Hygiene: Exploring the Drivers and Nexus" in C. Pahl-Wostl, A. Bhaduri and J. Gupta (eds), *Handbook on Water Security* (Edward Elgar Publishing 2015).

Hence, the HRWS include social, relational and environmental perspectives that are similar to the components of inclusive development, as illustrated below.

The evolution of the concept of development is traceable to the 1940s when development economists were preoccupied with post-war recovery and State intervention to attain industrialization and full employment without compromising on economic productivity. These were otherwise competing objectives. In the 1960s, the need to ensure that all people could enjoy some basic entitlements in democratic societies led to the adoption of economic, cultural, social, and civil and political rights, in the International Covenant on Economic, Social and Cultural Rights, 1966, and the International Covenant on Civil and Political Rights, 1966. Environmental issues also gained prominence by the 1970s in the development discourse, which led to the emergence of the concept of sustainable development, focused on reconciling social and economic development and environmental protection, for the benefit of both the present and future generations. Subsequent discourses tended to focus on a combination of the social, economic, and environmental pillars of sustainable development rather than integrating all three.

The global Sustainable Development Goals (SDGs) adopted in 2015 redirects the international development agenda towards economic development, social inclusion and environmental sustainability and promotes intergenerational equity. The inclusive development concept emphasizes that the economic growth agenda may be incompatible with social and ecological inclusion and, hence, argues in favour of revisiting the economic component of sustainable development.³ Although the neo-classical concept of efficiency suggests that the efficient allocation of natural resources would result in sustainable development, the realities show that the uncertainties of time preference and the strong bias towards economic growth and the substitution of natural capital often result in exclusionary tendencies.⁴ Hence, in this article, we adopt the definition of inclusive development

3 J. Gupta, R. M. N.R.M. Pouw and M.A.F. Ros-Tonen, "Towards an Elaborated Theory of Inclusive Development" (2015) 27 *European Journal of Development Research* 541 doi:10.1057/ejdr.2015.30.

4 A. Basu and U. Shankar, "Balancing of Competing Rights through Sustainable Development: Role of Indian Judiciary" (2015) 6 *Jindal Global Law Review* 61 doi:10.1007/s41020-015-0003-6.

as “development that includes marginalized people, sectors and countries in social, political and economic processes for increased human well-being, social and environmental sustainability, and empowerment.”⁵

Inclusive development entails three main components, namely, social inclusiveness; inclusiveness as a relational concept, or relational inclusiveness; and inclusiveness in the Anthropocene, or ecological inclusiveness.⁶ *Social inclusiveness* is about advancing human well-being⁷ and entails social justice, poverty reduction and builds on the entitlements, capabilities and freedom approaches,⁸ which mainly reflect a focus on social and economic equity. *Ecological inclusiveness* promotes development within the earth’s carrying capacity, and such ecological inclusiveness will have to be also contextually relevant.⁹ It builds on the narratives centred on identifying the safe and just ways of achieving human development within planetary boundaries¹⁰ and theories on the green economy.¹¹ *Relational inclusiveness* addresses the redistributive mechanisms,¹² the structural drivers of exclusion at all levels of

5 Gupta, Pouw and Ros-Tonen (n 3) 546.

6 Gupta, Pouw and Ros-Tonen (Ibid); J. Gupta and C. Vegelin, “Sustainable Development Goals and Inclusive Development” (2016) 16 *International Environmental Agreements: Politics, Law and Economics* 433.

7 I. Gough and J.A. McGregor (eds), *Wellbeing in Developing Countries. From Theory to Research* (Cambridge University Press 2007).

8 A. K. Sen, *Development as Freedom* (Oxford University Press 1999); J. Preece, “A Capabilities and Asset-Based Development Approach to Community Engagement” in J. Preece (ed), *University Community Engagement and Lifelong Learning: The Porous University* (Springer International Publishing 2017).

9 O.R. Young, *Governing Complex Systems: Social Capital for the Anthropocene* (The MIT Press 2017).

10 J. Rockström and others, “A Safe Operating Space for Humanity” (2009) 461(7263) *Nature* 472; K. Raworth, *A Safe and Just Space for Humanity: Can We Live within the Doughnut?*(Oxfam GB 2012).

11 J. M. Borel-Saladin and I. N. Turok, “The Green Economy: Incremental Change or Transformation?” (2013) 23 *Environmental Policy and Governance* 209; S. Lorek and J. H. Spangenberg, “Sustainable Consumption within a Sustainable Economy: Beyond Green Growth and Green Economies” (2014) 62 *Journal of Cleaner Production* 33.

12 S. Hickey, K. Sen and B. Bukenya (eds), *The Politics of Inclusive Development : Interrogating the Evidence*. (Oxford University Press 2015); S. Hickey, “Thinking about the Politics of Inclusive Development: Towards a Relational Approach” (2013) *ESID Working Paper Series*, No. 1/2013 <http://www.effective-states.org/wp-content/uploads/working_papers/final-pdfs/esid_wp_01_hickey.pdf> accessed 29 August 2017.

governance¹³ and the interactions between the haves and the have-nots.¹⁴ It builds on ideas emerging from the social movements¹⁵ and participatory development¹⁶ and entails instruments for capacity building, participation and non-discrimination in sanitation governance, and affordable access to basic sanitation services. The reach of relational inclusiveness also touches progressive taxation and other redistributive mechanisms. The relational approach requires that governance instruments like securitization and privatization policies do not interfere with the enjoyment of public and merit goods such as sanitation. Remarkably, the universal application of the SDGs to developing and industrialized countries is unlike the Millennium Development Goals (MDGs), which targeted mostly developing countries. This new position advances relational inclusion in the international development agenda by, for example, also focusing on inequality between and within states.¹⁷

2.1 Inclusive Development Assessment Framework

A variety of assessment frameworks exist for analysing urban water and wastewater systems for sustainable development, including non-integrated analysis, integrated multi-criteria decision-making, statistical frameworks and participatory approaches aimed at supporting decision

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- 13 M.A.F. Ros-Tonen and others, "Landscapes of Social Inclusion: Inclusive Value-Chain Collaboration through the Lenses of Food Sovereignty and Landscape Governance" (2015) 27 *European Journal of Development Research* 523; Gupta, Pouw and Ros-Tonen (n 9); Gupta and Vegelin (n 10).
 - 14 I. Ortiz and M. Cummins, "Global inequality: Beyond the Bottom Billion – A Rapid Review of Income Distribution in 141 Countries" (UNICEF 2011); Oxfam, "Even It Up: Time to End Extreme Inequality" (Oxfam GB 2014); Oxfam, "Wealth: Having It All and Wanting More" (Oxfam GB 2015); T. Piketty, "Capital in the Twenty-First Century" (Harvard University Press 2014); N.R.M. Pouw and J.A. McGregor, *An Economics of Wellbeing. How Would Economics Look Like If It Were Focused on Human Wellbeing?* (IDS Working Paper 436, Institute of Development Studies, Sussex University 2014); J.E. Stiglitz, *The Great Divide: Unequal Societies and What We Can Do about Them* (WW Norton and Company 2015).
 - 15 J. Roose and H. Dietz, *Social Theory and Social Movements Mutual Inspirations* (Springer VS 2016); M. DeCesare, "Understanding Social Movements: Theories from the Classical Era to the Present" (2014) 13 *Social Movement Studies*, 519-523 doi:10.1080/14742837.2013.844062.
 - 16 J. S. Mwanzia and R. Strathdee, *Participatory Development in Kenya* (Routledge 2016); Y. Beebejaun, *The Participatory City* (Jovis 2016).
 - 17 J. Gupta and C. Vegelin, "Sustainable Development Goals and Inclusive Development" 16(3) *INEA433* doi:10.1007/s10784-016-9323-z.

making and policy development.¹⁸ More recently, diverse sustainability assessment approaches have been synthesized based on critical decision-making elements as determined by domain experts, with clear indications of how to move from integrated assessment to sustainability assessment and the practical application for decision-making in various contexts.¹⁹

The foregoing sustainability assessments are, however, inappropriate for evaluating specific instruments in isolation of others. They, instead, assess either aspects of, or the entire system for, water and wastewater management, which is not suitable for analysing individual instruments such as the human right to water and sanitation and its supporting instruments. Furthermore, governance instruments are value-laden and can produce different results depending on how they are designed and applied in any given context. It is important, therefore, to be able to evaluate the impact of instruments on each of the components of ID, both individually and holistically across various levels of governance.

ID requires that each governance instrument should further social, relational and ecological inclusion holistically or at least without compromising any of the other components while promoting one or the other. For the sake of simplicity, in our model, we have combined social and relational inclusiveness. The x-axis of our model (see Figure 1) ranges from ecological exclusion to ecological inclusion. The y-axis ranges from social and relational exclusiveness to social and relational inclusiveness.

In Figure 1, Quadrant 1 (Q1) does not enhance social, relational or ecological inclusion. This could occur when the instruments designed to implement the human right lead to a situation where water and sanitation services are concentrated within a segment of the population, while other members of the population are forced to resort to overpriced options or unsustainable practices like open defecation which degrades the environment.

When a policy is designed with ecological criteria in mind but does not include the social criteria, then it would fall into Quadrant 2 (Q2).

18 S. Motevallian and M. Tabesh, "A Framework for Sustainability Assessment of Urban Water Systems Using a Participatory Approach" (4th International Perspective on Water Resources and The Environment Conference, Singapore, 2011).

19 S. Sala, B. Ciuffo and P. Nijkamp, "A Systemic Framework for Sustainability Assessment" (2015) 119 *Ecological Economics* 314.

In such a situation, the water and sanitation services are ecologically sustainable and pose minimal threats to the environment, but the cost of the services exclude the poor who nonetheless rely on environmentally sustainable on-site options.

Quadrant 3 (Q3) enhances social and relational inclusion while excluding ecology/environmental sustainability. When an instrument is implemented in a manner that some of the social and relational inclusion aspects are included, but the ecological dimensions are excluded, the instrument will fall in Q3. Thus, when the supporting instruments for the HRS ensure that water and sanitation services are distributed equitably, and there are ample opportunities for local participation in the governance process, but there are no instruments to govern wastewater and solid wastes, this will be in Q3.

When policies include social, relational and environmental criteria, they fall into Quadrant 4 (Q4) and here we can expect social, relational and ecological inclusion. An indication of this can be seen when the instruments designed to ensure that water and sanitation services are available to everyone, with ample opportunities for effective participation in the governance process and access to information, as well as minimal negative externalities due to the safe management of wastewater and other waste streams, leading to inclusive development.

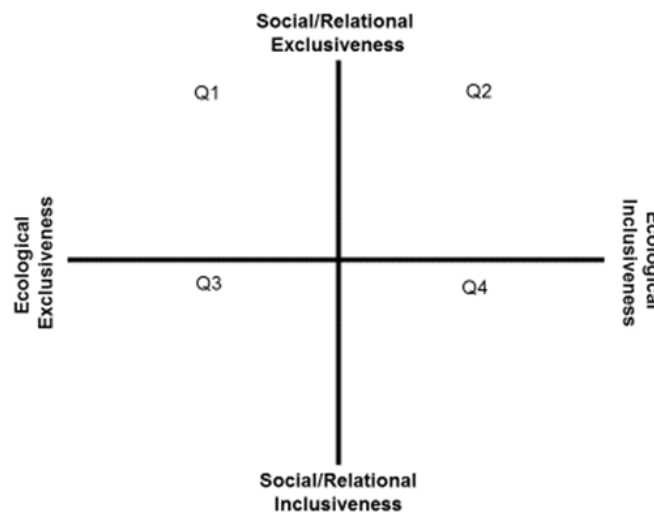


Figure 1. Inclusive Development Assessment Framework

3. ACTORS INVOLVED IN THE GOVERNANCE ARCHITECTURE FOR THE HUMAN RIGHT TO WATER AND SANITATION

The actors implied here are States that are primarily responsible for the realization of the HRWS under international law. As such, States are obliged to employ the maximum available resources towards the fulfilment of the HRWS, ensure the equitable allocation of resources for the benefit of the unserved and underserved, establish effective mechanisms to guard against retrogression and provide effective access to information and remedies for violations. In the context of States, governance instruments are the tools the government employs to achieve predefined policy goals or to promote or deter certain changes in society.²⁰

Nonetheless, non-state actors, such as the private sector, communities, and civil society groups, may also adopt governance instruments. The governance instruments for the HRWS are, therefore, tools employed by various actors to ensure universal access to sanitation that meets the human rights norms particularly in terms of safety, availability, accessibility, affordability, and acceptability.

The extent of States' involvement in the delivery of water and sanitation goods and services and the design of governance instruments ultimately depend on the dominant interpretation of the human rights norm in the governance process. For instance, where the HRWS is defined as a duty to provide access to water and sanitation services as predominantly public goods, this duty can be met by the State either through the establishment of public utilities with a mandate to progressively achieve universal coverage in accordance with human rights standards, and/or through the regulation of private service providers (and other third parties whose operations affect the prospects for realizing the HRWS). This ensures that they also meet the human rights standards in their operations, through providing basic services to the poor and other vulnerable users who would otherwise be unable to meet the cost of their water and sanitation needs *inter alia*.

Where the HRWS is alternatively defined as a duty to provide access

20 S. Majoor and K. Schwartz, (2015). Instruments of Urban Governance. In J. Gupta, K. Pfeffer, H. Verrest, & M. Ros Tonen (Eds.), *Geographies of Urban Governance: Advanced Theories, Methods and Practices*. Heidelberg: Springer International Publishing.

to water and sanitation services predominantly as economic goods, this duty can be met through creating an enabling framework for the growth of markets and a system for full cost recovery. This can inadvertently lead to the exclusion of the poor and other vulnerable groups who may be unable to afford water and sanitation services.

While the positivist view of law considers States as the main subjects of international law and, therefore, the only actors with a binding legal duty in international law to respect, protect, and fulfil human rights, it is now widely accepted that non-state actors may also bear some obligations for ensuring that their policies, programmes and operations generally promote rather than hamper the realization of the right (see Figure 1).²¹ For instance, international organizations such as the United Nations are subject to the international law to the extent that it is necessary for them to carry out the functions for which they were established effectively.²²

Hence, the General Comment No 15 enjoins the various United Nations agencies and other international organizations with mandates relating to water and trade to harness their respective expertise to cooperate effectively with States for the realization of the human right to water, including sanitation, within the national sphere.²³ This can be achieved through funding, capacity building, monitoring, evaluation and technical assistance to poor countries. International organizations can also promote the HRS through programme coordination and internal coherence with human rights standards.

In the narrow legal sense, an international organization is an organization that has been established by an agreement between two or more States for a defined set of lawful objects; exercises powers and functions that are independent of the member States; and exercises such powers and functions on the international sphere rather than

21 Martin (n 2).

22 *Reparation for Injuries Suffered in the Service of the United Nations* – Advisory Opinion of April 11th 1949 <<http://www.icj-cij.org/files/case-related/4/004-19490411-ADV-01-00-EN.pdf>> accessed 29 August 2017; *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* – Advisory Opinion of July 8th 1996 <<http://www.haguejusticeportal.net/index.php?id=6381>> accessed 29 August 2017.

23 See UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, *The Right to Water* (Articles 11 and 12 of the Covenant) (UN Doc. E/C.12/2002/11, 20 January 2003) (“General Comment No. 15”) paragraphs 60 and 53.

within the municipal legal systems of one or a few States only.²⁴ An international organization can also broadly refer to a private organization whose membership or sphere of operations cuts across more than one State, such as a multinational or transnational service provider with operations across different States.²⁵ In support of this emerging paradigm of shared responsibility for the realization of human rights, there is also an emerging discourse in international law for holding transnational corporations directly responsible for human rights violations.²⁶

Other key actors within the national sphere are non-international private sector service providers, civil society organizations, the various human rights organizations, and indeed rights holders and users of water and sanitation services. Non-international private sector service providers play a significant role in the realization of the HRWS and are imbued with juridical personality within the municipal legal systems where they are incorporated and have their operations.

Non-registered or informal service providers also play a significant role in the delivery of essential services to informal settlements and are also obliged to improve the quality and affordability of their services, towards universal coverage. Civil society organizations galvanize local action and support communities to enforce their human rights and, in some cases, also directly provide basic sanitation services. Although civil society organizations are not directly responsible for fulfilling the HRWS, they are obliged to adhere to human rights standards in their operations in order to avoid inadvertent human rights violations. Human rights organizations, which go by different names within different municipal legal systems, also bear some obligations for monitoring the enforcement of human right standards within their jurisdictions. The operations of national human rights organizations, however, raise the issue of the principal's moral hazard, especially in regimes that have the least interest in the implementation of human rights within their jurisdictions. This happens because the human rights organizations

24 I. Brownlie, *Principles of Public International Law* (7th ed, Oxford University Press 2010).

25 O. Enabulele and B. Bazuaye, *Teachings on Basic Topics in Public International Law* (Ambik Press 2014).

26 U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Resolution 2003/16, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

(as the agents) are mostly State-sponsored, yet to be effective, they would have to prioritize the enforcement of the human rights standards over the best interest of the State (as the principal).²⁷

In a pluralist setting characterized by various active actors, there can be different goals, ownership models, accountability mechanisms and incentives which ultimately determine the choice of governance instruments adopted in the implementation of the HRWS (see Table 1). Generally, the instruments for the HRWS can be categorized into five: regulatory, economic, technological, suasive and management instruments.

Regulatory instruments include binding policies, usually issued and enforced by the government, to promote certain objectives without economic incentives; economic instruments are designed to influence actor's behaviours through market signals and systems and are often backed by regulation; technology instruments require the use of physical infrastructure and considerable knowledge, expertise, and financial investment depending on the type of infrastructure and the local context. Suasive instruments aim to bring about an internalization of the desired behavioural change mostly through research, information dissemination, and awareness building; and management instruments engage the target individuals and communities in voluntary self-managed or hybrid management processes to bring about the desired objectives.²⁸

4. ASSESSING WATER AND SANITATION GOVERNANCE

4.1 Goal

The inclusive development paradigm requires that water and sanitation governance instruments should advance equality and cultural understandings of water and sanitation as basic human needs, stimulate social innovation in combination with technological innovation, and ensure that services are delivered within the ecological limits and advance environmental sustainability. A focus on people-oriented goals

27 M. Bovens, R.E. Goodin and T. Schillemans (eds), *The Oxford Handbook of Public Accountability* (Oxford University Press 2016); G. J. Miller, "The Political Evolution of Principal-Agent Models" (2005) 8 *Annual Review of Political Science* 203.

28 Majoor and Schwartz (n 20).

Table 1. Influence of Actors on the Human Right to Water and Sanitation

	Actors					
	Govern- ment	National Human Rights Organiza- tions	Interna- tional Organiza- tions	(Private) Service Providers	Civil Society	Right- sholders
Goal	Protection of the public good	Protection of individual rights	Protection of global interests	Full cost recovery	Protection of the commu- nity interest	Protection of the individual interest
Mode of ownership or control	Public utilities	No direct ownership	Partnerships with national actors	Corporati- on or informal provider	Co- production with communi- ties	Private owner- ship; tariffs
Accounta- bility mechanism	Downward (towards right- sholders)	Downward (towards right- sholders) ²⁹	Towards member States	Contractu- al and towards share- holders	Down- wards (towards right- sholders)	Upward & indi- vidualistic (towards the governme- nt & self)
Incentive	Public opinion & interna- tional obligations	Govern- ment mandate	Global value system	Market signals	Communi- ty norms	Personal value system & legal controls

Source: Authors.

like the protection of public goods, human rights protection, and the protection of the global interest, communities and individuals, therefore, offers a strong potential for advancing social and relational inclusion. This holds particularly where the goals translate into public participation in the governance processes and the equitable pricing of services in a manner that does not interfere with people's access to their basic needs.

People-oriented goals need to be reinforced through the protection of the environment to ensure a sustainable supply of the natural

29 Human rights enforcement by government agencies, like national human rights organizations, generally raises the question of the principal's moral hazard, and whether such agencies can be committed to upholding human rights standards even against the best interest of their principal (the State) or whether their activities can be constrained by authoritarian regimes. Miller (n 27) expounds on the relevance of the principal-agency theory to understanding political relationships, and Bovens, Goodin and Schillemans (n 27) showcase conceptual, empirical and normative approaches to public accountability.

resources for water and sanitation services, including freshwater and natural sinks for the safe disposal of treated waste. Otherwise, water and sanitation governance instruments may inadvertently exacerbate inequities in access, by entrenching discriminatory practices or solutions that prove to be quite expensive for the poorest, or through advancing unsustainable solutions such as low-cost sanitation options which exacerbate the sanitation problem by contaminating the environment, including water resources.

Conversely, neoliberal economic goals like full cost recovery could result in the interpretation of the HRWS in terms of pricing and the provision of services to people who can afford to would impose an unequal burden on poor people. In pursuance of neoliberal economic policies, there may also be a tendency to interpret the HRWS as paternalistic help for the vulnerable. This is an alternative to delivering services as an obligation and empowering the vulnerable to hold the relevant actors accountable to their obligation (see the bottom quadrants, Q3 and Q4, in Figure 2). Where people are denied access to basic water and sanitation services, they are more likely to resort to unsustainable practices, like the excessive abstraction of groundwater and open defecation, which further endanger the public health and the integrity of the environment. Figure 2 shows what combination of approaches is most likely to enable an inclusive development interpretation of the human right to water and sanitation.

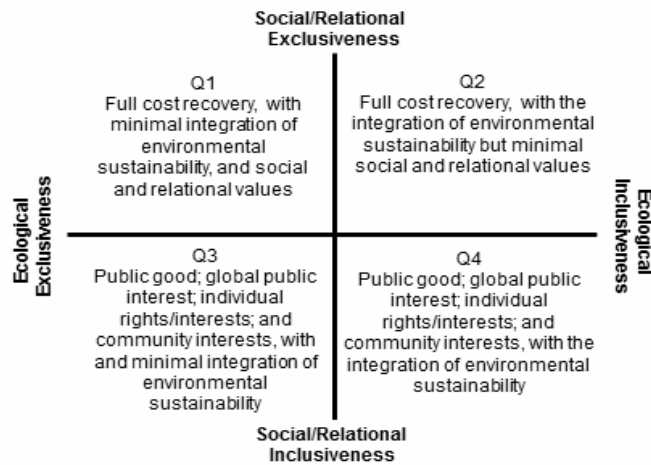


Figure 2. Illustrating the Inclusive Development Assessment Framework with Governance Goals

Source: Authors.

4.2 Ownership

Although the human rights discourse does not specify any economic model for the delivery of water and sanitation services, the economic model for the delivery of the HRWS needs to address any existing power imbalances in the governance architecture and empower the poor, vulnerable and marginalized in consonance with the relational focus of ID and the human rights paradigm. Any ownership model which depoliticizes water and sanitation governance, for instance as a result of a predominantly neo-liberal or technocratic paradigm, would entrench inequities in the governance process and run counter to social and relational inclusion.

The famous “water war” in Cochabamba, Bolivia, in the early 2000s, and other examples from the global South particularly, show how water and sanitation services delivered through business-oriented corporations mainly catered to the rich to the exclusion of the poor.³⁰ This has led to an increasing distrust between the State and unserved/underserved groups like those living in informal settlements and peri-urban dwellers, a development fuelled by either real or perceived discriminatory development policies, mostly in the form of privatization reforms.

Some scholars have argued that the inherent flexibility of the HRWS can inspire a more nuanced and geographically sensitive and context appropriate interpretation, thereby contributing to the political content and reclaiming the rights from technocrats. However, the flexibility also makes the HRWS susceptible to interpretations that suit the interests of the powerful at the cost of the poorer communities, who need the most protection from power imbalances in the governance process. Hence, some early activists built their local water justice movements on their need to access safe water resources rather than relying on the HRWS, which does not inherently integrate equitable access and quality concerns with environmental sustainability.³¹

Nonetheless, the State plays a vital role being the only authority that can allocate access to rights and resources and the primary duty bearer for human rights obligations. Economic models which devolve greater ownership and control rights to the State in partnership with

30 M.Barlow, *Blue Covenant: The Global Water Crisis and the Coming Battle for the Right to Water*(New Press 2009); L. Mehta and others, “Global Environmental Justice and the Right to Water: The Case of Peri-Urban Cochabamba and Delhi” (2014) 54 *Geoforum* 158.

31 Mehta and others (Ibid).

communities and rightsholders are generally better poised to improve social and relational inclusion when compared to private corporations or informal service providers that are mainly business oriented and controlled by investors. Even so, the overall impact of any given ownership or control model on inclusive development would depend on the integration of environmental sustainability in the governance process (see Figure 3).

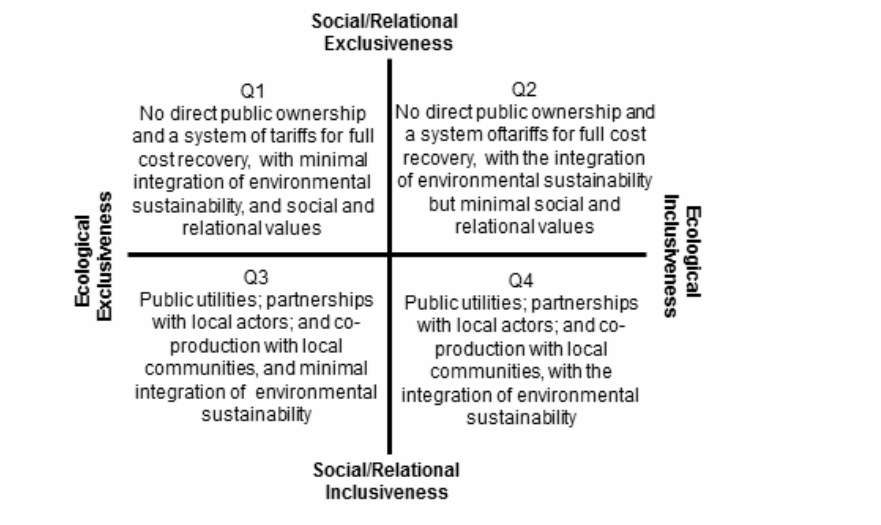


Figure 3. Illustrating the Inclusive Development Assessment Framework with Ownership Models

Source: Authors.

4.3 Accountability

The social and relational focus of the HRWS and inclusive development, respectively, should ideally enhance the downward accountability mechanisms to ensure that different actors involved in water and sanitation governance protect and defer to the best interests of the rightsholders. The accountability of actors is closely tied to their overriding goals and ownership and control models. Therefore, actors whose operations are strongly influenced by the public good and communal interests and are controlled by rightsholders rather than purely business-oriented corporations or investors are all the more likely to adopt mechanisms that make them more accountable to the rightsholders. This we term downward accountability.

Where actors are more strongly influenced by market signals and controlled by investors, then they are all the more likely to adopt accountability mechanisms to fulfil their contractual obligations and meet the expectations of their shareholders or investors generally. Furthermore, the level of accountability of private owners for the safety and maintenance of private water and sanitation goods and services, like privately-owned toilets and taps, are either determined by regulatory standards established by the government or dependent on individual values and ethics.

As already stated, the HRWS does not preclude the delivery of services by corporations or other private service providers. It, however, requires that private actors, just like public utilities, should be held accountable to rightsholders in their operations and that the interpretation of contractual terms, including bilateral investment treaties (BITs) and international commercial arbitration rules, should be in consonance with human rights standards as an imperative rather than purely from an economic focus on maximizing profits through cost recovery and protecting investors' interests.

Additionally, inclusive development requires that actors in the water and sanitation sector should advance environmental justice in their operations. This means for instance that the siting of waste management infrastructure should not impose an unequal burden on the poor, vulnerable and marginalized groups than other relatively richer or advantaged beneficiaries (see Figure 4).

4.4 Incentive

The inclusive development paradigm is better served by incentives that are tied to public opinion, international obligations for universal access to water and sanitation and a global value system for equitable allocation of resources. Other incentives like community norms, personal values and legal controls and market signals may advance inclusive development, but only where they integrate social and relational inclusion and environmental sustainability in the delivery of water and sanitation services.

The public opinion and global value system may not advance inclusive development if the dominant discourse compromises either basic water and sanitation needs or environmental sustainability. For instance, some scholars have advocated for an expanded focus of the human rights approach to encompass a broader range of already existing productive uses that are also necessary to fulfil other human rights,

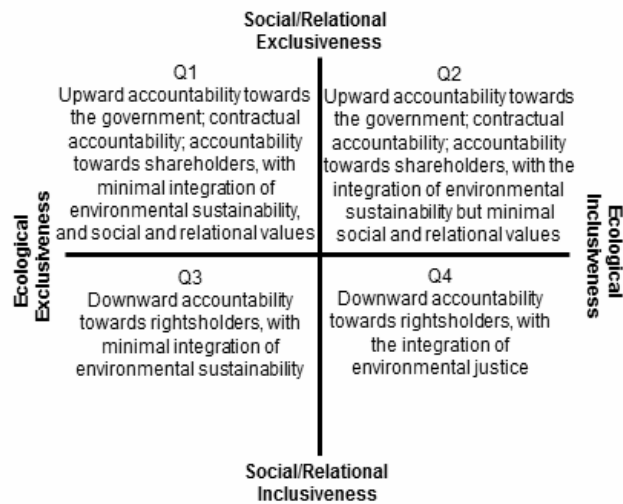


Figure 4. Illustrating the Inclusive Development Assessment Framework with Accountability Mechanisms

Source: Authors.

like the rights to food and work.³² This may compete with the realization of a narrowly defined human right to water (which covers only access to safe and clean drinking water, for instance), except other productive uses of water by households are fully integrated into human rights implementation in order to avoid rules incoherence.³³

Other scholars have advocated for an expansion of the HRS to reflect a strong focus on environmental sustainability beyond the provision of facilities for excreta management³⁴ and the incorporation of local solutions like communal sanitation facilities, which may be necessary given the limited space and financial resources for private facilities.³⁵ Hence, incentives that are rooted in a broad expression of the HRWS and integration of environmental sustainability are a prerequisite for inclusive development (see Figure 5).

32 R.P. Hall, B. van Koppen and E. van Houweling, "The Human Right to Water: The Importance of Domestic and Productive Water Rights" (2014) 20 *Science and Engineering Ethics* 849 doi:10.1007/s11948-013-9499-3.

33 P. Obani, and J. Gupta, "Legal Pluralism in the Area of Human Rights: Water and Sanitation" (2014) 11 *Current Opinion in Environmental Sustainability* 63.

34 Feris (n 2).

35 Obani and Gupta (n 2).

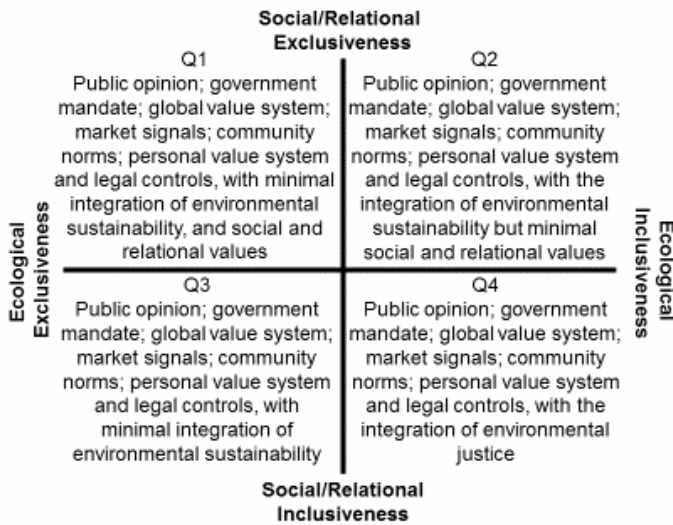


Figure 5. Illustrating the Inclusive Development Assessment Framework with Incentives

Source: Authors.

5. CONCLUSION

The HRWS needs to be interpreted and implemented through governance instruments that enhance social, relational and ecological dimensions in order to translate the human rights recognition into tangible benefits for human well-being, dignity and environmental sustainability. The inclusive development offers a framework for strengthening the HRWS and synergizing the social, relational and ecological dimensions in practice. In this article, we have indicated the value of the inclusive development framework to the HRWS by arguing that approaches to implementing the HRWS in different contexts will have different goals, ownership models, accountability mechanisms and incentives for water and sanitation governance, and hence, will have varying impacts on inclusive development.

As inclusive development *prima facie* integrates three otherwise competing components, namely, social, relational and ecological inclusion, in furtherance of social justice, it is equally important to advance indicators that monitor progress towards inclusion and ensure that there are no trade-offs in the process of achieving any one component of inclusive development. For this purpose, we choose the

following three indicators: (a) public participation, defined as improvements in mechanisms for the effective participation of marginalized individuals and groups such as residents of informal settlements; (b) equitable pricing of services, defined as pricing mechanisms that create a positive incentive for the adoption of sustainable water consumption and sanitation and hygiene practices while also protecting access to adequate sanitation for the poor and people living in humanitarian situations; and (c) environmentally sustainable systems, defined as a combination of water and sanitation infrastructure and services which ensures the safe management of wastewater and all other waste streams with minimal negative impacts on the ecosystem and human well-being. Public participation and equitable pricing of services are useful indicators for tracking the social and relational components of ID, while systems sustainability is useful for tracking the ecological component.