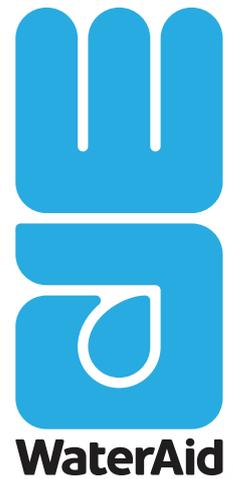


Policy Paper

Human Rights to Water, Sanitation & Hygiene (WASH)

A grayscale photograph of a hand with the index, middle, and ring fingers extended, representing the number three. The hand is positioned on the left side of the page, with a blue rectangular box overlaid on it containing white text.

**One vision.
Three goals.**

-  Brief overview of Pakistan's international commitments
-  Analysis of gaps in Pakistan's legal framework
-  Recommendations for parliamentarians and policymakers





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Executive Summary

Pakistan has made significant progress in improving access to water, sanitation and hygiene (WASH), and is among 93 countries that have achieved the Millennium Development Goals (MDGs) for WASH.¹ Pakistan is ranked amongst the top five countries in the world for improving access to clean water, decent toilets and good hygiene. Moreover, over the last decade or so, Pakistan has developed relatively progressive legislative and policy frameworks on various sub-sets of WASH. However, while these achievements are significant, they have not alleviated the overarching problem of unequal access to safe water, sanitation and hygiene across the country. A large number of the population, especially the marginalised and poor, remain without access to essential WASH services. Pakistan remains amongst the top 10 countries with the greatest number of people living without access to safe water, with over 79 million people lacking decent toilets² with considerable gaps in access to essential WASH services amongst the rural, poor and marginalised populations. The global pandemic has further revealed gaps in access to WASH in Pakistan and emphasised its significance as a fundamental human right.³

A review of existing literature relevant to WASH along with an analysis of both federal and provincial frameworks in Pakistan reveals the following gaps that need to be addressed to improve access to WASH:

Lack of recognition of the human rights to Water, Sanitation and Hygiene (WASH): There is no legislation that expressly and holistically recognises the human right to WASH in Pakistan. The rights to water and sanitation is not guaranteed under the Constitution of Pakistan 1973. The only representation of these rights exists in national and provincial level policies; however, these policies do not adequately entrench these rights within Pakistan's domestic legal framework.

Ambiguity in existing laws and policies: Post the 18th Amendment, a majority of areas relevant

to WASH, including aspects of environmental pollution, water including supply and sanitation, management, legislation and service provision have all become the provincial mandate. This increased provincial mandate has not only promoted new legislation and policies on the rights to water and sanitation, but with the coexistence of older federal and provincial laws and policies, has led to overlapping mandates, ambiguity in institutional structures and oversight, weak implementation and an ineffective provision of WASH across Pakistan.

Lack of a human rights approach to drafting legislation relevant to WASH and related cross-cutting themes: Existing laws relevant to the rights to water and sanitation, such as on water supply and sanitation, do not reflect a human rights centric approach that adopts a rights-based framework for access and accountability or afford attention towards inclusive and equitable access to WASH for marginalised groups like women, religious minorities, refugees, etc. Similarly, legislation in other areas, such as on education, health, and minorities does not adequately encompass the understanding of the right to WASH as a prerequisite for the access and exercise of other human rights. There has been a little effort and engagement to build a holistic access and protection framework that realises the significance of WASH in effective realisation of other fundamental human rights such as the right to education, dignity etc., which are already protected in the Constitution.

Ambiguity in institutional mandates on WASH: There is no centralised agency on the rights to water and sanitation at the federal or provincial level. Instead, a number of institutions both federal and provincial are authorised, yet not adequately resourced, to devise, implement and oversee

¹ WaterAid (2016). Pakistan Country Program Strategy 2016-21. Accessed from <https://www.wateraid.org/pk/publications/pakistan-country-programme-strategy-2016-2021>

² For detailed overview of WASH related statistics see <https://www.wateraid.org/pk/publications/infographic-on-wash-facts>

³ 'Why the Covid-19 crisis is an urban crisis', DAWN, Karachi Urban Lab, 14 April 2020 accessed from <https://www.dawn.com/news/1544933>; WaterAid, Country Overview, accessed from <https://www.wateraid.org/where-we-work/pakistan>

WASH across Pakistan. Overlapping mandates of ministries, government departments and other stakeholders contribute to non-implementation of existing laws, regulations and policies and prevent accountability for lack of access to WASH facilities across Pakistan.

Inadequate budget allocation for the WASH sector: While public financing for WASH has increased in the last decade the budgets are still largely inadequate to provide access to WASH services across Pakistan, keeping in view vulnerable groups. Moreover, there is lack of sufficient oversight with regards to successful release of and utilisation of existing allocated budgets.

The problems identified above with respect to the WASH framework in Pakistan require the immediate attention of parliamentarians at both federal and provincial levels. Parliamentarians are integral to formulating clear, coherent, effective and efficient laws and policies to strengthen access to WASH in Pakistan, in compliance with several international and regional commitments.

To promote the WASH agenda and strengthen the domestic framework, the following key recommendations are being made:

- **Recognise the rights to water, sanitation and hygiene** as a fundamental right reflected in the constitution and legislation of the federal and provincial parliaments.
- **Review and revise existing laws/policies/regulations on WASH** to ensure laws are human rights compliant, coherent and clear in their scope and authority.
- **Repeal/amend specific provisions/laws/regulations and policies** that are no longer in use, are outdated or have been effectively removed by newer legislation.
- **Increase budget allocations** for effective access to WASH across Pakistan.
- **Increase oversight** for the implementation of the WASH framework and the effective utilisation of an allocated budget for the WASH sector.
- **Use existing parliamentary tools and forums** to push the WASH agenda, including legislation, implementation and allocation of more appropriate budgets for the WASH sector.
- **Strengthen coordination** at national and provincial levels with relevant stakeholders to effectively monitor and advocate for the rights to water and sanitation.

“Pakistan remains amongst the top 10 countries with the greatest number of people living without access to safe water and over 79 million people lacking decent toilets with considerable gaps in access to essential WASH services amongst rural, poor and marginalised populations. The global pandemic has further revealed gaps in access to WASH in Pakistan and emphasised its significance as a fundamental human right.”



About this Paper

This paper looks at Pakistan's international and domestic legal obligations towards access to WASH from a human rights' perspective, in view of the international and national legal and policy framework and the role of the legislators, as well as national, provincial and local governments in the effective realisation of these rights. More specifically, the paper focuses on the rights to water and sanitation as provided under the international legal framework detailed in the section below. The human right to water is understood as entitling everyone to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.

The human right to sanitation entitles everyone to have physical and affordable access to sanitation, in all spheres of life; that is safe, hygienic, secure and socially and culturally acceptable and that provides privacy and ensures dignity.⁴ Although there are key differences between the right to sanitation and hygiene and arguably there should be a standalone right to hygiene, for the present paper, access to hygiene will be assessed under sanitation laws and policies and the two will be used interchangeably.

The paper also draws upon approaches adopted by diverse countries to enshrine the rights to water and sanitation for their citizens. By doing so, the paper seeks to assist lawmakers in understanding their role with regards to the provision of decent WASH services for all in Pakistan.

Acknowledgments

WaterAid Pakistan commissioned Musawi to develop this briefing paper. At Musawi, the paper has been written by Fatima Yasmin Bokhari with inputs from Sevim Saadat and Rana Hamza Ijaz.

From WaterAid Pakistan, Niaz Ahmed, Head of Policy and Advocacy supervised the assignment with inputs from Siddiq Ahmed Khan, Country Director, Louisa Gosling, Senior WASH Manager-Accountability and Rights and Priya Nath, Equity, Inclusion and Rights Advisor.

⁴Human rights to water and sanitation at <https://www.unwater.org/water-facts/human-rights/>



Overview of International Human Rights Framework on WASH

UN, International Law and WASH

While there is a long-standing history of recognition of WASH as integral to human development and the right to water in international law,⁵ it was in 2010 that the United Nations (UN) through a resolution of the General Assembly, explicitly recognised water and sanitation as a right for all.⁶ Moreover, the subsequent resolution of the Human Rights Council, further reaffirmed that the right to safe drinking water and sanitation is derived from the right to an adequate standard of living, the right to the highest attainable standard of physical and mental health, as well as to the right to life and human dignity,⁷ the

resolution stated:

“that the human right to safe drinking water and sanitation entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use and to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure and acceptable, and that provides privacy and ensures dignity.”⁸

The key indicators to determine the human right to safe drinking water and sanitation are explained below in Table 1.

Table 1. Definitions

<p>Sufficient⁹</p>	<p>Water supply for each person must be sufficient and continuous for personal and domestic uses, including drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. Additionally, there must be a sufficient number of sanitation facilities to ensure access for the needs of all. This includes ensuring collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. Moreover, hygiene facilities should be present in all places needed and accessible particularly for hand washing, menstrual hygiene management, etc.¹⁰</p>
<p>Safe¹¹</p>	<p>Water must be safe for personal or domestic use, including drinking/human consumption; it should be free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Similarly, sanitation facilities must be safe to use and effectively prevent human, animal and insect contact with human excreta, to ensure safety and protection of users and the community. Safe sanitation further requires access to clean toilets with hygiene facilities including hand washing with soap and water, as well as access for women and girls for menstrual hygiene management.</p>
<p>Acceptable¹²</p>	<p>Water should be of an acceptable colour, odour and taste for both personal or domestic use. All sanitation facilities and services must be culturally appropriate and sensitive to gender, lifestyle and privacy requirements. It is pertinent to note that a number of practices with respect to sanitation and hygiene have implications of human rights. These include, for example, the stigmatisation and taboos associated with women and girls during menstruation. States must take active steps to ensure that these practices are not acceptable and should be eliminated through targeted interventions, including awareness raising and education, changes in physical infrastructure and legal and policy changes.</p>

⁵ See UNW-DPAC, The Human Right to Water and Sanitation: Milestones. United Nations Office to support the International Decade for Action 'Water for Life', Spain. Center on Housing Rights and Evictions (2008). Legal Resources for the Rights to water and sanitation: International and National Standards. 2nd Edition. CHRE, Geneva, Switzerland.

⁶ July, 2010. UN General Assembly Resolution A/RES/64/292 accessed from www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/292

⁷ September, 2010, Human Rights Council Resolution A/HRC/RES/15/9 accessed from <https://bit.ly/32Dk4Qx>

⁸ UN General Assembly, The human right to safe drinking water and sanitation, Human Rights Council (A/HRC/RES/24/18)

⁹ Human rights to water and sanitation at <https://www.unwater.org/water-facts/human-rights/>

¹⁰ Principles and standards as applicable to human rights to water and sanitation at <https://human-rights-to-water-and-sanitation.org/hrbackground/>

¹¹ Human rights to water and sanitation at <https://www.unwater.org/water-facts/human-rights/> and Principles and standards as applicable to human rights to water and sanitation at <https://human-rights-to-water-and-sanitation.org/hrbackground/>, ¹² *ibid*

Physically Accessible¹³	The right to water and sanitation services must be physically accessible for all, within or in the immediate vicinity of a household, educational institution, workplace or health institution. Ensuring physical accessibility includes the design of facilities and infrastructure that is cognisant of distance to facilities, the security of the environment for users and also takes into consideration potential barriers for diverse groups of individuals such as differently-abled persons, children, older persons or those who are ill.
Affordable¹⁴	Water and sanitation facilities and services must be affordable for all. Therefore, governments should take steps to ensure the affordability of essential services for poor and marginalised groups.

Pakistan by the ratification of various UN conventions, as well as the adoption of UN Resolutions, has recognised the rights to water and sanitation. Moreover, it has also recognised the principle of human rights to

water and sanitation as legally binding in international law¹⁵. The following table provides a brief overview of the key conventions and resolutions that Pakistan has ratified and adopted.

Table 2. Rights to Water and Sanitation in Light of UN Resolutions and Conventions

Convention/Covenant	Relevant Provision	Ratified by Pakistan
International Covenant on Economic, Social and Cultural Rights	Article 11: The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.	Yes
The Convention on the Elimination of All Forms of Discrimination against Women	Article 14: 2(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.	Yes
The Convention on the Rights of the Child	Article 24: States parties recognise the right of the child to the enjoyment of the highest attainable standard of health 2(c) To combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water (e) To ensure that all segments of society, in particular parents and children, are informed and have access to hygiene and environmental sanitation.	Yes
The Convention on the Rights of Persons with Disabilities	Article 28: 2(a) To ensure equal access by persons with disabilities to clean water services	Yes

¹³ *ibid*,

¹⁴ *ibid*

¹⁵ December, 2013. UN General Assembly Resolution A/RES/68/157 accessed from <https://undocs.org/A/RES/68/157>

Resolutions	Title	Year
UN General Assembly A/RES/64/292	The Human Rights to Water and Sanitation	2010
UN Human Rights Council A/HRC/RES/15/9	Human Rights and Access to Safe Drinking Water and Sanitation	2010
UN Human Rights Council A/HRC/RES/16/2¹⁶	The Human Rights to Safe Drinking Water and Sanitation	2011
UN General Assembly A/RES/68/157	The Human Rights to Safe Drinking Water and Sanitation	2013
UN General Assembly A/RES/70/169¹⁷	The Human Rights to Safe Drinking Water and Sanitation	2015
UN Human Rights Council A/HRC/RES/39/8¹⁸	The Human Rights to Safe Drinking Water and Sanitation	2018
UN General Assembly A/C.3/74/L.33/Rev.1	The Human Rights to Safe Drinking Water and Sanitation	2019

State Obligations to the Rights to Water and Sanitation

Pursuant to ratification, the international human rights regime places obligations on States to ensure protection and promotion of human rights, to regulate the behavior of all actors within its jurisdiction to ensure respect for human rights and to commit to reducing inequalities by addressing systemic issues, such as discrimination and stigmatisation, that can lead to the exclusion of marginalised groups and individuals from access to essential human rights and services.¹⁹

Pakistan has specific obligations with regards to the rights to water and sanitation arising from the treaties that it has ratified, as detailed above. For instance, as a signatory of the ICESCR, the Government of Pakistan has a clear obligation to progressively achieve the full realisation of the rights to water and sanitation through all appropriate means.²⁰ This does not mean that all aspects of the right to water can or may be realised immediately, but the State must make all possible efforts to better protect and promote these rights through concrete, deliberate and targeted steps.²¹ The obligations of the State generally fall into three broad categories as displayed in Figure 1. below.

Figure 1. State Obligations to the Right to Water and Sanitation



¹⁶ Accessed from <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/124/85/PDF/G1112485.pdf?OpenElement>

¹⁷ Accessed from <https://undocs.org/en/A/RES/70/169>

¹⁸ Accessed at <https://undocs.org/en/A/HRC/RES/39/8>

¹⁹ For more info on comparative country approaches see 'Happy anniversary to the human rights to water and sanitation', Rural Water Supply Network, accessed at <https://rwsn.blog/2020/07/28/happy-anniversary-to-the-human-rights-to-water-and-sanitation/>

²⁰ Article 2.1, ICESCR

²¹ Hannah Neumeyer, Happy anniversary to the human rights to water and sanitation, Rural Water Supply Network (blog), July 2020 accessed from <https://rwsn.blog/2020/07/28/happy-anniversary-to-the-human-rights-to-water-and-sanitation/>

This three-tiered approach to State obligations require active engagements at the State level to push for not only progressive laws and regulations, but also to ensure that existing service, rules and procedures are reviewed from a human rights perspective. This should be done to ensure universal access and prioritising those who are furthest behind, as well as increasing education on minimising waste, increasing hygiene and sanitation, etc.

Pakistan's Regional Commitments towards WASH

In addition to UN Conventions and resolutions,

Pakistan has also recognised the rights to sanitation and water under regional cooperation organisations. In fact, even before the adoption of the UN Resolution of 2010, Pakistan recognised that *“access to sanitation and safe drinking water is a basic right, and according national priority to sanitation is imperative.”*²² The commitment to the rights to water and sanitation were reinforced in the subsequent SACOSAN²³ conferences, namely the Colombo Declaration, Kathmandu Declaration, Dhaka Declaration and Islamabad Declaration respectively, as shown in Table 3.

Table 3. Pakistan's support to SACOSAN Declarations

Declaration	Relevant Provision	Year
The Delhi Declaration	1. <i>“Recognise that access to sanitation and safe drinking water is a basic right, and according national priority to sanitation is imperative”.</i>	2008
The Colombo Declaration	<i>“Commit: i) in the light of the recent UN resolution regarding the right to sanitation, to work progressively to realise this in programmes and projects and eventually in legislation.”</i> ²⁴	2011
The Kathmandu Declaration	2. <i>“Renew our joint commitment to the Human Right to Sanitation adopted by the United Nations and endorsed by SAARC nations to work progressively to achieve an open defecation free and hygienic South Asia.”</i> ²⁵	2013
The Dhaka Declaration	<i>“Commits to:</i> 1. <i>The achievement of the SDG target 6.2: By 2030, to achieve access to adequate and equitable sanitation and hygiene for all.”</i>	2016
The Islamabad Declaration ²⁶	<i>Member States reaffirmed earlier commitments and committed to align their national and sub-national policies with SDGs relevant to WASH, generating data on WASH related inequalities existing along geographic areas, as well as vulnerable groups and income levels to ensure improved targeting of interventions.</i>	2018

While none of these are legally binding, they nevertheless demonstrate a strong desire by the respective governments to put WASH on the legislative agenda. It is, therefore, unfortunate that despite this perceived willingness by different regimes, there has been a lack of comprehensive legislation on the issue at both federal and provincial levels.

WASH and the Global Development Agenda 2030

Even before access to WASH was guaranteed through the human rights to water and sanitation, WASH

remained entrenched in the global development agenda. The Millennium Development Goals (MDGs) set the target of reducing the population without access to clean drinking water and sanitation by half. Pakistan met its targets for clean drinking water and sanitation during the MDGs, with 91 percent of Pakistanis having improved access to drinking water and 64 percent to improved sanitation. In fact, Pakistan was ranked amongst the top five countries on the WASH performance index in 2015.²⁷ This, however, does not mean that the equitable access to water and sanitation has been achieved; as noted by

²² SACOSAN, 2008. Third South Asian Conference on Sanitation: the Delhi Declaration. Accessed from <http://www.ielrc.org/content/e0802.pdf>

²³ A “biennial South Asian advocacy and practice forum on Water, Sanitation and Hygiene, co-led by governments of the South Asian Association for Regional Cooperation (SAARC) nations.” More information available at <https://washmatters.wateraid.org/sacosan>

²⁴ Accessed from <http://www.ielrc.org/content/e1119.pdf>

²⁵ Accessed from https://www.communityledtotalsanitation.org/sites/communityledtotalsanitation.org/files/SACOSAN%20V_Kathmandu_Declaration.pdf

²⁶ The Islamabad Declaration accessed from <https://www.wsscc.org/media/news-stories/south-asian-conference-sanitation-produces-islamabad-declaration>

²⁷ Ryan Cronk et al. (2015). The WASH Performance Index Report. UNC - Chapel Hill, Chapel Hill, NC. Accessed from <https://unc.live/2RBTbGi>

the Special Rapporteur on the human rights to safe drinking water and sanitation, that a progressive realisation of these rights entails not only horizontal access i.e. reaching out to all population groups but also vertical access to the improved quality of services provided.²⁸ These include five different dimensions, as specified in the General Comment No. 15 of the UN Committee on the Economic Cultural and Social Rights,²⁹ *“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”*³⁰

Subsequently, on 25 September 2015, the 194 countries of the UN General Assembly adopted the 2030 Development Agenda titled Transforming our World: the 2030 Agenda for Sustainable Development. The 2030 Agenda is an expansion of MDGs however

with a key focus on prioritising those furthest behind under the overarching theme of “leaving no one behind.” Amongst the 17 Sustainable Development Goals (SDGs), Goal 6 is specifically dedicated to clean drinking water and sanitation and explicitly recognises both as human rights.³¹ The goal contains eight targets, briefly detailed in Table 4. below. The SDGs recognise that each goal has a cascading effect on other targets due to the interconnected nature of the challenges, for instance working towards SDG 6 necessitates that targets will simultaneously be achieved in Goal 4 (quality education), Goal 10 (reduced inequalities), Goal 5 (gender equality),³² Goal 13 (climate action) etc. The interlinked nature of the SDGs should be utilised as a strategic tool by governments to ensure effective achievement of the goals.³³

Table 4. Targets under SDG 6.

SDG 6: Ensure availability and sustainable management of water and sanitation for all	
6.1	By 2030, achieve universal and equitable access to safe and affordable drinking water for all
6.2	By 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
6.3	By 2030, improve water quality by reducing pollution, eliminating dumping and minimising release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally
6.4	By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity
6.4	By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity
6.5	By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate
6.6	By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes
6.a	By 2030, expand international cooperation and capacity-building support to developing countries in water and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies
6.b	Support and strengthen the participation of local communities in improving water and sanitation management

²⁸ Leo Heller (2020), Progressive Realisation of the Human Rights to Water and Sanitation. UN Human Rights Council: Report of the Special Rapporteur on Human Rights to Safe Drinking Water and Sanitation. Accessed from <https://undocs.org/en/A/HRC/45/10>

²⁹ United Nations Committee on Economic, Social and Cultural Rights. General Comment 15. Accessed from [http://www.unhcr.ch/tbs/doc.nsf/0/5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf)

³⁰ For explanation of standards and principles as applicable to human right to water see <https://human-rights-to-water-and-sanitation.org/hrbackground/>

³¹ *Clean Water and Sanitation: Why it Matters* accessed at https://www.un.org/sustainabledevelopment/wp-content/uploads/2016/08/6_Why-It-Matters-2020.pdf

³² Grant M., Huggett C., Willetts J. & Wilbur J. (2017) Gender Equality and Goal 6: The Critical Connection. Australian Water Partnership, available at <http://waterpartnership.org.au/>

³³ WaterAid and Sustainable Development Goals at <https://washmatters.wateraid.org/sustainable-development-goals>

Pakistan became one of the first countries in the world to adopt the 2030 Agenda as a National Agenda through a National Assembly Resolution (No. 113) on 19th February 2016. With Vision 2025 having already incorporated the SDGs framework, the Ministry of Planning, Development and Special Initiatives and the UNDP signed a framework agreement under a National Initiative for SDGs; this aims to develop mechanisms for achieving the SDGs as per the respective priorities of the Federal and Provincial governments, and in collaboration with

the private sector, civil society and academia. Within the overarching ambit of the National Initiative for the SDGs, all four provincial governments are tasked with developing their own SDGs projects, focusing on their own prioritisation and preferred methods of implementation of SDGs in their respective provinces. This led to the establishment of SDGs tasks forces in the Planning and Development Department and SDG committees and taskforces in national and provincial assemblies.³⁴

““ The SDGs recognise that each goal has a cascading effect on other targets due to the interconnected nature of the challenges, for instance working towards SDG 6 necessitates that targets will simultaneously be achieved in Goal 4 (quality education), Goal 10 (reduced inequalities), Goal 5 (gender equality), Goal 13 (climate action) etc. The interlinked nature of the SDGs should be utilised as a strategic tool by governments to ensure effective achievement of the goals. ””

³⁴ Musawi (2019). *Legislative Drafting Manual for Punjab: A Guide for Legislative Drafters and Parliamentarians*. Musawi, Lahore. Accessed from <https://bit.ly/33B5uYR>

II Pakistan's Constitutional, Legislative and Policy Framework

Domestic Legal and Policy Framework Relevant to WASH

A range of diverse federal and provincial legal and policy documents collectively reflect Pakistan's existing framework as relevant to the rights to water and sanitation. At the outset, it is pertinent to mention that there is no comprehensive domestic legal or policy framework that directly focuses on or adopts a right-based conception on WASH. Furthermore, there are no federal or provincial laws on WASH nor a designated national or provincial body responsible for the holistic monitoring of access to WASH, progress in relation to the same, or accountability for the lack of WASH in Pakistan's context. Several existing laws, policies and state institutions at the federal and provincial level relevant to WASH relate to individual themes and sub-themes; such as water supply and management, environment, electricity, waste management, public health, local governments, education and so on. These cumulatively shape the legal and policy framework available to assess the extent to which the human rights to water and sanitation is present in the given context. It is also pertinent to mention that existing laws and policies on subthemes relevant to WASH also do not adequately distinguish between water rights and the human right to water. Water rights primarily govern aspects relating to control and use of water while the human right to water relates to the States obligation to ensure that the poor and marginalised segments of society have access to water on the principles of equality, non-discrimination, participation, accountability, access to information and sustainability.

Constitution of Pakistan

As a federal system, with enhanced provincial autonomy after the 18th Amendment to the Constitution of

Pakistan in 2010, the legal framework of Pakistan consists of "a complex patchwork of institutions, policies and legal provisions at the national and provincial level,"³⁵ with dispersed and overlapping responsibilities relevant to the rights to water and sanitation.

In order to identify what amounts to a human right in Pakistan, the starting point is the Constitution of Pakistan, which in Part II, Chapter 1 enshrines several fundamental rights that the State must guarantee to all its citizens, including the right to life,³⁶ dignity,³⁷ and education³⁸ amongst others. While arguably several of these rights relate to WASH, to date, there is no express recognition for the fundamental rights to safe water and sanitation within the Constitution, neither as an explicit Fundamental Right nor as a Principle of Policy.³⁹ However, the human right to water has been inferred and interpreted as being enshrined within the existing constitutional provisions. It has been argued as well as judicially pronounced in judgments of the Superior Courts of Pakistan that the right to "drinking water"⁴⁰, "unpolluted water"⁴¹ and "clean and healthy environment"⁴², is encompassed within the right to life guaranteed in the Constitution.

“There are no federal or provincial laws on WASH nor a designated national or provincial body responsible for the holistic monitoring of access to WASH.”

³⁵ Young, William J., Arif Anwar, Tousif Bhatti, Edoardo Borgomeo, Stephen Davies, William R. Garthwaite III, E. Michael Gilmont, Christina Leb, Lucy Lytton, Ian Makin, and Basharat Saeed. 2019. "Pakistan: Getting More from Water." Water Security Diagnostic. World Bank, Washington, DC.

³⁶ Article 9 of the Constitution of Pakistan,

³⁷ Article 14 of the Constitution of Pakistan

³⁸ Article 25A of the Constitution of Pakistan

³⁹ Part II, Chapter 2 of the Constitution of Pakistan comprises Principles of Policy

⁴⁰ Naimutullah Khan vs. Federation of Pakistan, 2020 SCMR 622

⁴¹ General Secretary Salt Miners Labour Union (CBA) Khewra, Jhelum vs. The Director, Industries and Mineral Development, Punjab, Lahore 1994 SCMR 2061

⁴² Shehla Zia vs.WAPDA PLD 1994 Supreme Court 693

⁴³ Even prior to the 18th Constitutional Amendment, water has largely been a provincial subject in Pakistan's context since partition. For more information see "The Constitutional History of Water in Pakistan", available at <http://government.com.pk/a-constitutional-history-of-water-in-pakistan/>

Moreover, post the 18th Amendment to the Constitution of Pakistan, water, including supply and sanitation, management, legislation, policy as well as service provision of the same, is a provincial matter with responsibility lying with provincial governments⁴³. Similarly, aspects relevant to WASH, such as issues of environmental pollution and ecology, which were previously also the responsibility of the federation, are now solely provincial matters as well. However, the Constitution allows for provinces to give legislative authority to the federation to make laws on any subject that is not part of the federal legislative list and part of the provincial domain under Article 144.⁴⁴ The matters that remain within exclusive federal jurisdiction as per the Constitution, include i) all inter-state and inter-provincial matters, including resolution of water allocation disputes,⁴⁵ ii) policy setting for water and power development and iii) all international treaties, conventions and agreements, including those relevant to water and sanitation.

Legislative, Policy and Institutional Framework

The sections below detail a selection of federal and provincial laws, policies and relevant institutions that

provide insights into the current standing on access to WASH in the domestic framework.

Federal Framework

National legislation on WASH remains limited in scope, especially post 18th amendment as a number of areas relevant to WASH have been devolved to the provincial domain. The federal legislative framework, which comprises of pre-18th amendment laws, does not reflect the parliaments' priority towards the WASH agenda in contrast to Pakistan's international and regional commitments on WASH. The existing laws and policies do not address the progressive realisation of the human rights to water and sanitation keeping in view the specific needs and challenges of the poor and marginalised i.e. the framework mentions components of the WASH agenda without scoping of the existing problem or developing achievable targets to make these rights accessible to all in practice. The laws listed in Table 5. below indirectly or directly deal with some aspect of the rights to water and sanitation.

Table 5. Federal Laws on WASH

Institution	Function
Easements Act 1882	This law predates the partition and is a colonial instrument that remains in power even today. The law provides ownership of water that does not pass through a defined channel both on the surface and underground, to the owner of the land. This enables landowners to collect and dispose of water within certain limits established by the Act.
Environmental Protection Act 1997	This is a special law that governs protection, conservation, rehabilitation, pollution and improvement of the environment in Pakistan. A number of rules and regulations exist under the main Act.
Indus Apportionment Accord 1991	This instrument governs the allocation of water from the Indus River to all four provinces. The law protects the use of canal water, assigns shares in the river supplies and surplus flows in the forms of floods, and future storages amongst the provinces.
Indus River System Authority Act 1992	This Act establishes a regulatory body for distribution of surface water amongst the provinces in accordance with the 1991 Accord. The Authority has the power to consider the redistribution of water, where and as needed, and also provides oversight to WAPDA.
Pakistan Penal Code 1860	The Act criminalises water pollution under section 277, whereby anyone who voluntarily corrupt or fouls the water of any public spring or reservoir will be punished with imprisonment or a fine or both. Moreover, in section 268 of the Act water pollution can also be considered a form of nuisance which is an offence as per the Act.

⁴⁴ Article 144 of the Constitution of Pakistan: **Power of the Parliament to legislate for [one] or more Provinces by consent.** (1) If [one] or more Provincial Assemblies pass resolutions to the effect that the Parliament may by law regulate any matter not enumerated in the Fourth Schedule [the Federal Legislative List], it shall be lawful for the Parliament to pass an act for regulating the matter accordingly, but any act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province.

⁴⁵ Through the Council of Common Interest (CCI) as per Article 153-155 of the Constitution of Pakistan

The Accessibility Code of Pakistan 2006	The Code provides special requirements for the construction, alteration and addition to all new and existing buildings, structures, facilities and premises, which are managed by the federal, provincial and local governments. The Code supplements other building and related bye-laws. The Code under Chapter 4 sets out the mandatory requirement for updating or constructing toilets that are accessible to differently-abled persons.
The Canal and Drainage Act 1873	This Act deals with use of water from all rivers and streams flowing in natural channels and all lakes, sub-soil water and other natural collection of still water. The Act criminalises willful damage or obstruction or interference with the supply and flow of any canal or drainage.
The Factories Act 1934	This Act governs the running, establishment, health and safety of factories across Pakistan. Chapter 3 specifically provides provisions on health, safety and sanitation at the workplace i.e. in factories. This includes provisions about the disposal of effluent waste produced by the factory and also regulations to ensure supply of clean water and access to latrines for both women and men as well as sanitation requirements for the same.
WAPDA Act 1958	This Act establishes an authority (now the Water and Power Development Authority i.e. WAPDA) to govern utilisation of water and power resources across Pakistan. WAPDA is authorised to prepare plans for the development and utilisation of water and power resources across Pakistan. In addition to this, assigns control over the underground water resources of any region, in any province.

Gaps and Challenges

i. Lack of recognition of the human rights to water and sanitation

Pakistan is a party to several international and regional agreements and human rights treaties relevant to the rights to water and sanitation. Domestic implementation and compliance with these agreements and treaties is exclusively the responsibility of the federation. However, there is no recognised 'right to water' or 'right to sanitation' enshrined within the Constitution of Pakistan or in any of the above-mentioned federal laws. The lack thereof means that Pakistan has not been able to translate its international and regional commitments on WASH into domestic law due to the absence of adequate legislation in this area. Moreover, there are no implementation plans or accountability frameworks at the federal or provincial levels to monitor the progress and scrutinise the inaction on the implementation of the WASH agenda.

Although the implementation of international treaties is within the exclusive domain of the federation under the fourth schedule of the Constitution (Federal

Legislative List), post 18th amendment devolution, successful implementation of international treaties will inevitably require provincial enabling legislation on subjects that now fall within the provincial legislative domain, including relating to water and sanitation.

“There is no recognised ‘right to water’ or ‘right to sanitation’ enshrined within the Constitution of Pakistan or in any of the federal laws.”

ii. Ambiguity in existing laws and regulations

Several federal laws, mostly those governing aspects pertaining to supply and ownership of water, which also have implications for the human rights to water and sanitation,⁴⁶ have not been updated or revisited, remain largely outdated and in some cases, as inherited from colonial rule. This revision is all the more necessary in the light of the 18th Amendment

⁴⁶ For example, use of water in a way that pollutes natural water sources has implications for the human rights to water and sanitation. Similarly, lack of regulation for groundwater extraction has implications for availability of sufficient water in the existing context of water scarcity etc.

⁴⁷ Pakistan's provincial water disputes: a way forward, DAWN, 28 July 2016 available at <https://www.dawn.com/news/1273760>

⁴⁸ Realising the human rights to water and sanitation available at <https://www.endwaterpoverty.org/sites/default/files/oldfiles/EWP%20Islamic%20Republic%20of%20Pakistan%20Briefing%20FINAL.pdf>

to the Constitution of Pakistan as key areas relevant to WASH are no longer within the federations' legislative mandate, as well as to bring them up to date with existing international human rights standards. To ensure that laws are effective and can be adequately implemented, it is important to revisit and revise existing laws as and when needed. In the present context, often federal and provincial legislation continues to exist on the same subject matter leading to ambiguity in the law. For example, the laws regulating ownership of water at the federal and provincial level are conflicting. On one side, federal legislation, under the Easements Act 1882, grants ownership to any owner of land, whereas the Punjab Water Act 2019, a recent provincial legislation, effectively moves ownership of water to the State and relevant regulatory authorities as established by the Act, which can provide licenses for ownership of water.⁴⁷

Although there is some reference to water rights with regards to supply of and access to water and penalties for pollution - although not the human right to water - in federal legislation, the right to sanitation is not reflected explicitly in existing legislation at the national level. While some efforts have been made to incorporate aspects of sanitation and hygiene at the policy level and more effectively at the provincial level, as discussed below, there are no clear indicators for the same at the national level. On the legislative end, WASA is authorised to provide drinking water and run sewerage systems across the nation. This is limited in implementation because a majority of these services and maintenance of the same are now devolved to

the provinces, as discussed below. The further lack of attention to issues of sanitation in the legal framework has impacted the realisation of this right in Pakistan, especially in comparison to developments in the context of the right to water.⁴⁸

iii. Ambiguity in institutional framework

There are a number of different institutions at the national level that have fragmented and overlapping mandates relevant to WASH. Although the Ministry of Climate Change hosts WASH initiatives at the federal level, other federal institutions also retain mandates and responsibilities relevant to aspects of WASH. There remains ambiguity on how these federal institutions interact with one another to provide a holistic framework of protection on the human right to WASH, if at all. The absence of a central body or mechanism on both the right to water and the right to sanitation reveals a lack of adequate coordination, harmonisation and a holistic monitoring of access to water and sanitation and accountability regarding the same at the national level. It is imperative to remove ambiguity in overlapping mandates and create a streamlined institutional framework to effectively implement water and sanitation rights. Moreover, in the context of the 18th amendment to the Constitution of Pakistan, it is also essential to assess the mandates of various federal institutions in relation to their provincial counter-parts, which are now largely responsible for access to WASH as a human right in practice. The table below notes some of the main institutions and their specific roles on implementing WASH related rights.

Table 6. Federal Institutions on WASH

Institution	Function
Ministry of Climate Change	The Ministry is responsible for reducing environmental degradation and promoting the conservation of a clean and green environment in Pakistan through policy formulation, standard setting, effective implementation of environment protection laws, etc. There are several wings within the Ministry including the Environment Wing and an established WASH Unit that is responsible for standard setting and coordination and reporting against international committed targets. ⁴⁹
Federal Ministry of Water Resources	The Ministry of Water Resources is tasked with the development of the country's water and hydropower resources to ensure the provision of resources now and in the future. In addition to this, the Ministry is responsible for the implementation of the National Water Policy 2018 and coordinates with all stakeholders for the same.
Water and Power Development Authority (WAPDA)	WAPDA is authorised by the Federal Ministry of Power and Water for the development of water resources such as dams, link canals, public tube wells etc. across the country. In 2017, WAPDA's power wing was placed under a separate entity, titled Pakistan Electric Power Company (PEPCO), except with regards to hydro-projects. WAPDA is now exclusively responsible for water resource management.

Ministry of Health	The Ministry of Health provides input with respect to water quality standards as well as monitor quality standards for drinking water across the country. The Ministry houses the Health Services Academy which has published Drinking Water Standards in 2007 as well.
Ministry of Finance	The Ministry of Finance is responsible for budget allocation, including the allocation for WASH related rights at the federal level and release of funds to provinces as well.
Ministry of Planning Development and Special Initiatives (MoPDR)	The Ministry houses the Planning Commission, which is responsible for research studies and state policy development initiatives aimed at managing Pakistan’s socio-economic development in a strategic and sustainable manner. The Planning Commission is central in developing plans and ensuring sustainable use of resources including water and waste management implications in such plans.
SDG Unit at MoPDR	The SDGs Support Unit provides coordination and support to respective federal ministries and line departments. The Unit is actively undertaking coordination, reporting, and monitoring progress towards SDGs, and providing policy, research, and knowledge management support for the Goals, which includes WASH related rights.
Pakistan Council for Research on Water Resources (PCRWR), Ministry of Science & Technology	The PCRWR was established under the PCRWR Act 2007 with a mandate of carrying out, coordinating and promoting research on water and sanitation rights.
Council of Common Interest (CCI)	The Council of Common Interest (CCI) was established under the Constitution of Pakistan and has the mandate of resolving inter-provincial disputes relating to water rights.
Indus River System Authority (IRSA)	The IRSA was established under the Water Apportionment Accord to regulate and monitor the distribution of water sources amongst the provinces in accordance with the Accord. The IRSA is also a relevant authority for disputes on water distribution and supply under the Accord.

National policymaking on the rights to water and sanitation has been more progressive in Pakistan’s context (at least on paper), however lacks implementation. Table 7. below lists key policies relevant to WASH at the national level.

Contrary to legislation, Pakistan has passed a series of progressive policies at the national level relevant to both the rights to water and sanitation. Even before the UN resolution was passed in 2010, Pakistan recognised the principle of water as a human right in the National Drinking Water Policy of 2009. Similarly, the National Sanitation Policy of 2006 acknowledged access to sanitation as an integral part of the fundamental right to health and hygiene. Moreover, the government of Pakistan has committed to becoming free from open defecation and also adopted the Pakistan Approach to

Total Sanitation (PATS) in 2011. Thereafter, the Clean Green Pakistan Movement (CGPM), launched by the Federal Government in 2018, sought to provide a more holistic approach to WASH, with total sanitation, clean drinking water, solid waste management and liquid waste management and hygiene as key components of the campaign. The CGPM is the first holistic effort to develop indicators for monitoring and accountability of the WASH agenda in Pakistan. The CGPM also promotes competition between the provinces by providing clean green city progress awards to ensure there is an implementation of the five-year plan.⁵⁰ In 2018, the government also passed the National Water Policy. The table below showcases Pakistan’s national policies relevant to WASH.

⁵⁰ Clean Green Pakistan Movement, <https://cleangreen.gov.pk/implementation-approach>

Table 7. National Policies and Plans on Water and Sanitation

Policy	Federal/Provincial	Year of Promulgation	Recognition of the Right
National Environmental Policy	Federal	2005	No
National Sanitation Policy	Federal	2006	Yes
National Drinking Water Policy ⁵¹	Federal	2009	Yes
Pakistan Approach to Total Sanitation	Federal	2011	Yes
National Climate Change Policy	Federal	2012	No
Clean Green Pakistan Movement	Federal	2018	Yes
National Water Policy ⁵²	Federal	2018	Yes

Gaps and Challenges

Although a number of policies at the national level recognise the right to safe water and sanitation, these policies have not been able to make these rights adequately accessible in practice and lack successful implementation. Several factors including a lack of political will, weak institutional arrangements, lack of review of water quality and the poor monitoring of sanitation and hygiene facilities, all contribute to existing gaps in comprehensive policy-making on WASH.⁵³

i. Ambiguity and limited scope of the existing framework

The existing national policy framework is limited to only certain subsets of the rights to water and sanitation rendering it incomplete and ineffective at the outset. For instance, the existing framework has afforded greater attention to issues of water supply and management whereas the quality of drinking water and water sanitation have largely taken a back seat in the national framework. Moreover, other aspects of hygiene have been further ignored. The National Sanitation Policy of 2006 is the only policy that deals exclusively with issues of sanitation. However, the policy itself merits revision and review as it was created in the context of the MDGs, the goals of which were distinct to those of the SDGs.

In addition to the need for more comprehensive policies, national policies also need to be reviewed and revised with a view to avoiding gaps, checking the overlap in competencies and harmonising national

level frameworks with the enhanced mandates of provincial governments, post 18th amendment. The National Water Policy 2018 for example states, "...roles of the federal and provincial water related agencies need to be reviewed in view of the 18th Amendment to the Constitution." The policy further stipulates that, "All water related Acts shall be reviewed for updating to remove overlaps".⁵⁴

Apart from the policies listed in Table 7. above, the WASH agenda is also recognised, albeit very briefly, in other national policies such as the National Education Policy of 2009. The National Education Policy charts out a national strategy for the development of education across Pakistan. The Policy iterates the importance of maintaining minimum standards in the learning environment which includes sufficient toilets in all educational institutions. However, in the absence of strong coordination mechanisms at the national level, it remains unclear to what extent an attempt is made to harmonise these diverse national policies and ensure successful implementation of the same.

ii. Lack of political will and the implementation of frameworks on WASH

One of the key challenges with national level policies is the absence of adequate implementation frameworks of the above-mentioned policies, only the National Climate Change Policy of 2012 has a corresponding implementation framework. There is a further lack of effective review and follow-up on the commitments made pursuant to these policies. Moreover, there is also a lack of jurisdictional clarity, for example, it is not clear how the National Drinking Water Policy of

⁵¹ Ministry of Climate Change, Government of Pakistan accessed at <http://mocc.gov.pk/frmDetails.aspx>

⁵² Ministry of Water Resources, Government of Pakistan accessed at <http://mowr.gov.pk/wp-content/uploads/2018/04/National-Water-Policy.pdf>

⁵³ (Hayder et al. 2009)

⁵⁴ National Water Policy 2018

2009, created by the Ministry of Climate change, is to be considered alongside the National Water Policy of 2018 by the Ministry of Water Resources, both having overlapping mandates with regards to WASH.

Moreover, the lack of political will to realise the rights to water and sanitation and implementation gaps in existing policies are visible in the failure to enact requisite laws on WASH. The National Drinking Water Policy of 2009, which sought to provide access to safe drinking water, equitably and with special attention to poor and marginalised groups, such as women, by 2025, also intended to enact the Pakistan Safe Drinking Water Act. This act was to ensure compliance with the National Drinking Water Quality Standards (created by Pakistan Standards and Quality Control Authority (PSQCA) and hold the water supply institutions accountable to the general public. However, no such legislation has been enacted till date. Moreover, the existing standards on water quality, set out in the policy, were also not adequately monitored or adopted by the provinces through local legislation/regulation and hence are not being implemented.

iii. Inconsistent measures/provisions to ensure access of WASH to marginalised groups

There are different national policies that incorporate the need for special measures or special attention to be afforded to marginalised groups like women, children and differently-abled persons. However, the inclusion of marginalised groups is inconsistent across the national policy framework and existing provisions affording them attention are not being implemented; this contributes to the lack of increased access to WASH for these groups.

With particular reference to the specific needs of marginalised groups, several policies offer theoretical support and inclusion to marginalised groups. For example, the National Climate Change Policy of 2012 recognises that climate change will disproportionately affect poor and under-privileged regions, communities and people with the least resources to adapt. The policy specifically mentions women, especially rural women engaged in agricultural activities, as adversely at risk by climate change. Similarly, the National Sanitation Policy of 2006 recognises sanitation as “an essential pre-requisite for success in the fight against poverty, hunger, child deaths, gender inequality and women

empowerment” and prioritises the needs of women, children and differently-abled persons in all policy planning and implementation processes. The policy further notes the diverse requirements of women and children with regards to public toilets and the added adverse impact on women of the lack of access to water and sanitation facilities. The policy stipulates that “all sanitation related policies, projects and programmes should be gender-sensitive and promote empowerment of women as crucial players in water management and hygiene.”⁵⁵

The National Drinking Water Policy of 2009 also recognises women as the main providers of water supply and the maintenance of household hygiene. It seeks to involve women, children and ensure the participation of communities to reflect their needs adequately in the design, operation and maintenance of water supply systems. This policy also notes distinct threats to children resulting from a lack of water, sanitation and hygiene and also states that the lack of adequate drinking water facilities in schools is one of the contributing factors for low enrollment and high drop-out rate of children from schools. The policy states, as part of its principles, that: “In order to ensure equitable access, special attention will be given to removing the existing disparities in coverage of safe drinking and for addressing the needs of the poor and the vulnerable.”⁵⁶

“In addition to the need for more comprehensive policies, national policies also need to be reviewed and revised with a view to avoid gaps, overlap in competencies and to harmonise national level frameworks with the enhanced mandates of provincial governments post 18th amendment.”

⁵⁰ Clean Green Pakistan Movement, <https://cleangreen.gov.pk/implementation-approach>

⁵¹ Ministry of Climate Change, Government of Pakistan accessed at <http://mocc.gov.pk/frmDetails.aspx>

⁵² Ministry of Water Resources, Government of Pakistan accessed at <http://mowr.gov.pk/wp-content/uploads/2018/04/National-Water-Policy.pdf> (Hayder et al. 2009)

⁵³ National Water Policy 2018

⁵⁵ National Sanitation Policy 2006

⁵⁶ National Drinking Water Policy 2009

Whereas, the National Water Policy of 2018 only states on one occasion that “women participation will be promoted in domestic water supply and promoted in water hygiene;” with regards to the poor, it states rural water supply and sanitation services shall be priced at affordable rates and in remote areas of the country, solar desalination of water will be promoted to provide communities safe drinking water.⁵⁷ It is noteworthy that a majority of the policy frameworks listed in Table 7. do in fact, include some provisions for marginalised groups. However, more consistent and coherent obligations towards marginalised groups in policies and supporting implementation frameworks for the

same could assist in increasing the actual provision of WASH services to these groups.

Provincial Framework

Post 18th Amendment and following the devolution of key areas relevant to WASH to the provincial domain, the primary responsibility in this regard lies with provincial government to ensure access to rights to water and sanitation. There has been a steady increase in provincial laws relating to various sub-sets of WASH. The provincial framework consists of both laws and policies relating to the rights to water and sanitation, as reflected in Table 8. and 10. respectively.

“ The National Drinking Water Policy of 2009, which sought to provide access to safe drinking water, equitably and with special attention to the poor and marginalised groups, such as women, by 2025, also intended to enact the Pakistan Safe Drinking Water Act. This act was to ensure compliance with the National Drinking Water Quality Standards (created by Pakistan Standards and Quality Control Authority (PSQCA) and hold the water supply institutions accountable to the general public.”

⁵⁷ National Water Policy, 2018 – 12.3, 12.6

Table 8. Provincial Legislation on WASH

Provincial Law	Scope of Law
<p>The Canal & Drainage Act 1873 (Punjab, Sindh, KP and Balochistan) Punjab Soil Reclamation Act 1952</p>	<p>The legislation extends control and the use of sub-soil water to the provincial government for public purposes. The provincial government is also responsible for the proper management of sub-soil water and to ensure the quality and availability of the same.</p>
<p>Punjab Soil Reclamation Act 1952</p>	<p>The Act aims to support agricultural production through the speedy reclamation of areas damaged by <i>thur</i> (salt at the surface of the land rendering the surface white, ash coloured, black, etc.) and <i>sem</i> (increase in the sub-soil water table which leads to water oozing out of the land or the land becomes too damp). The law creates a Punjab Land and Water Development Board, which is empowered to develop schemes for reclamation and to exercise full control over underground water-once a scheme is sanctioned for reclamation.</p>
<p>KP Local Government Act 2013 (as amended in 2019)</p>	<p>The Local Government Acts transferred responsibility for the delivery of water supply and sanitation services from the provincial governments to newly created local government institutions. Local governments are responsible for an array of issues related to WASH such as; the allocation and review of water supply, the provision of drinking water, sanitation services (such as ensuring access to public toilets), solid waste management, etc.</p>
<p>Punjab Local Government Act 2019</p>	
<p>Sindh Local Government Act 2013</p>	
<p>The Balochistan Local Government Act 2010 amended in 2019)</p>	
<p>Environmental Protection Act 2013 (Balochistan)</p>	<p>The Provincial legislation on environmental protection reasserts the importance of conserving, protecting and sustaining a healthy and clean environment across Pakistan. All of the Provinces have enacted legislation on environmental protection and simultaneously all prohibit the discharge of domestic or industrial effluent in excess of Provincial Environmental Quality Standards.</p>
<p>Environmental Protection Act 2014 (Khyber Pakhtukhwa)</p>	
<p>Environmental Protection (Amendment) Act 2012 (Punjab)</p>	
<p>Environmental Protection Act 2014 (Sindh)</p>	
<p>KP Water Act 2020 Punjab Water Act 2019</p>	<p>The Acts aim to manage and regulate water resources in the respective province to conserve and make sustainable the use of water for the Province. The Act sets up a commission to carry out functions such as allocating water resources for domestic, agricultural, ecological, industrial and all other purposes across Punjab, securing the proper use of water resources and conserving and distributing water resources. The Act also provides for licenses to use water, extract it and dispose it – in addition to this, the act also provides some regulatory power over sewerage workers.</p>
<p>The Punjab Ab-e-Pak Authority Act 2019</p>	<p>The Act establishes the Punjab Aab-e-Pak authority, which is 'responsible for the provision of clean drinking water to the people of Punjab'.</p>
<p>Khyber Pakhtunkhwa Factories Act 2013 KP Water Act 2020</p>	<p>The KPK and Sindh Act both provide the procedure for the regulation of factories in the province. Chapter 3 – in both Acts – details health and safety requirements for all factories, these include; access to and the supply of clean drinking water and sufficient toilets for both men and women.</p>
<p>KP Rivers Protection Ordinance of 2002, amended by the Khyber Pakhtunkhwa River Protection (Amendment) Act 201458</p>	<p>This Act is for the protection of aquatic ecology, water quality, the economic and environmental value of the rivers and their tributaries in the province.</p>

⁵⁸ Khyber Pakhtunkhwa River Protection (Amendment) Act 2014, available at <http://www.pakp.gov.pk/2013/wp-content/uploads/River-Protection-Amendment-Bill-20141.pdf>

Gaps and Challenges

i. Inadequate legislation on WASH

Post 18th amendment, issues relating to water supply and sanitation, environment, health and various other themes relevant to WASH are the responsibility of the provincial governments. At present, however, no provincial legislation across all four provinces codifies the right to water or the right to sanitation; the provincial laws detailed in Table 8. do not use a rights-based language. Moreover, these laws further make no reference to any special measures to ensure access and affordability of the rights to water and sanitation to the most marginalised groups. To effectively provide equitable and inclusive distribution of WASH within each province special attention must be given to the most disadvantaged individuals and groups.

In addition, certain areas relevant to WASH lack adequate provincial legislation and regulation. For example, there is an absence of legislation (and a designated institution) on the use of water that effectively governs the pumping and usage of groundwater at the provincial level. The Punjab Water Act of 2019 was to create an authority, which would be responsible for the issuing of licenses for the abstraction and disposal of groundwater for agricultural, domestic, industrial and mining purposes. However, to date no such authority has been created. Moreover, the existing framework remains ambiguous with old and new laws coexisting and various departments involved in water management creating jurisdictional ambiguities and overlaps, as detailed below.

Moreover, the existing framework includes some

provisions on the issue of public toilets and management of the same in various provincial laws. For example, section 83 of the Punjab Local Governments Act 2013 provides provision of separate public toilets for men, women and differently-abled persons. The local government is also responsible for the cleanliness and management of public toilets and requires all public buildings and plans to include adequate public toilets. This provision of access to sanitation and hygiene services is definitely noteworthy, especially due to the explicit inclusion of marginalised groups like women and differently abled persons. Similarly, Chapter 3 of the Factories Act provides safeguards for health and sanitation at the workplace, which include provisions on the disposal of effluent water and regulation to ensure access to toilets for both women and men. Currently, the manifestation of the right to sanitation is only found in different laws that provide for construction and management of toilets in each province. This however, does not capture the entirety of the right to sanitation nor does it apply equally in practice to all groups across the province, for instance the application of such provisions is more likely in urban cities in comparison to rural areas. This disparity is important as it increases access to one group and does not afford the same access to the other group.

ii. Ambiguity in institutional framework

All provinces have legislations that establish a number of different authorities relevant to water and sanitation rights, however. It there is not a clear mandate for each independently and in relation to another, creating jurisdictional overlaps and conflicts. Table 9. provides some institutions relevant to WASH at the provincial level.

Table 9. Provincial Institutions Relevant to WASH

Institution	Function
Irrigation Department (Punjab, Sindh, KP and Balochistan)	Mandate to plan, develop, manage, operate and maintain different modes of environmentally and socially acceptable irrigation and drainage system in the province. Responsible for providing continuous irrigation/water facilities to increase the irrigable area of the province and to assist in curbing the negative impact of global warming, rapid urbanisation and depletion.
The Housing, Urban Development and Public Health Engineering Department (HUD and PHED) – Punjab, Sindh and KP	The Housing, Urban Development and Public Health Department is primarily responsible for the oversight and proper administration of different agencies including Water Supply and Sanitation Agencies (WASAs), Parks and Horticulture Authorities and the Public Health Engineering Department (PHED). The PHED in each province is responsible for providing water and sanitation facilitates to rural population and also for planning and construction of water supply, sewerage and drainage schemes in rural and urban areas.

Institution	Function
	The WASAs main function is to plan, design and construct water supply, sewerage and drainage facilities for new works, rehabilitation and augmentation of existing systems, including effective operation and the maintenance of water supply, sewerage and drainage systems. WASAs are also responsible for the collection of rates, fees and charges for the services provided to consumers.
Local Government and Community Development Works and Services (Punjab)	The local government is responsible with respect to facilitation and implementation of facilities to assist in safe provision of water and access to sanitation in their areas. In addition to this, several attached departments such as the solid waste management companies function in different areas to take over solid waste management in their respective districts.
Local Government, Elections and Rural Development Department (KP)	
Local Government Department Government of Sindh	
Environment Protection Department – Punjab	Each provincial department is responsible for monitoring and reducing environmental degradation across the respective province. Similarly, each provincial department houses an Environment Protection Agency (EPA) (authorised by the Environmental Protection Act 1997) which is responsible for protection, conversation, rehabilitation and improvement of the environment, as well as the prevention and control of pollution which includes water and waste management.
Environment Climate Change and Coastal Development Department, Sindh	
Environmental Department, KP	
Balochistan Environmental Protection Agency	
Department of Education/Health (Punjab, KP, Sindh, Balochistan)	The Departments in each province are responsible for management of WASH services in schools and hospitals. The Department must provide WASH services to all such institutions in the province.
Department of Finance (Punjab, KP, Sindh, Balochistan)	The Department is responsible for budget allocation at the local government level with respect to WASH and related services. In addition to this, the Department also monitors revenue generation in different areas including WASH.
Punjab Housing and Town Planning Agency Regulations 2008	The Punjab Housing and Town Planning Agency passed the 2008 regulations under the Punjab Housing and Town Planning Agency Ordinance 2002, to ensure the regulation of development in the areas under the control of the agency. The Regulations detail requirements for drainage and sanitary installations, accessibility of toilets in public and commercial buildings, the building of toilets in houses, apartments, and proper ventilation and sanitation of all developments under this agency.

With the presence of many distinct authorities within the province, there remains ambiguity around which authority is autonomous with respect to decision-making on water and sanitation in each province. For example, the respective Punjab Water Act 2019 and the KP Water Act of 2020 authorise the provincial Irrigation Department to manage water resources across the province. However, at the same time the local governments are empowered with management of water resources in the province as

well. In Punjab, the Punjab Ab-e-Pak Authority Act 2019 establishes another separate body with the responsibility to provide clean drinking water to the people of Punjab. At the local level, there is an overlap in the functions of WASA and the irrigation department as well as conflict with certain mandates of the Lahore Development Authority (LDA). It is also pertinent to state that there is insufficient attention given to the fact that water management with regards to irrigation is a distinct matter and mandate

to water management for the provision of access to safe drinking water and domestic household related usage and sanitation. While there are also institutions tasked with monitoring of solid waste management across the provinces, further clarity is needed for the effective implementation of existing laws and clarity with regards to their mandates as well. Sindh and Balochistan also face issues with respect to different legislative and policy instruments setting up conflicting and overlapping regulatory bodies on water management and sanitation.

On the other hand, at the provincial level, local governments and PEHDs are responsible for the implementation of sanitation and hygiene, whereas provincial health departments are meant to lead in hygiene rights. Similarly, provincial Education Departments are responsible for the WASH agenda in schools. However, there is no coordination between the departments and the lack of central oversight has led to barely any action on sanitation management across the provinces in a cohesive manner. This is reflective in the multi-institutional framework that governs sanitation and hygiene matters in the provinces. The overlap of various institutions has contributed to the slow realisation of the right to sanitation in Pakistan.

iii. Accountability for cross-provincial interferences

It is important that both the federal and provincial governments holistically recognise the importance of the human rights to water and sanitation and the obligation on Pakistan to take active steps to stop any actions that hinder the enjoyment of these rights. For instance, while all local governments need to proactively ensure proper disposal of waste from commercial and non-commercial buildings, houses, factories, due attention also needs to be afforded to cross-provincial matters, where the improper disposal of waste from one province impacts another province. For example, toxic water flowing from Punjab into Sindh is also a failure of Pakistan's state obligation to respect and protect the rights to water and sanitation of the people of Sindh.

Provincial policy

With regards to provincial level policymaking on

the rights to water and sanitation, both Khyber Pakhtunkhwa's Drinking Water Policy⁵⁹ and Sindh's Drinking Water Policy 2017⁶⁰ recognise the right to water as a human right. The Punjab Drinking Water Policy, while not explicitly providing the right as a principle of policy, nevertheless recognises that the same has been recognised in the National Policy of 2009; the right is also mentioned in the section on resource allocation to serve as the basis for allocation of water resources.⁶¹ The policy framework for the right to sanitation lags behind across the provinces, with only the province of Sindh enacting the Sanitation Policy of 2017. The Sindh Sanitation Policy 2017 also recognises the principle of access to safely managed sanitation services as a *fundamental right*.⁶² Moreover, the Punjab Sanitation Policy was first drafted in 2015 and then updated in 2017 but the policy has not yet been approved. The 2015 draft is important as it explicitly recognises that the right to sanitation is a fundamental right and also includes specific provisions for women and differently-abled persons as groups that need to be catered to when developing public toilets across the province.⁶³ Similarly, media outlets in 2018 reported that a draft sanitation policy in KP was circulated but no further information on the formalisation of this policy is available.⁶⁴ Table 10. below lists existing provincial policies relevant to WASH.

“It is important that both the federal and provincial governments holistically recognise the importance of the human rights to water and sanitation and the obligation on Pakistan to take active steps to stop any actions that hinder the enjoyment of these rights.”

⁵⁹ Accessed from http://climateinfo.pk/frontend/web/attachments/data-type/KP_drinking_water.pdf

⁶⁰ Accessed from <https://www.sindh.gov.pk/dpt/phe/drikingpolicy2017.pdf>

⁶¹ Accessed from <https://hudphed.punjab.gov.pk/system/files/1-Punjab%20Drinking%20Water%20Policy%202011.pdf>

⁶² Accessed from https://sindh.gov.pk/dpt/phe/2017_05_23_11_41_00.pdf

⁶³ Section 7.6, Punjab Sanitation Policy 2015 (Draft)

⁶⁴ <http://www.radio.gov.pk/24-04-2018/kp-govt-prepares-draft-of-sanitation-policy-for-preservation-of-hygienic-conditions;>
<https://pakistannewsreports.com/kp-govt-prepares-draft-of-sanitation-policy/>

Table 10. Provincial Policies on Water and Sanitation

Policy	Federal/Provincial	Year of Promulgation	Recognition of the Right
Punjab Drinking Water Policy	Provincial	2011	Yes
Khyber Pakhtunkhwa Drinking Water Policy	Provincial	2015	Yes
Sindh Drinking Water Policy	Provincial	2017	Yes
Sindh Sanitation Policy	Provincial	2017	Yes
Punjab Water Policy	Provincial	2018	No

Gaps and Challenges

While some WASH policy-making initiatives, predominantly on the right to water are visible in the three provinces, Balochistan is lagging behind in this area. However, despite these existing policies setting positive standards, there are gaps in protections afforded and implementation challenges-as also visible in the case of federal policy initiatives. In order to be effective, provincial policies need to be equipped with necessary implementation frameworks with clear, achievable and measurable targets, adequately resourced financially and through the capacity building of relevant stakeholders as well as effectively monitored. As in the case of legislation, there is a need to harmonise existing provincial policies as well to clarify their scope with regards to existing laws, regulations and institutions and ensure that a coherent framework is in place.

As in the case of national policies, provincial policies also contain references to the specific needs of the poor and marginalised. The Sindh Sanitation Policy of 2017 requires that the fundamental right to sanitation services be ensured through enhanced access to marginalised and low resource areas and equitable distribution. The policy, which aligns itself to the SDGs, gives emphasises to issues of equity and rights-based programming during the planning, execution and monitoring of sanitation programmes⁶⁵. The policy also promotes affordability in terms of both the design and availability of water and cost-effective technical solutions consistent with cultural sensitivities of specific communities identified. The policy specifically notes the risks to children and focuses on the

promotion of good health practices at the school level. Moreover, the Sindh Drinking Water Policy of 2017 also recognises the need for ‘special attention to remove existing disparities in coverage of safe drinking water and address the needs of the poor and vulnerable on a priority basis.’⁶⁶ It further acknowledges the role of women as necessary participants in the planning and implementation of WASH programmes and calls to integrate WASH in maternal and neonatal health programmes.

The Punjab Drinking Water Policy of 2011 states that the provision and conservation of drinking water will be on a needs-based criterion and aimed at equitable distribution between urban and rural Punjab, with priority given to areas where water is scarce or contaminated.⁶⁷

Other provincial level policies on cross-cutting themes, for example the Punjab Women Development Policy 2018 by the Women Development Department Punjab also include aspects of WASH. For example, the 2018 policy prioritises “the availability of basic facilities for female teachers and girl students (separate washrooms, latrines, rest areas etc.) in all government-run schools from 2018 onwards⁶⁸ and the development of a module on menstrual health focusing on the sensitisation of teachers and students.”⁶⁹ Moreover, the policy seeks to ensure “equitable and gender-sensitive provision of WASH and Population Welfare Services in urban as well as rural areas for women alongside men.”⁷⁰ As in the case of national level policies, similar gaps and challenges of coordination and cross-sectoral collaboration on WASH and effective implementation are visible in the provincial context as well.

⁶⁵ Sindh Sanitation Policy 2017, Principles: III

⁶⁶ Principles, III ⁶⁷ Punjab Drinking Water Policy 2011, Policy Principles

⁶⁸ SE Department, P&D Department

⁶⁹ Health Department, WDD, SE Department

⁷⁰ Punjab Women Development Policy 2018 ; Health Department, PHE Department, LG&CD Department, P&D Department

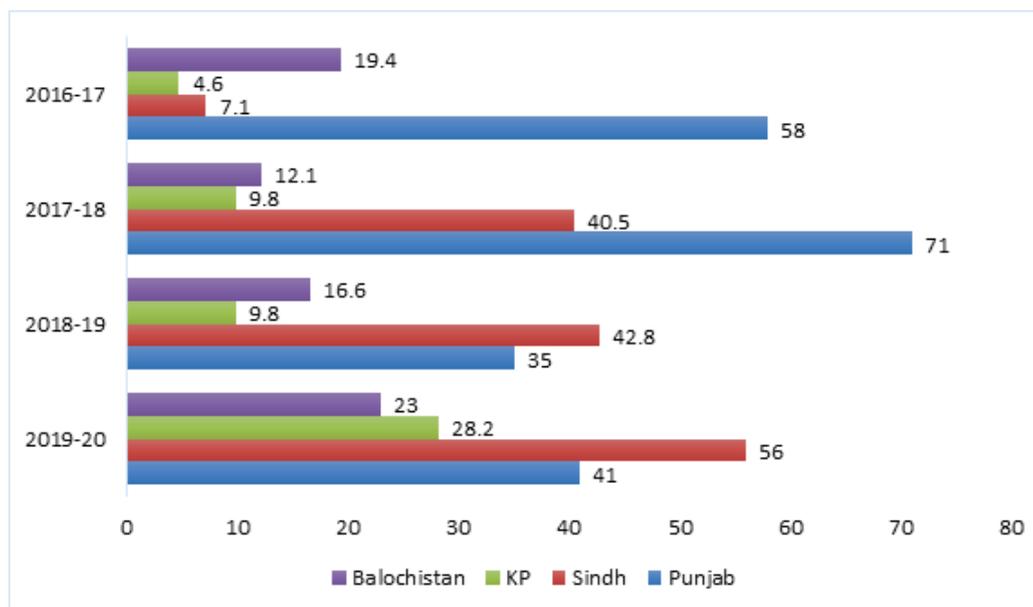
III

Resource Allocation for WASH

While it is important to recognise the rights to water and sanitation as principles of policies, the policies must go a step further; the principles need to be followed by actionable commitments that can be quantified and monitored through an action plan. Unfortunately, in the case of both national and provincial policies, the policies fall short in this regard. A lack of a proper action plan, budgetary commitments and monitoring frameworks lead to an arbitrary implementation, of the policies with no yardstick for their successful implementation or otherwise. While public financing

for WASH has increased in monetary terms during the last couple of decades, WASH as a proportion of total government expenditure and GDP has remained relatively constant at 1 percent of spending and 0.2 percent of the GDP.⁷¹ Also, analysis by sectoral experts reveals that almost all the budget (95 percent) comes from the provinces, with the federal government contributing only 5 percent.⁷² Figure 2 provides a brief overview of the budget allocated to water and sanitation during the last five years at the provincial level.

Figure 2. Provincial Budgetary Allocations for Water Supply and Sanitation (Billions PKR)



Source: Pakistan WASH Budget Analysis⁷³

There is a significant gap between the current levels of funding available for WASH and the required amount for Pakistan to achieve its targets of total sanitation and access to clean drinking water for all. As noted by the

GLAAS report 2019, Pakistan’s current levels of funding are less than half of what is required to achieve the WASH Plans.⁷⁴ Table 11. provides details of the funding shortfalls.

⁷¹ Richard Watts, Dan Walton and Thomas Yeung, 2020. Equal to the task: financing water supply, sanitation and hygiene for a clean, green and healthy

⁷² Pakistan. Water Aid. Accessed from <https://washmatters.wateraid.org/publications/all/pakistan>

UNICEF, 2020. Pakistan WASH Budget Analysis. Accessed from <https://cleangreen.gov.pk/download/Final-WASH-Budget-Analysis-Report-2020.pdf>

⁷³ ibid

⁷⁴ National Systems to Support Drinking-Water, Sanitation and Hygiene: Global Status Report 2019. UN-Water Global Analysis and Assessment of Sanitation and Drinking Water (GLAAS) 2019 Report. Geneva: World Health Organisation; 2019. License: CC BY-NC-SA 3.0 IGO.

Table 11. GLAAS 2019 Financing Sufficiency Report for Pakistan

WASH Sector	Locality	Sufficiency of Funding
Water Supply	Urban	Less than 50%
	Rural	
Sanitation	Urban	Less than 50%
	Rural	
Hygiene	Urban	Less than 50%
	Rural	

Under the Clean Green Pakistan Movement, the federal government seeks to improve the allocation by increasing the spending on the initiatives under the movement to 1 percent of the GDP, a fivefold increase in the previous spending.⁷⁵ The allocation of resources within the budget, however, is not a guarantee that the same would be utilised completely, or that the committed resources would be made available. For example, in the 2018-19 budget for Punjab, Rs. 20.5 billion were initially allocated for water supply and sanitation schemes in the ADP. However, the allocation was revised to Rs. 12.72 billion by the end of the fiscal year, as the remaining resources were diverted to other development schemes. Similarly, against the allocation of Rs.37.73 billion for 267 water supply and sanitation schemes in the ADP for Sindh in 2018-19, only Rs.15.90 billion were released. The Sindh government blamed the federal government for the poor receipt of funds, which resulted in a release of less than the allocated funds. However, even from within the released funds, the Sindh government managed to spend only Rs.7.87 billion by June 2019-almost half of the total funds released. It is important, therefore, for the legislators to keep an active check on budget allocations, the release of funds, the actual spending and to hold the executive accountable for the same. Regular reporting on these issues, through the standing committees as well as other mechanisms - the Sindh government has introduced quarterly reporting on budget spending, which can be one way to ensure that sufficient funds are allocated to the sector and whatever resources that are allocated are spent on development schemes and not surrendered at the end of the year.

The limited allocation of resources to water and

sanitation sectors, as well as mismanagement in spending the allocated resources, has resulted in neutral commentators suggesting that there is a lack of improvement in the rates of diarrhea, child stunting and waterborne diseases. On the contrary, there has been an ‘unprecedented concentration’ of untreated fecal waste near human settlements which has led to surface and ground water contamination as well as soil contamination, thereby increasing the channels for oral-fecal transmission.⁷⁶

“ The allocation of resources within the budget, however, is not a guarantee that the same would be utilised completely, or that the committed resources would be made available. For example, in the 2018-19 budget for Punjab, Rs. 20.5 billion were initially allocated for water supply and sanitation schemes in the ADP. However, the allocation was revised to Rs.12.72 billion by the end of the fiscal year. ”

⁷⁵ Accessed from <https://tribune.com.pk/story/1968767/2-govt-spend-1-psdp-green-programme>

⁷⁶ World Bank. (2018). *When Water Becomes a Hazard: A Diagnostic Report on The State of Water Supply, Sanitation and Poverty in Pakistan and Its Impact on Child Stunting*. Washington D.C.: World Bank Group. Accessed from <https://reliefweb.int/sites/reliefweb.int/files/resources/131860-WP-P150794-PakistanWASHPovertyDiagnostic.pdf>

IV

Role of Parliamentarians: Recommendations for Legislators

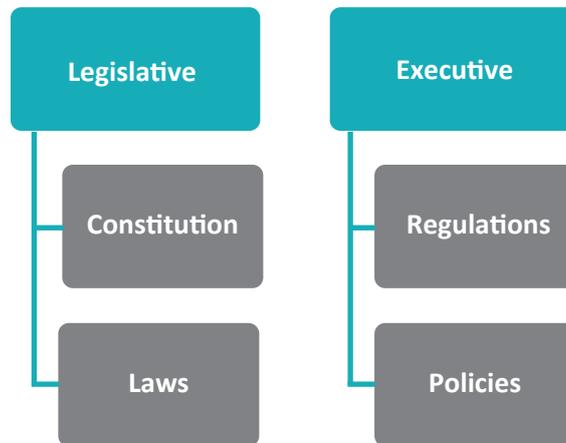
This section identifies some of existing problems within the domestic context of Pakistan that impact both the development of and access to the rights to water and sanitation and provides some recommendations for national and provincial parliamentarians in this regard. In addition to this, the section notes comparative country approaches to recognising and implementing the rights to water and sanitation, laws and policies.

Recognising WASH as a Human Right: Comparative Country Approaches

The UN Special Rapporteur on the human rights to safe drinking water and sanitation has categorised various governmental approaches to the realisation

of the rights to water and sanitation into four different categories, presented in the Figure 3. While the governments can choose to work in any one, or more of these structures - as there is no compulsion to pursue all legislative and executive frameworks - a more holistic approach that makes use of all these frameworks would be additionally effective⁷⁷ While the executive functions of the governments-to introduce regulations and policies are more commonly practiced and afforded due consideration in Pakistan-the legislative functions of guarantees within the constitution and laws have remained relatively unexplored. A brief description of the latter is, therefore provided in the following sub-sections.

Figure 3. Structure of National Legal and Policy Frameworks



Source: UN Special Rapporteur’s Handbook

A. Constitutional Provisions

The constitution of a country provides, perhaps, the strongest guarantee of human rights in national legal frameworks. Two different approaches to constitutional guarantees for the right to water and sanitation have been adopted by countries, namely the explicit provision of the rights to water and sanitation within the constitution, or an implicit guarantee through the interpretation of other provisions; such as the right to

life, the right to a minimum standard of living, the right to health etc.

A number of countries have acknowledged the rights to water and sanitation as fundamental rights within their constitutions. Table 12. provides some examples of countries that have explicitly recognised the rights to water and sanitation with relevant provisions. However, most countries take a broad view of guarantees provided in the constitution to include the rights to

⁷⁷ UN Special Rapporteur on the human right to safe drinking water and sanitation, 2014. Realising the human rights to water and sanitation: A Handbook by the UN Special Rapporteur Catarina de Albuquerque. Bangalore, India

water and sanitation. As reported by the Global Analysis and Assessment of Sanitation and Drinking Water (GLAAS) Report 2019, the rights to water and sanitation are recognised through the constitution in 65 percent and 62 percent of the countries that were a part of the assessment (including Pakistan). In this regard,

Pakistan's case is similar to that of India, Bangladesh, Nepal, Iran, Mali, Argentina etc. who recognise these rights under the umbrella of other rights – such as the right to life, the right to basic necessities, right to health and clean environment etc.

Table 12. Countries that explicitly recognise the right to water and sanitation as a constitutional right

Institution	Relevant Article
Burkina Faso ⁷⁹	Article 18. <i>Education, potable water and sanitation, instruction, [professional] training [formation], social security, housing, energy, sport, leisure, health, protection of maternity and of infancy, assistance to aged persons, to persons living with a handicap and [those] in social cases, [and] artistic and scientific creation, constitute the social and cultural rights recognised by this constitution which sees to their promotion.</i>
Congo ⁸⁰	Article 48. <i>The right to decent housing, the right of access to drinking water and to electric energy are guaranteed.</i>
Kenya ⁸¹	Article 43(1). <i>Every person has the right to:</i> <i>b). Every person has the right to a reasonable standard of sanitation.</i> <i>d) To clean and safe water in adequate quantities.</i>
Mexico ⁸²	Article 4. <i>Para 4: Every person has the right to health protection. The law shall determine the bases and terms to access health services and shall establish the competence of the federation and the local governments with regard to sanitation.</i> <i>Para 6: Any person has the right of access, provision and drainage of water for personal and domestic consumption in a sufficient, healthy, acceptable and affordable manner.</i>
Nepal ⁸³	Article 35. Right to healthcare <i>(4) Each citizen shall have the right to access clean water and hygiene.</i>
South Africa ⁸⁴	Article 27(1) <i>Everyone has the right to have access to:</i> <i>(b) Sufficient food and water</i>
Uruguay ⁸⁵	Article 47 <i>"Access to potable water and access to sanitation constitute fundamental human rights."</i>

A constitutional guarantee, while not an obligation under international law, is highly desirable in an explicit form as it ensures greater legal certainty as well as mechanisms for enforcement and legal recourse.

B. Laws

While changes to the constitution might be more

difficult to realise, governments can enact laws and introduce policies to provide recognition as well as entitlements with respect to rights. A large number of countries have enacted legislations pertaining to WASH based on the principles of non-discrimination, equality, access to information, participation and accountability. Some of these laws are listed in Figure 4. as follows:⁸⁶

⁷⁸ National Systems to Support Drinking-Water, Sanitation and Hygiene: Global Status Report 2019. UN-Water Global Analysis and Assessment of Sanitation and Drinking Water (GLAAS) 2019 Report. Geneva: World Health Organisation; 2019. Licence: CC BY-NC-SA 3.0 IGO.

⁷⁹ Accessed from https://www.constituteproject.org/constitution/Burkina_Faso_2015.pdf?lang=en

⁸⁰ Accessed from <http://constitutionnet.org/sites/default/files/DRC%20-%20Congo%20Constitution.pdf>

⁸¹ Accessed from <http://www.kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=Const2010>

⁸² Accessed from https://www.constituteproject.org/constitution/Mexico_2015.pdf?lang=en

⁸³ Accessed from https://www.constituteproject.org/constitution/Nepal_2015.pdf

⁸⁴ Accessed from <https://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

⁸⁵ Accessed from https://www.constituteproject.org/constitution/Uruguay_2004.pdf?lang=en

⁸⁶ It may also be useful to consider that in certain contexts, where there are no specific provisions in the constitution, it may in fact be more effective to focus on more specific laws, rules and regulations on the rights to water and sanitation. See comparative country approaches at 'Happy anniversary to the human rights to water and sanitation', Rural Water Supply Network, accessed at <https://rwsn.blog/2020/07/28/happy-anniversary-to-the-human-rights-to-water-and-sanitation/>

Figure 4. Examples of WASH legislations across the globe



Source: Country Studies and Various Reports.

As identified by the Special Rapporteur on the Rights to Water and Sanitation, national and local legislations should be based on the key underlying principles as stipulated in the General Comment no. 15.⁸⁷ These are:

Availability: Laws on Water and Sanitation should provide a general safeguard that water, sanitation and hygiene services should be made available to all people.

Physical Accessibility: The law should not only contain a general guarantee, but also specific guarantees for groups that commonly face accessibility problems or are at a higher risk, such as differently-abled individuals, women, children and marginalised groups. This includes time, distance, physical security etc.

Quality and Safety: All laws enacted to ensure the rights to water and sanitation should seek to provide benchmarks (or at least principle) for the provision of safe services in line with best practices and established standards.

Affordability: While it is important for enacted legislations to look at the sustainability of WASH services in financial terms, it is equally important for these laws to provide due consideration to affordability of water and sanitation services for all users.

Acceptability: In order for laws to be effectively

implemented it is important that there is a buy-in for the proposed technology and design for water and sanitation services. It is therefore, imperative that users be a part of the design and deliberation process, and that their participation is mandated through the law.

While incorporating the rights to water and sanitation within the constitution and/or creating laws focused on these rights is a useful strategy, it is often time-consuming and, therefore, a long-term goal. Political will is needed to make major legal changes - often that takes a very long time and, in the interim, reflects little change in practice to actualise the rights in question and affect the living reality of citizens. It is arguable that more effective and quick progress can be noted when countries rely on effectively applying a more targeted approach to regulate access and service delivery, usually through existing rules, roles and responsibilities in the government in the short-term, while preparing for more long-term changes. This provides a more hands-on approach with applying human rights' principles to improve how services are planned, implemented and maintained by the government, and hence could potentially lead to the progressive realisation of the rights to water and sanitation, as well as more informed future law-making⁸⁸.

⁸⁷ UN Special Rapporteur on the human right to safe drinking water and sanitation, 2014. Realising the human rights to water and sanitation: A Handbook by the UN Special Rapporteur Catarina de Albuquerque. Bangalore, India

⁸⁸ Happy anniversary to the human rights to water and sanitation, accessed at <https://rwsn.blog/2020/07/28/happy-anniversary-to-the-human-rights-to-water-and-sanitation/>

Problems identified and recommendations for legislators:⁸⁹

Problem 1.0 – Lack of recognition of the human right to water, sanitation and hygiene

Lack of recognition of the fundamental human rights to water and sanitation under the domestic legal framework of Pakistan

Recommendation

- The federal and provincial parliaments should recognise the human right to WASH through bringing in a constitutional amendment, which designates the right to WASH as a fundamental human right included within the chapter on fundamental rights within the Constitution of Pakistan. This would allow for clearer and more coherent jurisprudence on WASH. It would further lead to greater oversight by parliament and other relevant forums.

Lack of comprehensive legislation or policy at the federal or provincial level that holistically deals with the right to WASH as per Pakistan's international and regional commitments

Recommendation

- The federal and provincial parliaments should pass national and provincial legislations, either through a party consensus or as private member bills, which codify the human right to WASH in the domestic legal framework in compliance with Pakistan's international and regional commitments. The laws must ensure the 'promote, protect and fulfill' framework of human rights. This means that, amongst other things; laws should designate appropriate national and provincial bodies responsible for the implementation of the right to WASH, ensure the allocation of necessary resources for implementation, and ensure compliance with international and regional best practices relevant to WASH.

Problem 1.1 – Ambiguity in existing laws, regulations and policies

The existing domestic framework is ambiguous in scope and function, which leads to weak implementation due to a lack of clarity as well as lack of oversight

Recommendation

- Consolidation of laws to clarify the scope of existing legislation, regulations and policies with a view to ensuring the effective implementation of the same.
- Any new legislation or policy at the national and provincial level should take into account how the new law will interact with the already present legal and policy regime. A detailed assessment of existing laws/legal framework and gaps in the same will aid the effective drafting and implementation of a new law and prevent further non-implementation of laws.

Some existing laws at the provincial and national level relevant to WASH are colonial remnants - amended over the years - and outdated yet not repealed. These laws often contradict with newer legislation at the provincial level, creating jurisdictional overlaps and ambiguities and hampering the implementation of WASH and the accountability for failures with regards to the same

Recommendation

- Repeal outdated laws/policies/plans and amend existing laws to eliminate contradictions and conflicts in the provisions, role and responsibilities of authorities and bodies created under these laws, etc.

Problem 1.2 – Ambiguity in institutional framework

Many aspects pertaining to WASH, such as water and sanitation, fall within the mandate of the local government at the provincial level. In the absence of strong local government structures and appropriate resource allocations, implementation of and access to WASH related rights will be disrupted

⁸⁹ Several of the problems identified in this section are wider problems that are not necessarily specific to WASH. This includes issues of lack of oversight of budgets, ambiguities in existing laws and institutions, harmonisation of laws post 18th amendment etc. Addressing these problems would be beneficial for the overall successful implementation of Pakistan domestic and international obligations in other sectors as well.

Recommendation

- Strengthen and empower local governments at the provincial level and ensure adequate resource allocation for their WASH related responsibilities. A range of related functions of local governments also contribute to an overall enabling environment for the exercise of right to WASH.

The absence of a national and/or provincial body/authority, which can be a focal point on WASH to monitor the state of access to clean water, sanitation and hygiene and ensure the provision of these rights, as well as accountability for lack of the same

Recommendation

- Establish a national and provincial level body on WASH or designate an existing entity to serve as a focal point to guarantee the human right to WASH and to ensure adequate coordination between the various actors relevant to WASH in the federation and provinces.
- Clarify the scope of the work, role and responsibilities of the various institutions/departments and actors relevant to WASH at the federal and provincial level, preventing the duplication of efforts and resources.

Weak coordination between various stakeholders, institutions and actors relevant to WASH at the federal and provincial level can lead to ambiguity and the ineffective implementation of WASH related rights

Recommendation

- Establish appropriate coordination mechanisms to facilitate cohesive interaction on WASH amongst diverse relevant stakeholders at the federal and provincial level.
- Establish protocols, including allocation of resources for, capacity building of all relevant stakeholders, actors and institutions on the human right to WASH and their relevant mandates, roles and responsibilities in this regard. Many national and provincial stakeholders remain unclear about the scope of their work, particular their interaction with one another.

Problem 1.3 – Inculcating the human rights approach

There is an absence of the human rights approach to law-making, with insufficient focus on cross-cutting themes relevant to issues of WASH and vulnerable communities such as rural, poor populations etc

Recommendation

- Legislative and policy-making initiatives on WASH and related themes should adopt a human rights framework and a rights-based approach, ensuring that proposed law and policy is cognizant of the particular needs of marginalised and vulnerable groups and the challenges faced by them in the effective access to WASH.
- Proposed legislative and policy initiatives on diverse human rights themes should assess relevance to the right to water and sanitation to provide for a more holistic rights-based perspective to legislation. A range of diverse areas of government legislation and initiatives at the federal and provincial level relate to issues of WASH, for example; access to primary and secondary education, especially for women and girls, public health initiatives focusing on children and women, laws pertaining to climate change, infrastructural development, public health commitments, menstrual health and hygiene provision, the regulation of corporate and governmental industrial initiatives with regards to natural resources, and most recently, the government's initiatives as a response to the global pandemic etc. However, when these laws, regulations and policies are drafted, they do not focus on, or include in-built safeguards with regards to access to WASH facilities. When conceptualizing and bringing about legislation, it is also useful to identify the extent to which any legislation may be relevant to WASH and thereafter, include a perspective on WASH in legislating on related subjects. In addition to standalone water and sanitation laws and policies, this approach will strengthen Pakistan's overall legal and policy protection framework with regards to the right to water and sanitation. Moreover, it is further recommended that all laws relevant to WASH keep a specific focus on the needs of and impacts on marginalised communities and populations in Pakistan's given context.

There is a need for equitable representation of marginalised groups, peripheral areas and other communities in developing WASH related legislation

Recommendation

- Parliamentarians should be cognizant of the different equity requirements in WASH in their legislative and oversight functions relevant to WASH. This will allow for the more effective distribution of water and

sanitation and will account for the diversities of different groups and geographic locations across the country. It may be useful to call for affirmative action to promote equity on WASH for marginalised groups such as women, children, differently-abled persons, communities in remote or peripheral areas, etc.

- Parliamentarians should also consider allowing representatives to bring forward input from marginalised communities on how the provision of the rights should be shaped. This is necessary to ensure that laws or policies are shaped with the input of the locals and reflect the needs of different marginalised groups.

Lack of collaboration between WASH actors and relevant government departments, responsible for the rights of marginalised people, leads to inequitable access to water and sanitation services

Recommendation

- Work with relevant stakeholders from civil society and different government departments, such as the Ministry of Human Rights, Ministry of Education and Professional Training, Directorate General of Special Education, etc. to strengthen the representation of all groups within the policy and legislative framework. Working in collaboration with different departments will also help increase service delivery to those furthest behind.

Problem 1.4 – Lack of technical support and political will for WASH related policy in parliament

The absence of parliamentary committees, contribute to a lack of political will to deal with WASH related issues/ policies

Recommendation

- Establish a thematic standing committee on WASH at the national and provincial level to prioritize attention to WASH related issues and policies
- Select parliamentary committees, including committees - on other thematic areas (adopting cross-cutting perspectives) - can function as a means of raising peer-to-peer awareness on WASH, raising questions on existing policies within the parliament with a particular view to contributing to the awareness-raising of other members of the parliament on WASH, raising and how that may intersect with other priority areas.
- Civil society organisations working on WASH related issues can also be invited to share thematic reports, findings and grass-roots experiences during committee sessions, to inform legislative initiatives on WASH.

There is need for technical support for parliamentarians on WASH related rights

Recommendation

- Develop a research department or an assigned research officer to support parliamentarians in accessing information related to the right to water and sanitation to help them perform their roles better. The research department must provide adequate, accurate and reliable information in order to effectively update parliamentarians with new guidelines that affect WASH related mandates.

Existing budgetary allocations for WASH at the federal and provincial Level are extremely low and even those allocations are not effectively utilised or underspent

Recommendation

- Increase resource allocation for WASH. Parliamentarians can suggest greater budget allocation for WASH in annual budgets. Several laws lack implementation due to inadequate resource allocation. Moreover, with particular regards to WASH, there is a need to allocate additional resources for campaigns geared to the awareness-raising of communities on knowledge, attitudes and practices pertaining to WASH for e.g. with regards to menstrual hygiene. Moreover, there is a need to allocate resources to build the capacity of relevant stakeholders - including those within government departments - on the human right to WASH in the light of international and regional best practices.
- Review and devise a budget allocation formula for the WASH sub-sector across Pakistan. The budget allocation formula should rely on WASH indicators to determine which parts of the country require higher allocation. Moreover, the budgets should reflect a balance between priorities within the WASH sector to ensure that water needs for production and water needs for domestic use and sanitation are dealt with equitably. At present, budgets are allocated with a greater focus on drinking water and less towards water needs with regards to sanitation.

Problem 1.5 – Inadequate or lack of oversight by parliament on monitoring and implementation of WASH related laws and expenditures/ budgets

There is limited and at times no oversight provided by parliament at both the federal and provincial level. Without active oversight, it is difficult to monitor and ensure the effective implementation of WASH related legislation

Recommendation

- Increased oversight by the parliament, at both the federal and provincial level, with regards to the implementation of existing laws relevant to WASH and more broadly on the provision of WASH services at a country and provincial level.
- Establish a thematic standing committee on WASH at the national and provincial level to increase the oversight role of parliamentarians.
- In the absence of a specific thematic committee, parliamentarians can take up WASH related issues within existing parliamentary committees, such as those on human rights, water resources, health etc. The committees can be used for the aggregation of WASH related data, agenda-setting in parliament, as well as monitoring existing policies and projects relevant to WASH. A specific role of oversight of parliamentarians is also needed to monitor the implementation and progress of Action Plans for Approved Policies at the provincial and federal levels.

There is need for greater parliamentary role and oversight over budget allocation and spending

Recommendation

- Increase parliamentary oversight to ensure the effective use of existing budget allocations in relation to WASH. This can be done through the Public Accounts Committee, which is responsible for overseeing budgets and related implementation etc. In addition, existing thematic parliamentary committees and individual parliamentarians can also monitor the spending of allocated meetings.

The Way Forward

In order to achieve a progressive realisation of the rights to water and sanitation we must have appropriate **rules** in place, clear **responsibilities** and duties must be assigned, effective **reporting** and monitoring mechanisms must be developed and used to measure performance, the overall performance must be

reviewed and progress must inform a **reaction** through corrective measures such as improved services, new incentives, sanctions, etc.⁹⁰ The table below incorporates the five R's of accountability, as applicable to WASH sector functions to provide a more holistic approach to moving forward with both laws/policies on WASH but also effective implementation of the same.

	Short-term	Medium-term	Long-term
Law-making	<ul style="list-style-type: none"> • Revise existing laws to align them with Pakistan's international ratifications. • Coordinate with the Parliamentary Institute of Parliamentary Services (PIPs) to develop background and updating briefs on WASH 	<ul style="list-style-type: none"> • Develop a research unit or assign a specific expert dedicated to providing updates to parliamentarians on the right to water and sanitation to ensure compliance in new legislations 	<ul style="list-style-type: none"> • Develop support for a constitutional amendment to the right to water and sanitation for all • Increase access to information to better inform WASH legislation, rules, etc. For example, increased information on relevant modes of service delivery for WASH in different urban and rural areas across Pakistan
Oversight	<ul style="list-style-type: none"> • Assist in fulfilling national reporting requirements under international instruments that require periodic reporting • Encourage members of the Standing Committee on Water Resources to examine delegated legislations, public petitions and policies of the concerned Ministry • Liaison with existing legal departments and sections within the provincial environmental departments to identify and update relevant legislation on waste management and related policies • Strengthen the use of parliamentary tools such as questions, calling attention motions etc. on the WASH agenda 	<ul style="list-style-type: none"> • Strengthen the Standing Committee on Water Resources to bring suggestions on WASH legislation and policies • Increase the transparency of implementation frameworks of WASH through bi-annual / annual progress reports from relevant government bodies/departments 	<ul style="list-style-type: none"> • Develop support for a constitutional amendment to the right to water and sanitation for all • Increase access to information to better inform WASH legislation, rules, etc. For example, increased information on relevant modes of service delivery for WASH in different urban and rural areas across Pakistan

⁹⁰ Accountability and advocacy interventions in the water sector, A review of global evidence (Aug 2020) https://static1.squarespace.com/static/5baa3175bfa3e44386d68a5/t/5f3fe003d5bd632b56b26f08/1598021654388/Accountability+for+Water_Global+Evidence+Review.pdf

<p>Budgeting</p>	<ul style="list-style-type: none"> • Review the existing budget allocation for WASH, including allocation under specific laws • Raise questions and make suggestions for a greater budget allocation for WASH in annual budgets • Review the allocation of budgets to different provinces 	<ul style="list-style-type: none"> • Develop a budget allocation formula for the WASH sector • Liaison with the Public Accounts Committee to provide suggestions for the budget allocation based on water needs in respective areas 	<ul style="list-style-type: none"> • Implement budget allocation for the WASH sector via the new formula • Monitor or authorise a body to monitor progress the utilisation of the WASH budget annually • Develop possible sanctions for mismanagement of WASH budget to create accountability
<p>Representation</p>	<ul style="list-style-type: none"> • Increased use of questions, motions and other parliamentary tools to push forward the rights of different vulnerable groups in the WASH sector • Review existing provincial legislation to identify gaps in the equitable distribution of the right to water and sanitation 	<ul style="list-style-type: none"> • Amend existing legislation to reflect equitable distribution of the right to water and sanitation amongst different marginalised groups • Liason with Committees on human rights and marginalised groups to promote WASH for all, across the board 	<ul style="list-style-type: none"> • Monitor the distribution and access of WASH to different groups across specific areas



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