



LEARNING BRIEF

Exploring legal and policy aspects of urban sanitation and hygiene

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A review of legal arrangements (a 'legal scan') helps WASH professionals to have an overview of how these arrangements influence a safe and sustainable urban sanitation service in a given country context. In most countries, the various aspects of the urban sanitation value chain and sanitation users are addressed across a range of different legal documents. The overall legal picture is often unclear to stakeholders. Undertaking a legal review can identify the existing legal arrangements that could be used to drive change while identifying gaps that could be limiting their use and broader application.

This learning brief presents highlights from the learning paper '*Exploring legal and policy aspects of urban sanitation and hygiene*' that guides readers on how to conduct a legal scan. It built on research synthesising the experience of SNV Netherlands Development Organisation (SNV) from developing reviews of legal arrangements for urban sanitation and hygiene in four countries (Nepal, Bhutan, Bangladesh and Indonesia). Both the learning brief and learning paper were prepared by SNV and the Institute for Sustainable Futures at the University of Technology Sydney, as part of their partnership for research and learning to improve urban sanitation sector knowledge and practice.

Key messages

- **A legal scan is important when designing or delivering urban sanitation and hygiene programmes.** The high-level assessment of legal arrangements for urban sanitation can enable WASH professionals to use the frameworks and tools offered by such arrangements to improve outcomes, and to advocate for improvements to legal, policy and institutional arrangements.
- **The hierarchical relationship between documents means that the stated objectives and focus of legislation determine why certain aspects were included and others excluded in lower level regulations, policies and plans.** A lack of alignment of lower level documents with the stated objectives and goals can provide opportunities for action.
- **The reflection stage of the legal scan is important for finding action points.** These may include issues for which good legislation exists but is unknown or unused, and issues that urgently require improved legislation.

Legal arrangements in this document refers to the combination of national long term policy targets (e.g. universal access to sanitation by a specified year); national pronouncements (e.g. presidential decrees); legislative instruments (e.g. Acts of parliament and other laws); national or sub-national guidelines, standards and/or constitutional guarantees. They are necessary for safe and sustainable sanitation services, though not sufficient on their own.

A legal scan is a high level assessment of legal arrangements governing urban sanitation and hygiene across different sectors (health, housing, environment, water etc.) and at various levels of government (national, regional, municipal etc.).

A four-step process for conducting a legal scan

The amount of legal information can be overwhelming. It is therefore important to maintain focus on the purpose of the review, and to work in a systematic way. A four-step process is suggested to assist (figure 1).

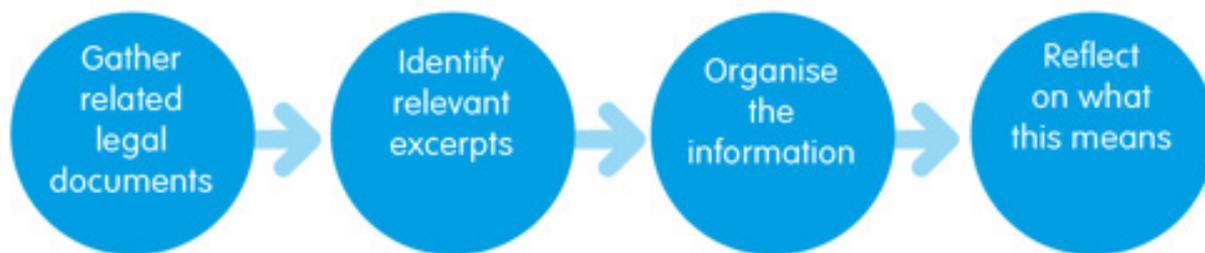


Figure 1. Steps to a legal scan

Step 1. Gather related legal documents

Legal documents are scattered across different sectoral and administrative documents so it is necessary to search across a wide range of legislation and regulations (e.g. health, environment, waste, urbanization, housing, governance, decentralization, finance).

Consider the hierarchy of different types of legal documents. It is important to include reference to the higher level documents that policies, plans and strategies sit under, to understand their context (i.e. under Environment Law, Building Law) and legal obligation (whether they change if the higher laws changes such as the Indonesian Water Law).

Adopt a systems perspective in seeking documents. Include documents from fields/sectors that address the systems perspective (figure 2), including disease pathways (e.g. Water Quality, Water Resources, Environment, Health, Pollution); sanitation service chain (e.g. Housing and Building codes, planning/building permits, design and discharge standards, solid waste, agriculture/reuse); full service lifecycle (e.g. national planning and budgets, asset ownership, operation and maintenance responsibility and budget, involvement of private sector).

Adopt a human rights perspective. Assess the status of the Human Right to Sanitation within national legislation and the constitution, and clarity of responsibilities of specified institutions charged with addressing sanitation needs of all population target groups (e.g. urban and rural populations).

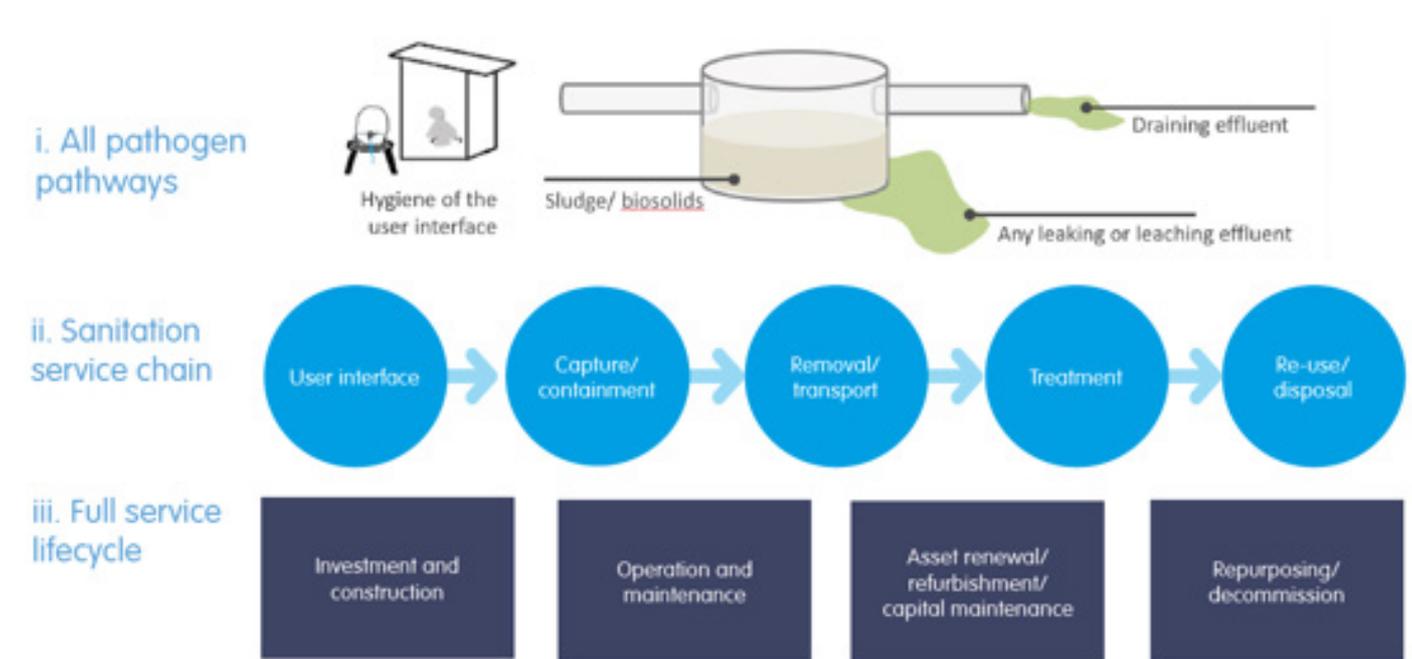


Figure 2. A systems perspective

Examples of identified paragraphs – Indonesia

Ministry of Public Housing Regulation No. 22 / Permen / M / 2008

- Housing requirements: “Houses must contain at least 1 bathroom and toilet (inside or outside the house) equipped with septic tank criteria to ensure health.”
- Environmental sanitation requirements: “Ensure environmental health by ensuring:
 1. Liquid waste from households is odourless and does not contaminate water sources or the soil;
 2. Faecal sludge of septic tanks should be desludged once every two years;
 3. Where installation of a septic tank is not possible in a new residential area, houses must then be equipped with a sanitary disposal system, or connected to city sewer or other processing system.”

Step 2. Identify relevant excerpts and manage information

To identify and manage the relevant information, a proper referencing system is essential to establish from the start. It is then important to copy the relevant paragraphs, including the exact text rather than a summary. Include reference to the context from which the paragraph has been extracted. Finally, keep reflections separate, ensuring a clear distinction between the text of the legal documents and your interpretation of what this means.

Step 3. Organize the information

There are different ways of looking at the information, that relate to the different objectives of urban sanitation and hygiene.

One way for organizing the information is by what it says about **roles and responsibilities of different levels of government**, the types of roles (policy making, regulation and oversight, service provision, etc.) and separation of these roles.

Another way is to **map information against the sanitation service chain** to understand with whom to engage and show practical gaps in the legislation.

A third is to **consolidate the information on equity of access to sanitation services**, by addressing how the Human Rights to Water and Sanitation are reflected in the constitution or lower level legal documents and specific guidance. As governments are responsible for progressive realization of these rights, do documents define timelines and targets? Who in government is responsible? How it is monitored and how the conditions for progressive realization are improved?



Clearly delineated roles and responsibilities but not in all areas – Bhutan

The **1995 Water and Sanitation Rules** clearly delineate responsibilities for installation and maintenance of sanitation infrastructure between property owners and City Corporations for large cities where sewage treatment facilities exist. Additionally the **ECOP for Sanitation and Sewage Management in Urban Areas** provides **comprehensive guidance** around the management of onsite systems, in particular septic tanks and sludge management.

These regulations provide clear guidance for responsibility, however, there are still gaps regarding the guidance for sewage management in smaller town and regulation of cluster scale treatment options.

Human rights recognised by courts – Bangladesh

In Bangladesh, the constitution identifies a number of fundamental rights including the right to life and personal liberty (Article 32) which states that “No person shall be deprived of life or personal liberty save in accordance with the law”.

Although Bangladesh doesn’t have an explicit constitutional guarantee of the right to sanitation, this has been interpreted by the courts as implicit in the right to life under the country’s constitution.

Step 4. Reflect on what this information means

The reflection and analysis process can be conducted by following several questions such as: “Which objectives are pursued in urban sanitation and hygiene?”, “Which sanitation technology?”, and “What type of settlement?” Legislation and regulation will often consider some and not all situations. The answers will highlight roles and responsibilities, priorities, and gaps.

The stated objectives of legislation, and focus, help to understand why certain aspects were included and others excluded in lower level legal documents and plans. The alignment of lower level legislation and plans with the stated objectives and goals can be analysed. A disconnect can provide opportunities for action.

Varied objectives for improving sanitation – Indonesia, Nepal, Bangladesh, Bhutan

Focus on improving access/coverage of improved sanitation:

- In Indonesia, the Millennium Development Goal (MDG) target to improve sanitation for poverty reduction was one of the key impetus’ for the Government of Indonesia to launch its strategy, ‘Accelerated Sanitation Development in Human Settlements 2010 – 2014’ (PPSP).
- In Nepal the Urban Water Supply and Sanitation Sector Policy 2009 aims to ensure the availability of basic, safe, accessible and adequate water supply and sanitation services to all urban and to protect, harness and develop surface and groundwater sources serving urban centres in an efficient manner. The 2011 National Sanitation and Hygiene Master Plan, set goals for increased toilet coverage, including universal coverage by 2016/17.

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- In Bangladesh the 1998 National Policy for Safe Water Supply & Sanitation (NPSWSS) describes the national goal to ensure that all people have access to safe water and sanitation services at an affordable cost. This aims to achieve a National government's target of sanitation for all by 2013 which is based on a national standard for sanitation (includes latrines shared by 2 households) rather than the JMP standard.

Prioritizing environmental protection:

- In Bhutan high level policy directives endorse the 'middle road' approach to development, which emphasises the importance of environmental protection.

The ultimate interest in undertaking a legal scan is to enable use of legal levers to achieve separation of human waste from human contact effectively, and contribute to a cleaner healthier living environment. It is therefore important to focus efforts on the things that matter most, even though some other legal areas might still be weak as well. The mapping of legal arrangements against the sanitation service chain, allows for a quick visualization of gaps, and reflection on how important those gaps are, depending as well on the number of people affected.

Prescriptive approach limits sanitation options – Bhutan

In Bhutan, current regulations identify networked sewerage systems as the ideal solution for urban sanitation, positioning onsite systems as an interim solution. Networked sewer systems and centralised wastewater treatment plants are appropriate for certain contexts, but not necessarily for all and are yet to fully service any urban settlement in Bhutan. This prescriptive approach to technology choice means potential alternatives that may be more locally appropriate, cost-effective and within the technical and management capacity (in human resource and financing terms) of local authorities are not considered. Further, by positioning septic tanks as interim solutions to be used only until networked systems are constructed, there is a risk that proper regulation and implementation of measures to ensure safe management of septic tanks which are the current dominant option are not prioritised.

Concluding reflections

Conducting a legal scan as suggested by the four steps, will rarely be a straightforward or linear process. It may be that all related legal documents are found at the start, or that during the reflection some gaps emerge which lead to searching for additional information. To manage a scan when a lot of legal information is available, it may be useful to start with a number of key documents first and go back to gather additional documents when required. It is going to be an iterative process!

It is important to be clear about the particular objectives and scope of the legal scan. A legal scan can become endless, especially in large countries, because there are many aspects that affect urban sanitation and hygiene. You need to be comprehensive, but you also need to use judgment about which aspects are relevant to your objectives and which are not, in order to keep the task manageable.

During the reflection process, action points will be found, such as:

- Issues for which there is good legislation but this is unknown.
- Issues for which there is good legislation but it is not used.
- Issues that urgently require better/clearer legislation.

The last point is always the most difficult and lengthy process that should not be rushed into. There may be issues that do merit the effort of new legislation, but simpler options for addressing issues through local regulations should also be evaluated.



About us

SNV Netherlands Development Organisation

SNV Netherlands Development Organisation (SNV) is a not-for-profit international development organisation with a long-term, local presence in over 30 countries in Asia, Africa and Latin America. SNV's global team of local and international advisors works with local partners to equip communities, businesses and organisations with the tools, knowledge and connections they need to increase their incomes and gain access to basic services – empowering them to break the cycle of poverty and guide their own development.

SNV's Urban Sanitation & Hygiene for Health and Development (USHHD) programme works with municipal governments to develop safe, sustainable city-wide services. The programme integrates insights in WASH governance, investment and finance, behavioural change communication and management of the sanitation service chain. We engage private sector, civil society organisations, users and local authorities to improve public health and development opportunities in their city.

As part of our USHHD programme, we have a long term partnership with the Institute for Sustainable Futures, University of Technology Sydney (ISF-UTS) focused on research and learning to improve practice and contribute to the WASH sector knowledge and evidence.

For further information please visit: www.snv.org

Institute for Sustainable Futures, University of Technology Sydney

The Institute for Sustainable Futures at the University of Technology Sydney (ISF-UTS) works with industry, government and the community to develop sustainable futures through research and consultancy. ISF-UTS seeks to adopt an inter-disciplinary approach to its work and engage partner organisations in a collaborative process emphasizing strategic decision-making.

For further information please visit: www.isf.uts.edu.au

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This learning brief draws on the following learning paper:

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