



EXPLORING LEGAL AND POLICY ASPECTS OF URBAN SANITATION AND HYGIENE



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- Review of Legal and other Governing Factors related to Faecal Sludge Management in Bangladesh (DevCon, KUET, 2014).
- Review of Policy, Legal and Institutional Arrangements for Urban Sanitation and Hygiene in Bhutan, prepared for the Ministry of Works and Human Settlements and SNV Bhutan by Naomi Carrard (Institute for Sustainable Futures, University of Technology Sydney) and Dechen Wangmo (Public Health Consultant) (2012).
- Domestic wastewater management in Indonesia: A study of the legal and institutional framework with an emphasis on on-site wastewater management systems (Royal Haskoning DHV, 2014).
- Review of the Policy Environment, Legal Framework and Institutional Arrangements related to Urban Sanitation and Hygiene in Nepal (FCG, TMS, 2014).

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DISCLAIMER

The views expressed in this guide are those of the authors and do not necessarily reflect the views of SNV or the Institute for Sustainable Futures, University of Technology Sydney.

This guide is part of SNV's Urban Sanitation and Hygiene for Health and Development programme.



Figure 1 – SNV's Urban Sanitation and Hygiene for Health and Development Programme



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Background

During 2012-2014, SNV did four country reviews of legal arrangements for urban sanitation and hygiene (Nepal, Bhutan, Bangladesh and Indonesia).¹



Based on this experience, this document was developed to provide guidance on how to undertake a legal scan for urban sanitation.

Over time, the ultimate objective of this work and related activities is that WASH professionals will be able to undertake a high-level assessment of legal arrangements for urban sanitation in order to both:

1. use the frameworks and tools offered by legal and policy arrangements to improve urban sanitation and hygiene outcomes; and
2. advocate for improvements in legal, policy and institutional arrangements to facilitate sustainable sanitation and hygiene outcomes for all.

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¹ Review of Legal and other Governing Factors related to Faecal Sludge Management in Bangladesh (DevCon, KUET, 2014).

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Introduction

About this guide

Purpose

This document aims to **support WASH professionals** to explore the legal arrangements for urban sanitation and hygiene in their context.

A legal scan is a key first step when designing or delivering urban sanitation and hygiene programs. In most countries, different aspects of the urban sanitation value chain and sanitation users are addressed in a range of different legal documents. The overall legal picture is often unclear to stakeholders. The legal scan helps WASH professionals to have an overview of legal arrangements that influence a safe and sustainable sanitation service.

The primary aims of this document are to guide WASH professionals through a document review, and to highlight the relevant perspectives and aspects in legal scans.

Please note that this guide does not have a strong focus on hygiene, because so far we have not found much in the legal scans. However, we expect that over time this can be strengthened in the legal scan and in general in legal arrangements.

Finally, as this is a relatively new area for WASH, we consider this a first version, and hope to benefit from your feedback and suggestions.

Structure

The document is structured according to 4 main steps of conducting a legal scan:

1. Gather related legal documents.
2. Identify relevant excerpts.
3. Organise the information.
4. Reflect on what this means.

Legal arrangements: Necessary but not sufficient

Do legal arrangements matter?

The overall objectives of sanitation policy and institutional frameworks are to: protect public health, protect the environment, and realise citizen rights to access sanitation.

This is achieved through legal arrangements: i.e. a 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.

In our sector, there is often scepticism about the effectiveness of legal arrangements. Some people point to the fact that there is a gap between intended legal arrangements on paper, and their application in practice. Others cite examples of good progress made in absence of legal arrangements, for example through good leadership and raising awareness.

However, in the absence of legal arrangements that progress often disappears over time, especially when there are leadership changes. Including good practices in legislation, regulation, plans, policies or standards ensures that they are no longer voluntary, but an obligation. Of course it is still necessary that there are people who implement or use these legal arrangements and demand that the right thing is done.

So, legal arrangements are necessary but not sufficient for safe and sustainable sanitation services. 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.

Which legal arrangements?

Legal arrangements for sanitation and hygiene are complex, and not always easily found.

Firstly, legal arrangements governing urban sanitation and hygiene are often scattered across a range of different sectors: health, housing, environment, water etc.

Secondly, not all are readily identified as applicable to urban sanitation.

Thirdly, there are legal arrangements at national, regional, municipal and possible village level. The arrangements at various levels may not speak to each other and may even be contradictory.

It is important to consider all relevant legal arrangements in the legal scan. This may include legal arrangements that are not generally known or applied, as some of these can be used to advocate for a change in practice.



Process of 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 for each step.

Do not make it too complicated, but remain organized!

We suggest 4 steps for a legal scan:

1. Gather related legal documents.
2. Identify relevant excerpts (paragraphs) in these.
3. Organise the information.
4. Reflect on what this information means, for example in terms of priorities, roles and responsibilities, gaps.

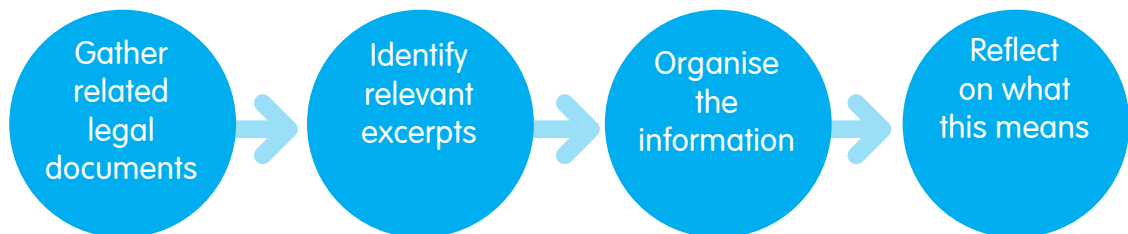


Figure 2 – Steps to a legal scan

The following sections include suggestions and examples for each of the steps.

Though the suggested steps are sequential, often the legal scan is not a straight forward 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 additional information. If there is a lot of legal information, it may be useful to start with a number of key documents first and go back to gather additional documents when required.

It is also important to be clear about the particular objectives and scope of your legal scan. You need to be comprehensive, but you will also need to use judgment about which aspects are relevant to your objectives and which are not in order to keep the task manageable.

It is going to be an iterative process!



Step 1 – Gather related legal documents

1.1 How to find the relevant documents?

It is not straight forward to find the relevant legal documents affecting urban sanitation and hygiene. As mentioned, they are scattered across different sectoral and administrative documents. So it is necessary to check legislation and regulation of health, environment, waste, urbanization, housing, governance, decentralization, finance. While searching for relevant documents, we recommend to consider:

- a. The hierarchy of legal documents
- b. A systems perspective of urban sanitation and hygiene
- c. Human Rights perspective

Some tools to assist with searching include:

- **Consulting with key informants:** Discussions with key informants can provide a useful introduction to the sector, overview of the key stakeholders/departments to consider and guidance of the types of legal documents to look for, relevant to the country and sector. Additionally (related to step 4) they can provide a perspective on the context of how these regulations are applied in practice and how to interpret them relevant to the actual conditions in country/sector. However care must be taken not to report opinions from key informants without proper checking and referencing. Ensuring that the source/reference of all legal statements are included will assist in reviewing what is factual compared with secondary information.
- **Search for existing legal reviews:** Search online for previous legal reviews in the country, including from other sectors. These can help to inform the different levels and type/name of documents to look for and provide background to the country approach to dealing with international laws and rights.
- **Review government agency websites:** Looking at government agency websites can provide references to the legal basis of their roles, responsibility and operations. Hard copy information pamphlets or reports may also include this information when not available online.

In some countries there is a lot of legislation and the number of documents can be overwhelming. It is helpful to make a long list first and then prioritize by making a shorter list. Remember that a systematic documentation and filing practice from the start saves time.

Depending on the degree of decentralization of services, part of relevant legal documents might be at the municipal or local government level. In some countries content can vary widely between different cities and towns. When this is the case, the best approach is to describe the national legal arrangements and those of 2-3 selected cities or towns.

Examples of relevant documents from different countries

Constitution

International norms and commitments of the country

National Decree/Policy/Governance

- Royal Decree 1995 – Bhutan
- Local Governance Act 2009 - Bangladesh
- Presidential Decree No. 5 year 2010 on the National Mid Term Development Plan 2010-2014 - Indonesia

Water and Environmental Protection Acts

- Water Industry Services Act 2006 – Malaysia
- Rules for Water and Sanitation 1995 – Bhutan
- National Environment Protection Act 2007 – Bhutan
- Waste Prevention and Management Act 2009 – Bhutan

Building and Environment Codes and Standards

- National Building Code of India - Part IX Plumbing Services, Drainage and Sanitation 1983 - India
- Code of practice for the design of septic tanks 1985 – India
- Bhutan Building Rules 2002
- Environmental Code of Practice for Sanitation and Sewage Management in Urban Areas 2000 – Bhutan
- Environmental Discharge Standard 2010 – Bhutan

Health and Finance Regulations

- Ministry of Health Regulation No. 32 year 2013 on Sanitarian Workers – Indonesia
- Government Regulation No. PU. 15/PRT/M/2010 on Technical Guidelines for the Use of Special Allocation Funds (DAK) for Infrastructure – Indonesia

A) Hierarchy of legal arrangements for sanitation services

This diagram introduces the hierarchy and key components of a legal framework in a country.

International norms and commitments (if ratified by the country)

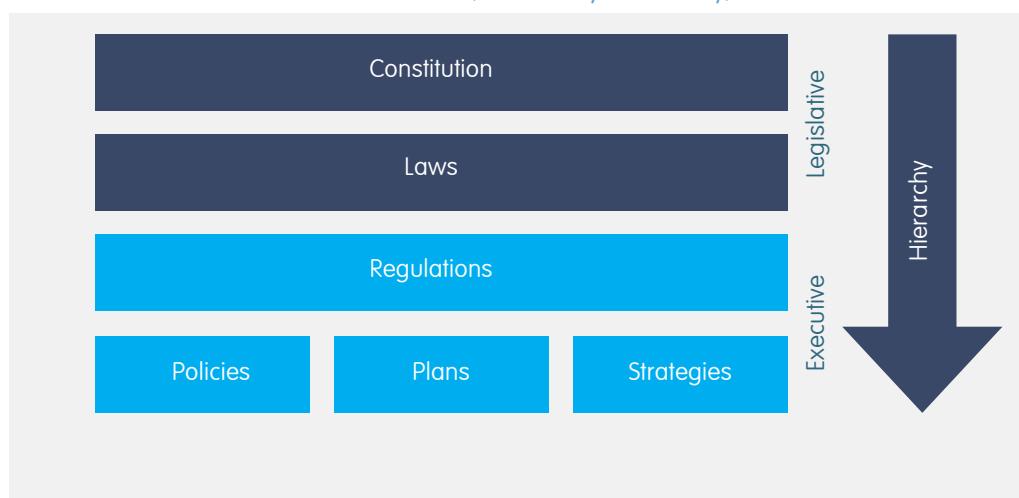


Figure 3 – Hierarchy and key components of legal framework

- The legislative branch is the law-making body of government.
- The executive branch implements laws, providing guidance and incentive for action and having responsibility for enforcement. This is where important documents and processes including policies, plans and strategies sit.
- The executive branch also develops standards and guidelines.
- National legal arrangements can be guided by international norms and commitments to sanitation services, depending on whether the country has ratified these norms.

Water governance can overshadow sanitation – Indonesia

In early 2015 the Indonesian Water Resources Law (No7/2004), covering water and sanitation, was revoked. Regulation on water services has been drafted to fill the void left by the rescindment of the Water Law. In the absence of other legal framework, the many regulations and activities based on the Water Law must revert to the prior law No.11/1974. Some regulations that violate this law may no longer be valid.

Additionally, the draft new regulation has 53 articles on water and two articles on sanitation, with no objectives for sanitation or provisions for sanitation planning.

There is a large gap for sanitation in comparison to water

How to consider hierarchy in gathering documents?

- Existing legal reviews or discussions with key informants can provide background to understand the hierarchy of the national legal framework.
- 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).
- It is useful to look whether national laws and regulations are mandatory at a local level.

B) Looking from a systems perspective

Sanitation is about more than toilets or treatment plants. There is a general consensus in the sector that effective management of sanitation requires a system's perspective. Taking a system's perspective means considering:

1. Different disease pathways; the hygiene aspects, biosolids and the liquid effluent (all carriers of pathogen risk) of different sanitation technology;
2. The sanitation value chain;
3. The life cycle of the service.

Elements of these systems will feature in legal documents across various sectors (environment, health, water, housing, occupational health and safety).

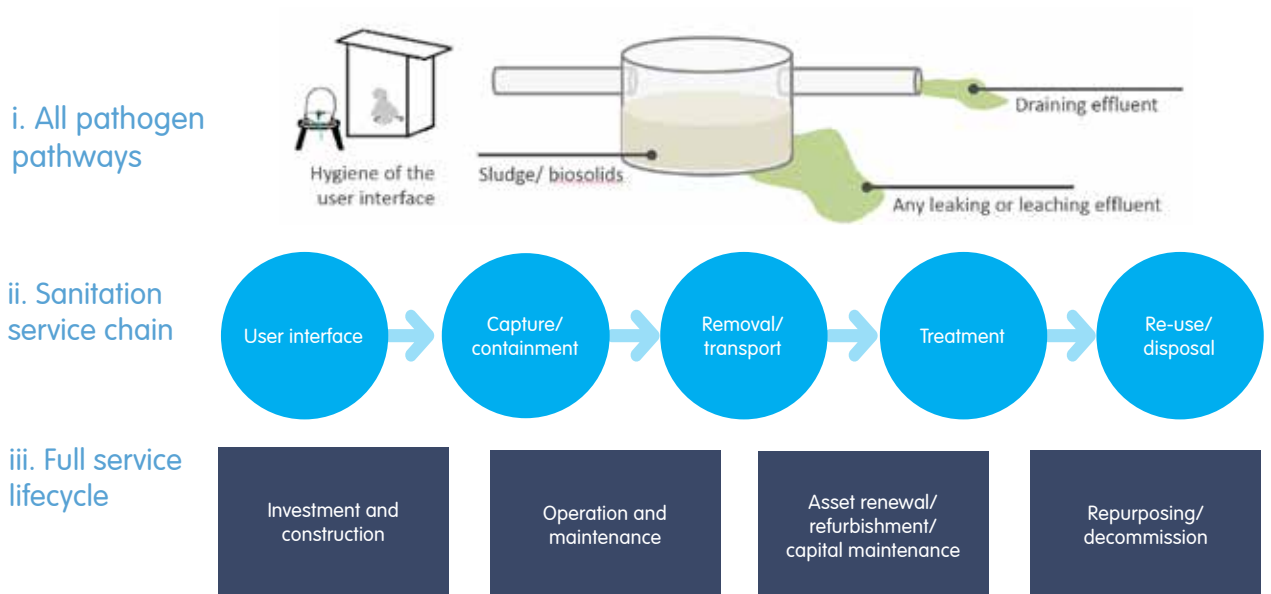


Figure 4 – A system's perspective

How to consider a systems perspective when gathering documents?

- Examples of fields/sectors to include in the search to address the system's perspective:
 - Disease pathways: Water Quality, Water Resources, Environment, Health, Pollution.
 - Sanitation service chain: Housing and Building codes, planning/building permits, design and discharge standards, solid waste, agriculture (re-use).
 - Full service lifecycle: national planning and budgets, asset ownership, operation and maintenance responsibility and budget, involvement of private sector.
- Consider the different terms that could be used for sanitation and look up the definitions of the terminology used to understand its scope/application.
- Institutions active in sanitation services at national and subnational levels may include financing, planning, construction, operations, M&E and program support, such as training.
- Consider who is responsible for compliance and enforcement of relevant laws.
- In taking a system's perspective, take care to use judgement about which aspects are relevant to your objectives and scope to keep the task manageable.

C) Looking from a human rights perspective

The Human Rights to Water and Sanitation (HRWS)

In 2010 the UN Human Rights Council adopted a resolution affirming that water and sanitation are human rights under the International Covenant on Economic, Social and Cultural Rights.²

This recognition means that people are defined as right-holders and States as duty-bearers of water and sanitation service provision. In other words, the provision of water and sanitation is not a matter of charity – but a legal obligation of the State.

The human right recognises that clean drinking water and sanitation are essential for the full enjoyment of life and all human rights; and calls on States to ensure progressive realisation of this right for their citizens – equally, without discrimination and on the basis of participation and accountability.³

Fulfilling the right to sanitation means safe, physically accessible, affordable and culturally sensitive services for all.

2 Text of HRWS: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/157

3 <http://www.righttowater.info>

Equity of access to safe sanitation and hygiene services means service provision on the basis of equality and non-discrimination against gender, caste, ethnicity, disability etc.

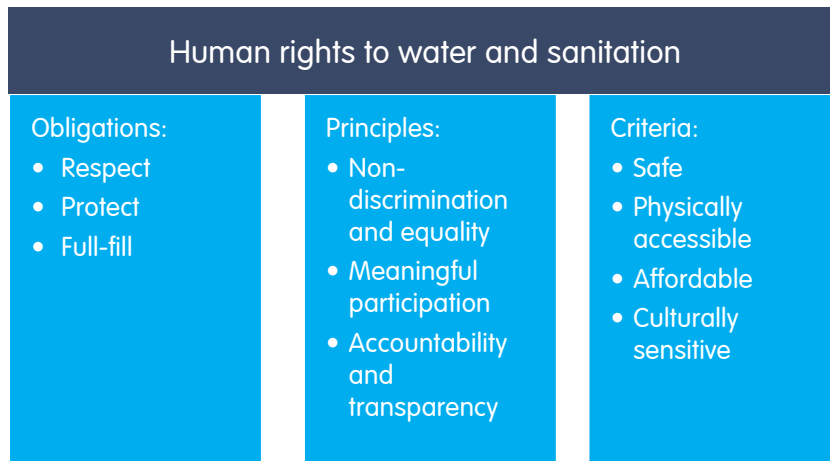


Figure 5 – Pillars of human rights to water and sanitation

However, the burden of deficient sanitation and hygiene for vulnerable people goes beyond access to services:

- Vulnerable people are more likely to live on marginal land where untreated waste water and/or sludge is dumped.
- Often the people engaged in pit emptying, belong to the poorest groups in society.

The right to a “healthy and clean living environment” is not explicitly recognized as a human right in the way the Human Rights to Water and Sanitation is. However, the right was mentioned in the Stockholm Declaration in 1972, and has since been included in the Constitution of 193 UN member countries.

The interpretation of “healthy and clean living environment” generally includes issues such as air pollution, solid waste and chemical toxins, with less attention on human waste.

In theory, other human rights, such as the right of workers to a safe and healthy working environment can also be relevant for urban sanitation, for example for emptiers.

How to consider a human rights perspective when gathering documents?

- Assess whether a country has enacted the right to sanitation within national legislation.
 - Global health and human rights law database: www.law.georgetown.edu/oneillinstitute/research/ghhr.cfm
- A constitutional guarantee of the right to sanitation would serve as a reference for developing subsidiary laws, regulations and policies.⁴ Even if the constitution does not explicitly recognise the right to sanitation (which is likely given that the right was relatively recently enshrined in international law), it might recognise related rights.
 - Database of constitutions and other related documents: <http://confinder.richmond.edu>
- The sanitation needs of all population target groups, such as urban and rural, should also be under the clear responsibility of specified institutions.
- Assess other rights related to sanitation including environmental, sustainability, etc.
 - United Nations Mandate on Human Rights and the Environment <http://srenvironment.org/>
 - The Right to a Healthy Environment as defined through the Human Rights Council output⁵

⁴ de Albuquerque, C. 2014. Realising the human right to water and sanitation: A Handbook by the UN Special Rapporteur Catarina Handbook on the Human Right to Water and Sanitation <http://www.righttowater.info/handbook/>
⁵ <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G14/123/55/PDF/G1412355.pdf?OpenElement> and broader reference <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx>



Step 2 - Identify the relevant excerpts

2.1 How to find the relevant paragraphs?

As mentioned in step 1, we can look at urban sanitation and hygiene legislation from the perspective of A) the hierarchy of legal documents, B) from a system's perspective and C) from a human rights perspective.

With these perspectives in mind, the following considerations help to identify relevant paragraphs in each document and manage that information.

- **Proper referencing from the start is essential.** If the amount of information is very large, it is wise to use a detailed referencing system (with article number and page number), and to keep note of why that particular section is relevant (i.e. note which aspect of sanitation or hygiene it relates to).
- **Copy the relevant paragraphs,** including the exact text rather than a summary. The legal scan requires a precise understanding of what each of the legal documents says. It is important to go back to the official text of the documents, rather than relying only on your own notes.
- **Include reference to the context** from which the paragraph has been extracted. This might include the overarching document objective, the topic of the section it relates to and the meaning of key terms. This provides a reference to the scope and application of the paragraph.
- **Keep reflections separate,** ensuring a clear distinction between the text of the legal documents and your interpretation of what this means. A common mistake is not to distinguish clearly between 1) what the legal text says, 2) what this means for access to sanitation.

This document becomes your reference document for analysing the information. It is not only useful for the study, but continues to serve as a reference document during programme implementation later.

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 3 - Organise the information

The organization of information is a crucial step to make sense of it. There are different ways of looking at the information, and this will direct analysis.

Different perspectives relate to the different objectives of urban sanitation and hygiene.

In this guide we are introducing 3 possible angles for organization of the information:

- Roles and responsibilities (linked to levels of government)
- The sanitation service chain
- Equity of access to sanitation services

In addition to this, one could focus on what the legal documents say about technology options and pathways of disease transmission, and the service life cycle.

3.1 Roles and responsibilities

A first perspective to organise information is by what it says about **roles and responsibilities of different levels of government** (national, sub-national, and local), non-government, private sector and household, and the separation of roles. This includes looking at how national legal arrangements, roles and responsibilities are applied or incorporated into lower levels.

Look within the legal documents for clarification of the types of roles (policy making, regulation and oversight, service provision, etc) and separation of roles. Generally it is felt that regulation and service provision should not be done by one and the same entity, and that separation of these roles improves transparency and quality of services. However, in most countries, there is not yet a separation between regulator and service provider, or the regulator is very weak in practice.

Usually there is a **lead ministry**, which carried the ultimate responsibility for urban sanitation and hygiene in the country (i.e. Ministry of Works, Ministry of Urban Infrastructure). At the national level, the lead ministry is expected to coordinate with other involved ministries, whose role should also be stated in legal documents. The organisation of departments at a local level may align or differ with the national responsibility.

Service provision is usually located at a lower government level, for example a municipal level. An important question is who is allowed to be a service provider. In many countries, the government is still the only entity allowed to provide services, which due to a lack of capacity can sometimes lead to gaps in service provision and informal private providers. It is often better to allow private sector to formally become a service provider, and to regulate them.

Key questions

- How clearly defined are institutional arrangements at various levels of government?
- Which is the lead ministry for urban sanitation?
- Which other ministries are involved and how do the legal documents say that coordination should take place?
- Is there a separation of roles between service provision and regulation?
- Who is the regulator?
- Who is responsible for compliance and enforcement of relevant laws?
- Who is allowed to be a service provider?

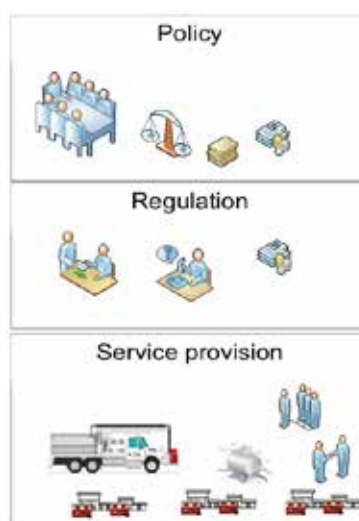


Figure 6 – Types of responsibility

Shared responsibilities for wastewater services – Indonesia

A review of regional autonomy law in Indonesia for wastewater service responsibility shows sanitation is a

- mandatory
- basic service that
- is a concurrent affair;

Meaning that:

- every region must carry out this service,
- it is a service that must be prioritised by regional government, and
- it is a shared competence to be carried out by both regions and central government.

3.2 Mapping information against the sanitation service chain

A mapping of the formal roles and responsibilities along the sanitation service chain will help to understand with whom to engage and show practical gaps in the legislation. However, the chain varies with different technology choices, which in some cases may fall under different entities.

For example, sewer and treatment may fall under the “Water Supply and Sewerage company”, while management of on-site systems may be considered a municipal responsibility as part of municipal waste management (solid waste, liquid waste, drainage).

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**.

Our proposal is to map legal information against the sanitation service chain taking into account three variations (as relevant):

- Systems based on on-site sanitation.
- Decentralised off-site sanitation (i.e. treatment at or near point of wastewater origin).
- Centralised off-site sanitation, such as simplified sewerage (small bore neighbourhood sewer network connected to conventional city sewerage trunk sewers) or conventional centralised sewerage.

In some cases, you might want to add another service chain to this matrix, e.g. community toilets if that is common in your country.

Technology	User interface	Containment	Emptying - Transport		Treatment	Disposal and/or re-use
On-site sanitation	HH toilets and containment facility		Emptying (transfer station)	Conveyance	Treatment, disposal and/or re-use	
Decentralised off-site systems	HH toilets	Decentralised system	Emptying and conveyance		Treatment, disposal and/or re-use	
Centralised off-site systems	HH toilets	Connection and conveyance			Treatment, disposal and/or re-use	

Table 1 – Service chain for different technologies

3.3 Equity of access to safe sanitation and hygiene

A third angle for organizing the information is to consolidate the information on equity. A useful first question is whether the Human Rights to Water and Sanitation, and perhaps the right to a clean living environment, are reflected in any of the legal documents. A general guarantee of the right to sanitation is best placed in the legislative branch, in particular in the constitution. However many countries do not yet have the right reflected at this level, but rather in strategies or plans.

A second question is whether the recognition of the right is translated into lower level legal documents and specific guidance. Sometimes a country mentions the HRWS in their strategy, but all other documents are “equity-blind”, meaning that they mention “citizens” in general and do not analyze the fact that reaching disadvantaged groups will require specific efforts.

Finally, it is important whether there is clarity about responsibilities. As mentioned above, governments are the duty bearer and thus responsible for progressive realization of these rights. The question is then whether documents define timelines and targets, who in government is responsible, how it is monitored and how the conditions for progressive realization are improved.

Key questions

- Has your country ratified the right to sanitation?
- Is the human right to sanitation mentioned in any document; if yes, at which level?
- Is the human right to a healthy living environment mentioned?
- Are there any other human rights that might be relevant?
- Are the documents clear which vulnerable groups there are in the country (in relation to sanitation)?
- Are these groups merely mentioned, or do any of the documents also suggest specific measures to reach vulnerable groups?
- Do the documents include any targets for achievement of the right to sanitation?
- Does it state who is responsible to create the conditions for access? Think: safe, affordable, physically accessible, culturally sensitive.
- Does it state how progress is measured and monitored?
- Does it say how to protect people’s right to sanitation from interference by others? (look for examples about landless people)

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 means

We have organized this section to guide you through the reflection/analysis process. Of course this is not exhaustive and each country will have its own specific needs/interest for analysis. The intent is that these are also the headings that you would use in your report.

4.1 Which objectives are pursued in urban sanitation and hygiene?

The stated objectives of legislation help to understand why certain aspects were included and others excluded in lower level legal documents and plans. It is valuable to see what the focus is (e.g. health, environment, and/or accessibility) in national level objectives, principles and directions for sanitation.

You can then analyse whether the stated objectives and goals are consistently reflected in lower level legislation and plans. A disconnect can provide opportunities for action.

You can also analyse whether the objectives and commitments in current legislation have a certain bias (e.g. only environment) or gaps (e.g. missing the link to development). Your country might be missing an opportunity to integrate sanitation and hygiene better.

Related to this is the question of which international norms and commitments legislation refers to. For example, the constitution might recognize the human right to sanitation, which sets a strong expectation that government agencies put in place laws, policies and strategies to realise this right. This mandate can be used as an advocacy tool.

Even if the constitution does not explicitly recognised the right to sanitation or the right to a healthy and clean living environment, it might recognise related rights, and in doing so lays a foundation at the highest level for action on sanitation.



Figure 7 – Urban sanitation objectives

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.
- 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.

4.2 Which sanitation technology or type of settlement?

What type of sanitation are we talking about?

Various users: Historically sewer has been seen as the most appropriate solution for urban sanitation, and as a result, a lot of legislation around the world only considers this option. However, the reality on the ground is often more diverse, hence a large part of urban sanitation may remain unregulated due to this type of bias.

Various settlements: Another common challenge is the diversity of settlements, and rapid urbanisation. Legislation might only consider the larger cities, forgetting about intermediate and smaller towns, or rapidly growing towns. Again, if these are a reality in your country, you may want to reflect on that bias.

Moreover, legislation might focus on those in formal settlements only, while significant parts of your country's population might live in informal settlements. Similarly there may be diversity in housing patterns.

Mismatch between population and designation — Bhutan

In Bhutan, institutional responsibilities for waste management differ depending on the population, density and economy of the urban area as described in the Local Government Act 2009. This creates confusion in some situations where town populations are growing or fluctuating, as it can be unclear which agency is responsible for those areas.

Similarly, current policy documents typically refer to 'urban areas' generally, and the emphasis appears to be on larger cities. There is a need to explicitly consider the situation for smaller and emerging towns.

Various users: Finally, households are not the only urban sanitation users, there are also non-domestic users. While this document focusses on domestic users, it is valuable to check if there is an acknowledgement of different types of users and if there is related legislation.

While it is clear that no legislation can capture everything, it is important to reflect on the technology and settlement bias that might exist, in order to examine whether the legislation appropriately addresses the conditions in your country.

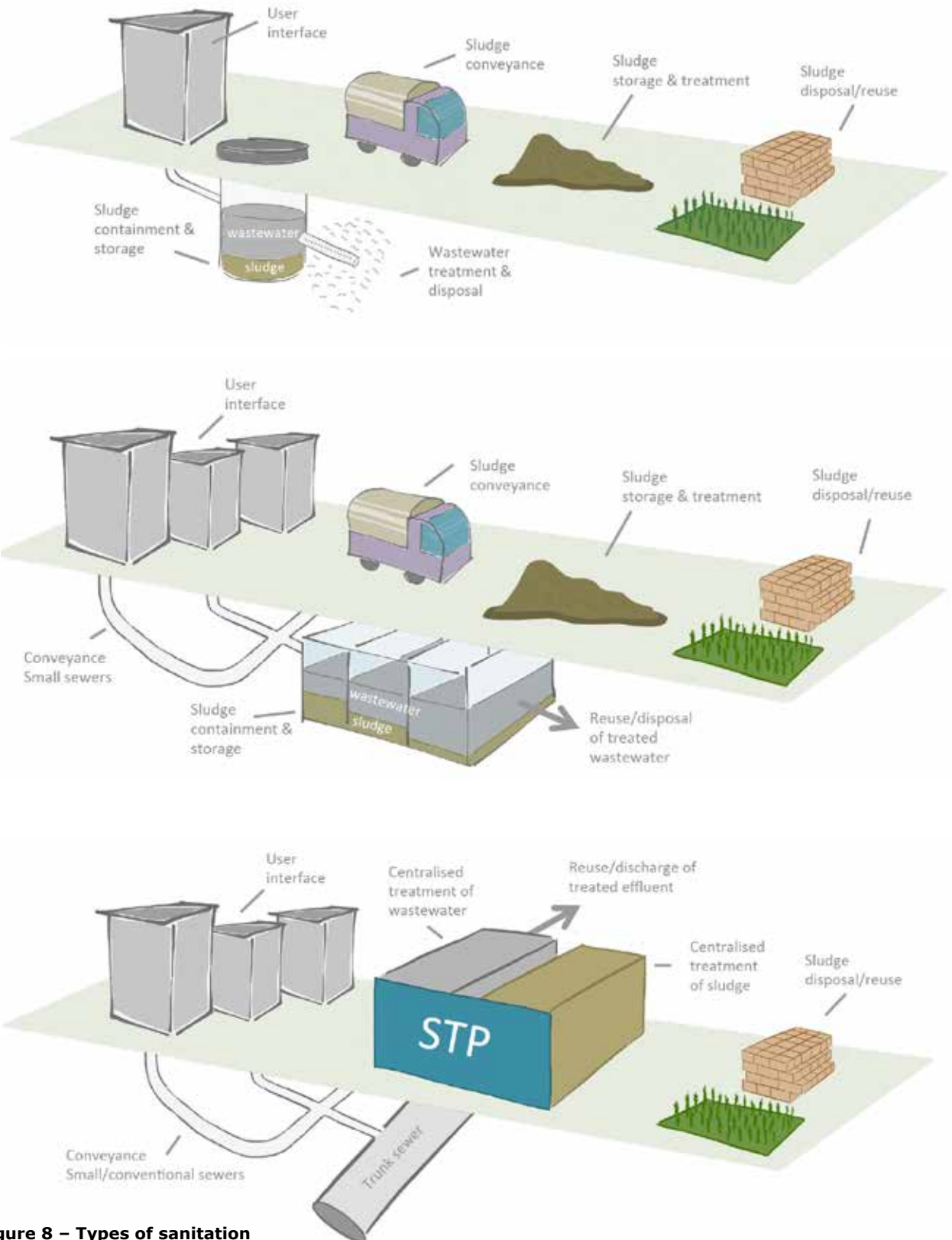


Figure 8 – Types of sanitation

4.3 Where does the responsibility lie?

In addition to the formal objectives, the location of the lead ministry influences the way in which urban sanitation is addressed. In addition to the question of who the lead ministry is, it is important to see at what level in that ministry urban sanitation is housed. You can then reflect on what this means for service delivery priorities and leverage.

A further question is how coordination takes place with other ministries, and whether such coordination mechanisms are informal or formalised. For example, does legislation stipulate that there has to be joint planning on urban sanitation improvements?

The degree of decentralisation, the roles of national versus local government, as well as coordination among them, allows reflection on the tasks and responsibilities at different levels. Rather than only looking at generics, it is good to look at some specifics, for example, how are licences and permits obtained, who sets pricing/ tariffs, can local governments be allowed to make their own ordinances on service provision, can they borrow money for investing in treatment plants?

A specific topic is the separation of roles of legislation, regulation and service provision. Who is allowed to be a service provider and who decides this? Be attentive that it is not always an explicit exclusion of certain service providers, but that required qualifications are too demanding that it excludes them. Who regulates or checks whether standards and norms are respected? This can be environmental/discharge norms, but also health and safety. Is there a mechanism for reporting or responsibility for receiving public complaints about the service?

When reflecting about what this means and to what extent this reflects reality, you can ask whether there are areas of responsibility that are not addressed in legislation and/or not addressed clearly. When comparing to practice, the question is whether the different agencies are aware and have assumed their responsibilities. This may perhaps give you ideas on what could be easily improved.

Guidance on financial elements of sanitation service – Bangladesh

Strategies can provide guidance on many of the key sanitation service elements. The 2012 National Cost Sharing Strategy in Bangladesh provides functional ways and means for the sector to facilitate standardisation of and increase access to water supply and sanitation services to all by 2025 and to make services affordable, equitable and sustainable at cost. It encompasses the following objectives for the sector: Recover costs of services, Gain financial self-sufficiency, Standardise services and ensure sustainability. The strategy aims to recover gradually the increased share of costs from the service users while decreasing the share of providers.

4.4 Legislation along the sanitation service chain

The legal scan or even the perfect legal framework, is not a goal in itself. Ultimately the interest is to separate human waste from human contact and contribute to a cleaner healthier living environment. It is therefore important to focus our energies 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 (see 3.2), allows for a quick visualization of gaps. You can thus reflect on how important those gaps are, depending as well on the number of people affected.

In the following section, we will zoom in on:

- User level legislation and regulation
- Legislation and regulation related to emptying/ conveyance
- Legislation and regulation related to treatment, disposal and re-use

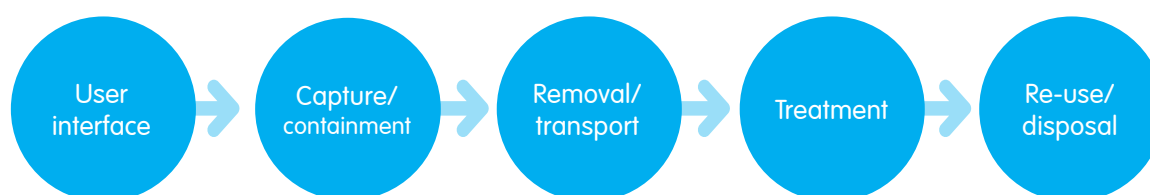


Figure 9 – Sanitation service chain

4.4.1 User interface (toilets)

With the Millennium Development Goals, there has been a lot of effort to reduce open defecation, and in each country there are discussions on what entails unimproved and improved sanitation, i.e. what is considered a (hygienic) toilet.

Legislation on whether having and using a toilet is compulsory for people (whether open defecation is an offense), what is considered a toilet, what minimal service standards are for schools, public toilets, shared toilets in urban areas, but also whether there are special provisions for access of people with disability, is the very first part of the sanitation service chain. Note that users are not only households (residential premises), but also include commercial premises and institutional premises. Standards thus vary for these different types of “users”.

Important questions are around how legislation on affordability and access of toilets for all is ensured, and who is responsible to monitor this. Specific issues are around the obligations of landlords to provide sanitation, and how landless people can be given the possibility to construct and use a toilet.

Legislation about the user interface is often linked to legislation about containment or “underground structures”, but often it is also not linked. Underground structures tend to be described in building codes, whereas the quality of the user interface of toilets and the need to eliminate open defecation tends to be linked to health.

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.

With this information, you can reflect whether there are obvious gaps in legislation for this first part of the service chain, both in terms of access for all as well as in terms of hygiene standards for toilets.

4.4.2 Containment and/or connections to piped sewer

The quality of the toilets and their underground structures or piped connections, have a decisive influence on disease pathways in the neighbourhood. In on-site sanitation facilities, this is not only about faecal sludge containment but also how effluent should be managed. Effluent management is often ignored in on-site sanitation.

Applicable legislation for this part of the sanitation service chain is found in building codes and designs. Furthermore it is important to understand legislation on enforcement/inspection of building codes, discharge by households, emptying frequencies and enforcement of these. In situations when there is piped sewer, the issues are around willingness or obligation to connect, and enforcement of connections. You can reflect on what it means if such legislation is absent or in some cases, legislation plainly unrealistic.

The most challenging situations are those where toilets already exist, but do not comply with building codes and/or are behind the house and thus not possible to connect to sewer. The reflection could include how legislation intends to address such status quo.

Last but not least, legislation on tariffs and enforcement of tariffs should be part of the reflection on this part of the sanitation service chain.

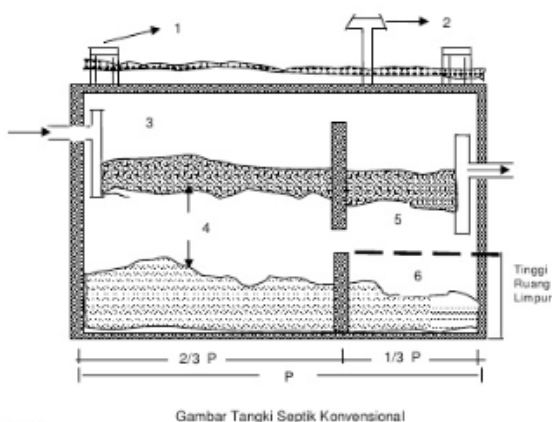


Figure 10 – Indonesia Standard Septic Tank
Source: SNI 03-2398-2002



Figure 11 – Retrofitted sludge emptying truck
Source: SNV Bangladesh

Regulation of emptying practices of on-site

On-site sanitation facilities accumulate faecal sludge which needs to be emptied. Depending on the facility this can be more or less liquid/solid, and depending on family size or facility size, the required emptying frequency can be higher or lower. While emptying is still an unregulated and often unsafe activity, the interest is to move towards safe and timely emptying. 'Safe' means safe for families, the emptiers and the general public. Timely emptying for septic tanks means when 1/3 of the tank is full. For pits, timely emptying means, emptying that avoids overflowing. The first question is thus whether regulation says anything about the safety and timeliness of emptying.

A second question is regarding who is allowed to work as emptier, what the minimal standards are and who regulates this service. Manual scavenging is still a practice in some areas, and in some cases not yet banned by law. In some places only local authorities are allowed to provide services, whereas in other places private sector is allowed to provide services as well.

Your reflection could focus on whether the current regulation around emptying facilitates safe and timely emptying services. Health and safety of emptying is not only about workers having boots, masks and gloves. It is also about spills at the site, or during transport, whether there is a protocol in the case of accidents for example.

Regulation of piped networks

Piped conveyance is thought to be cleaner and safer, but often there are leakages and clogging. Timely maintenance, clear responsibilities for maintenance and also budget is key. While most of these issues will be addressed in company planning, legislation should include some standards and the obligation to have such provisions.

Decentralised waste water systems are a combination of piped systems with a small treatment plant. These plants also need to be desludged regularly. In some countries, large numbers of decentralised systems are being built but not yet regulated.

4.4.3 Treatment and disposal

Reflection on this section should include questioning the extent to which legislation addresses the different systems in the country, which to build where, and whether the legislation is in place for each to ensure healthy living environments.

There is a large variety of treatment options, but often cities tend to copy options they know, resulting in a limited number of technologies in the country. The start of your reflection could be around whether legislation is prescriptive on technology choice or focuses on quality benchmarks.

A second point is about the pre-conditions for investment decisions and location. Is there an environmental impact assessment required? Are there evaluations required of the social and health implications? Is there a requirement for public engagement of the neighbourhood?

Legislation should also clarify environmental standards for treatment plants, both in terms for discharge and final disposal sites, as well as for aspects related to operation (smell). Another set of standards is around the need for health and safety protocols for workers, and the provisions in case of accidents (for workers as well as neighbourhoods). All this type of standards requires a level of independent oversight (as opposed to self-monitoring only).

As in the other parts of the sanitation service chain, an important question is about roles. Who is allowed to operate and who is excluded directly or indirectly (through required qualifications). Who provides the permits? And who is the owner of the asset?

Finally, the reflection in this part should include the financial aspects of investments in treatment and disposal, what type of transactions are allowed and who makes those decisions. Is there a life cycle costing perspective (O&M budget, asset management, rehabilitation budget), in the legislation around this, or does it merely focus on one-off investment for construction?



Figure 12 – Life cycle costs

4.4.4 Re-use

Closing the loop in terms of nutrients is an aspiration in sanitation, especially when faced with large amounts of waste that need a lot of space for disposal. However, guaranteeing human and environmental safety comes first. Therefore most existing legislation is prohibitive about re-use in general for all purposes.

It helps to disaggregate the discussion by looking at different re-use purposes, and looking at relevant legislation from other sectors (such as agriculture, energy or fisheries) regarding the use of human waste. You will most likely be looking for gaps in the legislation (has this been addressed at all?), as well as safety conditions under which re-use is allowed and the quality control of such safety conditions. Moreover for agriculture or fisheries there may be distinction in the type of products (direct consumption or indirect human consumption). In energy use, the disposal of ashes should not be forgotten.

Note that productive use of human waste (agriculture, fisheries, energy) is not the only re-use option. There could be non-productive use like use as fillers.

When looking at legislation on re-use, remember that it's not only about the safety of end-consumers of the products, but also about the health and safety of handlers and the neighbourhoods of production. For example in agriculture, it is not just about the safety of consumers of crops, but also the safety of those who irrigate with waste water and the neighbourhood affected by the vectors that waste water may attract. You need to reflect on whether legislation is sufficiently clear so that this will be safe at scale.



Final comments

It is never finished

A legal scan like this can be endless, especially in large countries, because there are so many aspects that affect urban sanitation and hygiene. It is therefore important to keep the bigger picture in mind and be cautious not to get lost in relatively less important detail. We always need to ground the analysis by constantly reflecting: "What does this mean for people's access to affordable, safe, appropriate sanitation? What does this mean for the separation of human faeces from human contact, and a clean living environment?"

From study to action

When you do the legal scan, especially in the reflection part, you will find action points, 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, so do not rush into that and if you do, evaluate the options for local regulations. Of course there may be issues that do merit the effort of new legislation.

We hope that you will work on this legal scan together with sector stakeholders and use the outcomes to discuss issues and next steps with sector stakeholders. A professionalised urban sanitation sector requires clear and appropriate legal arrangements, in addition to good leadership, awareness raising and technical support. As noted, a clear legal framework is necessary but not sufficient for safe and sustainable sanitation services.



References and links

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Review of Legal and other Governing Factors related to Faecal Sludge Management in Bangladesh (DevCon, KUET, 2014).

Review of Policy, Legal and Institutional Arrangements for Urban Sanitation and Hygiene in Bhutan, prepared for the Ministry of Works and Human Settlements and SNV Bhutan by Naomi Carrard (Institute for Sustainable Futures, University of Technology Sydney) and Dechen Wangmo (Public Health Consultant) (2012).

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Guide
Exploring legal and policy aspects of urban sanitation
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