Human development in a post-conflict setting

Water governance and human rights principles in South Sudan

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<tr>
<td>BSF</td>
<td>Basic Services Fund</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination against Women</td>
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<td>CPA</td>
<td>Comprehensive Peace Agreement</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>DFID</td>
<td>Department for International Development of the United Kingdom</td>
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<td>GiZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit</td>
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<td>GNP</td>
<td>Gross National Product</td>
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<td>GoSS</td>
<td>Government of South Sudan</td>
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<td>HDI</td>
<td>Human Development Index</td>
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<td>HDR</td>
<td>Human Development Reports</td>
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<td>HRBA</td>
<td>Human Rights-Based Approach</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICSS</td>
<td>Interim Constitution of Southern Sudan</td>
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<td>IWRM</td>
<td>Integrated Water Resource Management</td>
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<td>JAM</td>
<td>Joint Assessment Mission</td>
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<td>JICA</td>
<td>Japan International Cooperation Agency</td>
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<td>MDG</td>
<td>Millennium Development Goal</td>
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<td>MDTF</td>
<td>Multi-Donor Trust Fund</td>
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<td>MWC</td>
<td>The UN Migrant Workers Convention</td>
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<td>MWRI</td>
<td>Ministry of Water Resources and Irrigation</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
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<tr>
<td>OECD</td>
<td>Organisation for Co-operation and Development</td>
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<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>OLS</td>
<td>Operation Lifeline Sudan</td>
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<td>RoSS</td>
<td>Republic of South Sudan</td>
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<td>SDG</td>
<td>Sudanese Pounds</td>
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<td>SPLA</td>
<td>Sudan People’s Liberation Army</td>
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<td>SPLM</td>
<td>Sudan People’s Liberation Movement</td>
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<td>SRF/SSF</td>
<td>Sudan Recovery Fund</td>
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<td>SSDP</td>
<td>South Sudan Development Plan (2011-2013)</td>
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<td>SSUWC</td>
<td>South Sudan Urban Water Corporation</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNEP</td>
<td>United Nations Environmental Programme</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>WASH</td>
<td>Water, Sanitation and Hygiene</td>
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This thesis would not have come to be without the faith and interest in my study showed by my supervisor professor Dan Banik. I am deeply grateful for, first that you believed in my topic, and second for a continuous discussion along the way. Furthermore, I would like to thank Dan for opening the world of human rights based approach for me, so that I could find the link of my passion for water and people, and how to apply it for South Sudan. A special thank goes to the financial support for fieldwork coming from the research programme Academic Network on Legal Empowerment of the Poor (ANLEP).

There are many people whom without I could not have formed and completed my study, who I all pay a gratitude to. Here I would like to pay a special thanks to the people at the Ministry of Water Resources and Irrigation. I could not have come so far without your collaboration. Thanks for receiving me, taking your time and giving me your insights and thoughts.

For the people of South Sudan; I pay the deepest respect for your endurance and courage during the struggles. I hope for a future in peace and prosperous development, and may all of us learn to celebrate cultural diversity and life in the same manner as you. South Sudan, Oyee!

Oslo, May 2012

Susanne Hyllestad
1. Introductory part

1.1 Introduction

South Sudan finally reached the status of being an independent country after having been in almost constant conflict with northern Sudan for the last half century. The 9th July 2011 signified optimism and euphoria with regard to the development of a peaceful future as South Sudan became the world’s newest country as it seceded from Sudan following a historic referendum on self-determination that took place in January 2011. On the other hand, due to the protracted war, South Sudan is one of the least developed countries in the world (UNDP 2010:139). The challenges are daunting as the state of the country in all areas is destroyed and people remain one of the poorest in the world.

Water is vital for all forms of social and economic development and fair and effective management of water resources forms the cornerstone of human development. Access to water as one of the basic needs is essential in order to ensure the survival and well-being of the people of South Sudan and the development of the country. As stated in South Sudan’s Water Policy of 2007: it is “(…) essential to act now to put in place measures which will ensure efficient, equitable and sustainable development of available water resources into the future” to meet the basic needs of the growing population and to mitigate the possibility of conflicts over scarce water resources due to seasonal changes and the culture of pastoralists grazing their cattle.

Water is a basic human right and water management is crucial towards achieving human development and eradicating poverty. In this thesis, I aim to

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5 Human Development Index (HDI): ranking as number 154 of 169 countries in 2010. However, the statistics for Sudan are based on numbers from the northern parts of the country according to the Human Development Report 2010, it is expected that the southern parts are worse off (UNDP 2010:139).

explore and analyse issues of water governance in this newly independent country in order to highlight and understand the challenges of water resources and relations between the different actors in the light of a human rights-based approach. My focus will be on the Ministry of Water Resources and Irrigation (MWRI), the NGOs and the donors as I study the perspective of the duty-bearers regarding participation, equality and accountability in water governance. This is relevant for gaining an understanding – especially with the government of South Sudan as a new actor with a mandate – of the challenges, aspects and factors in water governance as one of the essential mechanisms of achieving access to water for people in South Sudan.

1.2 Background

Water, poverty and human development are interlinked (UNDP 2006:27, Kulidnwa and Lein 2008:2). According to UNICEF and the World Health Organization (WHO), more than 780 million people lack access to improved sources of drinking water and 2.5 billion lack access to sanitation facilities. Waterborne diseases are one of the top killer diseases on a world basis today.

It is estimated that 2 billion people die from diarrheal diseases, such as cholera, typhoid fever and dysentery, and other waterborne infections every year on a world basis. These diseases are a result of lack of safe drinking water and hygienic conditions. This has a severe impact on health and human development, especially for the vulnerable groups living in low-income countries. As noted by Peter Glieck: “the 21st century will open with one of the most fundamental conditions of human development unmet: universal access to basic water services” (1998:488).

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The link between water and poverty – and human development – is complex, but at the same time simple to understand (Kulindwa and Lein 2008:2). Waterborne diseases have direct consequences for human well-being. Other consequences include a reduced ability for people to create a livelihood and loss of school days. Access to water and sanitation is also essential for girls to be able to attend school. This has an impact on both gender equality and empowering of women’s role as they are the ones taking the burden of fetching water for the households – a task that requires a substantial part of the day for women and girls.

In order to achieve human development worldwide, the Millennium Development Goals (MDGs) were set in 2000. These eight goals encompassed eradicating poverty and hunger, achieving primary education, promoting gender equality and empowering women, reducing child mortality, improving maternal health, combating malaria and other diseases, ensuring environmental sustainability and developing a global partnership for development by 2015. Regarding environmental sustainability and water specifically, the millennium development goal is to halve the proportion of people living without sustainable access to safe drinking water by 2015.9 However, access to clean drinking water is a component of achieving almost all of the millennium goals.10

Although the link between water and poverty may be easy to grasp, how to organise the societies and water resources so that the poor gain access to the water needed for consumption and production is still complex and highly contested (Kulindwa and Lein 2008:3). Lack of water is not merely the non-existence of water resources in itself, but a result of the interplay between availability of resources, consumption patterns and management of the

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10 “Safe drinking water and adequate sanitation are crucial for poverty reduction, crucial for sustainable development, and crucial for achieving any and every one of the Millennium Development Goals” – UN Secretary-General, Ban Ki-moon from http://www.unicef.org/wash/index_bigpicture.html, accessed 22nd June, 2011.
resources – or equally mismanagement of water resources (ibid.). A core concept of human development is “agency”, where the process of development rests on “the ability of people to help themselves and to influence the world” (Sen 1999:18). This ability is especially expressed through political participation and democratic decision-making (Deneleuin 2008:186). Water governance has become increasingly recognised and applied in the water sector, where development efforts in the sector focus on the MDGs and the achievements of the international development targets as a contribution both to poverty eradication and environmental sustainability (Franks and Cleaver 2007:291-292). Hence, there exists a growing consensus on the need for “good water governance” within the water sector, as water governance represents an essential element in the development efforts mentioned above (ibid.).

Poverty is associated with a lack of means and resources without which it is difficult to satisfy even the most basic needs (UNDP 2007:7). The reason why the concept of poverty is concerned with the basic freedoms is that these are recognised as being fundamentally valuable for minimal human dignity. But the concern for human dignity also motivates the human rights approach, which postulates that people have inalienable rights to these freedoms (OHCHR 2004:9). And if someone has failed to acquire these freedoms, then obviously her rights to these freedoms have not been realised. Therefore, poverty can be defined equivalently as either the failure of basic freedoms (from the poverty perspective of capabilities), or the non-fulfilment of rights to those freedoms (from the perspective of human rights) (OHCHR 2004:10).

The growing interest in the link between human rights and human development grew out of the works of Amartya Sen, who addressed development and poverty in terms of capability and absence of freedom (Banik 2010:127). The concept of ‘capability’ refers to a person’s freedom or opportunities to achieve well-being in this sense (OHCHR 2004:6). Sen argues that development should be a means for improving human well-being and agency, and the understanding of capabilities includes what individuals are actually able to do and to be, that is their freedom to enjoy valuable beings and
doings; and poverty is the result of a failure of basic capabilities to function, that is, poverty is capability deprivation (Banik 2010:127).

Safe drinking water and sanitation facilities are fundamental for human development and for people to be able to live life in full enjoyment and dignity and water has been acknowledged as a basic human right.\(^{11}\) The legal right to water was further strengthened in 2010 when the General Assembly of the United Nations declared access to clean water and sanitation as a human right.\(^{12}\) Access to safe drinking water is a fundamental precondition for enjoyment of several human rights, including the rights to education, housing, life, work and protection against cruel, inhumane or degrading treatment or punishment. It is also a crucial element to ensure gender equality and to eradicate discrimination. The *human right to water* specifically is indispensable for leading a life in human dignity and a prerequisite for the realisation of other human rights.\(^{13}\) A human rights-based approach (HRBA) is based on an understanding of poverty built on human capabilities and freedoms (OHCHR 2004:6). Since the 1990s, the synergy between approaches to development and human rights has gained momentum, against the backdrop of a growing criticism of conventional development strategies, corresponding to the evolution of the discourse on vulnerabilities to food, shelter, water and health (Banik 2010:123).

With this background of linking water, poverty and human rights, I aim to study the elements of water governance in South Sudan. The civil war in Sudan\(^{14}\) was the longest and most deadly on the African continent in recent history. Sudan was first liberated from British colonial powers in 1956 and

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\(^{14}\) Sudan was split after the independence of South Sudan on 9th July 2011. The two countries are now 'Sudan' in the north and 'South Sudan' in the south. South Sudan is officially Republic of South Sudan (RoSS).
had been in endemic wars up until the 2011 referendum (Johnson 2011:2). South Sudan is shown in map 1. The last of two civil wars took place between 1983-2005, and ended after 22 years of civil war – leading to a devastating estimate of 2 million people killed and 5 million displaced (Jok 2007:15). The war officially ended with the Comprehensive Peace Agreement (CPA) being signed in 2005. Subsequently, the election in January 2011 represented a historic change for Sudan, first due to the fact that the election was actually carried out, and second due to almost 100 per cent voter turnouts voting for liberation from the North.

The peace process up to that point had not come easily. The conflict was rooted in several factors – factors that may not even be presented as the main causes – due to a struggle between the North and the South on the history itself (Johnson 2011:4). Slavery, religion, ethnic fights and the battle over resources such as oil and water – between the North and the South – are some of the issues that the Sudanese people found themselves living under for the last centuries (Johnson 2011:4-6). When the elite in North Sudan were trying to promote the country as Arab, this led to Sudan suffering from a low sense of national feeling (Jok 2007:53). Arabs were highly associated with the elites, and the rest as ‘blacks’ and ‘slaves’, even though slavery was officially abolished (Harir 1994:37). Together with the reaction to another colonial power, represented by the Arabs, the first civil war broke out after independence (Jok 2007:53). The decay of political governance, spread of civil wars, and killer famine characterised the 1980s in southern Sudan (Harir 1994:43).

A central part of the CPA in the transitional period after the war was to conduct a thorough census of South Sudan to ensure adequate key figures and the outcome of the census reveals numbers in terms of the current development situation. According to the Sudan Populations and Housing

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Census (2008), South Sudan has a population of 8.3 million, of which 1.4 million live in urban areas, compared with 6.9 million in rural areas. The population is therefore predominately rural (83 per cent) and dependent on subsistence agriculture. South Sudan is a young country with half of the population under the age of 18 and 72 per cent under the age of 30. There is a wide variation between the states, with Jonglei being the most populous at 136,000 people, and accounting for 16 per cent of the population, and Western Bahr el-Ghazal with 333,500 people (4 per cent of the total population). The population density is more than ten times lower than neighbour country Uganda.

In terms of human development in South Sudan, one third is illiterate and more than half live under the poverty line. However, data on infant mortality, maternal mortality, the ratios of the proportion of births attended by skilled health personnel, measles immunisation coverage, the proportion of the population below minimum level of dietary consumption, net enrolment and completion rates in primary education, and literacy rates suggest that the incidence of poverty in South Sudan is actually greater than this. Health indicators of child and maternal mortality are among the worst in the world (JAM Sudan 2005:3). It is estimated that one in four children die before the age of five, and of these deaths almost half are due to waterborne diseases (JAM Sudan 2005:21). From the Health Survey of 2006, it was reported that 40 per cent of the children seen by health posts suffered from diarrhoea within the previous two weeks and reports of cholera outbreaks still occur. South Sudan is also one of the few countries in the world where guinea-worm disease is still a problem (Water Policy 2007). All of these diseases mentioned are related to lack of clean and safe water. It is estimated that just

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above half of the population has access to improved drinking water sources and 38 per cent of the population has to walk for more than 30 minutes one way to collect drinking water.

In the six years of transitional period, there have been numerous efforts to prepare the new state for independence by implementing the intention of the CPA. These efforts have been directed towards building the government and administration, up until the present when the Government of South Sudan (GoSS) officially became the Republic of South Sudan. South Sudan is a federal state with a three-tier government system: federal, state, and local governments (Interim Constitution of Southern Sudan 2005). The states and local government bear the main responsibilities for basic social services. Local governments are responsible for primary education and health, as well as sanitation, while state governments manage water supply. The federal government produces policy and standards for these sectors. The Executive Branch of the State Government is headed by the Governor and is composed of the Governor, the Governor’s advisors, and the State ministers. Governors are accountable to the President of South Sudan, while the State ministers are accountable to the Governor. There are ten States in the Republic of South Sudan: Lakes, Central Equatoria, Eastern Equatoria, Western Equatoria, Upper Nile, Jonglei, Western Upper Nile, Warrap, Northern Bahr el-Ghazal and Western Bahr el-Ghazal. Local government consists of the County, Payam and Boma. A Payam is equivalent to a district and a Boma is the smallest unit of local government. An overview of the states and counties is shown in map 2.

The total government budget in 2012 was 4.48 billion Sudanese pounds (SDG), and the estimated relative spending on the different sectors showed that the main part of the total budget is allocated to security measures, States, public administration and infrastructure. Oil revenues constitute 98 per cent

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19 Approximately 1.6 billion USD converted at 1 USD equals 2.66 SDG, or approximately 9.5 billion NOK converted at 1 SDG equals 2.13 NOK. Currency values from oanda.com at 13th April, 2012.

of the total government revenue; however, this does not benefit the average
resident. Despite the richness of natural resources, there has been stagnation in
trade, investment and household savings over the last century.

There has been almost no development in the form of basic services –
specifically in the south of Sudan – over the past five decades because of the
war and the politics of the North. This is clearly seen in the poor levels of
various social indicators like literacy levels, infant mortality rates and water
and sanitation. The natural factors of the terrain of South Sudan and seasonal
constraints reduce access to large regions, which further increases the
difficulty of improving social indicators.

1.3 Research questions

At this point, South Sudan is basically starting at zero in terms of water
infrastructure and management of the water resources. There are several
parallel processes going on in order to start the build-up of service delivery in
the new country, from the immediate repair and rehabilitation of broken
boreholes, to allocation of water for cattle, to discussion on the positioning
regarding the future management of the Nile – all activities that are seen as
essential to move towards sustainable human development and economic
growth. Taking into account that South Sudan is emerging from war to a post-
conflict setting, it is claimed that “reconciliation, reconstruction and recovery
cannot progress without basic human security and strong national institutions
that protect fundamental human rights.”

Given this context, I therefore focus in this thesis on issues of water
governance in South Sudan and aim to highlight the challenges in the water
governance – as one of the bricks of the larger and more complex
development puzzle. My aim is to study elements of water governance in post-
conflict South Sudan in the light of a human rights-based approach. More
specifically I will study the Ministry of Water Resources and Irrigation as the

‘duty-bearer’ with regards to participation, accountability and equality in the efforts towards gaining access to water for the people in South Sudan, as a prerequisite for the ultimate goal; future human development. Hence, my research question is as follows.

Q: What are the challenges in the governance of water in South Sudan towards achieving human development?

I will aim to explore the above research question by answering a set of interrelated sub-questions:

- To what extent is the MWRI able and capable to participate and influence development, decisions and planning?
- What are the main mechanisms influencing the processes leading to access to water for people in South Sudan, and what characterises the relationship between the national and international ‘duty-bearers’ in water governance?
- What are the main challenges and the value-added of applying a human rights-based approach to study this particular case?

In Chapter 2 I will describe and further elaborate on how I designed and operationalised my study in order to answer the research questions listed above.

1.4 Methodology

In this chapter, I will describe my study design; methods used and discuss the challenges of fieldwork and empirical data collection. Further I will elaborate how I sought to overcome and rectify the eventual short-comings of the data collection in the study.
1.4.1 Case study and data collection

I have chosen to undertake a case study of the governance of water in South Sudan. According to Stake (1994:236), case study is a choice of the object to be studied in order to gain understanding of the case itself. Case studies are generally strong precisely where statistical methods and formal models are weak (George and Bennett 2005:19). Within water governance, there will be several issues to address that are either within the system or outside, however it is an integrated system, a ‘bounded system’, with its own patterned behaviour and prominent consistency (Stake 1994:236).

Considering the nature of studying one single case, in the search for its values and authenticity, it may not seem relevant to discuss reliability and validity; however, reliability and validity is also a concern within qualitative research. Approaches exist for the conduct of reading, observation and interviews, which ensure that the study has a degree of consistency, meaning the extent the study can be backed up by other studies (Silverman 2001:225). Validity refers to the ‘truth’ or a true reflection of the case, this is the extent the analysis or research design is a reasonable basis for measuring the concept or property that it claims to measure (Silverman 2001:233). The angle of this thesis is rather an inductive way of seeing the world, built on observations where the empirical particulars generate a more general truth; it is not for the purpose of testing a theory or finding explanation through established rules of reasoning in a deductive sense (Moses and Knutsen 2007:22).

The method of my study is a combination of interviews and conversations, along with a literature study of documents collected during the fieldwork in Juba and subsequently in Oslo. For the empirical data collection, I have used methods such as interviews and critical reading of available documents. When using secondary sources, there are some aspects that need to be addressed when analysing the data. The issue of ‘looking for what you want to answer’ may make me spot data and arguments that confirm my claim; this may even be done deliberately (Booth et al. 2008:84). Furthermore, there
exists a hazard of reading claims and arguments as the ‘truth’, so this requires careful and critical reading (ibid.:87-88).

In reducing the likelihood of misinterpretation, various procedures are employed that are called triangulation (Stake 1994:241). According to Stake, triangulation has been generally considered a process of using multiple perceptions to clarify meaning, verifying the repeatability of an observation or interpretation (ibid.:241). In my data collection (both in the interviews and literature study), I realised after a certain amount of data had been compiled that the data was repeating itself. According to Bertaux (1982), this may be called “a point of saturation”, and gives an indication that enough data have been revealed for the actual case being studied and it signals that the fieldwork may be rounded off (ibid.:132-133).

1.4.2 The case

South Sudan is endowed with rich water resources. However, they remain severely underdeveloped and unevenly distributed throughout the area. The management of these resources faced enormous struggles during the protracted war, resulting in an almost non-existent basic infrastructure such as water points, water distribution systems or sanitation facilities. Neither has the utilisation of water resources to areas of hydroelectric production or irrigation been developed on a mentionable scale. All kinds of mapping or monitoring systems were also destroyed and not maintained during the war years.

After the war, the Government of South Sudan (GoSS) recognised the central role of the water sector. The GoSS identified the development of sector policy and strategies as a key priority in order to enable sustainable management and effective delivery of water, sanitation and hygiene services and the achievement of the MDGs focused on improving the health, welfare and productivity of the people of South Sudan. The population in South Sudan relies on crop production, livestock and fishing, and together with rapid population growth due to economic development and returning refugees, the demand for water is expected to increase. Furthermore, it is believed that
water as a resource will be the “lever for peace and development” (Water Policy 2007).

Several areas of social and economic uses have been identified and described in the Water Policy of 2007. In the policy, water is viewed as a limited resource that forms the essential basis for human and animal life, for maintaining ecological balance and for social and economic development. It requires effective management based on good practices, international standards and the Dublin Principles. The Dublin Principles have been recognised guidelines for sustainable water management since the beginning of the 1990s, with a specific focus on a bottom-up approach based on participation.

The overall level of access to improved water supply and sanitation facilities in South Sudan are among the lowest in the world and existing services are unevenly distributed, reflecting historical imbalances in service provision and economic development. Water for survival and improvement of public health is obvious and is a fundamental need for human development. Furthermore, there are several areas that are essential for socioeconomic development in South Sudan, such as agriculture, fisheries, hydropower, transport and navigation along the river bodies (both for goods and as a transport only route during the rainy season), wildlife and tourism, along with unique ecosystems such as the ‘Sudd’ wetland, whose rich flora and fauna have been declared as a Ramsar Site.

The historical and cultural affiliation to the Nile is substantial, being the longest river in the world. And with ten riparian countries in the river basin, the “hydropolitics” of the Nile is equally intricate. With South Sudan

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becoming a new actor in the “hydropolitics” of the Nile after the 2011 referendum, the water management of the Nile now enters a new phase. The first Nile Agreement between Great Britain and Egypt was signed in 1929, due to the growing need for water for the cotton industry, where only a small proportion of the flow was allocated to Sudan and the rest to Egypt (Salman 2010:308-309). Later in the 1950s, the building of the Aswan High Dam was completed and with the new independence of Sudan from Britain, a new agreement – the 1959 Nile Agreement – was signed between Sudan and Egypt. The Nile Waters Treaty of 1959 designates 55.5 billion cubic metres to Egypt and 18.5 to Sudan. With the Aswan High Dam, the storage capacity of the Nile increased significantly (ibid.).

In 1999, the Nile Basin Initiative26 was established in order to ensure coherent management and sustainable development of the Nile, representing a central initiative in which South Sudan will have a central role. So far, South Sudan has been a more silent player as a new country along the Nile, despite knowing that the major part of the Nile Basin falls within South Sudan (Salman 2010:311). The reason for this is not clear. Some have speculated that South Sudan did not want to jinx the referendum by going into – what would be regarded as a sensitive issue – discussion of the sharing of the Nile. Others have questioned whether South Sudan’s own prediction and knowledge of their future water needs is unclear, and therefore the positioning for South Sudan as an actor along the Nile has been cumbersome.

A historical event of relevance for water governance is the Jonglei canal – one of the symbols of the last civil war in Sudan. In 1983, an attack on the newly started work of the Jonglei canal was conducted by the Sudan People’s Liberation Army (SPLA) as a protest against the regime’s incorporation of the Sharia as law by the North (Johnson 2003:48). This marked the start of the second civil war, lasting from 1983 to 2005. The Jonglei canal is a project that started as a hydro-project to meet the water

needs of the northern parts of Sudan and Egypt at the beginning of the last century (Goldsmith et al. 2002:204). The idea of the project was to save the evaporation water from the swamps of the Sudd by making a man-made canal and draining the swamps to this before the water evaporated to such a substantial extent as is does naturally.

The project was of a great dimension development-wise, and the Jonglei Investigation Team was created to assess the impacts on livelihood, including the ethnic groups in the area (Nuer, Dinka and Shilluk), as well as the ecology of the Sudd swamps where the groups live. The indications showed severe impacts on the pastoralists way of living with grazing, resettlement, invasion of foreign workers and change of ecological patterns (Goldsmith et al. 2002:204-205). Since the outbreak of the second civil war, the project stands as it was left with the attack in 1983, with a half excavated canal that gets filled during the rainy season, and, at that time, the world’s largest excavator standing in the field. There are rumours that the Jonglei canal project27 is again on the agenda for rethinking and implementing the project, however, there is no firm confirmation about this at this stage.

Infrastructure related to water and sanitation in the aftermath of the war is characterised by an ad-hoc and emergency approach regarding standards. The solutions are short-term interventions as a result of the humanitarian activities, and the water management is suffering from unforeseen exploitation of groundwater due to a lack of an overall view of the available water sources and feasible extraction.28 After the CPA, the work of improving this sector – and making a shift from short-term solutions to an officially led management with a focus on sustainable solutions – began from scratch for the people of South Sudan to meet the challenge of the high number of returnees expected after the peace agreement in the interim period until the referendum announced in January 2011. On the other side, as a newly founded ministry


with limited resources, there has been a shared effort among several actors within the field of water resource management and improving the service delivery since the CPA.

Given that South Sudan is at the early beginning of starting to build a new nation, and the state of development differs remarkably between Juba and the rural areas in this post-conflict setting, it is to a high extent a given that the service provision to the South Sudanese people is inadequate. In addition to this, there are huge constraints in implementing water programmes due to many issues, such as funding, logistics or other challenges. Knowing that the level of service provision of water is low, I will in this thesis explore water from another angle rather than at the beneficiaries’. I have therefore chosen to study water governance as an essential factor in achieving water programmes in a fair and effective manner, where human development is the ultimate goal of these activities.

1.4.3 Fieldwork

The fieldwork for this thesis was conducted in July 2011 in Juba where the main part of the data collection was undertaken in terms of interviews and collection of relevant documents. Some of the interviews also took place in Oslo among the diaspora community. In total, I have interviewed 14 persons in-depth over a period of six months. Some of the interviews were semi-structured with the guidance of a questionnaire and tape-recorder, and some information was gathered in the form of open-ended conversations. The interviews ranged in time from 30 minutes to approximately one and a half hours, and were mainly face-to-face, but some were conducted in groups of two and some of were done over phone.

My sources include ministry officials, non-governmental representatives, academia, inhabitants and Norwegians formerly stationed in South Sudan who are or have been involved in water sector components or the administration of the Government of South Sudan. One of the contextual challenges in conducting interviews in South Sudan is the matter of having
connections, as finding the ‘gatekeepers’ is highly dependent on having
connections or being introduced by the right people and this is far more
important than the issues that you address. In order to secure the
representatives anonymity, I have chosen to refer to my interview objects as
‘sources’ and avoid revealing the sex and title as that could easily reveal the
identity. The quotes I have used as empirical findings are somehow direct to
the wording and conversations, and they will appear with some misspelling
and grammar errors. I have chosen to let the quotes be as they were told in
order to remain authentic to the context.

In my preparations for the fieldwork, a lot of effort was put into
establishing networks and connections, however, getting hold of people in
South Sudan is not easy due to lack of communication means and intermittent
Internet access. Given the size of this case, it may be a reason to raise a
critique that – due to the relatively small number of samples for interviews –
the findings in this study do not represent a basis for general assumptions or
conclusions. Nevertheless, the data I have collected in the interviews represent
valuable first-hand insights relevant for the case that is intended to be studied
and explored in this thesis.

The interviews were semi-structured and open-ended and this kind of
approach gives the opportunity to get information that can be used to
understand the water situation in South Sudan (Brockington and Sullivan
2003:57). In my semi-structured interviews, I could sense a hindrance to
getting close to the real topic, and the interview would seem a bit static and
superficial – often due to the fact that I needed to concentrate on making
accurate notes and was not able to focus on the person – compared to the
open-ended interviews with a tape-recorder where the conversation could flow
more naturally. This is a potential problem that may occur in the use of
interviews as a method for data collection (ibid.:58).

Due to strong connections with Norwegian institutes for various
purposes, I was able to connect with a representative at the Ministry level
through personal contacts within academia in Oslo. When I first got
introduced through one gatekeeper in the Ministry of Water Resources and
Irrigation (MWRI), it was then possible to move forward and contact other
interviewees through the ones being interviewed. This enabled me to fill in
more information than was possible to reveal in the interview.

Furthermore, the access to NGO and UN agencies came through
personal contacts, whose representatives were able to put me into contact with
others who could provide relevant information. This method is called
‘snowballing’ and is a useful technique for selecting respondents with
particular characteristics where information on people with those
characteristics is lacking (Overton and van Diermen 2003:43). The weakness
with this method is that the selection of informants may show a consistency of
people within the same network. In my approach, I sought to overcome this by
having entry points in several networks that were independent from each
other.

During the long war and prior to the CPA, the population size and other
statistics were never properly accounted for. As such, the statistical
compilation during the interim period represents an achievement and a
baseline for the development of strategic planning documents and policies
with a total overview of the situation and a more substantial contextual
analysis. I have collected and studied a range of empirical sources such as
official statistics from South Sudan, academic studies, reports from
development agencies, information from NGOs, newspapers and books related
to water in South Sudan. In addition to this, I am a member of the ‘WASH
Cluster’-network\(^{29}\) in South Sudan and have received a large amount of
information, as well as updates, about the water and sanitation situation
around South Sudan.

Prior to the fieldwork for this thesis, I was involved in relief work in
South Sudan after the CPA was signed in 2005. My responsibilities were to

\(^{29}\) WASH is an acronym for Water, Sanitation and Hygiene. https://sites.google.com/site/washclustersouthsudan/
and http://oneresponse.info/GlobalClusters/Water%20Sanitation%20Hygiene/Pages/default.aspx, accessed 17\(^{\text{th}}\)
March, 2012.
ensure enough clean water and sanitary conditions in health projects in both main populated areas and in the rural areas over a period of six months in the period 2007-2008. During this period, I was interacting closely with the communities, and with my Sudanese employees. Participatory observation is one method within the field of qualitative research, which requires the researcher to immerse themselves in the place or societies they are studying and empathise with their way of looking at and interpreting their world (Brockington and Sullivan 2003:59). Even though data from this period are not directly used in this thesis, my understanding of the water situation and the insight in the development challenges in South Sudan is quite influenced by this ‘participatory observation’.

One potential problem with participatory observation can be the lack of skill in combining structured data with a relaxed attitude and letting things happen due to time constraints (Brockington and Sullivan 2003:59). However, this is something that was not the case during my previous fieldwork, as I did not have the ‘researcher-glasses’ on and was there for other objectives, rather than data collection. In addition, this insight and experience – and local knowledge of South Sudan – served as a major ‘entry-point’ in the conversations and interviews conducted.

The aspects that are least covered among the data collected by interviews are the views of NGOs. Due to time constraints and lack of a real ‘entry-point’, and other challenges described below, this lack of stakeholders’ views may represent a weak point of the study. On the other hand, this thesis aims to explore the perspective of the new state duty-bearers – as a central part of the governance of water in South Sudan – hence the main efforts of collecting in-depth interviews are done in the Ministry of Water and Irrigation (MWRI). Another weak point in the data collection is the views of the donor community in South Sudan. However, this ‘actor’ is far more likely than government official entities and Sudanese in general to have the possibility to provide information that is accessible on-line and in published reports. Hence, as a way of making up for the lack of interviews, data such as evaluations,
minutes of meetings, annual reports, briefings, progress reports, etc specifically from the donors have been used as a source for analysing the case.

**Challenges in the field**

South Sudan is a war-ravaged country and the young people know only the state of war. In a post-conflict setting, it is important to make sensitive steps in order to seek information (Scheyvens *et al.* 2003:139). Being a researcher, and not someone providing aid, can be a difficult role in a country where the needs are obvious without giving something back. I was aware of my role as a researcher, knowing where I come from and the issues that can arise within power relations while working with marginalised groups (ibid.:167). However, being from a major donor country, issues regarding the possibilities of providing aid or support came as a request from some of the interviewees.

Collecting empirical data in South Sudan is a rather challenging task and I would like to highlight some of the challenges I met during my fieldwork. The security context is one of the real challenges. Even though it is a time of peace, the situation can be somehow threatening due to the vast numbers of existing arms. Unfortunately, this became a reality for me, for example when a stray bullet dropped in the compound I was living in after only the first day in Juba. Otherwise, the security situation and the lack of peace and stability put limits on how to move around and where to move around to search for data.

Furthermore, the issue of transport was a constraint. As there are few alternatives for public transport and hiring a car service is rare and costly, in the beginning I used a ‘boda-boda’ (a motorbike transport service that had bloomed in Juba last year). It was relatively easy and affordable; however, since the road networks are poorly built and not very regulated, this method of transport was associated with a lot of accidents, sometimes resulting in death, of which I also observed. The accidents had been so serious that there was a discussion of abandoning this business in Juba. Therefore, I did not see the ‘boda-boda’ as a safe and adequate option for transport, and walked instead,
which was time-consuming and exhausting in the middle of the day with high sun.

As mentioned already, the struggle of getting access to the right people unless connections are made also entails arranging logistical tasks such as housing. Even though a lot of effort was put into the issue of arranging safe and affordable accommodation prior to leaving for Juba, the shifting context of the situation in South Sudan makes the NGOs reluctant to offer accommodation to ‘outsiders’ as the need to allocate space to their own resources gets prioritised. My other option, a research-cabin sponsored by Norwegian donors, was also not completely constructed during my time in Juba, even though the representative in Juba had claimed it was before I came to undertake my fieldwork.

The price level in Juba is extremely high due to the long presence of international staff during the civil war. And especially during the time of my fieldwork – subsequently of the referendum – the prices for commercial hotels reached new records and ranged in the level of 200-300 USD. For me, this was also quite a challenge since as a Master’s student I had quite a limited budget. Moreover, as there are no ATM services available in Juba, I did not have access to a bank account to withdraw money. Another example of the shifting context was that, according to my preparations for the field, I knew that the new currency for South Sudan as a new and independent country was scheduled in October. However, the government was quite hasty in introducing the new currency, resulting in insecurity of the value of USD and deadly riots at the banks.

One last issue to mention here is the risk of getting tropical and communicable diseases when in Juba. The level of hygiene is very low, and the risk of getting ill is extremely high. The illnesses also come in seasons, such as typhoid, which came to be the case for me even though I had been vaccinated against it. Since South Sudan has one of the world’s worst health services, even Sudanese choose to medically evacuate to Kampala of Nairobi, if they have the money to do so.
Due to money constraints and health issues, my fieldwork was shortened slightly. However, due to the networking done in the preparation phase, I was able to create the entrance point to several important persons very quickly in Juba and connected with very important sources of information after the fieldwork. As mentioned under ‘methodology’, I reached a ‘theoretical saturation’ point.

1.5 Outline of the thesis

This thesis consists of five chapters.

Chapter 2 outlines the linkages between human development and access to water, and how this is interlinked with water management. My entry point is water as a human right, and how this has become a discourse of development and water governance. I will draw my analyses from conceptions of human development, water governance and a human rights-based approach (HRBA) as my theoretical background, and present the content and debates around these concepts and approaches.

In chapter 3, I will discuss and analyse the duty-bearers’ perspective of water governance in South Sudan. Here, I will analyse the elements of water governance in the light of basic human rights principles such as participation, accountability and equality. In this chapter, I aim to highlight and discuss the challenges and factors that are playing a role in the processes towards access to water and, ultimately, human development.

Chapter 4 provides a summary and the main conclusions of the study.
2. Theoretical perspectives

2.1 Introduction

To achieve peace and development in South Sudan, effective and fair water management must be in place. Based on this, as theoretical background, I will build on a human rights-based approach (HRBA) to development and analyse how the water governance in the new country is conducted in the light of a human rights framework. In this chapter, I will elaborate on the linkages of water and human development, and how water as a human right has become a part of the discourse. I will present the concepts of the HRBA, which I will draw on heavily in my analysis of the findings.

2.2 Human development and the nexus with human rights

The concept of human development has become well-established in the development area as a concept that focuses on peoples’ capabilities, rather than measures development in economic growth regardless of human well-being. When Amartya Sen published ‘Development as freedom’, he captured – according to Andreassen (2006) – a dialectical shift that had evolved in the development discourse over the past decade, a shift that paved the way to see development as the process of expanding the real freedoms that enhance people’s capabilities to make choices about their lives (Andreassen 2006:298). Such a shift represented the recognition that people are both subjects and objects of development (ibid.).

With the ending of the Cold War, and other international developments – such as globalisation and the recognition that development per se did not reflect the anticipated impact on the poor – the concepts and approaches guiding international development institutions and efforts started to change. They moved in the direction of emphasising development as freedom – and
capabilities to fulfil them – as the main goal of development. This represents a change that began with the invention of the concept of human development (Andreassen 2006:305). The United Nations Development Programme (UNDP) was a leading development institution in the construction of a more inclusive and multi-dimensional notion of development (ibid.). The notion of ‘sustainable development’ came as a departure from the conventional growth-centred economic position represented by the first Human Development Report (HDR) in 1990. From this perspective the concept of human development have been defined as:

the process of enlarging the range of people’s choices – increasing their opportunities for education, health care, income and employment, and covering the full range of human choices from a sound physical environment to economic and political freedoms (UNDP 1992:2).

It was argued that people should get the opportunity to invest in what they valued – capabilities like health, education and training – and further to put these capabilities in use and be able to express themselves freely and creatively (UNDP 1991:1). Based on this way of thinking, the departure from measuring development as merely economic growth started to form and to move towards a development philosophy that was centred “around people”, meaning the people must be at the centre of human development and not “people around development” (UNDP 1991:13). This implied that a more participatory approach was required, and a call for the societies to “invest in the education, health, nutrition and social well-being of its people, so that they can play their full role in the country’s economic, political and social life” (UNDP 1991:13). A statement that is fulfilled with the acknowledgement that economic growth, measured by GNP, does not capture the well-being of

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30 From UNCTAD’s report Our Common Future that defined sustainable development as development that meets the needs of the present without compromising the ability of future generations to meet their own needs in WCED (1987). Our Common Future. Oxford: Oxford University Press.
people, but rather knowing that the development of people is necessary in order to achieve growth and social well-being (UNDP 1991:15).

The evolvement of the Human Development Index (HDI) has undergone several refinements and detailing since the Human Development Report of 1990. Starting with combining national income with adult literacy and life expectancy as a composite measure of human progress, and recognising that this did not encompass all the choices a human being has – the HDI has been refined to capture a wider range of all the dimensions of human choices (UNDP 1991:15). However, human development is related more to monitoring and reporting, and less to the process towards human development (Banik 2010:130).

There are significant connections between the human rights-based approach and that of human development and capability (Deneluin 2010:59). As stated in the Human Development Report of 2000: “Human rights and human development share a common vision and common purpose – to secure the freedom, well-being and dignity of all people everywhere” (UNDP 2001:1). The human rights-based approach and development is often referred to as a more recent link in the discourse of development, however, the interrelation has been there since the preparation and establishment of the United Nations (Andreassen 2006:301).

An understanding of human rights is relevant in order to make the link between human rights and human development. As Deneluin argues (2010:59), seeing the humans as the end of the development process was not the sole purview of the human development paradigm alone, it was in fact the central concern of the Universal Declaration for Human Rights (UDHR). The idea of basic needs – and the core principle of human development and poverty as a deprivation of one’s capabilities – is in fact the idea of human rights (ibid.).

Human rights evolved as a response to post-war narratives (Deneluin 2010:59), and resulted in the UDHR that was adopted in 1948 as a part of the preparation and establishment of the United Nations (UN) (Andreassen 2006:301). The UDHR is a “common standard of achievement for all peoples and all nations” and states that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.32 The core of the UDHR is that; all humans should be free and equal in dignity and rights, such as the right to work, the right to education, the right to health, the right to vote, the right to non-discrimination, the right to a decent standard of living among other core factors (Deneluin 2010:59). This recognition is also a basic characteristic of contemporary human rights thinking as reflected in Article 1 of the UN Declaration on the Right to Development (Andreassen 2006:298, Deneluin 2009:59).

At the end of the 1990s, economist Arjun Sengupta was leading the work of a UN working group studying the current state of progress in the operationalisation and implementation of the Declaration on the Right to Development (Andreassen 2006:309). This work resulted in five comprehensive reports, which defined the substance of the right to development and the corresponding duties. In brief, he defined the right as a ‘composite process’, meaning a right where all human rights specified in the two UN Human Rights Covenants of 1966 – the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights – are fulfilled (Andreassen 2006:309-310). Development as a process, therefore, implied that growth “must be carried out in ways that are compatible with human rights requirements”, and further that “such growth must be participatory, non-discriminatory, transparent, accountable and enshrined in international human rights law” (Andreassen 2006:310).

The Vienna Declaration and Programme of Action,\textsuperscript{33} adopted by the World Conference on Human Rights in Vienna in 1993, represented an early step in linking the concept of human rights and poverty (Hamm 2001:1007). Following this event, the linkages grew stronger with the release of the Human Development Report 2000 – stating that the elimination of poverty should be addressed as a basic entitlement and a human right. This was taken a step further in the 2003 UNDP Practice Note on Poverty Reduction and Human Rights\textsuperscript{34} where it was stated that extreme poverty is the most serious form of human rights violation of the time (UNDP 2007:8).

Poverty reduction is a central part of a broader goal – development – a link that only gained momentum more recently (UNDP 2007:9). The dimension of poverty, however, by depicting the lack of means alone – such as lack of income – does not account for the range of cultural, social and political sides of the phenomenon as poverty also leads to the lack of physical and social goods, such as employment, health, physical integrity, freedom from intimidation and violence, participation in social, political and cultural dynamics, and the ability to live life in respect and dignity (OHCHR 2004:9, UNDP 2007:7).

Human rights are universal legal guarantees that protect individuals and groups against actions and inactions that interfere with fundamental freedoms, entitlements and human dignity (UNDP 2007:7). Human rights comprise civil, political, economic, social, and cultural rights as codified in international, regional and national legal systems. Individual rights are usually distinguishable from one another, yet they are interdependent so that the exercise of one right can depend on and contribute to the enjoyment of another (ibid.).


The human rights approach refers to all human rights; it pays special attention to economic and social rights as the authentic concern of development (Hamm 2001:1006). Sen’s innovative conceptualisation contrasts with several other conceptions of development that had been the discourse since the end of WWII with the growth theories in the 1950s and 1960s, redistributive theories in the 1970s, to the expansion of market incentives and emphasis on privatisation, particularly represented by the International Monetary Fund and the World Bank in the 1980s (Andreassen 2006:299). And with the coming of the 1990s, Sen’s approach regarding capability coincided with the growth that was later dubbed as the human rights approach to development (ibid.).

2.3 The human right to water and water governance

While water has not been explicitly recognised as a self-standing human right in international treaties, international human rights law entails specific obligations related to access to safe drinking water. The first official debate on the right to water occurred in 1977 at the Mar del Plata Conference in Argentina, where the Conference’s Resolution II on ‘Community Water Supply’ made the landmark declaration that “all people have a right to access of sufficient quantity and quality of drinking water” (Hardberger 2005:346).

This resolution linked the needs of access to enough drinking water to the necessity of human life and provided a basis for subsequent documents that sought to confirm and delineate the right, although the resolution did not define the right to water, it recognised a need and set a precedent for future discussions (Hardberger 2005:346). In the following years after the Mar del Plata Conference, several important documents have attempted to explicitly

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establish the right, and these treaties and agreements have – similar to human rights generally – been a result of the work of the UN, NGOs and individual governments (ibid.). The UN has – as in the movement for human rights overall – been instrumental in promoting water as a human right (ibid.).

The efforts done to raise awareness of the need for water, by for example declaring the year 2003 as the ‘International Year of Freshwater’ and by the Millennium Declaration, which established the goal of reducing the proportion of people unable to reach or afford safe drinking water by half before 2015, comes in addition to drafting several documents that have gained momentum for water as a human right (ibid.). One of the early treaties to explicitly mention the right to water was the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW) in 1979 (Hamm 2001:1007, Hardberger 2005:347).

A second important document was the 1989 Convention on the Rights of the Child. The preamble to this document recognised that “childhood in entitled to special care and assistance... [and] children should be afforded the necessary protection and assistance”, which implies that states are to – among other things – provide an accepted standard of health care (Hardberger 2005:347). In addition to the recognition of the ‘right to life’ as stated in the UDHR, this broad phrasing in the Convention on the Rights of the Child explains this by compelling states to ensure the survival of the child to the “maximum extent possible”, a phrase which would include water implicitly (ibid.). Furthermore, the Convention included a specific provision for clean drinking water with the purpose of combating disease and malnutrition, directing the states to take appropriate means to ensure this (ibid.). Up until that point, these two human rights treaties were the only references to water as a human right.

Establishing water as a human right evolved with the 2000 and 2002 general comments to the United Nations Committee on Economic, Social, and Cultural Rights, which was the outcome of the initiative in 1987 to form a committee to clarify rights given in the source document (International
Covenant on economic social and cultural rights). General Comment 14 released in 2000 highlighted the linkage between the need for potable water and the right to health by explaining that Article 12 of the ICESR included things that contributed to health, including “access to safe and potable water” (Hardberger 2005:348).

The obligation to provide water was further clarified in the 2002 Comment 15 where the committee recognised water as a separate right included within the ICESCR, stating it was “one of the most fundamental conditions for survival” (Hardberger 2005:348). Comment 14 states that water is a limited resource, whilst Comment 15 links the right to water to other human rights including the right to life, health, an adequate standard of living, and adequate food (Hardberger 2005:348). From Comment 15:

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption; cooking, personal and domestic requirements. (Comment 15, page 2, point 2)

At this point, the right to water was divided into three categories, namely availability, quality and accessibility, each of which creates separate requirements for compliance, and availability includes quantities for continuous personal and domestic use (Hardberger 2005:348). Comment 15 emphasises that states must implement their obligations in a manner that is “deliberate, concrete and targeted towards the full realisation of the right to water” (ibid.:349). Comment 15 provides minimal duties that must be achieved in all locations. This lowest duty must include the supply of water needed for personal and domestic survival, access to the water on a non-discriminatory basis, equitable distribution of the water, governmental awareness including a national water strategy, monitoring of the local water situation, and efforts towards water sanitation (Comment 15).
International law does not require a country to agree upon an idea for it to be bound (Hardberger 2005:335). A state that apathetically allows its citizens to be deprived of adequate water supplies is not in violation of any human right. However, if these treaties and agreements are interpreted more proactively, a government’s inaction in building water systems or otherwise interfering with the delivery of water to its people also violates its obligations (ibid.:336). The ability of the rich to take water from the poor for a profit violates the idea of distributive justice (ibid.:343).

International documents, such as the UN’s General Comment 15, attempt to remedy this disparity by stating that although everyone has a right to water, “states parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous people, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees” (Comment 15).37

The principle of non-discrimination and equality are fundamental human rights principles and are critical to the right to water. Discrimination in relation to access to safe drinking water and sanitation can be rooted in discriminatory laws, policies or measures, exclusionary policy development, discriminatory water-management policies, denial of tenure security, limited participation in decision-making or lack of protection against discriminatory practices by private actors.38

There are some misconceptions regarding the right to water. A common one is that the right to water implies that water is free of charge39 (Glieck 1998:495-496). A distinction to this is that the right to water requires that water services are affordable for all and nobody is deprived of access because of an inability to pay. However, in certain circumstances, access to safe

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drinking water and sanitation might have to be provided free of charge if the person or household is unable to pay for it. Another issue is related to the need for water for agriculture or pastoralism, as water is inextricably linked with food security, income generation and environmental protection.

One might also question, as Glieck (1998) points out, what is the added value of recognising water as a human right, while a tremendous number of undernourished people exist despite the declaration of the right to food? However, the acknowledgement generates an added value in several respects such as setting the agenda for international discussions, creating pressure to translate the right into national and regional obligations, and putting water in the spotlight amongst some levels. It also explicitly helps to set specific priorities for water policy: “meeting a basic water requirement for all humans to satisfy this right should take precedence over other water management and investment decisions” (Glieck 1998:489).

However, access to water for agriculture comes under the right to adequate food, provided for in Article 11 of the Covenant. According to General Comment 15, on the other hand, priority should be given to “the water resources required to meet the core obligations of each of the Covenant rights”, which is a reminder of the interdependence and indivisibility of all human rights. More important to point out here, is that the right to water has implications for water management, as it requires giving priority in water allocation to personal and domestic uses for all. And these uses represent a tiny fraction of the total use of water, usually less than five per cent, while irrigation remains the largest user of water.

Access to water is gained through a system for the management of water, or water governance. Despite the growing emphasis on the significance of water governance, there exists less theoretical analysis or debate on what are the core concepts of water governance. This may – according to Franks and Cleaver (2007) – result from a focus on good governance as a normative

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of principles such as accountability, transparency and probity, and furthermore that elements of water governance are taken up under other concepts such as rights, integrated water resource management, participation and partnership (ibid.). As an attempt to propose a theoretical framework for the understanding of water governance, Franks and Cleaver (2007) build on existing definitions of water governance through concepts of social theories. This has resulted in an understanding of water governance “as the system of actors, resources, mechanisms and processes which mediate society’s access to water” (ibid.:303).

In a schematic sense, Franks and Cleaver (2007) propose the analytic tool:

![Diagram of a framework for water governance](image)

In this framework, ‘resources’ are understood to be material and non-material properties of social systems from which human governance of water are constructed (Franks and Cleaver 2007:293). This understanding is built on Gidden’s theory of structuration where he distinguishes between allocative and authoritative resources, where the allocative resources refer to raw materials, means of production and produced goods, and the latter is organisation of social time/space, chances for development and relationships
between people (ibid.). The concept of ‘resources’ adapted by Franks and Cleaver in water governance encompasses “general relationships of power, structures of inequality and rules of social life and resource allocation” (2007:294).

‘Mechanisms’ are fashioned from resources by actors ‘managing’ and ‘practising’ processes of water governance (Franks and Cleaver 2007:293). In this framework, general societal resources are drawn upon in differing ways by various actors – for example individuals, groups, the state – to construct arrangements for water governance (ibid.:294). Rather than define ‘mechanisms’ as merely institutions, access to water may be defined also by physical structures and technology, and furthermore, institutions are seen as arrangements between people, which are reproduced and regularised across time and space (ibid.:295). In this sense, ‘mechanisms’ cover a variety of mediators of access ranging from formalised institutions – such as water user associations – through socially embedded norms of ‘proper’ use, to particular technologies (hand pumps, pipes and so on) (ibid.).

The resources for water governance become transformed through specific mechanisms of access into outcomes through a series of processes of management and practice (Franks and Cleaver 2007:296). By processes it is meant the conscious or unconscious activities of negotiation, decision-making and action, which produce changes in the pattern of configuration of resources, mechanisms and outcomes of water governance (ibid.). Processes of deliberative management and routine practice shape the impacts and outcomes of water governance mechanisms for the poor (ibid.). These outcomes can be identified in several different domains and cover basic access to water (quantity, quality and timing of water availability) and livelihoods, how the poor can use water to support and improve their status (ibid.). Outcomes of water governance can be seen in terms of social relations and processes, for example in latent or overt conflicts that arise over access and instances of inclusion and exclusion (ibid.).
In the above framework, Franks and Cleaver (2007) have given specific attention to gendered outcomes due to the targets of the MDGs and since there is considerable evidence to suggest a gendered patterning of access to water, participation in governance institutions and of poverty (ibid.:296). Furthermore, this framework also defines outcomes for the ecosystem, as it is an integral part of it. Ecosystem outcomes are important because poor people rely on the aquatic ecosystem in multiple and diverse ways (ibid.).

At each interface in the framework, actors (or agents) are recursively implicated – being shaped by and shaping resources, mechanisms and outcomes (Franks and Cleaver 2007:293). To be an agent – or to exercise agency – depends on the ability to act, to choose a course of action (or inaction), the capability to make a difference – in sum to exercise some sort of power (ibid.). This is deeply intertwined into the concept of the human rights-based approach.

2.4 Human rights-based approach (HRBA)

Despite this growing conceptual convergence of human rights and poverty, much remains to gain broad programmatic acceptance of the link between the two areas, an area in which the HRBA represents a step towards realisation of the synergies between the two disciplines (UNDP 2007:8). According to the UNDP (2007), the human rights-based approach can be defined as follows:

The human rights-based approach (HRBA) is the practice of applying the norms and standards set out in international human rights law to policies and practices related to development. It is based on the observation that sustainable human development relies upon and contributes to the joint exercise of social, economic, civil, political and cultural rights. The core principles of the approach are universality, accountability and participation (UNDP 2007:2).

The approach uses human rights law as a framework by applying the intrinsic values (such as dignity, non-discrimination and participation) and the basic principles of human rights (such as indivisibility and interdependence, the
roles of duty-bearers and rights-holders) in the planning, implementation, monitoring and evaluation of programmes that are put out to achieve, for example, poverty reduction (Hamm 2001:1011, UNDP 2007:11).

In addition to the normative development of human rights and the proliferation of legal instruments for their protection, the demand to mainstream human rights into all aspects of the UN’s work – including the UNDP – has led to the ‘UN Common Understanding on the Human Rights-Based Approach to Development’ (UNDP 2006:2). This common understanding commits all UN agencies to the realisation of human rights, use of human rights standards and human rights principles in guiding development cooperation and programming, and capacity building for both duty-bearers to meet their legal obligations and rights-holders to claim their rights (ibid.).

As stated in the ‘UN Common Understanding on the Human Rights-Based Approach to Development’, experience has shown that the use of a human rights-based approach requires the use of good programming practices; however, the application of such practices does not by itself constitute a HRBA, which requires additional elements. These elements are recognised as necessary and unique to a HRBA, and are listed as follows (Darrow and Thomas 2005:500):

- Assessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realisation of rights.
- Programmes assess the capacity of rights-holders to claim their rights and of duty-bearers to fulfil their obligations. They then develop strategies to build these capacities.
- Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles.
- Programming is informed by the recommendations of international human rights bodies and mechanisms.

In addition, a good programming practice depends on recognising people as key actors in their own development, rather than passive recipients of commodities and services. This involves participation, empowering strategies, monitoring of outcomes and processes, inclusion of all stakeholders, a focus on excluded groups, local ownership, an aim to reduce disparity, synergy of bottom-up and top-down, analyses of the underlying causes of development problems, measurable goals and targets, sustaining strategic partnership and supporting the accountability to all stakeholders. According to Darrow and Thomas (2005), the principles should not be perceived as a “strait-jacket”, but need to be more specifically elaborated and adapted to context, practical implications hammered out in practice, and the strengthening and deepening of inter-agency commitment (Darrow and Thomas 2005:500).

The Statement of Common Understanding suggests the following list of principles derived from the human rights treaties that should be integrated within development cooperation and programming: universality and inalienability, indivisibility, interdependence and inter-relatedness, non-discrimination and equality, participation and inclusion, and accountability and the rule of law (ibid.:501). These principles and their implications are elaborated on as follows:

**Universality and inalienability**

The UDHR states: “All human beings are born free and equal in dignity and rights”. This implies for a HRBA that the principle of universality that that all individuals, regardless of personal attributes such as ethnicity or area of residence, must be provided with access to the processes and benefits of development assistance and public goods and policies (UNDP 2007:11). Human rights are inherent and inalienable in human beings, simply by the fact of their being human (Darrow and Thomas 2005:501). Furthermore, in the

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human rights-based approach, universality has potentially important consequences for the definition of target population in the sense that it may no longer be permissible to ignore the, for example, 20 per cent of the target population that – for some reasons – may not have been reached (ibid.).

**Indivisibility**

The principle of indivisibility of human rights acknowledges that no category of rights takes precedence over any other (UNDP 2007:13). Human dignity is indivisible; meaning that denying one part of it affects the whole. Human rights of all kinds are of equal worth and validity, inextricably linked and equally deserving of priority. The indivisibility principle means that priority cannot arbitrarily be given to one category of rights over another (Darrow and Thomas 2005:502-504).

**Interdependence and inter-relatedness**

The principle of the interdependence of rights recognizes that the realization of one right depends on or contributes to the fulfilment of another (UNDP 2007:13). This means for example, fulfilling the right to primary education contributes to the enjoyment of the right to a decent standard of living. For an HRBA, these principles together mean that efforts should be made to fulfil different types of human rights at the same time (ibid.) The principle of interdependence requires improvement in the realisation of all, or at least some, of the other human rights in any context (Darrow and Thomas 2005:504). For example, it does not make sense to talk about the right to information, without a minimum realisation of the right to education (ibid.).

**Non-discrimination and equality**

Non-discrimination is a basic principle of human rights and a precondition of peace and development (Hamm 2001:1017). The twin principles of non-discrimination and equality are among the most fundamental elements of international human rights law. They are enumerated and elaborated in
numerous international instruments, not least the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC) (OHCHR 2004:16). Non-discrimination in a human rights-based approach to development pays special attention to disadvantaged groups in a society, and current development projects already address some of these groups, especially the poor, women and children (Hamm 2001:1018). However, the legal obligation aspect is not recognised as such (ibid.).

Participation and inclusion
Participation is one of the most important parts of the HRBA (Hamm 2001:1018). Participation in the HRBA establishes empowerment and implies that the people have the right to determine their path of development. This addresses other human rights such as education and information, in addition to adequate food and housing among others, which are preconditions for participation as well as the outcomes (ibid.:1019). In *Voices of the Poor: Crying out for Change*, a study conducted for the World Bank’s World Development Report 2000/2001, one of the significant findings was how poverty was perceived, not merely as the absence of commodities and services to meet basic needs, but rather as a question of *disempowerment* (Darrow and Thomas 2005:478). In the fight against poverty one of the persistent themes among the poor is powerlessness, and hence the OHCHR (2004) states that: “a major contribution of a human rights-based approach to poverty is the empowerment of poor people, expanding their freedom of choice and action to structure their own lives” (OHCHR 2004:14).
Accountability and the rule of law

A human rights-based approach to poverty will include an explicit recognition of the national and international human rights normative framework (OHCHR 2004:14). Special attention will be given to those treaties that a State has ratified for two reasons; ones that represent ‘country ownership’ and the ones that are ratified legally binding on all branches of Government (ibid.). In a human rights-based approach to development, people will be empowered by granting them human rights and imposing legal obligations on others. Critically, rights and obligations demand accountability: “unless supported by a system of accountability, they can only become no more than window-dressing” (ibid.:15-16). This implies that the duty-holders, including States and intergovernmental organisations, be held accountable for their conduct in relation to international human rights (ibid.:16). While duty-holders must determine for themselves which mechanisms of accountability are most appropriate in their particular case, all mechanisms must be accessible, transparent and effective (ibid.:16).

These basic principles described above have an impact on how the human-rights based approach is laid out in practice. Universality and non-discrimination for the HRBA mean that “all individuals, regardless of personal attributes such as ethnicity or area of residence, must be provided with access to the processes and benefits of development assistance and public goods and policies” (UNDP 2007:11). The HRBA processes require that programming cannot be only directed to the ones that are easiest to reach, but must involve special efforts to identify vulnerable and marginalised groups (ibid.).

The international human rights framework “upholds every person’s and people’s entitlement to participate in any civil, economic, social and political process in which decisions or actions will be taken that affect their life” (UNDP 2007:11). The HRBA involves supporting efforts to bring the vulnerable and marginalised groups into the policy process – be that from needs assessment to policy design, to impact monitoring – as they are the
groups that are less likely to be reached. Furthermore, it recognises that citizens should be empowered to be agents of poverty reduction, not passive recipients (ibid.).

Participation adds transparency to the policy process, which implies increasing awareness of the commitments a government makes and those that it does not (UNDP 2007:11). Along with transparency follows a tool that can be used to hold governments accountable. This accountability is strengthened through a HRBA by the explicit identification of ‘duty-bearers’ and ‘rights-holders’ for each right – and the links of accountability between the two groups (ibid.). Duty-bearers are the stakeholders who have the main responsibility to take measures to ensure that human rights are respected, protected and fulfilled for all. These measures include positive actions that the duty-bearer should take, such as passing legislation and allocating funds to increase access to potable water, as well as negative actions that the duty-bearer must avoid, like denying access to education on the basis of race or gender (UNDP 2007:11). The rights-holders are the individual and communities, who again – within the process of realising people’s rights – have the responsibility to both participate in the decision-making processes that affect their situation, and to monitor the implementation and effectiveness of the same (ibid.).

The notion of accountability raises the question of mechanisms of enforcement. On the international level, there is a general judicial remedy for human rights violations to individuals, but on the national level many countries have legislations in place that provide legal recourse for human rights violations. The point to note here is that accountability in the sense of the HRBA goes beyond the purely legal sphere and as a characteristic of the approach can “generate political pressure for governments to investigate and act on the needs of the poor, and to create a sense of responsibility of all actors involved in the development process, from government agencies to civil society organisations to the impoverished themselves” (UNDP 2007:13). With this use of constructive advocacy, there are other potential measures to
enhance duty-bearers’ accountability, such as the monitoring of human rights or the development of organisational performance standards for government agencies (ibid.).

The principle of indivisibility of human rights acknowledges that no category of rights takes precedence over any other, and further the principle of interdependence of rights recognises that the realisation of one right depends or contributes to the fulfilment of another (UNDP 2007:13). There is a further difference between judicial and non-judicial mechanisms of accountability, meaning that even though there is a legally binding obligation to establish accountability, it does not necessarily involve the courts (OHCHR 2004:16). Broadly speaking, there are four categories of accountability mechanisms: judicial (e.g., judicial review of executive acts and omissions), quasi-judicial (e.g., ombudsmen, international human rights treaty bodies), administrative (e.g., the preparation, publication and scrutiny of human rights impact assessments) and political (e.g., through parliamentary processes) (ibid.).

While the human rights-based approach imposes an obligation on duty-holders to work towards poverty reduction, it does not make the unreasonable demand that all human rights must be realised immediately. The international code of human rights will be realised progressively and is subject to the availability of resources (OHCHR 2004:22). The idea of progressive realisation has two major strategic implications. First, it allows for a time dimension in the strategy for human rights fulfilment by recognising that full realisation of human rights may have to occur in a progressive manner over a period of time. Second, it allows for setting priorities among different rights at any point in time, since the constraint of resources may not permit a strategy to pursue all rights simultaneously with equal vigour (ibid.). Accordingly, under the principle of non-retrogression of rights, every effort must be made to ensure that no right suffers an absolute decline in its level of realisation (Darrow and Thomas 2005:515).

In order to be able to account for the mentioned elements of good programming practice in the HRBA, the UNDP has developed a set of
indicators and a user guide for measuring human rights and lists the main data sources available (UNDP 2007:4). The approaches for measuring human rights are divided into three main categories (ibid.:4):

- As they are laid out in national and international legal documents (human rights in principle)
- As they are enjoyed by individuals and groups in nation states (human rights in practice)
- Through the generation of official statistics that may not have been devised originally to measure rights, but nevertheless may serve as important proxy measures related to human rights protection (official statistics).

The sources that cover these three areas are also important for informing an assessment of the baseline human rights situation in the country (UNDP 2007:6). In many ways, indicators for human rights in principle are the simplest forms of measurement, since the source data can be well-known, publicly available, relatively easy to code, and arguably the most objective. These indicators are suitable for providing background information on the formal commitments that countries have made to protecting human rights, it does not, however, say so much about the capacity to implement the protection of a human right (ibid.:7).

Human rights in practice – as the next set of indicators – are those rights actually enjoyed and exercised by groups and individuals regardless of the formal commitment made by a government (UNDP 2007:7). There has been an increase in the availability of comprehensive documentation on human rights violations, in the salience of human rights as an issue, combined with organisations dedicated to documenting human rights violations (ibid.). However, this increased availability of information suffers from being incomplete since reporting on human rights violations is fraught with difficulties, including fear amongst victims, power of the offenders, and comprehensiveness of evidence, among others (ibid.).

As pointed out by Darrow and Thomas (2005), it is worth recalling that the rationale for integrating principles in development programming as
described above, is not that they should take the place of human rights standards as benchmarks for accountability and empowerment. Rather, human rights principles should be selected and applied on the basis of their potential to facilitate the enjoyment of human rights through the development process (ibid.). As stated: “A human rights-based approach is a framework for understanding and managing the negative impacts of discrimination and disempowerment, not a one-dimensional and static formula” (ibid.).

When human rights became a frame of reference for development policy, the perspective changed from a moral commitment and welfare policy in the development sphere, to legal claims of the rights-holders, duties of donors, and governments receiving development aid (Hamm 2001:1014). “Thus, adequate food, education, and health are no longer a matter of charity, but every person has the right to have his or her basic needs met” (ibid.). This requires duty-bearers (donor and recipient states and international organisations) to design their development policies so that they respect, protect, and fulfil human rights (ibid.). This will ensure that the development policies are no longer depending on the specific interests of the donor countries, or of the ruling class of the receiving state (Hamm 2001:1014). According to Andreassen (2006), the approaches require that development interventions (projects and programmes) ensure, above all, that fundamental human rights are not harmed or violated in development interventions. This is the so-called ‘do no harm principle’ (Andreassen 2006:315).

The threats to growth and poverty reduction are caused by rising inequalities (Darrow and Thomas 2005:474). Growing inequalities may contribute to an environment in which the benefits of growth are ‘captured’ by elites. Capture in this sense may be understood as the process by which elites skim development resources intended for legitimate development ends and define policies in a way that protects their own interests (ibid.). Only income in itself is not relevant here, naturally, public policies in fundamental areas (such as education and health) often neglect the poor and favour the wealthy,
with far-reaching consequences for the achievement of human dignity and well-being (ibid.). As said by Darrow and Thomas (2005):

There is nothing natural or inevitable in existing patterns of inequality. The distribution of assets and capabilities does not occur by accident, but is the product of conscious policy choices and political and social struggle. (ibid.:475)

An essential point to underline is that in human rights approaches, an arrogant attitude that ‘the law is the rule’ does not capture accountability as a vital mechanism alone. Conversely, law itself may have limited effectiveness as an instrument for social change, depending on the context (Darrow and Thomas 2005:487). In a context of elite capture particularly, law can be ignored with impunity or interpreted with bias (ibid.).

According to Banik (2010), “the HRBA is an important tool not only for poverty reduction, but also in efforts to combat poverty production since it entails a comprehensive re-definition of the aims and approaches to development such that the boundaries between human rights and development disappear” (ibid.:123). One argument is that the HRBA gives an advantage in the ability to ensure genuine participation of the poor and to better ensure the accountability of policymakers and implementers (ibid.). The focus areas of a HRBA approach include analysing inequalities, discriminatory practices and imbalances in power relations that are often the main obstacles to development. Based on the outcomes of these analyses, the policies are formulated (ibid.:128). A HRBA is said to enjoy several advantages over traditional development strategies, including the ability to ensure genuine participation of the poor and to better ensure accountability of policymakers and implementers, as human rights “contribute to human development by guaranteeing a protected space where the elite cannot monopolise development processes, policies and programmes” (Banik 2010:129). Linking human rights to development therefore confronts the questions of the work of
the practitioners such as matters of power and politics, exclusion and discrimination, structure and policy (ibid.).

It could be argued that the linkages between human rights and poverty reduction in the development discourse appear to be more a rhetorical exercise than having an actual impact (Darrow and Thomas 2005:482, Banik 2010:124). Despite a growing literature on human rights-based approaches to development and poverty reduction – including the rights to food, water and health – there is a need to focus on how global theory can be operationalised into effective national practice (Banik 2010:124). A lack of clarity, may risk undermining the integrity and credibility of human rights as both normative concepts and operational tools (Darrow and Thomas 2005:484). According to Andreassen (2006), one of the main obstacles to the application of human rights – inspired methodologies of economic and social change – is the lack of political commitment to applying these principles. Hence, human rights-based approaches are often severely restricted by political institutions, power relations or cultural practices (Andreassen 2006:319).

According to Hamm (2001:1008), obstacles related to doubts over the justifiability and institutionalisations of economic and social rights weaken the acceptance of the legal obligations that come with a human rights-based approach. With regards to the linkage between human rights and development, McInerney-Lankford (2009:51) pointed out that today the relationship between human rights and development is defined more by its distinctions and disconnects than its points of convergence, seen from a legal perspective. McInerney-Lankford points out that such activity [development] may not be assumed to reflect or promote the realisation of human rights as few of the development agencies reference or mainstream human rights in their design and objectives (ibid.). Furthermore, he argues that – maybe less by coincidence – there is an overlap regarding human rights and development evident in the principles that are prominent in the mainstream of development policy.
Principles of participation and consultation (participatory planning), inclusion, cohesion, good governance, accountability and equality or equity are well established in the development discourse, but they also constitute the tenets of a rights-based approach to development with roots in human rights philosophy or conventions (ibid.). And according to McInerney-Lankford, it is here that the human rights discourse brings added-value to the development discourse, where the convergence lies in the realm of obligations. One example is equality, as equality is a central factor of international human rights frameworks such as, for example, the CEDAW, ICCPR and ICESCR (McInerney-Lankford 2009:54). The development discourse often embraces equality principles like inclusion, cohesion, or empowerment, and further may also be transposed more implicitly through activities that foster inclusive development.

Rights confer “moral legitimacy and the principle of social justice” to development objectives and help shift the focus of analyses to the most deprived and excluded, especially as concerns deprivation caused by discrimination (Darrow and Thomas 2005:486) from the 2000 Human Development Report. Thus, human rights-based approaches compel us deeper into analyses of political and social power relationships in the public and private spheres, and the channels of contestation – formal and informal – that regulate the pattern of ‘winners’ and ‘losers’ in the process and endowments of development (ibid.).

Hamm (2001) argues that the process of neo-liberal economic globalisation threatens social standards, especially in countries of the South, and therefore calls for a stronger consideration of human rights (ibid.:1007). Moving from an economic growth discourse, Hamm argues that the HRBA will not guarantee success in itself, but it brings important changes and options for sustainable success for development and human rights. This follows due to a broad consensus over the content of human rights, implies a change in perspective because of the legal obligations and it influences the agent and changes the policy dialogue between donors and recipients (ibid.:1012).
Darrow and Thomas (2005) argue that a human rights-based approach considers that power inequalities play a fundamental rather than a marginal role in poverty reduction. It therefore addresses them directly using objective norms to underpin specific claims and obligations of equal application to all human beings, as opposed to alternative development approaches such as basic needs and livelihood (ibid.:489). It sets objective limits to the phenomenon of elite capture, providing essential minimal human guarantees for the benefit of those suffering the consequences (ibid.). Hamm (2001:1023) claims that the HRBA to development can be implemented successfully only when those responsible and involved (in ministries and international organisations as well as the people concerned) know human rights in depth. In translating the HRBA into practice it must be clear which human rights will be addressed (ibid.).

Another important aspect is that the concept of human rights may be perceived as a ‘Western’ concept and therefore alien to other contexts such as Africa (An-Na’im and Deng 1990:2). One argument for this has been that African is community or group oriented rather than individualistic (Howard 1990:159-160). Another argument has also been rooted in choice of words, rather than the understanding as argued by Tibi (1990):“non-Westerns tend to confuse human rights... with human dignity. If one is talking about the latter, there is no doubt that fully developed notions of human dignity exists in many non-Westerns cultures (ibid.:109). The reason to not absorb such a universal concept may unfold from a assertiveness of traditions that serves as a force that casts doubt on the universal validity of international standards, in combination with domination of ‘Western’ influence on the human rights formulations (Leary 1990:15). According to An-Na’im and Deng, it is nearly always the elite who interpret the culture and use it or abuse it for their own political ends, however, that a contextual cultural approach is the appropriate means by which to promote universal recognition of the concept of human rights (1990:1).
2.5 Operationalisation

In this study, the basic principles of human rights provide the foundations of the analysis of my chosen case. Even though the right to water applies strictly to personal and domestic uses of water, a human rights-based approach could be used when considering larger issues, such as water resource management, according to the OHCHR.\textsuperscript{43} It can be argued that such an approach notably requires that no population group should be excluded, and that priority in allocating limited public resources should be given to those who do not have access or who face discrimination in accessing safe drinking water. A HRBA also informs water management by clearly prioritising, in the allocation of water among competing uses, personal and domestic uses as defined in General Comment 15.\textsuperscript{44} My focus will be on the perspectives of the duty-bearers as part of the water governance in the processes of mediating the water resources in South Sudan and the human rights principles of participation, equality and accountability.

Participation in these processes becomes important seen from the viewpoint of a newly established government. In the landscape of actors in the water sector in South Sudan, there is a myriad of different overlapping ministries, donors and NGOs,\textsuperscript{45} and furthermore there are several established coordination platforms, forums, etc. I acknowledge that there are several actors in the water sector, however, I do not aim to present the full overview of these for the purpose of the overview itself. In this thesis I will focus on the Ministry of Water Resources and Irrigation and the relation with the donor community and the NGOs. For the delimitation of the scope of the thesis I concentrate on the state, donors and non-governmental organisations, with


\textsuperscript{45}For further reading, I refer to various reports such as “A Needs Identification Study of the South Sudan’ Water Sector” dated 20\textsuperscript{th} September 2010 conducted for NUFFIC-NL by QUEST-consult and “An Institutional and Organization Development Process for the GoSS Water and Sanitation Sector” dated September 2010 conducted for GTZ by Concepta Team Consulting.
specific views on participation, accountability and equality seen from the state actor.

The right to participation is a crucial and complex human right that is inextricably linked to fundamental democratic principles (OCHCR 2004:18). The HRBA includes control of planning, process, outcome and evaluation (Hamm 2001:1019). It strongly affects development policy, for it changes the direction from top down to one that integrates from the bottom up (ibid.). Related to this case, the ‘bottom-up’ participation and the possibility to influence the policy directions are represented by the new government and the Ministry of Water Resources and Irrigation. Participation as a human right both underlines the duty of those responsible to supply the conditions for participation and dismiss paternalism and charity, and by this strengthens civil society and democracy (ibid.). The ultimate objective is to institutionalise self-sustaining processes of participation, building upon existing mechanisms and political institutions as far as possible (Darrow and Thomas 2005:506). Participation is closely linked to access to information, as lack of access to information is one crucial factor that leads to a sense of isolation and social exclusion (OHCHR 2004:19-20). With information in this case, the perspective would be from the government side to influence the direction of the development of the water sector. How are the different priorities received and acted upon? To what extent is the Ministry setting the agenda?

With participation follows accountability. Accountability underlines the obligations of ‘the State’, as duty-bearers to ensure access to safe drinking water and sanitation to rights-holders. In practice, accountability requires the development of laws, policies, institutions, administrative procedures and mechanisms of redress to promote and protect access to safe drinking water and sanitation.46 This accountability is strengthened through a HRBA by the explicit identification of ‘duty-bearers’ and ‘rights-holders’ for each right – and the links of accountability between the two groups (ibid.). Duty-bearers

are the stakeholders who have the main responsibility to take measures to ensure that human rights are respected, protected and fulfilled for all, meaning to take upon actions such as “passing legislation and allocating funds to increase access to potable water, as well as negative actions that the duty-bearer must avoid, like denying access to education on the basis of race or gender” (UNDP 2007:11). By looking at the participation of the actors in water governance as mentioned, in this case I want to explore how the feature of accountability is evolving. What are the possibilities of taking responsibility for the mandate given?

Equality and non-discrimination are also fundamental principles in the understanding of human rights. Non-discrimination in a human rights-based approach to development pays special attention to disadvantaged groups in a society, and current development projects already address some of these groups, especially the poor, women and children (Hamm 2001:1018). Universality and non-discrimination for the HRBA mean that “all individuals, regardless of personal attributes such as ethnicity or area of residence, must be provided with access to the processes and benefits of development assistance and public goods and policies” (UNDP 2007:11). The HRBA processes require that programming cannot be only directed to the ones that are easiest to reach, but must involve special efforts to identify vulnerable and marginalised groups (ibid.). A part of a water governance framework is the actors who interact at all points within it (Franks and Cleaver 2007:297). People of South Sudan are of course one of the major ‘beneficiaries’, however, in this thesis it is assumed that this group – not to claim they are homogenous either – is not fully enjoying the outcome of a fully functional water sector due to the reality of emerging out of decades of war. Hence, focusing on the group would imply that obvious findings would emerge. This may be even more the reality for the people at grassroots level, as the country still has ongoing conflicts and a humanitarian situation despite the official time of peace. Still, the ultimate outcome of good water governance would in brief be the ‘access of water for all’.
In this thesis, I will explore and analyse how the principles of equality and non-discrimination take place in the processes of water governance. What are the social structures and mechanisms in the access to water? What are the constraints and challenges? How does participation and accountability relate to equality in water governance in South Sudan? Given the conditions for fieldwork and the challenges met, and knowing that the Government of South Sudan and its Ministries are barely starting to build a state after the CPA in 2005 and are in the making of their ways to function, I will aim to answer my research questions by analysing the case as described in this chapter.
3. Development, water governance and human rights principles in South Sudan

3.1 Introduction

South Sudan is endowed with water resources. As described in the more recent documents describing the water resources in the new country – the Water Policy 2007 – South Sudan covers an area of about 640000 square kilometres, with the entire area distributed in the southern plains of the White Nile and its tributaries. The water resources vary substantially from year to year, with periodic major flood and drought events. Within the regions there are various surface water sources comprising perennial rivers, lakes and wetland areas, seasonal ponds, river, torrents, streams and extensive floodplains, and in addition, characteristic falls or rapids upstream of the rivers. In map 3, the major rivers and water bodies are shown. The Sudd is located in the middle of South Sudan, and the river Sobat enters with its tributaries from east, north of Jonglei. From the west, one sees the Bahr el-Ghazal.

The richness and potential of water resources in South Sudan is depicted by one of the sources in my interviews: “If water is properly managed, South Sudan could be the food basket of the world!” And it is the elements of water governance I aim to gain an understanding of in the following chapter, by undertaking an analysis of the views of the Ministry of Water Resources and Irrigation as a duty bearer for water management in the light of human rights principles.

47 Locally known as the Toich in South Sudan.
3.2 The water resources in South Sudan: potential and challenges

Several areas of water use in South Sudan have been identified in the Water Policy 2007, based on traditional use and areas that can be nurtured for the future development of South Sudan. The basic access to safe drinking water for life is an uncontested need in this matter. This includes access to basic water, sanitation and hygiene facilities in order to secure the health, welfare and productivity of the population. Furthermore, there are water requirements for developing agricultural activities. Subsistence agriculture is the main livelihood activity for 95 per cent of the population. However, South Sudan’s agricultural potential remains largely underdeveloped, which is in turn linked to inadequate water supply. South Sudan has extensive forests and woodlands, although these have in recent times come under threat from overexploitation by rural inhabitants. Management of the water resources in the catchment areas are linked with forestry, as they are major uses of water; in addition, they serve a range of important environmental functions, including water conservation and mitigation of climate change.

South Sudan has an abundance of livestock, with an estimated 10 million cattle and an annual growth rate of 2 to 3 per cent. Cattle are a major component for livelihood and culture in South Sudan, and they are generally concentrated in areas where rainfall is marginal for cultivation. Distribution of livestock watering points is a major determinant of grazing patterns. There are considerable inland fishery resources in the Nile River and its tributaries. The fishery sector has great potential for improving food security and alleviating poverty; however, this requires consideration of several issues related to the fishery sector itself as a market and the pressing issues of environmental and conservation concerns in the fishery sector related to

pollution of water courses, over-abstraction of water, diversion of river courses and unfavourable human activities disturbing the wetland habitats along the water bodies. The fishery sector is heavily dependent on effective management of water resources and conservation of the environment.\textsuperscript{51} The same is true for natural resources; South Sudan has abundant mineral and natural resources, and their exploitation and processing need adequate and appropriate water supply systems to meet the demands in the future – and technological advancements for recycling industrial water to promote environmentally friendly solutions.\textsuperscript{52}

Currently, there are no hydropower stations existing in South Sudan, despite the enormous potential both for larger and smaller hydropower stations and multi-purpose schemes for domestic and industrial electrification.\textsuperscript{53} The only plans existing to generate power are from the Fula Falls\textsuperscript{54} below Nimule (by the border with Uganda) and Bedden Rapids above Juba. In South Sudan, waterways play a vital role within the transport network. The White Nile and its major tributaries of Bahr el-Jebel and Bahr el-Ghazal are navigable throughout the year, and minor tributaries, such as the river Sobat, are seasonally navigable. Traffic is expected to increase, and therefore it becomes increasingly important to minimise the obstructions of waterways, maintain minimum water levels for transport and mitigate potential negative impacts on water quality.\textsuperscript{55}

The cross-cutting issues of water and environment have been seriously neglected due to the long war.\textsuperscript{56} And as the country emerged from the war and towards development and rapid urbanisation and large scale population

\textsuperscript{51} http://www.bsf-south-sudan.org/sites/default/files/GOSSWaterPolicyBrief-final.pdf, accessed 5\textsuperscript{th} May, 2011
\textsuperscript{52} http://www.bsf-south-sudan.org/sites/default/files/GOSSWaterPolicyBrief-final.pdf, accessed 6\textsuperscript{th} May, 2011
\textsuperscript{54} http://www.bistandsaktuelt.no/nyheter-og-reportasjer/arkiv-nyheter-og-reportasjer/str%C3%B8m-og-l%C3%A5n-for-vekst-i-s.sudan, accessed 20\textsuperscript{th} February, 2012.
settlements, there is an urgent need to raise awareness of environmental issues and develop basic environmental standards to guide water resource development. There is a concern to maintain the water flows necessary to support basic ecosystem functions and of particular concern is the ‘Sudd’.

3.3 Participation and access to information

The previous chapter describes a vast range of water resources that need to be managed in order to achieve fair and distributed access to water for people in South Sudan. In the following section, I will analyse how participation by the actors takes place in the various processes in water governance. Here, the view of the Ministry of Water Resources and Irrigation, the NGOs and the donors, and the factors that influence the processes towards access to water will be studied. First I will present the Ministry of Water Resources and Irrigation.

3.3.1 The Ministry of Water Resources and Irrigation

With the formation of the GoSS in October 2005, the Ministry of Water Resources and Irrigation (MWRI) was created, which is the main official actor regarding water management. There are other bodies within the ministries that are central regarding the administration and management of sanitation and hygiene, other issues related to health and hygiene practices, primary education, environment and natural preservation, and hydropower and dams.

The MWRI’s mandate is to safeguard and conserve fresh water systems and carry out and supervise hydrological studies, flood control works, irrigation and hydropower developments, and water storage facilities. The mandate was expanded by the GoSS Presidential Decree of July 2008, which reorganised the functions and duties of the ministries. This required MWRI to ensure the provision of safe drinking water and improved sanitation services to the people of South Sudan. The MWRI is to ensure coordinated development and management of water resources, on one hand, and provision and

sustainability of water and sanitation services on the other. One of my sources from the MWRI explained how she saw the core of the responsibility of the water resource management:

For most of the human activities you have some water. So what happened is that the directorate, which is the same important to realise that people need water management. Water management is a suggestion where you have two activities in which you need water and you need to weigh…which one should take which amount of water so that we will survive from the other types of water. We cannot drink water because we need it for irrigation, yet we need because you need to see that illustration of what is – is used fairly, even of the need to water. You must detach all the areas with the consideration that we don’t run out of funds and certain other items.

The quote described water management in a holistic sense, due to the fact that water is a part of many aspects of life and society, and access to water is more than just the provision of water. In South Sudan, the responsibility for operating and managing the facilities and delivering of services lies with the state and county levels of government. The South Sudan Urban Water Corporation (SSUWC) is responsible for providing urban water services, while urban sanitation remains the responsibility of the Directorate of Urban Sanitation in the Ministry of Housing and Physical Planning (WASH Strategic Framework 2011). On a national level, strategic development regarding basic infrastructure on water and sanitation and development of the water sector lies within the auspice of economic development under the sector objective of ‘infrastructure’, while water management is interlinked with all the three sector objectives, including economic development, natural resources and economic functions (South Sudan Development Plan 2011–2013).

The MWRI consists of the following directorates: Water Resource Management, Hydrology and Survey, Planning and Programming, Irrigation and Drainage, Rural Water Supply and Sanitation, and a support directorate of Administration and Finance. In addition to these directorates, an important part of the operational tasks related to water supply is conducted by the South
Sudan Urban Water Corporation (SSUWC) – a semi-autonomous entity within the ministry – in collaboration with the assigned representative for the Urban Water Program under the directorate of Planning and Programming. An organogram of the MWRI is shown in Map 1. The directorate of Planning and Programming is responsible for overall planning and facilitating, monitoring and evaluation, and capacity-building activities that occur within the ministry, within the different ministries, and in relation and cooperation with donors, and further outwards to the state levels. Moreover, within this directorate the responsible for Urban Water Programmes sits, which is a unit within the planning department. The Urban Water Programmes, at the ministry level, deals with planning and programmes, development programmes and resource mobilisation, and plans for development projects. They are also supposed to regulate the water supply sector; however, this function is not operating, as expressed by one of my sources at the MWRI:

(…)…as we don’t have Executive Board, it is still not in place. We just do policy directions, planning for government funding projects. If we have plans we take some time to look for funding, and supervise the implementations.

Currently, the NGOs carry out 85 per cent of the activities related to water, sanitation and hygiene. The Planning and Programming directorate – with the underlying planning unit for water programmes – are of specific interest in this thesis, as the representatives are central in the realm of water governance regarding conducting planning and setting the priorities. And this relates very much to the directorate of Hydrology and Survey – as they are the provider of water resource data that are necessary for physical planning of water facilities – and as well as the directorate of Water Resource Management. They work closely with activities that are related to social and institutional structures for access to water. My sources are therefore mainly from the directorate of

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3.3.2 Human capacities and participation in processes

In water governance, there are several resources – both material and non-material – that are processed by actors mediated to outcomes. The processes and outcomes are in this context highly dependent on the resources available, such as human resources. One issue central to the development of the water sector in South Sudan is related to resources and the capacity of personnel, which was a common theme in this thesis throughout my interviews (especially at the MWRI) and discussions. A statement in my interviews from one of my sources at the MWRI highlights a challenge related to capacity:

"We actually take care of the life of people through the systems of water we use. That’s the most important thing we do in this directorate although it has – it looks very, very… very impressive in settlement like these, but it’s due – it’s due to lack some few areas because…what you lack in this ministry is the. There’s a problem in this ministry … people are not updated with their skills."

This statement falls well together with the perception of a former international official working with water in Juba, who claimed that the MWRI so far seems as “merely an empty shell”\(^\text{59}\). The representative at the MWRI did not easily explain this challenge to me. It is a personal and professional challenge to state that his or her work place is not performing or does not have the capability to do so. Capacity is fundamental – in terms of formal education and necessary knowledge to do tasks and be a part of the processes – for an employee to feel confident and empowered to feel like a valued participant in the work process.

As a result of the war, South Sudan consists of a very young population, and a majority have not received education at a high level.\(^\text{60}\)

\(^{59}\) Personal communication with a official Norwegian former employee in Juba, by phone, Oslo, 25\textsuperscript{th} April, 2011.

\(^{60}\) The “lost generation” of South Sudan retrieved at http://www.rebuildingsouthernsudan.org/, accessed 21\textsuperscript{st} March, 2012
Overall, it is not especially controversial after decades of war; a whole generation has lost the opportunity to get education. The capacity of personnel and relevant competence, therefore, became repeated topics in my interviews, no matter the water topic discussed. The concept, however, of human capacities and resources has more to it than merely the ‘lack of capacity’, as I will come to in the following section.

Education and formal skills are not the only challenge regarding resources; equipment is also required in order to maintain a continuous and sustainable access to water. One of my sources from the MWRI raised this issue:

We don’t have the human capacity with the technical expertise to maintain a water treatment facility. It’s [human capacity] there, but it is not equipped. So, those things [water facilities] are prone to break down and so forth.

One could recognise in this quote that the notion of the ‘lack of capacity’ is changing. The ability to fully perform a task is described to be because of certain aspects – here it is claimed to be lack of equipment – instead of a lack of capacity. This hinders the water committees or the local government responsible for providing access to water because of the means needed.

Initially, the concept of human development is centred on “enlarging people’s choices”, with arguments that people should get the opportunity to invest in what they value – giving them capabilities and putting them to use – and be able to express themselves freely and creatively. This could also then be a prerequisite for those practicing the policy and development directions, that is, at the MWRI – or in the local government as well. And this again, in the sense of a HRBA, would come from being able to participate in the processes and having the capacity to have a fruitful opinion on the agenda and priorities set, or even to set the priorities for development. This is because, from a human rights perspective, development is growth that is “carried out in ways that are compatible with human rights requirements,” and further that,
“such growths must be participatory, non-discriminatory, transparent, accountable and enshrined in international human rights law”. And so it appears from my sources that the capacity to conduct their mandate is somehow limited, meaning that, in the framework of HRBA, the role of the duty bearer is at stake in efforts towards achieving human development in planning, implementation, monitoring and evaluation.

The issue of the lack of capacities seems to also have a stigmatising side to it. Frustration appeared in my interviews from both Sudanese employees in the ministries and representatives from the Sudanese diaspora in Norway. The employees express an assumption that they don’t have competence and work capacity, and as a result of this, developing agencies prefer to hire international staff members. One employee at the MWRI said:

...but you see, sometimes people tend to think we don’t have capacity, when I have capacity. But I have not been given space to make my own decision, because sometimes it happens, sometimes people fear you when you are very educated and they get you to do only small jobs.

This illustrates a troubling issue in the HRBA framework of granting employees the ability to be creative and have a voice in the processes – yet the state actors are not empowered to be fully involved. The government has certain accountability to the stakeholder, but the reality is that management is limited. In the recently launched Water Policy 2007 and Strategic Framework 2011, the issue of lack of capacity – and to have the right capacity in the right places – is a high priority. On the other hand, in my interviews it is another reason why the level of skilled people is low:

They are – like, within the government here, the first battle [the first civil war], people were given very senior positions and did not

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61 Personal communication within the Sudanese diaspora in academia, Oslo, 10th August 2011.

62 https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbnx3YXNoY2x1c3RlcNvdXRoc3VkYW58Z3g6NTQ0MWY1OWIwMWVhNnM2OA, accessed 6th April, 2012.
necessarily deserve them. So, imagine if I’m a diploma holder and I have not work in many years. Then you come, with a Ph.D. They are not like in other countries where it is a known fact experience and education qualifies you to a position. Not your age, right? Don’t lose sight of your age. But there are people who are like that and always are resenting you because you have a Ph.D. and he doesn’t have. Know what I mean? While you have a master’s, he does not have. And you do not have that working relationship. So, it happens.

This describes a situation in which the skills are not ‘allowed’ to be free and fully functional. The sources in my interviews talked about open vacancies; however, the value of the process was questioned, as it is a system with a serious lack of transparency and solid arguments. It appears to be more of a “known” – yet maybe not accepted – structural arrangement in South Sudan. The result of this system of ‘granting’ positions leads to a situation that is expressed by one of my sources at the MWRI:

And I find some really old people holding positions, but they don’t qualify for it. To be frank…he’s just a drainage technician. He should be working with my brother…but the system allows that. If he was in the Army, he’s a colonel, so it’s political appointment. That’s all. It will take time.

To recruit people who have fought in the war may be common for countries emerging from war to peace. According to one of my sources working at a higher political level in South Sudan, this is especially true for South Sudan. Emerging from a long and devastating war, the top leaders are to a certain extent dependent on working closely with the president, who needs to be affiliated with people who fought together in the field during the war. It can in fact be claimed that there exists a general ‘expectation’ that people fought in the war, and scepticisms may occur unless one can show merits from the battle.

63 Personal communication with a Norwegian former employee at the Government in South Sudan, Oslo, 6th March, 2012.

64 Personal communication with the diaspora, Oslo, 10th April 2012.
Several of the donors are involved in capacity-building programmes, with a different strategic approach. This has – according to Bennett et al. (2010) – been too slow and ill-targeted due to the piecemeal and uncoordinated approach adopted. When inquiring how to overcome the ‘system of recruitment’, one of my sources at the MWRI had this explanation:

(...) and then another one targets capacity. How do we keep its capacity? The process of assessing our current capacities, those sitting in the offices like us. What are our capacities? Then next, how do we start to get capacity? First of all, those in – because you cannot get rid of them [the colonels], they are the ones holding the pot. They are the current soldiers in front. If you get rid of them [the colonels], nothing functions. So, the little they’re doing, you keep them. Then, you progressively bring up the next colonels. But it’s like we are thinking if we do not have capacity to manage a water treatment plant, what is wrong with outsourcing it? And then just create it on random understanding. Anybody from anywhere in the world. Somebody can come from Norway to manage Juba’s water treatment plant. I mean, we are now asking that. Why can’t we do that?

This quote illustrates the difficult situation of being in a post-conflict situation in which the ‘system of recruitment’, as mentioned in previous section, is very much the reality, and it shows how this limits the options and choices of the MWRI as the duty bearer in its work. It appears that it is not an option to remove or reorganise the personnel, as the employees don’t have such an influence on these issues in general. It was also claimed that development would not happen until this system of recruitment fades out and skilled people can be given the positions. There are few seniors in general in South Sudan. The senior positions are often held by people are not fully competent for the work to be done. Hence the satirical term; ‘he is sleeping there’, is a saying for the ones presently at work, but not really conducting any work.

On the other hand, in discussions with a historically rich and skilled senior – as one of the few seniors existing – my impression is also that there is a limited climate for employees to make use of their skills while participating in processes – like ‘being in a bind’. The constraints of the situation affected
several of my sources because of limited responsibilities and lack of influence, and the feeling of being disempowered, both due to a lack of formal skills overall and a lack of other resources. However, the people I interviewed had different reasons for coming back to Juba after the war, including family issues and a motivation to serve their country, now that it was finally independent. Another motivating factor was that there had been progress in the water sector after the MWRI was established.

In this case, I claim that in the water governance, people capabilities, or capacities, is also of significance in order to be able to make their own choices. Even though ‘well-being’ of course is intended for the poor, it shows in this case that without giving the means to be capable, be it education, access to information, the space to be included, the duty-bearer will be disempowered in the processes of water governance. I will argue that in the case of the MWRI in South Sudan, being a new founded ministry given a mandate, the MWRI is to a certain extent both “subjects and objects in development”. In a HRBA sense, the “state” is the duty-bearer. And in the perceptive of Sen – which has influenced the development discourse from a top-down, economic growth-centred development approach to “development as the process of expanding the real freedoms that enhance people’s capabilities to make choices about their lives” – this can, interestingly enough, be said about the MWRI. It appears that in their constraints of carrying out their mandate amidst the presence of a myriad of donors, NGOs, the notion of “lack of capacities”, as many times pointed of from the international development community, is leading to a stigmatising perception of an ineffective and corrupt public administration in general. In my study, I find reasons to claim that this notion –“lack of capacity” – is to a high degree lacking nuance and a real understanding of the factors that shape the processes of water governance seen from the MWRI perspective. This is again related to have the opportunity to “invest in what they values” according to the UNDP, and to be able to express themselves freely and creatively, also when being at work to serve for your country in the public administration, or as stated in the UNDP; “so they can
play their full role in the country’s economic, political and social life”, where the ultimate goal is human development.

Capacity – or the lack of capacity – has led to the current situation, in which the basic services are mostly provided by actors other than the government, the NGOs. Given that the ministry is only involved in approximately 15 per cent of the ongoing activities, one might question the interaction and possibilities for interaction of the MWRI in the provision of water. In the next chapter, I will look more closely into the aspect of participation in the planning and decision-making processes in the water sector.

3.3.3 Available information and inclusion

In the previous chapter, the constraints of access to human resources, a rather special ‘system of recruiting’ appeared, and the consequence led to limited performance and participation in the access to water. This issue also affects the aspects of participation in planning processes – a factor that is one of the core principles of human rights, specifically in the Dublin Principles for water resource management. Even though, ‘participation’ in processes is often referred to relative to the people at the grass roots level, I find it relevant while discussing the mandate of the MWRI – including how the MWRI includes the stakeholders and how the MWRI includes donors and NGOs. So regarding participation planning processes within water governance, there are two relationships I will focus on here; the planning processes the MWRI has towards the local governments and the processes towards NGOs and donors.

The directorate for Planning and Programming is responsible for facilitating the biannual coordination meeting for the water sector at the state level in the country. This event is a three-day meeting in which precedence is set for priorities and the general coordination of activities in each state related to the water sector and connected with the policies at the GoSS level. As said by one of my sources at the MWRI:
(...in those meetings, it will be agreed that for example roads are more important than clean water... doesn’t mean that water is not important. Then the Minister of Finance is the reporting body for the States. It is in fact an interesting exercise.

This illustrated the intention of the federal system in South Sudan, that the local government should set the agenda and have the mandate to prioritise. The states are, ideally, the responsible entity for implementation at the local level. This responsibility at the state level is a new role for the states – after policy makers opted to decentralise the system. The purpose of the federal system in South Sudan is indeed to empower local governments and to distribute decision-making authority to achieve bottom-up participatory processes. However, there appears to be some tension regarding power relationships and decision making, according to one of the representatives at the MWRI:

The states are supposed to manage cities’ delivery. But capacities vary. Some states have absorbed those new capacities easily. However, they are far behind. The duties it provides when there is new capacity, or you progress and be decentralised. Or you divulge some powers, you know? The social regiment type of language is sometimes confusing to some of us who are engineers. Because the evolution of power, the decentralisation of power – there’s a lot of the villages that actually use transfer of power or roles or something like that, and the current level; the government – does most of the decision-making process, the planning process, and so forth.

The quote shows that the issue of capacity appears again as to how it affects the processes within the governance of water. Here it is claimed by one representative at the MWRI that since the local governments do not function in all of the states, it becomes an issue of power, as the central government functions as the decisions maker for the time being. On the other side, the perception of the importance of involving stakeholders at the local level is depicted from the government side by one of my interviews:
The state has a Ministry for Water Resources; a Directorate for Water Resources. At the state level … well, we would want to coordinate them [the processes]. We coordinate first. We go to the state and from the state we go to the county. And from the county, we go to the payam, boma and then to the people. We have people at the grass root level where we work the leadership, like the local leaders. So it’s because they have a very good history of water. See, they’re very, very important in this system. So we don’t neglect them. We get this information and we use our brain to keep it that way.

From the quote, one can read that the MWRI are in charge of the overall coordination, and that this is as far as possible done in consultancy with the grass root level. This involvement is in accordance with basic human rights principles, the Dublin Principles and with the Integrated Water Resource Management (IWRM) rules. This challenge is also captured by the priorities stated in the WASH Strategic Framework 2011, in which the governance of the sector is described; it says that South Sudan is a federal state and ‘is explicit about the need to plan for development in a participatory approach whereby the top-down guidance meets needs and initiatives’. The last coordination meeting was held in February 2012, where the governor expressed the need to focus on water management, especially, and not only on the parts of the issue dealing with drinking water: “When you discuss about water, also discuss on proper ways of managing water the sources”.

The possibility of participating and interacting at these coordination meetings is assumed to be present; however, it is also observed by attendants of these meetings that the level of interest or active participation may be challenged by other interests of less relevance to the coordination meetings, like personal errands and similar activities. In a study on inter-governmental relations conducted in 2008, over 100 governmental officials were interviewed. The feedback from the states on GoSS performance was positive, in general, but included a need to focus on state economic viability, economic

diversification, corruption, civil service competency and security, as well as weak inter-governmental communication, including confusion about powers and competencies; and tribalism is also mentioned as an obstacle for GoSS performance.\textsuperscript{67}

The MWRI is the entity that develops policies and frameworks, and it is currently the ‘hub’ for information for planning. Little is gathered and collected by the local governments, other than historical and local knowledge, as mentioned before. In the rest of the data, there is not much information, other than the legacy of the OLS (Operation Lifeline Sudan) and UNICEF’s database of water points during the war, which are handled by the MWRI after a recent handover. Some official statistics on households and the various sets of information held by academia and consultants exist, but little is ‘processed’ further. There are challenges related to this, as well, as depicted by one of my sources at the MWRI:

The difficulty I have is that because of the many wars we have had, we do not have baseline studies. We don’t have baseline information to allow you to plan. For instance, for each of the towns, I don’t know what the population size is, what the population growth is. The demographic figures I do not know. Secondly, the socioeconomic aspects I do not know. Thirdly, available sources of water: All that information is missing. I would have been very happy if somebody would come and assist me to do baseline studies for all the 79 counties. That would make planning much easier, because I could then decide what type of facility for this area and how much it will cost us. Then I’ll have these plans on my table, and we can just walk in here, and I say, ‘According to my plans here, the areas of urgent needs are these, according the priorities, for the following reasons’. Then, we can debate it or I can give you one week to come back to me, choose which area you want. It’ll be easy. So, planning, currently, is very difficult.

The representative expresses a frustration of not knowing enough, so the participation and influence becomes limited. The quote also shows that because of this, the representatives at the MWRI are not able to set the

priorities and to have a genuine discussion about where to implement policies in a certain order based on the realities in the field. When it comes to setting priorities, in my interviews with the ministry representatives, it is expressed that implementation of concrete projects from donors (e.g., water treatment plants or capacity-building programs) are recognised and highly appreciated; however, issues over priorities were discussed. Again, the lack of information affects the process, as depicted by one of my sources at MWRI:

Somebody from African Development Bank came here and he wanted information about all this, and we were quarrelling with it. ‘Please, I don’t have – and then the populations figures I’m giving you are not accurate’. What help from African Development Bank is that? Please, commission a study in all these areas, then come back and ask me; ‘where do I want to implement the project, what area?’ As the first support to Southern Sudan, the Republic of Sudan. This is the way I want to see it go.

From the ministry side, the lack of information – which leads to a low capability of discussing priorities – is also looked upon as not an ideal situation and creates frustration in the duty of carrying out daily activities. The result is that the MWRI is disempowered in ‘setting the agenda’, whereas the desired situation is expressed that the planning and priorities should be made from the ministry side. Then the development agenda for the water supply sector could be set for the interested donors and development agencies who want to invest in South Sudan.68

Another pressing issue for genuine participation – and the progress of the water sector – is the lack of information, such as rainfall data and water flow, in terms of water resource management overall. Other information that is needed is further baseline studies for master planning, such as demographic figures, water availability and growth. These themes are interlinked; in order to pursue comprehensive water management and psychical planning,

68 Personal communication with representative at MWRI, Juba, 18th July, 2011.
information on the water course, water balance, flood ways, water quality, etc., need to be in place. One of my sources at the MWRI explained:

If you come to my office and say, ‘What is the access of water … access to safe water in Bentiu?’ I cannot give you that information. I don’t have it. Neither does anybody in Bentiu. So, you cannot start by what is the access there. Even the population I do not know. The other day I was surprised. An NGO just came to tell me Torit has three water treatment plants. An old one built in the year 1960-something. Another year. And they’re asking me, ‘Do you know about this?’ I said, ‘I have no clue … You are telling me!’ So, I don’t envy my job. An engineer is very happy where he has all the information on his desk, and he’s just waiting to do the design and implementation. At the end, I see a product. I go to the next. But when I start cracking my head to look for that, that’s a problem.

With the lack of such data, the water authorities arrive at a position where their priorities might not fall together with the priorities of the development agencies or NGO, and they do not have the ‘tools’ to steer the projects and to control the development activities. Another outcome might be that the MWRI – if not fruitful in having the needed information – the implementers (the NGOs or development agencies) could stop turning to the MWRI for such information. However, one common aspect of the two last quotes also reveals a need for another approach than what is happening now, and one might wonder why the development agencies and the NGOs are not involved in the work that is called for by the responsible actors at the MWRI, who know what is needed to gain access to water.

One of the challenges regarding water management in South Sudan is that there is no control over the Nile in terms of systematic gauging and measuring of the flow. The directorate for Hydrology and Survey is small, with limited resources and equipment for production of data for planning, resulting in no progress in moving forward with necessary planning processes.

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69 Personal communication with representative at MWRI, 17th July, 2011.
There has been an overly skewed emphasis on water supply and less focus on water resource management associated with most donor-driven projects.\footnote{WASH Strategic Framework 2011 https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbnx3YXNoY2x1c3RlcnNvdXRo3VkyYW58Z3g6NTQ0MWY1OWIwMWVhNmM2OA, accessed 15\textsuperscript{th} August, 2011.}

### 3.3.4 Discussion

Participation is one of the fundamental principles in a human rights-based approach. In my findings it is clear that the capacities of the people in the processes are somehow limited, both due to formal education and skills, but also because of larger mechanisms of political and non-transparent ways of recruiting people, or general mistrust in the capacities of the people itself. The donors are also the duty-bearers in this governance of water, and they are (at least the multilateral donors) according the Common Understanding on the human rights-based approach to Development committed to “use of human rights standard and human rights principles in guiding development cooperation and programming, and capacity building for both duty-bearers to meet their legal obligations and rights-holders to claim their rights”. As seen in the multi-donor evaluation (Bennett et al. 2010), it is exactly this capacity building that has been ill-targeted and off track. I will here argue that, based on my interviews, which kind of capacity building can easily be of track if the contextual understanding is taken lightly upon. Without that, capacity building may appear as a top-down and arrogant act, even though with the best of intention.

The HRBA embraces intrinsic values, such as dignity, non-discrimination and participation, where I would here interpret to have respect for the people involved to ensure such dignity in the “joint exercise of social, economic, civil, political and cultural rights” (UNDP 2007:2) also when undertaking capacity building as a significant feature in the approach to development. The HRBA implies recognition that people are key actors in their own development, rather than passive recipients of commodities and...
services, which of course relates most vividly to service provision among people at grass root level, however, as the duty-bearers are a part of the overall governance of water and water management, they too, I would argue, should be recognised as key actors and passive recipients of development aid, here for example by capacity building, or by receiving aid in general.

From an HRBA perspective, the lack of information leads to a “sense of isolation and social exclusion”. In this case – at this level of planning – it may be claimed that the lack of information leads to lack of influence and control of the processes. This leads to the lack of a true bottom-up approach, seen from the government side, in the process of coordinating and mediation between the actors and priorities of the states. However, this requires that the state representatives are also active participators in the arenas of coordination and planning. Participation, as a human right, underlines the duty of those responsible to supply the conditions for participation, and by this, strengthening democratic processes. This is also true for the MWRI, as they are currently a less advantaged actor in the governance of water. And furthermore, participation, in a HRBA sense, empowers and implies that people have a right to determine the path of development.

According to my findings, there have been different views, whether an approach where the capacity building have been targeted more as an general learning, or where there have been hands-on training of single human resources with specific tasks of technicians in the water sector and of course the capacity is directed to towards the representatives at the MWRI themselves. Despite the efforts, or lack of effort, to find the suitable approach for building capacity, I claim here, that it appears as important in this area, as for other in a HRBA programming, to not perceive the people as passive recipients of capacity building efforts. A contextual adapted thinking with genuine participation as a fundamental principle applies also here.

The participation aspect in planning is closely linked in a HRBA with accountability. In the following section, I will explore the aspect of accountability related to my case.
3.4 Accountability and access to water

The limited ability for a citizen to be an active participant in the water governance processes also illustrates the accountability aspects of the human rights based approach, in terms of how to hold people accountable and to have the means to hold someone accountable. In light of that – in practice – accountability in the HRBA requires the development of laws, policies, institutions, administrative procedures and mechanism of redress to promote and protect access to safe drinking water and sanitation. The duty bearer in this case, the government of South Sudan, is not able to hold the water providers accountable for ensuring adequate water quality to people due to lack of means to conduct its mandate. However, the question might as well be, “How can the MWRI undertake their responsibility given the ‘limited capacity’?” In the following section, I will examine the coordination with donors and NGOs, and explore the various mechanisms in water governance that are related to accountability in this case.

3.4.1 Donors as duty bearers and the coordination of water aid

In South Sudan, according to more recent statistics, the donors’ support is proportionally larger for the water sector than in other sectors. After years of significant humanitarian and aid assistance – more or less effectively coordinated – the ‘aid architecture’ in South Sudan has been focused on in recent years and is consolidated in the ‘Donor Book’. Total donor funding for South Sudan in 2010 stood at over 1.2 billion USD. A relatively small number of donors account for a large part of these aid flows (84 per cent of funds come from the 12 largest donors), but there are many more development agencies and NGOs active in the country that contribute on a smaller scale.

The largest bilateral partners by expenditure were the USA, Denmark, Norway, Canada, Japan, UK and Sweden, whereas the USA has been the largest bilateral partner, with the European donors opting for pooled funds or oversight through the Joint Donor Team\textsuperscript{72} (Bennett et al. 2012:46). The relation between government and donor spending on the different sectors are activities related to the water sector (health, infrastructure, natural resources and to a certain extent, capacity in the public sector) have relatively higher donor funding than governmental funding.\textsuperscript{73} Among the challenges for the donors – in general – are the contextual constraints, with the risks of returning to war greater than any other concern. In 2010, a multi-donor evaluation was conducted, which concluded that the CPA’s ‘failure’ to maintain peace and address local conflicts challenged the donors’ aid architecture, which was built on a peaceful scenario (Bennett et al. 2010:46).

A series of events in the interim period, nevertheless, laid a foundation for changing course and priorities in the aid policies. The Oslo International Donor’s Conference in 2005 was the basis for the GoSS to draft the Aid Strategy for Southern Sudan,\textsuperscript{74} and the strategic planning and priorities were set in the Expenditure Priorities and Funding Needs 2008-2011,\textsuperscript{75} and finally in 2009, the Juba Compact\textsuperscript{76} committed the GoSS to produce an overriding strategic plan that included a Poverty Reduction Strategy and a basis for the allocation of government and development partner resources (ibid.:46-47).

\textsuperscript{72} http://www.jdt-juba.org/, accessed 4\textsuperscript{th} April, 2012.

\textsuperscript{73} http://ssnbs.org/storage/key-indicators-for-southern-sudan/Key%20Indicators_A5_final.pdf, accessed 21\textsuperscript{st} February, 2012.

\textsuperscript{74} http://www.goss-online.org/magnoliaPublic/en/ministries/Finance/mainColumnParagraphs/0/content_files/file/Aid%20Strategy.pdf, accessed 4\textsuperscript{th} April, 2012.

\textsuperscript{75} http://www.goss-online.org/magnoliaPublic/en/ministries/Finance/mainColumnParagraphs/0/content_files/file5/GoSS%20Expenditure%20Priorities%20and%20Funding%20Needs%202008.pdf, accessed 4\textsuperscript{th} April, 2012.

According to Bennett et al. (2010), the GoSS had for the first time systematically reviewed the Joint Monitoring Mission conducted by the World Bank after the CPA – where the long-term development plan for Southern Sudan was drafted along with the peace agreement in 2005 – and revised the priorities for future efforts, among them the need to increase access to safe water and sanitation (ibid.:47). The security context is not only an issue for the donor community, but also at the government level. According to my interviews, the security context is e.g. one of the main hindrances for implementing the Water Policy and programs related to it due to higher activities by the Lord Resistance Army in the border areas. According to the evaluation of the multi-donor activities in the period from 2005 to 2009, the aid architecture has “proven to be largely inappropriate to addressing the dynamics of conflict”. By this, it is said that “most of the bilateral and multilateral funds have not looked at basic services and livelihoods programme rationales or funding decisions from a Conflict Prevention and Peace Building perspective”. The static and inflexible nature of the MDTF and most long-term development funding has not allowed for a context-specific reorientation of funding (Bennett et al. 2010:xvii). One of my sources describes the situation:

So, in the overall, we have currently six [water treatment plants], but the majority of the state capitals don’t have water treatment plants. But currently, we don’t have the resources to build additional water supply systems where we have the big state capitals. Because there are 10 states in Sudan, each state capitol is supposed to have – and then there are several counties that have populations of 25,000 going upwards. They still don’t have [water treatment plans].

77 This study includes the donor countries of USA, UK, Netherlands, EC, Norway, Canada, Sweden, Denmark, Germany and Belgium, http://www.oecd.org/dataoecd/3/40/46895095.pdf, accessed 14th March, 2011.


Much of the discussion about aid in South Sudan after the CPA has been towards the effectiveness around these pooled funds (Bennett et al. 2010:65). An overview of the main pooled funding mechanisms depicts a situation characterised by various attempt to overcome the challenges of time constraints and shifting needs. In 2010, 25 per cent of the funds were delivered through pooled funding mechanisms, such as the Basic Services Funds\textsuperscript{80}, Sudan Recovery Fund\textsuperscript{81} and Common Humanitarian Fund.\textsuperscript{82} The lack of financial resources – or the access to them – came up as an issue in all my interviews. The ability to manage water provision and development of the sector is a balance between available resources, priorities and finances to implement programmes where the needs are identified.

The Basic Services Fund (BSF) was established in 2005 shortly after the signing of the Comprehensive Peace Agreement, with the goal of supporting the Government of Southern Sudan (GoSS) in expanding education, water and sanitation services to communities recovering from conflict and with the purpose to expand coverage and usage of these services in the country. The initial purpose for the BSF was to function as an interim body for enhancing the coverage of basic services immediately after the CPA for a two-year period and to provide a peace dividend as humanitarian operations wound down and as the Multi-Donor Trust Fund (MDTF)	extsuperscript{83} was being established. The MDTF was delayed – and reoriented – resulting in the BSF being extending several times. However, even though the MDTF contributed to improving the coverage of water and sanitation facilities in the first phase (2005–2007), there was claimed to be an emerging need for a complementary early recovery\textsuperscript{84} mechanism in addition to the long-term

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\textsuperscript{80} http://www-bsf-south-sudan.org/, accessed 1\textsuperscript{st} April, 2012.

\textsuperscript{81} http://www.sd.undp.org/SRF-SS.htm, accessed 1\textsuperscript{st} April, 2012.

\textsuperscript{82} http://www.sd.undp.org/chf.htm, accessed 1\textsuperscript{st} April, 2012.

\textsuperscript{83} http://www.mdtfss.org/, accessed 23\textsuperscript{rd} March, 2012.

\textsuperscript{84} Early Recovery is defined as recovery that begins early in a humanitarian setting. It is a multi-dimensional process, guided by development principles. It aims to generate self-sustaining nationally owned and resilient processes for post-crisis recovery, from the UN IASC working group guidance note:
visions of the MDTF to provide more immediate peace dividends for the population. Based on this ‘recovery gap’, the Sudan Recovery Fund – South Sudan (SRF-SS) was established in May 2008 at the Sudan Consortium meeting in Oslo to support the provision of recovery assistance to South Sudan and bridge the gap between the short-term emergency and humanitarian aid, and longer-term development assistance.\(^{85}\)

Although these pooled funds only account for a smaller amount of the total of donor funding in South Sudan, they are an important signal of where the majority of OECD donors allocate funds, even though the bilateral fund elsewhere remains significant (Bennett et al. 2010:65). According to Bennett et al. (2010), this reveals the importance of NGOs as essential implementers in the field. Also, if the USA, the largest bilateral donor, is taken out of the picture, the pooled fund mechanisms would dominate the donor input to South Sudan (ibid.:77).

During the war, the efforts from relief agencies and NGOs were enormous and complicated (Tvedt 1994:89). Several organisations were obliged to work under the umbrella of Operation Lifeline Sudan (OLS), a consortium led by United Nations (UN) agencies – mainly UNICEF and the World Food Program. OLS was formed, with the support of the Government of Sudan and the SPLM/A, in the times of flood and food shortage in 1989 to create “corridors of tranquillity” in order to prevent a repetition of the previous year (Minear 1990.ix, Johnson 1994:129). The OLS was controlled by the regime in Khartoum and was characterised by discrimination of certain groups (Johnson 1994:130, Johnson 2003:149). This led to a major deficit of coverage of basic services to people in South Sudan, combined with a state of facilities characterised by ad-hoc interventions and non-sustainable solutions.

A number of NGOs and UN agencies had been present during the protracted war, and even though the humanitarian effort due to the war was somehow downscaled after the signing of the CPA, several NGOs continued working on a combination of humanitarian and recovery activities due to obvious gaps in covering basic needs for the population (ibid.:52). During the years of the war, the service provision from NGOs led to an undermining of the local government powers as they became a substitute for state administration, collecting fees to pay for such services when the regional government no longer bothered to levy its own social services tax (Johnson 2003:5). The NGOs, in effect, contributed unintentionally to the further erosion of the authority in a very weak state, undermining not only its accountability, but its legitimacy in the eyes of many citizens (Johnson 2003:50-51). NGOs have learned from these experiences and moved increasingly towards longer-term engagement, including the involvement of local governments (Bennett et al. 2010:xviii).

At the government level, it has been an ongoing struggle to follow and supervise the different policies of the various NGOs – especially with technical issues – which have been rectified with uniform guidance notes and common standards that the NGOs and the contractors devised to harmonise the work of water and sanitation. The MWRI is more and more taking the initiative forward in order to coordinate the NGO activities with MWRI priorities.66 This illustrates an aspect of the human rights based approach, the empowerment to influence and determine the path of development. Even though the HRBA refers to the rights-holders – or the people – the ‘lesser’ advantaged group in this case would be the state MWRI, so to speak, which also has the right to influence and participate. The accountability that the duty bearer is supposed to be held responsible for becomes skewed. It does not make the main actor less responsible, but because of the limited capacity of the actors in the field to follow up, the relationship between the duty bearers may affect the outcome of the activities.

66 Signaled as a ‘call for collaboration’ in letter from MWRI to the WASH Cluster, undated.
In the sense of planning or water programmes, one prerequisite for a fair and sustainable access to water is the involvement of the stakeholders, a prerequisite that also would account for involvement of the MWRI with the other various actors in the field. Without participation, accountability becomes a detached feature for the MWRI, which has a mandate to fulfil. Access to funds has an influence on the access to water. A quote from a representative from the MWRI depicted how changes in donor support directly affect the provision of water, as it was planned to increase the coverage of water delivery in Juba to meet the growing need; however, with the retention of the MDTF, there remained only enough funds for rehabilitation of the old water treatment plant in Juba without possibilities to increase the amount of water produced. Another quote from my sources at the MWRI shows how the context changed in the area of donor support and investments as the country emerged from war:

And as the towns grow, you increase the storage capacity, and so forth [if available resources]. And you can take care of everybody. But we don’t have the resources for that. But with the birth of a new nation, I see several interests from several countries. Hopefully – the Japanese government has just given us some money, some grant aids, to build a second facility next to that one, one and a half times bigger than the 7,000. So, we’re going to have around 21 something cubic meters per day. That will be a big plus. At least, we’re getting clear of that ratio, because less than 10 percent of Juba is receiving water from here.

There were delays and myriad funding mechanisms, but this quote illustrates a situation of sudden funding and the targeted aim of the donor – or developing agency. It may directly affect the water situation. Due to the war, instability and insecurity, South Sudan had halted investments,\(^7\) maybe not surprisingly. According to Bennett et al. (2010), the ability of absorbing the priorities and the changing context has been rather slow, as “donors have been slow to examine the specific context of decentralised government and adapt strategies

accordingly. This may reflect highly centralised donor structures and mindsets” (Bennett et al. 2010:xvii).

After the CPA, the donor community had expressed disappointment with a lack of harmonisation and sequencing with the Joint Monitoring Mission, and therefore its value for policy guidance, and due to slow progress from the GoSS side and development of priorities by the government, there was a space for the donors to ‘pick’ projects with high visibility (Bennett et al. 2010:66). It could easily be argued that the responsibility of the government would be to develop policies so that sufficient participation and ownership are established based on a ‘bottom-up’ approach; however, the government’s efforts have not meet the donors’ expectations (ibid.:67). Furthermore, it may be claimed that less attention was paid to the need for alignment with the GoSS priorities – on security that is – than to designing responses around specific contextual analysis rather than general principles of development for state and ‘post-conflicts’ environments (ibid.:76). Security, as one of the hindrances to development, has been outlined as the foremost priority by the GoSS, but they have never had the capacity to ensure donors adhered to their rules. The result has been that aid policy has been driven by the donors themselves with ensuing problems of coherence and sequence – resulting in a mistaken assumption that gave greater priority to socioeconomic development than was warranted (ibid.:76).

3.4.2 ‘Elite capture’ and transparency

Regarding accountability, a serious constraint regarding the availability of economic resources is the issue of corruption. Frustration was expressed for the country’s own leaders by one of my Sudanese sources from a humanitarian agency:

You would see luxury cars moving around in Juba, I mean, even more than in Cairo, and this is the country with the highest mortality in the world. This is not the right time for luxury.
Corruption is a known problem in South Sudan, as in many post-conflict settings. As a study organized by the states explains, the corruption problem is bigger than merely money disappearing, as “corruption is not only embezzlement of money. Tribalism and nepotism are really a problem”. These issues are seen as a big problem, especially due to the little effort that has been given in terms of development and deliveries of services in South Sudan. According to Bennett et al. (2010), many donors could not consider bilateral support through the GoSS until sufficient capacity, accountability and safeguards were in place, as the risks of corruption considerably narrowed the options available (Bennett et al. 2010:46). In my interviews, it is claimed that corruption is “happening from top” as a collective act, and since the CPA in 2005, the division between people – or the few in the elite – has become greater, as the government is not controlling the situation. The problem of corruption is not only reported to be a problem with the elite in Juba, but also with the states and counties. This is due to a power struggle between the central government and the local governments, rooted in fights over resources, in which the newly established government and local governments see conflict over money and decisions powers, as a result of lack of capacity to fully engage in the ongoing processes.

In several of my interviews, it was claimed that corruption is “destroying all future prosperities in South Sudan”. Corruption is no doubt a problem that is in the way of achieving development. According to Darrow and Thomas (2005), threats to growth and poverty reduction are caused by rising inequalities and ‘elite capture’, which means that the elite skim the development resources intended for legitimate development and define policies in a way that protects their own interests. In South Sudan there is what is referred to as “Dinka – domination”, meaning that the Dinka people are highly influential and outnumber other tribes, especially in regional


Personal communication at the MWRI, Juba 21st July, 2011.
government and administration bodies, and have especially increased in the government since the 1970s (Johnson 2003:51).

This is a known phenomenon in South Sudan that results in a highly skewed centre of power for the Dinka-affiliated people, as explained in one of my interviews. A HRBA is said to challenge the power structures to better ensure accountability of policymakers and implementers by genuine participation (Banik 2010:123). With participation, transparency follows; however, as described in the previous chapter, the “lack of capacity” in the administration in various levels can be claimed to hinder participation; hence, true accountability is hard to achieve and an arena for extensive corruption has been created. This creates a situation that continues to prevent economic development from being translated into well-being for the poorest people (Darrow and Thomas 2005:475).

3.4.3 Institutional resources and mechanisms in water governance

Rules and regulations are tools to ensure accountability in the practice of water management. For the time being, the MWRI does not have a Water Act that begins to approach a level of cost recovery for water management so that the income for water services covers the related costs and the capacity to maintain the facilities. However, there are some documents that have been developed, not to regulate the sector, but to give direction for the development of the water sector. These are therefore of relevance to the governance of water.

The first document developed was a water policy. The water policy of 2007 is based on the Interim Constitution of Southern Sudan (ISCC) and the Interim National Constitution (INC), which have given the GoSS a mandate to develop policies and strategies for reconstruction and development in the south. The water policy of South Sudan is built on the principle of water as a human right and incorporates local knowledge, while taking into account

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90 Personal communication with a Norwegian former employee in the Government of South Sudan, 6th March, 2012.
regional and international best practice, meaning an inclusion of the Dublin Principles\textsuperscript{91} (1992) and the targets of the MGDs and recommendation from the World Summit on Sustainable Development (2002), to develop national plans for integrated water resource management (IWRM).\textsuperscript{92} One of the first documents that are a part of the Water Policy is the WASH Strategic Framework 2011. Another strategic framework recently launched is the South Sudan Development Plan (SSDP) 2011–2013; it is the first comprehensive planning document for South Sudan.

Looking at the interaction between the different actors in the water sector, there has been a need for direction from the government of South Sudan, so these new efforts are an achievement from that perspective. Considering the rather huge difference between the state of development between Juba and some evolving populated areas, one of my sources working with the refugee situation expressed doubts that the government will consult with the people of South Sudan outside Juba. Ignoring the integrated water resources principle of participation – especially including women as the main actors in arranging for water in the households – and the right to water discourse collides with a human rights-based approach.

Normative approaches are central to the shaping of development policy, but are not sufficient to create it. They require a common understanding of the normative framework for analysis. Policies for economic growth based on an understanding of ‘development’ do not imply changes in people’s lives, such as greater freedom or fulfilment of capacities (Alkire and Deneulin 2009:5). What is considered to be ‘development’ and what is seen as a policy to improve people’s lives are inextricably linked with values about what matters (ibid.:13). Resources within the field of water governance also consist of non-material resources (Franks and Cleaver 2007:299). For example, the tools


\textsuperscript{92} Integrated Water Resources Management (IWRM) is a process which promotes the coordinated development and management of water, land and related resources in order to maximize economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems and the environment’, retrieved at http://www.gwp.org/en/The-Challenge/What-is-IWRM/, accessed 7\textsuperscript{th} March, 2011.
needed include a mandate to control and monitor water providers and enforcement mechanisms to affect sanctions when obligations are not fulfilled. One representative at the MWRI said:

As of now, no [monitoring of water quality]. It’s supposed to be handled by a public health department. They don’t have the capacity. They don’t go for rounds. They have no vehicles and so forth. So, you need to get them functional. The laws exist, but the enforcement is missing. Because if you cannot enforce existing laws, then what is the purpose of creating the laws?

Unless the tools are established to hold a state accountable, rights – and human rights – are not really ratified. They remain more as “window dressing” than as obligations of the state. One issue that was highlighted in most of my findings is the lack of cost-recovery systems for water services. There are few systems for cost recovery of the water supply; currently people are only paying a small fee – not in line with the expenses of maintaining the water point – or they don’t pay at all. In the urban areas (Juba), the connected households have paid a small token to be connected; however, the consumption is not currently paid for in a cost-recovery manner, meaning that the sustainability aspects remain a challenge. The other system in Juba is community tapstands, for which people pay a small fee; however, when a larger repair needs to be done, it is done by SSUWC. The tariffs currently administered for the existing water treatment plants are according to a flat rate established before the separation and do not serve the purpose, as explained by one of my sources:

(.…) depends which town. Which [tariff] was prescribed, I think, some years back when the Northern – when Sudan was one. And what you would call tariffs. It’s basically small token between nine to 15 pounds per month, fixed charge. It does not generate what you would call enough revenue for normal operation and maintenance.

93 Personal communication with representative at the MWRI, Juba 21st July, 2011.
The quote illustrates the challenge of upholding a continuous access to water without a functioning cost-recovery system. However, the challenge of having cost-recovery system remains, and the willingness and ability of citizens to pay is another issue. The willingness to pay – in the rural areas mainly – is not present on an overall basis, and it is something that is not really expected either, considering the context of a long war and insufficient and intermittent supply. The perception of the services and who is responsible – and the sense of ownership – play a vital role in the issue of sustainability of water facilities.

In South Sudan, according to one of the representative at the MWRI, there are significant differences between the urban and rural areas:

(…)…but some areas they just have the borehole, and people perceive borehole is a free word. They will not pay for that. Especially in the urban area. In the rural area, they do want to give something, a token. Maybe when there is a repair to be done, they will sell their food and then come and repair it.

It is quite common that a borehole is seen as a ‘free’ water source. It might be related to the issue that the borehole is not related much to the administration of water services, and the fact that they are often installed in precarious settings by NGOs and development agencies with a ‘detachment’ from ownership in the community itself. This is also clearly one of the issues in South Sudan after many years of war, but also still the case in recent development efforts. Currently, it is also a fact that the capacity for communities to maintain and operate water points is low, due to limited know-how and lack of access to spare parts.

Relating to institutional regulative frameworks, it is also a significant matter how the management of the Nile – with South Sudan as a new country and a central actor in the Nile Basin – is conducted in the future. The signing

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94 Personal communication with representative at the MWRI, Juba, 18th July, 2011.

of the CPA\textsuperscript{96} marked the end of the long war in Sudan, the longest civil war in Africa. The way towards peace was not without struggles, and in the peace talks, some areas of conflicts\textsuperscript{97} and controversies were still unsolved by the signing, such as the Abyei area, the Southern Kordofan and the Blue Nile. For water resource management, the Nile has historically played a crucial role for the dwellings and the water supply in Egypt and in the northern part of Sudan. The establishment of a new country along the main body of the Nile means a major shift in water resource management of the river.

It is worth mentioning that the Agreement on Wealth Sharing in the CPA does not address water resources, despite the detailed provisions on land and natural resources. Water resources are briefly addressed under the fourth agreement on ‘Power Sharing’ concluded on 26 May 2004 (Salman 2010:304). Questions related to water management and riparian countries will emerge as South Sudan becomes a nation, and according to the intentions of the CPA, the water resources will be determined by the national government depending on power sharing, and not wealth sharing, as one would assume that natural resources such as water might be handled.

Currently there are ongoing negotiations regarding the Nile within the forum of the Nile Basin Initiative. However, the question of South Sudan’s role as it relates to the Nile remains unanswered at this point due to the early processes of South Sudan membership in the Nile Basin Initiative. The opinions on the Nile are – maybe not unexpectedly – strong. The history of vast differences in the benefits of development and the exploitation of the Nile for the purposes of Egypt and the north has played a huge role, as described by one of the representatives at MWRI: “The British are to be blamed. The current agreement should be changed. It is possible. Get the [South Sudan’s] share and leave the rest!”

\textsuperscript{97} Often referred to as “The three areas”.
According to another of my sources, one of the crucial elements in the Nile discussion is that South Sudan, as a new country along the Nile basin, has not estimated their own water needs for the future as a basis for negotiation and future development plans. This is confirmed by the representative of MWRI in the mid-term review. It was foreseen that the GoSS would be an active participant in the Nile Basin Initiative for the sake of being a part of management of the Nile in ensuring the rights of South Sudan and “equitable water for the people of South Sudan”.

3.4.4 Discussion

Rights and obligations demand accountability. This implies that the duty-bearers, including the state and the NGOs, will be held accountable for their conduct in relation to international human rights. The notion of accountability raises the question of mechanisms of enforcement. In my case, it shows that without any institutional resources such as Water Act or regulative frameworks to enforce for ensuring safe and sufficient water for the people, then it becomes difficult to fulfil the role as a responsible government. It does not stop there either; in my findings it also revealed that it is not merely lack of rules and regulations that limit the space for accountability, it was related to lack of equipment and skills, and the possibility to make own decisions and to have control over the processes.

With a high extent of other actors, such as the donor community and the NGOs, it comes in this case difficult to truly identify the ‘duty-bearer’ and the ‘rights-holders’ for each right in a HRBA sense. I would argue that by not being fully part of the process, the possibilities for the MWRI to be accountable becomes difficult. According to my findings, there is a fine line between the representative at the MWRI as ‘duty-bearers’ and as ‘rights-holders’ in its own new country emerging from war, where the needs not covered in terms of basic services also for them as citizen of South Sudan. In a

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HRBA perspective, the notion of accountability goes also beyond the legal sphere and can be characterised by an approach that “generate political pressure for governments to investigate and act in the needs of the poor, and to create a sense of responsibility of all actors involved in the development process” (UNDP 2007:13).

From the finding in my case, seen from the MWRI perspective, I would argue that this can best be done with the genuine participation of the MWRI itself, which are sensitive to the context of its own country. It have been claimed that a HRBA is more “of a rhetorical exercise” than having a real impact. In my case, the elusive environment of the possibilities for the ‘duty-bearers’ to take responsibility and to be accountable, to a certain extent support that claim as it reveals in my finding that it is not merely a will to take upon the obligations that water as a human right implies, but more a limited space to undertake the actions these obligations require.

Participation establishes empowerment and implies in HRBA that people have the right to determine their path of development, to upholds people’s entitlement to participate in processes in which decisions or actions will be taken that affect their life. In my case, I argue based on my findings that this also require for the duty-bearer, whereas my findings implies that for various reasons the representatives are not able to do just that, for example by setting the agenda, or to steer the NGOs while implementing water facilities (which often are done by a contractor more or less supervised) in the work towards increasing the coverage of water coverage. For example may targeted funding ‘bypass’ the priorities of the MWRI, and retention in funding may stop planned projects. However, targeted funding may as well be argued to in fact have a positive impact, the water is in fact coming, however, I would like to her stress the point of the process up to the outcome, what kind of mediating processes where made and who interacted in the process of decisions and prioritising? It is claimed, e.g. by Hamm (2005), that a HRBA will ensure that development policies are no longer depending on the specific interests of the donors countries. This is where I claim that the MWRI’s participation and
influence may have been overlooked. Or the capacities to be able to participate have been undermined. Without genuine participation and accountability, the outcomes for the people have often related to inequalities and discrimination in the water sector; these aspects of human rights principles in the water governance debate in South Sudan will be further elaborated in the following section.

3.5 Inequality and non-discrimination in water governance

Equality and non-discrimination are fundamental human rights and critical to the concept of the right to water. In this chapter, I will explore the different aspects of access to water in South Sudan, the social mechanisms and other factors that affect water governance and the water situation, and how these are related to the previous aspects of participation and accountability.

3.5.1 Water arrangements and the inequalities in the rural and the urban areas

The lack of arrangements for water provision overall in South Sudan is a major issue – especially considering the influx of refugees returning to the south after the referendum – which together with other issues, such as insecurity and access to land for livelihood, makes settlement hard for people. The long war, tribal conflicts and lack of management have implications, of course, for the current water situation at the household level. As for now, average water consumption in South Sudan is around 6 litres per capita per day, which is far below the minimum standard of 20 litres per capita per day established by WHO. The difference between rural and areas are vast; 67 per cent of urban citizens have access to improved sources of drinking water, while only 53 per cent of rural residents have access to similar sources, meaning a significant higher proportion are relying on sources that are characterised as unsafe.
Piped water supply systems that can be considered urban water technology only exist in some parts of Juba and in some regional capitals (Malakal, Wau and Rienk), and by far the largest share of the urban population relies on supplies that could be typically considered rural by nature, ranging from water yards to motorised community systems and private hand pumps. Only six water treatment plants exist in the major towns. The government runs them through the South Sudan Urban Water Corporation (SSUWC). The normal day-to-day management of the water facilities, the delivery of services to the various consumers, the charging for revenue and extension of service is done by SSUWC. Water filtering stations with a common network or stand pipe are reckoned to be the most advanced technology within the water supply system currently in South Sudan; this type of system is used by 6.3 per cent of residents in urban settings (mostly in Juba and state capitals), while only 0.9 per cent of the rural population have access to this kind of water source.

The most common water source for the population in South Sudan is collection of water by hand pumps. According to the statistics, as much as 30 per cent of the population in the urban areas use this as their primary water source, and more than 35 per cent of the people living in rural areas use this source. The water is collected in jerry cans of 20 litres and carried to the homes; one factor that further results in the limitation of quantity is due to the labour of collecting water. The quality of the water depends on the handling of it, whether the jerry cans are clean and covered while stored, and many other pollutant factors.

A significant proportion of the population needs to walk more than one hour to reach a water source, according to the National Baseline Survey of 2009:
<table>
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<tr>
<th>Time to drinking water by state and region in per cent of population</th>
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<td>0     1-9     10-29    30-59          60+          Total</td>
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<td>Southern Sudan, States</td>
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Figure 2 Time to drinking water by state and region in per cent of population (National Baseline Survey of 2009\textsuperscript{99})

The average time for collection is more than 30 minutes for approximately 38 per cent of the population and varies a lot between the states, ranging from Unity, where almost one third of the population have to walk for more than an hour for water, to Western Bahr el Ghazal, where 14 per cent have immediate access to water, almost double the amount of the rest of the states.

There are significant differences in the access to water – and the mechanisms leading to access to water – between urban and rural areas. However, in terms of water planning, there exists no definition of what rural is or what urban is in terms of water facilities.\textsuperscript{100} The water networks are few and have not been extended much since the war. The groups of people who have access to water from conventional water network are well depicted by one of my sources:

\textsuperscript{99}http://ssnbs.org/storage/Poverty_Southern_Sudan.pdf, accessed 14\textsuperscript{th} March 2012

\textsuperscript{100}Personal communication with representative at MWRI, Juba, 18\textsuperscript{th} July 2011.
Juba station [water treatment plant] has piped network. It is small, but it has pipe network. There are some people who are lucky they have house connections. Because it’s the old network, so they are the only people who have a pipe coming to their houses. And because we have not extended with new customers. So, they are lucky.

To call people ‘lucky’ for being connected may be a personal metaphor used by my source; however, the quote shows the inequality that reigns among the users in Juba. Only few are enjoying running water in the house. Using Juba as an example, in terms of access to water, the old water treatment plant was built in 1937 and has never extended its network. The capacity, given to be 7000 cubic meters a day, serves only 10 per cent of the population of Juba. The ones that are not connected to the piped network will get water from elsewhere, such as from community tapstands. However, the ones that cannot afford water in the urban areas are forced to choose water from dubious sources, such as directly from the Nile, a water source that, as mentioned, is not officially monitored or regulated for water quality.

There is a difference in the mechanisms for access to water in the urban and the rural areas. The business of water truckers in Juba and the free market mechanism leads to a situation in which the water vendors themselves set the price, as there is no official regulation of the business and no real competition to hold the prices at a reasonable level. The tendency is that the demand is high compared to the availability of water, driving the pricing sky-high relative to the ability of residents to pay in South Sudan. This was well described in one of my sources at the MWRI:

Another one also says we must begin progressively to evolve the private sector and cities that deliver it. But you must create the regulations of how the private sector will operate because a private sector is normally business-minded. So, they will exploit. Like our current situation, we can be exploited like nobody’s business.

Discrimination in relation to access to safe drinking water and sanitation can result from limited participation in decision making – as explored in the
previous chapters – but also from lack of protection against discriminatory practices by private actors. From the quote above, it is clear that for the time being, people are affected by high prices of water, resulting in lack of access as the right to water also encompasses affordability in addition to quality and quantity. But it is not said that all water should be free or merely by piped supply; access may be solved in other ways to avoid people being dependent on a private water business. The access to water also depends on the consumer’s ability to pay when water has a price. The commercial water business in urban areas – meaning mainly Juba – is not regulated, and prices fluctuate without oversight. Just in recent years, a 1 litre bottle doubled in cost on the market, \(^{101}\) now costing 2 SDG. Buying larger quantum is expected to be lower, depending also on the quality available; however, at the bottled water price level, one person will need a minimum of 10 to 20 litres a day for personal drinking, cooking and hygiene, resulting in 20 to 40 SDG a day for water. In reality, this is probably lower than the average water consumption in South Sudan.

The statistical average consumption in South Sudan per capita, according to a government report, Poverty in South Sudan\(^ {102}\) (estimation for the National Household Baseline 2009), is 100 SDG per month. This is significantly higher in urban areas, at 168 SDG. The ability to pay for water that is safe to drink is therefore highly limited by household incomes. One of my sources at the MWRI explains:

But like anywhere I am, sometimes – or anywhere I stay, sometimes the tanker truck will come with treated water. Sometimes they come with river water. So, depending on the identity [water quality], like I need water for bathing, you just buy it, really, for what – there’s no problem. But you cannot drink. So, you end up with what you can afford. With bottled water, if you cannot afford, forget it.


The quote above reveals that a poor person with limited financial resources is bound to drink water that is not safe. According to conversations with the MWRI and NGOs, even though it is clear that cost recovery is a prerequisite for moving towards a sustainable water supply, people in general do not have enough money to pay for water yet. This means that poor people are left with less good quality water – as said in the interviews – and they fetch it in the Nile. In order to rectify the problem and to create access for people who are less able to pay for water, the MWRI has arranged a system managed by the SSUWC that consists of water vendors, who fill up tanks around the Juba area. However, there is still a risk of those vendors delivering contaminated water, as there is no real functioning oversight of this water provision.

Access to water, from a human rights perspective, implies that the water should be available, of good quality, culturally acceptable, physically accessible, free from threats and affordable. And the duty bearer is accountable for ensuring these rights. In this case, the MWRI would be violating the principle of a human right to water, by not hindering the use of unsafe water for drinking. Even though there are no formal institutional resources for the distribution of safe water, one could argue that there is no violation to the human right to water, even though the state “apathetically allows citizen to be deprived of adequate water supplies”. On the other side, as interpreted in a more proactive way, the right to water implies that the state inaction in building water systems, or otherwise interfering with the delivery of water to its people, may violate its obligations. However, as already stated, South Sudan is one of the least developed countries in terms of human development, and the extreme low levels of ‘access’ to water are not surprising, but the initiatives to provide tapstands for the less advantaged groups are an active effort to realise the right to water. The aspects of progressive realisation of human rights as an obligation for the duty bearers recognise that it is unreasonable to fulfil all human rights immediately. Of interest in this case are the interactions between the duty bearers – who here
are represented by the government – and the donors and the NGOs, and their efforts towards achieving access to water.

This issues are mainly related to areas of somehow what could be characterised populated or developed. But given that the majority of the people in South Sudan are pastoralists, live in the rural areas and rely on cattle, the issue of mechanisms and social structures for these naturally came up in my interviews of a central concern for the MWRI. In the next chapter I will elaborate on this issue.

3.5.2 Pastoralism and the role of gender aspect of women in accessing water

The level of coverage of water facilities between urban and rural are vastly different, and the rural areas, characterised by pastoralism and grazing cattle, are heavily affected by the seasonal factors. The stories of conflicts over water resources were significantly highlighted in my interviews. One of my sources depicted the issues of seasonal changes and conflicts:

When there are plenty of resources in abundance and plenty of grass, plenty of water, we don’t meet. But there comes a time when one water source will be the only place where we meet. So, I come with my animals, you come with your animals, he comes with his. Here, one of my animals stops and drinks his water. So, we fight. It may result in death. Because of the war, many of the people possess weapons and all those different type of guns. So, when we meet, it’s not like we will be fighting with sticks. I will shoot you. One of us must die. That’s the major conflict over resources. The animal conflicts itself and the human conflicts itself. Then, the other one is, again, the conflict of this thing of not mixing, because of our country – because of many years of war – we have never learned to live together and tolerate one another.

Conflicts that arise in relation to water sources are a reality in South Sudan, as the tradition of dependence on cattle as the source of livelihood persists. Cattle are used for many purposes, such as payment of dowry, income source, food and wealth. A traditional marriage is very costly and results in cattle raids and counter raids. Seasonal migrations in search of water and pasture frequently
result in land and water use conflicts between different pastoral and agro-pastoral groups; the conflicts are compounded by overstocking.\(^{103}\) The situation is described by one of my sources:

The place is really dry you see. So there are already problems set up in certain common months on the ground. Now population has either increased or decreased in some places for one reason or the other reason. So I find that it becomes very difficult for these people to manage their cattle in their own counties. They need to go to their neighbours. Going to the neighbours means that there is a few things which will either happen or not. Previously, you are friends with your neighbour or you are not.

The breakdown of cultural values and norms and the effects of broken trust are widespread throughout South Sudan after years of conflict. The reliance on cattle is worsened through imbalances in public investment, under-development, weak social services provisions, competition over scarce resources, land disputes, political and economic gains of some individuals, and the marginalisation of some communities (South Sudan Development Plan 2011-2013). A more recent development – so to speak – is the number of arms available, which fuels these conflicts considerably more than in the past.

The current uneven distribution of water points often leads to the concentration of large numbers of livestock, especially during the dry season, with negative impacts on water resources and the surrounding environment.\(^{104}\) Traditionally, the communities had – and still have – systems for conflict mitigation and resolution by respected leaders; however, the introduction of a significantly high number of arms is creating many more deadly tribal clashes.

The issue over cattle and access to resources is a historical and cultural aspect of life in South Sudan. Measures taken by the ministries and other actors to overcome this – as a means to maintain peace and stability – have been to create ‘haffirs’ – artificial ponds or dams in order to gain access to

\(^{103}\) [http://www.sudantribune.com/Pastoralists-head-to-Bor-as-water,30703, accessed 22nd February, 2012](http://www.sudantribune.com/Pastoralists-head-to-Bor-as-water,30703, accessed 22nd February, 2012)

\(^{104}\) In the Water Policy, the development of new water points is therefore a high priority.
water and to hinder movement of grazing cattle. Stagnating ponds similar to these are also the main source for the continuous survival of guinea worm, which will spread to humans when they enter the ponds to collect water. Some of these haffirs are constructed with a filtering function; however, the water cannot be regarded as safe for drinking purposes.

In most of my interviews, this well-known, yet complicated issue of cattle in South Sudan is explained as a situation that needs to be addressed by gaining access to water and developing traditional farming practices. However, one of the sources doubts this approach, as the tribes believe that the cattle would be taken from them at a certain point, and that would be difficult for them, as raising cattle is “in the blood”. Traditional ways of living, security and human development are highly related in South Sudan. One of my sources said:

One, the worst man of South Sudan has to think that everybody must produce things. Everybody must settle. They have to take the town to their place. ... you see; and then people will get into that place and condition and then, after they’re in their places, of course you need to water. That is when you will see development. There is no development unless you go with that human need: water.

The last quote illustrates the challenges of the traditions of pastoralism and development in a post-conflict setting. In my interviews, many referred to solutions as moving towards more modern farming, like in the quote above: people must “settle”. But in that atmosphere, people’s needs, such as water, must be addressed in order to get people to settle. According to one of my sources, one of the problems is that the households don’t know the concept of rainwater harvesting, which could contribute as a water source on the small scale. On the other side, this may not address the root causes of the conflict, such as the problem that people “have never learned to live together”, as mentioned, due to the long war. One might assume that people will settle where water is naturally available, or where the conditions allow for
dwellings, but other issues than natural conditions play a role, as explained by one of my sources:

This is conflicting because when – where you expect people to live because there’s water, there are no people but for many other reasons. And these reasons can be the hospital is not very close and people don’t – I know it is not in the area. I heard that people have not even lived before. Sick. Or either there’s a political problem. There are a lot of crimes within that place. People tend to move to where there are a lot of savages, and where there are a lot of savages, you find that there are many people and a lot of devastation leads to – women need stuff. All women need firewood and with the lack of rain and, they can’t fix the water table and they need to bore a hole. It becomes so complicated.

As expressed in the quote above, the constraints often become the burden of the women. In South Sudan, the women and girls are mainly the bearers of water, especially in the rural areas, which takes much of the time during the day – over one hour according to statistics, as mentioned in the previous chapter. The hardship of being a woman or girl in South Sudan may be well described by statistics; a girl in South Sudan is more likely to die while giving birth than she is to finish school. Among the women, there exists a fierce way of securing water for the households:

And then, for women, they come and put their jerrycans in one queue. So, women come; they don’t want to obey a line. They want to – you know – they start fighting and that one now going to the men. They want to jump straight to the front. You know, they start fighting and that one now going to be a fight. And then maybe a clan fight, or this group versus this group.

The fight over water described in the quote is also not only happening in the rural areas, but also in urban areas. In addition to this, the women do often have a reckless way of treating the water facilities, so they break down easily. Almost all activities by women in South Sudan are related to water, and

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especially in the rural areas, the lack of access to water will make the women suffer, as they are the caretakers when the family members are sick. One of my sources at the MWRI argues that the way to start rectifying the situation for women is to start with hygiene awareness at school for the young girls, and furthermore, to empower women to start their own businesses, like selling fruit or other products. However, the women lack capital for the time being to do such.

The inequalities regarding the situation of women in South Sudan are quite evident, and their voices are said to be less accounted for in many matters. A means to diminish this situation is provided in the Interim Constitution of Sudan; President Salva Kiir has ordered that all boards and administrative offices shall have at least 25 per cent women in order to balance gender in governmental processes and decision making. This is a major improvement in the context of South Sudan, according to a former government employee, even though it may take time before any major changes in the societal role of women in South Sudan take place.

3.5.3 Natural conditions, technological constraints and sustainability

In the endeavours toward access to water, human relations and conditions of the natural surroundings also shape the governance of water. Technological innovation and implementation face the major challenge of the seasonal constraints in South Sudan. As one of my sources put it, “the rain will wash away any technology”. The rainy season in South Sudan appears in some areas with a more significant impact than in others.

Annual rainfall varies from 400 mm in the northern parts to 1600 mm in the southern parts and is distributed across three major river basins that are tributaries to the White Nile, namely Bahr el-Ghazal, Bahr el-Jebel and the river Sobat. When high river discharges occur, water spills over the banks of rivers and floods large areas of land, creating swamps. In some areas, the swamps are seasonal, and in others, the wetlands remain. Not all of the water
discharged into the swamp areas flows out, creating permanent swamps, which have given the region its name, ‘the Sudd’. The swamps and marshlands of the Sudd region are characterised by high levels of vegetation cover. Altogether, wetlands account for around 7 per cent of the total land area of South Sudan.

Being one of the least developed countries in the world, the understanding of technology is also quite low, as expressed several times as lack of capacity. As revealed in several of my interviews, the call for prioritisation could go in different directions regarding technological infrastructure or the need for social change; for instance, one opinion is that “no development for water is possible before roads are built. The government should focus on roads”. Another opinion is that “we need hygiene educations in schools; there is where we should start for development to start”.

The lack of infrastructure for transport, communication and electricity results in a very challenging and slow development of basic services, such as water facilities. Furthermore, the relatively high occurrence of ‘black cotton soil’ in South Sudan represents a huge challenge when applying normal practices in the design of infrastructure. The challenges for development often are related to possibilities and constraints, as depicted by one of my sources; The goal of reaching the MDGs currently seems far away, as massive investments are needed. Furthermore, the investments must be directed to small and simple water facilities that are sustainable in the context of South Sudan, and they can only be developed further at a tempo that development and social change allows.

106 Meaning barrier or blockage in Arabic.


3.5.4 Discussion

To a certain extent, it could be relevant to discuss matters of discrimination and inequality of some of the actors in water governance in South Sudan. However, I have aimed in this thesis to explore how the lack of participation and inclusion of the MWRI may lead to skewed emphasis in the management of water, or one could call the outcomes. However, as mentioned before, the interesting in this case is the mediating behind the outcomes more than what the inequalities are, as it is obvious that there is just that. How does such inequalities relate to the water governance seen from the MWRI perspective? The human right to water is claimed to set specific priorities for water management, where the “lowest duty include the supply of water needed for personal and domestic survival, access to the water on a non-discriminatory basis, equitable distribution of water, governmental awareness including national water strategy, monitoring of the local water situation” (General Comment 15).109 And for international law, it does not require for a country to agree upon an idea for it to be bound. This means that for example that the MWRI are not in violation of human rights of “apathetically allows citizens to be deprived of water”, however, if interpreted a bit more proactive, to not take action of building water systems will be a violation of such rights.

The water situation in South Sudan is very different for those in the rural areas, especially the pastoralists living a nomad lifestyle, and those in more urban areas. In the total picture of lack of access to water in the urban areas, the ones that are suffering the most are the ones that cannot afford to pay. The private water business in Juba remains somehow unregulated, leaving the people with both high prices and risk of getting water of dubious quality, and are left with the Nile as the only water source. Measures from the taken to avoid people to drink from unsafe sources with serving people with tapstands located around Juba. However, there is no doubt that massive investments need to be laid out to meet the needs of a growing population in

the urban areas. In the rural areas, the situation of access to water is quite complicated due the lifestyle of the pastoralists that rely heavily on their cattle and the need for grazing during the seasons. This is a very much embedded traditional and cultural way of living in South Sudan, where the time when water sources become scarce, the risk of fights and conflicts increases.

In terms of ‘development’, it may only be relevant to Juba where technology and interventions of conventional water supply systems exists. Even though, this serves only a few of the citizens in Juba. From my sources at the MWRI almost nothing have been done from their side in order to expand the water network. Lack of funding is one obvious cause for this, but it also appear in my findings that the approach from the donor side does not correspond with the MWRI views on the need for e.g. baseline studies and master-planning where priorities from the MWRI side could be put more clearly. This may be said to be in accordance with the findings of Bennett et al. (2010) where it was found that the donors – due to lack of clear direction – picked projects like “cherries” based on self-interest and possibilities for a good reputation. In overall, I argue based on my findings that the MWRI to a high extent do not have the satisfying influence powers or means to have control or influence over the priorities made. Not to claim that the priorities of the MWRI may not be up for discussions either, but my point here is that the MWRI does not have the ability to be an equal actor with a voice and mandate to discuss the priorities in the water governance in South Sudan.

Water have become recognised as a human right, and the significance with water is that water touches a range of human activities from survival to well-being, dignity and economic and social development, and play a central role in realising other human rights. In this case, there is no doubt the “realisation of the right to water” meaning ensuring access to acceptable, affordable and sufficient quantity of water to the people of South Sudan is a far goal, however, the human rights concept nevertheless opens for a progressive realisation, allowing the duty-bearer to make priorities according to the needs and realistic limitations. My focus in this case has therefore been
on the processes within the governance of water, rather than the outcome. As said in the previous chapter of theoretical perspective, human development and human rights share significant connections; “...to ensure the freedom, well-being and dignity of all people everywhere”. The idea of human rights is very much related to the core thinking of human development and poverty as deprivation of one’s capabilities. This nexus of human right and development laid the ground that “such processes [development] must be carried out in way that are compatible with human rights requirements”, meaning that growth must be “participatory, non-discriminatory, transparent, accountable and enshrined in human rights law”. To participate in, and influence, the processes then becomes of a crucial aspect – or a pressing issues – of the water governance from the MWRI perspective.
4. Summary and conclusion

South Sudan has emerged as the world’s newest country after decades of war, and gaining access to water is essential for the human development of the people in South Sudan. In this thesis, I have studied challenges with water governance in South Sudan towards achieving human development in the new country. I have studied elements of water governance with focus on the views of the duty bearers Ministry of Water Resources and Irrigation (MWRI), donors and the NGOs as a in the light of a human rights based approach, with fundamental human rights principles, such as participation, accountability and equality. I explored to what extent the MWRI are able and capable to participate and influence development, decisions and planning. In the processes in water governance I have examined what the main mechanisms in gaining access to water. I have further sought to analyse how the relationship between the duty-bearers can be characterised. In the light of my findings and analysis, I have discussed what the main challenges in applying a HRBA, and what can be said to be the value-added in using this approach.

I have conducted this study based on empirical material, such as in-depth interviews and critical reading of written sources. The fieldwork was undertaken in Juba in July 2011 just after the referendum. During my fieldwork, I met challenges of several kinds that affected the time spent in the field, and these were related to insecurity, shifting context, fluctuating cost levels, health issues and logistical constraints. These challenges do not only apply to the implications of my fieldwork, but also stand as factors in a post-conflict country. And the challenges were as relevant for the people I interviewed as they were for me, as a masters student undertaking fieldwork. Even though the fieldwork was challenging and the time spent in the field was shorter than initially planned, I realised that my findings in the study and the stories told by my sources began to repeat themselves. And subsequently, after the fieldwork – along with the write-up of this thesis – I have discussed my
findings with several of the diaspora and scholars in Oslo in the field of South Sudan. These discussions have confirmed many aspects of my findings.

4.1 Ability and capacity of MWRI

I have looked into the aspects of participation in the processes in water governance from the MWRI’s point of view. Lack of capacity is often referred to as a deficit for participation in governmental administration in South Sudan. It is somehow connected to citizens being fully involved and setting priorities because the direction of development depends on people having the capability to do so. No doubt there is a lack of formal education and skills, as the long war has resulted in a population of very young people, who have had no or few possibilities for undertaking formal education. However, in my findings, it was revealed that despite the notion of “lack of capacities” that has led to a limitation in genuine participation, other factors also impact government participation in water governance.

These factors are related to the fact that people are given government positions based on things other than skills and education, like “being granted” positions after earning merits in the war. This ‘system of recruitment’ results in an ineffective administration in which those with skills and capacities feel underappreciated and have a limited climate to professionally influence the directions and decisions for the development of the water sector. Another factor that was revealed in my findings was the access to information. After being at war for so many years, there exists little information on water resources and social demographic needs that can be processed into plans and strategies. This leaves the administration without the empowerment to influence decisions and to steer the implementers of water services in South Sudan, which causes great frustration for the representatives at the MWRI.
4.2 The relationship between various duty-bearers

Participation and accountability go hand in hand, as is clearly seen in this case. How can one be held accountable without the true possibility of being able to participate in the processes? Or, one can be held accountable, but is it fair when the possibility to participate and influence is limited? Studying intrinsic values such as these in the thesis shows that if the conditions are not really ‘streamlined’ or fully functioning, it is difficult to identify the true duty bearer, or at least it raises some questions. The government should be the responsible party, and it should not be released from its responsibility, but the ‘in a bind’ situation and the difficulties that are present in this post-conflict setting should be understood. At this point, it may be claimed that it is not that relevant to “evaluate the performance” of the MWRI, as one can easily ask; “What do you expect?”

The donor community as duty-bearer also have the responsibility to undertake capacity building of the state. However, in this case these efforts have been ill-targeted and off-track, due to a lack of contextual understanding. This can also be related to the lack of participation of the national duty-bearer. In my findings, there seems to be a skewed emphasis of the priorities between the MWRI and donors, for example where a donor is in the search for information for a specific area to develop water projects, the MWRI would have had the mandate to decide which area should be the ones on need in an overall perspective. This is due to the lack of a general water management plan in the country and with the financial resources that donors have, they become the ones that are to a high extent “setting the terms” for the development agenda.

The conditions for sound performance cannot be said to be present for a well-functioning governmental administration. Accountability in South Sudan is under threat due to corruption and a growing elite in Juba. The problem of corruption – combined with a known problem of domination of one of the larger groups of people and a non-transparent granting of high-level positions
leads to discontent and mistrust of the government administration. This is especially revealed in the scepticism towards a growing focus on the Juba area and less focus on the rural areas. At this time, the MWRI has not developed the rural areas and has not been equipped with essential institutional resources, such as a Water Act that would allow enhanced accountability of the management of the water sector. In my findings, however, there were several attempts to ensure that the “realisation of the right to water” is taken care of, even though the overall water situation for the people in South Sudan is one of the worst in the world. In my findings, it is clearly shown that these attempts from the MWRI side were influenced directly by retention in funding, for example, or development where the funding was granted directly.

4.3 Main mechanisms influencing access to water

Many factors have implications for the equality and non-discriminatory process in gaining access to water in South Sudan and explain why there is such a vast variation among the regions. One of the issues that appeared clearly in my findings is the “conflict over resources” in the rural areas. The access to water during the different seasons lays the foundation for how the social living structures change due to the search for water to graze cattle, which may result in more fighting over scarce water sources among the different tribes and communities. This has historically happened in South Sudan for ages, but the high numbers of arms is a new development that exacerbates these conflicts into serious clashes and general insecurity for the communities – and the spread of weaponry severely hampers development activities. The women bear the burden of water fetching for the households. Even so, also the women would be the centre of outbreak of conflicts of resources, leaving them with suffering and struggles in upholding the families with safe and enough water. In my findings, ways to reconcile and start development were said that people must settle and find other ways to live, such as modern agriculture.
A new situation is also emerging in the urban areas, as the population is growing fast. The urban water supply system is a mixture of piped supply, service provision at taptstands, hand pumps and collection from the Nile directly. The water marked are currently not regulated and appears as a free business, leaving the poorest without ability to pay for treated water at the vendors only left with the Nile as their water source. Furthermore, there are no mechanisms for monitoring the private water marked, which means that there are no security whether the water is safe to drink or not. And last, the effect of natural seasonal constraints on the technological development of water facilities in South Sudan should not be underestimated.

4.4 Challenges and value-added in applying a HRBA

In this case, I see both challenge and added value by applying a HRBA. Contextual issues as high level of insecurity, tribalism, internal conflict and corruption represent factual constraints that are somehow conflicting with an ‘ideal’ concept as the HRBA may appear. With a high extent of other actors in a confusing ‘environment’, such as the donor community and the NGOs, it comes in this case difficult to truly identify the ‘duty-bearer’ and the ‘rights-holders’ for each right in a HRBA sense. Furthermore, it becomes difficult to hold someone accountable, especially if the one party are not truly capable to participate. I also found that there is a fine line between the representative at the MWRI as ‘duty-bearers’ and as ‘rights-holders’ in its own new country emerging from war, where the needs not covered in terms of basic services also for them as citizen of South Sudan. On the other hand, using central principles of a HRBA was indeed useful – and relevant – to highlight the role of the MWRI in the water governance. Even in the perspective of what would be the ‘duty-bearer’ in a HRBA, it was possible to examine their role in a more nuanced way, in what were the barriers in participation and how this affects accountability in the decision making processes in water governance in South Sudan.
4.5 Closure

Initially, the MWRI – as all the administrative entities in South Sudan – are newly established since the peace agreement was signed in 2005 and face enormous challenges in terms of economic and social development. The water sector involves providing basic services, such as access to water, and deals with the overall management of water in South Sudan. However, a long history of war has shown that NGOs and donors have been the main providers of basic services to the people up until now, and they are still main actors in the water sector. I believe my main contribution in this study has been to highlight and examine the aspects of the MWRI as a new actor in the water governance of South Sudan in order to gain a better understanding of the challenges and constraints – and the possibilities – that a recently established ministry faces as it attempts to meet its mandate and achieve human development in South Sudan, one of the poorest countries in the world.

It is indeed an intricate task to find ways to reconcile the aspects of the history of war, the underlying issues of tribalism and the fight over resources in the context of South Sudan. The way to overcome this is not within the scope of my thesis – or perhaps it could not possibly be easily addressed in a thesis at all.\textsuperscript{110} However, these issues cannot be ignored, as they significantly affect the governance of water. It is essential to consider the contextual factors that are necessary to understand the mechanisms and resources in water governance and attempts to achieve human development in South Sudan, as I have shown here.

Even though some of the underlying reasons that limit participation and hamper accountability in South Sudan seem to represent too much of a challenge to overcome, I would argue, based on my findings, that one place to start is with the capacities of the MWRI as a duty-bearer to set the priorities for what is needed and where to begin – in the efforts towards an effective and

\textsuperscript{110} Personal communication with a Sudanese academic and author with extensive insight in the history of war and multiculturalism in South Sudan, Oslo, June 2011.
equitable management of water in the future as a precondition for human development in South Sudan.
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Organogram Ministry of Water Resources and Irrigation

Legend:
- Reporting
- Consultation
- Advisory Services

Government of Southern Sudan (GOSS)
Ministry of Water Resources and Irrigation (MWRI)
Juba

Personal communication.