

COVID-19 Pandemic in India: The Right to Water

A Briefing Paper

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A Briefing Paper

The Right to Water in India and the COVID 19 Crisis

Briefing Paper on India's Obligations to Guarantee the Right to Water During COVID-19 Pandemic

Many people in India, particularly those living in poverty, in informal settlements and rural populations, lack access to clean water. In addition to the many ordinary purposes for which access to clean water is ordinarily necessary, there is the need for frequent hand washing to protect from, and prevent the spread of, COVID-19. For many people, water of adequate quality and quantity is unavailable, intermittently available and/or inaccessible, rendering people in these situations susceptible to infection. The failure of State authorities to meet their obligations to redress this situation results in violation of the rights to water and sanitation, life and health of affected people. It also presents a significant public health risk by increasing the likelihood of onward transmission of COVID-19.

This Q & A analyzes India's obligations to respect, protect and fulfill the right to water under international law and requirements of governmental authorities under India's domestic law. It provides recommendations to the Indian Government to ensure its compliance with such obligations.

What are the principal concerns regarding the right to water in India?

Impacts of COVID-19 on Right to Water in India. In India, frequent hand washing, as recommended by the World Health Organization and Indian Ministry of Health and Family Welfare,¹ is practically impossible for large numbers of people living in urban informal settlements and rural areas. In such areas, water is typically scarce, and of poor quality.² Studies have shown that these spaces are more vulnerable to an outbreak of the pandemic.³ The UN Special Rapporteur on the human right to safe drinking water and sanitation, Leo Heller, in his 2018 report on his mission to India observed that "adequate access to water and toilets

¹ Ministry of Health and Family Welfare, Novel Coronavirus - Protect yourself and others! Follow these Do's and Don'ts, Government of India, available at https://www.mohfw.gov.in/pdf/Poster_Corona_ad_Eng.pdf ; World Health Organization, Interim Recommendation, 1 April 2020, available at <https://www.who.int/docs/default-source/inaugural-who-partners-forum/who-interim-recommendation-on-obligatory-hand-hygiene-against-transmission-of-covid-19.pdf>

² Nilanjana Bhowmick, "Handwashing helps stop COVID-19. But in India, water is scarce" National Geographic, April 7, 2020, available at <https://www.nationalgeographic.com/science/2020/04/hand-washing-can-combat-coronavirus-but-can-the-rural-poor-afford-frequent-rinses/>. See also, from South Africa - <https://www.dailymaverick.co.za/article/2020-03-27-abahlali-basemjondolo-you-cant-stop-the-virus-while-living-in-the-mud/>

³ Shaonlee Patranabis et al, "Are slums more vulnerable to the COVID-19 pandemic: Evidence from Mumbai" Brookings, April 16, 2020, available at <https://www.brookings.edu/blog/up-front/2020/04/16/are-slums-more-vulnerable-to-the-covid-19-pandemic-evidence-from-mumbai/>

does not exist in most of the slums that he visited".⁴

According to a 2019 report of the NGO Water Aid, India has the largest number of people in the world – some one billion - living with physical water scarcity.⁵ UNICEF and WHO data from 2017 illustrate that only 44 percent of India's population had access to piped water. Only 56 percent of people in rural areas and 77 percent of people in urban areas had access to water at their place of residence. More than one-third of the water consumed by rural populations was contaminated.⁶ These households often depend on public water sources such as public taps and wells at a significant distance from their homes.⁷ Sanitation facilities are also often shared, and community toilets lack reliable water supply.⁸

Even where some water is available, it is often accessible infrequently or intermittently, in low quantities and for short durations.⁹ Given the limited supply of water, the household priority is often cooking food and drinking water, at the expense of hand washing and other hygiene measures essential for halting the transmission of COVID-19.¹⁰ Even before the COVID-19 pandemic, a National Family Health Survey (2015-2016) found that a majority of people living in low income households could not regularly wash their hands with soap and water.¹¹

The burden of carrying, storing and managing water falls disproportionately on women and children, who often congregate at public water sources in violation of physical distancing regulations.¹² One study suggests that this lack of physical

⁴ Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his mission to India, 6 July 2018, U.N. Doc. A/HRC/39/55/Add.1, page 16. The Special Rapporteur in his report highlighted a number of gaps in the human rights framework as applied to water and sanitation in India, including in relation to adverse health effects of unsafe water and the obstacles to accessibility faced by persons from marginalized and disadvantaged groups.

⁵ Fiona Callister, *Beneath the Surface: The State of the World's Water 2019*, Water Aid, March 2019, available at <https://washmatters.wateraid.org/sites/g/files/jkxoof256/files/beneath-the-surface-the-state-of-the-worlds-water-2019-0.pdf> at page 6.

⁶ United Nations Children's Fund (UNICEF) and World Health Organization, *Progress on household drinking water, sanitation and hygiene 2000-2017- Special focus on inequalities*, UNICEF, 2019, at page 95.

⁷ Catherine Davison, "Under coronavirus lockdown, Delhi slum residents struggle to get water" DW, 9 April 2020, available at <https://www.dw.com/en/under-coronavirus-lockdown-delhi-slum-residents-struggle-to-get-water/a-53073487>

⁸ Smruti Koppikar, "Death-trap toilets: the hidden dangers of Mumbai's poorest slums", *The Guardian*, 27 February 2017, available at <https://www.theguardian.com/global-development-professionals-network/2017/feb/27/death-trap-toilets-mumbai-india-slums>

⁹ Shubhagato Dasgupta, "Hand washing to stop coronavirus — 78% of toilets in Mumbai slums lack reliable water supply" *The Print*, 13 May 2020, available at <https://theprint.in/opinion/hand-washing-to-stop-coronavirus-78-of-toilets-in-mumbai-slums-lack-reliable-water-supply/402590/>.

¹⁰ Nilanjana Bhowmick, "Handwashing helps stop COVID-19. But in India, water is scarce" *National Geographic*, April 7, 2020, available at <https://www.nationalgeographic.com/science/2020/04/hand-washing-can-combat-coronavirus-but-can-the-rural-poor-afford-frequent-rinses/>.

¹¹ International Institute for Population Sciences (IIPS) and ICF, *National Family Health Survey (NFHS-4), 2015-16: India*, December 2017, IIPS, available at <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>, at pages 16 and 36.

¹² UNICEF, *Collecting water is often a colossal waste of time for women and girls*, 29 August 2016, available at <https://www.unicef.org/press-releases/unicef-collecting-water-often-colossal-waste-time-women-and-girls> For discussion on the human rights violations resulting from lack of access to water and sanitation facilities in India for LGBTQ persons, in particular transgender persons, who are living with poverty, due to the additional marginalization faced on account of gender identity, gender expression and sexual orientation, see International Commission of Jurists, *Living with Dignity - Sexual*

distancing has resulted in a higher COVID-19 infection rate among people living in informal settlements.¹³

Furthermore, households in “non-notified” informal settlements, specifically those that are not officially declared by the government,¹⁴ often do not have access to government-provided water supplies, and are therefore compelled to buy private water, which is often sold at more than 30 times the government price.¹⁵ Even people living in notified informal settlements, which are entitled to reliable access to water through various schemes,¹⁶ have experienced significant delays in tankers reaching them due to COVID-19. Even when tankers reach the settlements, they do not always deliver water to the less accessible interior of the settlements.¹⁷

Indian Government Relief Measures. The first case of COVID-19 in India was reported on 30 January 2020 and a lockdown was announced on 24 March 2020. In compliance with a Supreme Court order dated 3 April 2020, the Central Government produced an advisory for the state governments: “Advisory for ensuring safe drinking water during lockdown and effective management of pandemic caused by Corona Virus”.¹⁸

Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India, June 2019, available at <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf> at pages 104-131.

¹³ Lee Riley et al, “A Billion People Live in Slums. Can They Survive the Virus?” The New York Times, April 8, 2020, available at <https://www.nytimes.com/2020/04/08/opinion/coronavirus-slums.html>

¹⁴ Section 3, Slum Areas (Improvement and Clearance) Act, 1956, states that an area may be declared a “slum area” by the Government if it is “in any respect unfit for human habitation; or “detrimental to safety, health or morals” by reason of “dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors”. National Sample Survey Organisation, 1997, says that “[c]ertain areas declared as ‘slums’ by the appropriate municipality, corporation, local body or development authorities were the ‘declared slums’.” Notably no new slum areas have been declared in Delhi since 1994 and each state has its own cut off date. With respect to non-notified slums it calls an area a non-notified “slum” if it is a “compact area with a collection of poorly built tenements, mostly of temporary nature, crowded together – usually with inadequate sanitary and drinking water facilities – in unhygienic conditions”, and at least 20 households lived in that area. As per India’s 2008 National Sample Survey (NSS), approximately half of the informal settlements in India are non-notified.

¹⁵ Ramnath Subbaraman et al, “The right to water in slums of Mumbai, India”, Bulletin of the World Health Organization, 6 October 2015, available at <https://www.who.int/bulletin/volumes/93/11/15-155473/en/>

¹⁶ Various central level and state level schemes focus on access to basic services for those living in notified slums such as Basic Services to Urban Poor (BSUP) focus on providing services like water supply, toilets, waste water drainage, solid waste management, power, roads, transport and access to legal and affordable housing for urban poor. These schemes focus on slums declared under the law.

¹⁷ Nirma Bora, “Coronavirus Outbreak: Water woes compound struggle for urban poor during lockdown as tanker supply becomes erratic in Delhi” Firstpost, April 23, 2020, available at <https://www.firstpost.com/health/coronavirus-outbreak-water-woes-compound-struggle-for-urban-poor-during-lockdown-as-tanker-supply-becomes-erratic-in-delhi-8291271.html>

¹⁸ National Jal Jeevan Mission, Annex: Advisory for ensuring safe drinking water during lockdown and effective management of pandemic caused by Corona Virus, Ministry of Jal Shakti, Government of India, 13 April 2020, available at <https://jalshakti-ddws.gov.in/sites/default/files/Advisory.pdf> Note that an advisory is not legally binding. For a policy/ guideline/ advisory to be legally binding and enforceable it needs to be framed under a law or a provision of the Constitution. India Thermal Power Ltd v. State of Madhya Pradesh & Ors., [(2000) 3 SCC 379].

The Advisory, which is addressed to state governments, requires that safe potable water be made available to all “citizens”, and requires state governments to prioritize supply of water in water deficient areas and to enable potable safe water supply to vulnerable sections of the society. Such a restriction of access to services to “citizens” is contrary to international human rights law, which guarantees the human rights of all people regardless of nationality and documentation status.¹⁹ Protections under international human rights law such as the International Covenant on Civil and Political Rights (Articles 2 and 26) and International Covenant on Economic, Social and Cultural Rights (Article 2), to both of which India is a party, are not dependent on citizenship status or documentary proof of citizenship. The language in the Advisory is particularly concerning given recent attempts to restrict citizenship based on religious affiliation, and widespread discrimination against Muslims.²⁰

State governments must also meet immediate or emergency water requirements by ensuring that functional water procurement and supply systems are in place, and strengthen “grievance redressal mechanisms” wherein complaints can be registered with various bodies including the police “so that any interruption in water supply can be immediately brought to the notice of all the concerned and timely action can be ensured to reinstate the supply.”—This would allow state governments to take timely action to reinstate the supply of water so that social distancing guidelines can be followed.²¹ The existing guidelines do not provide for enforcement measures and no information has been provided to the public about whether or how states have implemented them.

In addition, the Ministry of Health and Family Welfare issued a separate advisory for “non-notified” informal settlements. The advisory recommends that common areas such as toilets, water supply areas, and other surfaces likely to be touched by residents, be regularly cleaned. It also advises domestic workers to “request exemption from service for a short period of two weeks,” and if they have to go to work, to practice proper hand hygiene.²² This advisory puts the onus on already marginalized persons to ensure their own workplace safety, without provision of resources or support from the government. This obligation lies more appropriately with employers, as set out in national laws and regulations by the

¹⁹ See International Commission Jurists: Practitioners Guide on Migration and International Human Rights Law available at <https://www.icj.org/wp-content/uploads/2014/10/UniversalMigrationHRLaw-PG-no-6-Publications-PractitionersGuide-2014-eng.pdf>, p 43; International Commission Jurists: Promoting Non-Citizens’ Right to Work in South Africa (2020) <https://www.icj.org/wp-content/uploads/2020/04/South-Africa-Non-Citizens-Right-to-Work-Advocacy-Analysis-Brief-2020-ENG-.pdf>.

²⁰ “India: Citizenship Amendment Act Violates International Law” 10 March 2020, Joint Oral Statement by the International Commission of Jurists (ICJ), Asian Forum for Human Rights and Development (FORUM- ASIA), CIVICUS - World Alliance for Citizen Participation, Human Rights Watch, International Service for Human Rights (ISHR), Minority Rights Group International, and World Organization against Torture (OMCT), in General Debate item 4, Human Rights Council, 43 Regular Session, available at <https://www.icj.org/wp-content/uploads/2020/03/ICJ-statement-GD-item-4-India-10-03-2020.pdf>

²¹ National Jal Jeevan Mission, Annex: Advisory for ensuring safe drinking water during lockdown and effective management of pandemic caused by Corona Virus, Ministry of Jal Shakti, Government of India, 13 April 2020, available at <https://jalshakti-ddws.gov.in/sites/default/files/Advisory.pdf>

²² National Center for Disease Control, Advisory for Jhuggi Jhopdi Clusters/Slums in view of COVID-19, 1753501/2020/O/O IDSP-NCDC, Ministry of Health and Family Welfare Government of India, April 8, 2020, available at <https://ncdc.gov.in/WriteReadData/l892s/34689327851585916662.pdf>

Indian government, which has an obligation under Article 7 (b) of the ICESCR to put policies into place that ensure “safe and healthy working conditions” of all workers.²³

What are India’s legal obligations to guarantee the right to water?

International Law. India is party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), (Articles 11 and 12) and the Convention on the Rights of the Child (Article 24 (c)), both of which contain obligations in respect of the right to water and sanitation. The former UN Special Rapporteur on the human right to safe drinking water and sanitation has developed guidance for States on the implications of the human right to water and sanitation for their work in the form of a handbook.²⁴ The Committee on Economic, Social and Cultural Rights (CESCR), is the supervisory body for the ICESCR, which provides the authoritative interpretation of the provisions of the ICESCR and works to ensure compliance by States that are party to it. The CESCR has described the right to water as “one of the most fundamental conditions for survival”,²⁵ and has clarified that states must prioritize access to water resources for preventing “starvation and disease”.²⁶ The CESCR has indicated that States are required to give special attention to individuals who have difficulty in accessing this right, including taking steps to ensure that “rural and deprived urban areas have access to properly maintained water facilities”.²⁷

The Committee has identified several core obligations, which must be given immediate attention, that are particularly relevant to the situation of people living with poverty.²⁸ These include the obligation to ensure access to:

- A minimum essential amount of water which is sufficient and safe for personal and domestic use, as well as to “prevent disease”;
- Water and water facilities without discrimination, especially to disadvantaged and marginalized groups of people; and
- Water facilities and services “at a reasonable distance from the household” that provide sufficient, safe and regular water “without prohibitive waiting times”.²⁹

In response to COVID-19, the ESCR Committee has expressly reminded States that some people are at greater risk of contagion, such as residents of informal settlements, because they lack “adequate access to water, soap or sanitizer”.³⁰ In this connection, States must make adequate investment in “housing, food, water and sanitation systems” to effectively counter global health pandemics.³¹ States

²³ Article 7(b), International Covenant on Economic, Social and Cultural Rights.

²⁴ UN Special Rapporteur on the human right to safe drinking water and sanitation, “Realising The Human Rights to Water and Sanitation: A Handbook by the UN Special Rapporteur Catarina De Albuquerque” OHCHR, 2014 available at <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>

²⁵ ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 3.

²⁶ ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 6.

²⁷ ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 29.

²⁸ ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 37.

²⁹ ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 37.

³⁰ ESCR Committee, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, U.N. Doc. E/C.12/2020/1 (2020), paras 5 and 9.

³¹ ESCR Committee, Statement on the coronavirus disease (COVID-19) pandemic and

are also required to cooperate with each other to mitigate the impact of the pandemic on vulnerable groups, including through the “provision of water, soap and sanitizer to communities that lack them”.³² In the context of COVID-19, the right to water must therefore be understood to include a right to water, soap and sanitizer for all on a continuous basis.

Independent experts appointed by the UN Human Rights Council have given additional guidance. Eleven UN experts led by the UN Special Rapporteur on the Human Rights to Safe Drinking Water And Sanitation have indicated that vulnerable persons (including people living in informal settlements, homeless persons, women and children) “need to have continuous access to sufficient and affordable water” to comply with the hygiene measures required to combat COVID-19.³³ The experts expressed concern that economically vulnerable people will be caught in a vicious cycle, as limited access to water increases risk of infection which will further decrease access to water. They therefore urged States to provide water free of charge for the duration of the pandemic to people living in poverty. Public and private service providers of water must comply with these measures.

Domestic Law. There is no national legislation that specifically guarantees the right of access to water in India. The current regulatory framework includes a Draft National Water Framework Bill (2016) and a National Water Policy (2012), but these policies and draft laws do not clearly prescribe the legal entitlement to access water. Further, while the Model Bill for the Conservation, Protection, Regulation and Management of Groundwater (2016) has been used as guidance by some states for enacting laws on ground water usage, there remains substantial variation between states in laws and policies on water and sanitation.³⁴

The Supreme Court of India, however, has consistently affirmed that there is duty by the State to provide clean drinking water, which it recognized as part of right to life with dignity guaranteed in Article 21 of the Constitution, even in the absence of an express and specific right to water set out in the Constitution. The Court has similarly found that States are obligated to make public toilets available under Article 21 of the Constitution.³⁵ In *Chameli Singh*, the Court clarified that the right to housing includes, “adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads etc.”(emphasis added)³⁶. The Court

economic, social and cultural rights, U.N. Doc. E/C.12/2020/1 (2020), para 24.

³² ESCR Committee, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, U.N. Doc. E/C.12/2020/1 (2020), para 15.

³³ “COVID-19 will not be stopped without providing safe water to people living in vulnerability-UN experts”, OHCHR, 23 March 2020, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25738&LangID=E>

³⁴ See Ministry Of Jal Shakti, Department Of Water Resources, Rd & Gr, at <http://mowr.gov.in>. Also note that the Government has set up Jal Jeevan Mission to provide safe and adequate drinking water through individual household tap connections by 2024 to all households in rural India.

³⁵ High Court of Bombay, *Milun Suryajani v. Pune Municipal Corporation*, 2016(2)ABR105, See also International Commission of Jurists, *Living with Dignity - Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India*, June 2019, available at <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf> at pages 116-122.

³⁶ Supreme Court of India, *Chameli Singh v. Union of India*, (1996)2SCC549, para. 8. *Subhash Kumar v. State of Bihar* - Supreme Court held that the right to life includes the right to enjoyment of pollution-free water 1991 AIR 420. Also see *A.P. Pollution Control Board II v. Prof. M.V. Nayudu* (2001) 2 SCC 62 - The Andhra Pradesh Government had

has recognized that water is a community resource that must be held in public trust by the State.³⁷

What issues must the Indian authorities address to meet its obligation to guarantee the right to water during COVID-19?

India is currently failing its duties to respect, protect and fulfill the right to water of all individuals,³⁸ in particular those living in poor urban areas and rural areas, as nearly one billion people live with water scarcity, at least for part of the year.³⁹ Some of the principles deficiencies in this connective involve discrimination in respect of accessibility and availability of safe water, non-human rights compliant responses to the COVID 19 pandemic, and failure to regulate service providers.

Discrimination in Access to and Availability of Water. Pursuant to its obligations under the ICESCR, India must desist from any action that would result in limiting access to water, especially for those in poverty and those living in the informal settlements.⁴⁰ In particular, the following actions are in violation of its duty to not discriminate:⁴¹

- First, the advisory states that safe potable water be made available to all “citizens”, thereby its unclear whether non-citizens will have equal access to water.⁴² The limitation of guarantees of availability to “citizens” does not comply with India’s human rights obligations, as the right to water may not be made dependent on a person’s legal status and all persons regardless of their legal and documentation status enjoy the right to water.
- Second, households in “non-notified” informal settlements (those that are not officially recognized by the government) do not have access to government-provided water supplies, and are therefore compelled to buy private water, which is often sold at more than 30 times the price.⁴³ Further, even those

provided a special exemption allowing a polluting industry to set up a factory near two lakes. The Supreme Court nullified the exemption and found the right to clean drinking water to be implicit in the rights to life and a healthy environment.

³⁷ M.C. Mehta v. Kamal Nath (1997) 1 SCC 388.

³⁸ For a detailed explanation of these terms and their application, see International Commission of Jurists, “Living with Dignity - Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India”, 2019, page 21, available at <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf>

³⁹ Fiona Callister, Beneath the Surface: The State of the World’s Water 2019, Water Aid, March 2019, available at <https://washmatters.wateraid.org/sites/g/files/jkxooof256/files/beneath-the-surface-the-state-of-the-worlds-water-2019-0.pdf> at page 6

⁴⁰ In its General Comment No. 15, the United Nations Committee on Economic, Social and Cultural Rights sets out several instances that would constitute State interference in violation of Articles 11 and 12 of the ICESCR, including “arbitrary or unjustified disconnection or exclusion from water services or facilities,” and “discriminatory or unaffordable increases in the price of water” (ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 44).

⁴¹ See ESCR Committee General Comment 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/20 (2009).

⁴² National Jal Jeevan Mission, Annex: Advisory for ensuring safe drinking water during lockdown and effective management of pandemic caused by Corona Virus, Ministry of Jal Shakti, Government of India, 13 April 2020, available at <https://jalshakti-ddws.gov.in/sites/default/files/Advisory.pdf>

⁴³ Ramnath Subbaraman et al, “The right to water in slums of Mumbai, India”, Bulletin of the World Health Organization, 6 October 2015, available at <https://www.who.int/bulletin/volumes/93/11/15-155473/en/>

living in “notified” settlements do not necessarily get access as tankers are not able to reach the interiors of all settlements.

- Third, the government simply issued an advisory for those living in non-notified informal settlements, requiring them to stay in their houses and maintain physical distancing guidelines. This put the onus on residents to maintain their safety without access to state resources or support.⁴⁴ The State has an immediate obligation to refrain from enforcing the law in a discriminatory or arbitrary manner that limits access to water during a public health crisis.

Absence of Laws and Policies on Non-Discrimination in Access to Water During COVID19. India is required to adopt appropriate legislation or institute other policy measures that ensure equal and non-discriminatory access to water for all persons,⁴⁵ but has fallen short of this obligation in

- The Government has failed to execute national level laws or policies to meet the water requirements of all people in India to mitigate the risk of transmission of COVID-19. A vaguely worded advisory with unclear mechanisms for enforcement falls well short of the obligations.
- The Government has also failed to adopt adequate “mechanisms for emergency relief” or to take measures adequate to “ensure that the minimum essential level of the right is enjoyed by everyone”.⁴⁶ This would require provision of emergency water services in rural and deprived urban areas including in community toilets.⁴⁷ It would also require the distribution of hand sanitizers, public hand-washing facilities and soap on a continuous basis throughout the COVID-19 pandemic.⁴⁸
- The Government has also not taken sufficient steps to ensure that needed institutional infrastructure for effective monitoring and supervision of COVID-19 policies are in place, including providing a clear process whereby those affected can report shortcomings in access to water and seek a remedy for violations of their rights.

Non-regulation of Service Providers. As a party to ICESCR, the Indian State is required to protect human rights from the conduct of private and other non-State actors. In this regard, it must act to prevent third-party water service providers from “compromising equal, affordable, and physical access to sufficient, safe and acceptable water.”⁴⁹ It is also required to ensure “independent monitoring, genuine public participation and imposition of penalties for non-compliance.”⁵⁰

⁴⁴ National Center for Disease Control, Advisory for Jhuggi Jhopdi Clusters/Slums in view of COVID-19, 1753501/2020/O/O IDSP-NCDC, Ministry of Health and Family Welfare Government of India, April 8, 2020, available at <https://ncdc.gov.in/WriteReadData/l892s/34689327851585916662.pdf>

⁴⁵ General Comment 15 on the right to water makes it clear that legislation needs to “operationalize” the government’s strategy for securing the right to water for everyone, including enacting framework legislation that “effectively regulate[s] and control[s] water services providers” and prevents “inequitable extraction of water”. ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 44.

⁴⁶ ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 44(c).

⁴⁷ ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 44(c).

⁴⁸ ESCR Committee, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, U.N. Doc. E/C.12/2020/1 (2020).

⁴⁹ ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 24.

⁵⁰ ESCR Committee General Comment 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (2002), para 24.

The Indian Government has failed to regulate adequately third-party water service providers:

- Although the Government has banned evictions of “students and laborers,”⁵¹ it has not effectively regulated the landlords adequately to prevent them from disconnecting or threatening to disconnect water access of stranded internal migrant workers to push them to leave the premises.⁵²
- The Government has not enabled or required private suppliers to provide water for free, at least during the crisis as recommended by UN Special Rapporteur on the human right to safe drinking water and sanitation. Due to loss of livelihoods as result of COVID-19, even more individuals than usual do not have access to resources to buy water.⁵³

What does the International Commission of Jurists recommend?

India has fallen short of ensuring the State meet its obligations regarding the right to water of its inhabitants, including those living in poverty. The ICJ therefore calls on the responsible Indian authorities to ensure:

1. Immediate and Emergency Water Provision

- Urgently enact and implement enforceable policies and strategies on the provision of emergency water in all water-scarce areas for all people during the COVID-19 pandemic. Such access should be provided regardless of legal tenure, notification status of an informal settlement or any other factor or circumstance. In particular, this must include:
 - a. Provision and cleaning of public hand-washing facilities, soap, other cleaning materials and hand sanitizer on a continuous basis during the COVID-19 pandemic;
 - b. Clear instructions for state governments on the permissible means of providing water and a minimum quantity and quality of water to be provided per household;
 - c. A waiver of water charges for all persons below a specified income level during the COVID-19 pandemic; and
 - d. A cessation of all water disconnections during the COVID-19 pandemic.

⁵¹ Order No. 40-3/2020-DM-I(A), Ministry of Home Affairs, Government of India, 29 March 2020 available at https://www.mha.gov.in/sites/default/files/PR_MHAOrderrestrictingmovement_29032020.pdf

⁵² “COVID-19 Lockdown: Migrant Workers Stranded in Chennai Lodges Face Eviction” 18 April 2020, *Newsclick*, available at <https://www.newsclick.in/covid-19-lockdown-migrant-workers-stranded-chennai-lodges-face-eviction>. See ICJ, “COVID-19 Pandemic Exposes India’s Housing Crisis- Briefing Paper on India’s Human Rights Obligations to Guarantee the Right to Housing During COVID-19 Pandemic” May 2020, available at <https://www.icj.org/wp-content/uploads/2020/05/India-Right-to-Housing-COVID19-Briefing-Paper-2020-ENG.pdf>

⁵³ Nirma Bora, “Coronavirus Outbreak: Water woes compound struggle for urban poor during lockdown as tanker supply becomes erratic in Delhi” April 23, 2020, *Firstpost*, available at <https://www.firstpost.com/health/coronavirus-outbreak-water-woes-compound-struggle-for-urban-poor-during-lockdown-as-tanker-supply-becomes-erratic-in-delhi-8291271.html>

2. Legal Enforcement

- Finalize the enactment of enforceable national legislation on access to water which is compliant with India's obligations in terms of the right to water;
- In the absence of such a law, clarify the legally binding nature of advisories, policies, orders and guidelines issued in relation to access to water in general and access to emergency water during the COVID-19 pandemic in particular; and
- Create and ensure effective operation of water supply helpline for effective and prompt redress of grievances and responses to emergency water needs.

3. Monitoring and Information Circulation

- Establish independent monitoring mechanisms, with effective participation by community members and civil society organizations, state human rights institutions, and other members as maybe deemed relevant by the Government;
- Provide regular, accurate, evidence-based information on the spread of COVID-19 to the general public (including via public television and radio) on hygiene measures that are effective in curbing the spread of COVID-19.

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