



REPORT ON THE PRINCIPLE OF ACCOUNTABILITY

**IN THE CONTEXT OF THE REALIZATION OF THE
HUMAN RIGHTS TO WATER AND SANITATION**

*United Nations Special Rapporteur on the Human Rights to
Safe Drinking Water and Sanitation, Léo Heller*

ALL ABOUT ACCOUNTABILITY

Accountability is “the means by which individuals and communities take ownership of their rights and ensure that states as primary duty-bearers, respect, protect and fulfill their international and national obligations.” The principal of accountability aligns with the right of access to an effective remedy and with mechanisms that provide redress to victims of human rights violations.

WHO'S INVOLVED?

government
entities

international
organizations

transnational
& national
corporations

individuals

NGOs

service
providers &
regulators

KEY FUNCTIONS

Corrective Function: addressing individual or collective grievances and sanctions for wrongdoing.

Preventative Function: clarifying aspects of policy or service delivery as good practices.

WHY IS ALL THIS NECESSARY?

Accountability is all about balancing power in order to protect the most marginalized and those living in the most vulnerable situations. It also serves to mediate the relationship between people as rights holders and those that wield power and affect the enjoyment of the former's rights.

Accountability also supports and empowers rights holders to request information or actions taken through:

- Participation
- Transparency
- Access to information
- Monitoring
- Assessment
- Enforcement mechanisms
- Oversight of progress or possible setbacks

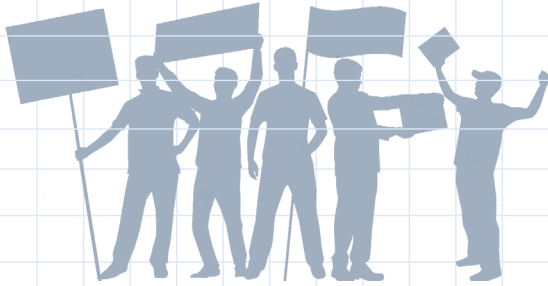
CHALLENGES

1. No clear accountability framework based on human rights to provide guidance and standards.
2. Widespread presence of informal service providers that are not regulated and operate without a license.
3. Imbalance of power that has at times affected the exercise of human rights to water and sanitation

READ MORE:

Report by the UN Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation on the principle of accountability:

<http://undocs.org/A/73/162>



VERTICAL ACCOUNTABILITY



Vertical accountability is when individuals take control of accountability, holding actors accountable directly or delegating that role to members of civil society or other entities.

UPWARD ACCOUNTABILITY



Upward accountability is the demand placed on actors to report to those who oversee their work.

ACCOUNTABILITY

With multiple accountability demands, who can ultimately hold actors accountable?

DOWNWARD ACCOUNTABILITY



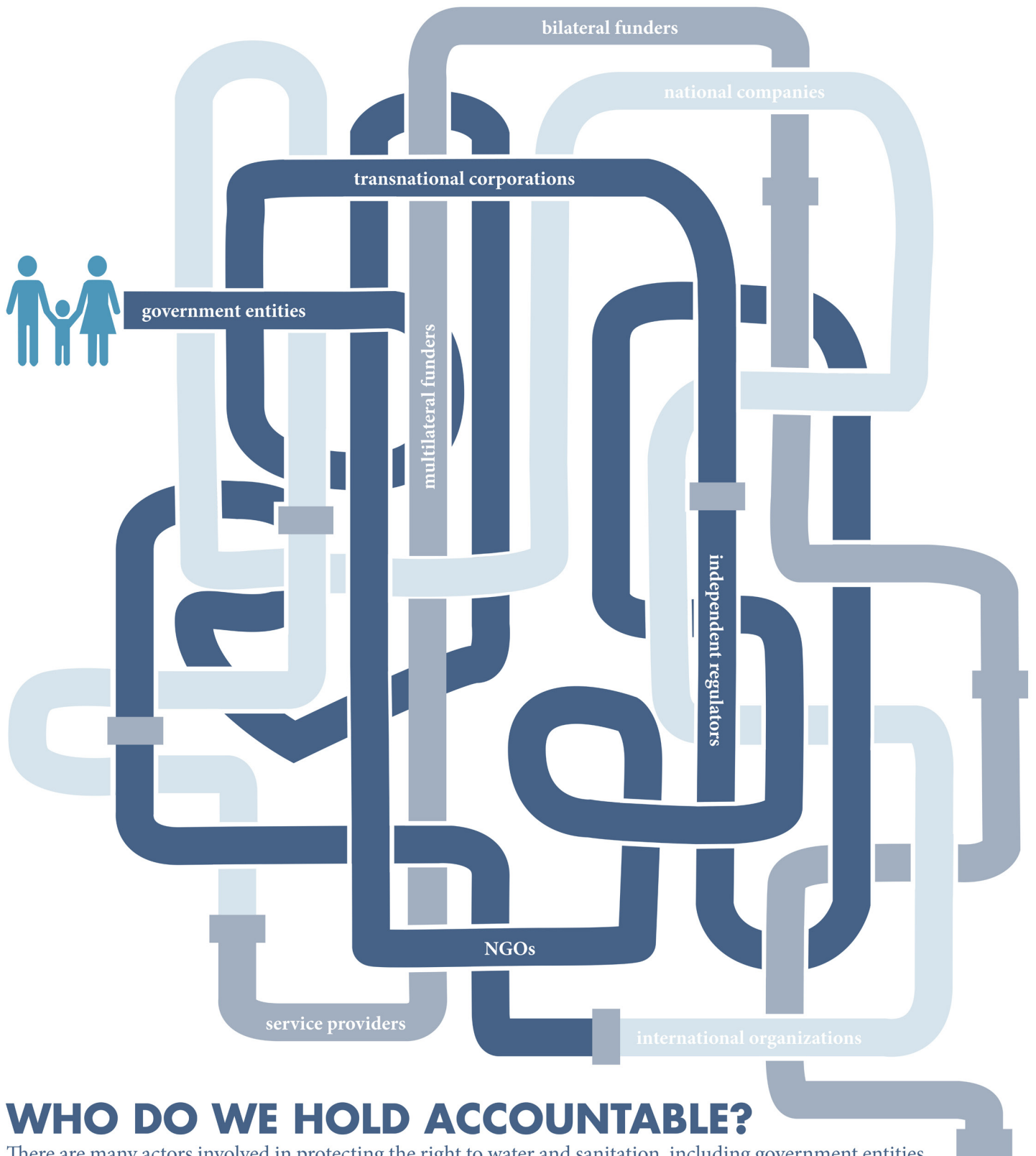
Downward accountability is the demand placed on actors to be accountable for the people for whom they provide services to and support.



HORIZONTAL ACCOUNTABILITY



Horizontal accountability involves state actors and those with formal authority. These entities may request explanations on behalf of individuals or impose penalties.



WHO DO WE HOLD ACCOUNTABLE?

There are many actors involved in protecting the right to water and sanitation, including government entities, international organizations, corporations and NGOs. The roles and responsibilities related to the human rights of water and sanitation are often divided and unclear. This decentralization of service provision, fragmented responsibilities, and unclear roles make it difficult for people to navigate to know whom to turn to for assistance and whom to hold accountable for realizing their human rights to water and sanitation.



Léo Heller

There are so many actors involved in the human rights of water and sanitation!

How can we make sure that they are accountable for their actions and decisions that affect our rights to water and sanitation?

Through answerability!

We can make sure that accountable actors are answerable.

Answerable?

Yes, States and other accountable actors should provide explanations and reasoned justifications for their actions, inactions and decisions to the people affected by them!

I understand— we can create an environment of accountability by making sure that relevant actors are transparent and there to provide information.

So is it just about providing information and being transparent?

Not at all! In addition to proactively and systematically providing information, State and other accountable actors must regularly monitor and report on their actions and also provide open spaces for interactions with affected population.

Participation and access to information can empower rights holders to influence or question decisions, voice their needs, and ultimately demand accountability for their rights to water and sanitation!

All of this is why credible and effective complaint and participation mechanisms should be made available to all rights holders.

You're right!

And access to information in a transparent manner and meaningful participation will also prevent corruption and put even more pressure on actors to be accountable and answerable.

COMPLIANCE THROUGH ENFORCEABILITY

Enforcement is the ability to oversee actors and apply sanctions when they give unsatisfactory answers. Enforceability of accountability encompasses two perspectives. The first being of the a process whereby *bodies and mechanisms* oversee actors' compliance with standards that are in line with the human rights principles. The second is from the perspective of *individuals*, whereby enforceability provides a venue to claim the rights to water and sanitation by enforcing actors' compliance and to exercise the right to an effective remedy

OVERSIGHT: A PREREQUISITE TO ENFORCEABILITY

The oversight of actors' conduct to assess whether performance standards are met is a prerequisite to enforceability. Oversight mechanisms exist through the state, independent institutions (i.e. regulators, human rights commissions and institutions, anti-corruption agencies, and State auditing institutions), and civil society organizations. Media also plays a crucial role in oversight, despite not having power to enforce any outcome, they serve as a watchdog function.

ENABLING ENVIRONMENT AND CHALLENGES

Marginalized people and people in vulnerable situations often lack the capacity and opportunities to hold actors accountable. Enforceability mechanisms are mostly used by individuals who are already aware of such mechanisms and who can afford the costs and the time spent using them. As such, we must build a bridge so that accountability and enforcement mechanisms are accessible to all.

Judicial and quasi-judicial bodies must allow relevant cases to be brought before them by individuals or their representatives, it is often easier for rights holders to voice their concerns and hold actors accountable collectively.

ENFORCEABILITY MECHANISMS

NATIONAL JUDICIAL MECHANISMS:

National judicial mechanisms are set up within States — among the executive, the legislative and the judiciary — through the principle of separation of powers, whereby each institution holds the others to account on behalf of the people. They are often not the preferred way for rights holders, but it is a crucial option for seeking redress when other mechanisms are exhausted. National judicial mechanism can:

- provide remedies to victims of violations
- serve the preventive function of accountability and prompt larger discussions
- also allow rights holders to hold actors other than States accountable
- give courts supervisory jurisdiction over the enforcement of their rulings and recommendations



QUASI-JUDICIAL MECHANISMS:

Quasi-judicial mechanisms are another forum for enforceability. Quasi-judicial mechanisms refer to an arbitrator or public administrative agency with the power to determine facts objectively and draw conclusions that will provide the basis for official action. They include:

- national human rights institutions that can receive complaints, investigate and recommend changes
- independent regulatory bodies with complaint mechanisms for the resolution of disputes between service providers and users, they can create incentives, warnings, penalties for non-compliance (i.e. fines), denial of permits, issuing injunctions, increased inspections and the possibility of revoking contracts

CONCLUSIONS & RECOMMENDATIONS

The principle of accountability is a core human rights principle that serves as a check and balance to protect the most vulnerable. The **Special Rapporteur on the human right to water and sanitation** has identified the need to strengthen three dimensions of accountability in the water and sanitation sector (roles, responsibility and performance standards; providing explanations and justification; and enforcement mechanisms for compliance) and has some recommendations for States and other accountable actors:

EXPLANATIONS & JUSTIFICATION:

- (a) *Regularly record actions and decisions taken* and the justification thereof.
- (b) *Maintain clear and effective mechanisms* to respond to requests and concerns from affected populations.
- (c) *Facilitate the exchange of information* through dialogues with or participation from affected populations.
- (d) *Regularly publish information* on decision-making processes related to water and sanitation.
- (e) *Adopt indicators* with specific benchmarks.

Specifically, States should:

- (a) *Provide support* to small-scale and informal service providers.
- (b) *Legally guarantee* the exercise of fundamental human rights (i.e. access to information, among others).
- (c) *Guarantee the process of complaint mechanisms* in regulatory frameworks and contracts when water and sanitation provision is delegated.

ROLES:

- (a) *Clearly identify the roles and responsibilities of actors* whose influence and decisions affect the provision of water and sanitation services.
 - (b) *Ensure that accountability mechanisms are properly transferred* when roles and responsibilities are transferred from one actor to another.
 - (c) *Adopt the normative content of the human rights principles* as the basis for performance standards.
 - (d) *Prioritize the provision of water and sanitation* in situations of multiple accessibility demands.
- Specifically States should also:**
- (a) *Establish clear coordination mechanisms* within governmental institutions.
 - (b) *Strengthen the capacity of local governments and service providers.*
 - (c) *Clearly allocate and define the responsibilities of all stakeholders* and regulate their implementation.
 - (d) *Identify informal service providers* and put in place regulations for those providers.
 - (e) When responsibilities for service provision are transferred to communities, *ensure that accountability measures for any human rights violations that may occur owing to aggressive practices are in place.*

ENFORCEABILITY:

In the realm of enforceability, there needs to be efforts to facilitate and enabling environment that empowers the affected populations to lodge claims and that builds trust and effectiveness in the accountability mechanisms.

Specifically States should also:

- (a) *Ensure that all elements of the human rights to water and sanitation and human rights principles are included in the legal framework,*
- (b) *Devise a mechanism that would enforce decisions on other accountable actors.*