



PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

Mandate of the Special Rapporteur on the human rights to safe drinking water and sanitation

Questionnaire for Non-State Actors

The principle of accountability in the context of the human rights to safe drinking water and sanitation

Pursuant to the UN Human Rights Council resolutions 27/7 of 2014 and 33/10 of 2016, the Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Léo Heller, will be elaborating his thematic report to the seventy-third session of the General Assembly in 2018 on the principle of accountability in the context of the human rights to safe drinking water and sanitation.

Accountability implies that actors involved in provision and regulation of water and sanitation services must have clearly defined duties and responsibilities and performance standards (“responsibility”); actors must be answerable to affected people and groups for their actions and decisions, which includes access to information in a transparent manner (“answerability”); and mechanisms should be in place that monitors actors’ compliance with established standards, imposes sanctions and ensures that corrective and remedial action are taken (“enforceability”).¹

The Special Rapporteur departs his initial analysis on the topic from a broad interpretation of the principle of accountability and focuses on the relationship of State and non-State actors² involved in policy-making, provision and regulation of water and sanitation services to the people affected by their actions and decisions.

The Special Rapporteur is seeking information on mechanisms that enable individuals and groups to hold those actors accountable for ensuring the rights to the safe drinking water and sanitation. He, therefore, requests information on good examples, as well as main challenges encountered in establishing, using and implementing such mechanisms. Accountability mechanisms may include, among others, processes of participation, monitoring, oversight, information, as well as judicial, quasi-judicial, administrative, political mechanisms.

As part of his research, the Special Rapporteur welcomes responses to the following questions:

¹ Office of the High Commissioner for Human Rights, “Who will be accountable? Human Rights and the Post-2015 Development Agenda” (2013), p. 10 available from <http://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf>

² Non-State actors may include, but are not limited to: businesses, private actors, development organisations, non-governmental organisations, among others.

1. Please describe the role and responsibilities of your organization in the water and sanitation sector.

AquaFed is the International Federation of Private Water Operators. AquaFed was established to facilitate contacts and information exchange between multi-lateral institutions and private water service operators.

The prime business purpose of our Members is to provide high quality water and sanitation services to the whole of each community where they work. They do this under the direction and control of the responsible public authorities. The very core of our Members' services is the delivery of water, sanitation and wastewater services that are sustainable and support human rights to water and sanitation both now and for future generations.

AquaFed encourages its members to:

- engage with public authorities to help and enable them to promote, fulfil and protect the right to safe drinking water and sanitation of their populations.
- to respect the human right to safe drinking water and sanitation and to contribute to implementing the related obligations of public authorities

to comply with the UN General Assembly and Human Rights Council's resolutions on the Right to Safe Drinking Water and Sanitation

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2. Depending on the role and responsibilities of your organization, please provide information on how the **principle of accountability is defined and applied** in the policies and activities of your organization, particularly to ensure the realization of the human rights to safe drinking water and sanitation.

Alternatively, please provide information on how the **principle of accountability is defined and applied** in the legal, policy and institutional frameworks of the State(s) with whom your organization is working, particularly to ensure the realization of the human rights to safe drinking water and sanitation.

Accountability is a very important issue for AquaFed and its members, and we work together on many topics related to this issue. For example, we have actively participated throughout the life of the OECD's Water Governance Initiative. This has given us opportunities to share expertise from our members on good governance mechanisms, which all aim to improve and enhance accountability. Governance and regulation is one of four key themes in AquaFed's strategic plan for 2018. Indeed one of AquaFed's key messages is that accountability to users is essential and that includes mechanisms that empower them to contribute to decisions on how their water and sanitation services are provided.

From a private operator's point of view, accountability is primarily ensured through the contract performance and reporting provisions. These must be carried out in collaboration between the contract principle (public authority) and the operator. The contract must have clearly defined duties and responsibilities and performance standards. The service regulations and regulators, together with the contract, are essential tools to ensure that actors are answerable to affected people and groups for their actions and decisions

It is essential to have effective monitoring and reporting systems, both of the delivery of the specifications of the contract but also according to a wider regulatory framework. A clear benefit of the contractual relationship between the awarding authorities and their private provider is the setting of clear responsibilities, relationships, and benchmarks, on which the private operator has to report at least on a yearly basis, and quite often monthly if not more often. Accountability can be further strengthened through the use of regular public meetings at which the public authorities and operators give first hand reports to interested users and other stakeholders.

The effectiveness of such processes can be helped significantly by the role of appropriate third party independent regulators in a regulatory framework which has clearly defined responsibilities and regulatory objectives. The European Water Regulators association (WAREG) have stated publicly that countries with independent regulators tend to be more transparent and accountable because they produce more public data and information about the provision of water and sanitation services. In France and the UK for example, where private companies provide all or a significant amount of water and sanitation services, there are many accountability mechanisms, and these countries can be said to be amongst the most transparent water sectors in the world.

3. Please describe any **challenges or gaps identified** when applying and implementing the principle of accountability in relation to the human rights to safe drinking water and sanitation. How were these challenges and gaps addressed?

The principle of accountability can be upheld if the rights to water and sanitation are implemented locally, but we see that these rights are unfortunately still not enshrined into domestic law in some countries.

There are three steps governments can take to address this challenge:

- **step 1.** Acknowledge the content of the rights to water and sanitation. This has been done by the United Nations at the international level, and also increasingly at national level in States' own laws.
- **step 2.** Identify the public authority in charge of the implementation of the rights to water and sanitation, its related duties and its means of action. In many places in the world this has yet to be decided. The Rights include several independent components such as safety (quality), accessibility, acceptability, availability, affordability, etc. Each of these components require elements of regulation and oversight by public or independent authorities. However, this may be by different sets of bodies. Organising the implementation of State duties with respect to the Rights requires the State to define which entities are responsible for each component of the Rights in each situation. In particular, targets must be decided, tariffs structures have to be appropriate, local authorities must be allocated the appropriate financial means and their obligations and reporting lines should be clarified.
- **step 3.** Make the rights real to every individual through delivery in the field. This is the stage where efficient operators are needed to produce the expected results. Water operators are the instruments of the public policies that aim at increasing access to water and sanitation. If called on, they can deliver. Obstacles to their action need to be removed. For example, they are often instructed by local authorities not to improve access to water in illegal settlements.

This can be for good reasons such as avoiding settling people in dangerous areas. However, it is an issue to be addressed.

Responsibility

4. Please provide information on the **level of clarity and transparency of the roles and responsibilities, and performance standards of State and non-State actors** in accordance with the normative content of the human rights to water and sanitation. In other words, how are defined the roles of the actors responsible for the accessibility, availability, affordability, acceptability and quality of water and sanitation services in an equal and non-discriminatory manner.

Through our response to this questionnaire, AquaFed has highlighted that needs for appropriate legal structures, allocation of responsibilities, regulation and governance. The Federation has worked with international institutions and other stakeholders on all these issues, recognising that they are essential to the provision of good service delivery and realisation of the human rights to water and sanitation, irrespective of what kind of delivery model (public, private or otherwise) is employed.

Private operators carry out their work under the direction and control of the public authorities who are responsible for delivery of the human rights on behalf of the state. They do this through legal relations that are established by formal contracts or licenses that include precise terms that define the levels of **availability, accessibility, acceptability** and **quality** that must be delivered.

The issue of **affordability** is addressed firstly through the contractual determination of the charging system put in place in the contract or license. This is set up by the public authority and normally reviewed between the authority and the operator in predetermined ways. In many cases, this results in an immediate reduction in the prices charged to users at the start of a project.

Private operators do not unilaterally determine the charging systems put in place. These are dependent on the policies and tariffs set up by the public authority and may include specific provisions to support those people who have difficulties in paying.

Private operators work is focussed on delivering all of the normative criteria through the way they provide and operate the services.:

- Availability - improving the availability in terms of the regularity and hours of service provided.
- Accessibility - extending the service zones and improving the service density of zones already served.
- Affordability - implementing public policies to assist those who have difficulty meeting the service charges. In addition, many private operators have developed local schemes to support those who have difficulty in paying. These include easy payment facilities, special funds, assistance programmes etc...

Monitoring of all these characteristics is normally part of any contract or regulatory system, which has key performance indicators to enable the reporting and validation of progress on each item.

Improving monitoring processes and generating accurate data for decision making and progress review is an integral part of private operations.

The regulatory processes that are usually set up or significantly reinforced in the case of private operation also contribute to data collection and reporting.

Contracts and licenses normally include provisions for users and others to communicate with the service operator or the public authority or both in case of difficulty or conflict over the service delivery and charging.

Private operators introduce customer relations departments and systems to make it easier for service users to interact with the service deliverer. They also produce statistics and key performance indicators to measure and report on their achievements.

5. Please provide information on the **availability and accessibility of information about State and non-State actors** responsible for the realization of the human rights to safe drinking water and sanitation

We refer you to comments in previous answers.

Answerability

6. Please provide examples of good practices or gaps on **how the State informs individuals or civil society organisations** of its progress, retrogression and failures in the realization of the human rights to safe drinking water and sanitation.

There are some good examples of how either the State works with operators and stakeholders to inform individuals and organisations about the progress and realisation of the human rights to water and sanitation.

England and Wales:

www.discoverwater.co.uk

This is a mechanism funded by the private companies but governed by a Steering Committee involving regulators, government, consumer representatives, and private water companies. The data is verified and approved by the regulators.

This data is just a very small collection of the hundreds of indicators and metrics available to the public concerning the provision of water and sanitation services. For example, all companies have to produce an annual report for the price regulator Ofwat regarding their compliance with price controls: <https://www.ofwat.gov.uk/regulated-companies/company-obligations/annual-performance-report/>

The Environment Agency also publishes a wide range of environmental data: <https://www.gov.uk/government/collections/environment-agency-data-on-business-environmental-performance#environmental-performance-of-water-and-sewerage-companies>

France:

National Level: Debates are organised with stakeholders including NGOs and customer associations at the Comité National de l'Eau (National Committee of Water). Since 2008, municipalities have to upload their yearly results to enable the calculation of 29 indicators: tariffs and debt, quality of the drinking water service, quality of the waste water service and quality of the customer service: www.data.eaufrance.fr.

Results are used by national and international governments, academics, individuals and NGOs as the source of comparable measures. Individuals may also download the free App to automatically see local compliance rate, tariff etc.

FP2E, the association of private companies managing water and sanitation services in France, review public water supply and sanitation services in France every three years. FP2E publishes a report putting the performance of the water services in perspective with the broader water and social environment: (link needed)

FP2E also has a dedicated on-line resource providing thematic insights, especially on water quality issues; as section is dedicated to health professionals: www.cieau.com.

At the utility level: All private operators report annually to the municipalities on a mandatory set of criteria. The municipalities integrate this information into their own mandatory public report on the price and quality of the service. Water quality analysis results are also attached to the invoices. At local level, the Commission Consultative des Services Publics Locaux (CCSPL) is installed for 100% of concessions, allowing direct information and debate with citizen. There is also a growing tendency in modern concessions (e.g. Dijon, Lille, etc.) to formally involve customer in decision bodies

7. Please provide examples of good practices or gaps on how individuals or civil society organisations **obtain reasoned justification for actions and decision** of State and non-State actors.
8. Please outline the main **obstacles encountered when accessing existing accountability mechanisms**.*
*Examples may include judicial, quasi-judicial, administrative, political and social mechanisms.

Enforceability

9. Please share your experiences in **holding States accountable** for violation of the human rights to safe drinking water and sanitation. How do these mechanisms work in practice?
10. Please provide examples of **accountability mechanisms* suited for holding non-State actors** accountable for breaches of its responsibility to respect human rights to safe drinking water and sanitation.
*Examples may include judicial, quasi-judicial, administrative, political and social mechanisms.
11. Please describe **how your organisation participated in mechanisms to hold State and non-State actors accountable** for the violation or abuse of the rights to water and sanitation. Has the contribution been taken into account in a meaningful manner and has it been included in State's follow-up action and reporting?
12. Please provide information on specific cases where **compliance with outcomes** of accountability mechanisms was or was not ensured or implemented.

Submission of responses

Due to limited capacity for translation, it is kindly requested that responses be submitted, if possible, in English, Spanish or French and, **no later than 15 March 2018**. All responses will be posted on the official webpage of the Special Rapporteur on the human rights to safe drinking water and sanitation, unless it is indicated that the submission and/or the supporting documentation should be kept confidential.

(www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx)

Please keep responses to a maximum of 5 pages (or 3,000 words), and provide links to information or documents when available. Preferably sent via email to: srwatsan@ohchr.org, copying registry@ohchr.org. Alternatively, please send to:

Special Rapporteur on the human rights to safe drinking water and sanitation
Office of the High Commissioner for Human Rights
Special Procedures Branch
CH – 1211, Geneva, Switzerland.

For any question, please contact Ms Madoka Saji, Human Rights Officer (msaji@ohchr.org; phone; +41 22 917 96 36) or Ms. Ahreum Lee, Associate Human Rights Officer (ahreumlee@ohchr.org; +41 22 917 93 91) at the Office of the High Commissioner for Human Rights in Geneva