

Expert Consultation on service regulation and the human rights to drinking water and sanitation

Organized by the UN Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller

22 - 23 May 2017, Rio de Janeiro, Brazil

Campus of Oswaldo Cruz Foundation¹

Presidential Room (sala de reunião da presidência) – 22 May 2017

Official Residency Room (sala Residência Oficial) – 23 May 2017

BACKGROUND

Pursuant to Human Rights Council Resolution 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, was mandated to work on identifying challenges and obstacles to the full realization of the rights, as well as protection gaps, good practices and enabling factors. The Special Rapporteur is elaborating a report on the subject of regulation of water and sanitation services in the context of realization of human rights. The report will be presented to the Human Rights Council at its 36th session in September 2017.

As part of the consultation process, the Special Rapporteur invited States and non-State actors to contribute their views and perspectives in writing through a questionnaire. (States - [EN](#) | [FR](#) | [ES](#) ; Non-States - [EN](#) | [FR](#) | [ES](#))

A [total of 43 submissions](#) were received. 18 submissions were received from States and 25 submissions were received from non-State actors including civil society organizations, private service providers, academia and international organizations.

TERMINOLOGY

For the purposes of the report, when the terms "regulatory framework" or "regulation" (in general) are used, they refer to secondary legislation such as norms, rules or standards emanating from government institutions exercising regulatory functions, and independent regulatory bodies, establishing how services should be provided in a given context.

The term "regulatory actors" is used in a broad sense, and it encompasses government institutions that exercise regulatory functions (for example, a department within a Ministry), and independent regulatory bodies created by the State to carry out regulatory functions.

The terms "regulatory body", "regulatory authority" or "regulator" are used to refer to an autonomous and independent body established by the State, to carry out the State's regulatory functions. These bodies are often responsible for setting standards, and applying and enforcing them.

¹ Address of Campus of Oswaldo Cruz Foundation : Avenida Brasil, 4365, Manguinhos, Rio de Janeiro

PROGRAMME: 22 May 2017 (Monday)

SESSION 1: Introduction	9:00 – 9:30
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Speaker: Special Rapporteur and participants

- Purpose and objective of the expert consultation
- Tour de table: Introduction of participants

SESSION 2: Role of regulation in water and sanitation services	9:30 – 10:45
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The implementation of the human rights to water and sanitation depends heavily on national legal and regulatory frameworks. Regardless of the institutional model chosen, currently most water and sanitation regulatory frameworks incorporate aspects of tariff-setting, standards of service provision and drinking water quality with a focus on economic regulation under the efficiency promotion paradigm. There is, however, growing acceptance that the rationale for the regulation of water and sanitation services involves a dimension of social sustainability that cannot be only justified by instances of 'market failure', especially in countries of the global South. The fact that the provision of water and sanitation services must be adequate for human dignity, life and health in accordance with articles 11, paragraph 1, and 12 of the International Covenant on Economic, Social and Cultural Rights, places concrete human rights obligations on national regulatory frameworks and actors.

Introductory remarks: Jaime Baptista

Moderator: Special Rapporteur

Guiding questions:

- What should the regulation of water and sanitation services aim to ensure in order to be effective?
- What are the main legal and institutional requisites for sound regulation from a human rights perspective?
- How does regulation usually balance the requirements for water supply and for sanitation regulation? Is water regulation more prominent than sanitation?
- What is the role of regulation in balancing the principles of economic sustainability of providers and affordability of those living in the most vulnerable situations?

Coffee Break	10:45 – 11:00
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SESSION 3: Monitoring the human rights to drinking water and sanitation	11:00 – 12:30
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Even strong regulatory frameworks will not serve any purpose if they are not monitored and enforced. Regulatory actors are often responsible for setting and monitoring indicators and targets relating to service delivery. While utilities' regulation, generally restricted to formal settlements in urban areas, is not without its challenges, the situation is significantly different for poor people living in informal settlements and rural areas, who often have no other option than resorting to informal service provision. In these situations, informal service provision can make regulation and monitoring difficult, with services being, as a result, lower in quality and higher in cost.

Introductory remarks: Manuel Carrilho Alvarinho

Moderator: Special Rapporteur

Guiding questions:

- How can human rights to drinking water and sanitation indicators improve regulatory actors' monitoring functions? What is the added value of using human rights to drinking water and sanitation indicators?
- What specific monitoring challenges do States and regulatory actors face in rural areas and in deprived urban areas?
- What role do informal providers play in fulfilling the rights to water and sanitation?
- How can regulation be extended to informal service provision? And to populations that use individual solutions?
- Can participants identify good practices, innovative solutions and lessons learned?
- How can regulatory bodies improve affordability and quality of water and sanitation services in these areas?

Lunch break	12:30 – 14:00
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SESSION 4: Ensuring accountability	14:00 – 15:00
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Regulation will be undermined in a situation where corruption prevails or when there are no accountability mechanisms to enforce the regulations and the decisions taken by regulatory actors. Accountability and access to administrative, quasi-judicial and judicial remedies are essential for the realisation of the human rights to drinking water and sanitation as service providers (public and private) and the State can be held accountable for deteriorating services, unmet performance standards, unjustified tariff increases, illegal disconnections or other breaches. Regulatory actors can play an essential role in ensuring accountability as they are at the interface between Governments, service providers, and users. Complementary to its obligation to monitor service providers' compliance with the human rights to drinking water and sanitation, is often their duty to provide a complaint mechanism to deal with conflicts between regulated entities or between these and users. The decisions and activities of regulatory bodies must also be subject to accountability mechanisms in order to ensure that they comply with the human rights to drinking water and sanitation. Participation in decision-making of regulatory bodies is also an issue frequently addressed in discussions about the independence of these bodies.

Introductory remarks: Marcos Montenegro

Moderator: Special Rapporteur

Guiding questions:

- What role can regulatory actors play in ensuring that service providers establish internal complaint procedures?
- Do regulatory actors consider and apply the human rights to drinking water and sanitation when dealing with complaints from service users against a service provider?
- How can human rights impact assessments contribute to promote accountability?
- How can the human rights framework support regulatory actors in the fight against corruption?

- How can accountability be strengthened in rural and deprived urban areas where informal service provision prevails?
- How and who can hold regulatory actors to account for its activities or decisions?
- How should the principles of the right to participation and the right to information apply to regulatory bodies?

SESSION 5: How different regulatory models relate to the human rights to water and sanitation
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15:00 – 16:30

States have interpreted the role of regulation in various ways depending largely on the norms applicable to their particular context and corresponding needs, leading to a range of different regulatory models and institutional arrangements. The most adequate approach will differ from country to country and will depend on the general regulatory framework, the levels of institutional capacity, and the types of problems that must be addressed. The number of States with a regulatory framework for drinking water supply and sanitation services is increasing and so is the contingent of regulatory bodies. However, there is no universal regulatory model. In some countries the government has created an independent regulatory body that carries out the State's regulatory functions, while, for example, in others the regulation and monitoring of drinking water quality is the responsibility of the Ministry of Health, and tariff-setting could be affiliated with the Ministry of Finance. It often is the case that service regulation is undertaken by contract or, as it is the case in many countries, public service providers regulate their own activities. These different regulatory models and institutional arrangements raise specific human rights challenges in regard to the realisation of the human rights to water and sanitation.

Introductory remarks: Richard Franceys

Moderator: Special Rapporteur

Guiding questions:

- Is self-regulation effective? How does it relate to the water and sanitation human rights framework?
- How can regulatory actors ensure that regulation by contract does not undermine the progressive realisation of the human rights to water and sanitation, especially for those living in poverty?
- When setting service standards, including tariffs, do independent regulatory bodies take into account the normative content of the human rights to water and sanitation and its human rights principles? In which ways?

Under each question, can participants give examples of successful regulatory experiences, which have contributed to the realisation of the human rights to water and sanitation?

Coffee Break

16:30 – 17:00

SESSION 6: Wrap-up day 1

17:00 – 18:00

Speaker: Special Rapporteur

- What are the main issues and concerns related to the human rights to safe drinking water and sanitation in service regulation?

PROGRAMME: 23 May 2017 (Tuesday)

SESSION 7: The human rights obligations in regulatory frameworks

8:45 – 10:15

From a human rights perspective, ideally the regulatory framework's objectives, activities and norms should be aligned with the human rights framework. If States are expected to uphold their international human rights obligations, regulatory frameworks should be developed or reviewed in a way that supports the implementation of the human rights to water and sanitation. The human rights to water and sanitation entitle everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, and to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, and acceptable, and that provides privacy and ensures dignity. Regulatory actors have the obligation to progressively realize these rights and they should set specific standards for all providers to comply with, in line with the human rights framework. In setting these substantive criteria, their actions should be guided by the human rights principles of non-discrimination and substantive equality; participation; access to information; accountability and sustainability.

Introductory remarks: Inga Winkler

Moderator: Special Rapporteur

Guiding questions:

- What implications do the human rights to drinking water and sanitation have for regulatory actors?
- What obligations does the human rights framework create for regulatory actors?
- What should be the role of regulatory actors in ensuring that economic sustainability is reconciled with affordability and non-discrimination?
- How can regulatory actors ensure that investments will reach the poor and that users will be charged according to the affordability standard?
- Does the human rights framework oblige regulatory bodies to promote meaningful participation and access to information, especially of the most vulnerable groups often excluded from decision-making processes?
- Do regulatory actors usually consider or apply the human rights framework in relation to service disconnections?

Coffee Break

10:15 – 11:45

SESSION 8: Creating an enabling regulatory environment for the human rights to drinking water and sanitation

11:45 – 12:15

Creating an enabling regulatory environment for the realization of the human rights to drinking water and sanitation is a gradual process that requires a series of steps and involves a multitude of factors, which will differ depending on each national context. Some steps are however, indispensable for the creation of an enabling environment in any given context and they include reforming the legal framework to incorporate the human rights to drinking water and sanitation, defining roles, responsibilities and accountability, and creating or strengthening a regulatory framework and effective institutional arrangements adapted to local circumstances.

Introductory remarks: Oscar Pintos

Moderator: Special Rapporteur

Guiding questions:

- From a regulatory perspective, what key factors are determinant for the creation of an enabling environment for the realisation of the human rights to drinking water and sanitation?
- What are the benefits of separating the roles of policy-making, regulation and service delivery?
- In which ways can regulatory actors contribute to the creation of an enabling environment for the progressive realisation of the human rights to drinking water and sanitation?
- What concrete actions can regional organisations like ESAWAS and ADERASA take to support this process?
- How significant is a regulatory body's independence in the creation of an enabling environment for the human rights to drinking water and sanitation?
- Regulatory bodies are autonomous and independent public bodies, often with the power to regulate. What deters regulatory bodies from taking on a leadership role in applying the human rights framework in their areas of action?

SESSION 9: Wrap up	12:15 – 12:45
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Speaker: Special Rapporteur

- What are the main issues and concerns related to the human rights to safe drinking water and sanitation in service regulation?

LIST OF PARTICIPANTS

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