**Request of Special Rapporteur on the Human Rights to Water and Sanitation**

**Questionnaire April 2017**

**Preliminary Remarks**

The German Ministry for Economic Cooperation and Development (BMZ) is not responsible for the water and sanitation sector in Germany. This responsibility lies with the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB). Therefore, the questions asked do not directly apply to us. Nevertheless, the questions are addressing some key elements of our policies for development cooperation in the water sector and have been answered from that perspective.

1. **Framework for regulation of water and sanitation services**

Regulation of water and sanitation services is a key element of German development cooperation in the water sector. BMZ supports the regulation of drinking water and sanitation in several countries, e.g. in Albania (comprehensive support to regulatory authority), Egypt (implementation of audits, mandate of the regulatory authority); Bolivia (transparency and reporting of the regulatory authority and recommendations for strengthening of providers), Kenya ( support to regulatory authority in the introduction of good governance indicator for service providers including on corruption), in Mali the support to developing a regulatory system is intended, Palestinian Territories (extended reporting of the Regulatory authority and establishing standards for reusing treated wastewater), South Sudan (support in introduction of a first regulatory instrument), Tanzania (support in the reporting of the regulatory authority on service providers); Zambia (support in regulatory instruments in the area of performance indicators and data gathering and reporting standards).

1. **Support to implementation of Human Rights**

Human rights are a binding principle of German Development Cooperation, as enshrined in the BMZ Human Rights Strategy (2011). This human rights-based approach means that human rights standards and principles are systematically integrated in its support to service delivery in partner countries. Thereby, the core elements of the human rights to water and sanitation, entailing availability, accessibility, affordability and quality, are of great importance. A common definition of human rights-based access standards is available as an orientation for development projects in Africa. Annual progress reporting also covers contributions to the implementation of relevant human rights standards and principles, such as participation and gender equality, and measures taken to ensure the sustainability of the activities.

1. **Implementation of Human Rights Principles**

German Development Cooperation pursues a human rights-based approach in its support to service provision in the water and sanitation sector. In many cases, we support countries in increasing transparency and by regulation improving the quality of services, in encouraging participation, e.g. through user groups, and in ensuring access for everyone, especially marginalized persons and groups, for example:

* 1. In Kenya the introduction of a good governance indicator for providers by the regulatory authority which includes corruption is supported.
  2. In Albania the support to the development of a Code of Conduct of the water services regulatory authority to create an integrity management system.

1. **Ensuring affordable access**

German Development Cooperation is supporting its partner institutions in developing tariff systems reflecting human rights principles such as affordability through the introduction of subsidized and ring-fenced tariffs and flexible payment schemes (e.g. pre-paid) as well as through intermediate supply solutions such as water kiosks in particularly poor areas. Effective regulatory frameworks ensure compliance, transparency and equity.

1. **Examples for monitoring and enforcement of regulation**

Monitoring and Enforcement are the key components in the advice of German Development Cooperation to its partner institutions. Monitoring and – foremost – enforcement of regulation as appropriate in the specific country context are key to realizing the human rights to drinking water and sanitation,

* 1. German Development Cooperation supports the establishment of monitoring systems and baselines in several countries, e.g. Zambia, Kenya and Tanzania.
  2. Access to monitoring data by the public has been the focus in regulatory advice in several Eastern African countries such as Kenya, Tanzania and Zambia, resulting in regular publicly available performance reports through the regulatory authorities.

1. **Informal services providers**

In dealing with informal service providers, several interests need to be weighed carefully. The state is the primary duty bearer under international law and responsible to enforce law and restrict illegal practices. In an environment where service provision especially to the poor is substantially in the hands of informal providers, the state should be careful not to shut down services and thereby impede access to water and sanitation, but to work on a transition to formalized service provision. Regulatory approaches need to follow a similarly balanced approach between trying to improve informal services provision especially with regard to affordability and quality, and refraining from solidifying informal services structures, which should be provided by the state.

1. **Support to regulation of services provided by non-state actors**

Promoting responsible business conduct is an important element of German development policy. Given that the human rights system in a State does not always function effectively, and the situation can worsen when a State cannot or does not fulfil its duties in this area, the role of business becomes directly relevant and important. While business does not have the legal obligation of States to protect and fulfil rights, under the UN Guiding Principles for Business and Human Rights (UNGP), the baseline for all businesses is that it has the responsibility to respect human rights. This responsibility includes the responsibility to „do no harm‟ to the enjoyment of human rights. Businesses have responsibilities on three levels in the context of the water sector: as a user or consumer, as an enabler, of access to water and as a provider or distributor of water. In accordance with the German National Action Plan on Business and Human, adopted in December 2016, the BMZ will review its development cooperation with the private sector to ensure compliance with the UNGP. This review will include projects related to water and sanitation.

Regarding the regulation of services provided by non-state actors, and standards and principles applicable in this context, German Development Cooperation cooperates with the private sector where useful and where oversight by the state is effectively ensured. In many cases, service providers are owned by the state but are formally independent entities able to act according to commercial principles. In our view, regulation should enable service providers – private and state-owned – to manage services economically independent of direct and arbitrary interference by state actors, and at the same time set and enforce regulations fostering the human rights to water and sanitation, and fundamental principles such as non-discrimination, including increasing access and/ or improving service delivery. Informal service providers are a special category among “non-state actors”.