

## HUMAN RIGHTS OBLIGATIONS RELATED TO SAFE DRINKING WATER AND SANITATION-VIEWS

### **Which obligations do States bear in the context of private sector participation in the provision of water and sanitation services?**

State parties including Ghana are to adopt effective measures to realize without discrimination the right to water as set out in General Comment NO. 15 that deals with state parties' obligations under (arts 11 and 12) of the International Covenant on Economic, Social and Cultural Rights. Water is seen as a limited natural resource and a public good fundamental to life and good health. It is a prerequisite for the realization of other human rights. The right to water entitles every member of society to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.

Water is scarce and this has serious health implications for especially the rural and urban poor in the country. Adequate supply of water is necessary to prevent the high risk of water related diseases that is pervasive in the country. The right to water clearly falls within the category of guarantees essential for securing adequate standard of living, particularly since it is one of the most fundamental conditions of survival. Many Ghanaian homes lack water to ensure environmental hygiene and easy realization of the right to food.

The right to water, like any human right, imposes three types of obligations on States parties: obligations to *respect*, obligations to *protect* and obligations to *fulfil*.

States parties are to *“prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.*

*Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this general comment, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.”<sup>1</sup>*

The right to water, like any human right, imposes three types of obligations on States parties: obligations to *respect*, obligations to *protect* and obligations to *fulfil*. The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (art. 2, para. 2), and equally between men and women (art. 3), pervades all of the Covenant obligations. the General Comments emphasize States parties have a constant and continuing duty under the Covenant to move as expeditiously and effectively as possible towards the full realization of the right to water.

State obligations entail establishment of legislative, policy and regulatory framework to guarantee the peoples' right to water and sanitation.

<sup>1</sup> General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)  
*Adopted at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights, on 20 January 2003 (Contained in Document E/C.12/2002/11)*

First, States must adopt legislation to ensure that the right to access to safe drinking water and sanitation is recognized.

In Ghana, the country's 1992 does not categorically spell out the right to adequate water and sanitation. It however, guarantees the dignity of all persons and provides in article 15 (1) that "The dignity of all persons shall be inviolable". In this respect, any condition that hampers access to safe water and sanitation detracts from the dignity of persons.

Other legislations include

- Water Resources Commission Act 1996
- Community Water and Sanitation Agency Act 1998
- The Local Government Act 1993
- Public Utilities Regulatory Commission Act 1997
- Environmental Protection Agency Act 1994

These legislations have been enacted to improve access to water and sanitation services to all persons in Ghana. Also in existence are Municipal & District Assembly by laws to ensure proper sanitation, but enforcement is weak, for instance in Accra houses remain without toilets notwithstanding the existence of regulations that make it mandatory for landlords to provide toilets for tenants in rented facilities.

Second, policies should be put in place to complement the objectives of legislative instruments. These policies should provide, among other things, capacity to enforce standards and supervise environmental sanitation activities.

In the last few years Ghanaian human rights activists have resisted water privatization in the country, fearing that such privatization will make water an expensive commodity and place it beyond the reach of many ordinary persons.

Mining communities feel let down. Some communities blame the degradation of the environment and destruction of their water bodies on weak and poor implementation of existing regulations and regulatory bodies. Some argue that section 17 of the Minerals and Mining Act, 2006 (Act 703) does not offer protection to mining communities.

This section on Water Right for mining companies provides: "Subject to obtaining the requisite approvals or licenses from the Water Resources Commission Act 1996 (Act 552), a holder of a mineral right may, for purposes of or ancillary to the mineral operations, obtain, divert, impound, convey and use water from a river, stream, underground reservoir or watercourse within the land the subject of the mineral right".

Third, a regulatory framework will have to be put in place to ensure that the private sector does not undermine the realization of human rights in relation to the provision of water and sanitation services.

In other words, the regulatory framework is supposed to take other steps to restrain third parties such as the private sector from denying equal access to adequate water and sanitation services.

In Ghana, the Public Utilities Regulatory Commission was set up to regulate standards of Services including the quality of drinking water for urban water supply.

What should the regulatory framework put into place by states provide for?

The regulatory framework put in place by the state should ensure that water is treated as a social and cultural good, and not primarily as an economic good. The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines. Water supply for each person must be sufficient and continuous for personal and domestic uses. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological *hazards* that constitute a threat to a person's health. Water and water facilities and services have to be accessible to *everyone* without discrimination. That is within safe physical reach for all sections of the population; must be affordable for all; accessible to all, including the most vulnerable or marginalized sections of the population; must be accessible to all, including the most vulnerable or marginalized sections of the population and accessibility includes the right to seek, receive and impart information concerning water issues. It must ensure water and sanitation services are available and affordable.

Apart from regulation, what additional measures, structures and institutions are necessary?

The state need to adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored.

National policies do not afford the level of protection that inclusion in the constitution or a statute would provide. It is useful to have some legislative recognition of the right to water and sanitation in addition to the existence of policies or frameworks to ensure legal accountability.

There is a need for a framework that would target universal access to water and sanitation and provide specific time-bound schedule for achieving equity in access to water supply for peri-urban and urban poor.

There is need to prioritise the provision of adequate water and sanitation services and facilities to institutions such as schools, hospitals, prisons and refugee camps.

The Public Utilities Regulatory Commission should be adequately resourced to play a more effective monitoring role.

The Public Utilities Regulatory Commission should ensure that disconnections are rarely done and with caution, There should be safety net and exemptions for those who are genuinely unable to pay their bills.

To ensure equity in the payment of water services the Public Utilities Regulatory Commission should regulate the rates charged by secondary and tertiary service providers.

What are the responsibilities of the private sector when participating in the provision of water and sanitation services

To ensure adequate supply of water sanitation services at affordable rates.

How can existing frameworks on private sector responsibility for human rights protection(including the work of the Special representative of the Secretary General on human rights and transnational and other business enterprise, the OECD guidelines, the Global Compact,etc) be used to guide our understanding of private sector responsibility in water and sanitation provision?

By providing information and educating the general public as well as officials and service providers on existing standards and regulations.