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Community Water Alliance is a civic organization that does advocacy on water governance issues. The organization provides technical expertise to Residents Associations especially those falling under the banner of the Harare Metropolitan Residents Forum (HAMREF) and also Residents Associations under the Zimbabwe United Residents and Ratepayers Association.

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Community Water Alliance welcomes the opportunity to contribute to the UPR process for Zimbabwe, which has been granted through the Special Rapporteur list of questions. The answers provided mainly focus on the compliance to international treaties to which Zimbabwe is a signatory as well as compliance with provisions of the Zimbabwean Constitution. This submission is also based on experiences of Community Water Alliance with citizens at community level as well as research and litigation cases done through the Zimbabwe Lawyers for Human Rights.

Questionnaire (non-State actors)

The Special Rapporteur would welcome answers to the following questions:

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

Community Water Alliance is a grassroots based civic organization that does advocacy on water governance issues. The organization provides civic education; monitors and observe water service delivery; disseminate information; provides capacity building and does research. Community Water Alliance analyze policies, laws and regulations on water; promotes civic participation and education; builds human resource capacity of both policy makers and bureaucrats at Local Authority level (even capacity of Residents Associations); and engage policy makers for structural changes in the water sector.

2. How can a regulatory framework (e.g., legislative, institutional, policy) and bodies contribute to the realisation of the human rights to water and sanitation? Please provide examples.

The regulatory framework and bodies can contribute to the realization of the human rights to water and sanitation through adoption of a human rights based approach to development in the water sector and synchronization of laws as well as a coordinated institutional framework. In Zimbabwe the National Constitution under Section 77(a) provides for the human right to water¹ (sanitation is excluded). Besides the National Constitution, there are other laws and policies on water e.g Zimbabwe National Water Authority Act (Chapter 20:25); the Water Act (Chapter 20:24); the Environmental Management Act (Chapter 20:27); the 2013 National Water Policy as well as Statutory Instruments like the 1913 Water Regulations By-law (Statutory Instrument 164 of 1913). These laws do not have provisions on the human rights to water and sanitation. Such inconsistency bred rampant violations of human rights to water and sanitation in Zimbabwe. Majority of institutions dealing with water and sanitation delivery in Zimbabwe are focused on addressing needs and employ a needs based approach to development in the water sector. UNICEF Zimbabwe provided technical expertise in the crafting of the 2013 National Water Policy² which has watered down provisions of the human rights to water and sanitation and the policy is expected to guide review of the Water Act, Zimbabwe National Water Authority Act as well as other regulations on water.

The regulatory framework needs also to be supported by human rights principles that form the foundation to the realization of the human rights to water and sanitation. For example the Constitution of Zimbabwe under Section 68 provides for the right to administrative justice. Section 68(1) of the Zimbabwean Constitution states that; “*every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair*”³. Regulatory frameworks therefore need to have provisions of procedural fairness mechanisms because on many incidents relating to water disconnections, the human rights to water and sanitation have been violated. All water disconnections in Zimbabwe, nearing 15000, have been arbitrary and were carried out without procedural fairness⁴. Local Authorities in Zimbabwe act

¹ Constitution of Zimbabwe Amendment (No. 20) Act 2013

² 2013 National Water Policy of Zimbabwe

³ Constitution of Zimbabwe Amendment (No. 20) Act 2013

⁴ Community Water Alliance 2016 community reports

as both player and referee on the issue of disconnecting water. Lack of political will has impacted negatively on the issue of procedural fairness because court orders are sometimes ignored and a culture of impunity provides a fertile ground for violations. Another principle is access to information. Under Sections 62(1) and (2) Zimbabweans have the right of access to any information held by the State or institution of government, in so far as the information is required in the interests of public accountability and for the exercise or protection of a right respectively⁵. However legislation (through Acts of Parliament, Statutory Instruments or Regulations) giving effect to this right is important otherwise the provision remains a paper tiger. In Zimbabwe the Access to Information Privacy and Protection Act has curtailed realization of the human rights principle of access to information. Another principle is non-discrimination especially on the basis of economic status. Although inadequate, the Zimbabwean Constitution under Section 56(3) provides for the right not to be treated in an unfairly discriminatory manner. Non-discrimination on the basis of economic status is very important because there is always confusion on determining willingness to pay as opposed to inability to pay. That confusion has found its way in disconnecting water for those who owe Local Authorities. Accountability is an important human rights principle in the realization of the human rights to water and sanitation. If corruption is allowed to take root, financial resources in the water and sanitation sector will not translate into realization of rights. Accountability need to be backed however by strong political will for it to achieve desired results. In Zimbabwe Section 194(f)⁶ provides for accountability to both Parliament and the people. However even with this provision in place, the 10 June to 10 July 2014 City of Harare Special Committee Report revealed disturbing case of inflated quotations on the US\$144million China Eximbank water loan⁷ and the 30 September 2016 City of Harare Special Committee Report on Firle Sewer Treatment Rehabilitation Tender revealed serious abuse of the US\$13million fund meant to rehabilitate the sewer plant⁸. Although there are legal provisions against corruption no action was taken to address the abuse of these funds.

The regulatory framework needs also to have obligations or duties to respect, protect, promote and fulfill the human rights to water and sanitation. Fulfillment has been a challenge in Zimbabwe because the government always says there is no money even though there is an option to increase budget allocation to water and sanitation. In Zimbabwe the 2017 National Budget allocation for water and sanitation is 0,4% of the total budget⁹. The responsibilities to protect and respect which are of immediate effect and which do not depend on the availability of resources are important in realizing the human rights to water and sanitation. The duties to respect and protect need to be echoed in all laws and regulations on water. In Zimbabwe the silence of the 1913 Water Regulations By-law on these duties has opened a leeway for Local Authorities to violate the duty to respect by effecting arbitrary water disconnections¹⁰.

The courts are also important in interpreting law relating to the human rights to water and sanitation. An example is the High Court case of Farai Mushoriwa vs City of Harare in Zimbabwe where the Local Authority had arbitrarily disconnected water at the premise of Farai Mushoriwa. The ruling

⁵ Constitution of Zimbabwe Amendment (No. 20) Act 2013

⁶ Constitution of Zimbabwe Amendment (No. 20) Act 2013

⁷ City of Harare 10 June – 10 July 2014 Special Committee Report on US\$144 China Eximbank Loan

⁸ City of Harare 30 September 2016 Special Committee Report on Firle Sewer Treatment Rehabilitation Tender

⁹ Community Water Alliance Analysis of The 2017 National Budget of Zimbabwe

¹⁰ <http://www.chronicle.co.zw/bcc-defies-court-over-water-cuts/>,

<https://www.dailynews.co.zw/articles/2015/04/25/water-disconnections-hcc-defies-court-ruling>,

<http://allafrica.com/stories/201405100090.html>

which compelled the City of Harare to reconnect water and to seek a court order first before disconnecting water was a progressive judgment before it was challenged at the Supreme Court of Zimbabwe¹¹. Other cases handled at the High Court of Zimbabwe are Hove vs City of Harare¹² and Bothwell Property Company vs City of Harare¹³.

Coordination of institutions mandated or institutions linked to water and sanitation is also important in realizing the human rights to water and sanitation. The Zimbabwe Human Rights Commission needs to coordinate well with other important institutions of government. Building the capacity of such independent commissions through either appointing a Special Rapporteur of the Human Rights to Water and Sanitation is important to the realization of these rights.

With changing climatic patterns, the regulatory framework on water and sanitation need to be anchored strongly on ecological sustainability if citizens are to enjoy accessibility and availability of acceptable quality water and sanitation services. In Zimbabwe, the capital City of Harare is using US\$3million to purify water because the city is sited on its watershed. Depletion of wetlands (which are primary raw water sources providing both flood attenuation services and free purification of raw water) through urban agriculture and construction of buildings impacted negatively on economic accessibility, physical accessibility, availability, acceptability and quality of potable water. In 2016 before the rain season the dwindling water levels in Manyame dam forced City of Harare to stop abstracting water from the dam and this reduced daily water production from over 700megalitres per day to below 400 megalitres per day. The level of pollution in Lake Chivero forced the City of Harare to reduce daily potable water production especially when diluting Lake Chivero raw water with Darwindale raw water was difficult. The US\$3million monthly water purification costs have forced the City of Harare to increase water charges from US\$0,25 cents per cubic metre to an undisclosed figure that will be announced in 2017. This will present challenges on affordability of water services to rights holders.

Domestication of international treaties and conventions to which countries are a signatory, helps in the realization of the human rights to water and sanitation. Treaties which include the International Covenant on Economic, Social and Cultural Rights General Comment 15 as well as the Ramsar Convention are important.

The policy thrust that informs programmes of the government is also important in realizing the human rights to water and sanitation. For example in Zimbabwe the pre-payment policy for water that is currently introduced will impact negatively on the human rights to water and sanitation. The policy framework anchoring pre-payment for water in Zimbabwe is the 2013 National Water Policy. The National Water Policy propose the creation of Water Service Providers (can be public, private or mixed entities) responsible for providing water¹⁴. The policy further provides for the creation of a Water and Wastewater Services Regulatory Unit that will receive and assess tariff applications. The City of Harare is in the process of creating Greater Harare Water Utility Company, a private company that will provide water in Harare Metropolitan Province. This is in line with the provisions

¹¹ <http://www.zimlil.org/zw/judgment/harare-high-court/2014/195/>

¹² <http://www.zimlil.org/zw/judgment/harare-high-court/2016/205/>

¹³ <http://www.zimlil.org/zw/judgment/harare-high-court/2016/360/>

¹⁴ 2013 National Water Policy of Zimbabwe

of the National Water Policy that a Water Service Provider can be a private company. Affordability of water is a challenge under a privatized model of water service delivery.

3. Are the contents and principles of the human rights to water and sanitation generally reflected in regulatory frameworks? How do you assess your country's regulatory framework in this regard? Please provide examples of other countries if available.

The Constitution of Zimbabwe generally reflects principles of the human rights to water and sanitation. The principles that are reflected in the Constitution of Zimbabwe include non-discrimination and equality; rule of law; good governance; access to information and transparency; accountability; sustainability and citizen involvement. Section 46(b) of the Constitution of Zimbabwe provides for the promotion of values and principles that underlie a democratic society when interpreting Chapter 4 on Declaration of Rights. The values and principles listed include equality and freedom; justice; openness and principles set out in Section 3 of the constitution. The founding values and principles set out in Section 3 of the constitution include *inter alia* good governance; transparency, justice, accountability and responsiveness; rule of law; and respect for the people of Zimbabwe from whom the authority to govern is derived. Access to information, equality and non-discrimination and sustainability are human rights enshrined in Sections 62, 56, and 73 respectively¹⁵. Section 73(b) provides for the right to an “environment protected for the benefit of present and future generations”¹⁶. The challenge in Zimbabwe largely lies in Acts of Parliament, Statutory Instruments and Regulations that are not aligned to the Constitution. The Government of Zimbabwe deliberately slowed down aligning laws with the national constitution.

4. Please provide examples of situations where the lack of regulation, or inadequate regulation, in the water and sanitation sector could potentially lead to, or has actually led to, violations of the human rights to water and sanitation.

The 1913 Water Regulations By-law has been used to arbitrarily disconnect water. Procedural fairness before, during and after water disconnections have not been adhered to because of the Water Regulations By-law which was ruled to be unconstitutional in the case of Farai Mushoriwa vs City of Harare¹⁷. The By-law is *ultravires* with Section 68 on the right to administrative justice¹⁸.

5. What are the main challenges or obstacles encountered when trying to incorporate contents and principles of the human rights to water and sanitation into regulatory frameworks?

Politics of power retention and the fear of citizens freely enjoying human rights without a system of patronage is the main obstacle in incorporating principles of human rights to water and sanitation into other Acts of Parliament and Statutory Instruments.

¹⁵ Constitution of Zimbabwe Amendment (No. 20) Act 2013

¹⁶ Constitution of Zimbabwe Amendment (No. 20) Act 2013

¹⁷ <http://www.zimllii.org/zw/judgment/harare-high-court/2014/195/>

¹⁸ <http://www.zimllii.org/zw/judgment/harare-high-court/2016/360/>

6. Please provide specific examples of good practices where a human rights-compliant regulatory framework has led to the progressive realisation of the human rights to water and sanitation.

The Zimbabwe High Court ruling of Farai Mushoriwa vs City of Harare led to reconnection of water supply on a premise that was illegally disconnected. This was possible because of Section 77(a) of the Constitution of Zimbabwe.

7. Non-State actors have the responsibility to respect the human rights to water and sanitation and to exercise human rights due diligence in their operations. How should a regulatory framework reflect this responsibility? Please provide examples.

The regulatory framework should have provisions prohibiting every institution or persons (whether it is a state or non-state actor) from acting in a retrogressive manner and doing anything that limits the enjoyment of the human rights to water and sanitation. These measures should include stiff penalty against vandalism of water and sanitation infrastructure. Affordability of water services has been hampered by bad raw water quality which demands high costs of purification. Non-state actors from the industry are mainly responsible for discharging effluent into streams. Compelling them to pay for the restoration of polluted raw water helps make water and sanitation services available and affordable.

8. Which model of regulatory mechanism would facilitate stronger compliance human rights standards by service providers? Why? What are advantages and disadvantage of an independent and autonomous regulatory body?

Existence of a capacitated and well-resourced independent Human Rights Commissions at national level and supported by an independent judiciary helps facilitate compliance to human rights standards. Independent Human Rights Commissions and judiciary systems help stop service providers from acting as both player and referee on issues of human rights standards. The Human Rights Commissions need to have Special Commissioners on Water and Sanitation at national level. The challenge with independent Human Rights Commissions is on funding of the commissions.

The 2013 National Water Policy of Zimbabwe under paragraph 1.3.4 provides for the establishment of Water and Wastewater Services Regulatory Unit. Such autonomous regulatory bodies are established in circumstances where there are plans to either commercialize or privatize water and sanitation services. The Zimbabwean National Water Policy gives the Water and Wastewater Services Regulatory Unit the responsibility to oversee licensing of Water Service Providers by Water Service Authorities (mainly Local Authorities) as well as receive and assess tariff applications. Privatization and commercialization of water impacts negatively on human rights standards.

9. What mechanisms should be in place to ensure that the voice of persons and communities in vulnerable situations is heard and their needs are taken into consideration in the regulation of water and sanitation services? Please provide positive and negative examples.

Regulations should be clear and makes it mandatory for service providers to involve citizens and shun discrimination. There should be deliberate policy framework to engage stakeholders and

clear criteria on stakeholder mapping. Elected officials or policy makers who are at the lowest structure of local government need to be involved as well and feedback to their respective communities on a regular basis. Communities should be involved in formulation of policy and budgets; implementation; expenditure tracking; monitoring and evaluation. There is also need to enhance capacity of vulnerable communities to demand accountability from duty bearers.

The City of Harare used to engage residents on issues they deem fit to do so. With the crafting of a Stakeholder Policy which was demanded by Civil Society Organizations and the Social Service Charter the approach of the Local Authority changed.

10. What measures could be envisaged in a regulatory framework to promote transparency and tackle corruption in the water and sanitation sector?

The prominence of aid-dependence on water projects within developing countries increasingly required them to answer to actors outside their own borders and banks that are financing water projects through loans. Accountability is thus directed “outward”, with answerability to loaning banks often taking precedence over accountability “downward” to citizens or parliaments. This contradicts the expansion of formal democracy systems that calls for increased focus on the accountability of states to citizens, and the role of citizens in decision-making processes¹⁹. It has further opened ground for corruption with some of the loans administered through offshore accounts. To promote transparency the regulatory framework need to make it mandatory to involve Civil Society Organizations in monitoring and evaluating grants or loans on water and sanitation as well as promoting involvement of CSOs on social accountability issues. Independent Anti-Corruption Commissions are also important in fighting corruption.

¹⁹ United Nations Social Accountability