

Public consultation

Independent Expert on the issue of human rights obligations related
to access to safe drinking water and sanitation

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I am interested in issues of human rights and water and particularly human rights based approaches to programming in respect to WASH delivery of services. I have been providing capacity development to local authorities on how best they can address this issue and recently was appointed a national level as a commissioner for human rights. I must admit that while looking at rights based approaches to WASH provision, we have largely looked at it from the public sector perspective and thus I will try to provide my reflections on the private sector who have not been actively engaged.

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

The first issues that the public sector has to bear and recognise are that the private sector is an important stakeholder in WASH that uses and impacts on the WASH services. While they benefit from water, they also potentially pollute the water as well. The private sectors that depend on water for production have a dual role of contribution to economic development as well as contributing to both social equity and environmental protection. Apart from this, the private sector is necessary in the provision of goods and services, skills development, research on technology and may even be the engine that drives social marketing for behaviour change as they generally have skills in marketing.

Against this recognition, states have an obligation to set in place mechanism for engagement with the private sector. This could be through the Sector Wide Approaches that promote stakeholder participation and involvement. Most principles on water have underscored the need for participation from all stakeholders (Dublin Principles, UN Decade review 1990). Participation in human development, social issues, political or cultural aspects is a human right. Private sector participation therefore should be encouraged and it is the mechanisms put in place for such participation to take place. As already indicated SWAP arrangements are one such mechanism, country level collaboration and coordination are other mechanisms.

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

- The regulatory framework put in place should be that there is public sector represented in all utilities or public entities dealing with the planning, management and implementation of water supplies and sanitation services. Secondly that there should be a public accounting mechanism in place so that there is accountability to the private sector on how tariffs that are collected are utilised for improving services. The private sector should also be part of the peer reviewers of budgets.
- Apart from regulation, what additional measures, structures and institutions are necessary?
- There is need to have a multi stakeholder platform that will bring private sector players together and as a representative body can then interact with public bodies. The Ministries of industry and commerce who normally are not considered as main stakeholders in water issues should be part of the multi stakeholder platforms.
- What are the responsibilities of the private sector when participating in the provision of water and sanitation services?
The private sector has a role of:
 - Carrying out research so that guidelines are based on evidence
 - Advising on the mechanisms for participation
 - Skills development
 - They also need to be transparent in their dealings
- 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 corporations and other business enterprises, the OECD guidelines, the Global Compact, etc.) be used to guide our understanding of private sector responsibility in water and sanitation service provision?

The issues of water and sanitation as a human right should be enshrined in the labour laws and this is an area that affects the private sector the most. In Africa workers fail to go to work and lose person hours and subsequently money due to disease burden associated with not having adequate facilities. The private sector needs to understand their dual role that they play both as duty bearers and as claim holders in relation to WASH. They are duty bearers in so far as they are obligated to provide services and yet are also claim holders that must demand the right framework from the state.