

ESCR Section
Special Procedures Division
High Commissioner for Human Rights, Ms. Catarina de Albuquerque
UNOG-OHCHR
Palais des Nations
CH-1211 Geneva 10, Switzerland

The Netherlands, 11th of March 2010

Subject: contribution on public consultation on the issue of human rights obligations in the context of private sector participation in the provision of water and sanitation services

Dear Ms. Catarina de Albuquerque,

On behalf of the Netherlands Water Partnership's NGO-platform, we would like to contribute some ideas towards your report on private sector participation in the provision of water and sanitation services in the context of the human right to water and sanitation

The access to safe water and sanitation are vital elements to combat disease, poverty and hunger. We do not need to convince you that illnesses caused by inadequate access to safe drinking water or sanitation undermine one's capacity to carry out productive labour and prevent one from investing in education or economic activities. Women share the largest burden, since they often have to collect water, take care of the sick, and cannot attend school when there are no toilets available.

Access to safe water and sanitation are basic services that should be provided by national governments. Unfortunately, some national governments do not have the means or the institutional capacity to invest in these services on the scale required. As a result, it is especially the marginalized groups in society that tend to bear the consequences. Donor organisations, donor countries, private sector investors and community leaders take initiatives to provide people without access to water and sanitation to taps and toilets. This assistance is offered in different ways, including the various ways in which the private sector engages with the issue. While diversity and adaptability are virtues, they certainly present challenges in the field of policy coherence at the national, provincial, district and local government levels.

Thankfully, the human right to water and sanitation offers a coherent framework for the integration of all these initiatives within a unifying set of parameters including but not restricted to the right to information, the right to participation, the right to non-discrimination, accessibility, affordability, availability, and allocation (priority of access over other water rights).

The Netherlands Water Partnership NGO-Platform would like to emphasize that water and sanitation services are basic needs for people to survive. Access to water and sanitation need to be provided in a sustainable way. Sustainability is required on different levels: financial, institutional, environmental, technological and social. This is the only way to make sure that water and sanitation services can be offered now and in the future. Financial sustainability ensures that financing is available to provide and sustain investments at household, community and business level. General comment no. 15 does not stipulate that water or sanitation should be provided free of charge -a common misconception with regard

to the human right to water for instance- but rather that water should be provided at an affordable rate. A key policy challenge lies in ensuring the cost recovery of water services without cost recovery objectives becoming an obstacle to the access to services by the poor.

By the same token, general comment no. 15 proscribes discrimination on any grounds. This principle of non-discrimination requires delivery agents acting on behalf of or in cooperation with the state to demonstrate a planned approach to delivery and maintenance which proves an even spread of activities across income groups, gender divisions, ethnic divisions, and so forth. Institutional sustainability makes sure that authorities and procedures ensure functionality on the long term, while on the technological side the 'hardware' ensures new technologies and facilities for safe water and sanitation. Social sustainability means the realization and sustaining of social conditions or prerequisites that are essential to realize the right to water and sanitation, for both the right holders as well as the duty bearers.

Water and sanitation services need to be provided at socially acceptable costs. It is important that vital functions in rural and urban areas, including safety, the economy, housing, agriculture and nature are guaranteed. This should be the starting point in the provision of safe water and sanitation in all places over the world. It is clear that this could conflict with the interest of private sector involvement.

States that have recognised the human right to water and /or sanitation bear the obligation to review existing legislation, strategies and policies to ensure that they are compatible with obligations arising from these rights. A key element of such a review includes the coherence of laws and policies pertaining to private investment with the laws and policies recognising and operationalising the right to water and sanitation. At the national level, this pertains for instance to bilateral investment treaties and to the investment commitments of foreign donors. At the local level, this pertains to public private partnerships and in particular to the *reviewing of service contracts in terms of the human right to water and sanitation*. This course of action is not disadvantageous to private sector investors, as it leads to a highly specific definition of expectations and ensures a minimum of conflict with the local service authority and civil society as it is anchored firmly in local justice. To protect community interests, the implementation of the right to information is a crucial anchor for effective and conflict free service delivery. This includes such essential elements as the transparency (regular reporting and independent review) of investment flows into the extension and maintenance of infrastructure and clarity on the breakdown of annual and project costs. The access of civil society to the decision making of local water companies is a case in point. From the side of States a clear long term vision, public debates on social acceptable costs, as well as codes of conducts with binding consequences should provide a framework for private sector involvement.

Private sector participation in the provision of drinking water and sanitation services offer a wide range of opportunities. It should however remain clear that the activities of the private sector, or for that matter of any other parties involved in the sector, are subject to the rights and duties embedded in the legal anchors of the human right to water and sanitation. As government can delegate its responsibilities to provide basic services to private sector organisations, these are given latitude to make profit while doing so. So, the private sector has an associated duty to adhere to international guidelines on corporate social responsibility.

Public-private partnerships can add value in the process of providing people with water and sanitation services, as well as in the field of capacity building. Therefore it is a welcome

development that more and more public-private partnerships are emerging, and lessons are being learned in the process, such that more attention is paid to service extension for marginalized groups. The Dutch NGO-platform encourages this.

Please feel free to contact the NWP NGO-platform if you have any questions, or would like to be informed of practical examples.

With kind regards,

The Netherlands Water Partnership NGO-platform, consisting of 17 NGO's;

AKVO
AMREF Flying Doctors
Aqua for All
BOTH ENDS
Connect International
Gender and Water Alliance
ICCO
Het International Water and Sanitation Centre IRC
Micro Water Facility
Plan Nederland
PRACTICA Foundation
RAIN Harvesting Implementation Network (RAIN)
Simavi
SNV Netherlands Development Organisation
WASTE
Wetlands International
Women for Water Partnership