

**Mandate of the Special Rapporteur on the human rights to safe drinking water and sanitation**

**Report to the 75th session of the UN General Assembly in 2020**

The Special Rapporteur’s thematic report to the General Assembly to be presented in October 2020 will focus on privatization and the human rights to safe drinking water and sanitation. For general guidance, the following tabel summarizes the limits of the report scope, clarifying what situations will or will not be included on it:

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| --- | --- |
| **The scope of this report includes:** | **The scope does NOT include :** |
| * Private sector actors (for-profit organizations) | * Non-profit organization that undertake service provision * Informal service providers * Community-led service provision * State-owned enterprises |
| * Enterprises that government owns capital and shares in, but where a large proportion of shares are owned by private investors. | * State owned-enterprises, i.e., any corporate entity in which the government owns almost all the capital or the voting shares |
| * Private sector participation with specific focus on service provision | * Private sector participation in subsidiary activities across the whole water and sanitation cycle by, inter alia, supplying materials and equipment, developing engineering designs and building infrastructure |
| * Impact of remunicipalization and risk of private sector participation | * Comparative analysis on risks and advantages of water and sanitation provision by public and private entities |
| * Both water and sanitation services |  |
| * Assess the level of risks and reasons behind those risks that private sector participation brings when for-profit organizations are heavily involved in service provision | * Whether human rights dictates a specific type of model or service provision |

**Questionnaire - non-State actors**

The Special Rapporteur would welcome answers to the following questions:

1. Please describe briefly the role and responsibilities of your organization in the water and sanitation sector, particularly concerning assessment or promotion of private provision.

UNDP (United Nations Development Programme) supports the ‘good’ governance of natural resources and services provision. In collaboration with authorities (typically national authorities) in host country, UNDP will assist in creating conducive legal frameworks and institutional set-ups for managing resources and services. There is no specific orientation of any policy, but the process that UNDP would support is to ensure multi-stakeholder participation, transparency, and that policies are crafted and implemented in line with the human rights-based approach.

**Current situation and trends**

1. In your view, what the role has the private sector played in the water and sanitation provision in the countries your organization works in (or at the global level)? How has this role evolved in recent decades? Please provide examples.

Global level: After a wave of municipalization of water services provision during most of the 1900s, the trend of privatization, or much more intensive private sector involvement, started in the 1980s. This trend echoes the wider trend of privatization in infrastructure management and services provision (including energy, telecoms, transport, and a range of so-called public services), which tries to capture the perceived or real availability of finances to invest in these services. In most services (but not water) this trend of private investment and/or service delivery was accompanied or driven by technological change that enabled ‘disbundling’ of otherwise highly interconnected systems.

It seems that the level of actual investments/involvement varied during the past decades, but might have peaked in the early 2000s when some larger privatizations of water services were also reversed. At present there may be parallel trends of privatization and re-municipalization going on at the same time.

For water and sanitation, it seems that the ‘privatization wave’ did not bring in as much capital or new investments as hoped by many. However, it put the spotlight on the (lack of) efficiency of (many) public sector providers, along with the need for regulation of the sector. A broader (positive) result of the privatization (and municipalization) wave may be the stronger role for regulators of water and sanitation services provision – of both privately and publicly provided services.

Yet, UNDP has not looked into these trends with any detail. Some work was been done on the role of small-scale providers – not part of the present survey! – in East Africa.[[1]](#footnote-1)

1. Why do public authorities allow or even attract privatization of water and sanitation services? What would be the alternatives for public authorities?

[noting that the question is not very openly posed]

1. (cash strapped) Public authorities are looking for investment. If the private sector willing to invest, public authorities typically delighted.
2. Public authorities often struggling with insufficient and poorly managed water and sanitation services provision. May be looking for ‘competent’ management of services and turn to private corporation for technical expertise.

The alternative is to ensure both capital investment and efficient management through other means. Leadership is important. Staff training is important. Enabling environment is important. Welcome and make best use of modern technology, including metering.

1. In your view, have International Financial Institutions (IFIs) recently encouraged privatization? Could you provide concrete examples?

Not recently, but IFIs were clearly encouraging privatization especially at the onset of the ‘privatization wave’ from the 1980s/1990s – and in some cases demanding it as a condition for loans.

Example 1: Dar es Salaam. IMF and World bank conditionality.

As shown in PhD thesis[[2]](#footnote-2) (pp. 218-219) of present UNDP Senior Water Advisor; in Dar es Salaam, Tanzania, commercialization and/or privatization were requirement for IMF Debt Relief and IDA World Bank loans. Hence, IFIs were actively pushing the Tanzanian government towards privatization or private sector participation.[[3]](#footnote-3) (Dar es Salaam’s water system was leased to a private operator in 2003)

It is also noted that:

1. There was not much (if any) resistance to the privatization of water services provision in Dar es Salaam, presumably due to the lamentable state of infrastructure and service quality.
2. As the Tanzanian authorities in 2005 decided to end the lease and put a publicly owned corporation as services provider, the World Bank did not change the project of loan. Hence: “The present [2005] situation is unique in that a publicly owned corporation operates a system with a financial package designed for a private operator” (Kjellén, 2006, p. 223)

At the time, e.g. the World Bank had become much less adamant on privatizing services, acknowledging that ‘an effective state is vital for economic development’

Example 2: Phnom Penh. – some pressure from the Asian Development Bank:

The exceptional performance of Phnom Penh Water Supply Authority has been hailed by many, and not least as an exceptional case of public sector efficiency.[[4]](#footnote-4) Whereas its outstanding performance is mostly attributed to the leadership of Ek Sonn Chan (director general of PPWSA 1993-2012), the PPWSA has also received important assistance from donors like France, JICA, UNDP, World Bank and not least the Asian Development Bank.

Yet, according to the director general (interviews with Ek Sonn Chan 2007-10-23 and 2010-09-08 by Marianne Kjellen) ADB had also put a lot of pressure on PPWSA to ‘go private’ or at least to make use of private providers of services. In 1998, the director gave in to such pressure and outsourced a major pipe-laying works. It became expensive and difficult to coordinate, and as the director was able to show that it was more economic to conduct the work in-house – retaining also the experience and the knowledge of the work ‘as performed’ the banks (sic) gave in agreed to fund pipelaying as performed by PPWSA in-house. (Success well recognized: In 2004, PPWSA received the Asian Development Bank Water Prize.)

1. In case of economic crises, have the promotion of privatization increased?

The promotion of privatization is clearly rooted in the perceived or real lack of finance among public authorities. (partly spurred by ‘stagflation’ of 1970s.)[[5]](#footnote-5) Yet, UNDP is not aware of any such connection having been systematically shown.

**Private provision**

1. In your experience, if the private sector is involved in provision of water and sanitation services, what process was undertaken prior to the decision to adopt this model of provision? What types of concerns have been considered in such decisions?

Privatization – or private sector participation, as it is usually referred to when the private sector takes on responsibility for service provision without necessarily owning the infrastructure – is usually proceeded by changes in legislation to make this possible.

In the case of Dar es Salaam, a regulatory body was set up in anticipation of the privatization exercise, albeit it only became operational *after* the privatization had already been reversed. Yet, this case also manifests the increased importance afforded to regulation, even in the context of publicly operated services.[[6]](#footnote-6)

It is important that the water sector regulation be reformed in an open and participatory manner, ensuring that the interests of various groups are well understood and appropriately regulated. In support of such measures, UNDP has recently supported additional policy consultations in the Comoros. It is important that legislative measures not be rushed to the detriment of transparency and consultation.

1. How could public authorities use the features of private providers to foster the realization of the human rights to water and sanitation (HRtWS)? Is private provision positive for the progressive realization of the human rights to water and sanitation? If yes, in which circumstances?

Equality: Public authorities can emulate all positive and efficiency-oriented features of private provision to ensure a more egalitarian service – e.g. by not sending scarce infrastructure or keeping higher water pressure in geographic areas with influential citizens. In situations – which are not uncommon – where the poor pay more, and the wealthy have subsidized services, then a strictly commercial means of distribution is more in line with the HRtWS.

Charge for water, not infrastructure: If technologies were more alike, the water sector could emulate the telecoms – giving mobile phones away for nothing, as long as you subscribe to the services of the provider. For technological reasons, the economics of water and telecoms are very different. Yet, there is a fallacy in the provision of cheap/underpriced/subsidized water – often in the name of ‘affordable’ services – if it is made available to the non-poor and not the poor.

Keeping water prices sufficiently high to ensure that water providers do not make losses, but rather financial gain, from delivering water to users, could be another feature that the public authorities can pick up from the logic of private/commercial provision. (Then, as suggested e.g. by the World Bank, subsidies can still be awarded, but through other mechanisms than to suppress water prices/tariffs.)

Plan infrastructure, and subsidize or amortize the connections: The inequalities in urban water provision are derived from the way that public sector/pipe networks are typically laid out, servicing some areas much better than others. This requires new investment – which is planned with (geographic) equity / human rights as the ultimate objective. The next step is to ensure that households are able to benefit from the services. This is determined by the policy for (first-time) connections. The high real cost of connection constitutes the main barrier for poor households in accessing safe water services. [[7]](#footnote-7)

1. How have instruments and mechanisms in place allowed the users (and non-users) to complaint and get remedy from private providers?

Not aware.

1. Do private providers advocate for stronger regulation? If so, why?

Not aware.

(generally, literature suggest that private sector advocate for ‘equal’ (environmental or similar) regulation between countries, i.e. neutral for competition between companies.)

1. How has been the relationship between private providers and public authorities at the local level? What are potential concerns public authorities and users face vis-à-vis private providers?

Depends…

One way to generally improve relations could be openness and transparency. For example, the conditions for a lease or concessions need not be secret or confidential. Such secrecy does not help any private nor public entity with honest intentions. And it helps both sides to gain understanding from the press/public.

1. How have private providers contributed to or harmed the realization of the HRtWS? Please give examples.

???

No clear idea, although in the case of Dar es Salaam, a lower tariff was for low-volume users (up to 5 cubic meters per month) was introduced along with private provision. *In theory* this is an improvement for poor households. But since the poorest households are unlikely to have a connection, this measure can be seen as neutral towards the realization of the HRtWS.

1. What is the nature of the information available on service provision? Does it allow for the adequate accountability of private providers and public authorities?

where contractual arrangements are not in public domain, there is certainly insufficient information for accountability.

1. Who monitors the performance of private providers in respect to the normative content of the HRtWS and how? Who intervenes when there are risks of human rights violations and how is it done? Who imposes penalties in case violations occur?

This should typically be spelled out by regulatory arrangements. (and where regulatory arrangements are not explicit it would be the law through the ministry of water or public works.)

Unfortunately, regulatory frameworks are sometimes ‘imported’ from high-income settings and applied to low-income settings. This may produce a situation where issues that are not of importance to the former, e.g. services coverage, is not monitored at all, even if the level of service coverage is the main issue in low-income settings. [[8]](#footnote-8)

1. What are the main challenges public authorities face regarding availability, accessibility, quality and affordability when private actors provide water and sanitation services? Please give examples.

Depends… on the public – private axis, regulatory framework should be key. And (as suggested above), WHAT to be monitored is of great importance. Then, openness, transparency and INTEGRITY among all parties involved.

1. Do you know any case of corruption involving private provision of water and sanitation services? Please give the necessary details.

Do not know, but suggest transparency (e.g. of all contractual arrangements) as important measure to avoid its occurrence.

1. Has the private sector shown more capacity to mobilize funds than the public sector? Could you please give concrete examples?

Do not know, but seems like the main ‘general disappointment’ with private sector involvement is that it has not generated the level of funding that was hoped for. (the case of providing financial packages for private providers highlighted above would not qualify as example of private sector raising funds, but rather of IFIs promoting private sector participation.)

1. In your opinion, is there power imbalance in a public-private partnership? Could you please give concrete examples of effects of this relationship?

Yes, there are power imbalances. But also complexity. International corporations have huge power, funding and backing through their sheer size and international extent. Yet, they may lack knowledge of the local situation, meaning that in a negotiation for a particular market / supply area, the local authorities may have an information advantage that can be construed as a power.

External parties, like financiers, have a huge influence/power. This can be motivated or not, depending on the level of risk assumed by the financier.

Only well-known example in this case – being that of Dar es Salaam – suggest that great power played out by IFIs in setting up the whole deal. Subsequent biddings and re-biddings suggest that companies were indeed competing *for* the market in all sincerity.[[9]](#footnote-9) But given how all unfolded, the company had underestimated the catastrophic state of the systems, indicating a lack of information about the local circumstances. Situations like these have been portrayed as if international water corporations do not have all the power. Hence, there are imbalances, but not totally obvious how these sway.

Again, while the regulator has subsequently introduced consumer councils to have influence and funnel grievance on behalf of the public; a much greater role for public debate about *how* water/sanitation is actually managed. Indeed, the procedural (?) side of the HRtWS indicate that rights holders are also entitled to influence over how services are provided. This entitlement could be pushed much more importantly – through public debates and transparency / openness about all contracts and rules.

1. When there is private participation in the water and sanitation sector, to what extent the private actor brings its own financial resources to the service?

Probably depends. But just the bidding is expensive, as is the whole exercise. All parties are putting lots of effort and financing into these processes.

**Remunicipalization**

1. Have you studied any case of remunicipalization? Why and how has it occurred? What types of difficulties has the public authority faced to establish the new municipal provider? Please, provide details of those processes.

Have not studied, except for the case of ‘reversal’ of privatization of Dar es Salaam.

It is noteworthy that in this case, the shift from public to private and back again has only involved a shift in leadership. Most of the ground staff remain.

The ‘failure’ in Dar es Salaam seem to involve miscalculation, lack of information, and underestimation of the problems of the water system. This may have been coupled by a lack of patience among the public and public officials. The procedure for ‘ousting’ of City Water directors did was unlawful, as later deemed in arbitration that the Government of Tanzania would get no compensation. Another arbitration also deemed no compensation for mistreatment due to the company, since they had not performed their proper due diligence or investigation of the system as stipulated, and hence were sort of at fault for getting themselves into ‘mission impossible.’

The continuation of the case of Dar es Salaam has not been studied. It seems, however, that the regulatory body is managing to get a systematic review and possibly ‘healthy competition’ based on ‘benchmarking’ between utilities in the country.

Insufficient knowledge on this side about the continued operations of the new public operator DAWASCO. However, the informal means of water provisioning in Dar es Salaam still seem to thrive, as people need to have their back-up in case of unreliable public water supply.

1. See e.g.:

   Bayliss, K. and R. Tukai (2011). Services and supply chains: The role of the domestic private sector in water service delivery in Tanzania. Secondary Services and supply chains: The role of the domestic private sector in water service delivery in Tanzania. Secondary Bayliss, K. and R. Tukai. New York. (<http://www.undp.org/content/dam/undp/library/Poverty%20Reduction/Inclusive%20development/Tanzania-Water.pdf>)

   Hailu, D., S. Rendtorff-Smith and R. Tsukada (2011). Small-Scale Water Providers in Kenya: Pioneers or Predators? Secondary Small-Scale Water Providers in Kenya: Pioneers or Predators? Secondary Hailu, D., S. Rendtorff-Smith and R. Tsukada. (<https://www.undp.org/content/undp/en/home/librarypage/environment-energy/water_governance/small-scale_waterprovidersinkenyapioneersorpredators.html>) [↑](#footnote-ref-1)
2. Kjellén, M. (2006). From Public Pipes to Private Hands: Water Access and Distribution in Dar es Salaam, Tanzania. PhD Thesis, Stockholm University. (<http://www.diva-portal.org/smash/get/diva2:189600/FULLTEXT01.pdf>) [↑](#footnote-ref-2)
3. The World Bank was actively supporting privatization of railways and more generally, and media campaigns for that, through the Tanzanian Parastatal Sector Reform Commission. See Kjellén (2006), page 184. [↑](#footnote-ref-3)
4. See e.g. Biswas, A. K. and C. Tortajada (2010). "Water Supply of Phnom Penh: An Example of Good Governance." International Journal of Water Resources Development **26**(2): 157–172. [↑](#footnote-ref-4)
5. See e.g. Finger, M. and J. Allouche (2002). Water Privatisation. Trans-National Corporations and the Re-Regulation of the Water Industry. London, Spon Press. [↑](#footnote-ref-5)
6. See Kjellen (2006) pp 77-79; 193-195 [↑](#footnote-ref-6)
7. Kjellen (2006) describes a situation in Dar es Salaam where the infrastructure has been ‘marketized’ in a way that pipe extensions are left to individual initiative and commercial logic. Such practice is NOT conducive to the HRtWS. [↑](#footnote-ref-7)
8. See also Gerlach, E. and R. Franceys (2010). "Regulating Water Services for All in Developing Economies." World Development **38**(9): 1229–1240. [↑](#footnote-ref-8)
9. The ‘winning’ and ‘only’ bidder actually put in the bid for the lowest possible operator tariff, which suggests them to be unaware of being the sole bidder. (it is sometimes alleged that bidders put in a low tariff to win the bid and then later count on renegotiation of the tariff. Indeed, there were subsequent requests for re-negotiation, but while the case suggests some potential tactics it also suggests competitive behavior rather than collusion. [↑](#footnote-ref-9)