**RESPONSES TO QUESTIONS FROM THE UN SPECIAL RAPPORTEUR ON HUMAN RIGHTS**

*(Contributions to the preparation of a thematic report onprivatization and the human rights to water and sanitation for the 75th session of the UN General Assembly)*

1. **WATER**

**Current situation and trends in the privatization of water**

* In Ghana, private sector participation in water is not well-developed. There is only one urban water utility, the Ghana water company limited, which is responsible for the provision of water supply to the urban centres, and is 100% government owned. The Utility is regulated by an independent regulator, the Public Utilities Regulatory Commission. The laws currently, do not make provision for private sector participation in the urban water space.
* The provision of rural water supply is the responsibility of the District Assemblies under the local government systems, and facilitated by the Community Water and Sanitation Agency (CWSA), which is 100% government owned. The Community, Ownership and Management concept is the principle by which rural and small town water supply is managed. However due to a number of challenges, the CWSA is currently undergoing some reforms to take over the direct management of the rural and small town water supply services.
* The peri-urban areas in Ghana have seen some interventions from private operators in the management of water kiosks, to assist the government to meet its SDG and national goals and targets for water, as those areas have challenges accessing safe water. There is currently no legislation governingthe activities of such private sector operators. They are mostly guided by sector policies and plans.
* Ghana is yet to enact legislation to govern the participation of the private sector in water supply. However,there are some policies and frameworks which provide guidance to private sector participation in several development areas, including water. These are the following:
* National Water Policy (2007) which encourages such initiatives
* Framework for Private Sector Participation in Rural and Small Towns water supply (2010)
* National Public –Private-Partnership (PPP) Framework. This is a broader PPP Framework within which sectors like the water sector can develop a comprehensive PSP framework for water supply.

**Future of Private Sector involvement in water supply services**

* The Government of Ghana plans to improve the enabling environment for private sector participation in water in terms of setting and/or clarifying standards of performance, developing effective regulation and enforcement regimes, developing indicators for monitoring to ensure that the needs of the poor and vulnerable are taken care of and ensuringthat everyone living in Ghana has access to safe, affordable and reliable drinking water in line with SDG-6, while at the same time fulfilling its commitment to upholding the human right to water.

1. **SANITATION**

**Current Situation and Trends**

1. **(a) How does the private sector participate in Sanitation provision in your country?**

The Environmental Sanitation Policy of the country has set the roles and responsibilities of the private sanitation service providers and how they can participate in sanitation service delivery. This is affirmed by and modalities outlined in the National Public Procurement Act, Act 663 of 2003.

Practically more than 80% of sanitation services are ceded to the private sector.

**(b)Please clarify the modalities of relationship with the different tiers of government and types of contracts.**

Various types of contracts are entered into with the private service providers by Government entities at the National, Regional and District level depending on the type and quantum of money involved. Each of these go through competitive open tendering process and in some limited cases, single sourcing is allowed. The National Public Procurement Act has set out the threshold and procedures.

**(c)Please clarify the rationale behind such policy.**

The main reason for private sector participation in sanitation service delivery is to ensure efficiency and procedures applied through the Public Procurement Act is to secure a judicious, economic and efficient use of state resources in fair, transparentand non-discriminatory manner.

1. **If there is no provision of sanitation by private entities in your country, please clarify the rationale behind such policy.**

Not Applicable

1. **How has the level of involvement of private providers in sanitation evolved in the last decades?**

The volume of services allowed to be ceded to the private sector has increased steadily from mere 50% to over 80% currently.

1. **(a)What are the expectations of your Government about the level of involvement of private providers in the short, medium and long terms?**

It is expected that in the short term, the quality of services being delivered by the private sector increases and in the medium term, the scope of service expanded while Government looks up to close to 90% private sector involvement in sanitation service delivery in Ghana in the long term.

**(b)If there is a trend of increasing or decreasing private provision, please clarify the underlying reasons.**

The trend in Ghana is increasing. This is due to ever increasing trust and efficiency in private service contractors and the fact that Government wants to concentrate on its core business of creating the enabling environment to attract the private sector.

1. **Please provide detailed information on legislation concerning participation of the private sector in sanitation (please highlight whether the legislation of your country encourages, allows for or prohibits this to occur) and concrete examples of related instruments and mechanisms.**

The following National and Local Legal Frameworks as well as Policy and Strategy allow private sector participation in sanitation service delivery in Ghana:

* National Public Procurement Act, Act 663 of 2003
* Local Governance Act, Act 936 of 2016
* Public Financial Management Act, Act 921 of 2016
* National Policy on Public Private Partnership (PPP)
* Environmental Sanitation Policy of 2010
* National Environmental Sanitation Strategy and Action Plan (NESSAP)
* Bye-Laws of various Metropolitan, Municipal and District Assemblies

Private Provision

1. **In the event the private sector is involved in provision of sanitation services, what process has your Government (also if the decision was taken by a former executive) taken prior to the decision to adopt this model of provision? What types of concerns have been considered in such decisions?**

The various regulations governing engaging the private sector in sanitation service delivery has been enshrined in appropriate Acts and Bye-Laws. The processes and procedures to this effect are clearly laid out. The decision to engage the private sector for a particular service is purely an administrative one is mostly considered by technical people from time to time, depending on the need, resource availability, technical soundness among other considerations. These decisions once taken and contracts are entered into, it becomes binding and barring any infringement of procurement Law and other laws, change in government machinery does not affect such contracts.

1. **(a)How has the private sector contributed to the realization of the human rights to sanitation in your country?**

Through advocacy and engagement with Government and relevant duty bearers.

(b)What kind of drawbacks and risks does your Government identify and what instruments are available to overcome them?

Inadequate resources to ensure full role out of sanitation as a human right partly captured in the 2010 Environmental Sanitation Policy.

Need for continuous advocacy by human right activists and put it into the Environmental Sanitation Policy and accompanying strategy current being reviewed.

1. **(a)What would be the necessary conditions for an enabling environment for the realization of the human rights to sanitation by private service providers?**

Need for the private sector to participate in existing coordination platforms and convening power to improve evidence based advocacy and influence policy change in addressing universal access and equity as ascribed by the SDG targets on Sanitation.

(b)How could eventual risks to the fulfilment of those rights be mitigated?

* Strengthened Public Institutions
* Develop capacity of decision makers
* Improved Planning, budgeting and monitoring
* Legislations

1. **How have courts ruled regarding alleged human rights infringements by private sanitation service providers? What are legal remedies for users’ complaints regarding any aspects of alleged violations of the human rights to water and sanitation when private sector is in place?**

Do not have any evidence on this.

1. **(a)Who defines performance for private operators?**

Government or Public sector agencies

**(b)** **Who oversees the prioritization of those unserved or underserved? Please clarify how regulations takes place when there is private provision**

Government or Public sector agencies.

Relevant Public Institution which signs contract with the private service provider, use pre agreed key performance indicators to assess whether the service has been delivered or otherwise and appropriate payments or sanctions are applied as stated in the signed contract

1. **What types of specific policies are in place to ensure affordability and sustainability when there is a private provision?**

* Guidelines for targeting the poor and vulnerable for basic sanitation services in Ghana (June 2018)
* National Environmental Sanitation Strategy and Action Plan (June 2010)

1. **In case of private provision, who finances service expansion to the poor? Who finances infrastructure renewal?**

Government and some cases Development partners

1. **To what extent does the private actor bring its own financial resources to the problem?**

Through BOT or BOOT arrangement for some selected sanitation infrastructure eg Public Toilets. The process is initiated through solicited or unsolicited proposals.

1. **With climate change, many countries are facing problems related to water availability. What are the responsibilities of private providers on addressing risks of supply disruption due to water scarcity?**

Not Applicable

1. **Has your country faced any documented case of corruption involving private sector provision of sanitation services?**

Not aware of any

***Remunicipalization***

1. **What are the legal means available to a local government when it is dissatisfied with the performance of a private sector provider?**

Apply the provisions of the signed contract. Usually starts with warning letters and ends with termination of contract. In some cases, the two parties may go for arbitration.

1. **Has your country experienced cases 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.**

Yes. Legislation Instruments are promulgated to determine the administrative and physical boundaries of the new Municipality.

So all private entities working in the carved areas, automatically move to the new Municipality using the same old contract.

1. Currently, there is limited private sector participation in water. These private sector interventions are not complex extensive water supply system but simple water kiosks which operates pre-dominantly in the peri-urban space. The only urban water utility in Ghana (Ghana Water Company Limited) is owned by government and there are reforms currently on-going in the rural water subsector for a government agency to take over the management of water which hitherto had was being managed by the Communities and allowed for the participation of the private sector with the development of a Framework for Private Sector Participation in Rural and Small Towns Water Supply.
2. There is limited participation of the private sector in watereven though there is the existence of a national Private-Public-Participation Framework that is hosted by Ghana’s Ministry of Finance within which the water sector led by the lead Ministry for Water could develop a framework for private sector participation in water and the National Water Policy (2007) encourages this initiative, the water sector is yet to contextualize the national PPP framework and agree on how it will be operationalised. To this end, PPP or PSP models to adopt for the water sector coupled with the right legal and institutional arrangements is yet to be put in place to ensure an effective private sector participation in water.
3. Private sector involvement in Water still has a narrow scope or limited to the management of water kiosks in peri-urban areas since the last decade. PSP involvement in the rural water sub- sector has been reviewed as part of a major reform where the government agency which hitherto facilitated rural and small towns water provision, is transforming its role to become Public utility and taking over the management of the water systems in rural and small towns.
4. Government of Ghana expects active private sector participation in water as it is currently reviewing the institutional arrangements in the sector in the light of the Sustainable Development Goals. Government therefore views private sector participation as key to mobilise the necessary financial and technical resources for the achievement of the SDGs and other national targets for water.
5. .

**Private provision**

1. Mobilisation of capital and technical know-how to reach targets
2. The limited private sector participation in Ghana has been in the peri-urban areas where access to safe water is a challenge. The private sector has therefore assisted in increasing access to safe water to population living in these areas and subsequently, contributing to the achievement of Ghana’s vision of ensuring a 100% access to safe water by the year 2025. However,weak regulation and enforcement becomes a draw back in ensuring that consumers are not over-exploited by the private sector and that the needs of the poor living in these areas areaddressed.
3. Models for private sector participation, appropriate institutional arrangements (including performance standards)and effective regulation and enforcement
4. N/A
5. They are guided by sector policies and frameworks which are normally developed by the lead Ministry for water and its stakeholders. However there are currently no standards of performance and lack of clarity with regards to the regulation of the private sector
6. The National Water Policy 2007 and the National Private Public Partnership Framework and the Framework for private sector participation in Rural and Small Towns Water Supply
7. Government addresses the needs of the poor It depended on the kind of contract signed with the District assembly. A management contract required the