

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

Questionnaire for Non-State Actors

The principle of accountability in the context of the human rights to safe drinking water and sanitation

Pursuant to the UN Human Rights Council resolutions 27/7 of 2014 and 33/10 of 2016, the Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Léo Heller, will be elaborating his thematic report to the seventy-third session of the General Assembly in 2018 on the principle of accountability in the context of the human rights to safe drinking water and sanitation.

Accountability implies that actors involved in provision and regulation of water and sanitation services must have clearly defined duties and responsibilities and performance standards (“responsibility”); actors must be answerable to affected people and groups for their actions and decisions, which includes access to information in a transparent manner (“answerability”); and mechanisms should be in place that monitors actors’ compliance with established standards, imposes sanctions and ensures that corrective and remedial action are taken (“enforceability”).¹

The Special Rapporteur departs his initial analysis on the topic from a broad interpretation of the principle of accountability and focuses on the relationship of State and non-State actors² involved in policy-making, provision and regulation of water and sanitation services to the people affected by their actions and decisions.

The Special Rapporteur is seeking information on mechanisms that enable individuals and groups to hold those actors accountable for ensuring the rights to the safe drinking water and sanitation. He, therefore, requests information on good examples, as well as main challenges encountered in establishing, using and implementing such mechanisms. Accountability mechanisms may include, among others, processes of participation, monitoring, oversight, information, as well as judicial, quasi-judicial, administrative, political mechanisms.

As part of his research, the Special Rapporteur welcomes responses to the following questions:

¹ Office of the High Commissioner for Human Rights, “Who will be accountable? Human Rights and the Post-2015 Development Agenda” (2013), p. 10 available from <http://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf>

² Non-State actors may include, but are not limited to: businesses, private actors, development organisations, non-governmental organisations, among others.

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

End Water Poverty is a global coalition of civil society, trade unions, health professionals and non-governmental organisations who are advocating and campaigning to end the WASH crisis within the framework of human rights to safe water and sanitation.

2. Depending on the role and responsibilities of your organization, please provide information on how the **principle of accountability is defined and applied** in the policies and activities of your organization, particularly to ensure the realization of the human rights to safe drinking water and sanitation.

At End Water Poverty, we rely on the working definition of UN refers to the obligation of relevant authorities to take responsibility for their commitments and actions, which are answerable to the people affected by these, and be subject to a thorough monitoring process and to some form of enforceable measures if their conduct or explanation for it is found wanting.³

Base on this definition, we mobilise our members to focus on advocating for inclusive, transparent, accessible and responsiveness of national accountability mechanisms with the aim of increasing access to safe water and sanitation, hygiene for the most vulnerable and marginalised people in their communities. We would be measuring the success of SDG 6 based on how much progress is made on these people.

Alternatively, please provide information on how the **principle of accountability is defined and applied** in the legal, policy and institutional frameworks of the State(s) with whom your organization is working, particularly to ensure the realization of the human rights to safe drinking water and sanitation.

The evidence we are seeing from our recent global survey of 25 countries is quite worrying. States/institutions have put in place laws, policy guidelines and platforms for accountability especially at the back of the Millennium Development Goals. However, these initiatives have been abandoned or deprioritise and some countries have jumped into adopting the Voluntary National Review mechanism without addressing the issue of inclusiveness, transparency and accessibility.

The implications for having these pseudo accountability platforms in countries are that, decisions on how gets access to safe drinking water and sanitation is made based on the convenience and whims of service providers and political patronage. The most vulnerable and marginalise are pushed to used unsafe water and sanitation which has health consequences. A case in point is the perennial outbreaks of cholera in the slums in Lusaka, Zambia.

3. Please describe any **challenges or gaps identified** when applying and implementing the principle of accountability in relation to the human rights to safe drinking water and sanitation. How were these challenges and gaps addressed?

In our research and day-to-day work, the challenges we have come across are; governments and service providers are not too keen to provide answers and governments are not willing to enforce the principles by making defaulters face the

³ See CESR and OHCHR, Who Will Be Accountable? P. 10. <http://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf>

laws of the country. Also various accountability mechanisms such as auditor general, parliament, national human rights commissions and courts are not aligned with global accountability mechanisms such as Universal Periodic Reviews. They see their obligation to this review as a tick box exercise. In some countries, this tick box exercise is limited to one department of government.

Responsibility

4. Please provide information on the **level of clarity and transparency of the roles and responsibilities, and performance standards of State and non-State actors** in accordance with the normative content of the human rights to water and sanitation. In other words, how are defined the roles of the actors responsible for the accessibility, availability, affordability, acceptability and quality of water and sanitation services in an equal and non-discriminatory manner.

This not respected at all either lack of knowledge about its application or deliberate attempt by states and service providers to focus solely on maximise their profits and keeping the political power to allocate services to themselves. This observation is not limited to governments, it also applies to civil society and the private sector when they are providing services. The question of acceptability and quality of water and sanitation services is poor with informal providers which sometimes include services provided by charities. Due to the nature of it being free in some circumstances, recipients are not encourage to speak out when they are receiving poor services. Eg high iron content in boreholes, shallow wells susceptible to flooding and contamination by faecal matter.

5. Please provide information on the **availability and accessibility of information about State and non-State actors** responsible for the realization of the human rights to safe drinking water and sanitation.

2017 JMP report is the only decent database with information on safe drinking water and sanitation. At national level, the data held by utilities not easy to access and are in format which is not user friendly. In some countries, the split between urban and rural services makes it even hard to get complete picture of the state of safe drinking water and sanitation. Safe drinking water and sanitation is seen as unrealistic target for communities. The bulk of service provided by charities cannot be classified as safe, hence there is apprehension in those quarters.

Answerability

6. Please provide examples of good practices or gaps on **how the State informs individuals or civil society organisations** of its progress, retrogression and failures in the realization of the human rights to safe drinking water and sanitation.

There are emerging platform in Burkina Faso known as Presimetre, an initiative by Diakonia and WaterAid Burkina Faso etc (www.presimetre.bf) is a great platform which brings government's accountability closer to reality with answers. Not all the issues they account for on water and sanitation can qualify as safe drinking water and sanitation, however it is a good start. This online platform is complimented with a monthly live TV audience discussion with a minister or the president of the country.

7. Please provide examples of good practices or gaps on how individuals or civil society organisations **obtain reasoned justification for actions and decision** of State and non-State actors.

We would use the base in Burkina Faso, where they combine online reporting and monitoring of progress with live TV audience to get feedback or clarification on progress or lack of it.

8. Please outline the main **obstacles encountered when accessing existing accountability mechanisms***.

*Examples may include judicial, quasi-judicial, administrative, political and social mechanisms.

They are opaque non responsive and process heavy with little results to show. It does not help when the UN decided to accept Voluntary reporting for the SDGs.

Enforceability

9. Please share your experiences in **holding States accountable** for violation of the human rights to safe drinking water and sanitation. How do these mechanisms work in practice?

The reversal of the ruling in Johannesburg to allow the municipality and the water company to install prepaid water meters against the will of the people was a setback.

10. Please provide examples of **accountability mechanisms* suited for holding non-State actors** accountable for breaches of its responsibility to respect human rights to safe drinking water and sanitation.

*Examples may include judicial, quasi-judicial, administrative, political and social mechanisms.

It is difficult to hold non-state actors accountability. They are able to use business confidentiality or subtle threat of withdrawing services to shield against being accountability. In the informal sector provision, accountability is not even discussed. However, there is an initiative by WIN (<https://www.endwaterpoverty.org/news/win-member-spotlight>) in Kenya to hold NGOs accountable.

11. Please describe **how your organisation participated in mechanisms to hold State and non-State actors accountable** for the violation or abuse of the rights to water and sanitation. Has the contribution been taken into account in a meaningful manner and has it been included in State's follow-up action and reporting?

Our members work in Mexico, India, Burkina Faso and Kenya are getting traction with their governments. Some of their comments makes it into their national Universal Periodic Reviews and country visit reports of the special rapporteur on human rights to safe drinking water and sanitation

12. Please provide information on specific cases where **compliance with outcomes** of accountability mechanisms was or was not ensured or implemented.

Less than 50% of countries globally have put in place policy measures to provide safe drinking water and sanitation after the JMP reports.

Submission of responses

Due to limited capacity for translation, it is kindly requested that responses be submitted, if possible, in English, Spanish or French and, **no later than 15 March 2018**. All responses will be posted on the official webpage of the Special Rapporteur on the human rights to safe drinking water and sanitation, unless it is indicated that the submission and/or the supporting documentation should be kept confidential.

(www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx)

Please keep responses to a maximum of 5 pages (or 3,000 words), and provide links to information or documents when available. Preferably sent via email to: srwatsan@ohchr.org, copying registry@ohchr.org. Alternatively, please send to:

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

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