

## **Questionnaire to non-state actors**

April 2021

Report to the 48th session of the Human Rights Council (2021) on planning and vision  
Report to the 76th session of the UN General Assembly (2021) on water commodification

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

Corporate Accountability is a non-governmental organization representing tens of thousands of people committed to challenging the life-threatening abuses of transnational corporations since 1977. We have spent over a decade researching the impacts of privatization on people and partnering closely with community members and civil society organizations across the United States and in the Global South to challenge violations of the human right to water by corporations.

Below, we have answered the questions most pertinent to our expertise and are available to provide additional information and resources.

#### **I. COVID19 and human rights to water and sanitation**

2. Within the countries that your organization works in, what temporary legislative or policy measures have been implemented in the context of COVID19 (including state of emergency, emergency laws, moratorium) to prohibit water disconnections for those who are not capable of paying the water and sanitation service tariffs?

#### **Response:**

In the United States, the COVID-19 pandemic has spurred a renewed grassroots movement demanding that the human rights to water and sanitation be protected. A central demand to the federal government is a nationwide prohibition on water disconnections through the entirety of the public health emergency, as well as for several months after the pandemic has been contained. The disconnection of service is an unambiguous violation of the human right to water. To do so during a global pandemic is simply inhumane.

In January 2021, Corporate Accountability joined more than 600 community, faith, and labor groups in calling for federal action to prevent disconnections during the pandemic.<sup>i</sup> Over 110 Members of Congress have also backed this critical demand.<sup>ii</sup> While there has been vital action to stop disconnections at the local and state levels, the patchwork of protections (many of which have expired) requires a federal-level response to ensure no one falls through the cracks. Despite this grave need, the private water industry has lobbied *against* congressional action to enact a national moratorium on disconnections.<sup>iii</sup> And today, communities across the United

States have no protections against water shutoffs, threatening the human right to water for millions of people. A nationwide water shutoff moratorium could have prevented nearly 500,000 COVID-19 infections and more than 9,000 deaths, according to a recent study, underscoring the devastating impact of federal inaction.<sup>iv</sup>

Unfortunately, the actions by private corporations to undermine protections against service disconnections are not isolated to the United States or to the time of the pandemic, as noted by former Special Rapporteur Léo Heller in his 2020 report to the United Nations General Assembly.<sup>v</sup>

3. What are the vulnerabilities that have been exacerbated by COVID19 that negatively impact people's access to water, sanitation and hygiene (WASH)? What measures and steps have been taken to identify and target individuals and groups that have been exposed to those vulnerabilities? Can you provide some case studies, statistics or specific examples?
  - 3.4. In addition to the above groups which have been identified as gaps in the Special Rapporteur's research thus far, which other groups and population should be prioritized due to the increased vulnerability that COVID19 has created?

**Response:**

The impact of water inequities falls disproportionately on women and girls, as described by former Special Rapporteur Heller in his July 2016 report to the Human Rights Council.<sup>vi</sup> This cascades from specific violations of the human rights to water and sanitation to other human rights such as the right to education and the right to health more broadly. The challenges that COVID-19 present exacerbate these inequities and must be examined in order to better understand how to best prevent further human rights violations.

Furthermore, given that women and girls often bear the primary responsibility for providing water for their household, they are at increased risk of becoming infected and falling ill while queuing for water in crowded settings. With many cities under lockdown, including some where enforcement of these measures has been violent, the physical safety of women and girls retrieving water from outside the home during lockdown is also a concern.

**Public policies**

4. In the countries that your organization works, what steps have been taken to address vulnerabilities that COVID19 has created for people and groups in public policies - the so-called "Building Back/Forward Better" policies – and other policies to build resilience and sustainability?

- 4.1. What are the lessons learned from responding to COVID19 to build social protection, resilience to prevent future possible public health crises?

**Response:**

The COVID-19 pandemic has shown the fundamental danger of a neoliberal approach to providing essential services. From healthcare to drinking water service, the human rights imperative has been undermined by a privatization push that prioritizes people based on their ability to pay ever-increasing costs. And even for water systems which have not yet been privatized, the systemic changes intended to facilitate privatization (the emphasis on full-cost recovery over universal service, the shifting of political will towards attracting the private sector, the erosion of basic transparency and public participation in decision-making, etc.) can lead to gross human rights violations.

One example is in Lagos, Nigeria, where millions of people do not have access to safe water during this pandemic. A coalition of civil society and labor organizations in the megacity, led by Corporate Accountability and Public Participation Africa (CAPPA), have been challenging the World Bank-backed privatization of the water system for six years.<sup>vii</sup> They have witnessed first-hand the ways that the drive to privatization has led to a degradation of the public water service and communities being shut out of decision-making as privatization proponents and government officials meet behind closed doors.<sup>viii</sup> In fact, in January 2020, the situation in Lagos was so concerning that then-Special Rapporteurs Philip Alston, Leilani Farha, and Léo Heller intervened to seek more information from the state.<sup>ix</sup> The erosion of resourcing for the public water system, spurred by pro-privatization officials over the years, was a major contributing factor to the fact that many of the water works were already in disrepair. Then, as the COVID-19 pandemic spread, these facilities were essentially abandoned, leaving millions of people to fend for themselves.<sup>x</sup>

While privatization proponents may claim that the failure of public services during the pandemic is evidence of why privatization is needed, civil society and labor organizations in Lagos are saying the exact opposite: The failure is *because* of the decades of chipping away at trust in and resourcing of the public sector to pave the way for privatization.

Of the many lessons that the pandemic has taught us, the need for robust public investment in universal, quality *public* services like water is among the most important.

### **III. Financialisation/commodification questionnaire**

#### **Specifics of the WASH sector and financialisation:**

1. Water and sanitation services are a “natural monopoly” and require large and long-term investments. This is in contrast to key characteristics of financial markets – competition and

short-term management. This makes the WASH sector, in principle, slightly different to other basic services.

- 1.1. Drawing from your experience, how do large private operators deal with long-term investment needs in the water, sanitation and hygiene (WASH) sector? Do you know of significant short-term financial operations in the WASH sector to date? Do you think that short-term speculative operations can be combined with long-term strategies in the WASH sector? Please share any research, testimonies or experiences of this.

**Response:**

The context provided for this question articulates precisely the fundamental conflict between the long-term investment needs of communities and the short-term profit motivations of corporations. Examples from around the world demonstrate that the privatization model is inherently incompatible with the human rights imperative of long-term planning and investment. Former Special Rapporteur Heller’s report on privatization provides numerous examples of this and the severity of the problem warrants further examination under your mandate.

In Pittsburgh, United States, the consequences of this conflict are still being felt by the community and local officials. Transnational private water corporation Veolia was contracted to manage the Pittsburgh Water & Sewer Authority (PWSA) from 2012 to 2015, under a deal where it would receive 40-50% of “cost-savings” realized – explicitly incentivizing cost-cutting to maximize short-term profitability.<sup>xi</sup> In April 2014, under Veolia’s management, the corrosion control chemical used to prevent lead contamination was switched to a cheaper alternative without required approval from the state.<sup>xii</sup> Over the course of Veolia’s contracts, PWSA laboratory staff (which monitored water quality) was also significantly reduced, which the city controller found was part of the “initiatives that Veolia negotiated and for which they were paid.”<sup>xiii</sup> A lead contamination crisis soon followed, endangering people throughout the city.<sup>xiv</sup> In the end, Veolia walked away with over \$11 million from its management contracts in Pittsburgh<sup>xv</sup> while local officials were left to find hundreds of millions of dollars to replace pipes leaching lead into the water supply.<sup>xvi</sup>

- 1.2. To the extent that it is a “natural monopoly” and that there cannot properly be competition in the market, what role should citizen participation and control have in the management of these services? Can you share any examples related to good practices in citizen control and participation, consistent with the requirements of human rights management in this regard?

**Response:**

Since the return to public control from Veolia, the PWSA has engaged with community members to pass a number of policies to protect low-income residents' access to water and sanitation services, including an affordability program and moratorium on water service disconnections in winter months.<sup>xvii</sup>

**On the privatization of water and sanitation services**

2. The former Special Rapporteur, Leo Heller, dedicated a thematic report on the impact of privatization on the human rights to safe drinking water and sanitation (A/75/208) in 2020. Building on this report, the current Special Rapporteur aims to follow-up on the recommendations made in that report and to expand the scope to examine the role of private actors, the various ways private actors can take part in water, sanitation and hygiene service provision and to clarify challenges and ways to address compliance with human rights to water and sanitation. In this context:

- 2.2. Crises can favour private investments to fill funding gaps in infrastructure and public services, if "austerity" strategies are applied, as was the case in the previous crisis (2007 – 2008). Given the economic crisis accelerated by the COVID-19 pandemic and the investment needs to prevent the impacts of climate change:

- 2.2.2. What has been the impact of COVID-19 shaped public or private financing of WASH services and infrastructure? And what has been the impact on communities in vulnerable situations?

**Response:**

The current moment represents an inflection point in the struggle for the realization of the human rights to safe drinking water and sanitation for all people.

The pandemic-related economic recession sets the stage for the privatization of essential public services in the years to come. This is a deep concern community members and water justice advocates across the United States and in multiple African countries have expressed to Corporate Accountability over the last year. From a financial firm chairman telling the National Council for Public-Private Partnerships that “desperate government is our best customer” in the midst of the 2008 financial crisis<sup>xviii</sup> to the World Bank Group President calling for “structural reforms” (reminiscent of the disastrous structural adjustment policies of the not-so-distant past) just two weeks after the W.H.O. declared a global pandemic,<sup>xix</sup> the threat of disaster capitalism is a clear and present danger.

The World Bank Group is already financially supporting the private water industry under the guise of pandemic response through the International Finance Corporation's (IFC) COVID-19 fast-track financing facility. In March 2021, the IFC announced a \$20 million financing package for Metito, a transnational corporation with a decades-long concession for bulk water supply in Kigali, Rwanda. This financing package will not only support Metito's *ongoing* operations, but also its corporate growth and expansion, according to its Chief Financial Officer.<sup>xx</sup>

There is a longstanding financial relationship between Metito and the IFC. According to the IFC, it purchased an equity stake in the corporation in 2007,<sup>xxi</sup> and it is still listed as one of Metito's "key shareholders" on the corporation's website as of April 2021.<sup>xxii</sup> Beginning in September 2010, the IFC was lead advisor to the Government of Rwanda in the development and structuring of the Kigali bulk water supply privatization project. The IFC was involved in the selection of Metito, a corporation which it is a shareholder in, for the 27 year concession agreement which was signed in 2015.<sup>xxiii</sup>

The fact that the IFC is using tens of millions of dollars, ostensibly intended for COVID-19 response, to support the expansion plans of a water privatizing corporation raises serious concerns about the distortion of pandemic-related financing to private benefit. These concerns also take on a "self-dealing" aspect when considering that the IFC itself is a shareholder in the corporation receiving the financing.

Given the grave human rights risks associated with privatization, which have been detailed by many including former Special Rapporteur Heller, the global community must stand together in rejecting this failed model and prioritizing robust public investment in this essential service. This is especially urgent as governments grapple with the economic and social impacts of the COVID-19 pandemic.

### **On market-based mechanisms as a response to water scarcity**

3. There are various market-based options for managing water scarcity and its distribution to competing users. Although there are different models, what is common to all is the need to separate water rights and land rights, so that water rights/concessions/allocations/entitlements can be traded and potentially managed as a commodity. There are models, such as Water Banks, that organize transactions under public control and with strong regulations. There are also water trading markets that facilitate trade between entitlement holders and those who want to use that water. These water markets can be opened to speculators, who are not going to use the water rights at stake. Speculators are financial actors that promote speculative games (with high expectations of short-term benefits) between those who have water rights and those who seek to buy them. Although most water trading markets are localized, within a river basin or in basins interconnected by water transfers, with the entry of new financial players, water rights can be

integrated into global financial markets, through financial derivatives, where water will receive the same treatment as other tradable commodities.

- 3.4. The recently announced Nasdaq Veles California Water Index is the first example of water futures trading, what do you think will be the impact of this on the affordability and availability of water? And can you see this model expanding beyond California? If so, how?

**Response:**

At its core, the financialization and privatization of water is an affront to the human right to water.

Powerful corporations seeking maximum short-term returns for the wealthy few should not be allowed to exercise control over a resource needed not only by all of humanity, but all living things. This is true in relation to service privatization and to financialization through the futures market.

Over 550 civil society organizations from around the world, spurred by the market developments noted above, joined together on World Water Day 2021 to condemn corporate control of water as incompatible with the notion of “water for life.”<sup>xxiv</sup>

**On the commodification of water through bottled water**

4. The extraction of water for beverages is an increasingly profitable industry. Water extraction companies can be given licences to extract groundwater or surface water or given access to municipal water supplies at low or marginal costs. Bottled beverages, including water, are sold at high profit margins and may be targeted at families in vulnerable situations who are wary of the quality of public water services or who have limited or poor quality access to such services. When groundwater or surface water is scarce, these businesses can increase the vulnerability of communities facing scarcity problems.

- 4.1. What has been the impact of bottled water extractions on communities in vulnerable situations’ access to water and sanitation services? Please share any evidence you have of this including research reports, anecdotal experiences, or testimonies.

**Response:**

Communities have been challenging the abuses of the bottled water industry for decades because of the myriad ways that these corporations threaten their human right to water.



The ongoing case in Michigan, United States is particularly emblematic of the converging injustices related to water extraction for bottling. For years, Nestlé<sup>1</sup> extracted hundreds of millions of gallons of Michigan water for the astoundingly nominal fee of \$200 per year.<sup>xxv</sup> Nestlé’s extraction has been taking place in the face of widespread local and regional community opposition for years.<sup>xxvi</sup> This is even more egregious when taking into account that this extraction took place just hours away from Flint and Detroit, two cities whose residents have had their human right to water serially violated.<sup>xxvii</sup> And while Nestlé attempted to protect its social license to continue this large scale extraction in Michigan by donating some of this bottled water to the City of Flint, residents have underscored the fundamental injustice at play. In response to an ad campaign Nestlé ran to capitalize on the crisis and promote itself, water justice activist and Flint resident Nayyirah Shariff said, “They haven’t been supporting the needs of Flint residents...Flint is being exploited for profit.”<sup>xxviii</sup>

The decision by the state to grant a multi-billion-dollar corporation virtually unfettered access to water while residents continue to have their human rights violated is reprehensible. Your mandate has the opportunity to continue insisting that human rights must always take precedence over business interests.

In 2016, Nestlé commissioned a major water bottling plant in Manderegi, a small village near Abuja, Nigeria. In 2019, an investigative journalist who visited the village and interviewed residents found that, “Two years after the water plant started full-scale operations, residents of Manderegi and its environs continue to struggle with chronic water shortages as the stream that serves as an alternative source of water supply is contaminated with wastewater directly pumped from the Nestlé’s water factory [*sic*]. Also, the channels for the release of the wastewater from the factory has created a gully erosion, that has caused serious ecological danger destroying farmlands and access roads in the community.”<sup>xxix</sup>

The impact of large scale water extraction is so clearly detrimental that, in order to gain a community’s cooperation, Nestlé often makes commitments to provide resources or services. In 2019, Corporate Accountability and CAPP staff also visited Manderegi and met with residents who showed dry taps and dilapidated facilities which Nestlé had provided. It was only after the investigative journalist published his exposé that the corporation was forced to address its failures. However, community members remain rightfully skeptical of the longevity of these commitments, given how short-lived they were at the outset. The community chief, Garba Seidu, voiced his concern plainly in May 2019: “Its [*sic*] good we are getting water but I don’t know how long it is going to last.”<sup>xxx</sup>

- 4.2. Are there mechanisms available for impacted communities to hold companies, the host-State and home-State to account for their impact on access, affordability and availability of water?

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1 Nestlé sold the majority of its North American bottled water business to two private equity firms for \$4.3 billion in early 2021 ([source](#)).



**Response:**

Holding bottled water corporations accountable for their abuses is made particularly challenging given the direct influence that these corporations exercise over policymaking itself, both individually and through relationships with intergovernmental and supranational bodies from the World Bank to programs of the United Nations. The power of this industry underscores the urgent need for binding accountability mechanisms to hold corporations liable for their impact on communities' rights to water.

**On Financialisation**

5. Water and sanitation services and infrastructure can be "financialised" in different ways, this can mean a larger role for for-profit actors in the WASH sector: investors and private companies, financial actors including banks, international financial institutions, hedge funds, pension funds, and increasingly insurance services. Thus, the corporate space is expanding through the commoditization of water, the privatization of water and sanitation services or the inclusion of WASH infrastructures, services and even water, as a resource, in global financial markets.
  - 5.1. The financialization of WASH has been driven by different motivations, for example, to promote investments and expand services or to address water scarcity under the perspective of climate change. In your observations, which actors are involved and what are their motivations in pushing for or against:
    - 5.1.2. The privatisation of services and/or infrastructures?
    - 5.1.4. The commodification of water through for example bottled water?
    - 5.1.7. How has this changed over time? And are there new trends and developments?

**Response:**

The two largest private water corporations in the world, Veolia and Suez, have been at the forefront of the push to privatize water and their track record of human rights abuses has been well-documented, including by former Special Rapporteur Heller. The privatization of water through bottling is largely driven by corporations such as Nestlé, Coca-Cola, and PepsiCo. The profit motivations of the multi-billion-dollar transnational corporations driving this agenda are clear.

The scale and speed with which they have been able to expand their control of water has been greatly facilitated by international financial institutions like the World Bank, International Monetary Fund, and the regional development banks.

One major development in the private water sector is Veolia's attempted takeover of Suez.<sup>xxxii</sup> This dangerous consolidation of power would exacerbate the already unjust status quo.

The good news is, the grassroots movement against water privatization continues to grow. People around the world are demanding a reversal of the trend toward corporate control and instead calling for an immediate return to community control. From Pittsburgh to Lagos to Osorno, communities are demanding that their human right to water being respected, protected, and fulfilled.<sup>xxxiii</sup>

- 5.3 Private actors have been involved in the WASH sector for many years, through privatization processes and public-private partnership strategies. What will change in your view with the advance of financialization involving the entry of powerful financial actors and speculative strategies in the futures markets?

**Response:**

In addition to the fundamental incompatibility of privatization and the human rights to water and sanitation (as detailed above), the further entrenchment of legal rights for corporations in relation to water is a grave threat.

There are numerous examples of corporations using their financial, legal, and political power to undermine States acting in the public interest, most notably through the investor-state dispute settlement (ISDS) system. Private water corporations have used ISDS to challenge public decision-making on water numerous times all over the world, from Gabon to Argentina to the Philippines.<sup>xxxiii</sup>

ISDS mechanisms are inherently unsuited to prioritize the human right to water above corporate profits. When the Government of Argentina cancelled its contract for the Buenos Aires water concession in the throes of a financial crisis in 2006, the private consortium took its grievance to arbitration at the World Bank's International Centre for Settlement of Investment Disputes (ICSID). Despite the Government raising an affirmative "necessity" defense that the human right to water must be paramount, the ICSID Tribunal ruled against the Government of Argentina, finding that it must fulfill both its human rights and treaty obligations *equally*.<sup>xxxiv</sup>

The addition of legal rights for unfathomably powerful finance corporations threatens to dramatically exacerbate the problem.

The ability of States to meet their obligation to respect, protect, and fulfill the human rights of their residents is what is at stake. The use of ISDS to subvert human rights must be challenged in all of its manifestations.

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