

Briefing Note on the Right to Water

Office of the High Commissioner for Human Rights (OHCHR),
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...the right to water is an evolving area in international human rights dialogue with many questions still to be resolved. It is in the interest of a global company that is part of business leadership initiatives on human rights to be proactive in engaging with community stakeholders, governments and the UN on what good practice in this area looks like and how further clarity on respective responsibilities of different actors should be established, keeping in mind always that national governments have primary responsibility for promoting and protecting human rights.

1. At the Millennium Summit in 2000, States agreed to halve, by 2015, the proportion of people without access to safe drinking-water. Also in 2000, the United Nations Committee on Economic, Social and Cultural Rights adopted a General Comment on the right to health that provides a normative interpretation of the right to health as enshrined in Article 12 of the Covenant on ESCR. This General Comment interprets the right to health as an inclusive right that extends not only to timely and appropriate health care but also to those factors that determine good health. These include access to safe drinking-water and adequate sanitation, a sufficient supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information.

The Convention on the Rights of the Child, 1989, in Article 24, obliges States Parties to pursue full implementation of the right to the highest standard of attainable health and, in particular, to take appropriate measures to provide adequate nutritious foods and clean drinking-water.

3. In 2002, the ESCR committee adopted a general comment (No. 15) specifically on the right to water. http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf It states: “the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.”

NOTE: General Comment 15 makes 4 brief references to the private sector: 27. ... Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households. 33. Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law. 49. ... In order to create a favourable climate for the realization of the right, States parties should take appropriate steps to

ensure that the private business sector and civil society are aware of, and consider the importance of, the right to water in pursuing their activities. 50. States parties may find it advantageous to adopt framework legislation to operationalize their right to water strategy. Such legislation should include: (a) targets or goals to be attained and the time-frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures.

4. In 2003, the WHO, OHCHR and others prepared a joint publication on the right to water.

http://www2.ohchr.org/english/issues/water/docs/Right_to_Water.pdf

It explains how a rights based approach can aid efforts to ensure adequate water for all :

- affirms fresh water is a legal entitlement, rather than a commodity or service provided on a charitable basis;
- the “least served” are better targeted and therefore inequalities decreased;
- communities and vulnerable groups will be empowered to take part in decisionmaking processes;
- the means and mechanisms available in the United Nations human rights system will be used to monitor the progress of States Parties in realizing the right to water and to hold governments accountable.

NOTE: REFERENCES IN THIS PUBLICATION TO PRIVATE SECTOR on pages 29 and 36:

A government is not the only actor that can endanger or restrict the right to water. Individuals and corporations have the potential to interfere with a person’s or community’s water supply. For example, pollution from factories, farming or sewage can greatly damage the quality of water used for drinking. A private individual can deny access to a river needed for washing, or a corporation may increase prices for water services to unaffordable levels. The duty to protect requires that governments should diligently take all the necessary feasible steps to prevent others from interfering with the right to water. This will usually require a strong regulatory regime that is consistent with other human rights. Comprehensive regulatory measures will be needed with respect to pollution, disconnection of water supplies, land use and access to water supplies.

“Privatization” of water services is often a controversial issue, and the involvement of the private sector in water delivery has accelerated over the past decade. In many countries, private sector involvement has extended beyond selling water from trucks and supply of infrastructure to the full operation and management of water delivery systems. While governments under international human rights law may permit private sector involvement, their responsibilities remain the same. Steps must be taken to ensure that the sufficiency, safety, affordability and accessibility of water are protected from interference as well as ensuring that everyone will enjoy the right in the shortest possible time. Where it is involved, the private sector should be encouraged by governments to participate effectively in ensuring people’s right to water.

National and multinational private service providers include companies ranging from local providers of services to multinational corporations. Depending on the nature of the company it may:

- advance the provision of services so that the number of people served should always increase;

- establish sustainable policies towards water conservation for its own activities;
- use differential cost-recovery/progressive pricing to contribute to increasing coverage;
- ensure equity in reliability of services;
- give priority to supplies for the most marginalized communities;
- establish a responsible disconnection policy;
- ensure the participation of citizens in decision-making;
- provide clear and accurate information to all users.

5. In 2006, the UN Human Development Report focused on "power, poverty and the global water crisis".

6. In Nov. 2006, the UN Human Rights Council adopted decision 2/104 titled "Human rights and access to water"

http://www2.ohchr.org/english/issues/water/docs/HRC_decision2-104.pdf

The decision requested OHCHR to prepare: "a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments..." 7. In August 2007,

OHCHR submitted its study

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/136/55/PDF/G0713655.pdf?OpenElement>

It found that:

67. ... "there is a need for further elaboration of certain aspects of human rights obligations attached to access to safe drinking water and sanitation. Existing human rights instruments have provided the basis for expert human rights bodies to elaborate on States' obligations, but the study has highlighted the fact that detailed practical advice is required on the following issues: the normative content of human rights obligations in relation to access to sanitation; the human rights obligations attached to the elaboration of a national strategy on water and sanitation; the regulation of the private sector in the context of private provision of safe drinking water and sanitation; criteria to protect the right to safe drinking water and sanitation in case of disconnection; and the specific obligations of local authorities." 69 ... "While United Nations special procedures and treaty bodies have contributed to clarifying human rights obligations in relation to access to safe drinking water and sanitation, their work also highlights the difficult task of covering these issues in a comprehensive and continuous way. Specific, dedicated and sustained attention to safe drinking water and sanitation is currently lacking at the international level, given the broad range of issues that special procedures and treaty bodies have to address within their mandate and the specific questions that arise in relation to access to safe drinking water and sanitation." 70. ... the High Commissioner: (b) Encourages States, intergovernmental organizations, national human rights institutions, civil society and business enterprises to identify good practices in the field of safe drinking water, sanitation and human rights and make them available to the Office of the United Nations High Commissioner for Human Rights."