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Municipalities must protect people's right to water

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Dr Khulekani Moyo

*Municipalities and other local authorities must see to it that private corporations don't threaten people's access to affordable, sufficient, safe and clean water, writes **Dr Khulekani Moyo**.*

Access to safe water is essential to maintain a healthy and dignified life. Yet, a significant portion of the

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world's population lacks basic access to safe water which leads to a global burden of disease and death.

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Water privatisation has been presented as the panacea to address the global water crisis.

However, using privatisation to deliver water must go hand in hand with the development of mechanisms for holding both municipalities and corporations accountable for the human right to water.

Conceiving of water as a human right as provided in the South African and other similar constitutions advances the goal of providing safe water to everybody, especially disadvantaged communities. This particular view clarifies that water is a legal entitlement rather than a commodity provided on the basis of charity or purely market principles.

Municipalities must therefore protect people's right to water when private corporations become involved in the management and distribution of water services.

It is important to ensure that water services, whether privately or publicly provided, are affordable to all users including socially disadvantaged groups. Since water tariff increases affect mostly the poor and vulnerable members of society, municipalities are obliged to take measures to mitigate the impact of tariff increases on these people.

Any water privatisation process must also take into consideration the concerns of affected communities, which include among others, the cost of and quality of water services, physical accessibility of water sources, security issues, environmental impacts, and the potential closure of public spaces if the privatisation initiative is not properly designed.

Sadly, this doesn't happen very often in some developing countries such as South Africa, Tanzania, Bolivia and the Philippines to name just a few.

Also worrying is the fact that national and international technocrats often conceive and implement water privatisation schemes without any public consultation and participation of local communities.

As a result, affected communities cannot determine whether the privatisation process is in their interest.

If municipalities wish to discharge their protective mandate effectively in instances where water is privatised, they have to put in place the necessary mechanisms to regulate and monitor the performance of water services providers.

Apart from effective monitoring mechanisms, measures and standards to govern water privatisation processes, assessing the risks and limitations of water privatisation is vital if people's right to water is to be realised.

Unfortunately, efforts of some governments and international financial institutions have been insufficient in this regard.

Effective regulating and monitoring of water privatisation processes can be done through an accountability model which will ensure that municipalities as well as corporations involved in the provision of water services have clearly designated roles and responsibilities to protect people's right to water.

Delineating these roles and responsibilities is significant for four primary reasons.

Firstly, it can provide detailed guidance to municipalities and corporations contemplating or involved in the privatisation of water services. Such guidance is indispensable for ensuring that all stages of the privatisation process and its implementation are consistent with the normative commitments of water as a human right.

Secondly, concrete standards will enable beneficiaries to the right to water, relevant NGOs and other stakeholders to hold municipalities and corporations accountable. Effective accountability is in turn indispensable to ensuring that the right to water has clear and practical implications in the range of contexts in which water delivery is being privatised.

Thirdly, such specification of roles and responsibilities may provide normative guidance to national courts, administrative tribunals and treaty-supervisory bodies in developing their jurisprudence relating to the duties of municipalities and corporations in a privatisation scenario.

Lastly, it can further contribute to the development of appropriate legislation regulating water privatisation that gives proper effect to the right to water. Such jurisprudence and legislation can in turn enhance the further development of the accountability model by providing greater specification of the norms and standards imposed by the right to water.

It is only through giving greater specification to the normative commitments of water as a human right in privatisation scenarios that this right will assume real relevance for those it was designed to protect and benefit.

Dr Khulekani Moyo is a senior lecturer at the UNESCO "Oliver Tambo" Centre for Human Rights, Nelson Mandela School of Law at the University of Fort Hare. This article is based on his recent doctorate in Public Law at Stellenbosch University.

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