

## LEARNING BRIEF 3

# WORKING WITH GOVERNMENTS

## Guidance for Civil Society Organisations

# ENTERPRISE IN WASH

## What is this learning brief and who is it for?

This learning brief is for civil society organisations (CSOs) active in supporting small-scale local enterprises that provide water and sanitation services for the community including the poor and disadvantaged. Its purpose is to inform CSO approaches, strategies and their program designs. Therefore, the primary target audience is CSO *program planners and designers*, but these briefs will also be useful for a wide range of WASH practitioners.

This document is the third of a series of six learning briefs developed on the basis of the 'Enterprise in WASH' research initiative. These include:

- Learning brief 1: CSO roles
- Learning brief 2: Know your private sector
- **Learning brief 3: Working with governments**
- Learning brief 4: Driving equality
- Learning brief 5: Private and social enterprise business models
- Learning brief 6: Working with motivations and incentives

### KEY POINTS FOR CSOs

- Governments are the primary duty bearers when it comes to fulfilling the Human Right to Water and Sanitation, and so their roles with respect to regulating and enabling private enterprises are very important for long-term functionality and accessibility of WASH services.
- Understanding how decisions are made will help CSOs advise government on how pro-poor mechanisms can best be structured, so that inequalities are not increased when private enterprises provide water and sanitation services.
- Governments need to navigate the natural tension between supporting and regulating private enterprises involved in WASH. CSOs can help them do so.
- CSOs can play a wide range of roles to support government in: (i) regulation and compliance; (ii) facilitation of enterprise roles; and (iii) ensuring equality of outcomes.

## The importance of working with governments

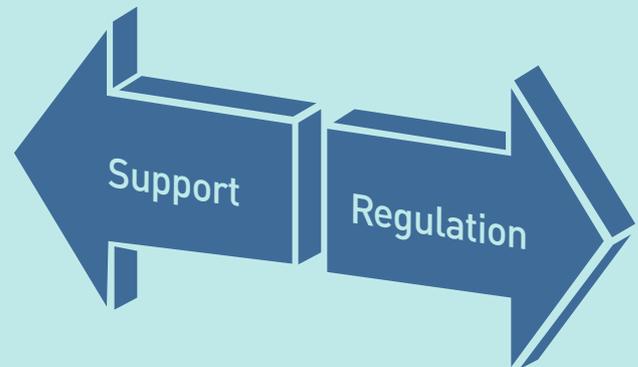
Governments are obliged to protect, respect and fulfil human rights, including the Human Right to Water and Sanitation. International human rights law demands that states comply with the duty of progressive realisation.<sup>1</sup> The concept of progressive realisation demands that states take deliberate, concrete and targeted steps towards fully realising covenant rights as *expeditiously and effectively as possible* using the *maximum available resources*.<sup>2</sup> Governments, therefore, at both the national and local levels, have a key role to play in water and sanitation services, including stimulating demand where appropriate, because they are the official duty bearers and are therefore responsible for facilitating equal access to everyone.

This learning brief explores how CSOs can work with governments effectively to protect, respect and fulfil human rights in a context where the private sector is engaged in delivering water and sanitation services.

### Other reasons why it is critical to work effectively with governments in the context of enterprise roles include:

- Governments determine the **governance and policy context** within which the private sector operates. This can support or hinder effective private sector engagement.
- Governments can manage water resources, water services and sanitation planning at a **strategic and integrated level** which assists sustainability and effective investments over the long term.
- Governments need to play a strong role in **managing risks** associated with private sector management of essential services, to ensure equal enjoyment of rights for all citizens.
- The Paris Declaration on aid effectiveness in 2005 (Accra Agenda for Action) emphasised the need for donors and CSOs to **support developing country governments** to set their own strategies for poverty reduction, improve their institutions and tackle corruption. It also calls for 'donors to base their overall **support on partner countries' national development strategies, institutions and procedures**'.<sup>3</sup>

**FIGURE 1: THE INHERENT TENSION BETWEEN SUPPORTING AND REGULATING ENTERPRISES**



Governments need to balance how they support an emerging private sector to deliver WASH services and invest their own capital, and the need to regulate and control the activities of these enterprises to ensure that human rights are fulfilled, and other risks are mitigated and managed (Figure 1). There is also a tension between the roles of direct implementation, and the oversight and regulation that governments adopt in different country contexts. CSOs need to carefully navigate these tensions when working with governments and enterprises for improved and sustainable WASH services.

This learning brief provides WASH CSOs with evidence-based guidance on considerations and strategies for working with governments in relation to enterprise roles in delivering water or sanitation products and services (see Figure 2).

FIGURE 2: KEY ROLES FOR CSOs

**KEY GOVERNMENT ROLES:****National governments**

- Policy institutional and legal, including incentive policies, defining role of private sector
- Define quality standards
- National regulatory frameworks
- Budgetary allocation frameworks

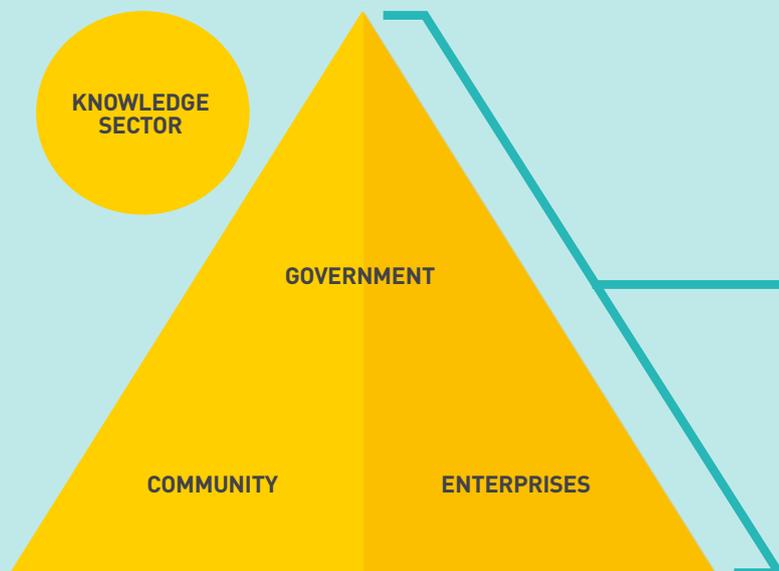
**Local governments**

- Regulation, compliance, monitoring and accountability
- Facilitate market development
- Ensure equality of outcomes

**OUTCOMES SOUGHT FROM CSO ENGAGEMENT WITH GOVERNMENT CONCERNING ENTERPRISE ROLES:**

- Effective and integrated governance of enterprise roles
- Equality of access to services and protecting and fulfilling human rights
- Water and sanitation enterprise viability and sustainability
- Protection of the environment, public health and safety

CSO roles to broker, facilitate and influence the links between government and enterprises



## Understanding the governance landscape

The governance arrangements for water and sanitation at the national and local levels influence the 'space' which enterprises may occupy and the roles they may play. The political economy of any context will influence intervention design, and needs to be well understood in order for programs to be contextually appropriate and to have the potential to be sustainable.

The following figure provides CSOs with some suggested questions to ask themselves and steps to take to better understand the governance landscape of the context that they are working within. Further discussion on understanding the political economy is provided in Learning brief 6: Incentives and motivations.

### SUGGESTED QUESTIONS AND STEPS FOR CSOs

#### Map the governance landscape

- How are decisions made? Who are the key decision-makers in relation to enterprise engagement in WASH? At the national level? At the provincial/regional level? At the local level?
- Who are the most influential non-government players in private enterprise engagement in WASH (including private sector/business)? How do they relate to/engage with government?
- Are there other actors that influence enterprise roles? For instance, what associations of enterprises exist? What is their influence and power? What is their relationship with government?

#### National government support to enterprise roles

- Does national policy include regulation of how the private sector is expected to play roles in water or sanitation products or services?
- Are any incentives from the national government to encourage enterprises to engage in WASH in the context you are working in?
- What are national government staff attitudes towards the role of the private sector in expanding access to services?

#### Subnational (regional/provincial/local) government support to enterprise roles

- What roles do provincial or regional level governments play with respect to enterprise roles in water and sanitation?
- What agencies exist at the local level that are relevant to enterprise roles? For instance, are there government agencies focused on private sector development? Are they engaged in supporting enterprise development in water and sanitation? What roles do line agencies play with respect to enterprises involved in water and sanitation?
- What incentives exist for local agencies to engage in supporting enterprise roles? What are the perceived barriers to supporting enterprise development?
- What are sub-national government staff attitudes towards the role of the private sector in expanding access to services?

#### What accountability mechanisms are in place?

- What legislation or policy is relevant to private enterprise engagement in WASH in the context you are working in? (This includes WASH-related legislation, and legislation related to businesses in general.)
- Does national level policy or legislation clarify how private sector actors will be regulated? This may include pricing, quality control, accreditation of products etc.
- What local policy or legislation exists to provide accountability and regulation of enterprise roles? Are relevant policies and legislation appropriate? Are they effective?
- What is the role of "social contracts" in the context you are working in – are the private sector organisations embedded in and invested in the community?
- What community rights need to be protected? How are they protected in the context you are working in?

# CSOs' roles in influencing the interface between governments and enterprises

When enterprises are engaged in the delivery of WASH services, CSOs can play a critical role in supporting the advancement of social justice and viable, sustainable services through strategic engagement with government.

Below we provide ideas about CSOs' ways of working with government, followed by a range of CSO roles to support government in regulating, facilitating and ensuring equitable outcomes of enterprise involvement in water and sanitation products and services (see Box 1).

## BOX 1

### WAYS IN WHICH CSOs CAN WORK WITH GOVERNMENT

#### UNDERSTAND

- **Policy and regulatory analysis:** Undertake research on policy and regulatory strengths, gaps and needs, and provide this research to government representatives (ideally conducted collaboratively between CSOs and government).
- **Understand government staffs' perspective:** Understand government representatives' attitudes in terms of roles and responsibilities for the private sector. 'Enterprise in WASH' found that some government representatives may feel conflicted and "don't know what to do." For example, in Indonesia, government representatives revealed uncertainty concerning how they should play such roles, since they felt it could be inappropriate for them to favour certain businesses by supporting them, and were unsure of 'fair' ways to offer support. In addition, conflicts of interest arose from government sanitation employees simultaneously leading enterprises which sold toilets.

#### INCLUDE

- **Seek alignment:** Align CSO programs/projects to strategic plans of government.
- **Share information:** Share planning information with government agencies and any plans to work with enterprises on WASH programs.

#### INFLUENCE

- **Facilitate joint planning:** Facilitate joint planning processes with local government representatives concerning enterprise roles.
- **Broker government-enterprise relationships:** Support and/or broker engagement between government agencies and existing and potential enterprises (for sanitation services in particular).
- **Influence policy:** Influence government policy and the regulatory environment through direct engagement and consultation; submissions; advocacy campaigns; and supporting advocacy leaders for example.
- **Shift cultural assumptions about private sector:** Help to shift cultural assumptions about the role of the private sector so that government can engage with them in a

more collaborative manner, enabling the private and public sectors to each play their role. In some contexts, this can be challenging. For example, in Timor-Leste, the government civil service was largely driven by a mistrust of the private sector and the philosophy that services should be delivered directly by government rather than contracted out. However, contracting out aspects of product or service delivery may, in some circumstances, be a useful strategy and could be considered along with direct government service provision.

- **Influence voice and accountability:** Support government to hear from the community so that community views can be understood and considered.

#### INCENTIVISE

- **Make the benefits clear:** Setting coverage targets can incentivise local government officials to support enterprise roles, if it is made clear that they can contribute to those targets.
- **Appeal to professional development aspirations:** Developing the skills of government representatives within relevant ministries and local departments through formal training.
- **Use of performance-based incentives:** Performance-based incentives can include criteria for promotion and advancement. Awarding performance-based payments when targets are met is being trialled by some CSOs as a way to motivate and incentivise government employees.
- **Appeal to learning motivations:** Facilitating exchange visits between government officials and communities being served by WASH enterprises to build deeper experiential understanding of strengths and challenges of private enterprise engagement.
- **Recognition:** Supporting ways in which government employees are rewarded and recognized for innovative practice in working with enterprises.

For more on incentives, please see Learning brief 6: Working with motivations and incentives.

## What CSOs can do

CSOs can support government across three key areas of government responsibility in relation to enterprise roles:

- Regulation, compliance, monitoring and accountability
- Facilitation of enterprise roles
- Ensuring equality.

In these three areas, CSOs can also work at the interface between governments and enterprises to support productive engagement between these actors. The following sections provide a range of ideas which are intended for inspiration and are not comprehensive.

### 1 REGULATION & COMPLIANCE

To ensure the protection of public health, environment and safety, governments must monitor enterprise activity and ensure compliance with regulations. CSOs have many opportunities to support government in carrying out these roles.

Ensuring compliance may not always require formal regulation: 'Enterprise in WASH' research found that business culture, particularly in rural areas, was embedded in existing social contracts and relationships, and hence there are other dynamics which promote enterprise accountability to communities. In addition, overly strict regulation whilst the market is in its nascent stages may inhibit enterprise participation and stifle innovation. However, in other cases formal regulation may indeed be critical to protecting public interests. Since resources to regulate and monitor enterprise activity are often scarce, local governments need to make careful assessments and decisions about how to support compliance in the most cost-effective way. CSOs can help governments to do this.

| Regulation, compliance, monitoring and accountability  | What can a CSO do?  |
|--|---|
| <p><b>Governments play the following roles:</b></p> <ul style="list-style-type: none"> <li>- Setting and monitoring quality standards (e.g. minimum technical latrine standard) or service standards (e.g. water service standards in terms of quantity, reliability, quality etc.)</li> <li>- Accrediting or certifying water and sanitation businesses</li> <li>- Accrediting or certifying certain products or designs</li> <li>- Providing licenses and business registration</li> <li>- For service delivery roles, putting in place an 'operator of last resort' mechanism so that if an enterprise fails, the government is ready and equipped to put in place an alternative operator</li> <li>- Developing regulatory and compliance strategies to ensure protection of environment, public health and safety.</li> </ul> | <p><b>CSOs can:</b></p> <ul style="list-style-type: none"> <li>- Advocate for the establishment of quality standards, service standards, accreditation procedures, licenses etc., inform development of these standards, and support their communication to enterprises</li> <li>- Work with enterprises and government to develop and test new products and innovations</li> <li>- Help enterprises to register using appropriate legal organisational forms (be they for-profit, not-for-profit etc. see Learning brief 5: Private and social enterprise business models) and help them to gain accreditation</li> <li>- Support the development of an effective, cost-effective regulatory environment. For example, in Bandung, Indonesia, the local government has established a competitive licensing system for faecal sludge management service providers, requiring disposal of waste in stipulated locations. CSOs can support and facilitate these kinds of compliance mechanisms where deemed appropriate.</li> </ul> |

## 2 FACILITATION OF ENTERPRISE ROLES

Governments have a key role in creating an enabling environment for enterprise activity. To catalyse markets, encourage private sector participation and support business viability and sustainability (sometimes in challenging circumstances where sanitation or water coverage is low), governments can play roles in market facilitation. They can do so by making business opportunities known, and through direct and indirect support or rewards for enterprises that achieve targeted outcomes. Governments can also subsidise services (see 'ensuring equality' section below). 'Enterprise in WASH' research showed that governments are sometimes unclear about their role in market facilitation, and CSOs can provide support in this important area.

| Facilitation of enterprise roles  | What can a CSO do?  |
|---|---|
| <p><b>Governments play the following roles:</b></p> <ul style="list-style-type: none"> <li>- Support consumer demand for hygienic sanitation and safe water, and link demand and supply</li> <li>- Provide technical or business training to entrepreneurs and enterprises</li> <li>- Offer business development support</li> <li>- Facilitate access to finance</li> <li>- Support associations of entrepreneurs through financial or other support</li> <li>- Conduct market assessment and disseminate results to encourage business activity</li> <li>- Reward businesses that achieve targeted service outcomes</li> <li>- Ensure particular support is provided to enable women to participate as entrepreneurs.</li> </ul> | <p><b>CSOs can:</b></p> <ul style="list-style-type: none"> <li>- Facilitate enterprise engagement in demand creation activities of their own and in government demand creation programs (for sanitation or for safe water), for example by providing visibility of enterprise services, and directly promoting enterprise services</li> <li>- Co-develop training programs with government to support enterprises to be sustainable, accountable and transparent</li> <li>- Assist governments to listen to and consider enterprise perspectives about barriers to business viability and sustainability where appropriate</li> <li>- Build relationships and engagement between government, financial institutions and enterprises</li> <li>- Identify barriers that may be hindering women's ability to establish enterprises in WASH.</li> </ul> |

## 2 ENSURING EQUALITY

Ensuring equality is about ensuring universal access to water and sanitation services. CSOs are focused on protecting human rights and increasing equality, and are therefore well placed to support governments to carry out their roles as the primary duty bearers of human rights in numerous ways. While the "to subsidise or to not subsidise" debate has been lively within the WASH sector over the last decade, there is growing agreement that the key question is no longer a matter of **whether** to subsidise the poorest or most disadvantaged members of our communities, but **how**. In the context of enterprise involvement in providing products and services, any approach to subsidise must consider how this will affect the market. These topics are addressed in more detail in Learning brief 4: Driving equality.

| Ensuring equality  | What can a CSO do?  |
|--|---|
| <p><b>Governments play the following roles:</b></p> <ul style="list-style-type: none"> <li>- Formulate policies to ensure poor and disadvantaged community members are catered for monitoring water and sanitation coverage and monitoring who gains access (for instance, across wealth quintiles)</li> <li>- Identify who requires support and what kind of support</li> <li>- Ensure accessibility</li> <li>- Ensure affordability</li> <li>- Provide targeted subsidies for the poor or disadvantaged (including people living with a disability)</li> <li>- Facilitate access to loans and finance for those that need them.</li> </ul> | <p><b>CSOs can:</b></p> <ul style="list-style-type: none"> <li>- Influence how decisions are made about who receives services</li> <li>- Work with government to provide consultative and inclusive community engagement processes prior to private sector engagement in WASH services</li> <li>- Support local CSOs working to ensure citizen voices are heard on issues related to WASH (with a focus on government engagement and private enterprise service delivery)</li> <li>- Pilot innovative subsidy mechanisms in collaboration with government and evaluate their effectiveness and cost-effectiveness.</li> </ul> |

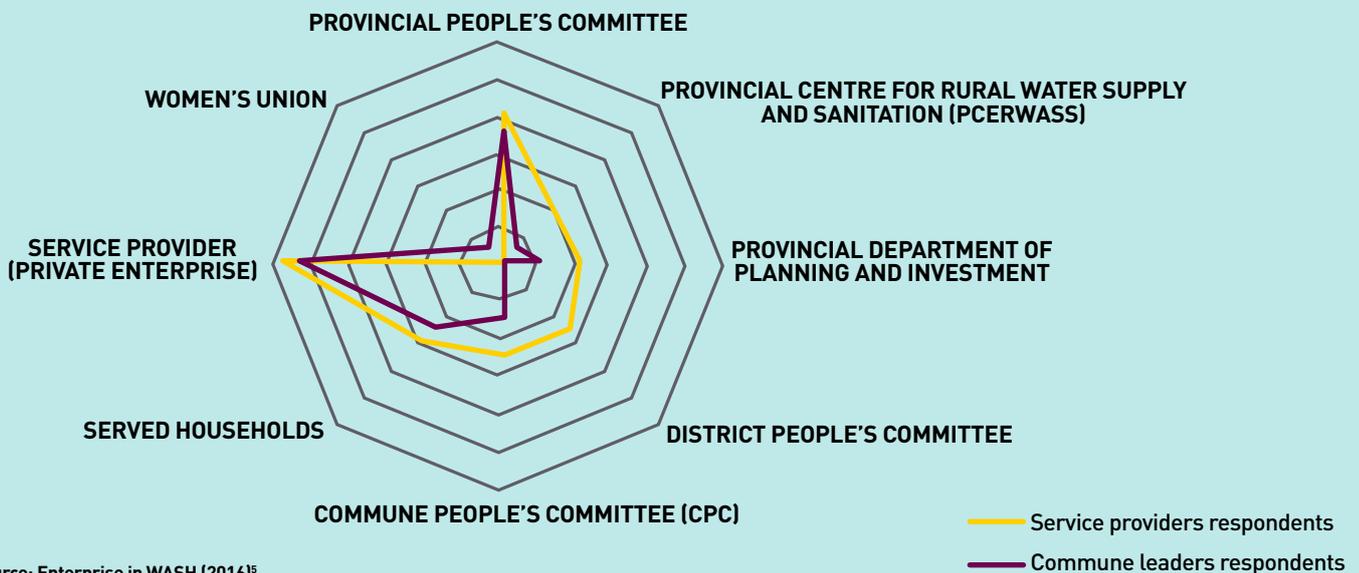
## Mapping decision-making processes in Viet Nam

The Enterprise in WASH research initiative investigated decision-making patterns in Viet Nam for piped water services delivered by private enterprises. It found that understanding **who makes decisions** about the water service area is important for identifying pro-poor mechanisms (and whom to target) to ensure the poor are reached. Interviews revealed that private enterprises play a significant role in decision-making about service areas (where infrastructure is placed and who is served), particularly in the Mekong region.

Private enterprises had a high degree of autonomy with regards to where a system was placed, and who it served in the five communes in the research area. These private enterprises were required to inform the Commune People's Committee, but determined the critical aspects of services themselves.

However, geographical variations were observed: In another study region (consisting for four communes), government entities (PPC, CPC and pCERWASS) played a much larger role in managing water service provision areas (Figure 3). This information and understanding can assist CSOs in targeting their interventions appropriately, especially in terms of influencing key decision-makers to consider and implement equality provisions.

**FIGURE 3: WHO INFLUENCED THE DECISION ABOUT WHO THIS WATER SYSTEM SERVES? EXAMPLE OF DECISION MAKING MAP FROM ENTERPRISE IN WASH RESEARCH IN VIET NAM**



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URL: [www.enterpriseinwash.info](http://www.enterpriseinwash.info)



- 1 Contained in Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights
- 2 Report of the UN Special Rapporteur on the human right to safe drinking water and sanitation to the General Assembly, Integrating non-discrimination and equality into the post-2015 development agenda for water, sanitation and hygiene, August 2012, para. 29, UN Doc A/67/270
- 3 The Paris Declaration on Aid Effectiveness (2005); Accra Agenda for Action (2008), page 3. URL: <http://www.oecd.org/dac/effectiveness/34428351.pdf>
- 4 An operator of last resort is a nominated entity (usually government) which will take over a water/sewerage service if the private operator fails or becomes unviable. It is a legal arrangement designed to protect the community and ensure continuity of service should failure occur.
- 5 Grant, M., Carrard, N., Willetts, J., Dominish, E., Ha, L., Nghiem, T., (2016) Access by the Poor: Private Water Enterprises in Rural Viet Nam. Enterprise in WASH – Research Report 7, Institute for Sustainable Futures, University of Technology Sydney.