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UN Special Rapporteur on the human right to safe drinking water and sanitation
Office of the High Commissioner for Human Rights
Special Procedures Branch, Palais Wilson
CH – 1211, Geneva
Switzerland

Dear Special Rapporteur Heller:

Thank you for this opportunity to provide input for your consideration in developing your report on report on development cooperation and the human rights to water and sanitation.

Our response herein focuses on your first questions:

> What measures can be taken to ensure that development cooperation does not risk violating human rights? What safeguards can be put in place?

We focus primarily on measures that could be taken by international financial institutions (IFIs) to ensure that their development programs do not risk violating human rights. Among IFIs, we focus primarily on the World Bank, whose water activities we have studied most closely.

Considering the World Bank in particular, and IFIs more generally, is especially apropos with the recent announcement of a panel convened by the United Nations Secretary-General Ban Ki-Moon and the President of the World Bank Group Jim Yong Kim. As you know, this panel's goal is to "mobilize urgent action towards the sustainable development goal for water and sanitation and related targets." A strong set of human rights guiding principles is necessary to ensure that this action does not risk violating human rights.

We submit that to ensure that development cooperation does not risk violating human rights:

1. IFIs must divest from private corporations to prevent conflict of interest that may drive human rights violations.
2. IFIs must abandon the promotion of "public-private partnerships" that are not designed to nor are capable of funding infrastructure expansion.
3. IFIs must abandon the promotion of policies designed to aggressively shift water costs to ratepayers through adoption of policies emphasizing bill collection, metering, and cost recovery.

Evidence and analysis of each of these three points is provided below.

1. IFIs must divest from private corporations to prevent conflict of interest.

The history of the World Bank shows how IFI investments in private corporations can create conflicts of interest that have led to violations of human rights. The example of the World Bank Group's private investment arm, the International Finance Corporation, or IFC, is especially instructive.

The IFC holds direct investment in private water corporations, generating numerous conflicts of interest between the World Bank's financial interests and the many other roles it plays in the privatization process, particularly its advisory role, but also its scholarly, PR and judiciary activities. This potential structural conflict of interest was apparent as early as 1956—when the IFC's initial 1956 Articles of Association were drafted, they prohibited equity investments categorically to avoid the appearance of self-dealing. However, the prohibition lasted only five years.[i]

Owning equity shares aligns the IFC's profitability with the success of its investees. Rather than a fixed interest rate, the IFC's return is tied to the profits of the investee, and the IFC's eventual ability to sell its stake for a gain. While this is standard practice in the private sector, it is of grave concern when the World Bank engages in it.

A March 2010 report co-authored by six NGOs explains: "It is highly problematic for a multilateral institution to position itself as an objective source of policy advice on matters where it has a direct financial stake in the outcome, particularly in low-income countries that may not have the resources to procure advice from other sources, or in countries where weak democratic processes do not provide adequate checks and balances relative to external donors." And NGOs are not the only ones raising this concern. Former World Bank economist Guillermo Perry concluded: "There is no doubt that dealing with both governments and private firms may create incentives or even occasion for advising on a policy or regulation that is self-serving to [the World Bank's] equity or debt interests in particular firms or sectors." [ii]

The 1997 privatization of water in Manila illustrates the perverse incentives generated by the IFC when it purchases equity and becomes part owner of the corporations that stand to benefit from privatization. The IFC played a number of roles in the corporate handover of Manila's water supply: it advised the government, designed the plan and conducted the bidding. The IFC also purchased an equity (ownership) position in a new corporate venture, Manila Water, which supplied water to the eastern half of the city, giving it a direct financial stake in ensuring a profitable contract for the corporation.[iii]

Since then, residents of Manila have suffered under declining water quality and access. Hundreds of communities remain without safe water, and the cost of a connection, even where available, is unaffordable for many of the city's residents. While Manila Water has been more profitable than the private venture created to supply water to the western half of the city, neither has delivered on the investment and access commitments necessary to deliver this critical service to all residents. Yet, the project is touted by the World Bank as a flagship success in promoting water privatization abroad, demonstrating that profitability, not human access to water, is the primary incentive when the World Bank becomes a corporate shareholder.[iv]

Following the model used in Buenos Aires and other early World Bank-sanctioned experiments with water privatization, the IFC plan called for dividing Manila into two separate zones—East and West—and awarding contracts to separate corporations to serve each area. In the largest deal of its kind to date, two new corporations were created as joint ventures of local Filipino elites (the Ayala and Lopez families) and transnational corporations. The contract for the West Zone, which covered the older part of the city, was awarded to Maynilad, a joint venture of Suez Environnement and the Lopez family's Benpres Holding Company. The East Zone contract was given to Manila Water, a venture of the Ayala family in partnership with Bechtel and United Utilities. The IFC also invested heavily in Manila Water, loaning $110 million and acquiring a $15 million equity share in the new venture.[v]

The IFC's plan for Manila's water was clearly designed to enrich Manila Water and shift decision-making control into corporate hands. With the public utility struggling under an enormous debt load—$177 million to the World Bank alone—the new plan loaded 90 percent of the debt obligation onto Maynilad, with just 10 percent picked up by Manila Water.[vi]

Even the Suez subsidiary invested in Maynilad, Ondeo, has acknowledged that the uneven debt load was necessary to make the initial contract appear viable long enough to approve and then renegotiate it. Its motives for entering into such an unfavorable contract are open to question, but in an industry where "dive-bidding" and premature contract renegotiations are common, it stands to reason that both contractors could have foreseen that the terms of the contract would be subject to change. As Manila-based economist Jude Esguerra observed, "[b]oth of the companies appeared to have made particularly low bids, on poor foundations, with the assumption they would change the terms of the contract once it was won." Indeed, had the extraordinary rate adjustment granted less than a year into the contract been factored into the original competitive tender process, Manila Water would not have won the contract, giving strong credence to critics' claims of "dive-bidding" and regulatory favoritism. [vii]

While Maynilad has been through bankruptcy and restructuring, Manila Water and its backers at the IFC have earned a tidy profit from this project. Despite this, throughout Metro Manila very little progress has been made towards closing the access gap and realizing the universal human right to water for the nearly 12 million residents of this metropolis. Years of private management of the city's water utilities have raised rates more than eight fold. Additionally, the corporations have cracked down on unbilled water and taken a heavy hand with their workforce and regulators. The Manila Water workforce was downsized from 6.3 staff per 1,000 water connections in 1997 to 3.6 in 2001. [viii]

But the additional revenue gained from these measures was not invested in the physical infrastructure required to extend water access. The city has suffered from periodic droughts and flooding exacerbated by crumbling infrastructure, as neither Maynilad nor Manila Water has made the $7.5 billion in capital investments promised in the 1997 contract. In a 2004 review of the project, the Asian Development Bank found that there were no "meaningful improvements" to the entire distribution network during the privatized period, and only 58 percent of Manila's population was connected to the city water system. As early as 2003, the World Bank had concluded that water and sewer access in Manila was among the worst in the major Asian cities, second only to Jakarta. Not surprisingly, water quality has declined alarmingly. In one October 2003 outbreak, 600 residents were sickened and eight died when Maynilad's E. coli level exceeded seven times the national limit. Despite vocal opposition from civil society, Manila Water's contract was extended in October 2009 without competitive bidding, continuing the troubled arrangement through 2037. [ix]

In 2015, after the Manila regulator tried to reign in rate hikes, Manila Water brought the regulator into arbitration at the International Chamber of Commerce. The case was decided in favor of the regulator, but Manila Water Company continues to contest that decision, meaning that a corporation with part ownership by a World Bank institution is attempting to win millions from a government entity, a situation that indicates a conflict of interest between the World Bank's financial interests and its expressed mission of poverty reduction.[x]

The Freedom from Debt Coalition concluded from an extensive review, the outcomes of Manila's water privatization "run counter to the common good and, in turn, defeat the people's right to water." [xi]

Such violations of the right to water are a serious risk whenever IFIs hold ownership stakes in private water corporations. To ensure that development cooperation does not risk violating human rights, IFIs must divest from private corporations to prevent conflict of interest.

2. IFIs must abandon the promotion of "public-private partnerships" that are not designed to nor are capable of funding infrastructure expansion.

The World Bank repeatedly affirms its commitment to private-sector participation not only through its financing, but also as through its role as the "Knowledge Bank," disseminating research and engaging in advocacy. The World Bank claims to be a "catalyst for action that leads to change, and to serve as a global connector of knowledge, learning and innovation" implying a level of enlightened objectivity that is directly at odds with the World Bank's role as corporate shareholder. [xii] The World Bank us

The World Bank's promotion of PPPs is exemplified by the enormous volume of documentation that has been produced to position the Manila water privatization project as a successful case to replicate.[xiii] Just months after the contracts were signed, the World Bank put Manila forward as an example for promoting privatization in its *Indian Urban Water Supply and Sanitation* report, based on the infrastructure investment and universal coverage commitments the contractors had promised but would never fulfill. As one Indian NGO observed, "the project had barely begun operating at the time of the Review, but the World Bank was in a hurry to conclude about the great benefits it offered." [xiv]

World Bank PPP promotion is especially apparent within the trust fund known as the Public-Private Infrastructure Advisory Facility (PPIAF). Despite a relatively small budget, PPIAF has played a catalytic role as the marketing agent of water privatization over the past decade. By providing the advisory and public-relations services needed to lay the groundwork for privatization, PPIAF serves as an advance agent ahead of World Bank projects, generating demand for private sector participation among borrower governments.[xv]

PPIAF funds and disseminates research (on its own behalf, and throughout the World Bank) to encourage private sector solutions, provides hands-on assistance with the bidding and contracting process, and frequently works with borrower governments to change the legal and regulatory environment to allow for privatization. [xvi]

In addition to producing and disseminating research, PPIAF also funds broader public-relations campaigns and targeted "technical assistance" aimed at policy-makers and public officials to promote and facilitate private-infrastructure contracts, often to the World Bank's own benefit. For instance, PPIAF grants in 2005 and 2008 incentivized the public water utility in Ho Chi Minh City, Vietnam to contract with a private corporation for reducing "non-revenue water" in the city. The $15 million contract was awarded to IFC investee Manila Water in July 2008. [xvii]

At PPIAF and throughout the World Bank Group, promotion of PPPs raises profound risk of human rights violations. Because PPPs have been shown to be ineffective in funding infrastructure expansion, the promotion or funding of PPP endangers the human right to water by *failing to properly raise...resources or to budget appropriately*.

In her June 2014 report, your predecessor raised concerns about public-private partnerships, under the rubric of "unjustified retrogressive measures," noting that

> The Portuguese auditing institution found that private-public partnerships—by not sharing risks and benefits equally—benefit largely the private sector, that they are detrimental to the people and that services are often of lower quality while higher prices are charged.[xviii]

In addition to this criticism, water industry representatives, the World Bank, and government officials have all acknowledged that PPPs do not bring funding for the expansion or repair of water infrastructure.

According to Antoine Frérot, CEO of Veolia Environnement: "The mission of an operator is to manage the infrastructure for which he is responsible, not to finance it."[xix]

A number of World Bank publications concur. For example, a 2014 report entitled "Water PPPs in Africa" maintains that "dependable funding from the public partner is key to promoting the expansion of access."[xx]

The World Bank's in-depth review of the past fifteen years' experience with water public-private partnerships, authored by Philippe Marin, finds the private sector's achievements with respect to expanded access have been mixed at best. Published by the PPIAF, the survey finds that private utilities have often failed to meet contractually agreed targets for expanded access. The report concludes: "The assumption that private lenders would be ready to provide large amounts of nonrecourse project financing to private operators proved unrealistic." Indeed, Marin notes that it is public financing that makes private sector participation possible, stating "provision of public financing (through grants or concessional loans) [was included in the project design] to accelerate access expansion." Conversely, Marin blames "the limitations of relying solely on the [private] sector's own cash flow to finance expansion when a large portion of the population is poor" for disastrous privatization efforts in Bolivia and Argentina.[xxi]

The World Bank's Internal Evaluation Group further explains that, "Contrary to intuition, PPPs generally do not provide additional resources for the public sector. Governments can finance their public infrastructure investments just as well as private firms."[xxii]
Thus, promotion of PPPs has led to the exclusion of an adequate plan for public finance, represents a predictably inadequate means to *properly raise...resources or to budget appropriately* and has been a contributing factor to the retrogression demonstrated above. Given the inadequacy of these approaches to progressively realize the human right to water, we are concerned the government's and World Bank's exclusive focus on these measures has resulted in the violation of the human right to water.

Such violations of the right to water are a serious risk whenever IFIs promote public private partnerships. To ensure that development cooperation does not risk violating human rights, IFIs must abandon the promotion of "public-private partnerships."

3. IFIs must abandon the promotion of policies designed to aggressively shift water costs to ratepayers

Aggressive shifting of costs to ratepayers is referred to as "full cost recovery" and similar terms. The World Bank has embraced the concept of cost recovery, building cost recovery goals into program aims and its "soft power" knowledge production roles.[xxiii]

This emphasis on aggressively <u>shifting costs to ratepayers</u> risks violating the human right to water by *failure to properly raise....resources or to budget appropriately* because it pursues a water system funding mechanism that is simply inadequate. While most water systems do derive a portion of their revenue from tariffs, the formation of successful municipal water systems invariably requires substantial investments in addition to those provided by ratepayers.

Aggressive cost recovery, however, has repeatedly failed to fund water systems. According to the World Bank's own research, the approach has "rarely been successful."[xxiv] In developed countries, only about half of water systems recover operation and management costs plus some capital expenditures through rates; in World Bank-supported programs, only 15% achieve cost recovery targets.[xxv]
<u>Shifting costs to ratepayers</u> also raises a serious risk of inequitable treatment. Without robust affordability policies, raising water tariffs places a disproportionate burden on the poor. In addition, cost recovery targets

under 100% could encourage water system expansion and repair within higher-income areas only, with the rationale that poorer customers may not be able to pay. In locations with widespread poverty, there is no way to achieve full cost recovery and simultaneously fulfill the right to water.

Such violations of the right to water are a serious risk whenever IFIs promote aggressive cost recovery. To protect the human right to water, IFIs must abandon the promotion of policies designed to aggressively shift water costs to ratepayers.

Special Rapporteur Heller, thank you for your attention to protecting the human right to water in the context of development cooperation. We appreciate your attention to the material we have offered here, and welcome any further communications on the subject.

Sincerely,

Shayda Edwards Naficy
Director, International Water Campaign

Notes

[i] Adapted from "Shutting the Spigot on Private Water: The Case for the World Bank to Divest" (Boston: Corporate Accountability International, April 2012), http://www.stopcorporateabuse.org/resource/shutting-spigot-private-water-case-world-bank-divest. See page 23 for full citation information.
[ii] Adapted from Ibid. See page 23 for full citation information.
[iii] Adapted from Ibid. See page 10 for full citation information.
[iv] Adapted from Ibid. See page 10 for full citation information.
[v] Adapted from Ibid. See page 10 for full citation information.
[vi] Adapted from Ibid. See page 10 for full citation information.
[vii] Adapted from Ibid. See pages 10-11 for full citation information.
[viii] Adapted from Ibid. See page 11 for full citation information.
[ix] Adapted from Ibid. See page 11 for full citation information.
[x] "Manila Water Seeks $1.8 Bln Compensation from Government after Tariff Cut," *Reuters*, April 23, 2015, http://www.reuters.com/article/philippines-regulations-manila-water-idUSL4N0XK26920150423.
[xi] Adapted from "Shutting the Spigot on Private Water: The Case for the World Bank to Divest." See page 11 for full citation information.
[xii] Adapted from "Shutting the Spigot on Private Water: The Case for the World Bank to Divest." See page 25 for full citation information.
[xiii] http://www.ifc.org/wps/wcm/connect/3f64d180498391a5856cd7336b93d75f/SuccessStories_MWSSweb.pdf?MOD=AJPERES
[xiv] Adapted from "Shutting the Spigot on Private Water: The Case for the World Bank to Divest." See page 25 for full citation information.
[xv] Adapted from "Shutting the Spigot on Private Water: The Case for the World Bank to Divest." See page 25 for full citation information.
[xvi] Adapted from "Shutting the Spigot on Private Water: The Case for the World Bank to Divest." See page 25 for full citation information.
[xvii] Adapted from "Shutting the Spigot on Private Water: The Case for the World Bank to Divest." See page 25 for full citation information.
[xviii] Catarina de Albuquerque, "Common Violations of the Human Rights to Water and Sanitation," 14.
[xix] Antoine Frérot, *Water: Towards a Culture of Responsibility* (UPNE, 2011), 157.
[xx] "Water PPPs in Africa" (World Bank Group, 2014), https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/africa_water_ppps_in_africa_en.pdf, 6.
[xxi] Marin, Phillipe, "Public-Private Partnerships for Urban Water Utilities: A Review of Experiences in Developing Countries" (Washington, DC: The World Bank; Public-Private Infrastructure Advisory Facility, 2009), 66–67, https://www.ppiaf.org/sites/ppiaf.org/files/FINAL-PPPsforUrbanWaterUtilities-PhMarin.pdf.
[xxii] Independent Evaluation Group, "Evaluation of the World Bank Group's Support for Public-Private Partnerships" (World Bank Group, March 14, 2013), http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/12/02/000461832_20131202161843/Rendered/PDF/821860IEGAppro00Box379862B00PUBLIC0.pdf, 5.
[xxiii] "Cost Recovery for Water Supply and Sanitation and Irrigation and Drainage Projects" (The World Bank), accessed November 10, 2015, http://water.worldbank.org/sites/water.worldbank.org/files/publication/costrecovery.pdf.
[xxiv] "World Bank Group Support to Public-Private Partnerships: Lessons from Experience in Client Countries, FY02-12" (Independent Evaluation Group, World Bank Group, 2014), http://ieg.worldbank.org/evaluations/world-bank-group-support-ppp.
[xxv] Parker, Ronald, "Water and Development : An Evaluation of World Bank Support, 1997-2007" (Washington, DC: World Bank, 2010), xvi, 34, http://documents.worldbank.org/curated/en/2010/01/12575829/water-development-evaluation-world-bank-support-1997-2007-vol-1-2.