

Catarina de Albuquerque
ESCR Section
Special Procedures Division
UNOG-OHCHR
Palais des Nations
CH-1211 Geneva 10, Switzerland

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Dear Ms de Albuquerque

I am publisher of Global Water Intelligence, the leading subscription magazine covering the international water industry. I understand that you are the independent expert reporting on the issue of human rights obligations related to access to safe drinking water and sanitation. In my capacity as an assiduous observer of and leading commentator on the water industry around the world I would like to make a submission on two aspects of this issue. The first is the involvement of the private sector in the water industry and the second is the obligations of utilities arising from the human right to water.

My points on private sector participation are as follows:

- 1) Water is a natural monopoly so customers need some protection from predatory pricing and from inadequate service. This protection is most effectively provided through independent regulation, although it can also be provided through contracts between elected authorities and utility organisations.
- 2) Public ownership and operation is no protection against monopoly abuses or poor service. In Wetzlar, Germany in January 2010 the courts found the municipality guilty of exploiting its monopoly to overcharge for water. In Milwaukee in the US, more than 100 people died in 1993 as a result of cryptosporidium poisoning as a result of failures at the publicly owned and run Howard Avenue Water Purification Plant.
- 3) There is an inherent conflict of interest when the government both sets standards for water service and takes responsibility for delivering those standards. It results in a silent trade-off: utilities are not pressed on regulatory standards, so in turn they don't press the government for extra investment. In the US, for example, where 95% of wastewater treatment facilities are publicly owned, a study by PIRG found that 53% of them exceeded their Clean Water Act discharge limits in 2005. These violations represented 87% of all CWA violations during the year. The remaining 13% came from industrial discharges. The dramatic reduction of CWA violations by industry since the Act was introduced in 1972 – and the continuing problems on the public sector side – show that governments are better at regulating third parties than they are at regulating themselves.
- 4) Some of the best performing utilities in the world – including PUB of Singapore and PPWSA of Phnom Penh – are publicly owned and operated. Similarly, some of them – including Manila Water and Sénégalaise

des Eaux – are privately operated. It would be heavy-handed for the UNHCHR to intervene in favour of one approach to utility management over another.

6) As water technology becomes more complex and expensive, public utilities are looking to insulate themselves from operational and financial risks. The private finance model is now used in 48% of desalination plant procurements worldwide. It is attractive because the utility just buys what it wants: water. It does not have to buy all the complexity and risk of a desalination plant. This is beneficial for the public, and the contracts between the utility and the vendor adequately protect the utility from any issues which might pertain to the human right to water.

7) The public sector is ironically one of the largest private investors in the water sector. The Ontario Teachers' Pension Plan has invested in Northumbrian Water in the UK, as well as Essbío, ANSM and Esval in Chile. Dutch public sector pension funds ABP and PGGM are investors in Thames Water. Other public sector pension funds have invested in water indirectly through infrastructure funds, such as those managed by Macquarie. This is because public sector pension funds need low-risk, high-yield investments in order to meet their growing liabilities, and water investments meet this requirement. The public sector pensions problem is related to the broader financial crisis now engulfing every level of government. Selling water assets to pension fund investors can help restore municipal balance sheets, while at the same time meeting the needs of their pensioners. Although investor-owned utilities require regulation, in terms of price and service, no additional obstacles should be put in the way of the privatisation of water utilities.

8) Defining private sector participation in water is difficult. Many public utilities contract out the running of particular parts of their business to private companies: this can include call centres, billing, network maintenance, treatment plant operations, testing and almost every other service between reservoir and customer. When does it represent the kind of privatisation that calls for the intervention of the UN High Commissioner for Human Rights?

9) In conclusion, I would advise the UNHCHR to ensure that both public and private water receives equal treatment in any wording on the human right to water, and there should be no preconditions set on the participation of the private sector in water distribution which are not applied equally to the public sector. Regulation of the sector should apply equally to public utilities as it does to those with some form of private sector participation. Regulators should have the power to force public utilities to increase tariffs and to invest, just as they have the power to force private utilities not to. It would be the best guarantee of universal water utility coverage.

My points on the obligations on utilities are as follows:

1. The UN should not be in the business of creating human rights with significant funding obligations attached to them. This is a particularly problematic proposition in the water industry because the body which commits to the human right is generally the central government, but the body which has to provide the service is generally local government. There is a real danger of governments signing up to the human right to water, without committing to the additional finance required by local government to deliver that right.

2. We have made great progress over the past decade on the Millennium Development Goal of reducing the number of people without access to an improved water source (the figure now stands at 87%). There has been less progress on increasing the number of people with a piped domestic water supply (the figure now stands at around 50%). The definition of access to an "improved water source" is fairly undemanding – a well within 1km of the home is enough to meet the criterion. With an average population density of 20,000 people per square kilometre in a typical informal settlement, you can spend \$5,000 drilling a well and installing a pump, and immediately you have an improved water source for the 62,831 people living within a 1km radius. The cost of a domestic piped potable water system serving the same number of people is upwards of \$5 million. The greatest challenge the water sector faces over the next decade is developing the mechanisms to enable that \$5 million to be financed. If the majority of the 62,831 people in the neighbour-

hood qualify for free basic water, then no utility will put in the money without outside assistance.

3. It is unrealistic to expect aid transfers and central government tax revenues to finance the kind of investment that is required in the water sector. The amounts involved are too great for aid agencies, and the tax base of most developing countries is usually too small to make a serious contribution to water utility finance. The OECD (see *Managing Water For All*, 2009) and most other organisations involved in water provision now accept that the burden of financing water infrastructure has to be tariffs. Indeed, the most dynamic utilities in the world today – such as Phnom Penh’s PPWSA, Manila Water, and Senegal’s SONEDE/SDE – all rely on tariff income as the basis of extending water services to the poor. The obligation to provide free basic water would undermine the business model of some of the utilities which have been most effective at extending piped water services to the poor.

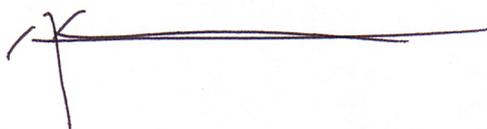
4. The obligation to provide free water to low-income groups exists in South Africa. It works reasonably well in high-income areas such as Johannesburg and Cape Town, because there are enough businesses and wealthy households to cross-subsidise the service to the poor. It works less well in low-income urban areas. In those areas, the obligation to supply free water to indigents has come at the expense of investment to extend services. The human right to water should not be implemented in such a way that it impedes the expansion of piped water services to low-income communities.

5. Food, like water, is a basic necessity of human life, but no one is telling food suppliers to provide basic free food to the poor. As Adam Smith said: “It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner.” Water might be a natural monopoly and enjoy low variable costs and high fixed costs, but it is still subject to the laws of economics. If a service provider is obliged to provide a service at a loss, that service provider is likely to find ways of avoiding that loss, regardless of whether it is publicly or privately owned. An unfunded obligation to provide free basic water is essentially a regressive tax on utilities which choose to extend services to low-income neighbourhoods.

6. In my view, the obligation on utilities in respect of the human right to water is that they should “offer such concessions to low-income customers as can reasonably be financed within the context of the continued expansion of piped water services for all”. This recognises that there are access issues for low-income groups without forcing a solution on a utility which may be inappropriate. In the urban context, the alternative to piped utility water supplies is often private vendors selling water of dubious quality at extortionate prices from tankers. It would be a travesty if this group of suppliers were to be the main beneficiaries of the human right to water.

I look forward to your findings.

Yours sincerely,

A handwritten signature in dark ink, consisting of a stylized 'K' followed by a long horizontal line that tapers to the right.

Christopher Gasson
Publisher, Global Water Intelligence