

March 26, 2010

Ms. Catarina de Albuquerque
Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation
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Dear Ms. de Albuquerque,

Thank you for the opportunity to comment with regard to the issue of human rights obligations in the context of private sector participation in the provision of water and sanitation services. As part of our Campaign Challenging the Corporate Control of Water, we regularly monitor and analyze how the participation of profit-seeking corporations in the water sector impacts the human right to water and sanitation. In particular, we focus on the World Bank's role in promoting water privatization and we compile relevant global case studies in order to analyze the performance of the private sector in providing water services. Our analysis over the past five years strongly indicates that the private sector is among the greatest impediments to achieving the human right to water and providing access to those most in need.

For more than 30 years, Corporate Accountability International has campaigned to save lives, protect people's health and contribute to social development by challenging economic injustices and holding transnational corporations accountable to the interests of society at large. Corporate Accountability International is a civil society organization with 80,000 individual members and activists, primarily in the United States and Canada, and hundreds of NGO allies around the world. We are officially recognized by the World Health Organization (WHO), the Conference of the Parties to the Framework Convention on Tobacco Control (FCTC) and the United Nations Economic and Social Council (ECOSOC).

Corporate Accountability International is working with our members and allies to organize Think Outside the Bottle, an award-winning public education and action campaign. Think Outside the Bottle is educating millions of people about the dangerous reality behind the image of bottled water, and building a base of power and support for public water systems across key constituencies..

At the international level, we have participated in the consultation on human rights obligations related to access to safe drinking water and sanitation organized by the Office of the High Commissioner for Human Rights, and played an active role in the process of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises.



In addition, we have continued to engage with various representatives of the World Bank Group and a broad range of allies throughout the water justice, human rights and sustainable development movements to understand the role of international financial institutions in the promotion of the private model as well as to survey the breadth of alternative public models currently in use from India to El Salvador.

In particular, we agree with recent comments from our allies in East Asia, including the Freedom from Debt Coalition, the Indonesian Peoples Coalition on the Right to Water, and others who complain that “the transfer of control of water utilities to corporations is tantamount to giving the private sector the power to bestow the right to water.” There is no question that governments in the developing world will need aid and assistance in extending infrastructure and broadening water access; however, when such aid includes a requirement to privatize, the basic guiding objective of water access is undermined.

For nearly 20 years, the World Bank has pushed privatization on the basis of this very real funding gap, but in its recent publications, the Bank has stepped back from this rationale, acknowledging that the transnational water corporations have no interest in infrastructure investment, preferring lower-risk operation and management contracts. As the Bank noted in December, “in most of the developing world, the bulk of the large capital outlays required to expand access in the near future will have to come from public sources.”¹ Nevertheless, the World Bank and by extension the regional development banks led by EBRD and the Asian Development Bank continue to promote privatization on the very narrow rhetorical grounds of “operational efficiency,” a shorthand for staff downsizing, tighter bill collections, and more rapid shutoffs of unpaid or unauthorized connections. It should be noted that none of these so-called competitive advantages of the private sector are constructive from an economic development perspective, much less for the realization of universal access to safe water. Such ideological promotion of privatization is fundamentally illegitimate for a development institution such as the World Bank, and in case after case their insistence on defining water as an economic commodity rather than a human need creates irreconcilable conflicts of interest between the development mission of the Bank and the profit motives of their corporate clients.

To illustrate our concerns over private sector participation in the water sector one can choose from dozens of recent cases where the ability of public officials to deliver basic water infrastructure has been curtailed by the privatizing agenda of transnational corporations and international financial institutions. For instance:

- Rudolph Amenga-Etego, esteemed Ghanaian attorney and founder of that country’s National Coalition Against the Privatization of Water recently released a powerful and concise account of Ghana’s failed privatization experiment. Following World Bank and



IMF loan conditions, the country has faced continued pressure to privatize over the past decade, despite well-documented detrimental impacts on public health and development.²

- We would also point you to the survey of privatization in India released earlier this year by NGO Manthan Adhyayan Kendra which concludes that “the greater goal of public benefits should always have predominance over the corporate profits.”³
- Finally, we are compelled to highlight the direct relationship between the World Bank’s private-sector arm, the International Finance Corporation, and the world’s largest private water corporation, Veolia. IFC currently owns 14% of Veolia’s Africa, Middle East and India subsidiary and is in the process of acquiring an equity stake in the Company’s Eastern European subsidiary, to finance the expansion of the private water model throughout Eastern Europe. While the project documents explicitly acknowledge that Veolia “does not own”⁴ infrastructure assets, the cited development impact of the deal hinges on the need for infrastructure financing, and the potential for promoting the PPP model in multiple sectors in the region. For the World Bank to own an equity stake in a privatizing water entity, while requiring borrower governments to privatize is a fundamental conflict of interest and is inconsistent with the Bank’s overarching development mission. We believe that this case highlights the fundamental conflict between water privatization, sustainable development, and universal water access.

In light of our organizational experience, we offer the following recommendations on best practices related to access to safe drinking water and sanitation.

1) The human right to equitable access to safe water and sanitation depends on public control and funding of water infrastructure.

An emphasis on “public-private partnership” implies equal roles in public policymaking for governments and business as well as joint decisionmaking, and ignores the need for safeguards against conflicts of interest. Indeed, the term “partnership” implies a confluence of interests whereas in reality the interests of the state in protecting the human right to water may be diametrically opposed to the profit imperative of private sector players. The public sector has one role to play in society at large, the private sector another, and civil society yet a third. Blurring those distinctions and ignoring power dynamics threatens equitable access to water and is dangerous to effective governance.

The more water becomes a high-priced commodity – the “oil of the 21st century” – the more public water sources and universal access to water become threatened. Bottled water corporations, for example, are convincing communities and individuals that the only place to get clean, safe water is from a bottle. However, bottled water has negative social, economic and environmental impacts. The growth of the bottled water industry threatens the political will to fund public water systems adequately. Public water systems have been critical to health and equality in the US, so they must be maintained in this country and secured throughout the world.

2) Governments must adopt, apply and enforce clear and binding standards on corporations. Voluntary corporate initiatives are inherently and seriously flawed.



Existing international law, in particular General Comment 15 on the International Covenant on Economic, Social and Cultural Rights, makes clear each State's obligation to prevent third parties, including corporations, from interfering in the enjoyment of the right to water.

While States have the primary duty to uphold human rights, TNCs should also be held accountable under human rights treaties, laws and standards.

The United Nations, as an intergovernmental institution, must uphold the role and responsibility of governments to establish and enforce laws, regulations and policies – and the responsibility of corporations to abide by those laws, regulations and policies. Voluntary corporate initiatives can never replace legally enforceable measures. The UN must closely monitor and evaluate initiatives such as the Global Compact and the CEO Water Mandate, and modify or stop any collaboration with business that cannot be proven to complement and reinforce government authority and action.

In an October 2007 joint letter to John Ruggie, UN Special Representative on Transnational Corporations and Human Rights, more than 200 NGOs and individuals emphasized that voluntary corporate initiatives:

- Are limited scope in terms of the rights they include and the sectors they cover;
- Typically fail to ensure that the principles which they advocate are upheld in practice;
- Allow companies to “opt in” to standards which are convenient and to “opt out” of standards which are not convenient;
- Contradict the concept of human rights as minimum guarantees for the treatment of all people.

3) Corporate interests cannot be presumed to converge with the public interest.

The FCTC advances conflict of interest as a concept in international law that preserves and protects the primacy of human rights over commercial enterprise. The FCTC Article 5.3 guidelines take this understanding a step farther, recognizing the tobacco industry's fundamental and irreconcilable conflict of interest with public health and spelling out specific recommendations to prevent it from undermining policy development and implementation.

It is dangerous to assume that what is most profitable for their shareholders will automatically be in the public interest. Best practices must include safeguarding public policy on water and sanitation against this potential conflict of interest, which is a business and social reality.

4) Transparency is fundamental to democratic governance. Governments must be transparent in their interactions with the private sector on issues related to access to safe drinking water and sanitation, and mandate disclosure by corporations of the impact of their business operations on water and of their engagement with water policy.

Because water is essential to life, transparency and disclosure around water issues are of paramount importance. People have a right to know about governments' obligations to protect the human right to water and people's access to safe drinking water and sanitation, about the



activities of corporations that affect our right and access to water, and about the health, economic and environmental consequences of corporate practices such as water bottling and privatization.

The FCTC strengthens international right-to-know laws by calling on governments to disclose a high level of information regarding the tobacco industry and its dangerous products.

Transparency measures in the FCTC Article 5.3 guidelines should be recognized as precedents, adapted and applied as best practices on water issues, for example:

- Ensuring transparency of government interactions with the private sector, through public hearings, public notice of interactions and disclosure of records.
- Requiring disclosure by corporations of information related to public access to safe drinking water and sanitation, including business operations and political activities.
- Imposing mandatory penalties on corporations for the provision of false or misleading information.

Last year, we released a report entitled *Thirsty for Change*⁵, which illustrates the human toll of the World Bank's privatization policies. We anticipate sharing further materials and analysis in the coming year, and hope that you will feel free to contact us with any specific questions or information needs. As a general response to the questions you posed, we firmly believe that the obligation to realize the human right to water rests with States. However transnational water privateers and the international financial institutions that support them present major impediments where they ought to support governments' efforts to advance water justice worldwide.

Thank you for your consideration of these recommendations. We welcome the opportunity to meet with you, and would be happy to provide additional background or clarification.

Sincerely,

T. J. Faircloth
Research Director

¹ "Public-Private Partnerships for Urban Water Utilities," December, 2009. Page 8.

<http://www.ppiaf.org/content/view/611/485>

² Water Privatization in Ghana: the Reality and the Mirage. By Rudolph N. Amenga-Etego.

<http://www.docstoc.com/docs/29283312/WATER-PRIVATIZATION-IN-GHANA--THE-REALITY-AND-THE-MIRAGE-BY>

³ Public-Private Partnerships in Water Sector: Partnerships or Privatisation? Page 81. <http://www.manthan-india.org/spip.php?breve26>

⁴ <http://www.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/89f42149cd9f1441852576ba000e2d93?opendocument>

⁵ <http://www.stopcorporateabuse.org/sites/default/files/Thirsty-For-Change.pdf>

