



# Human Rights Advocates

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## **PRIVATE SECTOR PARTICIPATION IN THE PROVISION OF WATER AND SANITATION SERVICES**

Submitted as part of the public consultation with the Independent Expert on the issue of  
human rights obligations related to access to  
safe drinking water and sanitation, Ms. Catarina de Albuquerque

**March 2010**

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## HUMAN RIGHTS COUNCIL

Public Consultation with the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Ms. Catarina de Albuquerque, regarding private sector participation in the provision of water and sanitation services

### **Written statement submitted by Human Rights Advocates (HRA), a non-governmental organization in special consultative status**

### **PRIVATE SECTOR PARTICIPATION IN THE PROVISION OF WATER AND SANITATION SERVICES**

#### States' Obligations

1. Many States no longer actively participate in providing water and sanitation services to their citizens. Although privatization of water and sanitation services is permitted, States are still ultimately responsible for ensuring the realization of the right to access to safe drinking water and sanitation.<sup>1</sup> It is States' responsibility to ensure that everyone has equal and non-discriminatory access to a "sufficient amount of safe drinking water for personal and domestic uses . . . to sustain life and health." These personal and domestic uses include drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene.<sup>2</sup> In addition to being sufficient in quantity, the provision of water should be free from interference or arbitrary disconnections, and the water must be of a quality acceptable for personal and domestic use, and free from contamination.<sup>3</sup>
2. The right to access to safe drinking water and sanitation includes both economic and physical access. Economic access means that water and sanitation services must be affordable. Poorer households should not be disproportionately burdened with water expenses, and the cost of securing water and sanitation services must not compromise the realization of other rights. Physical access means that water and sanitation services must be within safe physical reach for everyone, including the most marginalized sections of the population.<sup>4</sup>
3. Like any human right, the right to access to safe drinking water and sanitation imposes three levels of obligations on States. Regardless of whether water and sanitation services have been privatized, States have the obligation to respect, to protect, and to fulfill the right to access to safe drinking water and sanitation. While the obligation to respect requires that States themselves refrain from interfering with the enjoyment of this right,

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<sup>1</sup> The Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990) on the Nature of States parties obligations (Art. 2, par. 1), E/1991/23, para. 4; World Health Organization, *The Right to Water*, available at [http://www.who.int/docstore/water\\_sanitation\\_health/Documents/righttowater/righttowater.pdf](http://www.who.int/docstore/water_sanitation_health/Documents/righttowater/righttowater.pdf).

<sup>2</sup> Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, 16 August 2007, A/HRC/6/3, para. 66.

<sup>3</sup> The Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002) on the right to water, E/C.12/2002/11, para. 12.

<sup>4</sup> Id.

the obligations to protect and fulfill are of particular importance in the context of private sector participation in the provision of water and sanitation services.<sup>5</sup>

4. The obligation to protect imposes on States the duty to prevent third parties from interfering with the enjoyment of the right to access to safe drinking water and sanitation, including protecting water distribution systems from interference, damage, or destruction. In situations where water and sanitation services are operated or controlled by a private provider, States must take steps to prevent this arrangement from impinging on equal, affordable, and safe access to sufficient, safe, and acceptable water by establishing an effective regulatory scheme.<sup>6</sup> For example, States should adopt effective legislation and take other steps to restrain third parties from denying equal access to adequate water and sanitation services or from inequitably extracting from water sources.<sup>7</sup> Commendably, many countries have already adopted legislation regulating aspects of the provision of water and sanitation services, including water quality, water services pricing policies and subsidies, prioritization among various uses, minimum amounts needed for domestic consumption, and disconnections.<sup>8</sup>
5. The obligation to fulfill requires States to facilitate and promote universal enjoyment of the right to access to safe drinking water and sanitation.<sup>9</sup> Facilitation means that States must take steps that will assist individuals and communities to access safe drinking water and sanitation, even if those services have been privatized. Specifically, States should take legislative and administrative measures to ensure that the right to access to safe drinking water and sanitation is recognized, legally and politically.<sup>10</sup> The obligation to fulfill also requires States to ensure that services, whether they are publicly or privately provided, are affordable for everyone. This includes making sure that poorer households are not disproportionately burdened with water expenses as compared to richer households. There are a variety of ways to alleviate the burden felt by poorer households, including use of appropriate low cost technology, pricing policies that offer low-cost or free services, subsidies, and income supplements. States should also implement policies and programs to extend and improve sustainable access to water, especially to rural and deprived urban areas.<sup>11</sup> Ultimately, the obligation to fulfill requires that States provide access to safe drinking water and sanitation when individuals are unable, for reasons beyond their control, to realize the right themselves by the means at their disposal.<sup>12</sup>

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<sup>5</sup> *Id.*, paras. 44(b) and (c).

<sup>6</sup> Human Rights Council Resolution on Human Rights and access to safe drinking water and sanitation, 25 September 2009, A/HRC/RES/12/8, para. 4(a).

<sup>7</sup> E/C.12/2002/11, paras. 23-24; A/HRC/6/3, paras. 37-38; Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, 1 July 2009, A/HRC/12/24, para. 64. Third parties include individuals, groups, corporations, civil society organization, and other entities.

<sup>8</sup> A/HRC/6/3, para. 40.

<sup>9</sup> *Id.*

<sup>10</sup> E/C.12/2002/11, para. 26.

<sup>11</sup> *Id.*, paras. 26-27.

<sup>12</sup> *Id.*, para. 20-29; A/HRC/6/3, paras. 36-42.

### Qualities of an Effective Regulatory System

6. As mentioned previously, the obligation to protect requires States to establish and effective regulatory scheme.<sup>13</sup> For a regulatory system to be effective, it must incorporate independent monitoring and accountability mechanisms.<sup>14</sup> While the term “responsibility” refers to the legal, social, and moral obligations that are imposed on governments and private actors, “accountability” means the mechanisms that are necessary to ensure that all actors are held to their obligations.<sup>15</sup> States should establish effective, transparent, and accessible monitoring and accountability mechanisms, which actually possess the power to monitor and hold accountable all actors, both public and private.<sup>16</sup> For example, under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the duty to protect requires States to provide access to effective judicial or other appropriate remedies at the national and international levels for violations by all social actors.<sup>17</sup> Accountability mechanisms punish and deter violations of human rights, for example by imposing penalties for non-compliance. They also provide victims with a remedy for violations of their rights, including adequate reparation, including restitution, compensation, satisfaction, and/or guarantees of non-repetition.<sup>18</sup>
7. Genuine public participation is another essential component of an effective regulatory system.<sup>19</sup> States should ensure that concerned individuals and communities have access to information and are enabled to participate in the planning, construction, maintenance, and monitoring of water and sanitation services. Public participation is important because it empowers communities by providing people with an opportunity to be heard and to contribute to the planning and implementation of water and sanitation solutions. Such participation ensures that water and sanitation services meet the actual needs of the community, and are affordable, technically feasible, and culturally acceptable. It is also crucial for achieving community ownership. These factors are essential to the actual realization of the right to access to safe drinking water and sanitation. Public involvement also facilitates the transmission of information to communities, which increases the transparency and community understanding of the regulatory system.<sup>20</sup>

### Additional Measures

8. In addition to an effective regulatory system, the realization of the right to access to safe drinking water and sanitation requires adequate awareness and education. The taboo surrounding the topic of sanitation is a substantial obstacle because it results in avoidance of the topic. Avoidance contributes to a lack of understanding of the importance of

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<sup>13</sup> E/C.12/2002/11, paras. 23-24; A/HRC/6/3, paras. 37-38; A/HRC/12/24, para. 64.

<sup>14</sup> A/HRC/RES/12/8, para. 4(a); E/C.12/2002/11, para. 24; A/HRC/6/3, para. 38.

<sup>15</sup> Business and human rights: mapping international standards of responsibility and accountability for corporate acts, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 19 February 2007, A/HRC/4/35, para. 6.

<sup>16</sup> A/HRC/12/24, para. 81(j).

<sup>17</sup> E/C.12/2002/11, paras. 44(b) and (i).

<sup>18</sup> *Id.*, paras. 24 and 44(b); A/HRC/6/3, para. 36; A/HRC/12/24, para. 64.

<sup>19</sup> A/HRC/RES/12/8, para. 4(d); E/C.12/2002/11, para. 24; A/HRC/6/3, para. 38.

<sup>20</sup> A/HRC/12/24, para. 66. Note also that participation raises question about other rights, such as the right to take part in public affairs. A/HRC/6/3, para. 53.

sanitation, its effect on other human rights (including access to clean drinking water), and its impact on human dignity as whole. Lack of understanding results in the failure to prioritize sanitation as an issue that needs to be addressed. Tackling these taboos head-on, through increased awareness and discussion of sanitation and personal hygiene, will increase public understanding of the importance of this topic and bring about the changes in attitude that are necessary to make progress towards the realization of this right. Education about sanitation and hygiene and their effects on human health and the environment are also necessary, in order to bring about necessary behavioral changes. Indeed, the Human Rights Council has called on states to organize and support large-scale public awareness campaigns to promote such changes in behavior.<sup>21</sup>

#### Private Sector Responsibilities

9. The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (the “Norms”), promulgated by the United Nations Sub-Commission on the Promotion and Protection of Human Rights in 2003, begin by recalling that the Universal Declaration of Human Rights was addressed to “every individual and every organ of society.” From this premise, the Norms explain that even though States have the primary responsibility to promote, protect, ensure the respect of, and ultimately fulfill human rights, transnational corporations (TNCs) and other business enterprises, as organs of society, “within their respective spheres of activity and influence . . . have the obligation to promote, secure the fulfillment of, respect, ensure respect of, and protect human rights recognized in international as well as national law.”<sup>22</sup> The Norms also recognize that private entities, their officers, and their workers are obligated to respect the generally recognized responsibilities and norms contained in United Nations treaties and other international instruments.<sup>23</sup>
  
10. The right to access to safe drinking water and sanitation is implicated in several of the Norms’ provisions. Paragraph 10 requires TNCs and other business enterprises to “recognize and respect applicable norms of international law; national laws; regulations; administrative practices; the rule of law; the public interest; development objectives; social, economic, and cultural policies including transparency, accountability, and prohibition of corruption; and authority of the countries in which the enterprises operate.” According to the Commentary for the Norms, this provision requires TNCs and businesses to respect the right to development and the right to of everyone to enjoy economic, social, cultural, and political development. The Norms emphasize that such development should contribute to the realization of all human rights and occur with the goal of sustainable development in mind. TNCs and business must also respect the right of indigenous peoples and similar communities to own, occupy, develop, control, protect, and use their land and other natural resources.<sup>24</sup>

<sup>21</sup> A/HRC/RES/12/8, paras. 4(d) and (f); A/HRC/12/24, paras. 66 and 81(i).

<sup>22</sup> Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, 26 August 2003, E/CN.4/Sub.2/2003/12/Rev.2, para. 1.

<sup>23</sup> *Id.*, preambular para. 4. Please see the full text of the Norms for the complete list of international instruments.

<sup>24</sup> Commentary for the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, E/CN.4/Sub.2/2003/38, paras. 10(b) and (c).

11. Paragraph 12 of the Norms require TNCs and businesses to “respect civil, cultural, economic, political, and social rights, and contribute to their realization, in particular the rights to development; adequate food and drinking water; [and] the highest attainable standard of physical and mental health.” Furthermore, TNCs and businesses must refrain from actions which obstruct or impede the realization of these rights. The Commentary for the Norms explains that under this provision TNCs and businesses are required to observe standards protecting and promoting the rights to health, sufficient food, and water, as interpreted by General Comments 14, 12, and 15 (respectively) to the ICESCR. TNCs and businesses must also observe standards protecting all other economic, social, cultural, civil, and political rights in accordance with the ICESCR and ICCPR, and the relevant General Comments.<sup>25</sup>
12. Paragraph 14 requires TNCs and businesses to abide by international agreements, principles, objectives, responsibilities, and standards as well as national laws, regulations, and policies relating to the protection of the environment, human rights, and public health and safety. Private businesses must also conduct their activities in a manner that contributes to the goal of sustainable development. This provision requires TNCs and businesses to respect the right to a clean and healthy environment in light of the recognized relationship between the environment and human rights. Water pollution and hazardous waste are specifically mentioned in the Commentary to this provision.<sup>26</sup>

#### Existing Frameworks

13. The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, has recently proposed a new framework for dealing with businesses and human rights.<sup>27</sup> This Framework is based on three core principles: the State duty to protect against human rights abuses by third parties, including private actors; the corporate responsibility to respect human rights; and the need for more effective access to remedies. According to the Special Representative, international law firmly establishes that States have the duty to protect against non-State human rights abuses within their jurisdiction.<sup>28</sup> However, States are also in the unique position of being able to foster corporate respect of human rights using a variety of policy mechanisms.<sup>29</sup> Private entities, on the other hand, although technically considered “organs of society,” are specialized economic organs, not public interest organs. Consequently, their responsibilities are not the same as State duties. Instead corporations need only engage in “due diligence” to consider the whether their business activities might contribute to the abuse of human rights.<sup>30</sup> The third principle of the Framework charges States, as duty-bearers, with providing more effective

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<sup>25</sup> *Id.*, paras. 12(a), (b), (d), and (e).

<sup>26</sup> *Id.*, para. 14(a).

<sup>27</sup> A/HRC/4/35; Protect, Respect and Remedy: a Framework for Business and Human rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 7 April 2008, A/HRC/8/5; Business and Human Rights: Toward Operationalizing the “protect, respect and remedy” framework, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 22 April 2009, A/HRC/11/13.

<sup>28</sup> A/HRC/4/35, para. 10.

<sup>29</sup> A/HRC/8/5, paras. 27 and 29.

<sup>30</sup> *Id.*, para. 53.

access to remedies by strengthening judicial capacity as well as other non-judicial mechanisms, although companies are also encouraged to create their own internal grievance mechanisms.<sup>31</sup>

14. The work of the Special Representative undoubtedly deserves commendation for its contributions to the ongoing dialogue about corporate accountability; however Human Rights Advocates is concerned about the Framework for the following four reasons. First, the framework does not impose any real legal obligations on corporations. The Framework uses the term “responsibility” instead of “duty” or “obligation.” This is significant since responsibilities are merely moral obligations and societal expectations, whereas duties and obligations are binding law. The dearth of enforceable legal obligations has allowed powerful corporations to commit human rights abuses in the past and proven that mere responsibilities cannot adequately control corporate activities. Instead it is time for enforceable legal principles to be developed and implemented.
15. The second deficiency stems from the Framework’s reliance on States as the sole protectors of human rights. The problem with this reliance is that it fails to consider situations where States are unable or unwilling to take the steps necessary to protect human rights. Given the fact that modern TNCs can be much larger and wealthier than some States, an alternative approach is necessary to ensure that human rights are consistently protected world-wide.
16. A third problem with the Framework is that relegating protection of human rights solely to States creates a patchwork of regulation instead of one cohesive system. Such an environment has an adverse impact on businesses’ ease of operation and efficiency because multi-national corporations are subject to different legal obligations in each country. A patchwork system is also undesirable because it is incapable of adequately protecting human rights, since no amount of domestic regulation can reach corporate activity occurring outside a States’ jurisdiction. In fact, it creates a prime environment for a “race to the bottom” to occur. For these reasons, international consensus and cooperation are preferable to pure domestic regulation.
17. The fourth critique of the Framework is that it does no more than propose another voluntary corporate code. Respect for human rights should be required, instead of voluntary, and more than mere respect should be exacted. Corporations should be obligated to ensure the protection of and ultimately contribute to the realization of human rights. This can only be accomplished with clear, binding legal standards.<sup>32</sup>
18. Human Rights Advocates proposes that the Norms be used as a foundation for the development of binding legal obligations on the private sector. A primary strength of the Norms is that they are a *restatement* of established international and legal principles. The Norms come from numerous treaties as well as customary international law, the evidence

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<sup>31</sup> *Id.*, paras. 82-103.

<sup>32</sup> Connie de la Vega & Amol Mehra, International Legal Accountability over Non-State Actors: An Analysis of the Report of the Special Representative of the Secretary General, 3(2) *Zeitschrift für Menschenrechte Journal for Human Rights* 26, 31-34 (2009).

of which can be found in dozens of U.N. declarations and resolutions.<sup>33</sup> The Norms also explain that they are supplements to, not substitutes for, to the human rights obligations of States, and that States retain the primary responsibility for protecting human rights.<sup>34</sup>

19. Another advantage to the Norms is that they can be applied to non-state actors. Although the Special Representative criticized the Norms for co-mingling State and non-state responsibilities to the point of confusion,<sup>35</sup> such distinctions are becoming less significant. There is an emerging recognition that international rules can be applied to private actors, as evidenced by the application of the prohibitions against genocide, slavery, and torture to individuals and companies as well as governments. Additionally, some treaties specifically refer to corporate crimes and the International Court of Justice has stated that international organizations are subject to “general rules of international law.”<sup>36</sup>
20. The Norms also contain an implementation process and internal and external monitoring mechanisms, which involve corporations, international actors, states, and other stakeholders. According to the Norms, businesses are responsible for adopting, disseminating, and implementing internal rules of operation in compliance with the Norms.” The U.N. is then responsible for monitoring these efforts and for investigating complaints of violations. States are also required to adopt and enforce a regulatory scheme that is consistent with the norms. Companies are also required to provide prompt, effective and adequate reparation to persons and communities harmed by the company’s conduct, as determined by national courts or international tribunals.<sup>37</sup> The approach also provides for public participation by seeking input from individuals and communities and allowing individuals to file complaints about violations.<sup>38</sup>
21. Other recognized advantages of the Norms include: (1) The Norms had the goal of moving towards binding and enforceable obligations; (2) the Norms specify the rights and obligations of actors; (3) the Norms extend non-state actors’ responsibility for human rights to all business entities; (4) the Norms include the participation of various stakeholders in their implementation; and (5) the Norms are equipped with a savings clause<sup>39</sup> which ensures that TNCs and other business entities abide by the standard of conduct that is the most protective of human rights, regardless of the source of that standard.<sup>40</sup>

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<sup>33</sup> *Id.*, pp. 34-35.

<sup>34</sup> E/CN.4/Sub.2/2003/12/Rev.2, para. 19 and preambular para. 3.

<sup>35</sup> A/HRC/11/13, para. 58.

<sup>36</sup> de la Vega & Mehra, p. 33 (citing Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press) (2006)).

<sup>37</sup> E/CN.4/Sub.2/2003/12/Rev.2, paras. 15-18.

<sup>38</sup> de la Vega & Mehra, pp. 35-36 (citing Larry Catá Backer, *Multinational Corporations, Transnational Law: The United Nations’ Norms on the Responsibilities of Transnational Corporations as a Harbinger of Corporate Social Responsibility in International Law*, 37 *Columbia Human Rights Law Review* 287, 335 (2006)).

<sup>39</sup> E/CN.4/Sub.2/2003/12/Rev.2, para. 19.

<sup>40</sup> de la Vega & Mehra, p. 36 (citing Danwood Mzikenge Chirwa, *The Long March to Binding Obligations of Transnational Corporations in International Human Rights Law*, 22 *South African Journal on Human Rights* 76, 96 (2006)).



22. The Norms' strengths make them an ideal foundation for the development of binding legal obligations on the private sector. Unfortunately, voluntary codes of conduct have proven inadequate and have allowed scores of human rights abuses to occur. The creation of clear, consistent, and binding international legal obligations is necessary to ensure that all actors, public and private, respect, ensure the protection of, and ultimately contribute to the realization of human rights.

#### Specific instances of private sector participation

23. Privatization can be advantageous because it attracts funding and increased technical efficiency. However, there are also certain problems with privatization due to the involvement of private parties. These problems stem from the fact that water and sanitation services are not conducive to competitive delivery. Instead, these services are essentially monopolized once a provider is chosen. Monopolization can easily lead to profit-making practices such as abusive pricing.<sup>41</sup> Since the right is to *access* safe drinking water and sanitation, profit-driven practices have the potential of precluding economic access. Such practices are inconsistent with the requirement that water and sanitation services be affordable for everyone. The cost of securing water and sanitation services should also not compromise the realization of other rights.<sup>42</sup> Profit driven practices are also inconsistent with the principal of equity, which states that poorer households should not be disproportionately burdened with water expenses as compared to richer households. Due to the very real risk that privatization will interfere with equal, affordable, and safe access to sufficient, safe, and acceptable water, State regulation of private sector participation is essential.<sup>43</sup>
24. The events in Cochabamba, Bolivia in 1999 are a poignant example of the potential effects of privatization. Shortly after the Bolivian government agreed to a water privatization contract with Aguas del Tunari, water rates increased dramatically, in some cases by 100% to 200%. At the time, the minimum wage in Bolivia was less than \$100 per month, yet some families were paying \$20 for water. After several strikes and protests which left the city at a total standstill, the government finally agreed to terminate the contract. Another example occurred in El Alto, Bolivia. In 1997 the Bolivian government signed a contract with private service provider, Aguas del Illimani, to provide water to the cities of El Alto and La Paz. In 2005 citizens began calling for the termination of the contract on the ground that 70,000 people in the service area could not afford the \$445 connection fee. Additionally, Aguas del Illimani has refused to maintain or extend the water service system, despite the fact that over 200,000 people, usually the poorest communities, are outside of the service area and must pay extra to have water transported to them.<sup>44</sup>

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<sup>41</sup> Isabelle Fauconnier, *The Privatization of Residential Water Supply and Sanitation Services: Social Equity Issues in California and International Contexts*, 13 Berkeley Planning Journal 37, available at <http://www.ced.berkeley.edu/pubs/bpj/pdf/bid11305.pdf>.

<sup>42</sup> E/C.12/2002/11, para. 12(c)(ii).

<sup>43</sup> *Id.*, paras. 24-27; A/HRC/12/24, para. 64.

<sup>44</sup> The Public Citizen, *Reports from Around the World: Bolivia*, available at [http://www.citizen.org/cmep/Water/cmep\\_Water/reports/bolivia/](http://www.citizen.org/cmep/Water/cmep_Water/reports/bolivia/). Bolivia is not the only place to experience problems with privatization. Increased rates as a result of privatization have also been documented in the

25. The East Bay Municipal Utility District (EBMUD) in Northern California has been cited on several occasions as an example of a successful private/public partnership in the provision of water and sanitation services.<sup>45</sup> EBMUD is a publicly owned utility formed in 1923 under the Municipal Utility District (MUD) Act of 1921. The MUD Act facilitates a working relationship between the federal government, the local state government, and EBMUD to provide reliable access to water and sanitation services at reasonable rates and the highest water quality to all within EBMUD's service area.<sup>46</sup> However, there have also been indications recently that EBMUD may be experiencing problems. In April 2009, the San Francisco Chronicle reported that, according to EBMUD, conservation measures implemented in response to the recent drought had been so successful that the agency was delivering 13% less water. Unfortunately for EBMUD, this meant 13% lower revenues. To make up for the decrease EBMUD is raising water rates by an additional 2.5 - 4.0% each year for the next two years.<sup>47</sup> Although this increase is not extreme, as the increases in Bolivia were, it reconfirms the problems inherent in privatization. Rather than being rewarded for cutting back on their use of water, customers are being penalized with higher rates.

#### Human Rights Advocates' Recommendations

##### 26. Human Rights Advocates:

- a. Welcomes the work of the Independent Expert and commends her undertaking the issues of private sector participation and responsibility, which are of integral importance to the right to access to safe drinking water and sanitation.
- b. Urges the Independent Expert to consider the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights as a potential foundation for the development of binding legal obligations on the private sector.
- c. Requests that the Independent Expert, while recognizing the value of the work of the Special Representative, carefully consider the deficiencies of the Framework, discussed above, including the lack of legal obligations on corporations themselves, the consequences of relegating legal duties to States who may be unwilling or unable to protect human rights due to political or economic factors, and the undesirable effects of having legal standards that vary from country to country.

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Philippines, France, and the United Kingdom. For more information see The Public Citizen, *Water Privatization Fiascos: Broken Promises and Social Turmoil*, available at <http://www.citizen.org/documents/privatizationfiascos.pdf>, and Isabelle Fauconnier, *The Privatization of Residential Water Supply and Sanitation Services: Social Equity Issues in California and International Contexts*, 13 Berkeley Planning Journal 37, available at <http://www.ced.berkeley.edu/pubs/bpj/pdf/bid11305.pdf>.

<sup>45</sup> Leslie Bennett, *The Human Right to Water- An Imperative*, Human Rights Advocates; Rajwant Virk, *The Human Right to Water*, Human Rights Advocates, both reports available at <http://www.humanrightsadvocates.org/UN%20interventions%20list1.htm>.

<sup>46</sup> East Bay Municipal Utility District, *All About EBMUD*, available at <http://www.ebmud.com/resource-center/publications/all-about-ebmud>.

<sup>47</sup> Kelly Zito, *Less Demand for Water Has a Cost*, The San Francisco Chronicle, 15 April 2009.

- d. Strongly supports the formulation of binding international legal obligations and enforcement mechanisms which will ensure the protection, respect, and realization of the right to access to safe drinking water and sanitation. Including:
  - i. An international instrument, with an enforcement mechanism, that requires States to regulate and hold accountable private companies incorporated and/or engaged in providing water and sanitation services in their jurisdiction.
  - ii. An international process with the ability to hold corporations accountable for their actions when States are unable or unwilling to do so.
  - iii. Voluntary corporate codes that provide an incentive and reward respect, protection, and promotion of all human rights, in an effort to mobilize the concept of a “social license to operate.”<sup>48</sup>
- e. Encourages States who have not already done so to sign and ratify the International Covenant on Economic, Social, and Cultural Rights as well as the first Optional Protocol to the Covenant.

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<sup>48</sup> The idea of a “social license to operate” was mentioned by the Special Representative in A/HRC/11/13, para. 46. One example of this concept is the Kimberley Process Certification Scheme (KPCS), General Assembly Resolution on the role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts, 29 January 2001, A/RES/55/56.