

January 31, 2016

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 Leo Heller, Special Rapporteur on the human right to safe drinking water and sanitation,

We, the undersigned, thank you for this opportunity to provide input regarding your upcoming reports on gender equality and development cooperation in relation to the human right to water and sanitation.

Collectively, our organizations have been gathering data, developing analysis and supporting groups on the frontlines of development projects for decades. We hope our comments will help guide your analysis on development cooperation.

Since your report *will examine existing policies and their guidance on human rights to explore to what extent existing policies and approaches reflect human rights and how these are implemented in practice*, we first would like to point out that existing development cooperation programmes rarely make clear reference to the human right to water and sanitation. For instance, the World Bank Group, which provides low-interest loans, zero- to low-interest credits, and grants to developing countries, admits that indicators to assess access and pro-poor aspects are not part of the design process for programmes and projects and that such data are rare.¹

We hope your reports will serve to ensure that bilateral and multilateral development cooperation programmes in the water and sanitation sector include a human rights-based approach from programme design to evaluation.

Please find below more detailed responses to your questions.

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

1. The role of international financial institutions

Communities around the world have expressed their concerns regarding human rights abuses and violations related with existing development cooperation strategies.

In Europe, a European Citizens' Initiative (ECI), named the Right2water campaign, called for the European Commission to develop legislation that would ensure the realization of the human right to water and sanitation across member states; further it called for the Commission to contribute to universal access to water and sanitation for all.² This campaign was the first successful ECI, collecting 1.9 million signatures from citizens across all 28 Member States and was submitted to the European Commission in December 2013.

The petition demanded that the European Commission adopt a human rights-based approach to development cooperation, encompassing all human rights norms and standards. In order to achieve this goal the ECI insisted that international cooperation should be based on not-for-profit principles and solidarity among water operators and authorities, such as capacity-building partnerships aiming to improve the quality of water services (public-public partnerships or water operator partnerships). The European Parliament report adopted in July 2015 followed up on the ECI demands and advocated for partnerships based on solidarity between water operators and workers in different countries.³

The Right2water campaign was driven by the concerns of European groups to the effect that current aid and loans from bilateral and multilateral international development cooperation, many of which force or facilitate Public-Private Partnerships (PPPs) and/or private sector participation, would violate human rights. PPPs are increasingly controversial due to conflicts between the private sector's commercial objectives and local developmental objectives.⁴ These conflicts have led to widespread social resistance.

In India, for example, at least 20 PPP projects in 13 cities have been set up with the backing of the World Bank. According to a local human rights defender, World Bank PPP loan conditionalities are being implemented through the larger reform process in the water sector and are being cemented through specific clauses under the concession contracts. These loan conditionalities include control over domestic water supplies by private companies, mandatory household-level metering, disconnection on non-payment, 24/7 water supply that is too expensive for low-income families, increased water tariffs, automatic revision of water tariffs every one to three years (10% hike), ignoring access and coverage for poor and marginalized communities, prohibiting use of local water resources and the sharing of domestic water within the community, neglecting local water resources, increasing dependence on distant water sources, among other things.⁵ Many of these measures directly conflict with the human right to water and sanitation. The programme is expanding in full swing without any assessment of its human rights impacts.

It has also been observed that the loan agreements signed with international financial institutions as well as other donors in the water sector call for efficient financial management of the sector and measures to make service delivery economically viable such as user charges, full cost recovery and financial sustainability. Yet parameters that would ensure effective service delivery with a focus on affordability, access and coverage for local residents are missing from these agreements. Also missing is the link with ensuring the accountability of the water service providers, be they public or private. Under some of the recent PPP contracts for water service delivery in India, it has been observed that private companies force local residents to sign separate individual agreements regarding household water connections. These agreements serve as disclaimers for private water companies by shifting the responsibility of service delivery onto users through clauses that prevent them from complaining about the poor quantity or quality of water supply, pressure, etc. The agreements also include measures to force payments from users. For example, the company can in some instances make arrangements with employers to deduct amounts from salaries in order to recover dues. A company can also use such agreements to recover dues through movable and immovable user assets.

The World Bank has pushed for PPPs in the water and sanitation sector in Eastern Europe in the late 1990s and early 2000s. PPPs in Eastern Europe, however, were a spectacular failure. In Romania, for

instance, after a subsidiary of the French Veolia Environment group acquired the majority of the shares of the Bucharest water company, prices increased by 125% only between 2008 and 2015. Furthermore there are severe corruption scandals plaguing the company, which are currently under criminal investigation such as tax evasion and bribing of politicians.⁶ In Bulgaria where the concession of the Sofia water company did not lead to new investment and where water losses that were supposed to be improved by the 1999 concession continue at the same rate, prices quadrupled compared to what was initially promised 16 years ago, and corruption scandals are a constant. Moreover, the lack of investment in the water network in Sofia puts a serious strain on the poorest Roma neighborhoods, because in the summer months they are practically without water due to low pressure.⁷ Despite these failures the World Bank uses Sofia as a poster child for privatization. According to a recent PPIAF brochure,⁸ the "World Bank and European Investment Bank provided technical assistance to help introduce private sector participation in multiple water utilities across Bulgaria," and supported the Bulgarian government's plans "to revolutionize the water sector in Bulgaria through 48 concessions modeled on the Sofia concession." Rather controversially, in 2014 the Bulgarian government even commissioned the World Bank to produce its national Water and Sanitation Strategy. In this new strategy the World Bank continues to promote the Sofia concession as a model to be followed by the rest of the country.⁹

The privatization of basic utilities in sub-Saharan Africa in the 1990s has hampered the achievement of the Millennium Development Goals on both water and sanitation, according to a report approved by the European Parliament, "as the focus of investors on cost recovery has, among other things, intensified inequalities in the provision of such services, at the expense of low-income households."¹⁰

In conclusion, based on the overwhelming failures of privatization schemes around the world, we call for the suspension of grant and loan programmes which implicitly or explicitly promote PPP schemes. At the very least, there must be sufficient relevant data collection and independent assessment of existing PPP schemes with adequate access to legal recourse for communities whose rights have been violated by these PPPs.

2. The Post-2015 Development Agenda must be rooted in a rights-based framework

Throughout the negotiations for the Post-2015 Development Agenda, hundreds of water justice organizations campaigned to ensure that the human right to water and sanitation would be included in the language used to frame SDG 6. While it was taken out of the text regarding the goal itself, the human right to water and sanitation is named in the declaration as a result of these efforts.¹¹

Yet the dominant discourse surrounding the Post-2015 Development Agenda has been at times vague and at other times contradictory when it comes to its explicit commitment to human rights. As many civil society organizations have argued, the Post-2015 Development Agenda's commitment to economic growth fails to acknowledge the ways in which wealth accumulation (through the privatization of water and sanitation services among other measures) has served to undermine the interests of the most vulnerable and marginalized communities. In this context, when conflicts arise between competing interests in the implementation of the SDG agenda, it is important to establish whose interests will come first. A rights-based approach goes a long way towards establishing the primacy of rights-holders and the responsibility of states towards rights-holders. When water resources are scarce, a rights-based approach demands that sanitation and drinking water needs be met before private interests are served. ¹²A rights-based approach to the SDGs would also include

requirements for public participation in decision-making and hold governments accountable for their duty to consult. We call for a people-driven approach where vulnerable and marginalized populations are not only beneficiaries but also drive the agenda.

In order to meet the proposed sub-targets of SDG 6, implementation requires a commitment to greater empowerment of marginalized communities in decision-making and the recognition of the rights of local communities to veto projects that impact their watersheds. While the UN claims poor and marginalized peoples are the agenda's primary target, public consultation was achieved through a multi-stakeholder process that failed to distinguish between rights-holders and corporate stakeholders. All were given equal time at the microphone although corporations also benefited from other channels that were inaccessible to poor, marginalized and impacted communities. This created an environment where the voices of communities most deeply impacted were drowned out consistently by those of more powerful actors. These dynamics must not be reproduced in the implementation of the SDG agenda. Rights-holders must be involved at all stages of decision-making.

The implementation of the SDGs must also include mechanisms to ensure distributive justice. This requires a commitment on the part of states to a socially just allocation of public funds to ensure all members of society are able to enjoy their right to water and sanitation. This means public operators must not transfer an undue portion of the financing to users through fee structures or metering schemes that make services unaffordable to some sectors of the population.

The implementation of SDG 6 must be based on human rights obligations of States to respect, protect, and fulfill the human right to water and sanitation. Governments must adopt a holistic approach to address physical, economic, structural and social factors that facilitate or limit the enjoyment of the human right to water and sanitation. Implementation will necessarily vary according to local contexts but must always include all aspects of the normative content of the human right to water and sanitation. Services must be sufficient, safe, acceptable, accessible, and affordable.

3. What role is there for human rights impact assessments in development cooperation programmes?

The World Bank group's PPP lending activities are void of any adequate human rights impact assessment. The Independent Evaluation Group of the World Bank concluded: "Despite the Bank Group's central goal of fighting poverty—reaffirmed by the new strategy's dual goal of ending extreme poverty and promoting shared prosperity—little is recorded on the effects of PPPs on the poor."¹³

All international development cooperation projects including PPP schemes need to be assessed during project design and upon completion of projects to weigh their impacts on the human right to water and sanitation based on indicators measuring the normative content of the right including affordability, gender equality, quality of the workplace, access, discrimination, transparency, access to information, citizen participation and quality of service delivery. Systematic data collection based on these indicators should be integrated in project design.

We call for a commitment by the international community to develop a comprehensive benchmarking system based on the human right to water and sanitation framework. Importantly, such benchmarking indicators should be clearly differentiated from the existing benchmarking systems, which strongly focus on financial and economic efficiency and performance.

What measures can be used to ensure that development cooperation promotes equality and tackles discrimination?

Most water and sanitation operators employ some form of performance evaluation mechanisms to gauge their performance over time and against other operators. Commonly known as 'benchmarking', these evaluation systems can be a very powerful tool for shaping operator objectives and assessing areas in need of service improvement. As such they can lead to improved transparency and accountability and better service operations. Unfortunately, most benchmarking systems prioritize narrow financial goals over broader aims of equity, often resulting in highly commercialized and technical forms of performance evaluation that can marginalize goals of equity and make the process of performance assessment inaccessible to the average water user. Water and sanitation benchmarking systems that prioritize equity, promote community input, and that are more easily accessible to the general public would therefore contribute significantly to the promotion of human rights in this sector.

In addition, the human rights framework calls for disaggregation of data based on gender and sex, disability status, age, income, descent (religion, caste, ethnicity), geography and race. Progress towards sustainable development regarding water and sanitation will only be accurately determined if data is disaggregated appropriately. This must be a central element of all evaluation and monitoring processes.

What mechanisms can be used to ensure that development cooperation promotes transparency and access to information?

There is always a loss of transparency with PPPs because private companies can and do withhold much information on the grounds of commercial confidentiality.¹⁴ Because of the inherently secretive character of PPPs, the recipients/beneficiaries/users have little or no access to information on projects. Lack of transparency over finance, service management and investment is the key cause of conflicts between public authorities and private operators, and a widespread motivation for public authorities to terminate PPP contracts.¹⁵ According to the European Parliament, a rights-based approach to water and sanitation requires "support for legislative frameworks, financing and the strengthening of the voice of civil society in order to realise these rights in practice."¹⁶

What measures can be used to ensure that development cooperation programmes and projects are based on participatory processes?

As part of development programmes, including the Post-2015 Development Agenda, all implementation, review and follow-up processes must ensure the effective and meaningful participation of people as rights-holders, including indigenous peoples, women and other marginalized and vulnerable populations. They must not be grouped with corporate stakeholders and thereby forced to negotiate with more powerful actors whose interests may conflict with their own. As previously noted by Leo Heller, it is "essential that people freely and actively participate in and contribute to monitoring including data collection, analysis and dissemination, as well as in overall implementation arrangements at the national and local levels."¹⁷ This includes:

- Direct participation of impacted communities in decision-making processes through the creation of mechanisms and an enabling environment to ensure free, safe and meaningful participation;
- Respect for free prior and informed consent of indigenous peoples;
- Empowerment and participation of women and girls in water, sanitation and hygiene management, particularly low-income women, women living in rural areas, and women from historically marginalized communities;
- Empowerment of rural populations with information on communal water resources.

What monitoring mechanisms can be put in place to assess development cooperation programmes and projects with respect to human rights obligations?

Impacted communities and marginalized populations must be equipped with the tools to monitor, assess and report on abuses of development programmes.

What accountability mechanisms can be put in place so that people affected by development cooperation programmes or projects can effectively have complaints addressed?

States have an obligation to establish national plans of action outlining strategies for implementing the human right to water and sanitation. These strategies must include mechanisms to address the complaints of communities impacted by development programmes.

The complaints mechanisms of donors such as the World Bank must also be accessible and responsive to the needs of local communities.

The Global Water Operators' Partnerships Alliance (GWOPA) provides one of the few examples of good practices with regards to accountability mechanisms to ensure the adherence of projects to the principles of transparency, inclusiveness, not-for-profit partnership in development cooperation. The guiding principles were debated and established by the international steering committee, which represents a broad range of stakeholders including civil society organizations and trade unions. The GWOPA charter,¹⁸ however, should make a stronger reference to the human right to water and have a stronger rationale regarding the role of not-for-profit partnerships among water operators in contributing to the realization of the right to water. We also observe a relatively weak mechanism within the GWOPA to ensure compliance with the charter. The GWOPA as a global programme hosted by UN-Habitat must establish a clear remedy mechanism including investigation when potential violations of the human right to water are reported or when the not-for-profit principle is concerned. It also should have a much clearer procedure for concerned citizens to submit complaints.

What measures can be taken to ensure the sustainability of development cooperation in line with human rights principles?

We are encouraged to see that *the report will also explore ownership and control of development cooperation by the recipient states, and how they can promote human rights within development cooperation agreements.* Donor and consultant-driven technical assistance tends to fail to provide support particularly when it comes to capacity-building of 'beneficiaries'. A PPP is an agreement allowing a private actor to take over asset and/or management responsibility from a beneficiary. Consequently a beneficiary loses not only the sense of ownership but also institutional knowledge, memory and capacity. Take for example a project between Eranove-SDE (a private operator based in

Senegal) and REGIDESO (a public sector company in the Democratic Republic of the Congo). The Eranove website states that “in 2012 the Eranove-SDE group won an international request for proposal (RFP) for the administrative, financial and technical management contract with REGIDESO, financed by the World Bank in order to transform REGIDESO from a public company to a commercial company.”¹⁹ The website also states: “This three year service contract aims to strengthen REGIDESO’s capabilities in some key functions: This especially covers the availability of 5 Senegalese experts from SDE to hold key positions in REGIDESO in close collaboration with their Congolese peers, with an objective of returning control after three years.” In such an arrangement, it is clear that REGIDESO’s capacity will decrease at the end of the project and REGIDESO may require additional aid or another commercial arrangement to sustain services. This is neither cost-effective nor sustainable.

Public-public partnerships (PuPs) and Water Operators’ Partnerships (WOPs), on the contrary, are peer-to-peer partnerships primarily aiming to support and expand beneficiaries’ capacity to be able to provide better services to citizens. A PuP is simply a form of collaboration between two or more public authorities or organizations, based on solidarity, to improve the capacity and effectiveness of one partner in providing public water or sanitation services.²⁰ Because of its promotion of capacity-building, not-for-profit initiatives and solidarity, we observe local control, transparency, accountability and participation by users and workers in PuPs.

Despite many other advantages such as low risks for beneficiaries and low cost, PuPs are neither supported nor implemented by major multilateral donors and national aid agencies. Development cooperation programmes disproportionately favor PPPs over PuPs. There are a few exceptions, however. In addition to the GWOPA, the ACP-EU Water Facility (Restricted Call for Partnerships for Capacity Development in the ACP Water & Sanitation Sector) by the European Commission²¹ explicitly funded PuPs (2010-2013). Fourty million was earmarked and 32 projects were financed.²² Despite tremendous demand for the programme among public water operators and civil society,²³ it is uncertain if the EC will continue its PuPs/capacity development programme. PPP programmes on the other hand enjoy tremendous support despite their noted failures. The World Bank group alone approved 353 lending and partial risk guarantee (PRG) projects during 2002-2012 with a PPP component totaling \$7.6 billion.²⁴

While institutions like the European Commission acknowledge the “growing recognition of the potential of not-for-profit partnerships in the water sector,”²⁵ not-for-profit partnerships have received far less attention and nearly no resources from multilateral and bilateral donors. PuPs and WOPs deserve to be comprehensively studied in light of their potential to realize the human right to water and sanitation.

We truly hope our submission will be helpful to your upcoming reports. Should you have any questions please do not hesitate to contact us.

Sincerely,

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- ¹ *Independent Evaluation Group (IEG)*, 2014, Lessons from Experience in Client Countries, FY02-12, page 66. <http://ieg.worldbank.org/evaluations/world-bank-group-support-ppp>
- ² <http://www.right2water.eu/node/37/view>
- ³ European Parliament resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water (2014/2239(INI)). <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0294+0+DOC+PDF+V0//EN> (see paragraph 77)
- ⁴ Lobina, E. and Hall, D. 2013. Water Privatisation and Remunicipalisation: International Lessons for Jakarta. Report by the Public Services International Research Unit prepared for submission to Central Jakarta District Court Case No. 527/Pdt.G/2012/PN.Jkt.Pst, November. <http://www.psiu.org/sites/default/files/2014-W-03-JAKARTANOVEMBER2013FINAL.docx>
- ⁵ <http://www.blueplanetproject.net/index.php/an-overview-of-water-sector-reforms-in-india>
- ⁶ <http://www.criticatac.ro/lefteast/water-bucharest/>
- ⁷ <http://canadians.org/sites/default/files/publications/RTW-Europe-1.pdf>
- ⁸ http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/11/20/000333038_20121120005155/Rendered/PDF/NonAsciiFileName0.pdf
- ⁹ <http://www.mrrb.government.bg/docs/2f843c2f2474891d4253eac006162cf9.pdf>
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- ¹¹ <https://sustainabledevelopment.un.org/post2015/declaration>
- ¹² http://www.ohchr.org/Documents/Issues/Water/Handbook/Book5_Monitoring.pdf
- ¹³ *Independent Evaluation Group (IEG)*, 2014, Lessons from Experience in Client Countries, FY02-12, page 66. <http://ieg.worldbank.org/evaluations/world-bank-group-support-ppp>
- ¹⁴ http://www.world-psi.org/sites/default/files/documents/research/rapport_eng_56pages_a4_lr.pdf(see page 34)
- ¹⁵ <https://www.tni.org/files/download/heretostay-en.pdf> (see page 4 and examples of remunicipalisation)
- ¹⁶ European Parliament resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water (2014/2239(INI)) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0294+0+DOC+PDF+V0//EN>
- ¹⁷ <http://www.ohchr.org/Documents/Issues/Water/OpenLetter21July2015.pdf>
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- ¹⁹ <http://www.eranove.com/en/our-companies/francais-regideso/>
- ²⁰ <https://www.tni.org/files/download/pupinwater.pdf>
- ²¹ http://www.welcomeurope.com/europe-funding-opportunities/acp-eu-water-facility-restricted-call-partnerships-capacity-development-acp-water-sanitation-sector-3912+3812.html#tab=onglet_details
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- ²³ <https://www.tni.org/en/article/open-letter-extending-and-upscaling-support-innovative-non-profit-partnerships>
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- ²⁵ http://ec.europa.eu/transparency/com_r2w_en.pdf