The Right to Water
More than just a “Good Idea”*

Remarks & Preliminary Responses to IHRB Report

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The International Federation of Private Water Operators

CEO Water Mandate - Business and the Human Right to Water and Sanitation
Stockholm - 25th August 2011

* C de Albuquerque, UN General Assembly, July 27 2011
Our commitment

• We are water professionals. We are not human rights experts but implementers of a specific human right: Our job is implementation and delivery of the HRWS as mandated by governments

• “Making the HRWS a Reality” has been our consistent message (see our many publications)

• Thank you for recognising the commitment of private water operators to the Right to Safe Drinking Water and Sanitation
On the plus side:
- Pleased to have been consulted
- See the value in the initiative and recognise the work completed
- Have been able to make some comments - limited
- See this a platform to build from

We have some reservations:
- There is a need to align the human rights “theory” with realities and constraints of “delivery”
- Human rights approaches must support action and improvement not hinder it
- Respective legitimacies of authorities and operators should be included
Water & Sanitation as a “Business”

• “regulated” and “non-regulated” water services
  - Regulated = under ultimate political control
  - Non-regulated = state has abdicated all responsibility and control

• An atypical business
  - Public service – essential good – natural monopoly
  - Regulated operators do not control prices & can’t pass through costs without state approval. Prices not fixed by the market
  - Implementers of a human right, the right to water and sanitation

• Active right – requires delivery
  - Important differences between water supply & sanitation

• Individual vs Collective

• Operations – State & Non-State operators face the same “business & HRWS” challenges
Aligning a “Rights” view with “Water Experts” view

**Human Right**
- Sufficient quantity
- Regularity / Continuity
- Safety
- Acceptability
- Physical
- Economic
- Equity

**Water Expert**
- Availability
  - Volume sufficient for purpose
  - Pressure, 24/7
- Quality
  - Drinking water standards (WHO)
  - Taste, colour, odour
- Accessibility
  - Reachable, Safe, etc.
  - Affordable charges, Support
- Non-discrimination
  - Available to everybody
“It is a norm that applies to business whatever States do or fail to do”? A public authority and its operator are interdependent. If the Public Authority fails in key obligations (raw water provision, investment obligations, sustainable finance, prohibited areas) etc. the operator may have no remedy.

“Best endeavours” may not be seen as adequate to avoid an alleged HRWS infringement

See also Pg. 20

A fair analysis but practical suggestions are needed
Due diligence

• Why only focus on the “negative”, “adverse” & “harm”? Delivery of an essential public service has real “positive” & “beneficial” dimensions. Public policies have to strike a balance between conflicting constraints.

• Pg. 23 - The value of Data
  The absence of data is a cause of system failure that leads Public Authorities to call in a private operator. Create baseline data, consult by gender etc. Can only be done over time and within a contract not before.

• Pgs. 32–39 “Due diligence for service providers”
  A fair list of issues, workable solutions have to be developed, which is a major task in front of us all.
“Complicity”? 

• Page 25. Regulated operators must respect political choices and implementing instructions. Operators are faced with many “Catch 22” or “Damned if you do and damned if you don’t” situations. How can human rights application overcome these to promote better access to water and sanitation?

• Legitimacy: how can a private operator (mandated by a government) resist political arbitrages that address complex issues?

• Abusive claims under human rights can cause harm to many in the interests of the few.
Conclusion

• The paper does not yet meet the CEO Mandate objective
  “The mandate is in the process of developing operational
guidance that identifies companies’ responsibilities with
respect to the right to water and elucidates a process by
which they can fulfil those responsibilities” – “… Also
concretely explain what they can do to manage…”

• Human Rights theory and the messy world of reality have
to be brought together in a way that maximises the
opportunity for business to do good as well as to avoid
harm
The real size of the challenge

- AquaFed estimates that 3 - 4 billion people do not enjoy all aspects of the right to drinking water:
  - Availability, Safety, Acceptability, Accessibility (including reliability), Affordability, Non-discrimination
- Sanitation needs are of same magnitude
- All the population growth in coming decades will be urban, but “urban regression” is occurring
- MDG 7 (between 2000-2008)
  - Urban water: 114 million more people without
  - Urban sanitation: 134 million more people without
## Global trends between 2000 & 2008

<table>
<thead>
<tr>
<th>Safe Water</th>
<th>Urban half</th>
<th>Rural half</th>
</tr>
</thead>
<tbody>
<tr>
<td>without access to permanent tapwater (running water)</td>
<td>Not monitored</td>
<td>Not monitored</td>
</tr>
<tr>
<td>without access to tapwater</td>
<td>+114</td>
<td>-24</td>
</tr>
<tr>
<td>without access to “improved” sources</td>
<td>+13</td>
<td>-188</td>
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</table>

<table>
<thead>
<tr>
<th>Sanitation</th>
<th>Urban half</th>
<th>Rural half</th>
</tr>
</thead>
<tbody>
<tr>
<td>without wastewater treatment</td>
<td>Not monitored</td>
<td>Not monitored</td>
</tr>
<tr>
<td>without wastewater collection</td>
<td>Not monitored</td>
<td>Not monitored</td>
</tr>
<tr>
<td>without private sanitary toilets (= “improved” sanitation)</td>
<td>+134</td>
<td>-69</td>
</tr>
<tr>
<td>without toilets (Open defecation)</td>
<td>+7</td>
<td>-129</td>
</tr>
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Convergence of RtWS & MDGs

• More ambitious goals need to be set for the post - 2015 period to advance the RtWS

• More ambitious objectives pose:
  – an international political challenge
  – a national political challenge
  – a monitoring challenge
  – a resources challenge

• Implementing human rights is “more that a good idea”*: * C de Albuquerque, UN General Assembly, July 27 2011
  – a legal requirement for countries that recognise it
  – a moral imperative
  – an economic necessity
  – the job of water professionals