



UK Mission
Geneva

28 October 2013

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Mr Pavel Sulyandziga

Working Group on the issue of human rights and transnational corporations and other business enterprises;

OHCHR REGISTRY

Ms Maria Magdalena Sepulveda Carmona

Special Rapporteur on extreme poverty and human rights;

30 OCT 2013

Recipients: L. Wendland
SPB
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Ms Catarina de Albuquerque

Special Rapporteur on the human right to safe drinking water and sanitation.

OHCHR Palais des Nations
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*Dear Mr Sulyandziga, Ms Sepulveda Carmona
and Ms de Albuquerque,*

Thank you for your letter of 29 August 2013 in which you raised a number of questions relating to the provision of water and sanitation in the United Kingdom. Allow me to assure you of the British Government's firm and continuing commitment to advancing human rights, and the lead role we play globally. The responses to your questions below are aimed at facilitating your work but should not be taken as an acceptance by the United Kingdom of the accuracy of any of the content contained in the joint allegation letter. I would like to recall that the United Kingdom has recognised the right to water and the right to sanitation as a human right under international law, as an element of the "right to an adequate standard of living for himself and his family" (Article 11 of the International Covenant on Economic, Social and Cultural Rights").

In response to your questions:

1. Are the facts summarized above accurate?

1.1. The facts summarised in this letter are substantially inaccurate. They demonstrate a limited understanding of the statutory and regulatory regimes that are in place in England

and Wales to ensure that high-quality, affordable water and sewerage services are provided to all household and business premises.

2. What Measures has the Government taken to ensure that the population has access to drinking water and sanitation that is affordable, safe, sufficient and accessible to all without discrimination?

2.1 The law in England and Wales requires that all household and business premises have access to water and sanitation. Water and sewerage companies are legally required to provide these services and are prohibited from disconnecting household customers for any reason, including non-payment of bills. The companies operate under licences of appointment which can be revoked if they fail to perform these statutory functions.

2.2 The Water Industry Act 1991 established the Water Industry Regulator (Ofwat) to protect consumers both by ensuring that their charges are fair and ensuring that the industry is financially sustainable for the long-term. The Act places statutory requirements on the Water and Sewerage Companies; requiring them to supply sufficient wholesome water and to provide 'effectual drainage' i.e. waste water services. Since 1999 water and sewerage companies have been legally prohibited from disconnecting household customers in response to non-payment of bills (or indeed for any other reason).

2.3 There is a robust legal framework in place to protect public health and a separate regulator: the Drinking Water Inspectorate. Drinking water quality in England and Wales is high: 99.96% consistently meet the stringent national and European standards.

2.4 The average household combined water and sewerage bill in 2013-14 in England and Wales is £388 per year or just over £1 per day. The average increase in bills has been in line with inflation since 2009. The costs of water and sewerage services in England and Wales are in line with median costs in comparable European countries.

2.5 It should be noted that the points made in the opening paragraph of the letter are factually inaccurate. In particular, the Government does not set a threshold of 3% of income as a 'sustainability indicator' or a measure of 'water poverty'. This threshold was used in a piece of research undertaken by the regulator Ofwat in 2011. This report identified that, the typical household expenditure in England and Wales on water and sewerage services is 1.6% of income. The report states that the authors: "*selected the thresholds of 3% and 5% because they provide a useful means of describing patterns observed in the data.*" The report states explicitly that the use of this threshold for the purposes of data analysis: "*does not imply a threshold for which assistance should be provided.*"

2.6 On the whole, water and sewerage bills in England and Wales represent good value and are relatively low-cost compared to other utilities. At a little over £1.00 per day, the cost of these services is in line with similar European countries. Nevertheless, the Government recognises that some households struggle to pay their water bill. The Government published statutory guidance on the creation of Company Social Tariffs in June 2012. This guidance applies to both the companies and Ofwat. It sets the framework within which a company can bring forward a social tariff to support households that might otherwise struggle to pay their water bills. Where a company brings forward a social tariff that complies with the Company

Social Tariff Guidance there is a clear presumption in favour of approval by Ofwat. Your letter describes this as a system of *'charitable handouts provided by the companies themselves at their own discretion'*. This is incorrect. Company Social Tariffs are funded by cross-subsidy between customers and must be based on effective customer engagement by the companies, resulting in broad customer support for the measure. Your letter suggests that household customers may not benefit from this measure (page 3). This is not accurate, in fact only household customers can benefit from this measure.

2.7 Protecting and supporting vulnerable groups remains a key government priority. Alongside its general duty to protect the interests of all consumers, Ofwat has particular responsibilities towards certain groups in society; these include persons with disabilities or who are chronically sick, pensioners, individuals with low incomes, and those in rural areas (for further details see question 7 below). It is therefore factually inaccurate to describe Ofwat's remit as *'selectively defined [. . .] to exclude the protection of vulnerable groups'* (page 3).

3. Under the current legislative reform the Government stressed the need to build long-term resilience of the water sector in terms of infrastructure, supply and networks. What is the Government's position in relation to the need to strengthen the legal protection of the rights to water and sanitation pursuant to its international obligations under the ICESCR? How was it reflected in the draft water Bill?

3.1 The UK Government meets all of its international obligations in respect of protecting the rights to water and sanitation. The existing legislative framework requires that licensed water and sewerage suppliers provide water and sewerage services to specified standards to all household and non-household premises. These requirements, coupled with the ban on disconnecting household customers effectively secure access to water and sanitation. No further legal amendments are required.

3.2 The purpose of the Water Bill now before Parliament is, as noted above, to secure the long-term resilience of those services, improve standards of customer service and to ensure that water and sewerage charges remain affordable in future, in the light of increasing pressure on resources.

4. Under its international obligation to protect, which requires States to prevent third parties from interfering in any way with the enjoyment of the human right to water and sanitation, what actions has the Government taken to contain and sanction the licit and illicit profit-seeking practices that result in undue and excessive price increases for customers, including vulnerable customers? Has the Government contemplated the tightening of regulatory processes, and the introduction of more stringent transparency and accountability measures in the current reform agenda?

4.1 The purpose of this question is not entirely clear. The regulatory framework governing the supply of water and sewerage services in England and Wales requires the regulator to set a cap on the charges that water and sewerage companies can make. Every five years Ofwat undertakes a Price Review. The last Price Review took place in 2009. The companies are currently in the process of developing their business plans ahead of the next Price Review in 2014 (which will establish a cap on charges for the period 2015-2020). At each Price Review Ofwat sets an overall cap on the total revenue that each water and

sewerage company may recover from their customers. It is Ofwat's responsibility to ensure both that these charges are fair and that the companies are able to finance their operations.

4.2 The price limits set by Ofwat are determined by working out how much revenue each company must collect from its customers to run their businesses efficiently. These costs are determined by the cost of collecting or abstracting water, building and maintaining pipes and treating water and sewerage to meet environmental and water quality standards.

Company costs include capital expenditure (investment in and maintenance of infrastructure) and operating expenditure (wages, pensions and running costs). The companies borrow money to build and maintain their water and sewerage infrastructure and a proportion of all customers' bills is used to service that borrowing.

4.3 Your letter refers to both "*licit and illicit profit-seeking practices*". It is not clear what would be the objection to private companies making a profit within the bounds of the law. The UK government took the decision over twenty years ago to privatise the water industry in England and Wales. This has resulted in over £111 billion of low cost investment in essential services and improvements in environmental and drinking water quality and in lower bills to customers. Water and sewerage companies need to be able to provide their investors with a reasonable rate of return. Ofwat reflect this as well as other priorities in the decisions they make and the need to reflect their duties. Your letter does not provide specify any "*illicit profit-seeking practices that result in undue and excessive price increases for customers*" and it is not clear exactly what is meant by this. However, Ofwat has clear enforcement powers that enable them to take action against improper action by water and sewerage companies. The Water Bill includes a measure which increases the time limit during which the Secretary of State, the Welsh Ministers or Ofwat may impose a civil financial penalty on a company for breaching a licence condition or a relevant statutory obligation. Such action previously had to be taken within twelve months of the breach, this has now been extended to five years. Any company which breaks the law is, of course, subject to legal action.

4.4 Water companies make profits by out-performing against efficiency targets set for them by the regulator. Since 2009 the average increase in bills has been in line with inflation. Over this period water companies and their investors have benefitted from a very low cost of borrowing. This has lead to high profits and some companies have paid out substantial dividends. We welcome the fact that some companies have already agreed to share these benefits with their customers by ploughing profits back into the business and saving customers the cost of additional investment. Working with Ofwat and with the Consumer Council for Water, the companies have already committed nearly £800million in such 'gain-sharing' with customers.

4.5 You state that "*Citizens do not have a means to bring a complaint when their rights to water and sanitation have been violated*" (page 4). This is not correct. The Consumer Council for Water is an independent organisation that represents customer's interests and handles complaints on behalf of water and sewerage consumers. In addition, Ofwat is legally required to adjudicate in a wide range of cases where a customer has a complaint about their water company. Furthermore, all citizens have access to the process of judicial review where they may challenge an act or omission of Ofwat where they consider that this has led to a failure on the part of Ofwat to ensure that a company has delivered its statutory functions.

5. Please furnish details regarding the independence of Ofwat's functions, as a non ministerial government department. To whom is it accountable and what systems of accountability are in place?

5.1 As a Non-Ministerial Government Department Ofwat is accountable to Parliament. Ofwat is subject to the systems of accountability that apply to Government Departments. Please see below for further details regarding the Government's Statutory Guidance to Ofwat: the *Strategic policy Statement*.

6. How has the Government ensured that Ofwat carries out its duties primary and secondary, in compliance with the RTWS human rights framework? What measures has the Government taken to ensure that Ofwat can independently prioritise the human rights to water and sanitation when it is financially reliant on the water companies.

6.1 Ofwat's duties are set out in legislation and apply equally to the regulator and to the relevant Secretary of State. As noted above, there is no evidence to suggest that the human rights to water and sanitation are not fully respected in the UK.

6.2 The second part of this question suggests a general lack of awareness of how regulatory systems in the UK and elsewhere function. Water and sewerage companies are private companies that operate under licences of appointment which are issued by the regulator. These licences include a requirement on the companies to pay a licence fee in order to support the system of regulation under which they operate. This is a common feature across the regulated utilities in this country (and indeed in many others around the world). It is incorrect to suggest that, by recovering the costs of regulation from the regulated entity, the independence of the regulator is compromised.

7. What actions has the Government taken to induce the Ofwat to fulfil its duty to protect all customers, including vulnerable customers?

7.1 The regulator does not require 'inducement' to perform its statutory duties which are set out in the Water Industry Act 1991. Any failure by the regulator to perform its statutory duties would render them liable for Judicial Review. The consumer protection duty is as follows:

"The Secretary of State or, as the case may be, the Authority¹ shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated—

(a) *to further the consumer objective; [. . .]*

(2B) *The consumer objective mentioned in subsection (2A)(a) above is to protect the interests of consumers, wherever appropriate by promoting effective competition between*

¹ Ofwat

persons engaged in, or in commercial activities connected with, the provision of water and sewerage services.

(2C) For the purposes of subsection (2A)(a) above the Secretary of State or, as the case may be, the Authority shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes;
- (d) individuals residing in rural areas; and
- (e) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are not eligible to be supplied by a licensed water supplier,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.”

7.2 Within the context of these duties the Government has issued statutory guidance to Ofwat. The *Strategic Policy Statement* sets out the priorities for regulation of the water industry which the Government expects Ofwat to reflect in their decision making. The *Strategic Policy Statement* includes ten Directions from the Secretary of State on priorities with which the regulator must comply and on which they must report. These include the following: “Ofwat shall, as a matter of priority, keep under review whether companies are taking sufficient action to have a measurable positive impact on the needs of those customers that may struggle to afford their charges. Ofwat will report on this matter annually to the Secretary of State.”

8. The UK Government’s White Paper clearly articulates the fact that water is an important resource for life and is indispensable for economic growth. Given this laudable position, what kinds of mechanisms has the Government established at the national or regional level to bring together all the different interests and stakeholders for public debate on water policies.

8.1 There is a very wide variety of such mechanisms of which only a few are mentioned here. Prior to the publication of the Water White Paper a number of independent reviews were commissioned by Government into various aspects of water policy including:

- *The independent review of charging for household water and sewerage services* (the Walker Review 2009);
- *Review of competition and innovation in water markets* (the Cave Review 2009);
- *Review of Ofwat and consumer representation in the water sector* (the Gray Review 2010).

8.2 Each of these reviews was subject to consultation and widespread public debate both before and after publication and all of them informed the development of the Water White Paper: *Water for Life* which was published in 2011. The Water White Paper was subject to an inquiry by the Environment Food and Rural Affairs select Committee (EFRA).

This process fed into the development of the Water Bill, which was published in draft form for pre-legislative scrutiny. Each of the key policy areas included in the Water Bill was also subject to public consultation.

8.3 In addition to these processes at national level, there are also regional level processes for engagement in water policies. Water companies are legally obliged to produce a plan every 5 years showing how they will: manage the needs of future populations; deal with climate change; develop - where needed - new water supply resources such as reservoirs. These water company resource plans were published for consultation in spring this year. The companies are in the process of consulting on these plans.

8.4 In addition, water and sewerage companies are required to engage effectively with their customers in developing their business plans in advance of the Price Review process. Each water and sewerage company has a Customer Challenge Group (CCG). Most of these are independently chaired by a regional representative of the Consumer Council for Water. The CCGs bring together a wide range of interests including consumer groups, and environmental interests to discuss proposals for investment in water and sewerage services. Ofwat requires the companies to demonstrate evidence of effective engagement with these groups before submitting a business plan for consideration.

9. What actions have the Government taken to ensure the effectiveness of the social tariffs it is expecting water companies to introduce? How does the Government intend to tackle affordability issues, in the short and long-term, when neither the companies nor the functioning of market laws will tackle them?

9.1 As set out above, the Government has produced statutory guidance to both Ofwat and the water and sewerage companies. Any company bringing forward a social tariff must comply with this guidance. The guidance includes a presumption in favour of approval by Ofwat where a company brings forward a social tariff that complies with the guidance.

9.2 The role of the regulatory system described above is to ensure that all customers are protected in the absence of competition in markets for water and sewerage. The water White Paper sets out the government's long-term strategy to ensure that water and sewerage bills remain affordable.

10. Given the fact that WaterSure (the vulnerable groups' scheme) is publically funded, how does the Government ensure that its eligibility criteria work effectively for those in need? This scheme only applies to metered consumers. What measures has the Government devised to protect vulnerable groups in unmetered households?

10.1 There are two methods for paying water bills in England and Wales: by volume or according to the rateable value of the property. Customers with a water meter pay according to the volume of water they use, whilst customers charged based on rateable value pay according to a number of different factors including the size of their property, the number of rooms it has and the area they live in. Rateable value is recognised as being a progressive method of payment which results in a cross-subsidy between smaller households in larger properties and larger households in smaller properties.