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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Joint written statement^{*} submitted by Human Rights Advocates (HRA),
a non-governmental organization in special consultative status and UNESCO Etxea
(UNESCO Centre Basque Country), a non-governmental organization on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 August 2009]

^{*} This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The right to safe drinking water and sanitation

1. The UN High Commissioner for Human Rights concluded that, “it is now time to consider access to safe drinking water and sanitation as a human right, defined as the right to equal and non-discriminatory access to a sufficient amount of safe drinking water for personal and domestic uses—drinking, personal sanitation, washing of clothes, food preparation and personal and household hygiene—to sustain life and health.”¹ The rationale for the current international approach of treating water and sanitation together under one single right is that water and sanitation cannot be separated in practice.² The Committee on Economic, Social and Cultural Rights has stated that access to adequate sanitation “is one of the principal mechanisms for protecting the quality of drinking water supplies and resources.”³ The recognition of the right to water and sanitation as a human right is fundamental for life and essential to human dignity.⁴

2. Although the right to water and sanitation has been recognized as a prerequisite for the realization of other human rights, it is impossible to satisfactorily address this right through other human rights due to its unique nature.⁵ The independent expert on the issue of human rights obligations related to access to sanitation supports recognition of the right to sanitation as a distinct right due to its fundamental character and its relationship to the inherent dignity and worth of the human person.⁶

3. This statement recommends the recognition of the right to water and sanitation as an explicit stand-alone right. The need for a rights based mechanism for water security and the legal basis for affirming this human right will also be examined.

The Necessity of a Rights-Based Mechanism

4. The UN High Commissioner for Human Rights stated that there is a “growing recognition that access to safe drinking water and sanitation must be addressed within a human rights framework.”⁷ Defining access to safe drinking water and sanitation as a human right is essential to the realization of development. The definition of a rights-based mechanism for achieving this realization is a conceptual framework for the process of human development that is normatively based on international human right standards and operationally directed towards promoting and protecting human rights. A rights based approach integrates the norms, standards

¹ 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. A/HRC/6/3 16 August 2007 Para. 66

² Thorsten Kiefer and Virginia Roaf, “The human right to water and sanitation: benefits and limitations”, in UNESCO Etxea, *The Human Right to Water: Current Situation and Future Challenges*, 2008 p. 125-150, 129, available at <http://www.cohre.org/resources>

³ The Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water. E/C.12/2002/11 20 January 2003 Para. 29

⁴ *Id.* at Para. 1

⁵ Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque. A/HRC/12/24 1 July 2009 Para. 59

⁶ *Id.* at Para. 58; General Assembly resolution 41/120 on setting international standards in the field of human rights, 4 December 1986

⁷ 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. A/HRC/6/3 16 August 2007 Para. 65

and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations... A rights-based approach to development includes: express linkage to rights, accountability, empowerment, participation, non-discrimination and attention to vulnerable groups.⁸

5. A rights-based approach places the individual in a place of power and at the center of development instead of relegating them to passive recipients of aid. A rights-based approach identifies actors as duty-bearers, thereby necessitating the adoption of concrete measures to respect, protect and fulfill the right to water and sanitation and ensuring that the beneficiaries of the rights are parties to decision-making which affects them and guarantees transparency in the decision-making processes.⁹ The notions of accountability, non-discrimination and empowerment provide for more sustainable solutions focused on what is required, and not what is externally deemed necessary. Ensuring the right to water and sanitation as an explicit human right feeds into this rights-based mechanism for development and transforms access to safe drinking water and sanitation into a legal entitlement, rather than just a basic need or a commodity.¹⁰ The recognition of this comprehensive right informs a high level of accountability both in national and international judicial bodies and through the UN human rights system in its evaluative techniques and monitoring mechanisms if legal obligations, both positive and negative, are not met by the States parties.

Legal Basis for Recognition of a Right to Water and Sanitation

6. In March 2008, the Human Rights Council accepted by consensus a resolution recalling and emphasizing various international human rights treaties, declarations, programmes, General Comments, resolutions, and other legal basis for human rights obligations in relation to access to water and sanitation.¹¹ These legal bases form the foundation for explicitly recognizing a human right to water and sanitation.

7. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) explicitly recognizes the right to water and sanitation.¹² The Convention on the Rights of the Child (CRC) explicitly recognizes the right to water and the Committee on the Rights of the Child has consistently interpreted the right of every child to an adequate standard of living as including the right to access to clean drinking water and sanitary facilities.¹³ The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of everyone to an adequate standard of living. The Committee on Economic, Social and Cultural Rights has stated that “the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living” and has explained that the right to water means a

⁸ OHCHR, “What is a Rights-Based Approach to Development?”, available at <http://www.unhcr.ch/development/approaches-04.html>

⁹ *Id.*

¹⁰ Lindsay Knight, “The Right to Water”, World Health Organization (WHO), 2003 p.9-10, available at http://www.who.int/water_sanitation_health/rtwrev.pdf

¹¹ Human Rights and access to safe drinking water and sanitation. A/HRC/7/22 28 March 2008

¹² Art. 14, para. 2 (h) of The Convention on the Elimination of All Forms of Discrimination Against Women

¹³ Art. 27, para. 1 of the Convention on the Rights of the Child; Thorsten Kiefer and Virginia Roaf, “The human right to water and sanitation: benefits and limitations”, in UNESCO Etexa, *The Human Right to Water: Current Situation and Future Challenges*, 2008 p. 125-150, 133, available at <http://www.cohre.org/resources>

supply of water sufficient for personal and domestic uses, including personal sanitation and hygiene.¹⁴

8. Complementing the major international treaties, numerous international declarations recognize the right to water and sanitation. According to the Dublin Statement of the 1992 International Conference on Water and the Environment, “it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation.”¹⁵ The Programme Action of the 1994 Cairo Conference on Population and Development, endorsed by 177 states, recognizes the right to an adequate standard of living as including the right to water and sanitation, and the Habitat Agenda of 1996 echoes the same sentiment.¹⁶ The Beijing Declaration from the 1995 Fourth World Conference on Women, the Copenhagen Declaration from the 1995 World Summit for Social Development, the Rome Declaration from the 1996 World Food Summit, and the Johannesburg Plan of Implementation from the 2002 World Summit on Sustainable Development contain commitments to provide clean drinking water and sanitation to all people.¹⁷ The Ministerial Declarations from all five World Water Forums recognize the importance of clean water and sanitation.¹⁸ In 2007, 37 countries at the First Asia-Pacific Water Summit recognized “the people’s right to safe drinking water and basic sanitation as a basic human right.”¹⁹

9. Critics to the recognition of this right offer threadbare and empty opposition. Most recently, critics have parlayed fears that the recognition of a right to water may allow countries whose water resources are low to draw from countries in which water reserves are more plentiful. However, other human rights obligations, such as the right to food, or shelter, have never bound States parties to international assistance without their consent. Furthermore, critics of the recognition of the right to water must justify the acceptance of other economic, social and cultural rights such as the right to health, food, housing, while opposing a right to water and sanitation which is just as vital to any person’s dignity and survival. Finally, to deny the recognition of the right to water is to deny government accountability for ensuring the access of a basic necessity of human life. The treatment of water and sanitation as a human right empowers disadvantaged and marginalized groups in the struggle towards development, which is a clear mandate in the UN’s accepted Millennium Development Goals. “The human right to water and sanitation can be used to promote accountability in decision-making, focus on the needs of the most vulnerable and marginalized groups and help increase participation in decision-making by traditionally excluded communities.”²⁰

¹⁴ The Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water. E/C.12/2002/11 20 January 2003 Para. 3, 12

¹⁵ Principle 4 of the Dublin Statement on Water and Sustainable Development

¹⁶ Chapter 2, Principle 2 of the Cairo Programme of Action; Para. 11 of the Habitat Agenda

¹⁷ Strategic Objective C.1, para. 106(x) of the Beijing Declaration; Commitment 2(b) of the Copenhagen Declaration and Para. 35(l) of the Programme of Action; Para. 22(b) of the Rome Declaration; Chapter 2, para. 7 of the Johannesburg Plan of Implementation

¹⁸ The 1997 Marrakech Declaration, Art. 1 of the 2000 Ministerial Declaration, Arts. 16 and 17 of the 2003 Ministerial Declaration, Art. 1 of the 2006 Ministerial Declaration, Arts. 12, 15, and 18 of the 2009 Ministerial Statement

¹⁹ Message from Beppu

²⁰ Ashfaq Khalfan and Thorsten Kiefer, “Why Canada must Recognise the Human Right to Water and Sanitation”, Centre on Housing Rights and Evictions (COHRE), 26 March 2008, available at <http://www.cohre.org/store/attachments/RWP-WhyCanadamustrecogniserighttowaterandsanitation2026-205.pdf>

10. HRA and UNESCO Etxea Recommendations

- (a) Urge the Council to affirm the right to water, which, pursuant to General Comment 15, entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, including drinking water, water for consumption and cooking, and water for personal and domestic hygienic requirements.
- (b) Welcome the report of the Independent Expert, Catarina de Albuquerque, and looks forward to further clarification concerning the recognition of sanitation as a distinct right, as suggested by the Independent Expert.
- (c) Urge States as duty-bearers in a rights-based approach to protect the right to water and sanitation in both the public and private arenas.
- (d) Urge all States to become a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights when it opens for signature.

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