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

**Written statement* submitted by the International Environmental Law Research
Centre (IELRC), a non-governmental organization in special consultative status**

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

[30 August 2007]

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

Introduction

1. The International Environmental Law Research Centre (IELRC) respectfully submits the following statement to the Human Rights Council at its sixth session.

2. This statement reaffirms that the right to water is a self-standing right, as evidenced by adoption of General Comment No. 15,[†] and by many international law sources cited in the exhaustive review conducted by the OHCHR in its background report for the May 2007 Consultation.[‡] Given that the right to water is now recognised as a full part of international human rights law, we propose that the Council issue strong and explicit guidelines to protect and promote that right for all citizens, and ensure its full implementation by all states.

3. This statement recommends that the Council adopt these safeguards to ensure that all citizens may enjoy the fundamental right to water:

1. Responsibility of the State in the Realisation of the Right to Water

4. Worldwide, *commodification* of water is the prevailing ‘reform’ in the water sectors of many countries, particularly in the South. This model enlists the private sector to provide water services, corporatises state providers and implements full-cost recovery principles. As a result, the state no longer provides water for all citizens; it is now merely a distant facilitator or regulator.

5. Governments are formalising their progressive withdrawal from providing drinking water. For example, in India, the Swajaldhara Guidelines impose on villagers partial responsibility for the cost of new water infrastructure and full responsibility for infrastructure’s operation and maintenance.[§] The state is thus withdrawing from its responsibility in realising the fundamental right to water, and we believe this amounts to a violation of the right.

6. Furthermore, and even more worrisome, governments now implement disconnection policies. Firstly, even in the case of England and Wales, which fully privatised their water sector, disconnection was ruled out by the courts.^{**} Secondly, in some cases, disconnection policies are implemented under the guise of conditionality of development aid projects. For example, disconnection policies were introduced in the Indian states of Rajasthan and Karnataka as part of the assurances given by the borrower in two Asian Development Bank projects.^{††} Such measures clearly go against realisation of citizens’ right to water.

7. While this commodification model appears unlikely to advance realisation of the right to water, no alternatives are being proposed to remedy the dramatic situation faced

[†] UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, The Right to Water, UN Doc. E/C.12/2002/11 (2002) [hereafter General Comment No. 15].

[‡] Office of the High Commissioner for Human Rights (OHCHR), Consultation on Human Rights and Access to Water and Sanitation (11 May 2007).

[§] P. Cullet, Water Law in India: Overview of Existing Frameworks and Proposed Reforms (Geneva: International Environmental Law Research Centre, Working Paper 2007-01, 2007), available at <http://www.ielrc.org/content/w0701.pdf>, 7-9. Note that the Swajaldhara scheme is being discontinued but the underlying principles are not being abandoned.

^{**} Queen v. Director General of Water Services ex parte Oldham MBC and others (30 Jan 1998).

^{††} The Rajasthan Urban Infrastructure Development Project and the Karnataka Urban Development and Coastal Environmental Project.

in many countries where citizens lack access to a basic water supply. This statement thus supports the Council to explicitly recognise that the trend towards commodification of water amplifies existing inequalities in the face of water access, and that consequently a human-rights orientation must be promoted over a market commodity orientation. The Council should emphasise that no matter what model of water services provision a state chooses, the state is ultimately responsible, and must be held fully accountable, for ensuring that realisation of the right to water for all citizens is made fully operational. This implies that the government must closely supervise local decision-making bodies and private providers of water services. As with other human rights obligations, when a local government, a local users' association or a private provider fails to respect the right to water, that failure must be attributed to the state.

2. Accessibility and Non-discrimination

8. Accessibility of drinking water and water for other livelihood purposes to all segments of the population is a fundamental prerequisite for realising the right to water. Discrimination can occur between different segments of the population, for example urban vs. rural dwellers. In particular, current models for water service delivery result in likely discrimination based on ability to pay. Whether services are fully state-run but commercialized or taken over by private corporations, they are primarily based on full-cost recovery and other market principles often at the detriment of more human rights-oriented considerations. This has several implications. For example, in the case of the Swajaldhara Guidelines, villagers must pay at least ten per cent of capital costs for service level of 40 litres per day per person (lpcd). Individuals who do not or cannot pay do not receive water.^{††} If states are allowed to divest responsibility for water delivery, adopt cost recovery provisions and make local municipalities responsible for operating water services, inequalities in water access between rich and poor are likely to widen, not narrow.

9. While General Comment No. 15 includes language promoting economic accessibility,^{§§} it is worrisome that paragraphs 6.2 and 6.3 of the 2005 report adopted by the Special Rapporteur to the Sub-Commission for the Promotion and Protection of Human Rights adopts much vaguer and weaker language, emphasising state 'subsidies' and 'promot[ing] affordable access.'^{***} Instead, we encourage the Council to adopt language that no one's basic water should ever be reduced or denied due to lack of ability to pay.

10. The Council should emphasise that when third parties control water delivery, they must be made subject to all non-discrimination requirements subject to state supervision. We recommend that the Council urge states to develop concrete equity benchmarks for governments to achieve in providing water for marginalized

^{††} See Cullet, note § above at 9-10.

^{§§} See paras. 12(c)(ii), 14, 15, 26 & 27, General Comment No. 15, note † above.

^{***} Sub-Commission for the Promotion and Protection of Human Rights, Realization of the right to drinking water and sanitation, Report of the Special Rapporteur, El Hadj Guissé, U.N. Doc. E/CN.4/Sub.2/2005/25 (July 2005).

populations, and that these benchmarks also be named for private water suppliers.^{†††} Such benchmarks could be made a part of all contracts signed by whatever entity is providing water services, be it public or private.

11. IELRC continues to support a policy of free basic water for all. Any language urging 'economic accessibility' should not be read to abandon the ultimate human rights goal of free basic water.

12. Accessibility of water is closely linked to democratic principles. Special attention must be paid to schemes that decentralise decision-making; such attempts at participatory democracy in water delivery may bring their own forms of discrimination, for example privileging those with higher social status, local political power or land.^{†††}

We thus urge the Council to provide language that not merely encourages public participation in water services management, but specifies that such participation must 1) institute democratic principles at all levels; 2) include those traditionally marginalized in a given society; 3) comprise those least likely to be able to pay for water; 4) not represent an abrogation of state responsibilities; 5) not be a scheme to make local populations more fractured and more easily manipulated by private parties; and 6) respect traditional, culturally appropriate water management schemes.

13. The Council must also promote procedural guarantees. We strongly encourage the Council to recognise that the right to water is meaningless unless all citizens have the ability to access information and challenge violations of the right; and that all decision-making must be transparent whether decisions are made by national governments, local governments, local water user associations or third party providers of water services.

3. Prioritization of Drinking water and Other Livelihood Uses

14. We urge the Council to prioritise drinking water (including cooking and other household uses) as well as other livelihood uses. Furthermore, the Council should require that states be responsible for providing citizens with a basic amount of free water. States diverge on what represents a basic amount: For example, the 25 litres per day South Africa includes in its Basic Free Water policy has been deemed too low.^{§§§} Instead, we support the WHO's recommendations that 100 litres per day is optimal.^{****}

4. Responsibilities of Private Providers

15. With regard to countries where the private sector provides water, we support strong language that makes private providers co-responsible for ensuring implementation of the right to water. As a corollary, states should be made explicitly responsible for

^{†††} See United Nations Development Programme, *Human Development Report 2006: Beyond Scarcity: Power, Poverty and the Global Water Crisis*, at 9 and 65 (UNDP: New York, 2006), and para. 27, General Comment No. 15, note † above.

^{†††} See the case of Water User Associations (WUAs) which entrench different forms of discrimination. Cullet, note § above at 8-10.

^{§§§} A. Gowlland-Gualtieri, *South Africa's Water Law and Policy Framework: Implications for the Right to Water* (Geneva: International Environmental Law Research Centre, Working Paper 2007-3, 2007, available at <http://www.ielrc.org/content/w0703.pdf>), 7.

^{****} World Health Organization, *The Right to Water* (WHO, 2003), at 33.

ensuring that partial or full privatisation of water services advances the right to water. The private business sector must take into account the right to water in pursuing their activities, and all government decision-making bodies at all levels must recognise the right to water explicitly when negotiating contracts with private business sector interests. In this regard, we are concerned that the 2005 Report of the Special Rapporteur does not include the references to private providers that were contained in General Comment No. 15.^{††††}

16. We urge the Council to explicitly recognise that a) states have responsibilities to supervise third party private providers; b) that states are ultimately responsible when third party private providers violate the right to water, and c) that private water providers should also be named as co-responsible for respecting, protecting and fulfilling the right to water. The Council should also ensure that language on third party private providers found in General Comment No. 15 is included as a baseline in any document on the right to water.

5. Development of International Freshwater Law

17. In view of the scope of the international human right to water, we encourage states to develop international freshwater law beyond its traditional focus on international watercourses. In particular, states should adopt instruments that contribute to the realisation of the human right to water at the national level by taking a comprehensive view of water regulation that gives pre-eminence to water's social and environmental importance and that makes states absolutely responsible for ensuring that all citizens in all nations realise the fundamental right to water.

^{††††}See paras. 23, 24, 27, 33, 37, 44(b), 48 & 49, General Comment No. 15, note † above.