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VERBAL NOTE

The Permanent Mission of Finland to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to deliver the reply of the Government of Finland towards your questionnaire concerning access to water.

The Permanent Mission of Finland to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurance of its highest consideration.

20 April, 2007



ENCL. Finland's Human Rights Access to Water

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OHCHR REGISTRY

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## **Finland's Human Rights Policy; Access to Water**

**Human rights are high on the foreign and security policy agenda and Finland takes an active and consistent part in their promotion in each of the foreign and security policy sub-sections. Please find below a detailed answer to the OHCHR request for information on Human Rights and Access to Water (HRC decision 2/104, 26 November 2007)**

### **a) Views on international human rights obligations to be taken into account in relation to equitable access to safe drinking water and sanitation.**

In the Council's decision 2/104, the human rights obligations in relation to equitable access to safe drinking water and sanitation are based on the following conventions, which Finland has ratified:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR),
- the International Covenant on Civil and Political Rights (ICCPR),
- the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
- the International Convention on the Rights of the Child (CRC).

In addition, the Council refers to several relevant provisions contained in the declarations, resolutions and programmes of action adopted by major UN conferences etc., including the Millennium Development Goals.

The UN Member States have unanimously set policy goals to ensure that adequate supplies of water of good quality are maintained for the entire population. However, the question of the right to water as a human right and the subsequent obligations of the state remain controversial. On the one hand, a human right to water is often argued to be a prerequisite for the realisation of other human rights. On the other hand, the states' praxis does not support this view broadly. Many states have been reluctant to approve the rights-based approaches and have not taken official position on the obligations and the corresponding right to water.

It is clear that international legal obligations in relation to equitable access to safe drinking water must be grounded on international law, which consists of international conventions, international customary law and the general legal principles. Policy goals, for example the Millennium Development Goals, may be relevant when these sources of international law are interpreted, even if they lack the capacity to establish direct obligations.

Defining equitable access to safe drinking water and sanitation is rather difficult in the light of the above-mentioned sources of international law. Usually, drinking water is understood as water which is used by humans for immediate human survival as well as for the immediate sustenance of a household. Thus, drinking water seems to include water needed to meet the basic human needs. Meeting basic human needs for water requires access to water of adequate quality and sufficient and continuous quantity. Furthermore, the accessibility entails physical, economic and non-discrimination elements.

Apparently, the equitability refers to the economic and non-discrimination elements of the access to water. This is understandable since inadequate access to water and sanitation affects most dramatically the poor, women, children and indigenous peoples. Human rights law unambiguously prohibits discrimination.

The ICESCR or ICCPR make no explicit reference to water. According to article 14.2 of the CEDAW, however, States Parties shall take all appropriate measures to eliminate

discrimination against women in rural areas and, in particular, shall ensure to such women the right to adequate living conditions in relation to sanitation and water supply. According to article 24 of the CRC, the child has the right to the highest attainable standard of health. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures, inter alia, to combat disease through the provision of clean drinking-water.

Thus, the CEDAW and CRC must be taken into account in relation to equitable access to safe drinking water and sanitation, and the States Parties have the obligation to take steps to achieve the objectives of these conventions. However, the CEDAW and CRC do not set down clear obligations for the states in this relation. From the perspective of legal positivism, the obligations in relation to equitable access to water and sanitation remain rather vague.

In the ECOSOC General Comment No. 15, the human right to water is discerned from the ICESCR, particularly from articles 11 and 12. The main argument for the expansive interpretation of the Covenant seems to be that the word "including" in article 11.1 would indicate that the catalogue of rights was not intended to be exhaustive. From the standpoint of the ECOSOC, the human right to water is a prerequisite for the realisation of other human rights.

It can be argued that the right to water is a human right, since people could not survive without water. In that case the right to water is seen as a universal moral right, which is inherent in the human person. This kind of perspective of natural law seems relevant if equitable access to safe drinking water and sanitation is defined to include water to prevent death from dehydration, and sanitation to prevent water-related diseases. However, the human right to water is a relative concept. If the right to water extends to meeting welfare needs by ensuring, e.g., 40-50 litres of water per day per capita piped to each household, the question of the right to water as a human right seems much more complex. From this perspective, the right to water and sanitation would imply the respective obligation of the state to take active measures to enforce this right, such as investments in infrastructure.

In Finland, the international human rights obligations in relation to equitable access to safe drinking water and sanitation have not had notable impact on the legislation or policies. Water rights and water infrastructure have been developed from national premises. On the other hand, in Finland the problems related to the obligations and rights concerning water are very different from many other areas of the globe. Finland is one of the water-richest countries in the world, and has also had the wealth to develop the water infrastructure.

In addition to human rights law, the obligations and rights related to the access to water and sanitation could be approached through the international rules of water management and use. One of the main preconditions for achieving equitable access to safe drinking water is the fair allocation of freshwater resources between different water uses and needs. The instruments of international water and human rights law as a whole indicate that if the use of water resources is essential to human life, it should enjoy priority over other uses of water resources.

*As noted above, access to safe drinking water and sanitation as a human right is not universally acknowledged in the international law. While it may be essential to clearly define this human right and the subsequent obligations of the states in the main body of international conventions, the primary attention at present should lie on the commitment of the States Parties to the Millennium Development Goals, the concrete implications of these commitments, and the concurrent follow-up of the achieved results based on quantitative criteria.*

*Finland promotes access to water as human right in the international dialogue and is very much committed to operationalize it in its development co-operation. The achievement of the millenium development goals is one of the main targets.*

**b) National legislation or draft legislation related to equitable access to safe drinking water and sanitation, including with regard to private sector provision of related services.**

The Constitution of Finland contains an environmental section on the responsibility for the environment:

*Section 20 - Responsibility for the environment*

Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.

The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.

According to paragraph 2 of this section, the public authorities have the obligation to endeavour to guarantee the healthiness of the water resources. This provision relates to health and environmental protection and affects only indirectly the access to safe drinking water and sanitation.

On the other hand, Section 19 of the Constitution provides that everyone has the right to social security. Accordingly, those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. Thus, access to safe household water and sanitation may be granted through social assistance.

The Water Services Act (119/2001) is the most important act related to equitable access to safe drinking water and sanitation in Finland. Other relevant acts in this regard are the Water Act (264/1961) and the Act on Health Protection (763/1994). The Water Act regulates the abstraction of surface and groundwater. It includes the provisions on water abstraction permits and the prioritization of different water uses. The Water Services Act regulates water services including water infrastructure and charges for these services. The Act on Health Protection contains provisions on the quality of household water. These acts apply to public as well as to private water services.

*Water Services Act*

The objective of the Water Services Act is to ensure water services which provide a sufficient amount of impeccable household water with respect to health and otherwise, as well as appropriate sewerage in terms of the protection of health and the environment (Section 1). Water Services Act applies to water services in settlements and in business and leisure activities comparable with settlement (Section 2).

Section 6 of the Water Services Act regulates the organisation of water services. Its provisions are essential in relation to the obligations and rights related to equitable access to household water and sanitation.

*Section 6*

*Organisation of water services*

(1) The owner or occupier of a property is responsible for its water services as laid down in this Act and other law.

(2) When required due to the need of a relatively large number of inhabitants or health considerations or environmental protection, a municipality must make sure that

appropriate measures are taken to establish a water supply plant to meet the need, to expand the area of operation or to otherwise secure the availability of sufficient water services.

(3) Before taking the measures referred to in subsection 2, the municipality must reserve an opportunity for property owners and occupiers in the area to be heard.

According to Section 6, if certain premises are met, a municipality has the obligation to secure the availability of sufficient water services. Otherwise the owner or occupier of property is responsible for its water services. Thus, the substance of an individual's right to household water depends on the location of the property. In practise, in a sparsely populated area the individual's right to water consists only of the right to abstract surface or groundwater, whereas in a densely populated area an individual is entitled to sufficient water services provided by a water supply plant or otherwise secured by the municipality. The owner or occupier of a property located in the area of operation of a water supply plant is also obliged to connect this property to the water main and sewer of the plant (Section 10).

Sections 18 and 19 of the Water Services Act regulate the charges for water services.

#### Section 18

##### *General criteria for the charges*

(1) The charges for water services must be such that they cover the investments and costs of the water supply plant in the long term. The charges may include only a minimum return on the capital.

(2) Charges must be reasonable and equitable for all users. The need to regulate the consumption of water, special use of water and exceptional quality or quantity of wastewater may be taken into account in the charges. As considered necessary, the charges must be such that they promote the sparing use of water and reduction in the amount of wastewater and prevent the entry of harmful substances into the sewers.

(3) Water services may be subsidised by municipal, national or Community funds. The subsidy must be taken into account when covering the costs as set out in subsection 1. The subsidies for water services are subject to other relevant provisions on such subsidies.

#### Section 19

##### *Charges*

(1) A water supply plant must collect charges for the use of water supply services. Charges are collected on the basis of the amount of water used by the property and the amount and quality of the wastewater to be disposed of.

(2) A plant may also collect a connection charge and a basic charge and other charges for the services supplied by the plant. The amounts of these charges may vary in different areas if this is necessary in terms of appropriate cost allocation or implementation of the polluter pays principle or other similar cause. The use of the property may also be taken into account when establishing the connection charge.

According to Section 18, the charges for public or private water services must be reasonable and equitable for all users. The investments and costs of the water supply plant must be covered, but only a minimum return on the capital is allowed. The charges may be such that they promote the sparing use of water and the reduction of the amount of wastewater and the harmful substances therein. Thus, the Water Services Act takes account of the principle of recovery of the costs of water services. The charges must be based on the amount of water used and the amount and quality of the wastewater (Section 19).

The Water Services Act also protects the uninterrupted provision of water services. Section 26 of the Act states that a water supply plant may discontinue water services if the customer has in an essential way neglected the payments or otherwise breached the obligations based

on the provisions or contract. However, the discontinuation is allowed only after five weeks from the first notification of the threat of discontinuation to the customer unless an action which breaches the provisions or contract is such that it may cause danger or significant damage to the use of the plant or health or the environment. If the neglect of payment is due to financial difficulties caused by serious illness or unemployment or similar special cause through no fault of the customer, and the customer has notified the water supply plant of such difficulties, water services may be discontinued no less than ten weeks from the first notification of the threat of discontinuation.

The right to water services enjoys legal protection in the Water Services Act. According to Section 31, if a municipality neglects its obligation to secure the availability of sufficient water services, action may be instituted in writing by a party whose right or interest may be involved, or by an authority supervising the public interest in the matter. Authorities are obliged to make a decision in writing and this decision may be appealed to administrative courts. In all violations of the Water Services Act, the control authority may prohibit a violating party from continuing or repeating the procedure which breaches the rules, or order the concerned party to meet its obligations (Section 29).

### *Water Act*

The Water Act regulates, among other things, the abstraction of water. These provisions are relevant in relation to the access to household water in two ways especially. Firstly, if a property is located outside the area of operation of a water supply plant, the right to water of the owner or occupier of a property is based on the Water Act. Secondly, the Water Act regulates the right of the water supply plant to abstract surface water or groundwater and, thus, affects an individual's right to water.

According to the Water Act, surface water may be abstracted by virtue of general use, ownership of a water area or water permit, and groundwater by virtue of the ownership of the property or water permit. The general use entitles everyone to conduct surface water from someone else's water area, for use as household water, if enough water remains for the needs of owners and permit-holders (Ch 9, Section 1). As a principal rule, the abstraction of surface water for the household needs of a single property does not require a water permit, whereas a water supply plant usually has to apply for a permit for the abstraction of surface water. The permit may be granted if the advantage gained from the abstraction is greater than any damage, harm or other loss accruing from it (Ch 9, Section 2).

Abstraction of groundwater by the landowner for household use of a single property is entitled in the Water Act (Ch 1, Section 18). In general, the same applies to the construction of any groundwater intake designed to abstract less than two 250 cubic metres of water a day regardless of the purpose for which the water is used (Ch 9, Section 7). Also, the authority may on application entitle a party to abstract groundwater from someone else's land for household use (Ch. 9, Section 4). If a water supply plant plans to abstract groundwater at least 250 cubic metres a day, a water permit is always required (Ch 9, Section 7). The permit may be granted if the advantage of the groundwater abstraction is substantially greater than any damage, harm or other loss accruing from it (Ch 9, Section 8). Usually, the water supply plants have been granted permits to abstract surface or groundwater and the permits are well protected against the competing uses of water.

The Water Act provisions on the prioritisation of water use are applied only in situations when several parties apply for a permit for water use at the same time. In that case, the priority will be given to the allocation of water for household consumption near the watercourse and after that to the allocation of water for the needs of the community (Ch 9, Section 3 and 9).

Because the water use of an individual does not usually require a permit, it is not well protected against competing interests. However, if the supply of water from some area is being prevented or seriously obstructed as a result of permitted water abstraction, damage to the special rights, not including general use, must be compensated. Primarily, the compensation must be carried out by granting the injured party the right to receive the amount of water equal to the party's previous consumption (Ch 11, Section 12).

On the other hand, the Water Act ensures extensive rights of participation and appeal. Before passing a decision on a water permit, the permit authority has to provide those whose rights or interests might be concerned (stakeholders) an opportunity to lodge a complaint regarding the matter. Many other persons, for their part, may state their opinion on the matter before a decision is passed (Ch 16, Sections 6 and 7a). The right of appeal pertains to stakeholders, many registered associations, the municipality where the activity takes place or the impacts occur, and the concerned authorities (Ch 17, Section 1).

Presently, a new Water Act is under preparation. The above mentioned water rights will largely remain unchanged. According to the proposal, priority among the uses of water will be given to the household use near the watercourse, and after that to the use for local water services. The most notable change related to access to water would probably be that the reconciliation of water use priorities would also take into account the forthcoming needs for water. According to the proposal, a certain project could not be granted a permit if it jeopardizes the preferred uses of water in the future. Thus, an individual's right to water would be better protected in Finland after the reform.

#### *Financial support*

The Government may subsidise the provision of water and sanitation services. The grounds for subsidisation are regulated by law. The subsidies are intended mainly for the water supply plants to promote regional cooperation and preparedness for critical situations when such financial support is justified due to economic, health, environmental and other comparable reasons. Private landowners may also be entitled to subsidies in case the connection of their property to water supply and sewer network would entail excessive costs. Additionally, financial assistance on social grounds may be granted to low-income households for the necessary water and sewerage infrastructure.

#### **c) Examples of judicial decisions related to access to safe drinking water and sanitation.**

As mentioned above, the municipalities have - under certain criteria - the obligation to secure the availability of sufficient water services. The content of this obligation has occasionally been challenged through judicial appeals. In a recent decision, e.g., the Helsinki Administrative Court ruled that in order to fulfil this obligation, the municipality needed to considerably accelerate the execution of its plans to bring a residential area in its territory under organised water services. The Court recognised that there were over 180 permanently inhabited houses in the area, that the water quality in the household wells was poor both chemically and microbiologically, and that the houses, mostly equipped with septic tanks for wastewater, were located on a groundwater area that was important for water abstraction.

#### **d) National plan of actions, development programmes, public policies or emergency responses related to access to safe drinking water and sanitation.**

The priorities for water resources management for the years 2005-2010, laid down by the Ministry of Agriculture and Forestry, aim to secure the availability of good quality water services under all circumstances. The priorities include promotion of regional planning and cooperation in water services among the municipalities and the waterworks. Another priority

is to increase preparedness for emergencies and other critical situations by encouraging conglomeration of water supply networks into larger units and by promoting the establishment of reserve sources for water abstraction. Also, water services in rural communities and in sparsely populated areas outside of water supply and sewer networks will be improved. The target is to connect all households to water supply and sewer networks whenever this is technically and economically feasible.

**e) Impact of these national laws, judicial decisions, plan of actions, development programmes, public policies and other measures in promoting or restricting equitable access to safe drinking water and sanitation.**

The national target to provide every household with piped water supply and sewerage was first adopted in the 1950s. Since then, the public policies, national legislation and other measures have contributed to the achievement of this target to the extent that today, the connection rate to water supply and to sewer networks is approx. 90 % and 80 % of the population, respectively.

**f) Examples of approaches considered to represent "best practise" related to access to safe drinking water and sanitation.**

The administration for water resources management has promoted the preparation of guidelines for the municipalities and water supply plants relative to the proper construction and protection of water intakes, to water treatment and water distribution as well as sewer networks and wastewater treatment. Particular emphasis in the guidelines is placed on risk assessment and emergency preparedness and response. Guidelines are also issued for the landowners covering the construction and protection of household wells, and introducing alternative wastewater systems for individual on-site installations to comply with the recently established wastewater treatment requirements outside sewer networks. The guidelines are prepared in cooperation with the stakeholders and their representatives and, where appropriate, with the business community providing the relevant products and services.

*Finland is encourageing its development aid countries to adopt as much as feasible the Finnish model and is putting a strong emphasis on operation on lowest appropriate level and stakeholder participation.*

**g) Any other existing initiatives and standards relating to equitable access to safe drinking water and sanitation, and the scope and legal status of these initiatives.**

The above mentioned objectives for maintaining and improving access to water and sanitation will be reinforced in 2007 by the adoption of the national targets for the implementation of the UNECE 1999 Protocol on Water and Health.