



NACIONES UNIDAS  
COMISION ECONOMICA PARA AMERICA LATINA Y EL CARIBE<sup>1</sup>

EXOFF 10134

2 APRIL, 2007

Dear Ms. Arbour:

**Subject: Council's Decision 2/104 - Human Rights and Access to Water**

The Economic Commission for Latin America and the Caribbean (ECLAC) is happy to respond to your kind invitation to provide the Office of the High Commissioner for Human Rights with the relevant information to enable it to prepare the study "Human rights and access to water", as requested by the Human Rights Council decision 2/104 of 27 November 2006.

a) It is important to distinguish between human rights obligations related to access to water as a natural resource and those related to access to drinking water supply and sanitation services. Access to water as a natural resource may constitute a human right under certain circumstances, for example, as part of indigenous territories, when water has been customarily used by indigenous communities and farmers for time immemorial, or in the case of use for basic human needs if manually abstracted. But not everybody may have a right to water as a natural resource when there is not enough water or there is no intention to put it to a generally recognized and socially acceptable use. Therefore, implementing appropriate legal criteria to regulate access of economic agents to water resources, and to acknowledge and protect existing customary uses and entitlements, is crucial.

Access to drinking water supply and sanitation services is a human right. This access should be equitable and non-discriminatory, adequate in quality and quantity, economically, socially and environmentally sustainable, and affordable. Affordable here does not mean that services should be provided free of charge, but rather that those who can pay should pay reasonable rates, and for those who cannot, there should be effective subsidy systems in place. Accepting the principle of progressive realization, which mandates the realization of the right within the constraints of available resources, we consider that defining water as a human right creates a constant, continuing and inalienable responsibility for governments, which should be meaningfully (for example, in budgetary allocations rather than only in public policy declarations) reflected in their decisions and priorities, to move effectively towards the full realization of this right, universal access to services.

Ms. Louise Arbour  
High Commissioner for Human Rights  
United Nations  
Geneva, Switzerland

OHCHR REGISTRY

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*N. Miveloz*  
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The recognition of access to drinking water supply and sanitation services as a human right, however, should be balanced against other social needs (education, health, social security, etc.) that must compete for scarce financial resources with drinking water supply and sanitation services. Governments that recognize this right, and all governments should do this, may be subjected to litigation if they fail to satisfy it. Governments should, therefore, conduct a critical analysis of available options for service provision and structure them in such a way that they do not become a burden on the economy and citizens, and ultimately a regressive factor that hinders socioeconomic development. In the same way, violation of good faith, due diligence and duty of efficiency in compliance with their responsibilities on the part of service providers also affects human rights obligations related to access to drinking water supply and sanitation services.

b) Both in our research and technical advisory assistance activities, we pay particular attention to the formulation of public policies and design of regulatory frameworks that facilitate the effective and sustainable implementation of the human rights obligations related to access to drinking water supply and sanitation services, within the constraints imposed by other pressing environmental and social needs. This is duly reflected in our work programme, plans, strategies and other measures.

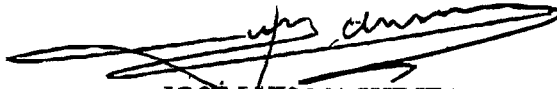
c) Our activities have promoted the adoption of state-of-the-art practices related to sustainable provision of drinking water supply and sanitation services to the whole population, balanced against other vital environmental and social needs. In our work, the emphasis is on strengthening the regulatory capacity and improving the process of decision-making in the countries of the region for the provision of these services, with particular attention to, among others: (i) clear institutional separation between the functions of sector policy formulation, provision of services and regulation, with independent and autonomous regulatory agency, endowed with necessary resources and appropriate legal capacities, and subject to rules of good conduct and ethics; (ii) maximum use of economies of scale and scope, structuring balanced systems, where responsibilities are assigned to the appropriate level of government; (iii) adequate and strict regulatory framework, both for public and private service providers, based on the notions of fair and reasonable rate-of-return, good faith, due diligence and duty of efficiency, since we believe that how serious governments are about social equity is revealed by how serious they are about efficiency, and hence regulation; (iv) an effective subsidy system that avoids as far as practicable cross-subsidies and that guarantees the low-income groups a basic minimum supply; and (v) the right to adequate, consistent, reliable and opportune information, both for regulators and customers, with emphasis on regulatory accounting and control of transfer prices. The experience of the past decade has also demonstrated the need to harmonize macroeconomic and sectoral policies in order to strengthen trends towards sustainability in service provision, as well as to ensure a rigorous sequencing over time of economic, social and environmental goals, which all are prerequisites for the realization of relevant human rights obligations related to access to drinking water supply and sanitation services.

d) The reforms carried out in recent years by the countries of the region in the drinking water supply and sanitation sector are analyzed in a number of ECLAC studies. These documents both identify the problematic points in need of urgent solution (such as inadequate tariff levels, chronic under-funding, lack of effective subsidy systems for the poor, weak regulatory frameworks which conspire against efficiency and hence against social equity, low priority given to the sector by many governments especially as far as budgetary allocations are concerned, extremely fragmented industrial structure which hampers the realization of economies of scale in service provision, and worrying effects of international investment protection treaties for national capacity to regulate public services) and examples of state-of-the-art (best) practices. These experiences are systematized in the following ECLAC publications, among others: "Equity, development and citizenship" (Chapter 12) (LC/G.2071(SBS.28/3)), document presented at the

twenty-eighth ECLAC session (Mexico City, 3-7 April 2000), "Water governance for development and sustainability" (LC/L.2556-P) by Miguel Solanes and Andrei Jouravlev, and "Drinking water supply and sanitation services on the threshold of the XXI century" (LC/L.2169-P) by Andrei Jouravlev, the later two prepared as part of the work programme of our Natural Resources and Infrastructure Division. The main points of these studies are summarized in "Latin America and the Caribbean preparatory process for the twelfth session of the Commission on Sustainable Development. Effective water governance in the Americas: a key issue" (LC/IN.138). We are sending all these publications to you by e-mail.

e) No comments.

Yours sincerely,



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