

Mrs Ize-Charrin,
Office of the High Commissioner for Human Rights
United Nations Office in Geneva
CH 1211 Geneva
Switzerland

31 May 2007

Follow-up to the Consultation on Human Rights and Access to Water and Sanitation held in Geneva on 11 May 2007

Dear Madam,

I would like to thank you for having allowed AquaFed to participate actively in the Consultation on Human Rights and Access to Water and Sanitation in Geneva on 11 May 2007. I believe that this was an instructive and constructive discussion of important issues. In the continuation of that spirit, and with our commitment to the Right to Water and Sanitation, we have given some thought to what we heard and understood from the session. As a result of these deliberations we felt it would be pertinent to make the following additional observations.

1. The legal framework of the Rights to Safe Water and Sanitation must take into consideration the practical aspects of the realisation of these rights

The fundamental concept of Human Rights to Safe Water and Sanitation seems to be generally accepted. Safe water and sanitation in themselves are very basic and simple matters. However, because of the essential nature of the services for both individuals and communities the organisational problems can be very varied and extremely complex. Such variety and complexity can only be resolved on a case-by-case basis and usually only at a local level.

One of the challenges is therefore to clarify the legal basis and requirements in a way that is sufficient for the States Parties and the UN system, recognises the range and complexity of the practical issues, but is also workable at the implementation level of individual states or localities.

One serious difficulty is the huge difference between developing countries, where only a part of the population benefits from a public water service, and developed countries, where nearly all the population benefit from access to tapwater. While there is no firm dividing line between them, the priorities and the constraints in implementing the Right to Water differ very significantly in these two cases. This complicates and confuses the debates at the global level and makes writing documents that are useful and pertinent to all situations very challenging.

Where Safe Water is concerned General Comment 15 appears to be adequate in this sense. This should be clearly endorsed by the Council. As stated in our formal submission there is more to be done on Sanitation.

2. The need to develop the Right to Sanitation as a means of protecting the water cycle and water resources

Whilst we stressed the need to look at sanitation as a separate problem, we also believe that it is essential to consider its role within the complete water cycle. There are aspects of sanitation that have a direct impact on the water quality in the environment and therefore the accessibility of water resources

necessary to meet the Right to Safe Water. For this reason a total separation between the Right to Sanitation and the Right to Safe Water is not advisable. However the real differences need to be identified and taken account of in the Right and any accompanying guidelines.

3. Scarcity: allocation, rights and equity

We believe that there is a real difficulty in the discussion that relates to the need for governments to make difficult policy decisions that involve the allocation of "resources" needed to meet the Right.

During the 11 May meeting some participants were talking about "water resources" and others were talking about "financial resources". Few, if any people, mentioned the resources of skills and competencies, which can be primordial in complex "governance" situations.

When any of these resources are scarce, it may be impossible to satisfy all the user-demands. In such cases, it seems equitable that the weight of the scarcity is shared by all users.

In our original submission (section 5.3, Page 18) we attempted to deal with this by stating, "*The Right to Water implies the "private" access and enjoyment of a part of the public or common assets. The concept of equity means that this right should be available in equal measure to all members of the community. It also implies that individuals must exercise their individual rights with equity and responsibility towards other individuals and also the organisations that represent the common or collective interest. This means that the Right to Water provides individuals with a right to obtain a fair share of the available water resources and infrastructure and services that are set up to make water and sanitation available and accessible. But it also means that they must exercise their use and access in ways that are not detrimental to others."*

This approach still leaves the governance problem of deciding what is a "fair share", what is "detrimental", and what are legitimate individual, public and other interests.

4. The need for "affirmative action" towards the unserved individuals

As I tried to explain it on May 11, in most cases the lack of access of a household to safe water means the lack of access to collective infrastructure. Contrary to the human rights about freedoms, at least in the developing countries, the Right to Safe Water cannot be satisfied without strong and material action by public authorities.

The priority action challenge is not to pump more water into existing water pipes (although that can be useful or necessary) since that would not bring one single drop of water to those who most need their Right to Water to be satisfied. This is because they have no access to any public water network or service. The necessary first action is to build the infrastructure and/or to organise the water services in a way that they reach every individual. This means that public authorities must act positively to serve every individual progressively.

This type of action does not seem contradictory to the general non-discrimination principles. Indeed, the challenge for public authorities is to perform the "affirmative action" that is necessary to supply all those who are not yet supplied. The fact that this public "access to water" action only targets the unserved part of the population does not imply any discrimination against the other part since the latter is in a different and better situation.

I trust that these few remarks are useful and ask you to feel completely free to contact me or my staff should you need further clarification or advice, particularly on the more practical aspects involved in the realisation of the Right to Water and Sanitation.

Yours sincerely,

G rard Payen
President