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April 14, 2007

Ms. Louise Arbour
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH 1211 Geneva 10
SWITZERLAND

Dear High Commissioner Arbour,

Corporate Accountability International welcomes the invitation to comment on human rights obligations related to equitable access to safe drinking water and sanitation. The OHCHR initiates its study at a pivotal moment in history when there is a basis in international law for protecting the human right to water, and a growing concern that people's right and access to water cannot be left to the market through privatization of water and sanitation services.

For thirty years, Corporate Accountability International (formerly Infact) has been protecting people and their communities from irresponsible and dangerous corporate actions. We work closely with the World Health Organization, with whom we have been an NGO in Official Relations since 2002. Our organization's relationship with WHO began in the 1970s, breaking new ground for collaboration with NGOs, and contributing to passage of the landmark International Code of Marketing of Breast-milk Substitutes in 1981. Since 1998, we have been collaborating with WHO and Member States in support of the development and implementation of a strong, enforceable Framework Convention on Tobacco Control (FCTC).

In our view, international human rights obligations to be taken into account in this study include not only those explicitly related to water, but also human rights obligations of transnational corporations, and specific precedents in the WHO FCTC.

The Global Water Crisis

We believe there is enough water to meet the basic needs of everyone on the planet. The real scarcity problem is the lack of political will. In our view, governments are not doing enough to stop the numerous threats to publically and democratically controlled water supplies, or to meet their obligation to provide people with water and basic sanitation. The world's water crisis is fundamentally a human rights crisis.

Corporations play a particularly insidious role in contributing to, and profiting from, the global water crisis. They overuse and threaten water resources in a number of ways, including: using excessive amounts in unsustainable agribusiness practices; worsening climate change that increases drought conditions; spreading industrial pollution and expanding water-intensive industries such as mining, oil production, paper and power generation.



Their actions threaten people's health, the environment and democracy, and behind this threat is the dangerous trend of prioritizing corporate use of water over people's daily needs. As water becomes more scarce, corporations increasingly seek to control and profit from it by:

- Privatizing water resources and systems through bottling and assuming control of municipal water systems and supplies;
- Undermining confidence in public water systems;
- Using political influence to shape policies affecting water to their advantage.

Addressing the world's water crisis, and protecting the human right to water, will require a major shift in how the international community responds to this issue. We believe that challenging corporate control of water is an essential part of ensuring that people around the world have access to the water they need.

Water as a Human Right

Existing international law, in particular General Comment 15 on the International Covenant on Economic, Social and Cultural Rights, affirms the human right to water. General Comment 15 also makes clear each State's obligation to prevent third parties, including corporations, from interfering in the enjoyment of the right to water.

Unfortunately, realization of this right is not yet a reality for more than one billion people around the world. Often this right is undermined by corporate interests.

According to the 2006 Human Development Report (HDR) published by the United Nations Development Program, privatizing water systems with the promise of extending service to the poor and achieving greater equity is a recipe for disaster. "Private water markets offer a questionable solution to a systemic problem. Even in the United States, where they are underpinned by highly developed rules and institutions, it has often been difficult to protect the interests of the poor." (HDR, p.17) The HDR goes on to discuss the inherent tension between commercial and social imperatives when private corporations operate water systems: "Companies undertake concessions to generate profits for shareholders. But raising tariffs to finance profits and investments can damage water security for poor households." (HDR, p.93)

South Africa, where the human right to water is enshrined in the constitution, provides a cautionary tale. Policies were adopted to eliminate water subsidies for the poor, insist upon full-cost recovery from water users and require pre-paid water meters designed to ensure that only those who can pay will have access to water. After sharp price hikes, 10 million people were cut off from water systems. Over the three years that followed, more than 100,000 cases of cholera stemming from unsafe water supplies were reported.

The HDR documents the high cost of water paid by the world's poorest, who must rely on the privatized informal network of water vendors for their household water needs. For example, in Jamaica the poorest 20% of families pay 11% of their monthly income for water service—well in excess of the 3% of monthly income deemed affordable by UNDP.



The HDR demonstrates that privatizing water supplies even in places with universal access to water can impede the quality of water and thus threaten the human right to water, citing privatization in the United Kingdom as such an example. Private corporations have underinvested in infrastructure and raised water rates dramatically, which resulted in a level of corporate profits well in excess of that which was forecast, but which left people with water that was increasingly unaffordable and of deteriorating quality.

In documenting the history of water development over the last two centuries, the HDR paints a picture that informs the role of the State in protecting the human right to water. In 19th century Britain and the United States, water systems were privately owned with less than 5% of the populations of London and New York having access to safe drinking water. For the masses, water-borne diseases like typhoid and cholera ran rampant at levels similar to those seen today throughout large urban centers of the global South. By late in the 19th century, private water systems began to be municipalized in a move to strengthen public health. Public control backed by a sizable commitment of public revenue established access to safe drinking water and adequate sanitation as a basic right. As universal access was achieved, water-borne diseases ceased to be a pervasive threat and within decades were all but eliminated.

Today, more than one billion people are in the same situation as most inhabitants of New York and London one hundred and fifty years ago. Their human right to equitable access to safe water and sanitation depends on public control and funding of water infrastructure.

Other Initiatives and Standards Relating to Equitable Access to Water

Corporate Accountability International is working with our members and allies to organize Think Outside the Bottle, an award-winning public education and action campaign. Think Outside the Bottle is educating millions of people about the dangerous reality behind the image of bottled water, building a base of power and support for public water systems across key constituencies, and generating direct pressure on the bottled water giants.

The campaign calls for specific policy changes from Coke, Pepsi and Nestlé, to address people's concerns about transparency, quality and local control of water. All three corporations are responding directly to these public demands.

Think Outside the Bottle provides opportunities for action for ordinary people on one of the most critical issues of our lifetime. Winning real changes from bottled water corporations will help build momentum, and a movement, toward challenging corporate control of our water and protecting the human right to water.

UN Human Rights Norms for TNCs

Corporate Accountability International has supported the draft UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. We believe that the time is past due for enforceable international standards for TNCs—particularly where voluntary initiatives have failed. The work of the Subcommission on



the Promotion and Protection of Human Rights on the draft Norms is a step in the right direction, and we have called for that initiative to be strengthened and extended.

While States have the primary duty to uphold human rights, TNCs should also be held accountable under human rights treaties, laws and standards. We urge the OHCHR to explore how the Norms impact on the obligations and accountability of water corporations. For example, in the section headed "Respect for national sovereignty and human rights" [E.11(a)], the commentary on the Norms calls on TNCs to fight corruption and increase transparency regarding political activities. Water TNCs such as Suez, Veolia, Coca-Cola, Pepsi and Nestlé have used their influence to undermine human rights laws and policies at the local, national and international level. Such influence takes many forms, including employment of lobbyists, use of public relations firms and tactics to frame policy debates, "revolving door" appointments of former government officials, sponsorship of political events, and contributions to political candidates and parties.

Corporate Accountability Precedents in the WHO FCTC

The FCTC, one of the most widely and rapidly embraced UN treaties in history, sets important precedents for holding transnational corporations accountable for human rights violations. Though the FCTC covers one industry sector, many of its provisions merit consideration as broad human rights standards for corporations.

The following recommendations, which we presented to the Special Representative to the UN Secretary-General on TNCs and Human Rights, are also relevant to the HRC's study on the human right to water.

- **Restrict corporate involvement in public policy matters pertaining to human rights, human health and environmental degradation:** For decades, the tobacco industry has worked to undermine effective regulation around the world. Therefore the FCTC clearly insulates public health policy from interference by tobacco corporations, their subsidiaries and affiliates, and calls on governments to be alert to industry attempts to undermine health policies. The FCTC advances conflict of interest as a concept in international law that preserves and protects the primacy of human rights over commercial enterprise in ways that we believe should be extended broadly to other economic sectors. For example, the precedents of the FCTC can be applied to the marketing of other dangerous or deadly products, matters of consumer safety or worker health involving the corporation's products or production facilities, or environmental degradation such as the abuse or appropriation of community water resources.
- **Corporate accountability through liability:** Liability and compensation are at the heart of deterring the spread of tobacco addiction, by forcing tobacco corporations to pay the true costs of their deadly business. Corporate human rights abuses are often linked to enhanced profits, therefore, directly connecting human rights abuse with legal liabilities that impede profitability is an important and particularly effective enforcement mechanism. Liability separates voluntary best practice efforts from binding standards, and represents a means of protecting people and their communities, while also



protecting higher-standard corporations from lower-standard corporations seeking a competitive edge by cutting corners.

- **Disclosure/transparency:** The FCTC breaks new ground by calling on governments to disclose a high level of information regarding the tobacco industry and its dangerous products. This precedent strengthens international right-to-know laws and should be applied to other industries. For example, public awareness of water issues must be increased: people have a right to know about the adverse health, economic and environmental consequences of water privatization, and about the obligation of governments to protect the human right to water and people's access to water.
- **Participation of civil society:** The FCTC strongly establishes the principle that civil society participation is essential in achieving the treaty's objectives, while also explicitly excluding NGOs affiliated with the tobacco industry from involvement in public health policy-making. NGOs represent an important resource for national governments in monitoring industry compliance with standards of conduct, regulations and laws, enabling States to focus enforcement resources that are often scarce.

Conclusion

This OHCHR study is an opportunity to advocate the creation, implementation and enforcement of new international mechanisms—such as a treaty—to protect people's right to water, prevent interference and abuses by corporations and international financial institutions, and support governments to deliver on this responsibility. We urge the OHCHR to propose a process and timetable for engaging UN institutions in strengthening international law in these areas.

Thank you for the invitation to submit these comments. I would be happy to provide additional background on any of the cases or examples cited. We look forward to the study, and to further action by the Human Rights Council to secure equitable access to safe water and sanitation.

Sincerely,



Kathryn Mulvey
Executive Director &
International Policy Director

