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APRIL 30, 2007

INTRODUCTION

This submission discusses the role of International Financial Institutions (IFIs) in promoting the right to water and the ways in which that right has been violated in Haiti.

Haiti is at a critical juncture.¹ It is the poorest nation in the Western Hemisphere and one of the poorest in the world. The 2006 Human Development Index ranks Haiti 154 out of 177 countries on the basis of indicators such as the likelihood that an individual will live a long and healthy life, attain education, and have a decent standard of living.² It is apparent from the statistics that it is the very survival of the Haitian population which is at stake. Food insecurity is widespread³ and Haiti's health indicators are correspondingly bleak.⁴

One of the most widespread human rights violations Haiti is the violation of the right to water. As such, it is crucial to examine the role that both state and nonstate actors have played in fulfilling the rights of Haitian's to water. Therefore, this submission examines the role of International Financial Institutions (IFIs) and the impact of their lending policies on the right to water for Haitian citizens. In particular, this submission analyzes the role of the Inter American Development Bank (IDB) and the fulfillment of its right to water obligations for Haiti, its poorest regional member. This analysis is part of a larger study to be undertaken in Summer 2007 that will provide an in-depth examination on the impact of right to water violations on the health of Haitian citizens and the IDB's obligation to Haitians regarding the right to water.

¹ The President of the Security Council, *Statement by the President of the Security Council: The Question Concerning Haiti, delivered to the Security Council*, U.N. Doc. S/PRST/2005/50 (Oct. 18, 2005).

² U.N. Development Program (UNDP), *Human Development Report 2006*, http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_HTI.html (last viewed April 24, 2007)

³ Haiti has the least amount of food available per capita in the entire western hemisphere. See Pan American Health Organization (PAHO), Regional Office of the World Health Organization (WHO), *Health Situation in the Americas: Basic Indicators 2005* (2005), available at <http://www.paho.org/english/dd/ais/BI-brochure-2005.pdf> (last viewed April 24, 2007).

⁴ The life expectancy for the total population of Haiti at birth is 52.7 years and only 50% of the population has access to even rudimentary health services, and urbanites consume much of the little healthcare available. See *Id.* See also World Bank, *Entering the 21st Century: World Development Report 1999/2000*, at tbl.7 (1999/2000).

I. THE ROLE OF THE HAITIAN GOVERNMENT

The Haitian Constitution guarantees the right to health to all citizens and imposes a duty on the state to promote respect for the right to health:

The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction, in conformity with the Universal Declaration of the Rights of Man.⁵

The right to water is derived from the right to health.⁶

Haiti is a state party to the Convention on the Elimination of All Forms of Discrimination Against Women, which explicitly recognizes the right to water.⁷ Under Haiti's Constitution, treaties are self-executing once ratified:

Once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them.⁸

Haitian national law therefore requires the government to uphold and promote respect for the right to water.

II. OBLIGATIONS OF INTERNATIONAL FINANCIAL INSTITUTIONS AND THEIR MEMBER STATES TO ENSURE THE RIGHT TO WATER

IFIs are comprised of Member States who participate in these institutions through their state representatives. As such, actions undertaken by the IFIs establish a duty both for the IFI as an international organization and the Member States who participate through these IFIs. While the government of Haiti owes to its population duties and obligations owed by any UN Member State to those within its jurisdiction, other States acting in Haiti also have obligations vis-à-vis those under their authority and control. Indeed, international human rights law has been evolving to take account of the realities of multiple State actors within the same geographical space.⁹

⁵ Article 19, Constitution of Haiti (1987), <http://pdba.georgetown.edu/Constitutions/Haiti/haiti1987.html> (last viewed April 24, 2007).

⁶ Committee on Economic, Social and Cultural Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 15, E/C.12/2002/11 (January 20 2003).

⁷ See *id.*, 2.

⁸ Article 276-2, Constitution of Haiti (1987).

⁹ See John Cerone, *Reasonable Measures in Unreasonable Circumstances: A Legal Accountability Framework for Human Rights Violations in Post-Conflict Territories Under U.N. Administration*, in THE UN, HUMAN RIGHTS AND POST-CONFLICT SITUATIONS (Nigel White and Dirk Klaasen eds., Manchester University Press, 2005) ; Rolf Kunnemann, *Extraterritorial Application of the International Covenant on Economic, Social and Cultural Rights*, in

The UN has stated in several reports that Member States have the primary obligation of ensuring the right to water:

Governments hold the primary responsibility for ensuring the realization of human rights. The United Nations Committee on Economic, Social and Cultural Rights has stated that governments have a number of duties that follow on from the right to water. Governments must take the steps necessary to ensure that everyone can enjoy sufficient, safe, acceptable, accessible and affordable water, without discrimination.

While some discretion is allowed in the choice and mix of the measures to be taken – for example, law, policies, and programmes – they must be targeted and directed towards full implementation of the right.¹⁰

Countries also have international obligations to cooperate with other states to ensure that the right to water is achieved everywhere. *This means countries must make certain that their actions do not deprive individuals of the right to water in other parts of the world . . .* Steps should also be taken to ensure that sufficient financial and other aid is given to other countries, to accelerate coverage improvement beyond that possible with limited domestic resources.¹¹

These obligations have also been recognized by the Special Rapporteur, Mr. El Hadji Guissé, in the report “Realization of the right to drinking water and sanitation”:

2.1 Each level of government in a State, including the national Government, regional governments and the local authorities, has a responsibility to move progressively and as expeditiously as possible towards the full realization of the right to water and sanitation for everyone, using practical and targeted measures and drawing, to the maximum extent possible, on all available resources.¹²

Further, Member States have an affirmative duty to ensure that “organizations” do not interfere with the right to water:

2.3 States should at all levels of government:

EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES (Fons Coomans and Menno Kamminga eds., Antwerp, 2004).

¹⁰ OHCHR, WHO, COHRE, CESR, Water Aid, The Right to Water (2003), 28, http://www.ohchr.org/english/issues/water/docs/Right_to_Water.pdf (last viewed April 24, 2007)

¹¹ *Id.*, 31 (emphasis added).

¹² ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Realization of the right to drinking water and sanitation, Report of the Special Rapporteur, El Hadji Guissé, E/CN.4/Sub.2/2005/25 (11 July 2005), 6, http://www.ohchr.org/english/issues/water/docs/SUCom_Guisse_guidelines.pdf (last viewed April 24, 2007)

. . . (d) Refrain, and ensure that private persons and organizations refrain, from interfering with the enjoyment of the right to water and sanitation or any other human rights. . . ¹³

International institutions comprised of representatives of UN Member States cannot shirk their obligation to uphold and promote economic and social rights. It is axiomatic in the contemporary era that governments do not only have a responsibility to safeguard the rights of their citizens but also to promote and protect the rights of individuals wherever they act.

With respect to the right to water, Member States acting through multinational financial institutions have clear obligations. OCHCR itself has noted the special role played by financial institutions such as the IDB in guaranteeing respect for the right to water:

International financial institutions play an important role in promoting the fulfillment of the right to water through their financing and influence on the use of domestic resources by national authorities. Their influence may also extend over activities of others (such as national and local governments and contractors) and contribute to respecting and protecting the right to water.¹⁴

III. THE INTER AMERICAN DEVELOPMENT BANK AND HAITI

The IDB has a regional focus: its mandate is to provide development and financial support for those member countries located in the Western Hemisphere.¹⁵ As the poorest nation in the Western Hemisphere, Haiti is a prime candidate for IDB loans.

In Haiti, access to water, which is critical for improving health and for increasing the availability of food through agriculture, is limited:¹⁶ 46% of all Haitians lack access to an improved water source.¹⁷ By contrast, in Latin American and the Caribbean as a whole, 91% of the population has access to improved water.¹⁸ Haiti's water quality was ranked 101 out of 122 countries;¹⁹ and Haiti was ranked last (out of 147 countries) in the Water Poverty Index, which is a combination of measures of water availability and access with measures of people's capacity to access

¹³ *Id.*, 6.

¹⁴ *Id.*, 34-35 (emphasis added),

¹⁵ <http://www.iadb.org/aboutus/index.cfm?language=English> (last viewed April 25, 2007).

¹⁶ U.N. Development, *Human Development Report 2006*, http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_HTI.html (last viewed April 24, 2007).

¹⁷ Joint Monitoring Programme for Water Supply & Sanitation, Latin America & Caribbean: Water Supply Data, http://www.wssinfo.org/en/238_wat_latino.html (last viewed April 24, 2007).

¹⁸ *Id.*

¹⁹ UNESCO, UN World Water Development Report, Water Quality Indicator Values in Selected Countries, http://www.unesco.org/bpi/wwdr/WWDR_chart2_eng.pdf (last viewed April 24, 2007)

water.²⁰ Some of the countries ranking above Haiti are notoriously prone to drought, such as Ethiopia, Chad, Burkina Faso, and Lesotho.²¹

In 1998, the IDB signed a number of loan agreements with Haiti's Minister of Finance in which the IDB agreed to provide over \$145 million in loans to Haiti. Included was a loan program to disburse approximately \$54 million for water and sanitation improvements in the country. The funds to be disbursed were earmarked for some of Haiti's poorest and most underserved regions – including areas such as Cap Haitien, Les Cayes, Saint Marc, Gonaïves, Jeremie, Kenskoff-Laboule and Port de Paix. The project's main purpose was “to provide potable water services across the country while establishing an institutional framework that ensures the long-term sustainability of those services.”²²

In December 2000, the Haitian government ratified the loans and fulfilled other terms of the loan contract, including paying \$5 million in arrears with expectation that these critical loans would be released. However, the IDB did not disburse the funds. Although representatives from the IDB acknowledged that there were no obstacles to disbursement of the loan, the funds were not remitted per the agreement. Instead, the IDB placed the loans on inactive status from 2002 until 2003.²³ To date it has disbursed approximately \$6 million over the last eight years, less than 12% of the total loan amount. Ironically, under IDB policy, Haiti currently owes over \$1 million on the water and sanitation loans, representing over 16% of the amount actually disbursed.

The full extent of the impact of IDB's non-disbursement of the water and sanitation loans is not yet known.²⁴ However, general findings regarding the consequences of Haiti's lack of water are grim: In Haiti, the infant mortality rate is 12.5%, well over the World Health Organization's regional rate of 2.5%. In addition, diarrhea related diseases – which has been linked to a lack clean water – is one of the main causes of infant deaths.²⁵

The IDB's own internal documents show that the organization understood the impact the water loans would have on the health of Haitians. In its *Environmental Impact Assessment Report*, IDB documented the poor health conditions of children living in Port de Paix, one of the targets of the IDB loan. The report makes a specific link between the health of children and their access to

²⁰ Peter Lawrence, et al., *The Water poverty Index: An International Comparison*, 11 (KERP 2002), <http://www.keele.ac.uk/depts/ec/wpapers/kerp0219.pdf> (last viewed April 24, 2007).

²¹ *Id.*

²² Inter American Development Bank, *Haiti Loan 1010/SF-HA* (June 30, 2003).

²³ At the time Haiti's loans were placed on inactive status, the country had fallen behind in the payment of arrears. However, from January 2001 until approximately June 2001 when Haiti was still eligible for loan disbursement, the IDB provided no funds.

²⁴ The RFK Memorial Center for Human Rights, together with New York University School of Law's Human Rights Clinic, is undertaking a long term study beginning in May 2007, to analyze the impact the lack of water has on Haiti's population and the IDB's role in providing support for Haitian's right to water.

²⁵ UNICEF, *Water, Environment and Sanitation Report – Haiti*. (2005)

water stating “[a]lthough other factors also play a role in the incidence of diarrhea/ dehydration, *poor quality drinking water is a prime factor.*”²⁶

The IDB’s decision not to disburse loans for water and sanitation in Haiti is particularly troubling given that IDB’s own internal documents show the water projects would increase the chance of survival for Haitian children under 5. For instance, in its *Environmental Summary*, IDB notes that the rate of gastro-intestinal disease in Haitian infants under 5 “contributes to high mortality rates.” The Summary further states that the loan programs would have a positive impact on this situation, presumably including increasing the rate of survival for Haitian infants. However, the loans were not disbursed.

CONCLUSION

As the primary source of funding for water and sanitation programs in less-developed nations, IFIs bear an enormous responsibility for promoting the right to water. Without support from IFIs, virtually none of the less-developed nations’ governments are capable of upholding their own obligations to protect this most critical right.

In Haiti, IDB’s disrespect for its responsibility led to violations of the right to water, arguably resulting in increased mortality for Haiti’s infant population. Just as states should be held accountable for violating the human rights of their citizens, state members of IFIs need to be accountable wherever they act.

²⁶ Inter American Development Bank, Environmental Impact Assessment Report Haiti – Potable Water and Sanitation Reform and Investment Program, 16.

Appendix – Supplemental Bibliography

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