



International Environmental
Law Research Centre

ORAL INTERVENTION ON THE HUMAN RIGHT TO WATER

**SUBMITTED TO THE UNITED NATIONS' HUMAN RIGHTS
COUNCIL AT ITS SIXTH SESSION, SEPTEMBER 2007**

*This paper can be downloaded in PDF format from IELRC's website at
<http://www.ielrc.org/content/c0703.pdf>*

I speak today on behalf of the International Environmental Law Research Centre (IELRC).¹ We undertake legal and policy research that contributes to equitable and sustainable environmental management in the South.

We welcome the High Commissioner's Report on the human rights obligations related to equitable access to safe drinking water and sanitation.² Our research in the South shows a progressive withdrawal of the state from water provision. We would like to see this trend reversed. We endorse this Report's finding that when water is a basic human right for all, the *state* stands at the centre of obligations to ensure that no citizen anywhere is denied the water that is crucial to sustaining life.

We support the High Commissioner's recommendation that every nation must develop legislation on safe drinking water and sanitation. Among other things, such legislation must aim at preventing discrimination in the face of access to water, whether water is provided by public or by private actors. Groups facing discrimination, particularly in cases where the government has divested itself of responsibility for water provision, include the poor, women, children, rural dwellers, slum dwellers, tribal/indigenous peoples, and those without land. While the state is the ultimate duty bearer in international law, we believe that private service providers and local government officials should be co-duty bearers for the right to water. Each nation's water legislation should describe the human rights responsibilities of private service providers or local officials to whom the state has delegated responsibility for water provision.

While this is not highlighted in the High Commissioner's Report, we believe that free basic water for all should be a goal towards which all countries strive. Certainly, each nation's water legislation should identify the groups most vulnerable to lack of basic water, and name policies that subsidize free water provision for these groups. Our research suggests that national water policies increasingly frame water as an economic good and couch water policies in terms of 'affordability' – particularly when aiming towards 'full cost recovery'. As a result, the poor, the landless or other marginalized groups are, in fact, denied basic water.

We applaud the High Commissioner's extensive discussion on the procedural safeguards that should be available for citizens facing disconnection of water services, but wish to make two points in this regard. First, contrary to a growing international trend, we believe the state should *never* be in the business of disconnecting access to safe drinking water, because this is incompatible with the obligation to respect the right to water. It troubles us that disconnection policies are implemented under the guise of conditionality of development aid projects, as International Financial Institutions (IFIs) now often impose conditions of 'full cost recovery' for water.³ IFIs should also be named as co-duty bearers for ensuring the realisation of the right to water, and must take into account the right to water when formulating lending policies and credit agreements.

Second, we would extend the due process rights discussed under disconnection to citizen participation in *all* aspects of water provision. The High Commissioner might urge that national water legislation include full and timely disclosure of all information on all proposed elements of water provision.⁴ National water laws should include procedural rights and resources for citizens to challenge unjust decisions by the state or by local providers. Special attention must be paid to schemes that decentralise decision-making; such attempts at participatory democracy in water delivery may bring their own forms of discrimination, for example privileging those with higher social status, local political power, or land.⁵

1 The written statement on the human right to water submitted to the Human Rights Council is available at <http://www.ielrc.org/content/c0702.pdf>. For information on IELRC's water law project, please see our website at <http://www.ielrc.org/water>.

2 Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, UN Doc. A/HRC/6/3 (16 Aug. 2007).

3 For example, disconnection policies were introduced in the Indian states of Rajasthan and Karnataka as part of the assurances given by the borrower in two Asian Development Bank (ADB) projects. See ADB, The Rajasthan Urban Infrastructure Development Project, Report and the Recommendation of the President to the Board of Directors, November 1998, paragraph 97 and ADB, Karnataka Urban Development and Coastal Environmental Project, Report and the Recommendation of the President to the Board of Directors, September 1999, paragraph 110.

4 Relating, for instance, to the identity of the provider, timing and content of contracts, role of local government, structure of water user associations or location of water hookups.

5 See, e.g., the case of Water User Associations, which entrench different forms of discrimination. P. Cullet, Water Law in India: Overview of Existing Frameworks and Proposed Reforms (Geneva: International Environmental Law Research Centre, Working Paper 2007-01, 2007), available at <http://www.ielrc.org/content/w0701.pdf>.

Proclamation of a fundamental right to equitable access to safe water and sanitation is just a first step. Ultimately, as primary duty-bearers for the realisation of the right to water, states must give pre-eminence to water's social and environmental importance and assume absolute responsibility for ensuring that all citizens realise the fundamental right to safe drinking water and sanitation. We welcome the importance given to water by the Human Rights Council and urge the Council and all its member states to rapidly proceed towards the establishment of a Special Rapporteur on the Right to Water.

Thank you for your attention.

www.ielrc.org