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STATUS OF COOPERATION AMONG DEVELOPING COUNTRIES IN THE FIELD OF WATER WITHIN THE PURVIEW OF ECLAC

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The Economic Commission for Latin America and the Caribbean (ECLAC), principally through its Natural Resources and Infrastructure Division, actively promoted cooperation among Latin American and Caribbean countries in the field of water.

Public policies, which are at the centre of our activities, come under the spotlight when their limitations manifest themselves. The growing awareness in the region of concerns such as unsustainable water use, water scarcity, water pollution deterioration of watersheds, monopolization of access of water resources, shortfalls in coverage and quality of drinking water supply and sanitation services, deteriorating water-related infrastructure, escalating water-related conflicts, at the local, national, regional and international levels, all illustrate the relevance of the issue. In recent years, virtually all countries of the region have embarked on reforms of their institutional systems for water resources management and provision of drinking water supply and sanitation services. The results, however, have often been unsatisfactory, and many significant issues and conflicts still remain unresolved. On the other hand, in the overwhelming majority of countries, this protracted and conflictive process of water reforms is still ongoing and consensus remains elusive.

In the debates taking place to advance the process of institutional reforms, the legal nature of water, water rights and their conditionalities, water allocation and the creation of water markets, the institutional design of water administration both at the central and river basin levels, regulatory framework for the provision of drinking water supply and sanitation services, especially incentives for efficiency and for the transfer of efficiency gains to consumers, the horizontal structure of the drinking water supply and sanitation industry (relationship between centralization and decentralization), access to information and public participation, financially, socially and environmentally sustainable tariff setting, promotion of efficiency in State-owned enterprises, consequences of international investment agreements for the economic, social and environmental sustainability and efficiency of water resources utilization and provision of public utility services, and related conflicts, among many others, remain a source of considerable controversy, and are at the centre of our cooperation with the countries of the region.

The main and traditional target group of our cooperation are public policy makers from executive, legislative and judicial branches of all levels of governmental (national, central, federal, provincial, state, municipal, etc.). We also increasingly work with many other stakeholders, including civil society, universities, NGOs and the private sector, as well as international, regional and bilateral organizations.

We have adopted the following two-fold approach in our work: (i) our research activities serve to analyze regional situation, identify challenges and emerging issues, formulate

appropriate institutional responses and systematize best practices; and (ii) our technical advisory assistance, dissemination activities, expert meetings and training courses serve to transmit our proposals to relevant stakeholders, so as to strengthen their institutional capacity to formulate and implement public policies and regulatory frameworks. There is a close coordination and synergy between these two groups of activities. Technical advisory assistance, dissemination activities, expert meetings and training courses help us: (i) to align our research programme with regional and national priorities and emerging issues; (ii) to gather information and receive the necessary inputs for our studies; and (iii) validate, and adjust as needed our public policy proposals.

Outputs of our research activities are used in our technical advisory assistance, expert meetings and training courses.

Our principal activities in the promotion of cooperation among Latin American and Caribbean countries in the field of water include the following ones:

Technical Advisory assistance:

At the national and local level:

Argentina, national provincial, municipal, university and judicial authorities provision of drinking water supply and sanitation services, regulation of state-owned companies and contribution of water of socioeconomic development.

Chile, universities: public policies for river basin management, water management; and provision of drinking water supply and sanitation services; national authorities: integrated water resources management; private sector: provision of drinking water supply and sanitation services.

Colombia, universities: economic aspects of water resources management.

Ecuador, national authorities: international investment, regulation, water resources legislation; private sector: provision of drinking water supply and sanitation services.

Guatemala, national authorities: water legislation and international investment treaties.

Mexico, national authorities: provision of drinking water supply and sanitation services, regulation and private participation; universities: water resources management, provision of drinking water supply and sanitation services and adaptation to climate change.

Peru, national authorities: regulation, provision of drinking water supply and sanitation services, sustainable tariff-setting, private sector participation, integrated water resources management and water legislation.

Cooperation with international, regional, bilateral and nongovernmental organizations:

Capacity Building International (InWEnt), Germany
Caribbean Water and Wastewater Association (CWWA)
European Institute of Political Studies (INSEEP), Spain
Federal Ministry for Economic Cooperation and Development (BMZ), Germany
German Agency for Technical Cooperation (GTZ)
Global Water Partnership (GWP) Central America
Helmholtz Research Centre, Germany
Institute of Sciences and Techniques of Equipment and Environment for Development (ISTED), France
Inter-American Association of Sanitary and Environmental Engineering (AIDIS)
Inter-American Development Bank (IDB)
Inter-American Dialogue on Water Management
Inter-American Water Resources Network (IWRN)
International Development Law Organization (IDLO)
International Development Research Centre (IDRC), Canada
International Network of Basin Organizations (INBO), France
Italo-Latin American Institute (IILA), Italy
Latin American Parliament (PARLATINO)
Organization for Economic Cooperation and Development (OECD)
Parliamentary Confederation of the Americas (COPA)
Swedish Environmental Research Institute (IVL)
The Nature Conservancy (TNC)
United Nations Conference on Trade and Development (UNCTAD)
United Nations Development Programme (UNDP)
Water Fund, Spain
World Water Forum

Recurrent and non-recurrent publications:

"Revisiting privatization, foreign investment, international arbitration, and water" (LC/L.2827-P, Natural Resources and Infrastructure Series No.129) by Miguel Solanes and Andrei Jouravlev. This study analyzes the implications of international investment agreements for the economic, social and environmental sustainability and efficiency of water resources utilization and provision of water-related public services.

"Servicios de agua potable y alcantarillado en la ciudad de Buenos Aires, Argentina: factores determinantes de la sustentabilidad y el desempeño" (LC/L.2751-P, Natural Resources and Infrastructure Series No.126) by María Begoña Ordoqui Urcelay. This paper identifies the main endogenous and exogenous determinants of performance and sustainability of provision of drinking water supply and sewerage services in the metropolitan area of Buenos Aires, Argentina.

"Servicios urbanos de agua potable y alcantarillado en Chile: factores determinantes del desempeño" (LC/L.2727-P, Natural Resources and Infrastructure Series No.123) by Soledad Valenzuela and Andrei Jouravlev. This study analyzes the main endogenous and exogenous determinants of performance and sustainability of provision of drinking water supply and sewerage services in urban areas of Chile.

"Seminar on the Regulation of Public Utilities 'Water and Electricity'" (LC/W.125) (published in English, Spanish and French). This report analyzes critical regulatory issues in provision of water-related public services in relation to local and international experiences, with a view to suggesting guidelines for dealing with them better in the future.

"Water governance for development and sustainability" (LC/L.2556-P, Natural Resources and Infrastructure Series No.111) by Miguel Solanes and Andrei Jouravlev. This paper identifies characteristics of water institutions and macroeconomic policies which promote the sustainable integration of water, both as a resource and as public utility service, into socioeconomic development.

In order to promote horizontal cooperation, policy harmonization and the adoption of best practices, in the region and beyond, in water resources management and provision of drinking water supply and sanitation services, we publish the Circular of the Network for Cooperation in Integrated Water Resource Management for Sustainable Development in Latin America and the Caribbean (in English and Spanish, twice a year) and newsletter International Rivers and Lakes (in English once a year).

Projects

"Sustainability and equal opportunity in globalization" project (2008-2010), jointly implemented by ECLAC and GTZ, and financed by BMZ. Its objective is to strengthened institutional capacity in the countries of the region to formulate and implement public policies and regulatory frameworks to increase efficiency and sustainability the provision of drinking water supply and sanitation services.

Meetings of experts

Regional Conference 2008 "Policies for economically efficient, environmentally sustainable and socially equitable water supply and sewerage services" (ECLAC headquarters, Santiago, Chile, 23 y 24 September 2008). The objective of the conference objective was to identify factor that favour economically efficient, environmentally sustainable and socially equitable provision of drinking water supply and sewerage services, and to formulate recommendations regarding those policies.

Seminar on "International Investment Agreements, Sustainability of Investment in Infrastructure and Regulatory and Contractual Measures" (Lima, Peru, 14-16 January 2009). The objective of the seminar was to exchange experiences in relation to the

impact of international investment agreements and their implications for the provision of water-related public services and management of natural resources, particularly water.

Main lessons that we have learnt:

Water legislation:

- Water laws must clearly state that water belongs to the public domain of the State.

- Water laws must determine specifically that water use rights, when granted under conditions of, or which aim at, effective and beneficial use and that do not cause environmental damage, are protected by private property clauses in the constitution. This is a basic legal element present in the systems that have successfully promoted private investment in the development and conservation of water resources.

- However, and provided there is no functional curtailment of the economic value of water rights, the laws may allow for the exercise of these rights to be generally regulated as needed for ecological and social sustainability, and in the public interest.

- Systems of water rights and the regulations guiding their allocation should be uniform without exception and have the highest legal status, to prevent manipulation by special interest groups.

- In this context, water rights are allocated when there is enough available water flow, when third party rights and ecological requirements are not affected, and when, in accordance with the opinion of water administration, the request is in the public interest regarding water use.

- The only functional priorities for the allocation of water rights when requested ought to be those for drinking water supply and sanitation purposes, subject to safeguards for ensuring that this does not prevent the generation of clear signals regarding the scarce nature of existing water supplies, and it does not lead to inefficient use arising from this privilege. Such considerations should not affect the preservation of minimum flows and levels for ecological reasons. In cases of concurrent uses for other purposes, water authorities must carefully assess their merits and, if the uses are equivalent, then they must be allocated on the basis of economic tender, order of application, or some other relevant criteria.

- Water laws should establish, as a condition for the acquisition and maintenance of water rights that the holders of such rights have to pay the corresponding financial charges.

- Countries should allow the trading of water rights between or within user sectors, subject to adequate regulation in the light of social, economic, environmental and public interest considerations.

- In the case of water rights and uses that were in existence prior to the legislative change, including traditional and indigenous uses, they should be recognized in accordance with their effective and beneficial, historical and current use, without this affecting the possibility of imposing appropriate regulations.

- There is a need for integrated water planning to satisfy economic objectives, environmental requirements and social concerns, through the generation of a shared vision regarding the future evolution of water availability and use at the river basin level.

- It is important to develop a public information system covering all elements affecting resource management, giving transparency to the actions affecting water, which in part of the public domain.

- The procedures for implementing these important considerations must ensure their continued effectiveness.

Regulation of drinking water supply and sanitation services:

- Universal and non-discriminatory service. Adequate quantity and quality of service.

- Effective prioritization, particularly in budgetary allocations.

- Reasonable tariffs and profits. It is important to bear in mind that privatization does not miraculously make unprofitable operations profitable.

- A subsidy system that avoids as far as practicable cross-subsidies and that guarantees the low-income groups a basic minimum supply.

- The right to adequate, consistent, reliable and opportune information, both for the regulators and for customers, with emphasis on regulatory accounting and control of transfer prices.

- 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, duty of efficiency, used and useful investments, and transfer of efficiency gains to consumers.

- Maximum use of economics of scale and scope, structuring balanced systems, where responsibilities are assigned to the appropriate level of government.

Centralization and decentralization:

- Depending on the activities involved, determine the appropriate level for decentralization or centralization, in accordance with technical considerations and economies of scale and scope.

- Separate the requirements of decentralized activities and their technical management from political influences, in order to ensure viability and effectiveness through the necessary legal, financial and control methods.

- Preserve a residual capacity at the central level, to promote or implement the necessary activities or measures in the event of decentralized bodies being negligent or unable to carry out their functions.

- Design systems in which administered parties and users have swift and expeditious access to justice.

- Clearly establish the legal obligations of the decentralized system and make its administration personally responsible for violations thereof.

- National legislation should recognize the two basic principles that govern disputes between decentralized authorities: (i) equity and reasonableness; and (ii) not causing significant harm.

Water management institutions:

- The authority responsible for water allocation and management should be independent from sector influences, with authority and resources in line with its responsibility.

- Inserting water management within environmental agencies may result in minimizing its effect as a socioeconomic development factor.

- Therefore, it seems appropriate that the water resources have their own stable and independent institutions, even when these are closely linked to institutions responsible for the strategic vision of national development.

- In general, administrative bodies of a collegiate type have not given good result, for which reason policies ought to aim at creating non-collegiate entities, while enabling sectoral agencies or interests to be brought in for purposes of consultation or participation.

- Adequate administration presupposes precise definition of its functions, duties and faculties, and the rights of administered parties and the public in general, under supervision of the judicial system for legality and arbitrariness.

- Water-related decision-making has economic content, and special interest group pressures can promote or dissuade such decisions. Accordingly, water authorities should have independent budgets and chief executives appointed for fixed terms and protected from arbitrary removal.

- River basin level organizations are valid options for water management. Critical requirements for their creation include a precise definition of their specific exclusive functions focused on water resources, and adequate authority and funding.

- User organizations are useful management structures; however, they cannot replace the State, as they have inherent limitations and must be subject to appropriate government controls. They should normally be organized under public law.

- A conflict resolution system should exist which provides an appropriate balance between the water administration, the user organizations, and the courts, and defines the limits of their authority.

- There are decisions related with water and its associated public services that are directly linked to governance, because of the impact that they have on economic and social stability. These considerations should be appropriately dealt with in trade and investment protection treaties.

Regulatory agencies for drinking water supply and sanitation services:

- Clear institutional separation between the functions of sector policy formulation, provision of services and regulation, with independent and autonomous regulatory agency.

- The system to be regulated should be manageable. It is not realistic to assume that, for example, hundreds of service providers can be effectively regulated or controlled. Consolidation is often necessary due to its advantages with respect to economics of scale and the requirements of control.

- The regulator must have independence and stability, and be subject to rules of good conduct and ethics.

- The regulator must have the necessary power and resources.

- The regulator must have appropriate legal capacities.