

August 29, 2002

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David D. Caron, tribunal president
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ICSID Dispute Resolution Panel
c/o International Centre for the Resolution of Investment Disputes
World Bank
1818 H Street, NW
Washington, DC 20433

RE: Demand for public participation
Aguas del Tunari S.A. (Bechtel) v. Republic of Bolivia (Case No. ARB/02/3)

Dear Sirs:

The signers of this letter represent more than 300 civil society organizations and public leaders across five continents. We are writing to you out of our shared commitment to the right of people to participate in the public matters that affect their communities and nations. With this letter we respectfully request that you guarantee public participation in the arbitration between Aguas del Tunari/Bechtel Enterprises and the Republic of Bolivia, a case that directly implicates one of the most fundamental human needs - access to water. This case is one of the most visible and important cases that has come before a World Bank/ICSID tribunal - Aguas del Tunari/Bechtel Enterprises vs. Bolivia.

BACKGROUND

The history of this case is well-known worldwide. Under direct pressure from the World Bank, the Bolivian government put up for private lease the water system of its third largest city, Cochabamba. In 1999, following a process with just one bidder, a 40-year concession was granted to Aguas del Tunari, a majority-owned subsidiary of Bechtel Enterprises of California set up for that sole purpose. Within weeks of taking over control of the water system, the company raised water rates by an average of more than 50% and in some cases far higher. Families living on a minimum wage of \$60 per month (and often less) were ordered by the company to pay as much as 25% of their income just to maintain their water service.

The people of Cochabamba, unable to pay the bills presented them by the company and unable to get any satisfactory relief from the Bolivian government, were forced into massive and widespread public protests. To protect the company's contract the Bolivian government took extraordinary measures against its people, including a declaration of a state of emergency, the suspension of constitutional rights, and the violent repression of the protests, resulting in more than 100 injuries and the death of one 17 year old boy, Victor Hugo Daza. In April 2000, with the government unable to stop the protests, the company abandoned its management of the water system and left the country.

THE BASIS OF OUR DEMAND FOR PARTICIPATION

To be clear, in our view the World Bank/ICSID should not be handling this case to begin with. The World Bank/ICSID system is one of what the New York Times recently called "secret trade courts" ("A Fairer Trade Bill" New York Times editorial, July 25, 2002), in which urgent public matters are decided behind a shroud of secrecy, without full information and without any of the opportunities for public vigilance and participation that are the basis for public legitimacy. Such public involvement is essential to the legitimate resolution of disputes, like this one, that directly affect issues of fundamental public concern.

Moreover, the World Bank/ICSID handling of this case is even more unjustified for two specific reasons unique to this case:

First, the World Bank is by no means a neutral party in this matter. It is well-documented that it was the World Bank itself which directly forced the government of Bolivia to privatize the water system of Cochabamba, making that privatization a condition for both debt relief and funds for water system expansion and thereby setting the events of this case in motion. Additionally, during the water revolt in Bolivia in April 2000, World Bank president James Wolfensohn personally made public comments about the case, justifying water price increases. Further, despite the Bank's role in the history of this case, Mr. Wolfensohn violated one of the most important principles of objectivity when he directly appointed the President of the arbitration tribunal that will decide the case. These facts have created strong and well-justified public doubt that ICSID can resolve this dispute fairly.

Second, Bechtel/Aguas del Tunari's claim of ICSID jurisdiction rests entirely on a bogus claim of being a Dutch corporation (and therefore benefiting from Holland's bilateral investment treaty with Bolivia which invokes ICSID as arbitrator of any trade disputes between the two countries). Bechtel/Aguas del Tunari moved its registration to Holland only after it signed its water contract with Bolivia, in a forum-shopping exercise already repudiated by the Dutch government.

Given, however, that the World Bank/ICSID has acceded to Bechtel/Aguas del Tunari's request to take this case, this makes it all the more imperative that the process be opened to public participation and scrutiny, as laid out in this letter.

We would also note that Bechtel/Aguas del Tunari has already made plain their willingness to advance fraudulent information about the case. In response to widespread public and press attention to the company's rate hikes, a Bechtel Enterprises spokeswoman, Ms. Gail Apps, widely distributed the following statement to members of the public and the media inquiring about the rate increases it imposed, "For the poorest people in Cochabamba rates went up little, barely 10 percent." Data drawn directly from the water company's computers make clear that the rate increase in question averaged more than 50%.

If Bechtel/Aguas del Tunari is willing to assert clearly fraudulent information such as this on the public record, one can only imagine what misinformation the company will be willing to provide to the tribunal behind closed doors and away from public scrutiny. For this reason as well, civil society groups directly knowledgeable about the facts at hand must be able to participate actively in the case, to assure that the tribunal receives a complete and accurate rendering of those facts.

THE METHODS OF PARTICIPATION PROPOSED

For all these reasons, we propose that the Tribunal adopt the following procedures:

1) Grant the Petition of Affected Individuals and Organizations to Participate in the Case

We call on the Tribunal to grant the petition to participate made by key Bolivian leaders, including Oscar Olivera of The Coalition for Water and Life; Father Luis Sánchez, a member of Cochabamba's public water company board of directors (SEMAPA); Omar Fernández of the Cochabamba Federation of Irrigators; and Congressman Jorge Alvarado, President of the Cochabamba delegation of the Bolivian Congress. These leaders, represented by able and experienced Bolivian and U.S. counsel, represent tens of thousands of people with a direct stake in the case. Their participation is essential to legitimate resolution of this dispute.

2) Publicly Disclose all Documents Filed with the Tribunal

In order to provide for adequate public scrutiny of the claims made by the two parties, especially given the record of misinformation, we call on the Tribunal to place into the public record all documents filed with the Tribunal.

3) That the Tribunal Members Travel to Bolivia to Receive Public Testimony

It is clearly within the purview of the tribunal to come directly to Cochabamba, Bolivia and receive testimony from the people directly affected by the case and who have important information to share with the tribunal:

"...the Tribunal may, if it deems it necessary at any stage of the proceedings...visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate. [Convention On The Settlement of Investment Disputes Between States and Nationals of Other States: Powers And Functions Of The Tribunal, Section 3, Article 43].

We call on the panel to invoke that power in this case and to travel to Cochabamba to receive appropriate public testimony relevant to the case.

4) That the tribunal hearings be made completely open to the public.

All tribunal hearings should be open to the public, including making all transcripts of the testimony public, as well as all tribunal decisions and awards.

CONCLUSION

No ICSID case has ever drawn the public attention that this case has and will continue to, and for good reason. The actions of Aguas del Tunari/Bechtel in Bolivia left a city of more than 600,000 people in turmoil for four months. They left hundreds injured and one young boy dead, and jeopardized thousands of peoples' access to the most fundamental element of life. This case is about far more than the calm transfer of assets from one economic institution to another. It is a matter of deep importance to far more than the two parties who now have formal access to the process. We hope the Tribunal will grant our requests and the petition to participate, and will honor the legitimate right of civil society to also have an active and constructive role in this case.

Sincerely,

(organized alphabetically by country and organization)

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