



## A DRAFT PROTOCOL FOR THE IMPLEMENTATION OF THE HUMAN RIGHTS TO WATER AND SANITATION

### The context

After 10 years of social mobilization aimed at the recognition of the human right to water by the international community, finally the UN General Assembly and Human Right Council approved in 2010 two crucial Resolutions establishing that water and sanitation are universal, specific and autonomous human rights, a prerequisite for all other rights.

- UN General Assembly **Resolution 64/292** (July 28, 2010) recognizes that “the right to safe and clean drinking water and sanitation is a human right essential for the full enjoyment of life and all human rights”.
- UN Council for Human Rights **Resolution 15/9** (Sept.30<sup>th</sup>, 2010) affirms that “the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living, and is inextricably linked to the right to the highest attainable standard of physical and mental health, as well as to the right to life and human dignity”. The Council also recalls the main characters of the human right to water, already defined in the General Comment n.15 on the right to water (2002): availability, quality and accessibility. According to the tradition of human rights, the latter includes four dimensions: non-discrimination, physical accessibility, economic accessibility and access to information.

In May 2013, following the ratification from more than 10 States parties, the *First Optional Protocol to International Covenant on Economic, Social and Cultural Rights* (ICESCR) became effective, linking the right to water to economic, social and cultural rights and therefore opening the way to justiciability.

**However today, more than eight years after UN Resolutions, a universal, specific and autonomous right to water, at least in terms of a minimum quantity necessary to life and human dignity, is not yet assured in any country.**

The SDG 6 Synthesis Report 2018 on Water and Sanitation bring into light that, three years after the launch of the new Agenda 2030, 844 million people have no access to safe drinking water, while more than 2.1 billion people are exposed to contaminated water, and 2.3 billion have no access to sanitation – that is the primary cause of water contamination and related illnesses. The UN Special Rapporteur on the human right to water and sanitation already in his Report 2013 had denounced that with the economic crisis the number of people unable to pay water bills is growing in all countries, and the number of climate refugees is also growing as a result of climate change - in 2050 they are expected to reach up to 250 million.

In the meantime, States having ratified the UN Resolutions have shown no political will to apply them. Only a few of them, under the pressure of civil society and water movements, have introduced in their Constitution the principle of the human right to water, or have adopted national laws, without fixing however rules for actually guaranteeing the vital minimum to all. The discretionary power left to States is likely to affect the universal character of the human right to water.

As far as UN policy is concerned, after the 2010 Resolutions no further step has been taken towards the implementation of the human right to water and sanitation. SDG 6 of the Agenda 2030 does not include any State obligation to guaranteeing the human right to water, rather takes the side of what is becoming the dominant approach, focused on an “affordable price” and an “efficient management” as main regulations of the human right to water<sup>1</sup>.

The UN Special Rapporteur in his 2015 Report (<http://undocs.org/en/A/HRC/30/39>) stresses economic accessibility as the crucial feature for realizing the human right to water; its implementation depends upon the access to service “at an affordable price”. State responsibility only consists in guaranteeing that price keeps affordable, via private investments

<sup>1</sup> Objective 6 is supported by two specific objectives clarifying targets: “ensuring by 2030 equitable and universal access to water at an affordable price” (6.1); “ensuring the access to sanitation forbidding open defecation, particularly for women and most vulnerable groups” (6.2).

or public taxation. Equally oriented towards economic accessibility is a Draft on the realization of the human right presented by a group of States to the III Commission and adopted by General Assembly Resolution 70/169 in December 2015. As for the EU, the new Directive on quality of water for human usage only claims that Member States promote free access to water in public offices and public spaces, without asking any commitment to guaranteeing the human right, not even to the most vulnerables.

**In the end, access to safe drinking water and sanitation, that is the right to life, are indeed acknowledged as fundamental human rights; however, they only could be claimed from the State through an affordable price!**

## The instrument

In order not to leave markets and corporations defining how the human right to water should be implemented, we need nowadays **new instruments** binding States and the international community to implementing the UN Resolutions on the human right to water and sanitation, namely to guaranteeing universal access to the vital minimum.

Such an instrument implementing the human right to water should have the following characters:

- it should be an **instrument of international law**, given that it regulates universal human rights;
- it should be a **binding instrument** for States ratifying it, and of reference for other States;
- it should **translate in binding norms** the principle that water is a universal human right, so far only declared, by establishing some indispensable **principles of implementation**, such as:
  - ✓ **Priority of the human use of water** for life, including personal use and production of food;
  - ✓ **Gratuitousness of a minimum amount of water** indispensable to life;
  - ✓ **States responsibility** in guaranteeing the human right to water and sanitation;
  - ✓ **Judicial execution of violations** before the International Court for Human Rights.

Such implementation principles define the kind of the instrument of international law that is needed: in order to be a binding instrument, it needs to be a Protocol or a Treaty. This instrument does not take place at the level of national legislation that only national States can define; it rather provides a juridical framework of reference binding States about what laws and policies they may implement in their own countries.

**CICMA** (*Italian Committee for a World Water Contract*) has been committed in the last years to identify what instrument of international law would be the most suitable to actually implement the human right to water and sanitation. This commitment comes out of a **political consideration**: national laws, and even Constitutions where they have explicitly acknowledged the human right to water, have proved so far to be too weak instruments for effectively guaranteeing the respect of the universal right to water. It is our conviction that there is an urgent need for defining international binding norms that States have to apply in order to implement the human right to water and sanitation, including sanctioning violations.

CICMA **strategic choice** has therefore been to draft a proposal in accordance with principles stated by our *Manifesto for the human right to water*, that have been shared and formalized in all Declarations produced by Alternative World Forums (2003-2018). Our **first objective** has been to identify what kind of legal instrument would be the most appropriate to our goal. After a year of joint work with the Department of International Legal Studies at the University of Milan-Bicocca, the instrument of international law most appropriate to our purpose has been identified as a **Second Optional Protocol to the International Covenant on Economic, Social and Cultural Rights** (ICESCR) and a proposal of Protocol was drafted. The Protocol is accompanied by juridical Notes, which illustrate the criteria of drafting and the references to international law that underpin the 32 articles of the Protocol.

Nowadays, our **current objective** is to identify a group of States and Institutions willing to open a negotiation about the Protocol with the UN Council of Human Rights for a Second Protocol to ICESCR.

**The Protocol provides an autonomous and specific human right to water and sanitation that States parties must guarantee at the substantive and the procedural level, and presents important elements of innovation compared to Resolutions, Conventions and Treaties already in force, on which however it grounds.**

## The content

The International Protocol for the implementation of the human right to water and sanitation establishes that water is a human right and a common good.

It offers to States, Institutions, civil society and water movements an articulated tool of international law that may serve

as a framework for national laws for the realization of the human right to water, out of governmental, parliamentary or popular initiative.

Moreover, his binding character allows sanctioning violations of the human right that everybody may denounce to the International Court.

His non-regressive character makes it possible that States with laws and Constitutions more advanced in terms of respect of the human right to water do not downgrade their laws as effect of the Protocol ratification.

Elements introducing **substantial innovations** are the following:

1. the quantification of the right to water, and the duty of the State to guarantee it (art.2,3);
2. the strengthening of local communities, who are recognized as one of the subjects ("Collective System", art.1) which is given the right to determine the type of water service they want and the way in which the service must be managed;
3. the recognition of community based water systems managing the water services (art.5);
4. the introduction of a scale of the amount of water per person per day (art.3), according to the following criteria:
  - a minimum amount of water /p/d (50-100litres, according to the WHO guidelines) to which everyone is entitled free of charge, defining the right guaranteed by the State;
  - an amount of water up to 250litres /p/d for personal use chargeable;
  - a sanction of overconsumption and waste quantified over 250 litres /p/d and charged progressively.
5. the quantification of a maximum of water leakages (20%) allowed in networks (art.6);
6. the recognition of new phenomena such as water grabbing, water fracking and dams as bad practices to be discouraged and checked as for their environmental impact (art.9);
7. the definition of a pricing policy that respect the right of people who cannot pay to have access to the minimum quantity guaranteed for life (art.12).

The draft Protocol also implements a series of principles of the human right to water, namely:

- it defines water as a public common good, to be used in solidarity (Preamble);
- it affirms the mandatory nature of the human right to water, even in exceptional circumstances such as war (art.2);
- it affirms the principle of precaution and sustainability considering the right of future generations (art.2,10);
- it defines the concept of gradual implementation of the law, that cannot be interpreted by States parties as an indefinite extension of the measures to be taken (art.7);
- it introduces the principle of non-discrimination and emphasizes the protection and priorities of vulnerable groups (art.8);
- it establishes the priority of human use associated to nutrition, food production and hygiene (art.6);
- it quantifies the possibility of access to water within a distance of 1000m. for water sources, 500m. for sanitation services (art.4);
- it obliges States parties to protect the human right to water:
  - by adopting non-regressive measures, considering laws already in force (art.2);
  - by providing an appropriate legislation to ensure the human right, including public participation mechanisms (art.5);
  - by promoting the creation of public and community services for the provision of water (art.5);
  - by taking full responsibility with respect to management carried out by a third party in relation to compliance with the law and the granting of water sources (art.9);
  - by monitoring the implementation of the obligations through independent bodies (art.11);
  - by preventing and punishing violations and pollution of groundwater for the protection of water good quality (art.16);
  - by establishing reparations measures for violations of collective or individual right (art.15);
  - by preventing actions of individuals or corporations that may interfere with the human right to water and sanitation (art.9);
  - by committing themselves to reject liberalization agreements in matter of services that could inhibit the full realization of the right to water (art.17);

- by providing, every two years, the Committee for Economic, Social and Cultural Rights with a Report on the implementation of the Protocol (art.19);
- by promoting international cooperation and by assessing the feasibility of an International Solidarity Fund to ensure the right to water in the poorest areas (art.17);
- it affirms the right of each one to complete and transparent information and to participation in decision-making processes, which must be democratic and participatory (art.11,13);
- it allows anyone to report and inform the Committee for Economic, Social and Cultural Rights about States non-compliance to the law; the Committee has the power to initiate investigation and to call the attention of the UN General Assembly, through the Secretary-General.

## Advocacy actions

The project of Protocol has been shared with Maude Barlow and the Water Network at the Canadian Council in Toronto (2014). Confrontation has been brought on with Water Movements from El Salvador, Bolivia, Ecuador at the African Social Forum in Dakar (Oct. 2014) and the World Social Forum in Tunis (March 2015). The Protocol has been presented to important network of social movement (Via Campesina, Sem Terra, Red Vida, European Water Movement, Italian Forum). It has been presented at the Brasilia FAMA (2018), where it has been supported by several organizations having signed a Final Declaration.

At the institutional level, the Protocol has been submitted to the attention of several States for evaluation: Italy (Foreign Affairs), ALBA Governments (Bolivia, Ecuador, Uruguay) and Mexico. In Geneva, it has been presented to the UN Special Rapporteur. The Holy See and their Dicastery for human integral development have examined the Protocol, as well as other important religious organizations, such as Caritas Internationalis and Franciscans International. Pope Francis drew, in his Encyclical *Laudato Si'* as well as in several oral interventions, the duty of States to ensure the human right to water recognized by the UN and called for the adoption of legal instruments that define how it ought to be concretely implemented.

## How to support the Protocol proposal

The ***Second Optional Protocol to ICESCR for the human right to water and sanitation*** is an instrument of international law that needs to be adopted by the States through an international negotiation for ratification. In order to open the negotiation, a first block of States must support the proposal and promote the adhesion of other States, presenting then the Protocol to the UN, through UN Council for Human Rights and the General Assembly.

For this, we need to identify, with the active support of civil society organizations, what States would be willing to support the adoption of such an International Protocol. In order to make a pressure over States and to build public opinion consensus around the Protocol, an international public campaign for a "Water Human Right Treaty" has been launched through the website [www.waterhumanrighttreaty.org](http://www.waterhumanrighttreaty.org)

All civil society organizations (NGOs, Social Movements, Water Networks), water experts, individual citizens, etc., that share the goals of the campaign, may join the **Support Committee**, that will be composed by all organizations supporting the international campaign in their own country. Membership of the Support Committee will imply some tasks at national level:

- make a **pressure on Governments** for their adhesion to the Protocol;
- promoting the **Campaign locally**;
- involving **citizens** through petitions launched by the Campaign and all other public initiatives.

It is also possible to join the campaign individually through the website.

More information: [info@waterhumanrighttreaty.org](mailto:info@waterhumanrighttreaty.org)

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