



Comitato Italiano Contratto Mondiale sull'Acqua
onlus



International Protocol for the human right to water and sanitation

*An International Protocol for the
implementation of the Human Rights to
Water and Sanitation*

WHO ARE THE PROMOTERS

Italian Committee for a World Water Contract (CICMA)

- A non-profit organization committed since 2000 to obtain the recognition of water as a human right, a common good, a world heritage, a source of life for all living beings - a goal shared through the years with other Associations, Committees and Organizations in Latin America, Africa, Asia and Europe.
- As a Member of the **European Water Network** who engaged (2003, 2006) the European Parliament to recognize water as a human right, CICMA has supported the European Citizens Initiative for the human right to water.
- CICMA was among the promoters of the Italian Water Movements Forum (2006) and of the **National Referendum** backed by 27 million voters (2011) aimed at stopping the process of water management privatization in Italy.
- CICMA actively promotes the engagement of Italian Government and public opinion towards a new water policy and a new culture based on the right to water.

ACTIONS PROMOTING THE HUMAN RIGHT TO WATER

Ten years of mobilization for a human right to water

- International Campaigns asking to States and to the European Parliament to recognize water as a human right;
- Alternative World Water Forums (FI 2003-Marseille 2012)
- CICMA supported the efforts of Bolivian and other Latin American Governments in the process engaged at the UN General Assembly to obtain the recognition of water and sanitation as a specific “universal human right” (leading to UN Resolutions of 2010);
- CICMA supported the proposal of a Special Rapporteur on the human right to water, the activity of the first Rapporteur, Catarina de Albuquerque, and is now in contact with the current Rapporteur, Leo Heller.

The right to water in human rights international law

Water was dealt only **indirectly**, as implicit in other human rights that laws aimed at guaranteeing ⇒

- **Universal Declaration of Human Rights, 1948**

art.25 *the right to a standard of living adequate for the health and wellbeing of the family*

- **International Covenant on Economic Social & Cultural Rights, 1966**

art. 11 *adequate standard of living, including adequate food, clothing and housing*

art.12 *everyone has the right to the enjoyment of the highest attainable standard of physical and mental health*

- **International Covenant on Civil & Political Rights, 1966**

art.6 §1 *Every human being has the inherent right to life.*

The right to water directly mentioned

Only in 2002 with the *CESCR General Comment No.15* the UN deal **directly** with the right to water.

1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights [...] States parties have to adopt effective measures to realize, without discrimination, the right to water as set out in this general comment.

2. The human right to water entitles everyone to sufficient safe acceptable physically accessible and affordable water for personal and domestic uses.

The right to water directly mentioned

3. *The right to water clearly falls within the category of guarantees for securing an adequate standard of living since it is one of the most fundamental conditions for survival.*

11. *Water should be treated as a social and cultural good, and not primarily as an economic good.*

The *General Comment 15* marked a crucial step:

⇒ it defined the human right to water and linked it to human rights already acknowledged by an International Covenant binding States parties.

The acknowledgement of the human right to water as an autonomous and specific human right, will arrive only 8 years later, on the initiative launched at the UN General Assembly by the Bolivian government and other 40 countries, mostly from the South of the world.

UN DECADE “WATER FOR LIFE” 2005-2015

Sufficient. The water supply for each person must be sufficient and continuous for personal and domestic uses (drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene). According to WHO, **50-100 lt.** per person per day are needed to ensure that most basic needs are met.

Safe. The water required for each personal or domestic use must be safe, free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.

Acceptable. Water should be of an acceptable color, odor and taste for each personal or domestic use [...] All water facilities must be culturally appropriate and sensitive to **gender, lifecycle and privacy** requirements.

Physically accessible. Everyone has the right to water and sanitation services physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution. According to WHO, water source has to be within **1,000 m.** off home and collection time should not exceed **30’**.

Affordable. Water, and water facilities and services, must be affordable for all. The United Nations Development Program (UNDP) suggests that water costs should not exceed **3%** of household income. -- Is water a right or a market good?

A Special Rapporteur on the human right to water

Resolution 7/22 of the UN Council on Human Rights, 2008

2. Decides to appoint for a period of three years an independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation.

The appointment of a Special Rapporteur on the human right to water and sanitation is prorogated and consolidated by subsequent Resolutions of the CHR.

THE HUMAN RIGHT TO WATER

2010 : the human right to water finally acknowledged

Resolution 64/292, UN General Assembly (28/07/2010)

⇒ the human right to water and sanitation is essential for the full enjoyment of life and all human rights.

Resolution 15/9, UN Human Rights Council (30/09/2010)

⇒ the human right to water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity, as established by the *ICESCR, art.11* (1966).

THE PROBLEM

UN Resolutions are instruments of *soft law*, without a binding strength over States.

⇒ Five years later, the human right to water is not yet actually implemented in any State.

WHO Report 2013 ⇒

880million do not have access to safe water,

2.5billion do not have access to sanitation,

1.5million kids under 5years still die for reasons due to the lack of safe water and basic hygiene,

Even in countries such as Italy tap water is often closed to those who cannot pay their bills.

What do we need for an effective human right to water

Acknowledging the human right : a crucial **advancement**, but **insufficient** to actually guarantee the respect of the right to water.

African and Latin-American countries introduced the human right to water into their **Constitutions** (most recent: Ecuador Bolivia Uruguay) ⇒ but water is still denied to many, under market control.

Human rights belong to **international law**, and need to be realized through international norms of implementation.

The realization of the human right to water can only come from the adoption of an instrument of implementation at the level of international law, binding States to concretely act for ensuring conditions needed in their countries for the respect of the universal right to water.

WHAT OBLIGATIONS FOR STATES

States parties to Human Rights Covenants have **three obligations** - each one entails criteria for evaluating possible violations.

- Obligation **to respect** the right implies the State refrains from interfering: the State ought to avoid any measure suitable to fetter the exercise of the right (pollution, denying access to water).
- Obligation **to protect** the right requires a positive intervention of the State through legislative or other measures aimed to preventing third parties from inhibit the exercise of right (pollution, abusive exploitation of sources).
- Obligation **to realize** the right implies a positive action from the State aimed at creating conditions facilitating the exercise of the right by all, including people unable to do it by themselves. This also entails the obligation **to promote** the right (information, protection of sources, reduction of waste).

CORE OBLIGATION

- Together with these obligations, the State ought to respect the « *minimum core* » or « core minimum obligation »
 - ⇒ the State must ensure for each right a minimum considered essential and that cannot be denied nor delayed. Such a minimum standard is indispensable for guaranteeing an adequate living.
- Being the *minimum core* what is considered essential to life, it is an obligation that the State must fulfill **immediately** → although the *CESCR General Comment No. 15 art.2 §1* recognizes that in matter of economic social and cultural rights obligations should admit a **progressive application** (below), this does not exempt States from their obligation to immediately taking some actions – such as the minimum core, the principle of non-discrimination and some procedural obligations (National Strategies and Plans, administrative and judicial measures of control, conditions of granting benefits).

An International Treaty on the human right to water

In order to realize the human right to water, we need an **International Treaty** on human rights to water and sanitation

- having the strength **to bind State parties** to their implementation and being a reference for all States;
- translating into **binding norms** the principle that water is a human right essential for life, namely by implementing :
 - **Priority of human use** (personal, domestic)
 - **Free vital minimum** of water for all
 - **State responsibility** in guaranteeing the right to water
 - **Justiciability of violations** of the human right before international Courts.

We can rely on existing Treaties indirectly referring to a human right to water as condition for other human rights (life, food, health) or specifically mentioning a right to water (discriminations against women, rights of children and persons with disabilities).

The bases for the human right to water

The bases for a human right to water lay on

- right to **an adequate standard of living**, including adequate food, established by *ICESCR, art.11 §1* (above)
- right to **health** established by *ICESCR, art.12* (above)
- the **right to health** established by the *Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1999), art. §1*: « In order to achieve the objective of this Protocol, the Parties shall pursue the aims of: a) Access to **drinking water for everyone**; b) Provision of **sanitation for everyone**, within a framework of integrated water management systems aimed at sustainable use of water resources, ambient **water quality** which does not endanger human health, and protection of water ecosystems. »

Water and child health/mortality

Convention on the Rights of the Child (1989), art.24 §2 →

« States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and **child mortality**;

(b) To ensure the provision of necessary medical assistance and **health care** to all children with emphasis on the development of primary health care;

(c) To combat disease and **malnutrition**, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and **clean drinking-water**, taking into consideration the dangers and risks of environmental pollution [...] »

Interrelated and essential features of rights

Human rights present some essential features to be respected and fulfilled – that work also as useful criteria for monitoring the progressive realization of the right.

- **Availability** ⇒ water supply for each person must be sufficient and continuous for personal and domestic uses
- **Quality** ⇒ water required for personal or domestic use must be safe, free from micro-organisms, chemical substances and radiological *hazards* that constitute a threat to a person's health
- **Accessibility** ⇒ water and water facilities and services have to be accessible to *everyone* without any exclusion - price

Accessibility includes four overlapping dimensions:

non-discrimination, economic accessibility, physical accessibility and information accessibility

Substantial dimensions of a Treaty on the human right to water

Specifying the human right to water in its substantial and procedural aspects implies taking into account :

- ✓ The right to water for human use
- ✓ The right to a minimum quantity of water
- ✓ The right to have access to water for all
- ✓ The right to water of good quality
- ✓ The right to information on water sources and quality
- ✓ The right to participate into decisions about water
- ✓ The right to denounce violations to the right
- ✓ The right to water even in the case of war.
- ✓ The right to water for vulnerable groups

The instrument we propose

Building on these bases a new instrument of international law on human rights specifically devoted to the right to water as an autonomous human right would fill an evident gap in international human rights law.

In collaboration with a team of academic experts in international law, prof. T. Scovazzi and dr. G. Citroni (Milano-Bicocca University), we drafted an **International Protocol** structured as a second *Optional Protocol to the ICESCR*.

This would allow taking advantage of the competences already entrusted to the *Committee on Economic, Social and Cultural Rights*. However, subject to some inevitable modifications, the Draft could also become a self-standing Treaty binding the States parties.

The proposed *Protocol*

The *Protocol* on the human rights to water and sanitation is composed by 32 Articles.

It is accompanied by a *Commentary*, which illustrates the criteria followed in drafting articles and the **references to international law** that support them, and some **substantial innovations** to be introduced and implemented by the States. The aim is to illustrate that every single article of the Protocol is strictly connected to an obligation already adopted by the international community through Conventions or Resolutions. Hence, ratification of the Protocol on the part of the States is simply a matter of **political will**.

Avoiding commitments unlikely to be accepted by sovereign States, the Draft is based on an advanced level of protection of the human right to water under both substantive and procedural levels.

Progressive Implementation

Taking into account the difficulty that some States, in particular developing States, may face in implementing the human right to water and sanitation, the *Protocol* envisages a progressive implementation of the measures to ensure such right.

Progressive implementation is based on *ICESCR, art.2 §1*:

« Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to **achieving progressively** the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. »

Progressive does not mean delayed

CESCR General Comment No.3 (1990) The nature of States parties obligations, §9

« The concept of **progressive realization** constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time [...] Nevertheless, the fact that realization over time is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device [...] the phrase must be read in the light of the overall objective of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an **obligation to move as expeditiously and effectively as possible** towards that goal. »

However, it certainly means **interdiction of regressive measures**, as it is confirmed in *General Comment No.15*, §19

The content of the Protocol

The Protocol details the human right into a series of principles

- water is a public common good to be realized in solidarity
- the human right to water is mandatory
- prevention and sustainability for future generations
- gradual implementation of the law
- non-discrimination and protection of vulnerable groups
- priority of human use associated to nutrition, food, hygiene
- States' obligation to protect the human right to water
- all people have a right to a complete and transparent information and participation
- anyone is allowed to report and inform the Committee of ESCR about failures or violations by the States
- violations to be prosecuted before international courts
- mechanisms of international solidarity (*International Fund for right water and sanitation*)

The content of the Protocol

In order to implement these principles, the Protocol defines the **main features** of human right to water and sanitation :

- **quantifies** the right to water and States duty to guarantee it /art.2,3
- strengthens the right of local communities, as collective system, to determine the kind of water service they want and the way in which the service has to be managed /art.1, 13
- **recognizes** the community based water system management /art.5
- introduces a scale of the amount of water per person/per day to be guaranteed by the State (50 l. ← WHO guidelines) / art.3
- **quantifies the max level** of water leakages admitted in the networks (20%) /art.6
- **quantifies the max distance** of water and sanitation services / art.4
- **recognizes** *water grabbing, water fracking* and *dams* as bad practices to be discouraged and to be checked out from the vantage point of their environmental impact /art.9
- **defines** a pricing policy that respect the right of people who cannot pay to have access to guaranteed minimum standards /art.12

STATES OBLIGATIONS

The Protocol expects from States that

- They establish **effective domestic remedies** for the realization of the Right to Drinking Water and Sanitation (Art.14);
- They define a **pricing policy** respecting the right of people who cannot pay to have access to a minimum quantity guaranteed (Art.12);
- They establish a **right to compensation** and other measures of reparation for damages (Art.15);
- They **sanction** activities related to waste, pollution, limitation of access to water, as well as to the destruction and damaging of water services and infrastructures (Art.16).
- They refrain from interfering and prevent third parties from interfering with the right to water and sanitation (art.9), also in other countries, they cooperate for **transboundary waters** (art.18), they establish an **International Fund** for the right to water and sanitation, they finance projects to assure the human right to water and sanitations in developing countries (art.17).
- They commit to **monitoring** the realization of the right and **reporting** to the CESCR (art.19).

The Protocol offers to States the bases for opening a negotiation at the level of the UN for an International Treaty of binding character.

INNOVATIONS

Main innovations introduced by the Protocol:

1. quantification of the right to water that States must guarantee (art.2, 3)
2. definition of a scale of the amount of water per person per day, which defines the minimum amount of water per person per day (50 l., according to WHO guidelines) to which everyone is entitled, free of charge and guaranteed by the State (art.3)
3. quantification of accessible water (1000m) and sanitation (500m) (art.4)
4. quantification of a maximum water leakages in the networks (20%) (art.6)
5. justiciability of waste (from 250liters up) (art.3)
6. recognition of the community based water management of water services (art.5)
7. recognition of new phenomena such as *water grabbing*, the hydraulic fracturing (*water fracking*) and *dams*, as bad practices to be discouraged and evaluated according to their environmental impact (art.9)
8. a pricing policy respecting the right to a vital minimum amount of water of people unable to pay (art.12)

OUR CAMPAIGN FOR THE PROTOCOL

The goal of the Campaign is to identify, through the mobilization of citizens, international networks, social movements, NGOs and associations, a ***group of States and Institutions*** willing to open negotiations at the UN for a Second Protocol to the International Covenant on Economic, Social and Cultural Rights defining the mode of realization of the human rights to water and sanitation.

Binding our States to support and subscribe such a Protocol is a responsibility to be taken on by each of us, as human beings, as world citizens, as holder of the right to life.

Each of us and organized group of citizens (committees, associations) must implement all actions of mobilization and advocacy towards our governments and international organizations and communities.



International Protocol for the human right to water and sanitation

NGOs, Social Movements, Water Networks, water experts, individual citizens, etc., that share the goals of the campaign, may join the International Support Committee, that will be composed by all organizations supporting the international campaign. Membership of the International Support Committee will imply some tasks:

- make a pressure on Governments for their adhesion to the Protocol;**
- building a Local Committee of Support;**
- involving citizens through petitions launched by the campaign and all other public initiative they might set.**

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

www.contrattoacqua.it

www.waterhumanrighttreaty.org

For more information **info@waterhumanrighttreaty.org** - **[@watertreaty](https://twitter.com/watertreaty)**