



## 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, the UN 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<sup>th</sup>, 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 five 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.**

WHO and UNICEF in their joint 2015 Report (Joint Monitoring Programme) denounce that more than 663 million people have no access to safe drinking water, more than 2.6 billion have no access to sanitation – that is the primary cause of water contamination and related illnesses. At the end of the UN “Water Decade 2005-2015”, according to the 2013 Report “Safe Drinking Water and Sanitation” of the Special Rapporteur on the human right to water the consequences of the lack of access to drinking water and sanitation are the following:

- ✓ 1.5 million children die before 5;
- ✓ 443 million of school days are lost because of illnesses related to poor water and sanitation;
- ✓ With poverty growth, in all countries also grows the number of people unable to pay water bills;
- ✓ 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 parties have shown no political will to apply UN Resolutions; only a few of them, under the pressure of 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 human right. The discretionary power left to States is likely to affect the universal character of the human right to water, while no specific commitment from States or the UN is expected. Even worse: the post-2015 Development Agenda does not include guaranteeing the human right to water as an objective of sustainable development (Objective 6), 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>.

Indeed, the current UN Special Rapporteur in his 2015 First 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”, while State responsibility only consists in guaranteeing that price is affordable. 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 last December 2015**, aimed at separating water and sanitation as two different human rights. Meantime, the UN and the World Bank have launched the creation of a [Group of High Level Experts](#) that should replace UNSGAB on the implementation of Objective 6 of the post-2015 Agenda.

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

## The instrument

In order not to leave markets and corporations defining how the human right to water may be implemented, we need **new instruments** for the implementation of the UN Resolutions on the human right to water and sanitation. **Water Movements** that succeeded in mobilizing public opinion for the acknowledgement of the human right should now feel committed in launching and supporting the adoption of such instruments and claiming from their own State and the international community that they ratify them.

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 legislations, 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. At the same time, this instrument allows Water Movements to strengthen their claims against Governments and Parliaments for the concrete realization of the human right to water and sanitation in their countries.

**CICMA** commitment in the last year has been working in order to identify what instrument of international law would be the most suitable to actually implement the human right to water and sanitation. Our proposal of a **Draft International Protocol** for the implementation of the human right to water and sanitation comes out of a **political consideration**: national legislations, 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. As a matter of facts, States have been free to regulate the access to water through bills even at a minimum amount respectful of the human right, in other words through an economic price. 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.

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<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).

CICMA **strategic choice** has been to draft a juridical instrument, in accordance with principles proposed by our *Manifesto for the human right to water*, as well as with principles shared with other Water Movements and formalized in all Declarations produced by Alternative World Forums (2003-2012). 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, a **Second Optional Protocol to the International Covenant on Economic, Social and Cultural Rights** (ICESCR) was identified as the most valuable instrument, given the binding character of the Covenant, and a proposal of Protocol was drafted. The Protocol is accompanied by a juridical **Commentary**, which illustrates the criteria of drafting and the references to international law that underpin the 32 articles of the Protocol. The **next objective** is to identify a group of States and Institutions willing to submit to the international community the proposal and to open a negotiation 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

Starting from principles recalled above, the International Protocol for the human right to water and sanitation establishes that **water is a human right and a common good**. It offers to States 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 to sanction violations of the human right to water that everybody may denounce to the International Court. His **non-regressive character** (art.2) 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 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.

The project of Protocol has been shared with Maude Barlow and the Water Network at the Canadian Council in Toronto (Fall 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 2014). The Protocol has been presented to Via Campesina, Sem Terra, Red Vida; it has been mentioned from Social Movements in their meetings with Pope Francis in Rome and Bolivia. In Italy, it has been presented to Forum dei Popoli, to the European Water Forum and the Italian Forum of Water Movements. It has also been presented for evaluation to a first group of States: the Italian Ministry of Foreign Affairs, some ALBA States (Bolivia, Ecuador, Uruguay), Mexico, the Holy See and their Commission on Justice and Peace, the main religious organizations.

## How to support this 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 Water Movements, what States would be willing to support the adoption of an International Protocol for the implementation of the human right to water and sanitation. In order to make a pressure over States and to build public opinion consensus around the adoption of 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)

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 at National level. Membership of the Support Committee will imply some tasks at national level :

- 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.

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

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