



***MINISTRY OF FOREIGN AFFAIRS AND
INTERNATIONAL COOPERATION
Inter-ministerial Committee for Human Rights***

***Italy's contribution in relation to the
Questionnaire on
The principle of accountability in the context
of the human rights to safe drinking water and
sanitation***

April 2018



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QUESTIONS FOR STATES

Following to your query, Italian Authorities are in a position to provide the following information.

The principle of accountability in the context of the human rights to safe drinking water and sanitation

- 1. Please provide information on how the principle of accountability is defined and applied in the legal, policy and institutional frameworks, particularly to ensure the realization of the human rights to safe drinking water and sanitation.**

The rights to safe drinking water and sanitation are deeply embedded in the European Union and Italian legal framework, with specific regulations on the matter establishing, *inter alia*, drinking water quality standards and treated wastewater standards for discharging into surface water, requirements on collection and treatment for agglomerations, monitoring obligations on drinking water and wastewater. The implementation of the general principle of accountability is ensured by means of data reporting and a penalty system. Moreover, general EU regulations address the general issue of the right of access to environmental data and the European Statistics ([http://ec.europa.eu/eurostat/statistics-explained/index.php/SDG_6 -
Clean water and sanitation#Ensure availability and sustainable management of water and sanitation for all](http://ec.europa.eu/eurostat/statistics-explained/index.php/SDG_6_-_Clean_water_and_sanitation#Ensure_availability_and_sustainable_management_of_water_and_sanitation_for_all))

2. Please describe challenges or gaps identified in the application and implementation of the principle of accountability to ensure the realization of the human rights to safe drinking water and sanitation. How have these challenges and gaps been addressed?

Italy has a multilevel governance framework in the water sector involving public and private actors and several governance levels.

This framework provides on the one hand a clear identification of the tasks of the different actors and their responsibility and the required flexibility for managing water services , on the other hand, relying on the capacity of several Entities (State, Regions, Optimal Territorial Areas, local authorities, private companies, the Regulatory authority on water Services etc) can imply difficulties in ensuring homogeneous achievements on the whole national territory.

Responsibility

3. Please describe how and where (law, policy, administrative documents) the roles and responsibilities of the actors involved in the provision of water and sanitation services are defined in accordance with the normative content of the human rights to safe drinking water and sanitation. In other words, how are defined the roles of the actors responsible for the accessibility, availability, affordability, acceptability and quality of water and sanitation services in an equal and non-discriminatory manner.

Italy developed a comprehensive policy and institutional framework for management of water services. This framework was shaped since 1994 by the Galli Law (Decree 36/1994) which helped mitigate territorial fragmentation of water and sanitation services through aggregation and rationalisation of the sector. The Galli Law aimed at improving the water supply and wastewater sector by establishing a clear-cut separation between service provision and public administration activities, and by improving overall efficiency through the gradual independence of the financial systems and operations based on income derived from water and wastewater tariffs.

The Galli Law reduced fragmentation of water services through the aggregation of utilities into larger multi-municipal units (Optimal Territorial Areas, *Ambiti Territoriali Ottimali*, ATOs) managed by autonomous authorities with a legal status. The reform provided for economies of scale and horizontal integration (one operator for each ATO), as well as economies of scope and vertical integration. Following the reform in 1994, undertakings were drastically cut, responsibility to organize water services was given to Local public Authorities across Optimal Territorial Areas into which the Italian territory was divided, tariff was approved at local level with a principle of covering forecasted costs, a governmental body at national level was created to supervise local authorities.

As a result, investment increased and quality of service improved.

In 2006 the Legislative Decree 3 April 2006 (Environmental Code) reclassified the entire national environmental legislation for pollution control, environmental

impact assessment, and environmental decision making. Part III of the Code defined water environmental standards and conditions for water resources management, transposing the Waterframework Directive. It also introduced the principle of cost recovery. Concerning Water Services (Titolo II of Section III), the Environmental Code confirmed the approach on water services set out by the Law 36/1994 based on the organization of Optimal Territorial Areas.

The most recent reform by decree-law 201 of December 2011 converted into the Law n. 214/11 transferred the regulating powers on water services to an independent Authority, the Regulatory Authority for Electricity and Gas (now Regulatory Authority for Energy, Networks and Environmente ARERA-AEEGSI (https://www.arera.it/it/che_cosa/presentazione.htm)).

A new governance has been set into place, whereby Local Authorities (established by Italian Regions) organize integrated water services, decide which legal form is adequate to entrust services (whether to private or mixed public-private companies, by means of a tendering procedure or to public companies by means of a direct public concession), and determine the local tariff on the basis of AEEGSI tariff methodology, which requires AEEGSI final approval.

Finally, the recently approved Decree of President of Council of Ministers of 16 October 2016 set out a social water tariff, ensuring to poor people a free access to a minimum amount of drinking water (50 l/inhabitant.day) <http://www.gazzettaufficiale.it/eli/id/2016/11/18/16A08100/sg>

4. Please provide information on existing performance standards, and monitoring and assessment mechanisms to ensure accountability for actions of the State that affect the enjoyment of human rights to safe drinking water and sanitation of people both within and outside its borders.

Concerning drinking water the national regulation (Legislative decree 2 February 2001, n.31

<http://www.trovanorme.salute.gov.it/norme/dettaglioAtto?id=51112&completo=true>

implementing the Directive 98/83/EC - Drinking water directive) set out the standards on drinking water, the monitoring requirements and the control and sanction system.

Moreover, in order to inform the citizens, the national regulation set out that the Ministry of Health shall publish triennially a report on the quality of the drinking water supplied to consumers. Member States of the European Union are also obliged under the Drinking Water Directive 98/83/EC to report triennially the monitoring results to the European Commission under Article 13(5) of the Directive. A synthesis report is then published by the Commission.

Concerning sanitation, the Environmental Code (Legislative Decree 3 April 2006) , implementing, inter alia, the Urban Wastewater Treatment Directive 271/91/EEC, set out the obligations on collection and treatment of wastewater, on monitoring of wastewater treatment plants to assess performance and on requirements for discharges from waste water treatment plants. A report on the disposal of urban waste water and sludge in their areas shall be prepared every two years and transmitted to the European Commission.

Based on the reports transmitted by Member States the Commission may take action in case it is considered that the EU regulations are not complied with by individual Member States and open an infringement procedure. The infringement procedure may lead to refer the matter to the European Court of Justice. In case the ECJ concludes that there is a breach of EU Law and this is not rectified, financial penalties can be established by the Court, which can be either a lump sum and/or a daily payment.

Information about Commission Decision on infringements is available online.

Therefore, the accountability of the action of the State is ensured through a system based on:

- an external verification from the European Commission of the information provided on a regular basis on the implementation of the obligations on drinking water and wastewater treatment set out in the European regulations (based on an obligation on reporting set out in EU laws)
- a system of sanctions for non compliance based on the ruling of the European Court of Justice.

5. In situations where non-State actors provide water and sanitation services, how does the State ensure accountability for the actions of those actors? What documents and mechanisms exist to define the responsibilities and performance standards of non State actors, and to monitor and assess their behaviour in a transparent and objective manner?

As described above (point 3), the Authorities (ATOs) in charge of water services are supervised by an independent Authority ARERA-AEEGSI. This independent body regulates, controls and monitors the water services in Italy. Regulation by ARERA- AEEGSI applies the following general principles, established by the founding law nr. 481 of 14 November 1995:

- ensure availability and distribution of regulated services in a uniform way throughout the country;
- establish a reliable tariff system, that is equitable, certain, transparent and non-discriminatory;
- protect consumer and customer rights;
- ensure that delivery of water services is efficient, effective and financially and economically balanced;
- ensure full cost recovery, in respect of EC Directive 2000/60.

The Water Tariff Method established by AEEGSI on 27 December 2013 (Resolution 643/2013/R/idr) covers the efficient costs recognized for the delivery of the integrated water service. Until 2012, before AEEGSI intervention, three methodology were in place. The new tariff method for the first regulatory period (2012-2015) was asymmetric and flexible, allowing Local Authorities to choose one out of four possible regulatory schemes, depending on the combination between objectives done by the operators and the level of investment planned by the competent Local Authority.

Main responsibilities of the Authority includes

A)Regulatory functions:

- Setting tariffs for protected markets and for the use of monopoly infrastructures (define cost components, set/update tariff methodology for tariff determination, approve tariffs)
- Setting compulsory standards for technical and commercial quality of service, by means of incentives, penalties, refunds
- Setting rules for administrative and accounting separation of vertically integrated companies
- Setting minimum conditions to be included in investment programmes and economic-financial plans provided by Local Authorities, and monitor their compliance

B)Monitoring functions: collect economic-financial data from operators, ensure compliance of regulation

C)Enforcement functions: consumer protection, infringement procedures, dispute settlement

D)Advising functions: providing opinions to Government and Parliament

Answerability

6. Please provide specific examples of cases where the State provided reasoned justifications for their actions and decisions to those whose human rights to safe drinking water and sanitation were affected.

Not applicable

7. Please provide specific examples of good practices on how individuals and groups – including those who are particularly hard to reach – are informed

of available accountability mechanisms, and what measures exist to support and empower them to access and utilize those mechanisms.

See above, text in reply to point 4.

- 8. Please provide examples of mechanisms in place that provide a platform or forum for participation and discussion on remedy measures specifically on the human rights to safe drinking water and sanitation. (These may include monitoring bodies, platforms for civil society to participate, consultations, public hearings, civil society monitoring.)**

See text in point 5 on the role of ARERA-AEEGSI.

Enforceability

- 9. Please provide examples of effective mechanisms to ensure that State and non-State actors at all levels are subject to enforceable sanctions or remedial actions in relation to the violation or abuse of the human rights to safe drinking water and sanitation. *Examples may include judicial, quasi-judicial, administrative, political and social mechanisms.**

See the text in reply of the previous points and the annual report from the Agency ARERA-AEEGSI.

- 10. Please provide examples of cases where State and non-State actors were held accountable for their obligations and responsibilities with regard to the human rights to water and sanitation in front of a judicial, quasi-judicial, administrative, political and other mechanisms.**

See the annual report from the Agency in the ARERA-AEEGSI website.

- 11. Please provide examples of cases where State effectively monitored and held nonState actors accountable for their actions that negatively affected the enjoyment of the human rights to water and sanitation within and outside its borders.**

See the text in reply of the previous points.

- 12. Please provide information on how outcomes of accountability mechanisms are implemented and complied with**

See the text in reply of the previous points.

QUESTIONS FOR NON-STATE ACTORS

- 1. Please describe the role and responsibilities of your organization in the water and sanitation sector.**

The Italian Committee for the Global Water Contract (CICMA) was born in Italy in March 2000, with the aim to promote a new culture of water as a source of life, and the recognition of water as a specific human right, according to the first *Water Manifesto*.

The right to life that had been launched in Lisbon in 1998 by the Committee for the Global Water Contract.

In Italy, the World Water Contract (CICMA) has promoted campaigns for a responsible culture of water in schools, in civil society, with public companies, and urged the decision-makers and the Parliament to provide the country with a relevant law for water as human right and a public management. In 2007 and 2014 CICMA support the presentation of citizen's initiative for a proposal of law to recognize water as a human right and a commons goods. A group of Parliamentarians in 2016, accepted this bill and the Chamber of Deputies approved a bill that recognize the human right to water, quantified the minimum vital to be guaranteed to each citizen, as free access to at least 50 lt / pers / dg with coverage of costs through the water tariff, after being. Unfortunately the approval process has not been completed by the Senate with the end of the legislature the law has lapsed (2018).

In 2006, the World Water Contract supported the birth of the Italian Water Forum and was the promoter of the Campaign for the Referendum that blocked the development of private water services and the competition of local public services put up for tender during 2011.

European level

- **CICMA** has proposed and obtained by European Parliament two important resolutions in March 2004 and 2006 that recognize: water in note a goods and water as human right.
- **CICMA** realise, in partnership with international Committee for Water and IERPE, in the seat of the European Parliament,(Bruxelles) the 1° World Water Assembly of the Citizens and Elected (March 18-20 2008).The assembly approved of a Declaration to request the recognition of water as human right and as a common goods by UN.

International level

- **CICMA** supported the Bolivian government initiative for the draft resolution to the recognize of the right to water presented to the United Nations and approved with a resolution in July 2010; after support the action of the first UN Reporter through to Council of Human rights in Genève
- **CICMA** support (2011-2014) the actions proposed by local network to formalize the water right in the national Constitution as just realized in Ecuador, Uruguay, Bolivia, African Country
- **CICMA** is committed (2014), with the major water networks, to achieve right-water as a specific objectives of SDGs in the Agenda 203. Despite the support of some states (Italy, Spain, Turkey) the human right to water, presented in the first draft.
- **CICMA** with a team of experts in International Law of the University of Milano-Bicocca (coordinated by prof. Tullio Scovazzi), we identified, during 2015, the form of a Second Optional Protocol to the International Covenant on Economic, Social and Cultural Rights as the most adequate to our purposes. This proposal

was *supported by the Campaign “Waterhumanrighttreaty”*- Now we are working for the mobilization of Movements and Water Committees, through advocacy actions, to constitute a first block of States available to start a negotiation process for the adoption of a Protocol.

2. Depending on the role and responsibilities of your organization, please provide information on how the principle of accountability is defined and applied in the policies and activities of your organization, particularly to ensure the realization of the human rights to safe drinking water and sanitation.

Alternatively, please provide information on how the **principle of accountability is defined and applied** in the legal, policy and institutional frameworks of the State(s) with whom your organization is working, particularly to ensure the realization of the human rights to safe drinking water and sanitation.

At international level CICMA is engaged to promote a legal instrument able to realize the human right to water as a universal, autonomous and specific human right, as an **International Law Treaty** signed by States, defining binding norms and States’ obligations to achieve the right

At national level CICMA working to obtain, through a national law, the recognition of the human right to water, the quantification of the right to access to least 50 lt/per/day with the taking charge of the cost through general taxation, the adoption of a model of public management and participated by the citizens of the water service

The main actions implemented by the CICMA are:

1.Level International institutions

- *UN Secretary*. Advocacy actions during the process of defining the 2030 Agenda to recognize the implementation of water as human right
- *Human rights council*. Raising awareness on some State Representatives present in the Council with respect to a path of study on the legal instruments for the implementation of the human right to water
- *States*. Presentation of the Protocol proposal as a juridical instrument for the realization of human rights in some Governments and Institutions (Italian Ministry of Foreign Affairs and Cooperation, Governments of ALBA countries, Vatican Secretariat of State)
- *European Commission*: solicited debate in the European Parliament through meetings with some parliamentary groups (Commons goods) to commit the Commission to adopt legal measures for recognizing the human right to water and adopting framework directives (Drinking water) guarantee the human right to water at the minimum vital level.

National level

- Advocacy action on the National Sustainable Development Strategy to support Agenda 2030 elaborated by the Ministry of the Environment through participation in working groups for the drafting of the document

- Participation in the Alliance for Sustainable Development, organization of civil society that will undertake to solicit and monitor Italy's commitment compared to 17 development goals.
- International cooperation. CICMA has contributed to the drafting of Guidelines for cooperation in the water sector adopted by the Directorate General for Cooperation, adopted in 2016 and requested, with documents shared with Italian NGOs, the promotion of the human right to water as a priority of the three-year cooperation.
- Local authorities (Metropolitan Cities). After 2010, more than 18 cities have accepted the CICMA proposal to incorporate the human right to water in city statutes and adopting good practices to support access to free drinking water in public spaces. CICMA obtained inclusion of the commitment to guarantee universal access to water between in the Expo Commitment of Milan Food Policy Pact.
- Italian Parliament. CICMA support a legislative process that in 2016 led to the approval, by one Chamber of the Parliament, a proposal of law that recognized the human right to water; unfortunately, the text approved by the Chamber was blocked in the Senate during 2017.

Civil society and international networks

- Sharing the proposal of the Protocol as a legal instrument for implementing human rights to water with the main international networks of NGOs, with social movements, through the World Social Forums in Tunis (2015) and in Brazil (March 2018), with the popular movements in the meetings with Pope Francis. All these Declaration support the request to relevant measures and instruments of international law, especially in the framework of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of the United Nations, in order to effectively strengthen the human right to water and sanitation, and to clarify and specify its content and States' obligations, and to prevent any form of water grabbing.

3. Please describe any challenges or gaps identified when applying and implementing the principle of accountability in relation to the human rights to safe drinking water and sanitation. How were these challenges and gaps addressed?

The main difficulties encountered, by CICMA, in the implementation of the human right to water are attributable to the following factors

- The dominant political and cultural vision, promoted by companies and finance, of water as an economic resource and the transformation of the human right to water into the right of economic access to be guaranteed only through a price set by the market.
- The non-binding nature of the UN resolution and the absence of initiatives to implement the UN human right to water and through the mandates given to the Special Rapporteur
- The weak political will of the governments to accept the challenge of implementing the human right to water, at least at the level of guaranteeing access to the minimum

vital linked to the dignity of human life, through the adoption of binding legal instruments

- The constraints imposed to member countries by the European Commission with the principle of Full Cost recovery that subordinates access to water to the taking charge of all costs, by the consumer and the lack of recognition of the human right to water among those recognized to European citizens. This prevents Member States from taking on the cost of the right to water at a minimum level of living.
- The absence at national, European and international level of legal framework to implement the human right to water and financial instruments of international cooperation supporting States and local communities.

Responsibility

4. Please provide information on the level of clarity and transparency of the roles and responsibilities, and performance standards of State and non-State actors in accordance with the normative content of the human rights to water and sanitation. In other words, how are defined the roles of the actors responsible for the accessibility, availability, affordability, acceptability and quality of water and sanitation services in an equal and non-discriminatory manner.

The attitude of the Italian State and political forces is ambiguous. At the level of principle, everyone recognizes the human right to water but does not take subsequent legislative measures.

After 7 years from the referendum that in 2011 has established that water is not a commodity and the management of water is not profitable, until 2018 no one of the 5 Governments have adopted legislative measures to respect this popular will.

The attitude of the Parliament is to guarantee access to water through social bonus only for the most disadvantaged groups and defaulters, to avoid the legal costs of the recovery of bills, social tensions in case of water detachment.

Citizens are not able to claim the human right to water in the absence of legislative recognition.

Environmental organizations have not yet accepted the vision of water as a human right and of water rights; the consumers association do not support the defense of human rights, but only the disputes linked to the tariff of access to water.

5. Please provide information on the availability and accessibility of information about State and non-State actors responsible for the realization of the human rights to safe drinking water and sanitation.

At national level, the current legislation, supported by all political parties, is based on the implementation of the European economic vision to access of water by an economic service, entrust management to listed companies, and the access to water subject to payment of the service costs (principle of full recovery cost).

The national policy adopted by the Parliament, by 2011, was to subtract the water public governance of service and tariff to the municipalities, to entrust it to a Authority of market (Agency ARERA) related to regulation and control of water services network industrial services, on the base of competition and competitiveness principles.

On the basis of a law adopted during 2017, the Authority has adopted a measure that will become operational in 2018, to introduce a discounted of tariff for families in poverty, subordinating access to the presentation of an application to the Municipality that must verify the existence of income and status **requirements**. The coverage of the cost of the discount, limited to access to the first 50/lt /pers /dd for each component of the family, is achieved by increasing the rate of the water service and then taken in charge by all consumers.

The feasibility of violations with respect to the interruption of the right of access to water are only at the level of appeals to administrative Courts and in relation to the service contract signed with the supply company, which however is a private contract (private law).

Answerability

6. Please provide examples of good practices or gaps on how the State informs individuals or civil society organisations of its progress, retrogression and failures in the realization of the human rights to safe drinking water and sanitation.

The human right to water is not recognized in Italy at the Constitution or Legislative level.

So there are no Reports about the implementation of the human right to water presented by the Government to Parliament and available to citizens.

The failure to recognize the human right to water by the national legislation referred to in the 2016 Report to the Parliament on the Status of Human Rights by the International Committee on Human Rights (CIDU)

Access to water. The information is available only related to water management service about the tariff system, water quality, investments and contents. The Report is produced annually by the Authority ARERA about the status of service management of water, gas, electricity. Other report is produced by the National association of National Association of Water Service Management Companies.

Access to water to disadvantaged groups. The facilities for water can be accessed only at the end of 2018, and the information are entrusted by the Municipalities through the sites.

Water quality. Information regarding the quality of water for human use and monitoring of sources of supply are provided by the Ministry of the Environment but are often difficult to access and cover all water resources.

Health control on the quality of the water. The information about the quality of water are entrusted by the Regions and by local health monitoring authorities; the reports available on their sites. The companies of water service assure the quality of the water for human use and the information are available by the site.

The political approach, at the level of Ministries and Parliament, is to consider the human right to water not a universal, autonomous and specific right but a social right that must be recognized only to the most disadvantaged classes, without having to pay the cost through general taxation

7. Please provide examples of good practices or gaps on how individuals or civil society organisations obtain reasoned justification for actions and decision of State and non-State actors.

- Citizens. Some citizens' committees, supported by consumer associations, have resorted to administrative courts or peace judges to contest tariff increases, by the companies, to recover lower of revenues determined by the reduction in water consumption or the maintenance of percentages of capital return not recognized by the Authority through the tariff system.
- Some citizens have taken legal action in administrative courts in cases of interruption of water supply or have taken measures to authorize tariffs considered burdensome.
- In the case of interruption of water supply the administrative courts have imposed to the companies the obligation to restore the service and the companies apply a reduction in the flow provided in homes to a quantity of 50lt / pers / dd.

8. Please outline the main obstacles encountered when accessing existing accountability mechanisms*. *Examples may include judicial, quasi-judicial, administrative, political and social mechanisms.

In the absence of a legislative framework for the recognition of the human right to water, the citizen does not have the possibility of challenging violations and activating actions of justice against the State or local administrations (Municipalities) or to refer to the Constitutional Court of Justice the water human right.

The disputes for the access to water can be activated only at private law level, referring the service contract signed by the citizens with the water service management company that supplies water for human use; the commercial contract is regulated by service Charters that each company drafts and proposes to the user.

Enforceability

9. Please share your experiences in holding States accountable for violation of the human rights to safe drinking water and sanitation. How do these mechanisms work in practice?

It is not possible to take legal action against the State in order to claim the right to water as it is not recognized in the Constitution.

The right to water is still associated with the right to health and dignity of the person, rights specified in the Constitution.

10. Please provide examples of accountability mechanisms* suited for holding non-State actors accountable for breaches of its responsibility to respect human rights to safe drinking water and sanitation.*Examples may include judicial, quasi-judicial, administrative, political and social mechanisms.

CICMA has solicited and obtained the following commitment of some water service management companies, controlled by the Municipalities:

- to pay for the cost of information tools on the quality of the water supplied (labels, sites, info in water bolt)
- create points for dispensing drinking and carbonated water in public spaces, schools, canteens, municipal offices.
- to sign with some management water Companies and Municipalities Memoranda that allow citizens and associations as CICMA to access control analyzes on the quality of the water supplied

11. Please describe how your organisation participated in mechanisms to hold State and non-State actors accountable for the violation or abuse of the rights to water and sanitation. Has the contribution been taken into account in a meaningful manner and has it been included in State's follow-up action and reporting?

The experiences realized by CICMA were those of reporting some cases to Organizations in consultative status at Ecosoc to activate reports to the Human Rights Council.

CICMA has supported some citizens who have been interrupted by the provision of the water service reporting available lawyers; CICMA has promoted awareness raising actions in the lawyers' order to stimulate a commitment of the order to protect the human right to water.