



# Model Law on Community Water and Sanitation Systems

Latin American  
and Caribbean  
Parliament



# **Model Law on Community Water and Sanitation Systems**

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## PREAMBLE

The right to water is a standalone right inextricably connected to the right to an adequate standard of living and is understood to be also inherent in the right to health and the right to life. The right to water and the right to food are intimately connected and therefore, these rights are expected to mutually support each other's realization with a view to contributing to an adequate standard of living<sup>1</sup>.

The 2030 Agenda includes a goal exclusively devoted to water-related rights (Sustainable Development Goal 6). This focuses on achieving universal access to drinking water services and includes access to sanitation and hygiene services, reduced water pollution, efficient use of water resources, integrated management, protection and recovery of water-related ecosystems and community participation in water and sanitation management.

With regard to the latter, the targets of SDG 6 include:

- a) expand international cooperation and capacity-building support to developing countries in water and sanitation-related activities and programmes, including water harvesting, desalination, water

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<sup>1</sup> Morgera, E., Webster, E., Hamley, G., Sindico, F., Robbie, J., Switzer, S., Berger, T., Silva Sánchez, P.P., Lennan, M., Martin-Nagle, R., Tsioumani, E., Moynihan, R. & Zydek, A. 2020. The right to water for food and agriculture. Rome, FAO, available at: <http://www.fao.org/3/ca8248en/CA8248EN.pdf>

- efficiency, wastewater treatment, recycling and reuse technologies;
- b) support and strengthen the participation of local communities in improving water and sanitation management.

In 2018, UN Water published the SDG 6 Synthesis Report 2018 on Water and Sanitation<sup>2</sup>. The report highlighted the need to eliminate inequalities in access to water, sanitation and hygiene, as well as the importance of strengthening good water governance with all sectors of society participating in decision-making on water resource management.

Most recently, on 9 July 2020, during the High-Level Political Forum on Sustainable Development, FAO Director-General QU Dongyu launched the SDG 6 Global Acceleration Framework. This new framework will help achieve the human right to water and sanitation, with strengthened partnership across the UN system at country level.

Parlatino has been active in promoting international recognition and coverage of the human right to water and sanitation: its significant contributions to regional

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<sup>2</sup> [www.unwater.org/publications/highlights-sdg-6-synthesis-report-2018-on-water-and-sanitation-2/](http://www.unwater.org/publications/highlights-sdg-6-synthesis-report-2018-on-water-and-sanitation-2/)

legislative expansion and harmonization include the approval of a Draft Framework Law on the Human Right to Safe Drinking Water and Sanitation, dated 30 November 2012. The Law's central objective is to *"encourage the recognition of access to safe drinking water and sanitation as an essential human right for life"*<sup>3</sup>, in line with the recognition achieved by the United Nations General Assembly two years earlier.

However, the work done by the Latin American Parliament has now become more relevant in view of subsequent quantitative developments, including recognition of the strategic role of local community participation in improving water and sanitation management. This has led Parlatino to adopt measures to address the Sustainable Development Goals through regional legislation that adopts targeted analyses, criteria and guidelines implemented at international level over the last few years.

Transposing the provisions of international human rights treaties into national laws and establishing clear rules that specify competencies, responsibilities and processes is an important step towards ensuring that those treaties are put into practice.

By enshrining the human rights set out in international treaties in national law, we can also harmonize the

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<sup>3</sup> Draft Framework Law on the Human Right to Safe Drinking Water and Sanitation, dated 30 November 2012

contents and interpretation of those treaties. This step will also provide greater clarity on their scope, in addition to defining the responsibilities of state authorities in promoting, respecting, protecting and guaranteeing them.

The formal recognition of human rights contained in international treaties by the signatory countries does not mean that they shall be shoehorned into the law of those states. Instead, the laws shall acknowledge the way in which legislative agreements and references are being shaped – globally and within the Americas – to reflect a shared concern and undertaking to identify problems and strategies to achieve respect for and compliance with human rights.

*“International human rights treaties and treaties drawn up within the inter-American system constitute shared hemispheric values that represent a commitment to democracy and the rule of law. When a human rights violation is committed, the violation concerns an asset legally protected by a system – i.e. a value protected at continental level by all states.”<sup>4</sup>*

Access to water and sanitation are therefore basic and fundamental rights for human dignity and their benefits extend into different spheres: health, education,

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<sup>4</sup> Christian Steiner and Patricia Uribe, Coordinators. “American Convention on Human Rights, Commentary”. Supreme Court of Justice of Mexico, 2014



a healthy environment, preservation of ecosystems and their biodiversity, food and nutritional security, livelihoods and many more.

General Comment No. 15 of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) states that 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 have to adopt effective measures to realize, without discrimination, the right to water, as set out in this general comment.<sup>5</sup>

The SDGs propose ambitious targets for achieving “safely managed” water and sanitation services, but many people still lack the right to a basic level of access and therefore practice open defecation or drink surface water. Several Latin American countries are affected by great inequalities in terms of living area (urban or rural), educational level and ethnicity. The 2015 Joint Monitoring Programme (JMP) for Water Supply, Sanitation and Hygiene offers a legislative interpretation of SDG target 6.1 “By 2030, achieve universal and equitable access to safe and affordable drinking water for all”.

However, in 2015, the Inter-American Commission on Human Rights stressed in its annual report that about

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<sup>5</sup> General Comment No. 15 on the Right to Water of the International Covenant on Economic, Social and Cultural Rights

one quarter of the population of Latin America and the Caribbean – i.e. more than 100 million people – lives in areas affected by water scarcity. This is exacerbated by difficulties in water supply, given cases concerning source pollution, the intense urbanization process that has taken place in recent decades and the impact of mining activities and the use of agrochemicals. Other factors include discrimination that specifically affects people living in poverty, Afro-descendant communities, rural, urban and farming communities and other groups that have historically been discriminated against<sup>6</sup>.

The management systems implemented by states in the region, which are designed to supply towns and cities with water, have therefore not been able to cater for the requirements described above. This mainly relates to the demands of small, rural (indigenous and farming) and peri-urban communities and has led to the emergence of a large number of self-management schemes that have been implemented in the region, which offer an important alternative for achieving the human right to water in these communities.

“Experiences recorded in other Latin American countries, including Mexico, led to the recognition that – along with

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<sup>6</sup> Organization of American States, “Implementation of the Human Right to Water and Sanitation through the OAS Inter-American Programme for Sustainable Development”, 2019

the challenges of burgeoning urbanization – countries of the region face another no less important and perhaps even more complex challenge, which is to meet the needs of rural populations, peri-urban areas that have come into being because of migratory flows between rural and urban settings and cities that retain a significant degree of “rurality” even though they are described as urban. The implementation of state decentralization and streamlining policies has somewhat diminished the state’s ability to properly address the needs of these small communities. Self-management schemes that have come into being since the end of the twentieth century have progressively come into their own as effective and efficient solutions.”<sup>7</sup>

Because these systems are operated by communities with the participation of their members, such strategies have made it possible to enter into social agreements that have, so far, led to encouraging results regarding the sustainable management of common assets, especially when such agreements are based on fairer and more inclusive participation.

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<sup>7</sup> Enrique Aguilar Amilpa. COMMUNITY MANAGEMENT OF WATER AND SANITATION SERVICES: Possible application in Mexico. United Nations 2011. This document was prepared by Enrique Aguilar Amilpa, ECLAC consultant as part of the activities by the Joint Programme of the United Nations System in Mexico with the Government of the United Mexican states (OPAS- 1816) “Establishing effective and democratic water and sanitation management in Mexico to support the achievement of the Millennium Development Goals”

Community management is based on the cooperation of community members, who act through their own forms of organization with the aim of satisfying their needs, with no thought of profit or gain. Community management paves the way for the recovery and/or strengthening of members of society in a scenario of pluralism, respect and cooperation, which is not achieved with government-run systems.

*“Community management and water sanitation can facilitate human rights. It is essential for community management to receive the support of local and federal governments so that good quality, accessible services can be offered without discrimination.”<sup>8</sup>*

The experience of water management in indigenous and tribal communities has been very significant in the Americas. By owning the territory that they inhabit and occupy and retaining their own institutions and forms of government as well as their own regulatory systems, such communities have also been able to own their community water and sanitation systems (CWSS) as another expression of their “communality”. Such systems vindicate the communities and their forms of organization as well as playing an important role in ensuring that states in the region guarantee the human right to water and sanitation.

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<sup>8</sup> Léo Heller, UN Special Rapporteur, through a video shown at the beginning of the introductory discussion “Community water management and the Sustainable Development Goals (SDGs)”, 2019

Even though not all Parlatino countries have ratified International Labour Organization (ILO) Convention 169 and many of them still observe the provisions of ILO Convention 107, Convention 169 nevertheless recognizes the rights of indigenous and tribal peoples to natural resources as well as the right to participate in their use, administration and conservation. This automatically gives them the right to manage, control, administer and use water in their communities and obliges states to respect, protect and guarantee those rights.

There are also approximately 145,000 community water and sanitation system (CWSS) service organizations in Latin America. These provide more than 70 million people with access to water. *“CWSS organizations are social structures created by neighbourhood groups in areas not reached by the public, private or mixed operators that serve large cities. These organizations focus their efforts on establishing a water collection, treatment and distribution system as well as a system for paying for the water service and sometimes sanitation. Their leaders normally do not receive remuneration for their work but do it out of a sense of vocation and social commitment”*.<sup>9</sup>

Indigenous and tribal communities as well as Afro-descendant communities and community water

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<sup>9</sup> Tania Zambrano Villalobos. “CLOCSAS. Latin American Confederation of Community Water and Sanitation Service Organizations. Background, development and potentials.” Spanish Corporation Agency. Panama, 2017

and sanitation service organizations have created a great diversity of community water management systems, based on local institutional mechanisms and arrangements that allow them to self-manage their water resources while respecting local habits and customs.

For these reasons and based on established international legislation, the Latin American Parliament considers it a priority for its countries to recognise these community water and sanitation systems in their legislations and to build their capacities by allowing them to control the administration and management of water resources in order to realize the human right to water and sanitation across the region.

“Community Water Management (CWM) is a central action that shall be recognized for what it is, i.e., a water service provider sector that guarantees a supply to millions of people located mainly in more remote rural and peri-urban areas, but also in urban areas. This recognition and the actions it entails in terms of legal, institutional and resource allocation development will be an indispensable condition if we want to achieve the goals set out in the new Sustainable Development Goal (SDG) agenda in terms of universal and quality access to water in Latin America and the Caribbean (LAC).”<sup>10</sup>

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<sup>10</sup> Ibid.

The purpose of this Model Law is to establish a reference legal framework that will allow each state to adopt, strengthen and complement their own respective policies, strategies and legislations, in order to recognize and guarantee the development of community water and sanitation systems that are harmonious, consistent and aligned with relevant international instruments. Legal recognition of these community organizations will be the first step toward recognizing the strategic role of these systems in water management or administration, within a framework of water justice and social, intergenerational, gender-based equality and sustainability as well as responsibility, transparency and accountability. This aim should be achieved through a human rights-based ecosystem approach and participatory territorial planning processes at catchment area level.

The new SDG 6 Global Acceleration Framework also drives a cooperative platform to address the most urgent water and sanitation challenges, including challenges linked to the COVID-19 pandemic.

Community water and sanitation systems constitute a management strategy that provides an alternative and is complementary to strategies traditionally adopted by states in the region, which also contribute to their obligation to meet the demand for drinking water and sanitation, particularly in rural and peri-urban population

segments where people often live in varying degrees of poverty. They also meet the obligation to ensure greater equality in social participation and resource distribution, given that users are responsible for decision-making and running the system.

This proposal has come together through the combined efforts of the Latin American Parliament (Parlatino), the Mexican Parliamentary Front against Hunger (FPH), the Ministry of Environment and Natural Resources (SEMARNAT), the Mexican Institute of Water Technology (IMTA), the Mexican Agency for International Development Cooperation (AMEXCID) and the Food and Agriculture Organization of the United Nations (FAO) within the framework of the Mesoamerica Hunger Free programme which, among other actions, encourages high-level political dialogue to promote food and nutritional security and rural development.



## **CHAPTER I. PRELIMINARY PROVISIONS**

### **Article 1.- Nature and purpose**

The purpose of this Law is to recognize community water and sanitation systems in order to guarantee the human rights of peoples and communities to water and sanitation and to conserve, use and exploit water by administering water in the territories inhabited and occupied by those communities. This administration shall be adopted as a public policy strategy of the states involved considering political, economic, social, cultural and environmental aspects, within a framework of inclusion, justice, equality and respect for human rights, and in accordance with the provisions of international treaties and declarations on the subject.

### **Article 2.- Relevant international instruments**

This Law recognizes the rights of indigenous and tribal peoples and communities to the waters of the territories they inhabit, in accordance with the provisions of Article 15 of International Labour Organization Convention 169, which establishes that *“The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources”*; and the rights of non-indigenous communities that self-manage their own community water and sanitation systems.

In accordance with the provisions of the American Convention on Human Rights and the progressive development of human rights standards derived from the case law of the Inter-American Court of Human Rights, the provisions of the following international instruments shall be taken as a reference in the application of this Model Law:

- I. American Declaration of the Rights and Duties of Man, Ninth International Conference of American states, 30 April 1948;
- II. Universal Declaration of Human Rights, United Nations General Assembly Resolution 217 A (III), 10 December 1948;
- III. International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the United Nations General Assembly on 16 December 1966 in New York;
- IV. American Convention on Human Rights (Pact of San José), adopted on 22 November 1969 in San José;
- V. United Nations Water Conference in Mar del Plata Declaration, 1977;
- VI. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted on 18 December 1979 by the United Nations General Assembly in New York;

- VII. Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted 27 June 1989 in Geneva;
- VIII. Convention on the Rights of the Child, adopted as an International Human Rights Treaty on 20 November 1989;
- IX. Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, Rio de Janeiro, June 1992;
- X. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the United Nations General Assembly on 18 December 1992 in New York;
- XI. Beijing Declaration and Platform for Action, adopted in September 1995 at the Fourth World Conference on Women in Beijing;
- XII. Ministerial Declaration of The Hague on Water Security in the twenty-first Century, March 2000;
- XIII. General Comment No. 15 of the United Nations Committee on Economic, Social and Cultural Rights of November 2002, “The Right to Water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)”;
- XIV. Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, adopted by the Council of the Food and Agriculture Organization of

the United Nations (FAO) (Guideline 8.1 on Access to Resources and Assets)<sup>11</sup>;

- XV. United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on 13 September 2007 in New York;
- XVI. Human Rights Council Resolution A/HRC/RES/15/9 “Human rights and access to safe drinking water and sanitation”, 2010;
- XVII. United Nations General Assembly Resolution A/RES/64/292 “The Human Right to Water and Sanitation”, 2010;
- XVIII. World Health Assembly Resolution WHA64/24 “Safe drinking water, sanitation and health”, 2011;
- XIX. Human Rights Council Resolution A/HRC/RES/18/1 “The Human Right to Safe Drinking Water and Sanitation”, 2011;
- XX. Outcome document adopted at the United Nations Conference on Sustainable Development (RIO+20), entitled: “The future we want”, approved on 22 June 2012 in Río de Janeiro;

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<sup>11</sup> FAO. 2004. Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security. Available at: <http://www.fao.org/3/y7937e/y7937e.pdf> “States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people’s livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination”

- XXI. Framework Law on the Human Right to Safe Drinking Water and Sanitation, Latin American Parliament 2012;
- XXII. Framework Law on School Feeding, Parlatino, 2013;
- XXIII. United Nations Sustainable Development Goals, adopted on 25 September 2015 in New York, particularly Sustainable Development Goal 6 (SDG 6);
- XXIV. The American Declaration on the Rights of indigenous Peoples, adopted on 14 June 2016 by the General Assembly of the Organization of American States in Santo Domingo;
- XXV. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), 4 March 2018, and
- XXVI. SDG 6 Global Acceleration Framework, 9 July 2020.

### **Article 3.- Definitions**

The following definitions are established for the purposes of the Model Law:

- I. Public Community Agreements: these are a formal type of joint cooperation and partnership instrument that may adopt various modalities of a technical, operational, administrative, political, environmental, organizational and economic nature, based on social

interest where the services associated with water and sanitation are public, non-profit and aligned with political and regulatory provisions in force within the territorial scope;

- II. Water Management: this is a process that organizes the holistic, fair and sustainable use of water based on a knowledge of water availability, in terms of quantity and quality, in accordance with a catchment approach, with the active participation of users, where it is essential to control and monitor the efficient use of water, pollution prevention and control, contributing to the enjoyment of human rights associated with water and the functionality of water-based ecosystems;
- III. National Registration Authority: the competent public agency for registering community water and sanitation systems;
- IV. National Water Authority: the competent public agency for managing, administering, regulating and controlling national waters, their protection, use, exploitation and development;
- V. Quality: the water needed for personal and domestic use shall be safe and shall therefore not contain microorganisms or chemical or radioactive substances that may constitute a threat to people's health. The water shall also be of an acceptable colour, odour and taste for personal domestic use;

- VI. Community: a group of human beings inhabiting a shared territory and interacting in an organized and self-managing manner vis-à-vis common objectives or interests;
- VII. Indigenous and Tribal Communities: human groups that form a social, economic and cultural unit, settled in a territory, who recognize their own authorities in accordance with their habits and customs and who are members of an indigenous peoples group;
- VIII. Personal Data: any information concerning an identified or identifiable natural person. A person is considered identifiable when his or her identity can be determined directly or indirectly through any information;
- IX. Sensitive Personal Data: data that refer to the most intimate sphere of their owner or whose improper use may give rise to discrimination or entail a serious risk to the owner. By way of example, personal data that may reveal aspects such as racial or ethnic origin, present or future health status, genetic information, religious, philosophical and moral beliefs, political opinions and sexual preference are considered sensitive;
- X. Human Right to Water: this is the right of all people to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use,

without discrimination, and should include the right to seek, receive and impart information on water matters and to participate in decisions affecting this resource;

- XI. Human Right to Sanitation: this is the right of all people to have physical and financial access to sanitation services that are safe, hygienic, socially and culturally acceptable, provide privacy and ensure dignity;
- XII. Availability: the water supply for each individual shall be continuous and sufficient for personal and domestic use. These uses normally include beverages, personal sanitation, laundry, food preparation and personal and family hygiene;
- XIII. Emergency: a critical situation of evident danger to life in one or more communities or when people are prevented from or seriously affected in the effective exercise of their human right to water and sanitation by natural or man-made phenomena;
- XIV. Human Rights Approach: set of international principles, rules and standards that guide the action of states to safeguard, protect, respect, and ensure the fulfilment of human rights, in accordance with the principles of universality, interdependence, indivisibility and progressivity;
- XV. Gender Approach: considers the different opportunities that women and men are afforded,



their interrelationships and the different roles assigned to them socially;

XVI. Water Management: a process based on a set of principles, policies, acts, resources, instruments, formal and informal regulatory systems, assets, rights, powers and responsibilities by means of which the state, communities, water users and society promote and implement holistic and sustainable development in a participatory manner and within a human rights framework through (1) the control and management of water and watersheds, including aquifers, and thus their distribution and administration (2) the regulation of water use or exploitation, and (3) the preservation and sustainable management of water resources in terms of quantity and quality, considering the risks of potential exceptional hydrometeorological phenomena and damage to ecosystems and the environment;

XVII. Social Interest: the order, asset, benefit, utility, value, convenience or transcendence of something that is intrinsic to the social, collective or community sphere;

XVIII. Gender Perspective: the methodology and mechanisms which make it possible to identify, question and assess the discrimination, inequality and exclusion of women, which is supposedly justified based on the biological differences between women and men, as well as the actions that shall be

taken to act on gender factors and create conditions for change that makes it possible to make progress in constructing gender equality;

XIX. Participatory Territorial Planning: a process by which all members of a community actively and decisively participate in drawing up a community development plan, which is territorially based and ensures the participation of the various stakeholders from the moment the process is initiated until its completion;

XX. Indigenous Peoples: people who descend from the peoples who inhabited a given current territory of the country before colonization and who retain their own social, economic, cultural and political institutions, or part of them;

XXI. National Register: the National Register of Community Water and Sanitation Systems will be the public policy instrument where declarations and all information and documents relating to community water and sanitation systems generated by communities and organizations, as well as by authorities at different levels of government, will be registered;

XXII. Sanitation: this is the process for the hygienic elimination of excreta and wastewater and for ensuring a clean and healthy environment for housing and in the vicinity of users. Its implementation is required to prevent and reverse water pollution. It

involves prevention, containment and progressive elimination of pollutants;

- XXIII. Community Water and Sanitation Systems: community water and sanitation systems are local strategies, mechanisms, processes and institutional arrangements by means of which communities take action in their territories in order to self-manage their water resources according to their legislative systems, through their own institutions and forms of governance;
- XXIV. Transparency: obligations of states to publicize actions which they are empowered to perform, as well as to provide access to information they generate;
- XXV. Domestic Use: the application of domestic water to guarantee the human right to water and sanitation, including the irrigation of houseplants and watering of domestic animals that do not constitute a profit-making activity; and,
- XXVI. Users: people living in the community who receive a water service from the community water and sanitation system.

## **GENERAL PROVISIONS**

### **Article 4.- Scope**

The Law is public and in the social interest and shall be generally observed throughout the territory and areas over which the states exercise their sovereignty and jurisdiction.

The local and national authorities shall issue such legal and regulatory provisions as may be necessary to comply with the provisions of this Law in their management of water and catchment areas, in accordance with their competencies.

### **Article 5.- Public policy guidelines for community water and sanitation systems**

- I. Water is a public asset for communal use. Its conservation and care, as well as its sustainable, fair and equitable use is a joint responsibility of states and society.
- II. Planning as well as any public policy on the use, protection, conservation, restoration and sustainable use of water, shall consider the well-being of people in accordance with the needs and priorities of their communities, social interest and nature as its fundamental goal.

- III. The design and implementation of policies on water resources shall be culturally appropriate, financially efficient and based on the broad and equitable participation of society from the perspective of gender, intercultural matters and age.
- IV. Any legislative or administrative act that could affect or infringe a community's right to water shall be subject to free, prior and informed consent in a culturally appropriate manner and shall be subject to consultation with potentially affected communities.
- V. Services and infrastructure offered by community systems shall be in the social interest and shall be community assets, and therefore may not be subject to any privatization whatsoever.

**Article 6.- Guiding principles of the Law**

Authorities and those responsible for the community systems of the states within the scope of their respective competencies are obliged to promote, respect, protect and guarantee the principles associated with water and sanitation:

- I. Accessibility: water and sanitation services shall be easily accessible to all;
- II. Acceptability: water and sanitation services and their location shall be acceptable to any person and culturally appropriate in keeping with the habits and customs of the community;

- III. Affordability: water and sanitation services shall be affordable to all and paying for them shall not limit the enjoyment of these human rights under any circumstances;
- IV. Equality and justice: indigenous peoples and communities and their equals are responsible members of society and their legislative systems are the fundamental local regulatory basis for achieving fair and equitable administration;
- V. Non-discrimination: all people and communities shall have equitable access to water, and arrangements shall be put in place to overcome processes of marginalization based on gender, financial status, geographical location, ethnicity, culture, sexual orientation and gender identity, political affiliation, religion, age, disabilities or other differences;
- VI. Public participation: everyone shall be in a position to take part in decisions relating to water administration and management, either on their own behalf or through a person or persons that they freely appoint;
- VII. Plurality: recognition of the diversity of values, opinions and practices typical of community living, including respect for them by local, regional and national authorities in community water and sanitation systems;
- VIII. Solidarity: in community water management that

is based on the higher interests of society, through community action in achieving the common good above and beyond individual interests;

- IX. Sustainability and integrity: the fundamental purpose of water management is to guarantee the quantity and quality of water in the present and future, as well as the activities that depend on this natural element, through the care and sustainable management of related ecosystems, in such a way as to guarantee their balance and integrity.

#### **Article 7.- Interpretation**

In the application of the contents of this Law, the interpretation that most favours the protection of human rights shall prevail, as well as the right of communities to participate in its use, sustainable exploitation and administration, in accordance with the principles of universality, interdependence, indivisibility, progressiveness, equality and interculturality.

The guiding principles of national policy regarding community water management, enshrined in this Law, and in the provisions of related international treaties and instruments, are fundamental in its interpretation and application.

## **CHAPTER II. RIGHTS AND DUTIES**

### **Article 8.- Right to community management**

Indigenous peoples and communities and, in general, organized communities that self-manage community water and sanitation systems through their own institutions and forms of government, are collectively recognized as legal persons under public law. This empowers them to use, manage and conserve the water in the territories they inhabit, which for indigenous communities includes the collection, distribution, regulation and control of water in accordance with their own legislative systems, while also respecting the principles of equality and sustainability.

Non-indigenous communities, for their part, may use, administer and conserve the water resources existing in the territories they inhabit in accordance with provisions laid down by the state national authorities.

### **Article 9.- Right of access to water**

Inhabitants of indigenous and tribal communities hold the right of access to water in their territories.

For non-indigenous communities, this right shall be subject to the provisions of applicable legal frameworks, without affecting the duties of the aforementioned states.



The infrastructure of the community water and sanitation system is a public resource, an indivisible asset that is immune from seizure and belongs to the community of users. This infrastructure and the services therein cannot be privatized under any circumstances.

Any infrastructure financed in full or partially with subsidies or state funds shall be part of the assets for the provision of drinking water and sanitation services and may be assigned or transferred to the community water and sanitation systems with encumbrances, conditions and limitations agreed upon by the parties.

#### **Article 10.- Tenancy rights and their governance**

Once registered, community water and sanitation systems confer on communities the right to manage water resources in their territories. This includes their regulation, administration, control, care and conservation.

In order to maintain governance of community water and sanitation systems and thus ensure the continuity of the strategy, planning and operating rules are agreed upon through arrangements and procedures that ensure the participation of all members in decision-making. This encourages accountability for community systems and avoids any form of marginalization or discrimination.

Community members shall also shoulder the responsibilities assigned to them in the operation and maintenance of the system. They shall also participate

in community works carried out for the operation, repair, expansion and maintenance of the community's water infrastructure.

**Article 11.- Right of participation by communities and by indigenous and tribal communities in decision-making regarding community water and sanitation systems**

Everyone living in a community shall have fair access to water as well as to participation in decision-making regarding water and associated ecosystems, ensuring arrangements to overcome processes of marginalization due to gender, economic status, geographical location, ethnicity, culture, sexual orientation and gender identity, political affiliation, religion, age, disabilities or other differences. In particular, full representation of women in decision-making on water management shall be ensured through rules to guarantee the principle of gender equality, such as the establishment of participation quotas.

**Article 12.- Right to recognition and registration**

The recognition of community water and sanitation systems is a right of communities, indigenous and tribal communities and comparable communities who inhabit the territories of states.

Indigenous and tribal communities and comparable communities are part of a National Registry, which

formalizes state recognition of the right to operate their community water and sanitation systems; this shall be done through simple and culturally appropriate procedures.

Non-indigenous communities operating community water and sanitation systems are entitled to have their own registry, which shall be governed under the principles and criteria of the National Registry kept by the states.

#### **Article 13.- Duty to facilitate access**

State authorities shall establish the necessary arrangements and strategies to protect, facilitate and support full exercise of the rights of communities to access, manage, use and conserve water (in terms of quantity and quality) in their territories, based on their legislative systems, habits and customs and through their own institutions and forms of government. Authorities shall also provide them with the necessary resources for this purpose.

#### **Article 14.- Community duties**

To make full and sustainable use of the water they receive, as well as to attend and participate in the meetings of community representative or governing bodies, pay the agreed tariff systems or contributions, establish accountability arrangements for those responsible for managing the community systems

and carry out activities required for the maintenance, operation, repair and expansion of community water infrastructure in accordance with their own legislative systems, habits and customs.

### **Article 15.- Duties in the administration and operation of community systems**

Those responsible for administering and operating community water and sanitation systems shall report on the administrative activities carried out, as well as on progress in programmes and projects approved by the relevant meetings, and on problems that have arisen, in line with the timeframe agreed upon by the community governing and/or representative bodies, or in accordance with the provisions of community regulations on this matter. The report shall be sent to the National Water Authority, which shall incorporate it in the National Information System and disclose it to the public in a timely and open manner.

Proper water administration shall meet the needs of users for access to water and sanitation and produce demonstrable results for the progressive realization of the right to water and sanitation for those who lack such rights and ensure that adequate access to these services will continue to be enjoyed in the future.

## **CHAPTER III. ACTIVITIES AND FUNCTIONS OF COMMUNITY WATER AND SANITATION SYSTEMS**

### **Article 16.- Activities and functions of community water and sanitation systems**

The activities of community systems include supply of the resource, piping from its source to the distribution area, storage, treatment and delivery to end users, sanitation, and/or reuse (as applicable) within community territory.

Communities shall determine the organization and functions of those responsible for the different stages of the community water and sanitation system as well as the responsibilities and obligations of users through their representative and/or governing bodies.

### **Article 17.- Powers of communities in the operation of community water and sanitation systems**

Community water and sanitation systems are intended to achieve sustainable development for the benefit of human beings and their social, economic and environmental surroundings, enabling them to:

- I. control, manage, administer and distribute water in their territories in accordance with the legal mandate determined for this purpose by community or national laws, as applicable;
- II. regulate the exploitation, use or enjoyment of water in their territory, in accordance with the legislative

mandate determined for this purpose by community or national laws, as applicable, without detriment to those persons or communities who already enjoy this right;

- III. preserve and ensure the sustainability of water resources, through relevant actions and measures to prevent damage to ecosystems and the environment, as well as to address climate risk;
- IV. set up councils and other associated forms of government, with other communities, to manage waters shared between their respective territories in a coordinated manner;
- V. generate and enforce their own regulations to ensure fair and sustainable access to water;
- VI. manage and implement local water culture and sound territorial management projects;
- VII. be compensated for the water and environmental services that they protect, conserve, restore and strengthen in their territories;
- VIII. take the necessary legal action against projects or activities that could affect their right to good quality water now and in the future; and
- IX. apply for formal recognition before the National Authority for the purposes provided for in this Law.

When carrying out activities of social interest, community water and sanitation systems may be allocated public resources and benefit from state-sponsored financial instruments to assist in their undertakings and functions.

## **CHAPTER IV. STATE AND NON-STATE ACTORS**

### **Article 18.- State obligations**

States are responsible for ensuring compliance with the obligations of access to and availability of water and sanitation services in all spheres of life to protect the environment and people's health and dignity by establishing the relevant systems and structures.

States shall respect the right of indigenous peoples and communities to use, manage and conserve the water resources existing in their territories and shall refrain from arbitrary interventions.

States, through the National Authority, are obliged to recognize community water systems and to include them in a National Registry of community water and sanitation systems, by means of simple and culturally appropriate procedures.

States are obliged to strengthen, promote and build the capacity of community water and sanitation systems at local and national level, as well as to respect the validity of their legislative systems, institutions and forms of government, which underpin arrangements and processes for administering water in the territories that the communities inhabit and occupy.

Local authorities shall encourage citizen participation in local public water and sanitation organizations by

including citizens in decision-making and operating bodies, whose makeup shall ensure gender equality and the participation of representatives of the community water and sanitation systems who inhabit the territory administered by these public organizations.

**Article 19.- Prohibitions applying to state and non-state actors**

The National Water Authority as well as local and national authorities may not grant permits or authorizations for the use or exploitation of water within the territories of indigenous communities who belong to the National Registry.

Similarly, it is forbidden for public agencies at any level and private, public or mixed organizations to use or exploit the water resources of communities, carry out infrastructure works and provide water-related services in territories where community water and sanitation systems operate without their express consent, after free, informed and appropriate consultation in good faith.



## **CHAPTER V. CAPACITY-BUILDING AND DEVELOPMENT**

### **Article 20.- Education, training and innovation**

Communities and indigenous and tribal communities who operate their own community water and sanitation systems are entitled to education and training for the purpose of building, improving and developing the technical tools required for operating and maintaining community water and sanitation systems, as well as to incorporate new practices and technologies to achieve greater operating efficiency.

States shall establish policies for technical assistance, investment and financing for community management as well as for the supervision and promotion of community water and sanitation systems with information generated in an intersectoral manner by governmental, academic and research institutions and individuals or organizations specializing in the subject.

It is the responsibility of the National Water Authority to create and implement a training programme for the capacity-building of community water and sanitation systems to meet the challenges of water security, food security and climate resilience with a gender perspective. The training programme shall aim, as a minimum requirement, to improve knowledge and skills for the adoption of good practices relating to efficient

water use (including irrigation systems and practices), leak prevention, rainwater harvesting and storage, water treatment, water source quality, groundwater flows, climate risk management, reuse of treated water, water-related human rights, integrated catchment area management with an ecosystem approach (fight against degradation, climate change and biodiversity), participatory territorial planning and the circular economy.

#### **Article 21.- Promotion of community water and sanitation systems**

States are obliged to promote community water and sanitation systems, and to promote the rights of communities and indigenous communities to manage water in the territories that they inhabit and occupy. States may therefore establish public-community partnership agreements or other forms of association that enable the establishment of local, regional and national community water and sanitation system networks as well as promote the exchange of experiences among communities operating community systems and carry out campaigns to promote and disseminate community water and sanitation systems at national level.

The National Water Authority shall also promote the contents of this Law, water-related human rights and

the rights of communities to use, manage and conserve water in their territories.

**Article 22.- Disseminating a culture of water care**

States shall promote a culture of water care as well as the importance of community systems to guarantee the realization of individual and collective water-related human rights, to achieve the holistic and sustainable use of water, to protect and preserve ecosystems and their associated biodiversity, and to carry out relevant actions to address the effects of global climate change.

**Article 23.- Occupational safety in community water and sanitation systems**

When operating community water and sanitation systems, the necessary measures shall be applied to ensure their operators have a suitable working environment, with conditions that allow them to carry out their activities in a safe and dignified manner.

People who contribute to the operation of community systems shall be afforded the safety and hygiene conditions required to prevent all types of risks due to the activities they perform.

## **CHAPTER VI. GENDER EQUALITY AND EQUITY**

### **Article 24.- Gender mainstreaming**

Communities and indigenous and tribal communities shall respect the principles of equity and sustainability in the administration of their waters. In particular, they shall ensure the equal representation of women in decision-making forums and their rights to education and training, in order to promote the participation of women across the various stages of the community system.

## **CHAPTER VII. CLIMATE CHANGE AND CLIMATE RISK MANAGEMENT**

### **Article 25.- Climate change**

Community water and sanitation systems shall consider implementing measures to prevent the impact of the effects of climate change on water availability in their territories, as well as its impacts on ecosystems and biodiversity.

The National Water Authority shall carry out awareness-raising and sensitization campaigns on the effects of global climate change associated with water, as well as relevant prevention, response and adaptation measures and actions, with the aim of ensuring that water is available for the population at large.

### **Article 26.- Climate risk management**

Community water and sanitation systems shall include appropriate arrangements and measures to protect people and their property against climate risks.

Community systems, in partnership with the National Water Authority, shall also consider strategies for building, strengthening and developing people's capacities for the implementation of adaptation arrangements and relevant measures to reduce people's vulnerability to climate change.

## **CHAPTER VIII. EMERGENCY MANAGEMENT**

### **Article 27.- Emergency management**

States are responsible for establishing actions, arrangements and strategies to be adopted in order to contain, mitigate and immediately address emergency situations through national and local authorities, with the participation of those who inhabit the affected communities.

**Article 28.- The following shall be considered when addressing natural or man-made emergencies:**

- I. a description of the causes of the emergency;
- II. the scope of the emergency and how it endangers the lives of community members or seriously affects the exercise of the human right to water and sanitation;
- III. estimation and characterization of the affected population and territory;
- IV. general and specific actions to be taken to contain and address the emergency situation as soon as possible;
- V. arrangements for partnership and coordination of actions between national and local authorities and the population, international organizations or social organizations;
- VI. institutional and/or financial support for dealing with emergencies;
- VII. recovery plans for preventing and responding to hazards and the effects of emergencies, and arrangements to strengthen the resilience of people, which guarantee access and availability to water and sanitation and other water-related human rights in the affected territories.

## **CHAPTER IX. TRANSPARENCY AND PERSONAL DATA PROTECTION IN COMMUNITY WATER AND SANITATION SYSTEMS**

### **Article 29.- Right of access to information**

Everyone has the right to information on water supply and sanitation systems. This shall be made available to him or her upon request and shall not be conditional upon the need to prove any interest or provide any justification for its use. Therefore, all information generated, obtained, acquired, processed or held by community water and sanitation systems is public and shall be promptly accessible to anyone in a simple, understandable and comprehensive manner that is available in the language or linguistic variation used by the relevant communities.

### **Article 30.- State obligations regarding transparency**

The National Authority shall adopt the necessary measures to ensure that anyone can have access to information relating to community water and sanitation systems through simple, expeditious and culturally appropriate procedures; their actions shall be governed by full compliance with the principle of maximum openness and disclosure.

Information on all acts by states and activities by individuals that affect or infringe the rights of communities

to water, as well as on the social, environmental and cultural impacts and potential means of mitigation and compensation, and benefits for the community, shall be provided in advance to communities, in a truthful, simple, comprehensive and culturally appropriate manner.

**Article 31.- Personal data protection**

Personal data held by states' community water and sanitation systems shall be protected in order to regulate their due processing based on applicable national regulations.

Any processing of personal data held by community water and sanitation systems shall be justified by the specific, lawful, explicit and legitimate purposes enshrined in this Law.

## **CHAPTER X. ACCOUNTABILITY OF COMMUNITY WATER AND SANITATION SYSTEMS**

**Article 32.- Accountability**

Community water and sanitation systems shall be administered and operated in such a way as to ensure accountability to the entire population and the interest



of the collective shall take priority over individual interests or interests that are unrelated to the welfare of the community.

**Article 33.- Principles of accountability in community systems**

In community water and sanitation systems, resources shall be managed in accordance with the principles of austerity, efficiency, effectiveness, economy, transparency and honesty to meet the intended goals of social interest.

Those in charge of community water and sanitation systems shall behave righteously, avoid using their office or commission to obtain personal benefit or to favour third parties, and abstain from seeking or accepting compensation, benefits, handouts, donations or gifts from any person or organization.

**Article 34.- Accountability arrangements**

Those in charge of community water and sanitation systems shall implement codes of ethics or culturally appropriate regulations, shall report through community meetings, shall put in place effective systems of control, monitoring and surveillance by the inhabitants of communities as well as implement arrangements for whistle-blowing and protecting whistle-blowers that provide for constant and regular examination of

compliance with the standards of accountability of community water and sanitation systems.

Community water and sanitation systems may request technical and legal training from the National Authority for the management, custodianship and use of resources in order to strengthen their financial efficiency and accountability.

### **Article 35.- Whistle-blowing and monitoring of accountability**

Anyone may report any fact, act or omission of the community water and sanitation system that endangers or affects the health of the population, infringes human rights, gives rise to ecological imbalances or damages natural resources as a result of the way water resources are managed or administered in their territories, and follow up the reported action with the community, the National Authority and corresponding state bodies.

### **Article 36.- Penalties for improper use or diversion of resources**

People and organizations responsible for serious human rights violations, damage to natural resources or the misappropriation, misuse and diversion of material, human or financial resources belonging to community water and sanitation systems, shall be subject to administrative and criminal penalties before the corresponding state offices.



### **Article 38.- Differentiated policies**

Community water and sanitation systems in areas affected by high poverty and marginalization rates may be granted special benefits to obtain, distribute and sanitize their water resources.

## **CHAPTER XII. ADMINISTRATIVE APPEALS**

### **Article 39.- Administrative and jurisdictional remedies**

Administrative and jurisdictional remedies provided for in national legislation may be brought against the acts or resolutions of the National Authority pertaining to the recognition or issuance of a declaration and its registration, as well as against acts of the National Water Authority and the authorities at different government levels that damage communities and their members in terms of their human right to water and sanitation.

## **CHAPTER XIII. FINAL PROVISIONS**

### **Article 40.- Application of the Model Law**

This Model Law is intended to serve as a legislative reference to be considered by Member States of the Latin American Parliament when drafting or updating their own legislation.

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