

FOR AN INCREASED EFFECTIVITY OF THE RIGHT TO DRINKING WATER IN FRANCE

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Summary :

After reviewing France's official position on the human right to drinking water and sanitation, this paper will examine the content of this right and identify those people not yet benefiting from this in France. In part B., measures will be proposed with a view to implementing the right to drinking water and sanitation more effectively.

Part A – THE STATUS OF THE RIGHT TO DRINKING WATER AND SANITATION

1. Effects of international recognition of the right to drinking water and sanitation on French law

In his address of the 2nd June 2010, the President of the French Republic supported the objective to:

"*organise a universal right to water and sanitation.*"

According to the Minister of Ecology, Mme Nathalie Kosciusko-Morizet, "the President of the Republic has chosen to make this right to drinking water and sanitation one of the four main issues of the 6th World Water Forum" (January 2011).

Following the General Assembly of the United Nations' adoption, in July 2010, of a resolution recognizing the fundamental right to water and sanitation and the Human Rights Council's adoption of a further resolution in September 2010 on the same subject, the Ministry of Foreign and European Affairs set forth the official position of France in light of these votes:

> *"France welcomes the adoption by consensus on 30 September of a resolution on the right to safe drinking water and sanitation which it co-sponsored. The right to safe drinking water and sanitation was recognized as a human right by the United Nations. The Human Rights Council resolution supplements this and clarifies the main parameters of this right. It affirms in particular that the right to safe drinking water and sanitation is derived from the right to an adequate standard of living.*
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> *France, which will host the 6th World Water Forum in Marseille in March 2012, would like this event to enable further progress to be made on the realisation of this universal right to drinking water and sanitation, a critical factor with regard to achieving the Millennium Development Goals and in particular those related to maternal and child health." (France - Diplomatie, 4 Oct. 2010).*

France's official position is in line with that it has upheld for many years. As early as 1994, Madame Simone Veil, as Minister of Social Affairs, declared that: "*free access to clean water is a human right*" and in 2003, President Chirac proposed that "*access to water be recognised as a fundamental right*". France took a stand in favour of the right to water during

the World Water Forum in Mexico (2006) and in March 2009, the Minister Jean-Louis Borloo defended the right to water as a "human right of the 21st century".

As a result of the considerable progress made in 2010 regarding international recognition of the right to drinking water and sanitation [1], the priority in France is now to organise and formalise this right in domestic law. It is no longer a matter of defending an already accepted principle, but rather of implementing this by identifying concrete legal and practical solutions. In 2006, France formally introduced elements pertaining to the right to water in its law on water and aquatic environments. Legislative changes also came into force in 2007 (ban on disconnecting users) and again in 2011 (financing of a solidarity fund for people with water debts).

By ratifying the International Covenant on Economic, Social and Cultural Rights (1966) and by supporting the 2010 Resolutions of the General Assembly of the United Nations and the Human Rights Council, the French Government, under Article 2 of the Covenant[2], has committed to taking the domestic legislative measures necessary to ensure the right to an adequate standard of living (Art. 11), which includes the right to drinking water and the right to sanitation, as affirmed in the interpretation at global level within the framework of the Human Rights Council which was supported by France.

This right to drinking water and sanitation has therefore become an important political objective, a policy for Parliament and a source of inspiration for the Government. Whilst France has committed itself to formalising this right in French law, it is only gradually implementing it.

The French Government's support of the above-mentioned resolutions will have little direct effect on domestic law. Economic and social rights, such as the right to an adequate standard of living, food or housing as laid down in the International Covenant on Economic, Social and Cultural Rights, are recognised as provisions invoked between states, yet are of little practical use when defending individual rights in a French court.[3] According to the consistent interpretation of the administrative Supreme Court, the Conseil d'État, and the highest French judicial court, the Cour de cassation, these rights are "stipulations that have no direct effect on individuals". This position on the absence of direct effect is also held by several other countries.

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1 Henri Smets : *Les effets de la reconnaissance internationale du droit à l'eau potable et à l'assainissement*, Revue Environnement, Industrie, Nuisances, Nov. 2010.

2 Art. 2.1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

3 In the Mme Bayer case (N°323250, reading of 15 December 2010), the Conseil d'État took the Rome Convention into consideration: "Whereas the decision of the mayor to refuse, on the basis of Article L.111-6 of the town planning code, to permit an unauthorised construction for residential use to connect to the electricity, water, gas or telephone networks constitutes interference by a public authority in the right to a private and family life, as guaranteed by the aforementioned provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and that, if such interference can be justified by the legitimate aim that is the respect of planning rules and safety and the protection of the environment, it pertains, in each case, to the administration to ensure and to the judge to verify that the interference resulting from the refusal to grant a connection is, given all the facts of the case, proportionate to the legitimate aim being pursued."

A large number of French rulings have substantiated the fact that many economic and social rights cannot be invoked in French courts.[4] Notably, this is also true of the right to drinking water and sanitation, even though this has formally been accorded equal status to the other economic rights contained in the Covenant.[5] In contrast, both France's official position and the aforementioned resolutions could, however, have an important effect on those cases that come before the international courts, such as the European Court of Human Rights or the European Court of Justice.

The absence of direct effect is due to the fact that the stipulations are not sufficiently clear or precisely stated. For the right to drinking water and sanitation to become an enforceable right, it needs to be more clearly defined. Introducing programmatic provisions or provisions that require implementing measures is not sufficient. The obligations of French actors will only be established through substantive law, laws and case laws, and not through unclear political discourses.

For the right to drinking water and sanitation to become a real human right in France, previously established legislative provisions will need to be supplemented so that the right to water can be formalised. The Resolutions adopted in 2010 need to be translated into enforceable texts within domestic law, taking inspiration from General Comment N°15.[6] Stating in French law that the right to drinking water is a fundamental right will not suffice; it is also necessary to define who is to provide this drinking water and under which conditions.

As early as 2007, the French National Consultative Commission on Human Rights (CNCDH: *Commission nationale consultative des droits de l'homme*) emphasised "that, in order to be completely effective, the right to water needs to be implemented through precise provisions in domestic law, covering its various aspects, notably access to water and sanitation for the poor or in occasionally deficient rural areas."

The French Economic, Social and Environmental Council[7] (*Conseil économique, social et environnemental*) and the Conseil d'État[8] have recently published important reports that focus on the issue of implementing the right to water. Studies have also been undertaken

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4 In 2005, the Cour de cassation reiterated that "with regard to their content, the provisions of Article 11 of the International Covenant on Economic, Social and Cultural Rights of the 16 December 1966, which have no direct effect in domestic law, cannot be effectively invoked", C. Cass. com, Arrêt N°199 (25 January 2005). Likewise, the Conseil d'État (Aides, décision N°335738, reading of Thursday 23 December 2010): "Whereas, firstly, under Article 10 of the International Covenant on Economic, Social and Cultural Rights, party states recognise that the greatest possible protection and assistance should be accorded to the family and to children; and, according to Articles 11 and 13 of the revised European Social Charter, the parties commit to taking appropriate measures to ensure the effective exercise of the right to protection of health, social and medical assistance, respectively, these stipulations, which have no direct effect on individuals, cannot be effectively invoked in support of claims for the annulment of the contested decision…"

5 For instance, if there was a new Protocol on the human right to drinking water and sanitation.

6 CESCR: General Comment N°15: *The right to water*, 2002.

7 Conseil économique, social et environnemental (CESE): *Les usages domestiques de l'eau*, recommendation presented by M. Paul de Viguerie, 2009.

8 Conseil d'État : *L'eau et son droit*, Rapport du Conseil d'État, La documentation française, 2010.

within the French Water Academy.[9] The National Water Committee and the National Consultative Committee on Human Rights (CNCDH)[10] made proposals to the Government.

In order to establish a universal right to water in France, it would seem necessary to conduct a critical review of those texts already in place in French law so as to identify any gaps hindering the effective implementation of the right to drinking water and sanitation. It is possible to envisage initiatives being undertaken at parliamentary level as the debates that preceded the enactment of Law N°2011-156 showed there was unanimous support from elected officials for implementing the right to drinking water and sanitation.

2. The main provisions of the right to drinking water and sanitation

The right to drinking water and sanitation in France results from a range of provisions introduced many years ago to ensure public health, manage the public water supply, maintain hygiene, reduce pollution and protect human health, natural resources and the environment. In particular, municipalities (local authorities) are responsible for operating sewer systems in urban areas, inspecting on-site sanitation facilities and monitoring the water quality. Most of the provisions currently in force define the obligations or responsibilities of both the authorities and the public. The innovation in 2006 was to accord greater emphasis to individual rights within the water and sanitation sector and to ensure that no longer will anyone be excluded from the right to water and sanitation services.

a) Right of access to drinking water at an affordable price

The most significant provision pertaining to the human right to drinking water was introduced through Article 1 of the Law Nº2006-1772 of the 30 December 2006 on water and aquatic environments, whereby:

> *"...each natural or legal person has the right to obtain drinking water for nutrition or hygiene in conditions that are affordable to all" (Environmental Code, Art. L210-1).*

This text pertaining to the affordability of water has so far only been very partially implemented. The Government submitted in September 2011 a report that aims to protect the poorest members of the population from having to spend an excessively high proportion of their income on water and sanitation services. Indeed, it is generally recognised in France that households should not spend over 3% of their income on water. The French Senate voted in favour of a proposed law on preventive aid which failed to be supported in the National Assembly in December 2011. In Paris, the municipality endorsed the 3% objective and decided to grant preventive financial assistance for water to over 41 000 poor households in 2010 (80 €/household on average).

9 See www.academie-eau.org.

10 CNCDH, *Avis sur la mise en œuvre du droit de l'homme à l'eau potable et à l'assainissement.* Avis du 23 juin 2011. Site CNCDH (www.cncdh.fr/IMG/pdf/11.06.23_Avis_droit_a_l_eau.pdf).

b) Right to a supply of drinking water

According to the Health Code, "Anyone offering water to the public for human use must ensure that this water is fit for consumption" (CSP, Art. L1321-1).

All water that is distributed must be potable, but some dispensations are possible. It is not compulsory for each municipality to construct a water supply network; however, they are required to define those areas served by a water supply network. Each person has the right to connect to a water supply network in the vicinity, if one exists, at their own expense. Once the connection is activated, there is a constant supply of water. In practice, there are only 100 municipalities, out of a total of 36 664, with no water supply network and only 150 000 out of 25.6 million dwellings with no water connection. The inhabitants of remote or illegal dwellings cannot exercise the right to have water supplied to their home.

c) Right to assistance in the event of financial difficulties

For several years now, there has been a form of social assistance in place to help those people receiving water from the network who have either accumulated water arrears or are at risk of so doing:

> *"...any person or family experiencing particular difficulties, especially with regard to their assets, lack of resources or living conditions, is entitled to assistance from public authorities to ensure the continuing supply of water, energy and telephone services to their home" (Family and Social Action Code, L115-3).*

This text, that refers to the right to assistance, is usually restrictively interpreted as being limited to those people owing arrears to their water supplier (an individual contract) or to a landlord / homeowner association (collective contract). A solidarity mechanism has been set up at department level (FSL: *Fonds de solidarité pour le logement*), as well as a social assistance measure at municipal level (CCAS: *Centres communaux d'action sociale*). The financing of the mechanism managed at departmental level was improved in 2011 (Law N°2011-156). It now incorporates voluntary contributions from water suppliers, sanitation companies, communes (local authorities) and the general councils of the departments. In 2008, over 60 000 households benefited from this departmental assistance for a total cost of € 12 million. There is no information available on the amount of social assistance allocated at municipal level for water by CCAS but it is not negligible in some municipalities.

d) Right of non-disconnection

A customer's water supply can be cut off in the event of late payment of their water bill. To prevent this situation arising, a special procedure has been put in place with the aid of social services. In the event of non-payment, a reminder notice is sent and it is usually possible to agree payment terms with the supplier ("Should a consumer have failed to pay his bill, … the water supplier informs the consumer in writing of the terms and conditions, defined by decree, under which the supply may be reduced or suspended in the event of continuing non-payment" (CASF, L115-3).

A customer with water arrears is invited to contact social services (FSL or CCAS) to obtain financial assistance. Whilst awaiting the FSL ruling, interruption of supply (disconnection) is suspended ("In the event of non-payment of bills, the supply of energy,

water, as well as a limited telephone service, is to be maintained until the ruling on the request for assistance has been issued"). If FSL does not grant the customer assistance, then it is sometimes possible to obtain aid through CCAS.

If FSL has granted aid to the customer for the payment of rent, service charges, energy or water, it is not possible to cut off the water supply in the event of non-payment ("In the case of a main residence, water suppliers are not permitted to disconnect the water supply for non-payment of bills of those persons or families mentioned in the first paragraph and who are receiving, or have received within the last twelve months, a ruling in their favour granting them assistance from the housing solidarity fund."). In practice, there are very few disconnections of consumers in precarious situations (0.1%) that last for more than 24 hours (around 2 000 per year, 10 years ago and probably much less to-day).

e) Right to sanitation (toilets, sewers, septic tanks, waste water treatment)

The right to sanitation has only recently been recognised as an individual right, as the obligations involved mainly come under the remit of the public authorities. The right to sanitation is derived from the Environmental Charter, annexed to the Constitution, which stipulates that "Everyone has the right to live in a healthy and balanced environment" and from the Charter of Fundamental Rights of the European Union that states that human dignity must be respected and protected. European community law and national law[11] contain several provisions for formalising the right to sanitation (the collection and treatment of waste water). As a contracting party to the Protocol on Water and Health, France has committed to taking "all appropriate measures to achieve adequate sanitation of a standard that sufficiently protects human health and the environment."

According to French law, everyone is entitled to an inspection of existing sanitation systems and to demand that such sanitation facilities be appropriate. As far as collective sanitation systems are concerned, everyone is entitled to a sanitation service that conforms to health and environmental standards and has the right to connect to those sewer systems located in the vicinity. 13 000 municipalities have no sewer system and so rely on the proper functioning of on-site sanitation facilities (19% of the population).

f) Right of access to water supply facilities, to toilets and to waste water evacuation facilities

The numerous provisions in place pertaining to the right to housing, work, health and the environment, etc. have resulted in everyone now having access to water from the supply network and to toilets in dwellings, in the workplace, in school buildings, in meeting places, cinemas and theatres, on long distance public transport, etc. The right to water and sanitation derives from the fact that the necessary facilities have to be made available and it is forbidden to rent out and operate facilities with poor standard sanitary equipment.

g) Right to drinking water and toilets for the travelling community

France is one of the few countries to have accorded the travelling community the right of access to water and sanitation in designated stopping places.

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11 Henri Smets : *Le droit à l'assainissement, un droit fondamental*, Éditions Johanet, Paris, 2010 (in particular: *Le droit à l'assainissement en France*). P. Steichen : *L'évolution du droit de l'assainissement en France : une mise aux normes sous contrainte*, Les Cahiers de Droit, Vol. 51, N°3-4, sept.-déc.2010, pp. 567-93 (2010).

h) Right of access to information and public participation in water and sanitation services

According to the Environmental Charter (Art. 7), "Each person has the right, within the conditions and limitations of the law, to access environment-related information that is held by the public authorities and to participate in the public decision-making process where this has an incidence on the environment." This provision, which has recognised constitutional value, is supplemented by the rights of access to information and public participation in decision-making set out in the Aarhus Convention and is implemented through various texts included in European community or domestic law.

3. People with no access to drinking water or with no sanitation facilities in France

Whereas over 96% of people in metropolitan France have proper access to drinking water and sanitation, there remains a minority without adequate access whether due to unsatisfactory sanitation facilities (running water, toilets, and sanitation), lack of water supply and sewerage services or unaffordable tariffs. It is necessary to identify these people so that their circumstances can be improved.

a) The quality of water distributed does not always meet health standards

2.5 million people receive water that does not conform to health standards at least once a year and 2 million people live in small villages (fewer than 500 inhabitants) where the water does not meet the standards in 22% of tests. Although, in the majority of cases, the exceedance of standards is only minor, it can lead to corrective measures being required or to interdiction orders being issued. As a result, over 60 000 people per year are supplied with water that is not officially recommended for consumption. Nevertheless, there are very few outbreaks of gastroenteritis linked to water.

b) Sanitation facilities in dwellings are not always satisfactory

Out of a total of 30 million dwellings, 1 100 000 directly discharge waste water without treatment, 270 000 have no inside toilets and 180 000 have no access to running water piped to the home.

c) The price of water may be too high

Middle-income users and poor users view the issue of the water price very differently. The socio-economic situation is such that 500 000 households have had to take out a loan to pay their water bills. Due to the increasing cost of water services, 500 000 households spend over 3% of their income on water bills; an amount that is considered excessive. In some villages, the price of water is very high when compared to the departmental average; this gives rise to significant differences in the conditions under which users are able to access the public service. In certain communes, the pricing mechanism used is such that, for some households, the average price of a litre is far higher than the average paid by standard households. Partial measures have already been introduced to limit these discrepancies (cross subsidies within the supply network, aid from department targeted to municipalities with a high price for water).

WATER BILLS ARE CONSIDERED MOST EXPENSIVE BY LOW-INCOME HOUSEHOLDS

Out of the 77% of users receiving a water bill, half (49%) consider that the bill is "expensive" and nearly 30% (28%) consider it "inexpensive". The variation in responses based on socio-economic levels illustrates that low income households recognise more particularly the concept of an unaffordable water price, even though water does not constitute a large part of the average budget of poor households.

	Expensive bill	*Inexpensive bill*	*Don't know*
Tradesmen, shopkeepers, business owners	*58*	*36*	*6*
Managers, professionals	*61*	*32*	*7*
Intermediary professions	*77*	*22*	*1*
Employees	*84*	*15*	*1*
Manual workers	*86*	*10*	*4*

Source: Credoc: Les héros de l'eau, March 2011 (Results of a survey conducted in March 2011).

d) Sanitation is sometimes unsatisfactory

In towns of between 2 000 and 10 000 inhabitants, sanitation systems do not always satisfy sanitation standards set at EU level. Out of the 4 million dwellings using on-site sanitation facilities in France, over one million do not have an on-site system that complies with regulations. Significant investment by households will therefore be required in this area.

e) The living conditions of certain categories of the population are poor

Difficulties accessing drinking water and sanitation can be observed in economically backward regions (such as the overseas departments and communities, *DOM/COM*), in places where households live in dilapidated housing (improper or precarious housing, squats), on land with no water supply (illegal camps, slums), or in places where people are unable to access sanitation facilities that are adapted to their needs (lack of toilets for the disabled, prisons unfit for habitation). These problems are caused by failures to comply with legislation and by lack of sufficient investment in sanitation. They affect at least 500 000 people in metropolitan France of whom 120 000 people live outside the traditional norms (sub-standard housing, the homeless, people of no fixed abode, etc.).

These examples show that, whilst the right to water is effective for the vast majority of people, a large-scale investment effort is still required to improve the situation. Whilst now is perhaps not the best time to commit to further major expenditure, there is nothing to prevent either those commitments made at international level being fully implemented or those laws currently in force being respected.

Part B – SEVERAL MEASURES AIMED AT REDRESSING SHORT COMINGS IN RESPECT OF THE HUMAN RIGHT TO DRINKING WATER AND SANITATION

As a result of the considerable progress made over the last 60 years in households and municipality sanitary equipment, there are relatively few cases where the right to drinking water and sanitation is not respected in France. Nevertheless, use of those measures currently in place for at least 96% of the population could be expanded further.

In the current context, whereby the right to drinking water and sanitation is included in at least six codes (environment, health, local authorities, social action, construction, town planning, etc.), other than as a consequence of the various obligations of the public authorities and the owners and operators of the different facilities, there is no general text that establishes or guarantees the right to drinking water and sanitation as a human right.

Within the framework of the International Covenant on Economic, Social and Cultural Rights, France has committed:

> *"to undertake steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures" (Art. 2.1).*

This commitment applies to the right to drinking water and sanitation which is included in the right to an adequate standard of living (Art. 11 of the Covenant). France has already invested a large part of the financing required and has adopted a number of legislative measures to reinforce this right. Nevertheless, further efforts are still needed to complete the existing legal system.

Whereas there are several laws pertaining to the right to housing, there is still no text in place that incorporates the right to drinking water into the body of law and provides a legal interpretation of all the political declarations made on this topic. It would therefore be advisable to prepare a general law on this subject.

A less ambitious, yet equally necessary, task consists of identifying the particular instances where the right to drinking water is not respected in those texts drafted prior to the right to water being recognised as a human right. This exercise could then lead to small improvements being made to these texts, providing proof of the legislator's willingness to uphold the right to drinking water and sanitation.

To support the effort to implement the right to water, it will be necessary to begin by making the public more aware of this subject as, although they are called upon to participate in the decision-making process and to finance investment, they are currently only poorly-informed.

1. Access to information and public participation in the water sector

The water supply and sanitation sector is one public service where there is relatively limited access to information - and public participation in decision-making - despite the fact that the laws currently in force include several obligations in this regard (Environmental Charter, Convention on access to information, public participation in decision-making and

access to justice in environmental matters (Aarhus)). Indeed, nearly half of households[12] never receive information from their water supplier, whereas they do receive information from many other public services (electricity, gas, telephone, etc.) with whom they have a direct contractual relationship.

Improving access to information and public participation in water supply and sanitation services does not particularly require the adoption of new legislative texts, but rather the implementation of existing texts at local authority level. It is not enough to make public the Report on the price and quality of the sewerage public service (CGCT L 2224-5), the public should also be consulted on all important measures that concern them (network extensions, tariffs, inspections of on-site sanitation facilities, etc.). In this regard, it would be useful to identify the measures taken by medium-sized local authorities (of between 500 and 10 000 inhabitants) to better inform the public about water services without having to commit too high levels of expenditure.

2. Determining areas served by the water supply network and by the sewer system

Each commune is required to define those areas served by the water supply network and by the sewer system. However, there appears to be total confusion surrounding the date by which these areas actually have to be determined, especially in rural areas. As a minimum, the law needs to set a deadline, for example by the end of 2014, at least for those communes of over 2 000 inhabitants who already have to fulfill strict requirements as regards the collection of waste water and sanitation.

To ensure that the deadline is respected, it would be advisable to withhold subsidies for water supply and sanitation services until the zoning has been completed. The proposed provision would be as follows:

> "The plan referred to in the first/second paragraphs is established prior to the end of 2014 in all communes of over 2 000 inhabitants. It is updated every 10 years. No subsidy for water supply or sanitation services can be granted unless such a plan is in place."
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> (to be added to the end of Article L 2224-7-1 of CGCT and to the 2nd paragraph of Article L2224-8 of CGCT).

3. The water quality

The French people place great importance on consuming drinking water that is of good quality and are generally able to do so. The particularly poor quality of the water distributed in small villages therefore discriminates against the inhabitants of these villages when compared to urban dwellers who have constant access to water of very high quality. The public authorities' apparent willingness to tolerate this situation could be offset by obtaining and publishing test results showing instances of non-conformity. It is imperative that those people concerned are made aware of the quality deficiencies observed (microbiological levels, nitrate and pesticide content). In addition there is a need to provide free bottles of water to people who have no more access to good quality water.

12 Out of 22 million connections, 18 million are domestic connections of which 14 million are within a contract with the occupier (out of a total of 27 million households).

4. Access to water

a) Special measures for the homeless

With access to water and to toilets being considered as a human right, it is vital that these facilities and services are provided to all those with no access. It would therefore be advisable to introduce particular measures to improve access for marginalised groups, the vulnerable, the homeless and those of no fixed abode, etc. In the 19th century, there was a tradition of making public drinking fountains available to all. The fact that use of these fountains has considerably decreased does not mean they are no longer required. It is also necessary to plan an amendment to the law making it compulsory to improve access to public water points, particularly in towns. Similar proposals have also been made by the national water committee, Comité National de l'Eau, and by the Conseil d'État.[13]

On a legislative level, it would be useful to introduce a requirement to create free public water points and, if possible, public toilets in large municipalities. The general local authorities code (CGCT: *Code général des collectivités territoriales*) could stipulate that:

> *"According to the needs of the population, each municipality creates and maintains free-to-access water points and public toilets".*

This provision is probably already in force in most of the France's 873 towns of over 10 000 inhabitants without it being a formal requirement. In towns of this size, it will no doubt be necessary to have three water points and two public toilets available all year round, as in Paris.

b) Special measures for the travelling community

In France, the law makes provision for the travelling community[14] to be provided with drinking water and toilets in the designated stopping places placed at their disposal. Eleven years after the Besson law[15] was passed, only half of the proposed stopping places are up to standard and travellers are thus forced to park illegally or in unacceptable conditions. The Prefects who are able to intervene and, in certain cases, to take action for inefficient mayors, fail to do so. The preparation of a study to identify both the obstacles hindering the implementation of the Besson law and the means of improving the travellers' situation could serve to open up a debate on this sensitive issue.

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13 "For the 100 000 homeless people living in France, access to water is not provided under satisfactory conditions leading to the occasional use of fire hydrants or water points located in cemeteries for either consumption or washing. The removal of public fountains, which provided permanent access to free water, and the closure of a large number of public baths and showers as a result of bathrooms being increasingly installed in dwellings have also rendered access more difficult. The Conseil d'État therefore recommends requiring communes to reopen shared water points, accessible to the homeless, so that they can satisfy their consumption and hygiene needs in acceptable economic conditions. It is not a case of reinstalling free-flowing fountains in public places, but of devising a new standpipe-type service that can be managed by an association working on reintegration or on reducing social exclusion or by a public baths. In the same way as certain countries require a minimum volume of water to be supplied in the event of disconnection, it would be advisable to set a minimum threshold and require the commune to either supply this directly or ensure it is supplied through a delegation contract."

14 The travelling community is mostly made up of French citizens and bears no relation to the East European immigrant population who live illegally in insalubrious conditions.

15 Law N°2000-614 of 5 July 2000 pertaining to the reception and accommodation of travellers. Decree N°2001–569.

c) Special measures for the inhabitants of the overseas departments (DOM)

The metropolitan population does not always realise that people living in the overseas departments (DOM) and overseas communities (COM)[16] have poor access to water and sanitation. While providing aid to developing countries, they remain unaware that access in parts of the national territory still needs to be greatly improved. To rectify this situation, a national water and sanitation action plan needs to be adopted in these regions and funding, guaranteed through national solidarity actions based on the model set out in the Oudin-Santini law, needs to be approved.

5. Special measures to prevent disconnections

a) Voluntarily reducing the flow of water to indebted customers

In certain municipalities, in the event of unpaid bills, the supplier restricts the flow of water both to alert the customer to the fact the bill remains outstanding and to reduce any further consumption that may also remain unpaid. This measure enables the supplier to control the flow consumed without having to resort to disconnection, which would pose a health risk. Although this measure has been practiced in France, as in several other countries, for many years, it is in fact prohibited by decree N°2008-780 (Art. 1), which also bans the total disconnection of the water supply. It would be worth correcting this anomaly by authorising reduced water flow.

b) Eliminating discrimination in regulations governing the ban on disconnections for poor households

In France, people receiving, or who have received within the last 12 months, a ruling in their favour granting them assistance from the housing solidarity fund (FSL: *Fonds de solidarité pour le logement*), set up at departmental level, cannot have their water supply disconnected (Family and Social Action Code, Art. L115-3). This protective text of the right to water only applies to those people receiving assistance from the FSL (around 400 000 out of over 1.6 million poor households) meaning that there are two separate sets of regulations in place pertaining to disconnections: regulations banning the disconnection of those users receiving FSL assistance and regulations permitting the disconnection of those who, although as poor as those households in the former category, either receive assistance from another official body, such as the communal social action centres (CCAS: *Centres communaux d'action sociale*), or who are not eligible for aid in spite of their degree of poverty.

This discrimination of the poor who find themselves in such a position is a result of the applicable laws and needs to be rectified. To do this, the following provision could be added to the CASF (Art. L115-3):

> "These provisions also apply to the water supply of those persons receiving the minimum social benefits or having received assistance from CCAS over the course of the last twelve months".

Such a provision, which increases the number of poor households not liable for disconnection, has already been implemented on a voluntary basis (non-disconnection

16 For example, in Mayotte, 25% of dwellings have no drinking water on site and 27% have no toilets. In Martinique and Guyana, around 60% of dwellings have no sewer system.

following an intervention by the mayor). It does not impact on the right to disconnect those people who fail to pay their water bill without a valid reason (secondary homes, for example).

Adopting this provision would reduce the number of instances in which disadvantaged individuals are made to suffer a violation of their human dignity.

c) Protecting the occupants of collective housing against disconnection

For collective housing on a single meter, disconnection of the water supply results from non-payment of the water bill by the registered user (the manager, housing association or the landlord). In these situations, the occupants find themselves caught in the middle of a conflict between the registered user and the water supplier, with no drinking water and no toilets. Due to the complex nature of these situations[17], unless there is an alternative accessible water source available, it would seem appropriate to submit any such requests for disconnection to a judge for prior authorisation. The water supplier would take the exact nature of each case into account, if he was bound to adhere to a provision such as:

> "Where there is a collective contract in place for the supply of water to a residential building used as a main residence by the occupants, neither the water supply service nor the owner nor the building manager is permitted to disconnect the water supply unless an alternative water source is made available to the occupants in their immediate vicinity or unless, following prior consultation, the competent judge has given his authorisation."

In order to take account of residential institutions where disconnection for non-payment would appear unacceptable, the following could also be added:

> "The same applies to contracts for the supply of water to those buildings housing residential institutions, such as hospitals, boarding schools, barracks, retirement homes, etc."

In the event of any dispute, the water supplier must seek redress through the proper official channels without first depriving occupants of their toilet facilities.

6. The water tariff

a) An affordable water price

The adoption of a social pricing system or of preventive assistance aimed at reducing expenditure on water for the poor

With a view to implementing the affordable price criterion established in law in 2006, legislative bills were referred to Parliament pertaining to the creation of a preventive assistance system to help prevent the poor from getting into debt with their water supplier.[18]

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17 According to the Fondation Abbé Pierre report (2011), there are 200 000 dwellings under co-ownership where people have general difficulties paying service charges. In Brussels, where nearly half of dwellings are not individually metered, disconnections are subject to authorisation from a judge (99 disconnections in 2008). In Paris, there were no disconnections of inhabited dwellings. A provision of this type would not create great additional expense for the water suppliers.

18 "To reinforce the credibility and coherence between the positions taken by France domestically and in international Forums and in national law, the Conseil d'État also recommends that the right to water be fully implemented within France to benefit the poorest members of the population."

An agreement was reached to cap expenditure on water at 3% of the household budget. However, the system of aid allocation still needs to be implemented and the sources of financing this assistance are yet to be defined (solidarity contribution for water). At the end of 2011, no law was passed and no decision was taken.

b) Equal access to water for all through the water price

Preventing inequalities caused by the pricing system

The inevitable increase in the water price means it is necessary to devise fair pricing conditions that do not create discrimination. As of January 2010, local authorities have been able to introduce a progressive water-pricing mechanism. However, this pricing mechanism can penalise both large families, for whom the price increases too rapidly, and users in remote areas, for whom the fixed charge can be excessively high.

In order to be able to define a fair progressive pricing mechanism, it would be advisable to consider whether, in a given commune, each person pays a similar average price per litre to access drinking water and whether there is a need to provide a minimum quantity of drinking water to each household at a reduced price. Over the course of the last few years, a cap on the fixed charge has been introduced, with the exception of communes classed as tourist areas, where a single person can be required to pay very high standing charges. Furthermore, there is no provision in place to restrict the rate at which prices within the progressive pricing mechanism increase. It would, therefore, be possible to improve the way in which the water pricing mechanism is regulated.[19]

7. On-site sanitation

Due to the scope of work that still needs to be carried out to improve on-site sanitation, it would seem reasonable to introduce a plan that includes tax incentives and subsidies so as to ensure all legal provisions can be met. It would appear incongruous were the public authorities, after having provided assistance to improving collective sewer systems for so many years, to refuse to assist with on-site sanitation which is built because collective systems are too expensive.

CONCLUSIONS

Although France has already undertaken several legislative and regulatory measures to implement the human right to drinking water and sanitation, further measures are still required to ensure this right is made effective and implemented in such a way as to include those who are still precluded. It is up to the legislator to undertake an examination of the water laws to ensure that they include the principle that the right to drinking water is now a human right and that they enforce it. For their part, the public authorities could make additional efforts to better inform the public on these issues. The adoption of specific provisions promoting the human right to water would help in obtaining the further investment required, particularly for sanitation.

19 See Henri Smets : *La tarification progressive de l'eau potable*, Ed. Johanet, Paris, 2011.