

# Guidelines on the Right to Water in Africa

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## TABLE OF CONTENTS

Preface .....	4
Preamble .....	6
Definitions.....	9
Part 1. GENERAL PRINCIPLES.....	11
1. State sovereignty and communities' responsibility over natural resources.....	11
2. Principles of indivisibility and interdependence of human rights.....	11
3. States' obligations to respect, protect, promote and fulfil the right to water.....	12
4. States' obligation to mobilise resources for the realisation of the right to water .....	12
5. Principe of non-discrimination and equal access .....	12
6. Principle of non-retrogression .....	13
Part 2. A RIGHTS-BASED APPROACH TO WATER MANAGEMENT .....	15
7. General provision.....	15
8. Participation .....	15
9. Access to information.....	17
10. Accountability .....	18
11. Sustainability .....	19
Part 3. SUFFICIENT, SAFE, ACCEPTABLE, PHYSICALLY ACCESSIBLE AND AFFORDABLE WATER FOR PERSONAL AND DOMESTIC USES .....	21
12. General provisions .....	21
13. Availability.....	21
14. Physical accessibility .....	22
15. Affordability.....	23
16. Quality and acceptability .....	24
Part 4. VULNERABLE AND MARGINALIZED GROUPS AND GROUPS WITH SPECIAL WATER NEEDS.....	26
17. General provisions .....	26
18. Persons who are homeless and persons living in informal settlements.....	26
19. Persons living in rural areas and deprived urban areas.....	26
20. Persons deprived of liberty .....	27
21. Children .....	27
22. Women.....	27
23. Elderly .....	27
24. People with disabilities .....	28
25. Refugees, migrants and internally displaced persons.....	28

26. Stateless persons and asylum-seekers .....	28
27. Indigenous peoples .....	28
Part 5. SUSTAINABLE WATER MANAGEMENT .....	29
28. Sustainability and integrated strategies .....	29
29. Human rights impact assessment .....	29
30. Emergency situations .....	31
31. Climate change .....	31
Part 6. PRIVATE ACTORS.....	33
32. Conditions for delegation of water supply services to private entities.....	33
33. Regulation of all other private actors’s activites and impact on the right to water .....	35
Part 7. IMPLEMENTATION .....	36
34. General provisions .....	36
35. Regional cooperation in transboundary water management .....	36
36. International cooperation.....	37
37. Dissemination.....	38
38. Training.....	38
39. Reporting to the African Commission.....	38

## Preface



The African Commission on Human and Peoples' Rights ('the African Commission') is the main African Union body charged with the promotion and protection of human and peoples' rights throughout the African continent. A major milestone in the work of the African Commission has been the significant attention brought to economic, social and cultural rights.

On the eve of the thirtieth anniversary of the African Charter on Human and Peoples' Rights ('the African Charter'), the African Commission adopted the 2010 Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in Africa, also referred to as the 'Nairobi Guidelines', and the 2010 Reporting Guidelines for Economic, Social and Cultural Rights in Africa, also referred to as the 'Tunis Reporting Guidelines'. These instruments constitute the building blocks for the protection of economic, social and cultural rights in Africa.

In 2015, through Resolution 300 on the right to water obligations, the African Commission mandated its Working Group on Economic, Social and Cultural Rights to develop 'principles and guidelines on the right to water to assist States in the implementation of their obligations'.

The objective of the Guidelines on the Right to Water in Africa adopted by the Commission is to inform and support the work of States, while meeting their obligation to respect, protect and fulfill the individual and collective right to water, and in developing their periodic reports to the African Commission. By encapsulating in one instrument the interpretation developed by the Commission through its resolutions and case law over the last decade, the Guidelines provide clear guidance to States and civil society actors on the rights and obligations arising from the right to water.

These Guidelines inform the development of a comprehensive state-integrated strategy to address all water-related rights, which are by nature interconnected and interdependent. Thus the realisation of the right to sanitation and the right to a safe environment is a necessary precondition to ensure the realisation of the right to water. Access to safe drinking water and water for cleansing and handwashing are essential to realise the right to health. Water for menstrual hygiene management is a necessary precondition for the right to education of women and girls. The right to food complements the right to water by providing water for farming, fishing and livestock husbandry, and securing other water-related livelihoods.

Overall, these Guidelines provide the main legal reference against which to assess progress towards the goals pursued in the 2063 Africa Union Agenda and Sustainable Development Goal 6 to respectively ensure an 'equitable and sustainable use and management of water resources

for socio-economic development, regional cooperation and the environment' and 'access to water for all'.

The African Commission is extremely grateful for the immense contributions from members of the Working Group and in particular Ms. Helene Ramos dos Santos, the Right to Water Focal Point, the Senior Legal Officer and African Union Youth Volunteers that provided support during the elaboration of these Guidelines.

***Jamesina Essie L. King***  
***Commissioner and Chairperson of the Working***  
***Group on Economic, Social and Cultural Rights in Africa***

A handwritten signature in blue ink, appearing to be 'JL King', written in a cursive style.

## Preamble

The African Commission on Human and Peoples' Rights,

**Recalling** ACHPR/Res.300 (EXT.OS/XVII) on the right to water obligations requesting the Working Group on Economic, Social and Cultural Rights to prepare principles and guidelines on the right to water to assist States in the implementation of their obligations;

**Noting** the role of the African Commission, under Article 45(1)(b) of the African Charter, 'to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation';

**Noting** also Articles 60 and 61 of the African Charter mandating the African Commission to draw inspiration from international law on human and peoples' rights and other sources of law recognized by African States;

**Recalling** in that respect the General Comment No.15 of the United Nations Committee on Economic, Social and Cultural Rights on the right to water; Resolutions 64/292 and 70/169 of the United Nations General Assembly and Resolutions 15/9 and 33/10 of the United Nations Human Rights Council recognizing both the right to water and the right to sanitation;

**Recalling** that the right to water is not among the rights directly protected in the African Charter, but is implied in the protection of a number of those rights, including the rights to life, dignity, work, health, economic, social and cultural development and to a satisfactory environment;

**Recalling** the African Commission's 2010 Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in Africa and the 2010 Reporting Guidelines for Economic, Social and Cultural Rights in Africa, and Resolution ACHPR/Res. 300(EXT.OS/XVII) on the Right to Water Obligations, as they explicitly develop the content of the right to water in Africa;

**Recalling** the African Commission's 2017 State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment, as they develop the content of people's right over natural resources, including water resources, in Africa;

**Recalling** further the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons

with Disabilities in Africa, and the African Union Convention On Cross-Border Cooperation; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, as they referred to the right to water;

**Recalling** the Africa Water Vision for 2025, as adopted by the African Union and the Economic Commission for Africa, calling for 'an Africa where there is an equitable and sustainable use and management of water resources for poverty alleviation, socioeconomic development, regional development and the environment'; as well as the recent declarations and action plans adopted by the African Union, as they recognize a particular place to water in development;

**Recalling further** the Africa Water Vision 2025, as it calls for river basins to serve as a basis for regional cooperation and development, and be treated as natural assets for all within such basins;

**Welcoming** the 2002 Senegal River Water Charter, the 2008 Niger Basin Water Charter and the 2012 Water Charter for the Lake Chad Basin, explicitly recognizing the right to clean drinking water;

**Noting** the eThekweni, Sharm el Sheikh and N'Gor agreements, where States have committed to reserve 1% of GDP for water and sanitation services,

**Recalling** further the customary principles of international water law guiding shared watercourses management, including the principles of reasonable and equitable use of shared water resources, no-harm, and cooperation as the basis for a sustainable management of transboundary water resources;

**Recalling** the jurisprudence of the African Commission on economic, social and cultural rights;

**Concerned** that Sub-Saharan Africa has the largest number of water-stressed countries than any other place on the planet and that out of an estimated 800 million people living in Africa, 300 million live in a water-stressed environment;

**Concerned** by the competition in water uses and over access to water resources, in a context of great diversity in safe water coverage among regions on the Continent and of great interdependence as most of the river basins are shared among several countries;

**Concerned** by the growing trend of water grabbing by international institutions and transnational companies<sup>1</sup>, the privatization of water supply and water resources management

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<sup>1</sup> <https://www.grain.org/es/article/entries/686-lessons-from-a-green-revolution-in-south-africa>  
[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/535010/EXPO\\_STU\(2015\)535010\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/535010/EXPO_STU(2015)535010_EN.pdf)

and the unequitable access to and control of water by rural and urban communities;

**Concerned** by the extensive operation of mining and extractive companies in the African continent, which cause irreparable social and environmental damage, contaminating water sources and rivers and preventing communities from having equitable access to safe and clean drinking water and sanitation;

**Concerned** that many parts of Africa experience cycles of drought and flood and that climate change can impose a significant impact on human populations, ecosystems and the physical environment, by inducing extreme weather events, as well as fluctuations in temperatures that affect evapotranspiration;

**Concerned** about the negative effects of overuse and pollution of water resources and other development activities threatening the rights of present and future generations, the realisation of which depends on equitable access to water;

**Concerned** that many jurisdictions still work on the basis that the right to water is not justiciable;

Hereby **adopts** the Guidelines on the Right to Water in Africa and urgently **calls upon** State Parties to the African Charter to adopt all necessary measures to implement the provisions of these Guidelines in their national legislation, guarantee their broad promotion and dissemination, and ensure their effective implementation.

## Definitions

In the context of these Guidelines:

**‘Affordable water’** means that the fee charged for water does not threaten or compromise the person’s ability to pay for other basic needs, such as food, housing and healthcare.<sup>2</sup>

**‘Communities’** refers to groups of people living in the same place or having a particular characteristic in common, e.g. religion.

**‘Domestic hygiene’** refers to all the work which is done to keep the house and people's clothes and bedding clean, such as food preparation, sweeping and washing floors, cleaning the toilet, washing clothes and bedding, washing dishes and cooking utensils after meals.

**‘Improved water source’** is a type of water source that, by nature of its construction or through active intervention, is likely to be protected from outside contamination, in particular from contamination with fecal matter.

This includes: piped water into dwelling or yard/plot; public tap/standpipes; tubewell/boreholes; protected dug wells; protected springs (normally part of a spring supply); rainwater collection; and bottled water, if the secondary source used by the household for cooking and personal hygiene is improved.

This excludes: unprotected dug wells; unprotected springs; vendor provided water; cart with small tank/drum; bottled water, if the secondary source used by the household for cooking and personal hygiene is unimproved; tanker-truck; and surface water.

**‘Marginalized groups’** refers to groups with no or insufficient<sup>3</sup> access to water.

**‘Personal and domestic use’** means water for safe and clean drinking, personal and domestic, hygiene, sanitation, religious and cultural purposes.

**‘Personal hygiene’**: refers to maintaining cleanliness of one's body and clothing to preserve overall health and well-being, including in particular for these guidelines, handwashing and menstrual hygiene.

**‘Riparian communities’** refers to a group of people sharing access to the same river basin.

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<sup>2</sup> Compilation of general comments and general recommendations adopted by Human Rights Treaty Bodies (2008) HRI/GEN/1/Rev.9 (Vol. I), para 12(i). ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (Nairobi Guidelines), para 79(i) and para 86 (h).

<sup>3</sup> According to the World Health Organisation a minimum of 50 litres of water per person per day is required to fulfil the most basic domestic and hygiene needs and this is a widely accepted benchmark. G. Howard and J. Bartram, ‘Domestic Water Quantity, Service Level and Health’, WHO/SDE/WSH/03.02; World Health Organisation, 2003 p. 22. Also see ‘The Human Right to Water and Sanitation’, UN-Water Decade Programme on Advocacy and Communication and Water Supply and Sanitation Collaborative Council.

**‘Safe sanitation’** refers to the provision of facilities and services for the management of human excreta that effectively prevents human, animal and insect contact with excreta, and treatment and disposal or reuse of faeces, urine and wastewater.<sup>4</sup>

**‘Safe water’** means water that, in particular, is free from hazardous substances (micro-organisms, chemical substances and radiological hazards) that could endanger human health.<sup>5</sup>

**‘Sufficient’** water is the quantity of water necessary to meet the individual’s personal and domestic needs.<sup>6</sup>

**‘Vulnerable groups’** are groups particularly at risk of receiving no or insufficient water, due to a situation of dependence vis-à-vis a public institution, and/or a condition, which can be linked, for instance, to their age, economic status, health, work, location, gender or disability..

**‘Water resources’** refer to natural renewable water resources, both surface water and groundwater, which are generated through the hydrological cycle.

**‘Water supply’** refers to the collection, transmission, treatment, storage and distribution of water from source to consumers for drinking purposes.

**‘Special water needs’** refers to the increased amount and/or quality a person may need due to personal factors, including health, cultural, spiritual and religious needs.

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<sup>4</sup> UNGA, ‘Report of the Special Rapporteur on the human right to water and sanitation to the 68<sup>th</sup> session of the UNGA’ (2013) UN Doc A/68/264

<sup>5</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (Nairobi Guidelines), para 90. ACHPR State Reporting Guidelines and Principles on Articles 21 and 24 relating to Extractive Industries, Human Rights and the Environment, para 9, p 22.

<sup>6</sup> The absolute minimum determined by the WHO is 20 litres/person/day. For the realisation of the right to water, States should provide at least 50 - 100 litres per capita per day. G. Howard and J. Bartram, Domestic Water Quantity, Service Level and Health, (World Health Organisation, 2003), 22, cited in World Health Organization, Guidelines for drinking-water quality, 4th edition (2017), p. 84.

## **Part 1. GENERAL PRINCIPLES**

### **1. State sovereignty and communities' responsibility over natural resources**

- 1.1. States have the main responsibility for ensuring natural resources stewardship with, and in the interest of, the population within their jurisdiction, and must fulfil their mission in conformity with international human rights law and standards.<sup>7</sup>
- 1.2. In particular, States shall respect, protect and fulfill human rights in all matters of natural resources, exploration, extraction, toxic waste management, development, management and governance, in international cooperation, investment agreements and trade regulation.<sup>8</sup>
- 1.3. States shall under no circumstances waive their sovereignty over natural resources.
- 1.4. States shall refrain from using access to water as a political tool.<sup>9</sup>
- 1.5. States shall protect water resources, including springs, streams and lakes that are of cultural significance to the local and traditional communities or to the country at large and guarantee access to individuals and communities who depend on it for their domestic and livelihood needs.
- 1.6. States exercise their sovereignty under the delegated authority of their people, and communities shall in turn actively engage in the sustainable management of water resources and never use those resources in a way that would run counter the public interest or sustainable management of the resources.

### **2. Principles of indivisibility and interdependence of human rights**

- 2.1. All human rights recognised explicitly and implicitly within the African Charter are interdependent and indivisible. As such, their implementation and realisation shall be pursued in a comprehensive manner.
- 2.2. States shall pursue, through an integrated water strategy, the realization of the right to water and all other water-related human rights, such as the right to life, the right to survival and development of children, the right to economic, social and cultural

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<sup>7</sup> ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance'. ACHPR State Reporting Guidelines and Principles on Articles 21 and 24 relating to Extractive Industries, Human Rights and the Environment, 19-20.

<sup>8</sup> ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance'

<sup>9</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92 (c). ACHR, 155/96 : Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria, paras 55-58

development, the right to food, the right to livelihood, the right to health, the right to education, the right to a satisfactory environment and the right to sanitation.

### **3. States' obligations to respect, protect, promote and fulfil the right to water**

- 3.1. All rights, including the right to water, are of immediate application to States upon ratification of the Charter.
- 3.2. States shall respect, protect, promote and fulfil the right to water exercised individually, in association with others or within a community or group.<sup>10</sup> No hierarchy is accorded to any of these duties and all shall be protected through administrative and judicial remedies.
- 3.3. States shall take deliberate, concrete and targeted steps to move as expeditiously and effectively as possible towards the goal of full realisation of the right to water, using the maximum available resources.<sup>11</sup>

### **4. States' obligation to mobilise resources for the realisation of the right to water**

- 4.1. States shall mobilise available resources in order to respect, protect, promote and fulfill the right to water.
- 4.2. To that end, States should mobilise financial and non-financial resources, including technical and human resources and prioritise resources that are more sustainable<sup>12</sup> and allow greater responsiveness to domestic needs and accountability to their people.<sup>13</sup>
- 4.3. When a State claims that it has failed to realise the right to water, due to whatever reason such as economic constraints or adjustments, it shall show that it has allocated all available resources towards the realization of human rights, including the right to water.<sup>14</sup>

### **5. Principle of non-discrimination and equal access**

- 5.1. States shall ensure a non-discriminatory participation to all stakeholders in the water sector, as well as equal access to water and water facilities and services. States shall take positive measures to ensure that vulnerable and marginalized groups and groups with

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<sup>10</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, paras 4-12.

<sup>11</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 13

<sup>12</sup> Report of the Special Rapporteur on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona (2014) UN Doc A/HRC/26/28, para 52

<sup>13</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 20

<sup>14</sup> Maastricht Guidelines, para. 13 and 15(e)

special needs, including cultural, spiritual and religious needs, participate in the water sector and have access to water, following Guidelines under Part 4.<sup>15</sup>

5.2. In accordance with Article 2 of the African Charter, States shall prohibit any discrimination hindering access to water on the grounds of age, race, ethnic origin, colour, sex, gender, sexual orientation, language, religion, political or any other opinion, national and social origin, economic status, birth, health status or other status. Discrimination includes any conduct or omission that has the purpose or effect of nullifying or impairing the equal access to and enjoyment of economic, social and cultural rights.<sup>16</sup>

5.3. Gender equality and the protection of women' and girls' rights shall receive particular attention in the water sector.

## 6. Principle of non-retrogression

6.1. Except in emergency situations addressed in Guideline 29, States are prohibited from taking retrogressive measures that can lead to backward steps in the enjoyment of the right to water.<sup>17</sup> Examples of retrogressive measures are price rises that exclude the poorest within the population from accessing water services, inadequate monitoring and oversight or insufficient investment in human resources capacity or in operation and maintenance of water services and facilities.

6.2. Measures that reduce the enjoyment of the right to water by individuals or peoples are *prima facie* in violation of the African Charter. Any such measures must be justified in the light of the totality of the rights provided for in the African Charter and in the context of the full use of the maximum available resources, as interpreted in Guideline 4.

6.3. Emergency situations may nevertheless lead to retrogression, but only if States publicly provide justification that retrogressive measures are, all together:

- i. Temporary, in that they remain in place only as long as they are necessary and for a maximum period of three months, extendable upon review as defined under (viii);
- ii. Legitimate, with the ultimate aim of protecting the totality of human rights;
- iii. Necessary, in that they must be justifiable after the most careful consideration of all other less restrictive alternatives;

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<sup>15</sup> ACHPR Resolution.300 'Resolution on the human right to water obligations'

<sup>16</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 19

<sup>17</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 16

- iv. Reasonable, in that the means chosen are the most suitable and capable of achieving a legitimate objective;
- v. Proportionate, in the sense that the adoption of any other policy or failure to act would be more detrimental to the enjoyment of economic, social and cultural rights;
- vi. Not discriminatory, able to mitigate the inequalities that can emerge in times of crisis, and not disproportionately affecting the rights of marginalized and disadvantaged individuals and groups;
- vii. Protective of the non-derogable content of economic, social and cultural rights, based on transparency and genuine participation of affected groups including the right to free, prior and informed consent of affected indigenous peoples where appropriate, in examining the proposed measures and alternatives; and
- viii. Subject to meaningful review and accountability procedures every three months.

6.4. Some measures may not be deliberately retrogressive but may nevertheless have regressive effects. In these cases, States' due diligence is required to avoid negative human rights impacts.<sup>18</sup> States are accountable for human rights violations derived from the implementation of such retrogressive measures.

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<sup>18</sup> UN HRC, 'Report of the Special Rapporteur on the human right to safe drinking water and sanitation: Focus on sustainability in the realisation of the rights to water and sanitation' (2013).

## **Part 2. A RIGHTS-BASED APPROACH TO WATER MANAGEMENT**

### **7. General provision**

- 7.1. States shall ensure, in laws and practice, that the principles universally recognised, and defined below, of participation, non-discrimination, access to information, sustainability and accountability are respected, protected, promoted and fulfilled in the planning, decision-making, implementation, and monitoring processes in the water sector, as integral to the realisation of the right to water.

### **8. Participation**

#### **General provisions**

- 8.1. States shall establish mechanisms that proactively and deliberately enable the transparent, maximum and effective participation of individuals and communities at all stages of planning, decision-making, implementation, monitoring and evaluation of water resources management and water, sanitation and hygiene policies and plans at the local level in a democratic and inclusive manner.<sup>19</sup> This obligation applies in all cases, whether entities in charge of water resources management or water supply are public or private.
- 8.2. States shall identify, acknowledge and remove barriers to participation as defined under Guideline 8.1 and ensure the meaningful participation of vulnerable and marginalized groups, especially those mentioned under Part 4 and the free, prior and informed consent of indigenous peoples where appropriate.
- 8.3. States shall ensure that individuals and groups, including vulnerable and marginalized groups, are aware of their ability to participate.<sup>20</sup> States shall take steps to encourage and facilitate the participation of those belonging to these groups and ensure that the mechanisms for participation are accessible to all and function in a non-discriminatory manner. States shall in particular empower women to participate, on an equal basis with men, at all levels in water resources and water programmes,
- 8.4. States shall promote and protect the civil society space and enhance the capacity of civil society and human rights defenders working with water and sanitation issues and strengthen their voice in decision-making processes and public discourse.

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<sup>19</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92 (i) ACHPR Resolution 300 'Resolution on the human right to water obligations'

<sup>20</sup> UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation (2016), para 77 (j)

## Community-based water management

- 8.5. All levels of government, including local authorities, have a primary responsibility in ensuring the realization of the right to water of all and manage water resources in a participatory, transparent, sustainable, equitable, effective and accountable manner. To achieve this, States shall ensure that local authorities have the necessary powers and resources, and seek and facilitate the participation of communities to design and implement plans, strategies and projects for water resource management.
- 8.6. States shall take steps to ensure that local government authorities, as well as decision-making structures of traditional communities, are adequately empowered, equipped and resourced to manage water services in their own areas in a sustainable manner, and under their authority so as to facilitate universal access to water in sufficient quantity, quality and continuity, and at an affordable and equitable price.<sup>21</sup>
- 8.7. States shall support community development and management of small-scale water services and facilities, facilitate and regulate small-scale provision by communities, civil society actors or private business ventures. In particular, the community shall take part in the decision-making process about the type of water services required, how those services shall be managed and the relevance and conditions under which water services shall be delegated, how tariffs, subsidies and payments are structured and arranged and, where possible, to choose and manage their own services with assistance from the government.

## Development projects

- 8.8. States shall require transparent, maximum and effective community participation, including the free, prior and informed consent of communities, in the decision-making process about, and monitoring of, any developmental activities that may affect the use of, and equitable access to, the water resources.<sup>22</sup>
- 8.9. The cultural significance of the water resources, as identified by the riparian communities, which shall be consulted, shall be respected and fully taken into account during the human rights impact assessment before and during the implementation of the project, as foreseen under Guideline 29.

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<sup>21</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92 (i)

<sup>22</sup> ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance'. ACHPR State Reporting Guidelines and Principles on Articles 21 and 24 relating to Extractive Industries, Human Rights and the Environment, para 4, p 20.

8.10. States shall ensure that the benefits from land, water and other natural resources management activities are shared in a fair, equitable and participatory manner with the communities and that the communities are engaged in the benefit-sharing process from the initial stage.<sup>23</sup>

## **9. Access to information**

9.1. States shall ensure that individuals and communities, especially vulnerable and marginalized groups, are given full and equal access, in an understandable and adapted manner, to information on their right to water and ways to exercise it and information concerning water management, water services and the environment, whether this information is held by public authorities or third parties.<sup>24</sup> Adapted access includes publication of the information on a public website that is compatible with the main mobile internet browsers. It also includes community workshops to provide information on the right to water.

9.2. States shall include in the information referred to in Guideline 9.1.:

- a) Information about quality, quantity, costs, and continuity of water supplies, services and facilities necessary for daily use by individuals and communities;
- b) Information relating to the management of the water sector;
- c) Information on all existing databases, records and information assets in the water sector.
- d) Information relating to privatization, concession, corporatization, nationalization, partnership and the contracting of essential water services;
- e) Information relating to development and industrial projects affecting water resources;
- f) All types of strategic and impact assessments, including environmental impact assessments, strategic environmental assessments, social impact assessments and human rights impact assessments that may affect the right to water; and
- g) Agreements with other states or measures affecting other states' access to essential water supplies from shared water resources and plans for sharing water between states.

9.3. States shall ensure that accurate, reliable and comprehensive information and data relating to the realization of the right to water are collected on a regular basis and maintained in an organized and systematic manner.

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<sup>23</sup> ACHPR State Reporting Guidelines and Principles on Articles 21 and 24 relating to Extractive Industries, Human Rights and the Environment, para 11, pp 22-23.

<sup>24</sup> General Comment no. 15

- 9.4. States shall ensure that all procedures for accessing information apply to information relevant for the realization of the right to water. These procedures shall ensure that requests for water-related information are to be processed rapidly and fairly, that an independent review of any refusals and complaints mechanisms is available and that applicants are provided with assistance if necessary.
- 9.5. Public and private entities in the water sector shall adopt and implement comprehensive measures that facilitate the sharing of information relating to the right to water and promote transparency in the water sector. They shall refrain from activities that may impede the realization of these rights.
- 9.6. Access to information is necessary to ensure the meaningful participation of communities in decision-making processes in the water sector, as established under Guidelines 8 and 29.

## 10. Accountability

- 10.1. States are primarily responsible to ensure the realization of the right to water. Non-state individual and corporate actors shall respect the right to water and ensure due diligence in accordance with Guideline 29 for abuses of the right to water
- 10.2. States shall prohibit and provide access to remedies to victims of, *inter alia*:
  - i. exclusion from access to water due to evictions or homelessness;
  - ii. exclusion from access to a publicly owned facility or one operating on a commercial basis;
  - iii. corruption, such as demands for bribes in return for access to public water services;
  - iv. water disconnection on the grounds of non-payment, in case the person is unable to pay and there is no alternative source ensuring his/her right to water as defined in these Guidelines; and
  - v. water pollution.
- 10.3. States must ensure the justiciability of the right to water in all its components and principles set out in these Guidelines and ensure that anyone directly or indirectly affected, including those responsible for or interested in the well-being of vulnerable groups, shall be entitled to lodge a complaint and receive reparation, before an accessible, impartial, transparent and effective administrative or judicial mechanism.
- 10.4. To this end, States shall put in place accountability mechanisms that can monitor the realisation of the right to water and can provide access to justice when the right is violated by a state or non-state actor, including private operators acting as part of a delegation of services or independently. These mechanisms shall be accessible to all individuals and shall include:

- i. independent utilities' regulators that can monitor how services are provided, determine how much the public can pay for the service to be affordable to all, and ensure that the quality of the service does not deteriorate;
  - ii. effective procedures to receive and respond to complaints about any lack of provision of the service;
  - iii. human rights commissions and ombudsman offices or other relevant administrative bodies, that are accessible, well known and promote information sharing on the right to water, can carry out detailed and long-term reviews of government policy, respond to complaints effectively, and resolve conflicts; and
  - iv. judicial bodies, including courts, that effectively hear and process individual complaints in a timely manner; require, when necessary, broader changes to laws and policies, programmes and actions; provide remedies such as restitution, compensation and guarantees of non-repetition; and impose criminal and civil penalties on public officials, businesses and private persons that are failing to comply with the law; and apply remedies.
- 10.5. As per Article 55 of the African Charter and Art. 34.6 of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights respectively the African Commission and the African Court are competent to hear cases of violations of the Charter, including the right to water defined here, upon exhaustion of local remedies.

### **Corruption**

- 10.6. States shall engage in vigorously fighting corruption at all levels of decision making related to water governance by strengthening and enforcing criminalization and by taking other appropriate measures to fight corruption in the delivery of water services and management of the sector.<sup>25</sup>

### **Extraterritoriality**

- 10.7. States shall guarantee that companies are legally accountable for their activities in the country hosting their activities and in the country of their legal domicile.

## **11. Sustainability**

- 11.1. States shall ensure that water resources are managed and water is supplied so as to ensure the right to water and all other water-related rights of present and future

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<sup>25</sup> ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance', para 3

generations within its jurisdiction, and without jeopardizing the rights of populations of other states dependent on the same resources.

11.2. States shall follow the guidelines pertaining to sustainability under Part 5 below.

## **Part 3. SUFFICIENT, SAFE, ACCEPTABLE, PHYSICALLY ACCESSIBLE AND AFFORDABLE WATER FOR PERSONAL AND DOMESTIC USES**

### **12. General provisions**

- 12.1. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.<sup>26</sup>
- 12.2. Under no circumstances may an individual be deprived of the minimum essential amount of water for basic human needs and survival.<sup>27</sup>
- 12.3. Water shall be treated first and foremost as a social and cultural good, not as an economic good.<sup>28</sup>

### **13. Availability**

#### **Priority to human needs in water management**

- 13.1. States shall ensure the reasonable and equitable use of water resources through the allocation of and distribution of water resources to meet, as a priority, the vital human needs of the populations concerned, in particular equitable access to safe and clean drinking water in sufficient quantity and of good quality for personal and domestic uses, subsistence agriculture and other means of subsistence.<sup>29</sup>

#### **Access to sufficient and safe amount of water**

- 13.2. States shall ensure that everyone has equitable access to an amount of water that is sufficient for a dignified life,<sup>30</sup> safe and clean for personal, domestic and productive uses, including preventing diseases, for subsistence farming and for securing the livelihoods of peoples, no matter where they live, particularly for indigenous communities.<sup>31</sup> They must do this before providing greater quantities for more well-off communities.

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<sup>26</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 88.

<sup>27</sup> The absolute minimum determined by the WHO is 20 litres/person/day. For the realisation of the right to water, States should provide at least 50 - 100 litres per capita per day. G. Howard and J. Bartram, *Domestic Water Quantity, Service Level and Health*, (World Health Organisation, 2003), 22, cited in World Health Organization, *Guidelines for drinking-water quality*, 4th edition (2017), p. 84.

<sup>28</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92

<sup>29</sup> ACHPR Resolution 300, 'Resolution on the right to water obligations'

<sup>30</sup> General Comment no.15 para 12(a). See above note 29.

<sup>31</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92 (u)

13.3. States shall increase the water quantity required to be ‘sufficient’ taking into account peoples’ special needs, including special conditions mostly related to age, gender, health, climate and work conditions.<sup>32</sup>

### **Continuous or regular supply**

13.4. States shall adopt measures to ensure that a continuous or regular supply of water is available for the personal and domestic needs of each individual.<sup>33</sup>

### **Water exports**

13.5. States may export domestic water resources only if the right to water is fully enjoyed within the country.<sup>34</sup>

### **Rainwater harvesting**

13.6. States should promote rainwater harvesting so as to support both rural and urban communities that currently lack sufficient supplies of safe water, while protecting the needs of the wider environment. They shall invest in catchment tanks either below or above ground where rainwater can be collected.

## **14. Physical accessibility**

14.1. States shall ensure safe, physical and equitable access to water facilities or services that provide sufficient, safe and regular water; have an adequate number of water outlets to avoid prohibitive waiting times; and are within or in the immediate vicinity<sup>35</sup> of the household, educational institutions, workplaces, market places, health institutions, prisons and other places of detention, refugee camps and any other public institution or institution in charge of public services.<sup>36</sup>

14.2. States shall ensure that water services and facilities are safely accessible to all. This means that they shall address the needs of vulnerable and marginalized groups, and in particular of persons with disabilities, and be of adequate quality, culturally appropriate and sensitive to gender, life cycle (age) and privacy requirements.

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<sup>32</sup> G. Howard and J. Bartram, *Domestic Water Quantity, Service Level and Health*, (World Health Organisation, 2003), 22.

<sup>33</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (Nairobi Guidelines), para 92(a)

<sup>34</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (Nairobi Guidelines), para 92(l)

<sup>35</sup> The World Health Organisation the water source should be within 1’000 metres from home and collection time should not exceed 30 minutes See G. Howard and J. Bartram, *Domestic Water Quantity, Service Level and Health*, (World Health Organisation, 2003), 22

<sup>36</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights (Nairobi Guidelines), para 92(b)

14.3. When a household connection is not possible, the person shall have access to improved sources of water near the household, such as boreholes, public stand posts, water kiosks, covered wells, and rainwater collection.

## **15. Affordability**

15.1. States shall ensure that water is affordable to all. The cost of water shall not mean that people have to go without other essential goods and services for the realization of human rights, such as food and healthcare. Supplying a free amount of safe water is one way to make water affordable.

### **Pricing policies**

15.2. States shall define benchmarks for affordability of water services in such a way that it can be readily monitored, such as a maximum percentage of household income that shall be spent on access to and use of the service.<sup>37</sup> Water services usually include service charges, connection fees and maintenance. Water prices shall be established so as to ensure that operations and maintenance cost are covered in the long term, and shall never depend on profit considerations only. Benchmarks for water pricing established by the State shall bind all water providers, whether public or private.

15.3. States shall adopt appropriate water pricing policies, including through stepped tariffs, flexible payment schemes and cross-subsidies from high-income users to low-income users. They shall subsidise water services for low-income households and poor areas that lack the means to secure access to such services. Subsidies shall be used for connection to distribution networks or for the construction and maintenance of small-scale water supply facilities, such as wells, boreholes and latrines.<sup>38</sup>

### **Water disconnection**

15.4. Marginalized groups shall never be subjected to water disconnection.

15.5. Full water disconnection may only be permissible for nonpayment if the person unable to pay can access an alternative source, thereby ensuring the right to water as defined in these Guidelines.<sup>39</sup>

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<sup>37</sup> UN Special Rapporteur on the right to safe drinking water and sanitation (2014): Realising the rights to water and sanitation: a handbook by Catarina de Albuquerque

<sup>38</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92(q)

<sup>39</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92(k)

15.6. In all cases, States shall ensure that procedures for the disconnection of water are reasonable, occur only when the individual has the actual ability to pay but did not, apply only after timely notification, at least one month in advance, of the planned disconnection. The notification shall include a reasoned decision for the disconnection, full disclosure of the facts supporting the decision and information on legal recourse and remedies, as well as legal assistance.

## **16. Quality and acceptability**

16.1. Everyone has the right to safe water for personal and domestic uses.

States must prevent the pollution of water supply by agricultural and industrial activities, as well as wastewater. Water provided for domestic and personal use in homes and public spaces must be of an acceptable colour, odour and taste. Acceptability shall be defined by the water users.

16.2. States must monitor and ensure that the quality of drinking water supplied by any public or private entity, especially bottled or bagged water, is safe, in accordance with national legislation on water quality complying with international standards.<sup>40</sup>

### **Protection of water resources**

16.3. States shall protect the quality of water resources and the entire riverine ecosystem, from watersheds to oceans.<sup>41</sup> They shall also ensure the protection and maintenance of traditional sources of water, including reservoirs, springs and rivers, and promote safe sanitation and hygiene practices. This shall be done in consultation with affected communities with special attention given to the participation of individuals belonging to vulnerable and marginalized groups.

16.4. States shall ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. This includes strict control of the use of water resources and the prevention of pollution of such sources by agricultural and industrial activities, especially the activities of extractive industries in rural areas.<sup>42</sup>

16.5. In case of water pollution, States shall take all available measures, including health and social security measures, in order to mitigate the damage, and protect the affected persons' rights, in particular their rights to health, an adequate standard of living and a healthy environment. Remedies shall be provided as expeditiously as possible.

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<sup>40</sup> See WHO standards on water quality.

<sup>41</sup> ACHPR Resolution 300 'Resolution on the human right to water obligations'

<sup>42</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92(n)

## Disease prevention and monitoring

- 16.6. States shall take steps on a non-discriminatory basis to prevent threats to health from polluted water conditions.<sup>43</sup>
- 16.7. States shall monitor and combat situations where aquatic eco-systems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments.<sup>44</sup>
- 16.8. States shall promote ways to ensure that water collected from rivers, wells, springs or rainwater harvesting, is protected, and is safe for customary and religious practices.
- 16.9. States shall ensure that everyone has the right to have physical and affordable access to adequate and safe sanitation that is conducive to the protection of public health and the environment, giving everyone the right to access in sufficient numbers, physically accessible, technically and hygienically safe, affordable, culturally acceptable and respecting the privacy and dignity of the person, including handwashing facilities.<sup>45</sup> Sanitation comprises at least, a clean toilet or latrine, within or in the immediate vicinity of each household, educational institution, workplace, market place and shopping area, health institution, prison and other places of detention, refugee camps and any other public institution or public service, together with the collection, disposal and treatment of human excreta, wastewater, solid waste and storm water removal and hygiene education.<sup>46</sup>

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<sup>43</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92 (m)

<sup>44</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92 (o)

<sup>45</sup> See 'Report of the Special Rapporteur on the human right to safe drinking water and sanitation' 27 July 2015 A/70/203 paras 5-13 at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203)

<sup>46</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 91

## **Part 4. VULNERABLE AND MARGINALIZED GROUPS AND GROUPS WITH SPECIAL WATER NEEDS**

### **17. General provisions**

- 17.1. In addition to the rights afforded to persons with special needs under the African Charter and relevant international law, States shall adopt positive measures as described below.
- 17.2. States shall identify marginalized and vulnerable groups, which have no, or are at risk not to have, access to sufficient water, and collect data in a way to assess the actual enjoyment of the right to water by those groups.
- 17.3. States shall also identify groups with special water needs, due to personal or external factors, such as work, location, health, age, or gender. Women, children, and the elderly and those facing multiple disadvantages shall receive particular attention.
- 17.4. States must develop, adopt and periodically monitor and review laws and policies, with the active participation of the relevant groups, to ensure that water supply is adapted to the special needs of these groups.

### **18. Persons who are homeless and persons living in informal settlements**

- 18.1. No one shall be denied access to water because of their housing or land status, including those who are homeless. States shall upgrade informal human settlements through the provision of water services and through assistance with the construction of their own water facilities.<sup>47</sup>
- 18.2. States shall aim to lessen power imbalances between stakeholders. This includes adopting landlord-tenant laws protective of the rights of the tenants.

### **19. Persons living in rural areas and deprived urban areas**

- 19.1. States shall extend safe water services to rural and deprived urban areas.<sup>48</sup>
- 19.2. States shall support equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology, for disadvantaged and marginalized farmers, including women farmers.<sup>49</sup>

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<sup>47</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92(r)

<sup>48</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92(s)

<sup>49</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92(t)

## **20. Persons deprived of liberty**

20.1. States shall ensure that imprisoned and detained persons have access to sufficient, safe and acceptable water and sanitation facilities. Sufficient water shall be provided daily, together with sufficient soap and clothes detergent to ensure personal hygiene, clean bedding and clothes.<sup>50</sup>

## **21. Children**

21.1. States shall ensure that safe drinking water is provided to children, taking into consideration the dangers and risks of environmental pollution.<sup>51</sup>

21.2. States shall ensure that appropriate water facilities, access to suitable hygiene products including soap, and separate sanitation facilities for girls and boys are available in schools.

21.3. States shall ensure that children have access to information and are educated concerning safe hygiene practices.

21.4. States shall work to relieve children of water collection and other related household chores and ensure that, in any case, it does not prevent them from going to school.

## **22. Women**

22.1. States shall take action to reduce the disproportionate burden and amount of time women bear in water collection.

22.2. States shall guarantee safe access to water for women and girls at any time of the day and strengthen customary and statutory institutions and mechanisms for defending or protecting women's rights to water

22.3. States shall pay particular attention to alleviate difficulties encountered by rural women in accessing water who have to pay fees in some countries affected by desertification.

## **23. Elderly**

23.1. States shall ensure that adequate quantities of safe water with improved and adapted access are available, affordable and safely accessible for the elderly.

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<sup>50</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92(v)

<sup>51</sup> African Charter on the Rights and Welfare of the Child, Art.14.2(b); Convention on the Rights of the Child, Art.24.2(c).

## **24. People with disabilities**

24.1. States shall ensure that adequate quantities of safe water with improved and adapted access are available, affordable and safely accessible for persons with disabilities.

## **25. Refugees, migrants and internally displaced persons**

25.1. States shall guarantee refugees, migrants and internally displaced persons the right to water.

25.2. States shall use access to water as a governing factor for camp site selection and design camps with proper drainage to mitigate flood risks.

## **26. Stateless persons and asylum-seekers**

26.1. States shall ensure that stateless persons and asylum-seekers enjoy their right to water within their jurisdiction, notwithstanding their nationality or lack of legal status.

## **27. Indigenous peoples**

27.1. States shall consult, cooperate and engage with indigenous peoples in order to support them in protecting, developing and adapting their traditional water management systems for their ancestral lands.<sup>52</sup>

27.2. States shall respect the indigenous peoples' access and use of natural resources in their territory as intrinsically related to their right to life, food, self-determination and the right to exist as a people. Limitations on the right of indigenous peoples to their natural resources, including water resources, can only flow from the most urgent and compelling interest of the state.<sup>53</sup>

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<sup>52</sup> ACHPR Resolution 300 'Resolution on the right to water obligations'. General Comment no. 15 par. 16 (d). 'Facilitation refers to providing sufficient resources for indigenous peoples to design, deliver and control their access to water.

<sup>53</sup> ACHRP, 155/96 : Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria. ACHPR, 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya (2009), paras 212, 267.

## **Part 5. SUSTAINABLE WATER MANAGEMENT**

### **28. Sustainability and integrated strategies**

28.1. States shall establish a clear legal framework for sustainable development that makes the realisation of human rights a prerequisite for sustainability.<sup>54</sup> States shall develop comprehensive integrated strategies addressing the realisation of all water-related rights in such a way so as to ensure the individual and collective rights of present and future generations. Sustainability goes beyond the functionality of services and is intrinsically linked to the principle of equitable use of water resources.

28.2. Such strategies may include:<sup>55</sup>

- i. reducing the depletion of water resources by halting unsustainable extraction, diversion and damming;
- ii. implementing effective human rights-consistent climate change mitigation and adaptation measures in order to reduce the impacts of climate change on the right to water;
- iii. eliminating over-exploitation;
- iv. monitoring water reserves in accordance with international human rights standards;
- v. ensuring that development projects do not interfere with access to adequate water;
- vi. developing rain harvesting and irrigation technology;
- vii. assessing the impacts of actions that may impinge upon water availability and natural ecosystem watersheds such as climate change, desertification and increased soil salinity, deforestation and loss of biodiversity and reducing water wastage in its distribution;
- viii. ensuring response mechanisms for emergency situations;
- ix. establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes; and
- x. prohibiting and repressing water pollution and contamination of watersheds and water-related eco-systems;.

### **29. Human rights impact assessment**

29.1. Human rights impact assessments are a preventive tool to evaluate, together with the affected communities, the impacts that the activities of such projects might have, is having or has had on their right to water. The affected communities have the right to request that projects with grave impacts on their human rights are disallowed or stopped at any stage before or during the implementation of a project. States are

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<sup>54</sup> ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance'

<sup>55</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92 (g)

accountable for regulating and monitoring the possible activities of such projects and are responsible for remedying situations of human rights violations as a consequence of such activities.

29.2. Prior to any development activity likely to have an impact on water resources or water supply, States shall ensure independent human rights and environmental impact assessments,<sup>56</sup> with direct participation of the affected communities, in order to:

- i. identify likely positive human rights impacts;
- ii. identify potentially negative human rights impacts, including potential violations of non-derogable obligations in respect of the right to water, such as impermissible retrogression of the right to water and discriminatory impact in law and in practice that are incompatible with international human rights law;
- iii. prevent or mitigate adverse impacts on the right to water; and
- iv. clarify the circumstances under which certain temporary retrogressive measures may be justifiable, based on the principles of necessity, proportionality, legitimacy and reasonableness as per Guideline 6.

29.3. States shall ensure that the human rights- impact assessment conducted:

- i. is based on qualitative and quantitative data, disaggregated by gender, disability, age group, region, ethnicity and any other relevant prohibited grounds of discrimination and based on a contextual, country-level appreciation of groups at risk of marginalization;
- ii. ensures the meaningful participation of all relevant stakeholders and affected individuals and communities, including women, children, the elderly, persons with disability, migrants, minorities and other groups at risk of vulnerability, such as indigenous peoples, refugees and internally displaced persons;
- iii. is transparent;
- iv. ensures the free, prior, informed consent of the community, as well as fair compensation for, and benefit-sharing with, the community as required under Guideline 7;
- v. includes impact on the spiritual, religious and cultural rights of indigenous peoples and other traditional communities, customary people's rights and community existence including livelihoods, local governance structures and culture; and
- vi. can serve as an accountability tool and be used to obtain reparations.

29.4. The rights of the people of the State as a whole may not detract from the specific rights of affected people who are directly impacted by extractive industries to benefit from the exploitation of natural resources. While this does not confer an absolute right on

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<sup>56</sup> ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance', para 4

affected people over the national interest, there is need for these, at times conflicting interests, to be balanced in a fair and just manner, which does not prejudice the affected people.<sup>57</sup>

### **30. Emergency situations**

- 30.1. Following an emergency situation such as a natural disaster or armed conflict, States shall adopt an effective response plan to ensure that people have access to minimum quantities of safe water and basic sanitation without discrimination and to facilitate the provision of aid to vulnerable and affected persons where necessary.
- 30.2. States shall protect water sources and find ways to store water and prevent wastage, without impacting local economies.
- 30.3. States may be forced to take retrogressive measures in times of crisis, but these measures shall respect the conditions established under Guideline 6.

### **31. Climate change**

- 31.1. States shall apply a human rights-based approach to guide policies and measures designed to address climate change and prevent their negative human rights impacts, among others:<sup>58</sup>
  - i. identify rights-holders, and in particular, the groups most vulnerable to climate change, and duty-bearers;
  - ii. strengthen the capacities of rights-holders for them to make their claims and have the necessary capacity to adapt to climate change and of duty-bearers to meet their obligations;
  - iii. integrate human rights impact assessments into climate change mitigation and adaptation actions, ensuring these measures do not interfere with the enjoyment of the right to water;
  - iv. guarantee non-discriminatory, meaningful and informed participation for the development of mitigation and adaptation measures, in accordance with water strategies;
  - v. mobilize maximum available resources and international cooperation for sustainable, human rights-based development;
  - vi. implement appropriate adaptation measures to ensure that water infrastructure is resilient to extreme weather events and rising sea levels;

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<sup>57</sup> ACHPR State Reporting Guidelines and Principles on Articles 21 and 24 relating to Extractive Industries, Human Rights and the Environment, para 4, p 20.

<sup>58</sup> OHCHR, 'Climate Change and the Human Rights to Water and Sanitation'

- vii. ensure that third parties implementing climate change mitigation and adaptation measures do not interfere with the enjoyment of human rights, including the right to water;
- viii. raise awareness about the impact of climate change on the right to water, including water availability, and chemical and biological contamination; and
- ix. ensure accountability and effective remedy for human rights harms caused by climate change.

## Part 6. PRIVATE ACTORS

### 32. Conditions for delegation of water supply services to private entities

- 32.1. States remain ultimately responsible for the realization of the right to water, notwithstanding the delegation of water services, in whole or in part.
- 32.2. Prior to delegating water services, in whole or in part, States shall consult with the public to decide on whether to delegate service provision to private entities. There is no assumption under human rights law that delegation is necessary or more effective. States shall demonstrate that the decision to delegate meets substantive requirements and, as such:
  - i. is the most effective and expeditious way to realise the right to water, in particular the obligations related to equality and non-discrimination;
  - ii. does not constitute a retrogressive measure as defined in Guideline 4;
  - iii. does not constitute or contribute to the marketisation or commercialisation of water;
  - iv. can be reversed and the role of the private entity transferred back to public authorities; and
  - v. does not create a real risk of nullifying or impairing the discharge by the State of any of its other human rights obligations, particularly the obligation to prevent direct and indirect discrimination;
- 32.3. If they consider delegating water services, States shall meet procedural requirements, including by carrying out a participatory and non-discriminatory assessment of the potential impacts of the introduction of a private provider, where plans or providers who do not meet the required standard can be discontinued or disqualified respectively. Where the consultative process determines that a delegation is necessary, there must be a plan of action to avoid all foreseeable negative impacts and a threshold to disqualify providers where there is a risk of human rights violation.
- 32.4. States shall ensure that this assessment:
  - i. measures the impact of private providers' services both on the short and long term;
  - ii. makes the findings publicly available;
  - iii. informs the regulations put in place by the State in order to guarantee that the right to water is not undermined by the existence of private operators; and
  - iv. informs a plan of action to address the negative impacts identified, and that this plan of action is made public.

- 32.5. States shall ensure that the private management of water services, or any delegation of water service provision, including to small-scale service providers, does not take place in the absence of a clear and efficient regulatory framework that ensures sustainable, participatory and non-discriminatory access to safe, sufficient, regular, physically accessible and affordable water, as defined in these guidelines. This draws from the States' obligation to prevent third parties, including corporations and agents working under their authority, from violating the right to water.<sup>59</sup> Private actors delegated from a public service obligation are subjected to more stringent obligations than other private actors.
- 32.6. States shall establish mechanisms to monitor and control charges imposed by private providers. States shall, in particular, put effective independent regulatory bodies to exercise oversight over all private providers. Such bodies shall be adequately funded and supported so that they have the means to ensure the protection of the right to water, such as to ensure that water use charges are not higher for lower-income consumers than higher-income consumers.<sup>60</sup>
- 32.7. When they delegate water services, States shall ensure that all means for delegating service provision, including contracts, are in line with human rights law. Contracts shall include a clear definition of service providers' rights and responsibilities,<sup>61</sup> and substantive benchmarks for accessibility (physical and economic), availability (sufficiency and continuity), acceptability, and quality, including ensuring access to a minimum level of water for all.<sup>62</sup> Contracts shall equally provide details on public access to information on the means of service delivery as well as on the capital, operation and maintenance costs incurred by the provider. Reporting guidelines shall be provided, detailing the frequency and scope of reporting by the provider. Contracts shall contain performance targets in terms of the extension and improvement of services in accordance with the right to water and shall prioritize the provision of basic levels of service to unserved population groups above the upgrading of service levels for population groups already enjoying services.<sup>63</sup> Contracts shall also have a clause enabling to terminate the contract in case the realization of the right to water is at risk of, or is being, jeopardised.

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<sup>59</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92 j

<sup>60</sup> ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Nairobi Guidelines), para 92 g

<sup>61</sup> UN Special Rapporteur on the right to safe drinking water and sanitation (2014): Realising the rights to water and sanitation: a handbook by Catarina de Albuquerque. Planning Processes, service providers, service levels and settlements; UN Special Rapporteur on the right to safe drinking water and sanitation (2013): On the Right Track: Good Practices in realising the rights to water and sanitation. Geneva: OHCHR

<sup>62</sup> General Comment no. 15, para 47

<sup>63</sup> UN Special Rapporteur on the right to safe drinking water and sanitation (2014): Realising the rights to water and sanitation: a handbook by Catarina de Albuquerque.

32.8. In all circumstances, States remain accountable in case of harm caused by the activities of a private water operator. This is the case *inter alia* where private actors' involvement:

- i. interferes with the right to non-discrimination and equality;
- ii. leads to the commercialisation of water;
- iii. undermines the core obligations under the right to water and the nature of water provision as a public service;
- iv. undermines transparency, public accountability, or public participation by the concerned stakeholders; or
- v. amounts to a retrogressive measure as defined under international human rights law.

### **33. Regulation of all other private actors's activities and impact on the right to water**

33.1. In accordance with the obligations of companies set up by the African Commission,<sup>64</sup> States shall adopt a regulatory framework mandating business enterprises to avoid causing or contributing to adverse human rights impact and, in particular:

- i. undertake a human rights impact assessment, prior to, and regularly during, any of their activities;
- ii. seek to prevent or mitigate possible adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts; and
- iii. address without delay such impacts when they occur, and set up processes to remedy any adverse human rights impacts they cause or to which they contribute.

33.2. States must adopt a specific regulatory framework for private entities supplying drinking water in containers, such as bottles or bags, to respect the right to water obligations.

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<sup>64</sup> See ACHPR's State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment, 37-40.

## **Part 7. IMPLEMENTATION**

### **34. General provisions**

- 34.1. In accordance with Article 1 of the African Charter, States shall adopt, in a participatory, transparent and non-discriminatory manner, legislative, policy, administrative, judicial, financial and other measures, with clear responsibilities and adequate resources for implementing and monitoring agencies, and clear objectives, targets, timeframes, indicators and benchmarks, to give effect to these Guidelines and ensure that the rights and obligations contained herein are always guaranteed in law and practice, including during conflict and states of emergency. Institutions and local governments shall have the powers and be adequately resourced and respect a gender balance.
- 34.2. States shall adopt an integrated water strategy that links water with sanitation, health, education, satisfactory environment and other cross-cutting rights.<sup>65</sup> In so doing, States shall identify the primary institution leading the regulation of water, and set up a coordinating body involving all relevant state and non-state stakeholders in a participatory, transparent and non-discriminatory manner. This coordination platform shall address in a comprehensive manner gender inequalities and cultural taboos.<sup>66</sup>
- 34.3. In order to guarantee accessibility to water for all, States shall set targets at the national or regional level for extending services and facilities and prioritise communities with currently little or no access.
- 34.4. States shall mobilise financial and human resources available to attain the objectives, targets and goals, and allocate resources appropriately according to institutional responsibility. Prior to this process and afterwards to monitor progress, States shall collect and analyse data in a participatory manner, on access to water, sanitation and hygiene management, disaggregated by sex and other relevant prohibited grounds of discrimination. This process shall identify in particular those most in need and assess gender equality and women's enjoyment of their right to water.<sup>67</sup>

### **35. Regional cooperation in transboundary water management**

- 35.1. States shall:

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<sup>65</sup> Non-Discrimination, Access to Information, Participation, Accountability, Access to Justice and Sustainability

<sup>66</sup> UN Special Rapporteur on the Right to Water and Sanitation (2016), para 77 (f)

<sup>67</sup> UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation (2016), para 77 (k)

- i. take all legal, administrative, economic, financial and technical measures, including the necessary administrative control over public and private operators, in order to prevent transboundary harm that would impair the right to water of the riparian communities;
- ii. prior any development activity likely to impact on the water resources, conduct transboundary human rights and environmental impact assessments, with the meaningful participation of the riparian communities;
- iii. ensure that measures taken to prevent transboundary damage are publicly accessible; and
- iv. where unavoidable harm has been caused to one of the riparian communities, take all appropriate measures to mitigate such harm and/or compensate the communities affected.

35.2. In case of shared river basins, States are encouraged to:

- i. explicitly recognise the right to water in transboundary water agreements, with the consecutive implications for all parties that:
  - the right to water is one of the relevant factors that determine whether the use of the resource is equitable and reasonable;<sup>68</sup>
  - vital human needs are given priority in the allocation and distribution of water, as per Guideline 13.1.<sup>69</sup>
- ii. set up an adequately resourced joint body in charge of the integrated and participatory management of water, including management at the lowest appropriate level,<sup>70</sup> and participation of, and access to information for, riparian communities with no discrimination;
- iii. set up a dispute- prevention and settlement mechanism, competent to address issues related to the right to water and balance competing communities' interests, which may legitimately arise.

### 36. International cooperation

36.1. When entering into international and regional engagements or undertaking bilateral and multilateral assistance, States must ensure that the right to water is respected and that those without basic access are given priority. International organisations, including UN agencies, such as World Health Organization and the Food and Agriculture Organisation (FAO), trade and financial institutions, such as the World Bank and the International Monetary Fund (IMF) and the member States of such bodies shall ensure that their policies and actions respect the right to water.

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<sup>68</sup> Convention on the Law of the Non-navigational Uses of International Watercourses (1997), Art.10, para 2

<sup>69</sup> Commentary on Draft articles on the Law of the Non Navigational Uses of International Watercourses, International Law Commission Report, 46th session, Doc. Officials, Supplement No. 10 A / 49/10, 279-280

<sup>70</sup> Economic Commission for Africa, African Union, African Development Bank (undated): Africa Water Vision for 2025: Equitable and Sustainable Use of Water for Socioeconomic Development

36.2. Agreements arising from bilateral and multilateral economic cooperation shall not lead to adverse impact on the right to water and a clause that excludes the responsibility of entities from liability arising from activities undertaken under these agreements shall be held contrary to Article 21(5) of the Charter.

### **37. Dissemination**

37.1. States shall ensure that these Guidelines are widely disseminated, including to the justice, health, education, sanitation, environment and water sector actors, the community, and to national human rights institutions, national preventative mechanisms, statutory oversight authorities and other stakeholder in water management and water supply.

### **38. Training**

38.1. States shall build the capacity of populations in human rights education, including the right to water and protection mechanisms.<sup>71</sup> States shall ensure that all officials who are involved in water management are properly trained in relation to the provisions of these Guidelines. The provisions of these Guidelines and other relevant guidelines developed by the African Commission on Human and Peoples' Rights pursuant to the African Charter shall be fully incorporated into the curricula of all basic and in-service training.

38.2. The rights to water require States to take steps to ensure that there is appropriate education concerning the hygienic use of water. States must therefore implement hygiene education at schools, hygiene awareness campaigns and provide information on household water treatment and safe storage.

38.3. Civil society organisations, in particular consumers' associations, can also play an important role in educating communities on hygiene, including the importance of hand washing.

### **39. Reporting to the African Commission**

39.1. States parties to the African Charter, in their periodic reports to the African Commission, shall provide information on the implementation of the right to water, including relevant information on the implementation of legislation, policies and court decisions, on the extent to which laws, policies and action plans are consistent and in compliance with these Guidelines.

39.2. The State party's report shall indicate:<sup>72</sup>

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<sup>71</sup> ACHPR Resolution 300 'Resolution on the right to water obligations'

<sup>72</sup> ACHPR State Party reporting guidelines on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Tunis Reporting Guidelines), para 2

- i. Whether it has adopted a national framework law, policies and strategies necessary for the recognition and implementation of the right to water, identifying the resources available for that purpose and the most cost-effective ways of using such resources. A recitation of legislative steps without an indication of policies and implementation will be regarded as insufficient measures towards the realisation of the protected rights;
- ii. The incorporation and direct applicability of the right to water in the domestic legal order, with reference to specific legal provisions;
- iii. The judicial and other appropriate remedies in place enabling those affected, directly or indirectly, to obtain redress in cases where their right to water has been violated, with reference to examples of relevant decisions or case law; and
- iv. Structural or other significant obstacles arising from factors beyond the State party's control which impede the full realisation of the right to water.

39.3. The State party's report shall in particular indicate what legislative and other measures have been taken to ensure:

- i. safe physical access to water facilities or services that provide sufficient, safe and regular water for personal and domestic use to all, and in particular for specifically identified vulnerable or marginalized groups as defined in the Guidelines;<sup>73</sup>
- ii. gender equality in addressing issues related to access to water and inclusion in decision-making in water governance;
- iii. that the private ownership of water services, or their privatisation, complies with a clear and efficient regulatory framework that complies with the current Guidelines;
- iv. that procedures for the disconnection of water services are reasonable and only occur after timely and full disclosure of information and include legal recourse and remedies as well as legal assistance; and
- v. that natural water resources are protected from contamination by harmful substances and pathogens. This includes strict and independent controls of the use and pollution of water resources for industrial purposes, and especially of extractive industries.

39.4. States shall provide summaries of national plans and policies and indicate how these were developed, how they are being implemented and what steps have been taken to monitor such implementation, in a transparent and participatory manner.<sup>74</sup>

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<sup>73</sup> ACHPR State Party reporting guidelines on Economic, Social and Cultural Rights in the African Charter on Human and People's Rights (Tunis Reporting Guidelines), para 6

<sup>74</sup> ACHPR State Party reporting guidelines on Economic, Social and Cultural Rights in the African Charter on Human and People's Rights (Tunis Reporting Guidelines), para 5

- 39.5. States shall provide the disaggregated indicators used to monitor progress towards the full realisation of the right to water, and statistics on the enjoyment of the right, disaggregated by age, gender, and other relevant status, particularly with reference to groups identified as vulnerable or marginalized in the Guidelines, on an annual comparative basis over the past five years.<sup>75</sup>
- 39.6. States shall provide information on the preparation of the report submitted to the African Commission in a participatory and transparent manner. Mention must be made of civil society organisations involved in drafting the report.<sup>76</sup>

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<sup>75</sup> ACHPR State Party reporting guidelines on Economic, Social and Cultural Rights in the African Charter on Human and People's Rights (Tunis Reporting Guidelines), para 3

<sup>76</sup> ACHPR State Party reporting guidelines on Economic, Social and Cultural Rights in the African Charter on Human and People's Rights (Tunis Reporting Guidelines), para 4