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| <p>الاتحاد الأفريقي African Commission on Human & Peoples' Rights</p> | | <p>1.1.1.3. UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples</p> |
| <p>No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) 441 05 05 / 441 05 06, Fax: (220) 441 05 04E-mail: achpr@achpr.org; Web www.achpr.org</p> | | |

Guidelines on the right to water in Africa

DRAFT FOR COMMENTS

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Foreword

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 since 2010.

In 2011, on the occasion of the thirtieth anniversary of the African Charter, the African Commission officially launched 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 Guidelines'. These instruments constitute the building blocks of the protection of the economic, social and cultural rights in Africa. Their evolving interpretation is the task of the African Commission, and, in particular, its Working Group on Economic, Social and Cultural Rights.

In 2015, through its 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 is to inform and support the work of States, while implementing the 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.

Overall, these Guidelines provide the main legal reference against which to assess progress towards the goals pursued respectively in Sustainable Development Goal 6, and the aspiration in the AU Agenda 2063 to 'ensure access to water for all' and an 'equitable and sustainable use and management of water resources for socio-economic development, regional cooperation and the environment'.

Preamble

Noting that the right to water is not among the rights directly protected in the African Charter on Human and Peoples' Rights (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 further the African Charter on the Rights and Welfare of the Child, the AU Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, the AU 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 the Rights of Women in Africa, as they referred to the right to water;

Recalling the Africa Water Vision for 2025,¹ as adopted by the African Union and the Economic Commission for Africa, and 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;²

Noting 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 UN Committee on Economic, Social and Cultural Rights on the right to water,³ and Resolution 64/292 of the United Nations General Assembly and Resolution 15/9 of the United Nations Human Rights Council recognizing the right to water and sanitation;

Recalling further the customary principles of international water law, including the principles of reasonable and equitable use of shared water resources, no-harm, and cooperation as the basis for a sustainable management of water resources and the protection and promotion of the human right to water of riparian populations;

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

¹ Economic Commission for Africa, African Union, African Development Bank (undated): Africa Water Vision for 2025: Equitable and Sustainable Use of Water for Socioeconomic Development

² See in particular, the AU Agenda 2063 (Framework Document) (2015); the First Ten-Year Implementation Plan 2013-2023 of Agenda 2063 (2015); the AU Sirte Declaration on the challenges of implementing integrated and sustainable development on agriculture and water in Africa (2004) ; the AU Social Policy Framework (2009); the AU/AfDB/UNECA Framework and Guidelines on Land Policy in Africa (2009); and the Africa Mining Vision (2009)

³ U.N. Committee on Economic Social and Cultural Rights (2002): Substantive issues arising in the implementation of the International Covenant on Economic Social and Cultural Rights. General Comment no. 15: The right to water paras 1, 6; German Institute for Human Rights (2013): How States can manage conflicts between the Human Right to Water and the right to Adequate Food. Berlin: DIMR

Concerned by the competition in water uses and over access to water resources, in a context of growing water scarcity, in Africa;⁴

Concerned that many parts of Africa experience cycles of droughts and floods 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 access to water;

Concerned that the right to water is not justiciable and not effectively protected by national courts within many jurisdictions in Africa;

Further concerned by the absence of a regional legal framework for greater human rights-based cooperation in the management of trans-border waters, whereas Africa is the continent with the highest number of watersheds;

Recognising the role of the African Commission, under Article 45(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’;

Hereby **adopts** the Guidelines on the Right to Water in Africa and **calls urgently upon** African Union Member States to adopt all necessary measures to implement the provisions of these Guidelines in their national legislation, guarantee their broadest promotion and dissemination, and ensure their effective and fast implementation.

⁴ For instance, some 90% of African surface freshwater resources are located in basins that are shared by at least two countries, while five river basins are shared by 8 or more countries.

Definitions

- Marginalised groups: ‘marginalised groups’ are understood as groups, which are under- or unserved in water access.
- Personal and domestic uses (‘water for personal and domestic uses’): refers to water uses for drinking, personal and domestic hygiene, sanitation and religious and cultural purposes. Domestic hygiene activities refer to all the work which is done to keep the house and people's clothes and bedding clean. This includes sweeping and washing floors, cleaning the toilet, washing clothes and bedding, and washing dishes and cooking utensils after meals.
- Safe sanitation: ‘Safe sanitation’ is sanitation that effectively prevents human, animal and insect contact with excreta.⁵ Safe sanitation includes the treatment and disposal or reuse of excreta and associated wastewater. Sanitation does not stop simply with the use of latrines or toilets, but includes the safe disposal or reuse of faeces, urine and wastewater. Such a broad understanding is warranted, as sanitation concerns not only one’s own right to use a latrine or toilet, but also the rights of other people, in particular their right to health, on which there might be negative impacts.⁶
- Safe water: ‘Safe water’ is water that, in particular, is free from hazardous substances (micro-organisms, chemical substances and radiological hazards) that could endanger human health, and whose colour, odour and taste are acceptable to users.⁷
- Vulnerable groups: ‘Vulnerable’ groups include, but are not limited to, women, children, persons with disabilities, older persons, displaced persons, refugees, rural persons living in geographically inaccessible areas, the urban poor, traditional communities and persons deprived of their liberty.

⁵ Sub-Commission Guidelines, Section 1.2.

⁶ United Nations General Assembly (2013-8-5): Report of the Special Rapporteur on the human right to water and sanitation to the 68th session of the UNGA, report A/68/264 on Wastewater

⁷ 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

Part 1. GENERAL PRINCIPLES

1. State sovereignty over natural resources

1.1. The State has the main responsibility for ensuring natural resources stewardship with, and in the interest of, the population, and must fulfil its mission in conformity with international human rights law and standards.⁸

1.2. In particular, States shall respect 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.⁹

1.3. States shall under no circumstances waive their sovereignty over natural resources, and shall not sell off the resource itself.

1.4. States shall refrain from using access to water as a political tool.¹⁰

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.

2. State obligations to respect, protect, promote and fulfil the right to water

2.1. All rights, including the right to water, are of immediate application upon ratification of the Charter.

2.2. States shall respect, protect, promote and fulfil the right to water. The obligations to respect, protect, promote and fulfil are defined in paragraphs 4 to 12 of the Commission's 2010 Guidelines on Economic, Social and Cultural Rights. No hierarchy is accorded to any of these duties and all shall be protected through administrative and judicial remedies.

2.3. 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.¹¹

3. Principle of non-retrogression

3.1. Except in emergency situations, States are prohibited from taking retrogressive measures or steps that can lead to backward steps in the enjoyment of the right to water.¹² Examples of retrogressive measures are price rises that exclude the poorest within the population from accessing water services, as well as a lack of investment in operation and maintenance of water services and facilities.

3.2. Measures that reduce the enjoyment of economic, social and cultural rights 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 paragraph 7.

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

⁹ ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance'

¹⁰ 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)

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

¹² ACHPR Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, para 16

3.3. Emergency situations may nevertheless lead to retrogression, but only if states provide justification that retrogressive measures are:

- i. Temporary, in that they remain in place only as long as they are necessary;
- 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;
- iv. Reasonable, in that the means chosen are the most suitable and capable of achieving the legitimate aim;
- 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 minimum core content of economic, social and cultural rights, based on transparency and genuine participation of affected groups in examining the proposed measures and alternatives; and
- viii. Subject to meaningful review and accountability procedures.

4. Obligation to mobilise resources for the realisation of the right to water

4.1. State shall mobilise available resources in order to respect, protect, promote and fulfill the right to water.

4.2. 'Available resources' encompass both financial and non-financial resources, including technical and human resources. They include the State's own resources and international assistance and cooperation.¹³ The more a State can rely on domestic rather than external resource mobilization for its financing, the more it will be able to deploy sustainable development strategies and policies that are responsive to the needs of its people and accountable to them.¹⁴ Moreover, domestic resource mobilisation diminishes reliance on external aid, which is unpredictable and unsustainable.¹⁵

4.3. When a state claims that it has failed to realise the right to water, due to whatever reason including 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.

¹³ 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

¹⁴ 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

¹⁵ Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (2012) UN Doc A/67/302

Part 2. A RIGHTS-BASED APPROACH TO WATER MANAGEMENT

5. General provisions

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

6. Participation

General provisions

6.1. 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.¹⁶ This obligation applies in all cases, whether public or private entities are in charge of water resources management or water supply.

6.2. States shall identify, acknowledge and remove barriers to participation as defined under Guideline 6.1 and ensure the meaningful participation of vulnerable and marginalised groups, especially those mentioned under Part 4.

6.3. States shall ensure that individual and groups, including vulnerable and marginalized groups, are aware of their ability to participate.¹⁷

Community-based water management

6.4. States, local authorities and communities have a joint responsibility in ensuring the realization of the right to water of all and water resources management.

6.5. States shall take steps to ensure that local government authorities and other governance entities not part of central government are empowered and sufficiently supported to manage water services in their own areas, 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.¹⁸

6.6. 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, how tariffs, subsidies and payments are structured and arranged and, where possible, to choose and manage their own services with assistance from the government.

6.7. States shall engage with indigenous populations in order to address and adapt or support the protection and development of traditional water management systems for their ancestral lands.¹⁹

¹⁶ 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'

¹⁷ UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation (2016), para 77 (j)

¹⁸ 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)

¹⁹ 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.'

Development projects

6.8. States shall require transparent, maximum and effective community participation, including the free, prior and informed consent of communities, in decision-making about any developmental activities that affect the use and access of the water resources.²⁰

6.9. The cultural significance of the water resources to the communities 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 26.

6.10. State shall ensure that benefits from land or resource management are shared in a fair and equitable manner with the communities and that the communities are engaged in the benefit-sharing process.

7. Non-discrimination

7.1. Article 2 of the African Charter prohibits any discrimination in the enjoyment of the protected rights on the following non-exhaustive grounds: race, ethnic group, colour, sex, gender, language, religion, political or any other opinion, national and social origin, economic status and birth.

7.2. 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.²¹

8. Access to information

8.1. States shall ensure that individuals and communities, especially vulnerable and marginalized groups, are given full and equal access to information in an understandable manner concerning water management, water services and the environment, whether this information is detained by public authorities or third parties.²²

8.2. Access to information is essential to ensure the meaningful participation of communities in decision-making processes in the water sector, as established under Guidelines 6.1 and 26.

9. Sustainability

9.1. States shall ensure that water resources are managed and water supplied so as to ensure the right to water of present and future generations within its jurisdiction, and without jeopardizing the rights of populations of other states dependent on the resources.

9.2. Guidelines pertaining to sustainability are developed under Part 6 below.

10. Accountability

10.1. States shall set up independent monitoring and accountability mechanisms, including ensuring that the right to water is justiciable.

²⁰ ACHPR Resolution 224 ‘Resolution on a human rights-based approach to natural resources governance’

²¹ 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

²² General Comment no. 15

10.2. Guidelines pertaining to accountability are developed under Part 7 below.

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

11. General provisions

11.1. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal, domestic, and agricultural use.²³

11.2. Under no circumstances may an individual be deprived of the minimum essential level of water.²⁴

11.3. Water shall not be primarily treated as an economic good, but as a social and cultural good.⁴⁰

12. Availability

Priority to human needs in water management

12.1. State 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 access to drinking water in sufficient quantity and of sufficient quality for personal and domestic use, sanitation, subsistence agriculture and other means of subsistence.²⁵

Minimum amount of water

12.2. States shall ensure that everyone has access to the minimum quantity of water²⁶ that is sufficient and safe for personal and domestic use, including preventing disease, for subsistence farming and for securing the livelihoods of peoples, no matter where they live, particularly for indigenous communities.²⁷ They must do this before providing greater quantities for more well-off communities.

12.3. The minimum quantity may vary due to individual requirements and needs such as health, climate or work conditions.²⁸

Continuous or regular supply

12.4. States shall ensure that a continuous or regular supply of water is available for the personal and domestic use of each individual.²⁹

²³ 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

²⁴ The absolute minimum determined by the WHO is 20 litres/person/day. G. Howard and J. Bartram, Domestic Water Quantity, Service Level and Health, (World Health Organisation, 2003), 22

²⁵ ACHPR Resolution 300, 'Resolution on the right to water obligations'

²⁶ General Comment no.15 para 12(a). The World Health Organisation states that 100 litres per person per day is necessary to ensure that all health concerns are met, and sets an absolute minimum of 20 litres per person per day.

²⁷ 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)

²⁸ G. Howard and J. Bartram, Domestic Water Quantity, Service Level and Health, (World Health Organisation, 2003), 22

Water exports

12.5. States shall ensure that the export of water resources does not limit the full enjoyment of the right to water within the country.³⁰

Rainwater harvesting

12.6. States shall promote rainwater harvesting carefully so as to support rural 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.

13. Physical accessibility

13.1. States shall ensure safe physical 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 at a reasonable distance³¹ from the household; educational institutions; workplaces; market places; health institutions; prisons and other places of detention; refugee camps and any other public institution or public service.³²

13.2. States shall ensure that water services and facilities are safely accessible to all. This means that they shall address the needs of vulnerable and marginalised 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.²⁸

13.3. The right to water does not require that every person has a household connection. Other improved sources of water can be located near the household such as: boreholes; public stand posts; water kiosks; covered wells; and rainwater collection.

14. Affordability

14.1. 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 such as food and health care. Supplying a free amount of safe water is one way to make water affordable.

Pricing policies

14.2. 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

²⁹ 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)

³⁰ 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(1)

³¹ The World Health Organisation has noted that when a water source is located over 100 metres from a household, it is unlikely that it will be possible to collect more than 20 litres of water per person, and consequently not all health concerns will be met. To provide between 50-100 litres per person, which is necessary to ensure most health concerns are met, usually requires a water point either in or near the home. See G. Howard and J. Bartram, *Domestic Water Quantity, Service Level and Health*, (World Health Organisation, 2003), 22

³² 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)

access to and use of the service.³³ Water services usually include service charges, connection fees and maintenance. Water prices should be established so to ensure that operations and maintenance cost are covered on the long term.

14.3. States shall ensure appropriate water pricing policies, including through stepped tariffs, flexible payment schemes and cross-subsidies from high-income users to low-income users. They shall subsidize 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.³⁴

Water disconnection

14.4. Full water disconnection may only be permissible for nonpayment if the person unable to pay can access an alternative source ensuring the right to water as defined in these Guidelines.³⁵

14.5. In all cases, States shall ensure that procedures for the disconnection of water and services are reasonable, take into account the individual's ability to pay and only occur after timely and full disclosure of information and include legal recourse and remedies as well as legal assistance.

15. Quality and acceptability

15.1. Everyone has the right to safe water for personal, domestic, and agricultural uses.

Protection of water resources

15.2. States shall protect the quality of national and international water resources and the entire riverine ecosystem, from watersheds to oceans.³⁶ 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.

15.3. States shall ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. This includes strict controls of the use and pollution of water resources for industrial purposes, and especially of extractive industries in rural areas.³⁷

15.4. In particular, chemical pollution of water resources from agriculture and industry sanitation requires governments to prevent third parties, such as factories and industries, from polluting water resources.³⁸

Disease prevention and monitoring

³³ 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

³⁴ 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)

³⁵ 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)

³⁶ ACHPR Resolution 300 'Resolution on the human right to water obligations'

³⁷ 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)

³⁸ General Comment no 15, para 23-12 (c)

15.5. States shall take steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.³⁹

15.6. 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.⁴⁰

15.7. States shall ensure that water collected from rivers, wells, springs or rainwater harvesting, are protected, and respect the needs of those whose customary and religious practice require it.

15.8. States shall ensure that everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment. Sanitation comprises at least, a clean toilet or latrine, together with collection, disposal and treatment of human excreta, wastewater, solid waste and storm water removal and hygiene education.⁴¹

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³⁹ 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)

⁴⁰ 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)

⁴¹ 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 GROUPS

16. General provisions

16.1. In addition to the rights afforded to persons with special needs under the African Charter and relevant international law, States shall take measures to ensure that the special protections set out below are provided.

16.2. States shall identify groups, which are likely to be un- or under-served, and assess the actual water access by vulnerable and marginalised groups.

16.3. States shall ensure that water management complies with the principle of non-discrimination within and among riparian populations, and take into account the needs of vulnerable and marginalized persons.⁴²

16.4. States shall ensure in laws and policies that all water facilities and services are of sufficient quality, affordable, culturally appropriate and meet the needs of members of vulnerable and marginalised groups. They shall ensure that these groups have a safe physical access to these facilities. Targeted water programmes to protect these groups shall be adopted.⁴³

16.5. States shall ensure that vulnerable and marginalized groups are consulted and actively participate in water service design in order to ensure that such facilities are adapted to their needs.

17. Persons living in informal settlements

17.1. No one shall be denied access to water because of their housing or land status. Informal human settlements shall be upgraded through the provision of water services and through assistance with the construction of their own water facilities.⁴⁴

17.2 States shall aim to lessen power imbalances between stakeholders. This includes adopting landlord-tenant laws protective of the rights of the tenants.

18. Persons living in rural areas and farmers

18.1. States shall extend safe water services to rural and deprived urban areas, taking into account the needs of women and children.⁴⁵

18.2. States shall ensure that disadvantaged and marginalised farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology.⁴⁶

⁴² ACHPR Resolution.300 ‘Resolution on the human right to water obligations’

⁴³ 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(p)

⁴⁴ 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)

⁴⁵ 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)

⁴⁶ 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)

19. Persons deprived of liberty

19.1. States shall ensure that imprisoned and detained persons have access to sufficient, safe and acceptable water. Sufficient water should be provided daily, together with sufficient soap and clothes detergent to ensure personal hygiene, clean bedding and clothes.⁴⁷

20. Children

20.1. States shall ensure that appropriate water facilities and separate sanitation facilities for girls and boys are available in schools;

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

20.3. States shall work to reduce the disproportionate burden and amount of time children bear in water collection and other household chores and ensure that it does not prevent them from going to school.

21. Women

21.1. States shall empower women to participate, on an equal basis with men, at all levels in water resources and water programmes, including decision-making and implementation.⁴⁸ Particular attention shall be paid to ensuring access to water for rural women.⁴⁹

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

22. People living with HIV and other diseases

22.1. States shall ensure that adequate quantities of safe water with improved access are available and affordable for those living with HIV and other chronic and non chronic illness.

23. Persons living with disabilities

23.1. States shall ensure that water facilities in public services are designed and located in order to provide improved access to persons with disabilities.

24. Refugees, migrants and internally displaced persons in camps

24.1. States shall use access to water as a governing factor for site selection.

24.2. States shall design camps with proper drainage to mitigate flood risks.

⁴⁷ 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)

⁴⁸ International Conference on Water and the Environment (1992): The Dublin Statement on Water and Sustainable Development.

⁴⁹ Convention on the Elimination of all forms of Discrimination Against Women (CEDAW, 1979): Art 14

Part 5. SUSTAINABLE WATER MANAGEMENT

25. Sustainability and integrated strategies

25.1. States shall develop comprehensive integrated strategies to realise the right to water in such a way as to ensure the right to water of present and future generations. Sustainability goes beyond the functionality of services. Water and sanitation shall be provided in ways that protect water resources from overexploitation and pollution.

25.2. Such strategies may include:⁵⁰

- i. reducing depletion of water resources by halting unsustainable extraction, diversion and damming;
- ii. reducing and eliminating contamination of watersheds and water-related eco-systems monitoring water reserves;
- iii. ensuring that proposed developments do not interfere with access to adequate water;
- iv. assessing the impacts of actions that may impinge upon water availability and natural ecosystem watersheds; reducing water wastage in its distribution;
- v. response mechanisms for emergency situations;
- vi. establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes; and
- vii. prohibiting and repressing water pollution.

26. Human rights impact assessment

26.1. Prior to any development activity likely to impact on water resources or water supply, States shall ensure independent human rights and environmental impact assessments,⁵¹ in order to:

- (i) identify positive human rights impact;
- (ii) prevent or mitigate adverse impacts on the right to water;
- (iii) identify and prevent potential violations of the core minimum obligations in respect of the right to water;
- (iv) prevent discriminatory impact in law and in practice that are incompatible with international human rights law;
- (v) identify impermissible retrogression of the right to water; and
- (vi) clarify the circumstances under which certain retrogressive measures may be justifiable, based on the principles of necessity, proportionality, legitimacy and reasonableness.

26.2 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 grounds, 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 groups, including women, children, the elderly, persons with disability, migrants, minorities and

⁵⁰ 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)

⁵¹ ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance', para 4

other groups at risk of vulnerability, such as indigenous peoples, refugees and internally displaced persons;

(iii) is transparent;

(iv) aims at ensuring the free, prior, informed consent of the community, as well as fair compensation for, and benefit-sharing with, the community as required under Guideline 8;

(v) includes impact on customary people's rights and community existence including livelihoods, local governance structures and culture; and

(vi) can be used as an accountability tool.

27. Emergency situation

27.1. States shall adopt an effective response plan to ensure that people have access to minimum amounts of safe water and basic sanitation following an emergency situation such as a natural disaster or armed conflict, and to facilitate the provision of aid to vulnerable and affected persons where necessary.

27.2. States shall protect water sources and find ways to prevent wastage and store water, without impacting the local economies, in construction like dams.

27.3. States may be forced to take retrogressive measures in times of crisis, but these measures shall be temporary and a reasonable justification shall be provided as set out in Guideline 6. Some measures may not be deliberately regressive but may nevertheless have regressive effects, such as inadequate monitoring and oversight or insufficient investment in human resources capacity. In these cases, due diligence is required to avoid negative human rights impacts.⁵²

28. Climate change

28.1. States must ensure that the implementation of obligations in the framework of climate agreements are coherent with the implementation of obligations in terms of international human rights treaties by, among others:⁵³

- i. Ensuring that National Adaptation Plans of Action are aligned with water provision strategies;
- ii. Ensuring that climate adaptation measures do not interfere with the enjoyment of the right to water;
- iii. Implementing appropriate adaptation measures to ensure that water infrastructure is resilient to extreme weather events and rising sea levels;
- iv. Ensuring that third parties implementing climate adaptation measures do not interfere with the enjoyment of the right to water;
- v. Raising awareness about the impact of climate change on water availability and chemical and biological contamination; and
- vi. Integrating human rights impact assessments into climate change mitigation actions.

⁵² Human Rights Council (2013): 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

⁵³ OHCHR / Mac Darrow, Jackie Dugard, Ann-Mari Karlsson, and Karin Lexén (undated): Climate Change and the Human Rights to Water and Sanitation

Part 6. INTERNATIONAL COOPERATION

29. General provisions

29.1. In order to guarantee the realization of the right to water across the African continent, States sharing one or more watercourses shall ensure that the allocation and use of water amongst riparian states are guided by the principles of reasonable and equitable utilization; no harm and cooperation, recognised as principles of customary international law for transboundary fresh water resources.⁵⁴

29.2. When entering into international and regional engagements or undertaking bilateral and multilateral assistance, all 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 WHO and the Food and Agriculture Organisation (FAO), trade and financial institutions, such as the World Bank, and State members of such bodies shall ensure their policies and actions respect the right to water.

30. Principle of reasonable and equitable use of shared water resources

30.1. In line with the principle of equitable and reasonable use, the sovereign right that States have on rivers that cross their jurisdiction shall not deprive other riparian States and their peoples of their right to use waters.

30.2. Among their obligations in relation to the right to water towards people living in another country, States shall:

- i. enshrine in water agreements the right to water among the relevant factors and circumstances that determine whether a use is equitable and reasonable;
- ii. take in account basic human needs of the populations when they are planning to develop an international watercourse; and
- iii. give a special regard to the satisfaction of human needs in case of conflict between uses of an international watercourse.⁵⁵ In determining ‘vital human need’, special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation.⁵⁶

31. Principle of no-harm

31.1. In the utilization of international watercourses and shared sources of groundwater, States shall take all appropriate measures to avoid causing harm to other States and local communities dependent on the resource

31.2. Where unavoidable harm has nevertheless been caused to other States, States shall take all appropriate measures to mitigate such harm and/or compensate the State(s) in question.

⁵⁴ Ibid.

⁵⁵ Art.10, paragraph 2, Convention on the Law of the Non-navigational Uses of International Watercourses (1997)

⁵⁶ 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

31.3 Among their obligations in relation to the right to water towards people living in another country, States shall:

- i. Take all legal, administrative, economic, financial and technical measures to prevent transboundary harm that would impair the right to water of the local population;
- ii. Exercise of administrative control applicable to public and private operators to safeguard the right to water of population's dependent on water resource;
- iii. Conduct a human rights impact assessment and an environmental impact assessment where the planned activity is liable to cause harm to a shared resource and transboundary harm;
- iv. Ensure that measures taken to prevent transboundary damage are publicly accessible and consult riparian communities on watershed development projects that could prejudice their right to water;

32. Duty to cooperate

32.1. States sharing common watercourses have the duty to cooperate in the protection and development of these resources. In accordance with the Africa Water Vision 2025, river basins shall serve as a basis for regional cooperation and development, and be treated as natural assets for all within such basins.

32.2. States, which have the resources to do so, shall provide financial and technical assistance to enable other States to meet their obligations in relation to the right to water and to give aid in emergency situations.

River basin joint bodies

32.3. States whose territory is adjacent to the same transboundary waters and that lack of institutional mechanisms of cooperation, shall consider action aimed to establish joint bodies.⁵⁷

32.4. In case of existing joint bodies, States shall ensure those institutions have been reformed to create an enabling environment for effective and integrated management of water in national and transboundary water basins, including management at the lowest appropriate level.

32.5. States shall ensure that Basin joint bodies are empowered to contribute to the prevention and settlement of disputes. Such powers in no way obviate the role of courts such as the International Court of Justice in performing their functions, but contribute in a quasi-judicial way to dispute resolution.

Rainwater harvesting

32.6. States are encouraged to develop rainwater collection mechanisms and international cooperation agreements that enable them to assist States with low levels of rainfall with supply of water to meet the human needs of their populations.

⁵⁷ Art. 9, Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992); Art. 5 paragraph 3, SADC Revised Protocol on Shared Watercourses (2000)

Part 7. ACCOUNTABILITY AND REMEDIES

33. Accountability mechanisms

33.1. States shall adopt a national policy on water, with clear responsibilities for implementing agencies and timeframes for implementing measures necessary to safeguarding the right, particularly for vulnerable and marginalised groups.

33.2. States shall also identify a primary institution that leads the regulation of water matters and which includes a coordinating body involving stakeholders. This could be part of a Ministry, such as the Ministry of Water or Health.

33.3. States shall take measures to ensure that monitoring and implementing agencies are adequately resourced.

33.4. States shall put in place accountability mechanisms that can monitor the realisation of the right to water and can provide access to justice when it is violated. These mechanisms should be accessible to all individuals and include:

- i. independent utilities regulators that can monitor how services are provided, determine how much the public can pay for a service, and ensure that the quality of the service does not deteriorate;
- ii. effective procedure to receive and respond to complaints about lack of provision of the service;
- iii. human rights commissions and ombudsman offices 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, and respond to complaints effectively and resolve conflicts; and
- iv. 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.

34. Business and the right to water

34.1. States shall adopt a regulatory framework mandating business enterprises to:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate 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
- (c) Set up processes to remedy any adverse human rights impacts they cause or to which they contribute.

34.2. States shall guarantee that extractive industries and investors are legally accountable in the country hosting their activities and in the country of legal domicile.⁵⁸

35. Monitoring mechanisms

35.1. States shall monitor progress towards the realization of the right to water through improved data collection, analysis and joint / participatory evaluation.

35.2. States shall develop an indicator system to improve the collection of data disaggregated by sex and other relevant factors, which are necessary to assess the impact and effectiveness of water management and water policies, including at mainstreaming gender equality and enhancing women's enjoyment of their rights to water.⁵⁹

35.3. State shall ensure that comprehensive data is collected on access to water, sanitation and hygiene management, in particular in respect of vulnerable and marginalized groups, and support civil society in collecting data and in analysing, interpreting and monitoring results.⁶⁰

36. Corruption

36.1. States should engage in vigorously fighting corruption at all levels of decision making related to water governance by strengthening and enforcing criminalization of corruption and by taking other appropriate measures to fight corruption in the delivery of water services and management of the sector.⁶¹

37. Access to remedies

37.1. States shall explicitly prohibit the following practices:

- i. exclusion from access to water caused by forced evictions;
- ii. exclusion from access to a publicly owned facility or one operating on a commercial basis;
- iii. demands for bribes in return for access to public water services; and
- iv. disconnecting access on the grounds of non-payment, while there is no alternative source ensuring the right to water of the person unable to pay as defined in these Guidelines.

37.2. States shall guarantee the justiciability of the right to water as defined in these guidelines.

37.3. In case of water contamination, 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.

37.4. Under its individual communications mandate, established under Article 55 of the African Charter, the African Commission is competent to hear cases of violations of the right to water, upon exhaustion of local remedies.

⁵⁸ ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance'

⁵⁹ UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation (2016), para 77 (k)

⁶⁰ UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation (2016), para 77 (m)

⁶¹ ACHPR Resolution 224 'Resolution on a human rights-based approach to natural resources governance', para 3

Part 8. IMPLEMENTATION

38. General provisions

38.1. States shall remain responsible for ensuring that the provisions of these Guidelines and other relevant guidelines developed by the African Commission pursuant to the African Charter, and other relevant international law and standards, are applied.

39. Implementing measures and reviews

39.1. In accordance with Article 1 of the African Charter, States shall adopt legislative, administrative, judicial and other measures 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. This shall include a review of existing legislative, administrative and other provisions to assess compatibility with the Guidelines. States should undertake reforms to ensure that their national legal and policy frameworks implement the principles relating to the right to water contained in these Guidelines.

39.2. States shall establish a clear legal framework for sustainable development as it impacts on natural resources, in particular water, that would make the realisation of human rights a prerequisite for sustainability.⁶²

39.3. States shall develop a national strategy to realise the right to water. States shall formulate and implement national water strategies and plans of action that shall cover all the main attributes of the right to water, including the principle of nondiscrimination, and ensure the right of everyone to participate in decision-making affecting their right to water⁶³ In particular, States shall ensure that regulations require that the specific needs of vulnerable and marginalised groups are incorporated into the design, implementation, monitoring and evaluation of water facilities.

39.4. States shall adopt a comprehensive approach that links water with sanitation, health, education and other cross-cutting rights.⁶⁴ In particular, States shall increase collaboration between entities operating in the water, sanitation and hygiene sectors and those operating in other sectors, including the health sector, to address gender inequalities and culturally taboo topics more effectively and in a comprehensive manner.

39.5. States shall define clear objectives, set targets and time frames for their achievement, and define indicators and benchmarks for each attribute of the right. The strategy shall also establish institutional responsibility in the implementation process; identify resources available to attain the objectives, targets and goals; allocate resources appropriately according to institutional responsibility; and establish accountability mechanisms to ensure the implementation of the strategy.

39.6. 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. In order to set targets, governments must invest in data collection to identify those most in need.

⁶² ACHPR Resolution 224 ‘Resolution on a human rights-based approach to natural resources governance’

⁶³ 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(h)

⁶⁴ Non-Discrimination, Access to Information, Participation, Accountability, Access to Justice and Sustainability

39.7. States shall also ensure that, through domestic and international resources, adequate financial and human resources are available to implement and monitor national policies.³⁰ States shall apply due diligence in budgeting for the water sector, reserving 1% of GDP for water and sanitation services in accordance with the eThekweni, Sharm el Sheikh and N’Gor agreements.⁶⁵

39.8. States shall ensure that local governments have the financial, technical and human capacities to improve effective water supply services.

39.9. States shall invest in, increase financing for, and contribute to developing local services and infrastructures that give priority to those without basic access to water facilities.⁶⁶

39.10. Regulators shall monitor whether water regulations are well interpreted, implemented and effective.⁶⁷

39.11. The regulatory body can be within or separate from the body that regulates State water services.

40. Delegation of water services provision to private entities

40.1. States shall ensure that the private ownership 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, physically accessible and affordable water, as defined in these guidelines. States are obligated to regulate and monitor private water providers to ensure that they do not violate the right to access to water.⁶⁸

40.2. States shall establish mechanisms to monitor and control charges imposed by private suppliers.⁴¹ States should, in particular, put regulatory mechanisms in place, including subsidies, to ensure that water use charges are not higher for lower-income consumers than higher-income consumers.⁶⁹

40.3. States shall ensure that all means for delegating service provision, including contracts, are in line with human rights standards and principles. Contracts shall include a clear definition of service providers’ rights and responsibilities,⁷⁰ and substantive benchmarks for accessibility (physical and economic), availability (sufficiency and continuity), acceptability, and quality.⁷¹ Contracts shall equally provide detail on public access to information on the means of service

⁶⁵ The eThekweni Declaration made at the AfricaSan+5 Conference on Sanitation and Hygiene, February 2008—the International Year of Sanitation. Sharm El-Sheik commitments for accelerating the achievement of water and sanitation goals in Africa (2008). Dakar N’gor Declaration on Water and Sanitation.

⁶⁶ 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)

⁶⁷ UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation (2016), para 77 (h)

⁶⁸ 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

⁶⁹ 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

⁷⁰ 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

⁷¹ General Comment no. 15, para 47

delivery as well as on the capital and 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 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.⁷²

41. Dissemination

41.1. States shall ensure that these Guidelines are widely disseminated, including to the justice, health, education, 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.

42. Training

42.1. States shall build the capacity of populations in human rights education, including the right to water and protection mechanisms thererelated.⁷³ 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.

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

42.3. Civil society organisations can also play an important role in educating communities on hygiene, including the importance of hand washing.

42.4. States shall also promote efficient water use through public education and impose penalties for over-consumption⁷⁴

43. Reporting to the African Commission

43.1. States parties to the African Charter, in their periodic reports to the African Commission and in accordance with their other reporting responsibilities to relevant regional and international bodies, 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.

43.2. The State party report shall indicate:⁷⁵

⁷² 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.

⁷³ ACHPR Resolution 300 'Resolution on the right to water obligations'

⁷⁴ UN Sub-Commission on the Promotion and Protection of Human Rights, Guidelines for the realisation of the right to drinking water and sanitation, (Sub-Commission Guidelines), (2005), UN Doc. E/CN.4/Sub.2/2005/25 Section. 4.2

⁷⁵ ACHPR State Party reporting guidelines on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Tunis Guidelines), para 2

- i. Whether it has adopted a national framework law, policies and strategies for the implementation of the right to water, identifying the resources available for that purpose and the most cost-effective ways of using such resources (please note that 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. Any mechanisms in place to monitor progress towards the full realisation of the right to water, including identification of indicators and related national benchmarks in relation to this right;
- iii. The incorporation and direct applicability of the right in the domestic legal order, with reference to specific examples of relevant case law;
- iv. The judicial and other appropriate remedies in place enabling victims to obtain redress in cases where their right to water has been violated; and
- v. Structural or other significant obstacles arising from factors beyond the State party's control which impede the full realisation of the right to water.

43.3. States shall provide statistics on the enjoyment of each right, disaggregated by age, gender, ethnic origin, urban/rural population, disability and other relevant status, particularly with reference to groups identified as vulnerable or marginalised in the Guidelines, on an annual comparative basis over the past five years.⁷⁶

43.4. Reports shall be drafted after wide and meaningful consultation and states shall provide information on steps taken to make the reporting process as transparent and accountable as possible, particularly regarding how the process was publicised and which members of civil society were involved in drafting the report.⁷⁷

43.5. States shall provide summaries of national plans and policies and indicate how these were developed, demonstrating public participation, how they were being implemented and what steps have been taken to monitor such implementation, including disaggregated statistics where appropriate.⁷⁸

43.6. States shall provide information on legislative and practical steps taken to ensure enjoyment of the rights on a non-discriminatory basis by members of vulnerable or marginalised groups as defined in the Guidelines. Reports shall particularly indicate what steps have been taken to ensure gender equality.⁷⁹

43.7. The State party report shall also indicate:

- i. what legislative and other measures have been taken to ensure access to the minimum essential amount of water, which is sufficient and safe for personal and domestic use, including for preventing disease, together with access to adequate sanitation.

⁷⁶ ACHPR State Party reporting guidelines on Economic, Social and Cultural Rights in the African Charter on Human and People's Rights (Tunis Guidelines), para 3

⁷⁷ ACHPR State Party reporting guidelines on Economic, Social and Cultural Rights in the African Charter on Human and People's Rights (Tunis Guidelines), para 4

⁷⁸ ACHPR State Party reporting guidelines on Economic, Social and Cultural Rights in the African Charter on Human and People's Rights (Tunis Guidelines), para 5

⁷⁹ ACHPR State Party reporting guidelines on Economic, Social and Cultural Rights in the African Charter on Human and People's Rights (Tunis Guidelines), para 6

- ii. what legislative and other measures have been taken to ensure safe physical access to water facilities or services that provide sufficient, safe and regular water; that have an adequate number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household, educational institution, workplace or health institution.
- iii. what legislative and other measures have been taken to ensure that the obligations set out in these guidelines have been complied with, particularly with reference to the obligations to ensure:
 - a. That the private ownership of water services, or their privatisation, complies with a clear and efficient regulatory framework that ensures sustainable access to safe, sufficient, physically accessible and affordable water.
 - b. 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.
 - c. That natural water resources are protected from contamination by harmful substances and pathogens. This includes strict controls of the use and pollution of water resources for industrial purposes, and especially of extractive industries.

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