

Right to Water Index in Africa

The Possibilities of Measurement and Assessment



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Introduction

The use of evaluative and standard indicators in the fields of human rights have increased to the extent that they are rooted in international treaties.

In this context, Africa Water for Peace: Nile for Peace Initiative is launching a right to water index; to be used to measure, monitor and analyze the reality of the right to water in Africa by outlining the concept of the right to water, the foundations of international and African law, the specific and general obligations of States, its violations and criteria, as well as the development of structural and practical water right indicators and results.

First: the concept of the right to water and its international and African legal foundations

The concept of the right to water became widely used in the 1990s due to the variables of the international system and its developmental and strategic orientations at all practical, scientific and legal levels. This popularity of this concept has widely increased, and a definition thereof has been developed in the Economic, Social and Cultural Commission's Commentary No. 15 of 2002. It was defined as "the right of everyone to adequate, safe, acceptable, physically accessible and financially accessible water for personal use; The availability of safe water is necessary to prevent death due to loss

of fluids by the human body and to reduce the risk of water-borne diseases as well as for consumption, cooking and personal and household health requirements; Include a range of entitlements and freedoms: access to a minimum amount of safe drinking water and sanitation services; participation in national water and sanitation decision-making; protection against indiscriminate and illegal interruptions; prohibition of illegal pollution of water resources; non-discrimination in access to safe drinking water and sanitation services, in particular land and housing; non-obstruction of access to existing water supplies, especially to traditional water sources; and (1990) as "human capacity to ensure sustainable access to adequate amounts of water of acceptable quality; To maintain livelihoods, human well-being and development: social and economic."

This has been reflected in most environmental and water conferences since the 1970s, in particular the Mar del Plata Conference in 1977. For the first time, the concept of basic water needs has been created, and the right of all peoples to drinking water in equal quantities and quality has been referred to. In addition, the Rio de Janeiro Earth Summit (1992) and the International Conference on Population and Development (1994) all stipulated that: "All persons have the right to an adequate standard of living and to themselves and their families, including food, clothing, housing, water and sanitation."

In terms of the legal basis for the right to water, within legal corridors, the right to water has risen. It was adopted by articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights as one of the fundamental components of health and adequate standard of





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living and by the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1945); To include it at all international, regional and local levels within the following:

1. Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women (1966).
2. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
3. ILO Convention No. 161 concerning Occupational Health Services, 1985.
4. Article 24 of the Convention on the Rights of the Child (1989).
5. Article 28 of the Convention on the Rights of Persons with Disabilities (2006).
6. Geneva Conventions (3) concerning Prisoners of War, and (4) concerning the Protection of Civilian Persons in Time of War (1949).
7. Vancouver Declaration on Human Settlements, 1976
8. Mar del Plata Action Plan at the United Nations Water Conference (1977)
9. Declaration on the Right to Development "(1986).
10. Rio Declaration on Environment and Development and Agenda 21 of the United

Nations Conference on Environment and Development (1992).

11. Vienna Declaration and Program of Action of the World Conference on Human Rights (1993).
12. Program of Action of the International Conference on Population and Development (1994).
13. United Nations Millennium Declaration (2000).
14. Articles 18, 21 and 26 of the United Nations Declaration on the Rights of Indigenous Peoples (2007). Right to Water Document 2003 of the World Health Organization, the United Nations and the Centre for Human Rights
15. The Sub-Commission's Guidelines on the Right to Water and Sanitation for the Promotion and Protection of Human Rights.
16. Principle 18 of the Guiding Principles on Internal Displacement (1998).
17. Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1999).
18. ILO Recommendation No. 115 on Workers' Housing, 1961.

In addition to the comments of the International Committee on Economic, Social and Cultural



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Rights, in particular comment No. (3) of (1990) on the nature of States parties' obligations and general comment No. (4) of (1991) on the right to adequate housing and general comment No. (14) of (2000) on the right to the highest attainable standard of health, general comment No. (15) of (2009) on non-discrimination in economic, social and cultural rights and Human Rights Committee Comment No. (6) of (1982) on the right to life, which evolved to the extent that the Human Rights Council created the mandate of the independent expert on safe water and sanitation in (2008), and the recognition by the United Nations of the human right to adequate and clean water by the ratification of (121) States in 2010.

At the level of the African continent, actors have tended to frame the right to water in human rights documents, first and foremost of which is the implicit reference in the African Charter on Human and Peoples' Rights (1981), the African Charter on Children and Welfare (1990) and the "Annexed Protocol" The African Charter on Human and Peoples' Rights on the Rights of Women in Africa "(2003), the African Convention on the Conservation of Nature and Natural Resources (2003) and the Guidelines "On the right to water in Africa" (2015); The African Commission on Human and Peoples' Rights commissioned its "Group on Economic, Social and Cultural Rights" to develop principles and guidelines on the right to water; To assist States in implementing their obligations and respecting and realizing rights: Individual and collective water, addressing its challenges and operationalizing Goal 6 of the Union's development agenda: "Equitable and sustainable use and management of water resources for social, economic and regional development, cooperation, environment and access to water for all"

Second: Obligations of the Right to Water:

The right to water is derived implicitly from international human rights obligations, including the right to life, adequate housing, education, food, health, work, and cultural life, as a right associated with human nature and a prerequisite for the enjoyment of several human rights, being an essential part of human security, and a prerequisite for sustainable development and meeting their needs, and can be presented as follows.

1. General legal obligations
 - A. Paragraph (2) of Article (2), and Paragraph (2) of Article (11, 12) of the International Covenant on Economic, Social and Cultural Rights show obligations on state parties to have immediate obligations related to the right to water, such as ensuring the exercise of that right without discrimination.
 - B. The International Covenant expresses obligations on states to make use of the fastest and most effective means of realizing the right to water and to make it possible and feasible by virtue of the control of states parties over a wide range of resources, including water.
 - C. The Covenant does not permit retrogressive measures with regard to the realization of the right to water.
2. Specific legal obligations:



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The realization of the right to water as its human rights counterparts involves (3) types of obligations as follows:

1. Commitment to respect

This requires states to refrain from interfering directly or indirectly with the enjoyment of the right to water, to refrain from participating in or limiting any practice or activity that denies equal access to adequate water, to arbitrarily interfere with customary or traditional water arrangements, to illegally reduce or pollute water through waste from State facilities or weapons and to restrict or destroy access to water-related services and infrastructure as a punitive measure in peace. In addition, international humanitarian law shows that the indispensable objects of civilians must be protected in times of armed conflict, emergencies and disasters, including drinking water, supplies and irrigation, protecting the natural environment from widespread, long-term and severe damage and ensuring that civilians, detainees and prisoners have access to adequate water.

2. Commitment to protection

It is incumbent upon States to prevent third parties from interfering in any way with the enjoyment of the right to water, including corporations, groups and other agents. That obligation includes the immediate adoption of necessary and effective legislation and other measures to prevent other parties from denying people equal access to water, polluting water or unfairly extracting water, including natural resources, wells and other water resource systems, as well as the need to prevent other parties by operating or controlling such services as water transport systems, water tanks and access to rivers

and wells from physically, equally and affordable access to adequate and acceptable water. In order to prevent such abuses, an effective regulatory network, consistent with the provisions of the Covenant and this general comment, should be established, including independent surveillance, genuine public participation and penalties for non-compliance

3. Commitment to fulfill

The Commitment to fulfill includes the obligation to facilitate, enhance, and provide. Facilitation requires States to take positive measures to promote the enjoyment of this right by individuals and communities. Promotion requires steps to ensure adequate education regarding the healthy use of water, the protection of water resources, and ways to minimize water wastage. States are also obligated to provide through available means, and this requires States to adopt the necessary measures directed to the realization of the water right. It included giving recognition to the right in political and legal systems, implementing legislation, adopting plans and strategies, and facilitating access to disadvantaged rural and urban areas, in addition, making it financially affordable through the use of appropriate and low-tech technologies and subsidies. For income, the allocation of amounts is accessible to everyone.

While securing sufficient and safe water for present and future generations, it is necessary to limit the depletion of water resources, divert waterways, and build dams. It should limit the pollution of watersheds and ecosystems by radioactive, chemical, and monitor water reserves. It is necessary to ensure that the proposed developments do not interfere with adequate water access. It is also should assess the impacts of climate





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change, desertification, salinity, deforestation and deforestation, loss of biodiversity, emergency response mechanisms, establishing specialized institutions, and making appropriate institutional arrangements to implement strategies and programs.

Third: violations of the right to water

Many violations can be monitored, including:

- The state's unwillingness to implement the right to water under paragraph (1) of Articles (11, 12) of the two covenants concerned with the standard of living and health
- Adopting retrogressive measures that are inconsistent with essential legislation, temporarily repeal, formally suspend legislation necessary to continue enjoying the water right. Adopt legislation or policies inconsistent with pre-existing domestic or international obligations relating to the right to water.
- Failure to fully realize the water right, develop national water policies, and implement relevant laws.
- Violations of non-compliance stop the work of water services, utilities or arbitrarily prevent their use, raising water prices in a discriminatory or unsustainable manner, polluting water, or declining water resources.
- Violations of non-compliance with protection Failure to pass or unfairly apply laws to prevent water pollution and water extraction, failure to effectively regulate and

monitor water service providers, and failure to protect water distribution systems from interference, damage, and destruction.

- Non-compliance violations, including failure to adopt, implement a national water policy designed to guarantee everyone's right to water, insufficient spending or misallocation of public resources, result in individuals or groups not enjoying the right to water, especially those who are disadvantaged or marginalized. The failure to monitor the implementation of the right to water at the national level, for example, by identifying indicators and parameters for the right to water and the failure to take measures to reduce the unfair distribution of water facilities and services. Failure to adopt mechanisms for emergency relief, failure to ensure that everyone enjoys the minimum necessary level of this right, and failure to observe its international legal obligations about the right to water when entering into agreements with other states or with international organizations.

Fourth: Criteria for the Right to Water and its Indicators

1. Sufficiency and continuity

It includes water for drinking, washing clothes, food preparation, and personal and hygiene. Other domestic uses of water for swimming and gardening are not within the scope of the Right to Water. The right to water includes life, health, and meeting basic needs without giving him unlimited quantities. According to the World Health Organization, a person needs between (50: 100) liters per day, and the minimum is about (20: 25) liters.





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2. Safety, acceptability, safety, and quality

Where access to water must be free from microorganisms, chemicals, and radiological hazards, it must be acceptable in terms of color, odor, taste, and this applies to all water sources. And ensuring access to adequate sanitation facilities to protect the quality and supply of safe water and its resources.

3. Physical accessibility:

Water, and its adequate facilities and services, should be within physical and safe reach for all groups of the population. There must be access to sufficient, safe, and acceptable water within or in the vicinity of every household, educational institution, and workplace. All water facilities and services must be of adequate quality, culturally appropriate, and consider gender, life cycle, and privacy requirements. These facilities must be at a safe distance within all sectors of the population reach, considering the needs of special groups, including the disabled, women, children, and the elderly. That does not mean that everyone has access to water and sanitation in their own homes. It should be close to or at a reasonable distance from every home, school, hospital, workplace, detention center, and camp for refugees and internally displaced persons. It is estimated about (1,000) meters from the house and about (30) minutes for transportation.

4. Economic Accessibility:

Everyone should afford water, its utilities and services, and the direct and indirect costs and fees associated with water insurance. These costs and fees should not jeopardize the implementation of other Covenant rights. No individual or group should be denied access to safe drinking water because of their inability to pay for it, nor should it

prejudice their ability to enjoy other human rights to these services. The UNDP suggests that the criterion in this regard should be about (3%) of the household income, and no provision in the human rights framework requires an individual to obtain water for free.

5. Non-discrimination:

Everyone should have access to water, facilities, and services without discrimination, including the most vulnerable or marginalized groups. States should obligate to guarantee the water right enjoyment without discrimination, with equality between men and women. It should prohibit discrimination based on race, color, sex, age, language, religion, opinion, national, social origin, wealth, lineage, physical, mental, health disability, civil, political status, and social. Water resources must allocate, investments, and ensure access for minorities, indigenous peoples, refugees, displaced persons, migrant workers, and detained prisoners.

6. Transparency and access to information:

The water right adopts both transparency and access to information as one of the main requirements for its realization and to achieve participation, which is information related to water, its projects, its management, and its transfer. The information must be widely disseminated and made available in all appropriate languages and through multiple channels to ensure easy access through websites, local radio, billboards, and dissemination of information in the local press.

7. Sustainability:

Sustainability is at the forefront of the criteria for the right to water, which obliges states to take





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immediate and effective steps towards realizing the water right, preserving its positive changes, and balancing the economic, social, and environmental dimensions of the water right, in the present and the future. Through sustainable investments, operation and maintenance, supporting the institutional and administrative structure, and increasing capacity; the realization of the right to water in the present should not threaten the ability of future generations to enjoy this right.

8. Sharing

The water right requires a comprehensive, free, meaningful, and effective participatory process at the planning process. At defining objectives, formulating responses, implementation, monitoring, and evaluation, going beyond information exchange and superficial consultation to making decisions that include all parties from civil society organizations, national human rights institutions, and scientific and research circles. The private sector and the marginalized, vulnerable and vulnerable groups, especially women, minorities, and indigenous peoples.

9. Remedies and accountability

The water right requires accountability standards for providing and empowering individuals and groups to effective judicial and other avenues at the national and international levels, including administrative complaints, judicial proceedings, and granting them restitution, compensation, or satisfaction. Or guarantees of non-repetition and allowing human rights committees, mechanisms, and procedures to address human rights violations, as well as monitoring and control processes related to service levels, availability, and consistency with international and national standards.

Fifth: the indicator's methodology

1. Structural indicators

Structural indicators help assess the commitment of states after they have ratified human rights treaties. It reflects the ratification and adoption of legal instruments and the existence and establishment of institutional mechanisms to promote and protect that right and limit the state's acceptance, determination, and commitment to take measures in line with its human rights obligations. The structural indicators are as follows: visions, policies, plans, strategies, and internal legal frameworks, institutional and administrative structure related to water and its right, water infrastructure and right to it, challenges, weaknesses, opportunities, and strengths.

2. Operation indicators

Operations indicators measure and evaluate the ongoing efforts of duty bearers to transform their human rights commitments into desired outcomes. It includes all the steps, public programs, budgetary appropriations, and interventions that the state is prepared to implement its intention or commitments to implement right.

3. Outcome indicators

Outcome indicators enumerate individual or collective results that reflect the state's enjoyment of human rights in a specific context, including the number of results and goals achieved, the extent of water availability, physical, economic and temporal access, and the quality and quality of water.

