



UNDROP SERIES

RIGHTS TO WATER AND SANITATION

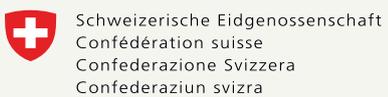


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RIGHTS TO WATER AND SANITATION

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In the UN Declaration on the Rights of Peasants and other People Working in Rural Areas

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (hereinafter, UNDROP) was adopted by the United Nations General Assembly on 17 December 2018. This briefing note on the rights to water and sanitation is part of a series of briefings published by FIAN International to better explain the content adopted in UNDROP.

The first series of briefings covered the following topics: the right to sovereignty over natural resources, development and food sovereignty; the right to land and other natural resources; the right to seeds and the right to biological diversity; states obligations; rural women's rights; right to a decent income and livelihood; collective rights; and the right to water.

The second series of briefings cover: rights of women in rural areas; right to water; the right to adequate food and nutrition, and to food sovereignty; right to seeds; interlinkages between UNDROP and UNDRIP; climate justice; agroecology; business and human rights; the right to land; and digitalization.

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1.

HOW DOES UNDROP RECOGNIZE THE RIGHTS TO WATER AND SANITATION?

Article 21 of UNDROP defines the rights to water and sanitation as the “human rights to safe and clean drinking water and to sanitation, which are essential for the full enjoyment of life and all human rights and human dignity. These rights include water supply systems and sanitation facilities that are of good quality, affordable and physically accessible, and nondiscriminatory and acceptable in cultural and gender terms.” (Article 21, paragraph 1). This definition underlines that the rights to safe and clean drinking water and sanitation are essential for the full enjoyment of life in dignity and are interconnected with all human rights. Article 21 also acknowledges the complex relationships peasants and rural population have with water. Water adequate in quality and sufficient in quantity is essential for farming; water is equally indispensable for fishing grounds, for livestock needs, and water is an important resource and sustenance base for forest dwellers and other rural communities. Water plays a key role in the lives of peasants² and rural population, and thus access to water for livelihood is just as equally vital as access to drinking water. (Paragraph 2)

2 |

For example, smallholder farmers who comprise around fifty percent of the world’s hungry today are denied sufficient access to productive resources such as land, water, and seeds and thus cannot produce enough to feed themselves adequately. See Final study of the Human Rights Council Advisory Committee (on the advancement of the rights of peasants and other people working in rural areas), UN doc. A/HRC/19/75, 24 February, §11.

In the face of increased extraction of ground water, diversion of rivers, and irreversible pollution of water due to large-scale industrial agriculture, extractive industries and large-scale dam construction for hydropower, local rural populations are facing dispossession and eviction from their traditional land and territories and thus losing access to and control over national resources such as land and water. It also has disastrous consequences on ecosystems

and agro-pastoral food production systems. The privatization of water and water distribution services and management – both for drinking and irrigation purposes – as well as the increase of water prices, deprive poor rural communities of their vital water resource. Often, private actors’ involved (national, international or multinational corporations) are backed by states.³ In the face of power imbalances, and resource grabbing as consequences thereof, peasants and other people working in rural areas require special protection and measures to safeguard their existing access to water resources. Article 21 thus spells out additional rights for peasants and other people working in rural areas which must be guaranteed by states. These are equitable access to water and water management systems based on existing customary and community-based water management systems, freedom from arbitrary disconnections, and freedom from contamination of water supplies and the right to water supply systems and sanitation facilities that are available, of good quality, affordable and physically accessible, non-discriminatory and acceptable in cultural and gender terms.

3 |
For more information, see Kay, S. & Franco, J. C. (2014): *The Global Water Grab: A Primer* (Amsterdam: Transnational Institute).

4 |
UNDROP, Article 21, Paragraph 2.

5 |
UNDROP, Article 21, Paragraph 3.

6 |
UNDROP, Article 21, Paragraph 3.

7 |
UNDROP, Article 21, Paragraph 4.

8 |
UNDROP, Article 21, Paragraph 3.

9 |
General Comments are authoritative interpretations of the content of human rights provisions issued by the UN Human Rights Treaty Committees.

10 |
General Comment 15, Paragraph 37 (a), (b), (c), (d), and (e). Plantation workers’ access to drinking water is based on Paragraph 10 (a) of ILO Recommendation 192 concerning safety and health in agriculture - Welfare and accommodation facilities - 10, which states “To give effect to Article 19 of the Safety and Health in Agriculture Convention, 2001, employers should provide, as appropriate and in accordance with national law and practice, to workers in agriculture: (a) an adequate supply of safe drinking water (...) and (d) separate sanitary and washing facilities, or separate use thereof, for men and women workers”.

11 |
Article 21, paragraph 2).

Article 21 also lays down conditions which must be guaranteed by states in order to realize the rights to water and sanitation for peasants and other people working in rural areas. These include essential amount of water that is sufficient and safe for personal, domestic, and productive use;⁴ non-discriminatory access to drinking water and sanitation, especially for disadvantaged or marginalized groups (e.g. nomadic pastoralists, plantation workers, migrants irrespective of their legal status, and persons living in irregular/informal settlements);⁵ physical and economic accessibility of water and water facilities and services also for productive uses;⁶; and protection of water resources from overuse and contamination.⁷ Access to water particularly in customary and community-based water management must be respected, protected, and fulfilled by states, thereby preventing third parties from interfering with the enjoyment of the right to water and prioritizing water use for human needs, small-scale food production, ecosystem needs and cultural use before any other uses.⁸ These prerequisites are also reflected in General Comment 15 on the Right to Water⁹ (hereafter referred to as General Comment 15) under the core obligations of the right to water,¹⁰ however, clearly expanding the water uses beyond personal and domestic to productive uses¹¹ in line with the core element of the rights to water and sanitation spelled out in paragraph 1 of Article 21.

Water is also at the heart of ecosystems on which not only food sovereignty but the entire humankind’s present and future generations depend. Therefore, states must protect and ensure the regeneration of watersheds, aquifers and surface water sources such as wetlands, ponds, lakes, rivers and streams (Paragraph 4).

The rights to water and sanitation in UNDROP and as well in general contain both freedoms and entitlements. The freedoms include the right to preserve access to extant water supplies, including also traditional water supplies, and the right to be free from any interference such as arbitrary and illegal disconnections, pollution of water resources, and discrimination in access to water on the basis of legal status. The entitlements include, for example, access to an essential amount of water to conduct life in dignity which includes drinking water and water necessary for domestic and productive uses and for livelihood; sanitation services and facilities, physical and economic access to water facilities and services that are affordable and based in customary and community based water management systems for peasants and people working in rural areas; and participation in water- and sanitation-related decision-making at the national and community levels.

The normative content of the rights to water and sanitation is Adequacy, Availability, Quality, Accessibility, and Sustainability.

12 |
General Comment 15, Paragraph 11.

13 |
General Comment 15, Paragraph 12.

14 |
UNDROP, Article 21, Paragraph 2.

15 |
General Comment 15 does not detail out the normative content of the right to sanitation. The normative content mentioned here is framed by Catarina de Albuquerque, independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, in her report (A/HRC/12/24; 1 July 2009) – Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development– reported at the twelfth session of the Human Rights Council. The nature of the right to sanitation is furthermore explained in the statement of the Committee on Economic, Social and Cultural Rights (CESCR) (E/C.12/2010/1) issued in November 2010.

16 |
A/HRC/12/24, Paragraph 70.

17 |
General Comment 15, Paragraph 12 (b).

18 |
CFS Decision Box on water 1. (c) refers to "Prevent and significantly reduce pollution, restore, depollute and protect water bodies from contamination and ensure water quality is preserved for domestic, agricultural and food-related uses (...)"

19 |
A/HRC/12/24, Paragraph 80.

Adequacy (Article 21, paragraph 1): In line with Article 11 and 12 of the ICESCR (“right to the highest attainable standard of physical and mental health”), water must be adequate for human dignity, life and health. The adequacy of water should not be understood in a narrow sense, by referring merely to volumetric quantities and technologies. Water should not be treated primarily as an economic good, but as a social and cultural good.¹²

Availability (Article 21, paragraph 2): The water supply must be sufficient and continuous for personal (drinking), domestic (e.g. cooking, personal and housing hygiene, washing clothes)¹³, and productive (for farming, fishing, livestock keeping and ensuring other water related livelihoods) purposes¹⁴. Sufficient water must be available for a person and community to enjoy a life in dignity. With respect to sanitation,¹⁵ a sufficient number of sanitation facilities must be available, which are located for ex. within, or in the immediate vicinity of each household, health or educational institution, public institutions and places, and the workplace.¹⁶

Quality (Article 21, paragraph 4): Safe water (“free from micro-organisms, chemical substances and radiological hazards”¹⁷) is required for personal, domestic and productive uses.¹⁸ Also, water must have acceptable odor, color and taste. Sanitation facilities must be hygienically safe to use (effectively prevent human, animal and insect contact with human excreta), have access to safe water for hand washing and hygiene, and technically safe to use at all times. Also, sanitation facilities and services must be culturally acceptable, for example, ensuring privacy and separate for women and men in public and work places, and girls and boys in schools, allowing also culturally acceptable hygiene practices (“acceptability”).¹⁹

Accessibility (Article 21, paragraph 1): It has several dimensions: *Physical accessibility, economic accessibility, non-discrimination, and information.*²⁰ Safe, sufficient and regular water, water services and water and sanitation facilities must be in vicinity to houses, fields, fishing ponds, and work/educational places (e.g. plantations). Physical safety and security should not be threatened particularly for girls and women when accessing water and water services (physical accessibility). Water and the connected services for personal, domestic and productive uses must be affordable to everyone (economic accessibility).²¹ Sanitation facilities and services, also including construction, emptying and maintenance of facilities, treatment and disposal must be available at an affordable price for all without limiting their capacity to acquire other basic goods and services, including water, food, housing, health and education guaranteed by other human rights.²² Water resources and services should be managed in accordance with non-discriminatory principles (non-discrimination) especially for disadvantaged and marginalized groups, and particularly respecting customary and community-based water management systems.²³ Also, a possibility to seek and reach information about water services, management and related issues must be ensured for all (information).²⁴

20 | General Comment 15, Article 12 (c).

21 | General Comment 15, Article 12.

22 | A/HRC/12/24, Paragraph 77.

23 | UNDROP 21. 3.

24 | General Comment 15, Paragraph 12.

25 | General Comment 15, Paragraph 11.

Sustainability (Article 21, paragraph 5): the realization of the right to water must be sustainable, guaranteeing the right to be realized for present and future generations.²⁵





2.

WHAT ARE STATES' OBLIGATIONS UNDER THESE RIGHTS?

Based on the human rights framework and taking into account the universality, inalienability, indivisibility, interdependency and interrelatedness of human rights, UNDROP defines both **general obligations** (progressive realization of the rights and non-discrimination) and **specific obligations** (obligations to respect, protect, and fulfill) of states, and acknowledges international obligations of states vis-à-vis the rights to water and sanitation. It needs to be emphasized that while states are obliged to fulfill the rights to water and sanitation progressively, states must guarantee immediately, even in the situation of limited available resources that the rights are exercised without discrimination and steps towards its full realization are taken.²⁶

In regard to peasants and people working in rural areas, the obligation to **respect** implies that states must refrain from interfering with rural people's enjoyment of the rights to water and sanitation and with existing arrangements in water management, water allocation, and water system, including customary, traditional, and community-based rights, insofar that they are compatible with human rights law. In many parts of the world, access to and control over water and other natural resources is governed by customary and community-based norms and practices. States must also cease from taking actions that harm equitable distribution of all available water, and sanitation facilities and services.²⁷ Actions that limit or prevent the enjoyment of the rights to water and sanitation are, for example, water supply interruptions, diversions of water (for ex. for large-scale irrigated agriculture or hydropower/dams) and diminishing and pollution of water resources by states or state-

²⁶ | General Comment 15, Paragraph 17.

²⁷ | UNDROP, Article 21.2.

owned companies. States must also refrain from discriminating against rural women regarding their enjoyment of the rights to water and sanitation. States also have the obligation to **protect** the rights to water and sanitation of peasants and people working in rural areas. They must protect them against third parties whose interference in any way represents or could represent a threat to the enjoyment of the rights to water and sanitation for peasants and people working in rural areas.²⁸ States must also protect access to water, particularly in customary and community-based water management systems. Third parties include non-state actors such as individuals, groups or private corporations. For example, states are obliged to prevent third parties from interfering with the enjoyment of the rights to water and sanitation from arbitrarily cutting off users from water supply, from polluting and contaminating water by harmful substances specifically by industrial effluents and concentrated minerals and chemicals that result in slow and fast poisoning, or from over-use and inequitable extraction of water by corporations.

States have the obligation to fulfill the rights to water and sanitation of peasants and people working in rural areas.²⁹ States must **facilitate** the right to water and sanitation by taking positive measures to assist individuals and communities to enjoy the right and prioritize water use for human needs, small-scale food production, ecosystems and cultural use before other uses.³⁰ States should also facilitate access to water particularly in customary and community-based water management systems. States must **promote** the rights to water and sanitation by taking steps to ensure that there is appropriate education regarding essential water related issues such as hygienic use of water, ways to protect water sources and measures to minimize water wastage. In addition, States must **provide** water supply, sanitation and decentralized, small-scale and community-based irrigation services that are affordable or at no cost, if individuals or groups are unable – beyond their control – to realize the rights by themselves and by the means at their disposal.

Finally, in accordance with States' international obligations, States should "refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction"³¹. Also, upstream and downstream neighboring states should cooperate and jointly engage in safeguarding the right to water of peasants and other people working in rural areas.³²

28 |
UNDROP, Article 21.5.

29 |
General Comment 15 differentiates this obligation between the obligation to facilitate, to promote, and to provide. General Comment 15, Paragraph 15.

30 |
UNDROP, Article 21.5.

31 |
General Comment No. 15, Paragraph 31. Also Sub-Commission Guidelines, section. 10.1.

32 |
UNDROP, Article 2.6. & 18.4.



3.

WHY IS IT IMPORTANT THAT UNDROP RECOGNIZED THESE RIGHTS?

— *Because the rights to water and sanitation are inextricable for the realization of a whole range of human rights for rural population*

Life cannot be sustained beyond a few days without water. Water is thus not only indispensable for mere human survival ensuring hydration, nutritious food-intake and maintaining health and well-being, water is also vital for basic sanitation and good hygiene. Water lays the foundation for a healthy, productive and dignified life, which is at the core of all human rights. Notwithstanding, there are 783 million people today who are water insecure and denied access to safe and clean water, while 2.5 billion do not have access to adequate sanitation.³³ The majority of them live in rural areas and depend on agriculture (which also includes forestry and fishery) and related activities for their livelihoods.³⁴ For peasants and rural communities, water is not only indispensable for their mere human life, it is also essential for ensuring their livelihoods. Too often local water supplies and sources are exhausted and/or polluted by mega mining operations and agribusiness corporations, thereby impacting the availability, adequacy, and accessibility of water, both drinking water and water necessary for farming, fishing, livestock keeping and for securing other water related livelihoods. This, in return, has detrimental impact on the enjoyment of other human rights – for example the rights to an adequate standard of living and to just and favorable conditions of work, the right to land and other natural resources, the right to food, the right to health, and the right to housing of rural populations. In addition, rural women and girls bear the primary responsibility for fetching water in many parts of the

33 | <http://www.unwater.org/water-cooperation-2013/water-cooperation/facts-and-figures/en/>.

34 | See World Bank. 2007. World Development Report 2008: Agriculture for Development. Washington, DC. © World Bank. See <https://openknowledge.worldbank.org/handle/10986/5990> License: CC BY 3.0 IGO. P.1.

world and are disproportionately affected by the lack of adequate water and sanitation. Notably, they suffer most from the severe consequences from water-borne diseases. Walking longer distances to fetch water increases the risk they face to be exposed to sexual and gender-based violence and the lack of adequate water and sanitation force many girls out school during menstruation. Very often their human rights – for ex. the right to health and the right to education are threatened and/or violated.

— *Because it re-emphasizes the importance of water for small-scale food production*

The rights to water and sanitation are powerful tools for all rights-holders, especially rural communities who depend on water for livelihoods to hold states that are duty-bearers accountable to respect, protect, and fulfil these rights. UNDROP thus serves as an additional legal interpretation to fill in the current normative gap of the rights to water and sanitation which prioritize drinking water and sanitation and water for domestic uses and makes normative differences between drinking water and water required for production and livelihood. Indeed, water is necessary beyond domestic and sanitation uses, as it is indispensable for growing, preparing, and selling food and other products that are vital for guaranteeing livelihoods of peasants and people working in rural areas. The multi-fold character of community-based and customary water rights constitutes the lifeline for rural families, reflecting thus the need to look at water in all its usages that guarantee life in dignity. Furthermore, adequate and sufficient water for productive uses to secure rural population's livelihood in farming, fishing, livestock keeping and any other related livelihoods is an essential prerequisite to guarantee several related rights enshrined in UNDROP, in particular Article 15 on the right to food and sovereignty, Article 16 on the right to decent income and livelihood and the means of production and Article 17 on the land and other natural resources.



ARTICLE 21

- 1 Peasants and other people working in rural areas have the human rights to safe and clean drinking water and to sanitation, which are essential for the full enjoyment of life and all human rights and human dignity. These rights include water supply systems and sanitation facilities that are of good quality, affordable and physically accessible, and nondiscriminatory and acceptable in cultural and gender terms.
- 2 Peasants and other people working in rural areas have the right to water for personal and domestic use, farming, fishing and livestock keeping and to securing other water-related livelihoods, ensuring the conservation, restoration and sustainable use of water. They have the right to equitable access to water and water management systems, and to be free from arbitrary disconnections or the contamination of water supplies.
- 3 States shall respect, protect and ensure access to water, including in customary and community-based water management systems, on a non-discriminatory basis, and shall take measures to guarantee affordable water for personal, domestic and productive uses, and improved sanitation, in particular for rural women and girls, and persons belonging to disadvantaged or marginalized groups, such as nomadic pastoralists, workers on plantations, all migrants regardless of their migration status, and persons living in irregular or informal settlements. States shall promote appropriate and affordable technologies, including irrigation technology, technologies for the reuse of treated wastewater, and for water collection and storage.
- 4 States shall protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes, from overuse and contamination by harmful substances, in particular by industrial effluent and concentrated minerals and chemicals that result in slow and fast poisoning.
- 5 States shall prevent third parties from impairing the enjoyment of the right to water of peasants and other people working in rural areas. States shall prioritize water for human needs before other uses, promoting its conservation, restoration and sustainable use.



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