



POLICY BRIEF

Comparative Analysis of the Framework Principles of the Human Right to a Clean, Healthy and Sustainable Environment, with the Principles of the Human Right to Water





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The recognition of the human right to a clean, healthy and sustainable environment by the Human Rights Council in October 2021 (Resolution 48/13) has prompted HR2W to make a comparative analysis between the Framework Principles (link ref), and the Human Rights to Water and Sanitation (HRWS)¹. This comparison is intended to serve as a useful reference for linking the principles of these two sets of human rights, providing a connection between the management of water resources for drinking and personal use, and the conservation and protection of water resource availability and quality for the long term sustainability of increasingly scarce water sources.

This analysis has helped to form the basis for the expansion of the HR2W country legal mapping tool to include a wider base of environmentally linked water legislation.

¹ General Comment No.15

BACKGROUND

In 2020, Human Right 2 Water joined the Global Coalition of Civil Society, Indigenous Peoples, Social Movements, and Local Communities for the Universal Recognition of the Human Right to a Clean, Healthy, and Sustainable Environment.

In October 2021, through the adoption of Resolution 48/13, the Human Rights Council recognised the right to a clean, healthy, and sustainable environment (HRHE). This resolution is a call for States to cooperate together and build capacities to protect the environment. Then, in July 2022, the HRHE was officially recognised as a human right by the United Nations General Assembly.

The recognition of the HRHE emerges in response to the increasing environmental degradation (the triple planetary crises²) that endangers the ability of future generations to enjoy human rights. It reinforced the fact that to guarantee the HRWS, we must protect and conserve the environment.

Following that context, the Global Coalition for the HRHE received the 2023 United Nations Human Rights Prize for its essential role in advocating for the recognition of the right to a healthy environment by the UN General Assembly (UNGA).

To complement these advocacy efforts, HR2W has conducted country legal mapping studies to analyse the links between the human rights to water and sanitation (HRWS) and the right to a healthy environment (HRHE). It is based on the existing country legal mapping methodology that has been tested and refined over the last ten years to assess the integration of the HRWS into national law. The addition of the HRHE principles and laws as related to water provides a more sustainable perspective to the analysis.

The attached comparative analysis between the principles of the HRWS and the HRHE was used as the foundation for the analysis, to capture the areas where these human rights are linked.

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**Principles of the Human Right
to a Healthy Environment
(from Framework Principles)**

**Principles of the Human Rights
to Water and Sanitation
(from General Comment No.15)**

HUMAN RIGHTS

PRINCIPLE 1. States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.

GC 1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.

GC 20. The right to water, like any human right, imposes three types of obligations on States parties: obligations to respect, obligations to protect and obligations to fulfil.

SUSTAINABLE DEVELOPMENT

PRINCIPLE 2. States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.

Respect: GC 21: The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.

Protect: GC 23. The obligation to protect requires States parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority.

The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.

Fulfill: GC26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. ... and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.

GC.11. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.

NON-DISCRIMINATION

PRINCIPLE 3. States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.

GC. 15. With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services.

SAFETY AND FREEDOM OF EXPRESSION

PRINCIPLE 4. States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation, and violence.

GC. 44,b. Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to water by third parties.

PRINCIPLE 5. States should respect and protect the rights to freedom of expression, association, and peaceful assembly in relation to environmental matters.

PUBLIC AWARENESS AND EDUCATION

PRINCIPLE 6. States should provide for education and public awareness on environmental matters.

GC, 25. The obligation to fulfil can be disaggregated into the obligations to facilitate, promote, and provide. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage.

Article 24, para. 2. of the Convention on the Rights of the Child requires States parties to “To ensure that all segments of society [...] have access to education and are supported in the use of basic knowledge of [...] the advantages of [...] hygiene and environmental sanitation.”

ACCESS TO INFORMATION

PRINCIPLE 7. States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective, and timely access to information to any person upon request.

GC 48. The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people’s participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.

ACCOUNTABILITY

PRINCIPLE 8. To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.

56. Before any action that interferes with an individual’s right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies.

GC 24. Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe, and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment.

PUBLIC PARTICIPATION

PRINCIPLE 9. States should provide for and facilitate public participation in decision-making related to the environment and take the views of the public into account in the decision-making process.

GC 48. The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.

REMEDIES

PRINCIPLE 10. States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.

55. Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels.

STANDARDS AND INDICATORS

PRINCIPLE 11. States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights.

53. To assist the monitoring process, right to water indicators should be identified in the national water strategies or plans of action. The indicators should be designed to monitor, at the national and international levels, the State party's obligations under articles 11, paragraph 1, and 12. Indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party's territorial jurisdiction or under their control.

VIOLATIONS

PRINCIPLE 12. States should ensure the effective enforcement of their environmental standards against public and private actors.

GC 55. All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.

INTERNATIONAL COOPERATION

PRINCIPLE 13. States should cooperate with each other to establish, maintain, and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.

GC 30. Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to water.

GC 38. For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfil their core obligations indicated in paragraph 37 above.

NON-DISCRIMINATION

PRINCIPLE 14. States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.

PRINCIPLE 15. States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by:

a. Recognizing and protecting their rights to the lands, territories, and resources that they have traditionally owned, occupied or used.

b. Consulting with them and obtaining their free, prior, and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources.

16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners, and detainees.

GC 7. The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see General Comment No.12 (1999)). Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.

c. Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories, and resources.

d. (d) Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories, or resources.

GC 16 (d) 16... In particular, States parties should take steps to ensure that:

...(c) Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status; (d) Indigenous peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water; (e) Nomadic and traveller communities have access to adequate water at traditional and designated halting sites; (f) Refugees, asylum-seekers, internally displaced persons, and returnees have access to adequate water whether they stay in camps or in urban and rural areas. Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals;

SUSTAINABILITY

PRINCIPLE 16. States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development.

11. The elements of the right to water must be adequate for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.

26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, inter alia, according to sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.

Human Right 2 Water is an international public interest development organisation based in Switzerland. It's mission is to use and share expert knowledge on how the human rights to water and sanitation should be integrated into law, policy and practice to realise safe and sustainable access to water and sanitation for all, including the most vulnerable and marginalised.



<http://humanright2water.org/>