



Guidelines for a human rights based approach to the management and protection of water resources: a contribution from the African Commission

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Plan

- 1. Transboundary water resources in Africa
- 2. One legal framework for transboundary water management?
- 3. The right to water in transboundary water management:
 - 3.1 An emerging recognition
 - 3.2 Legal implications?
- 4. The right to water in transboundary water management at the level of the ACHPR

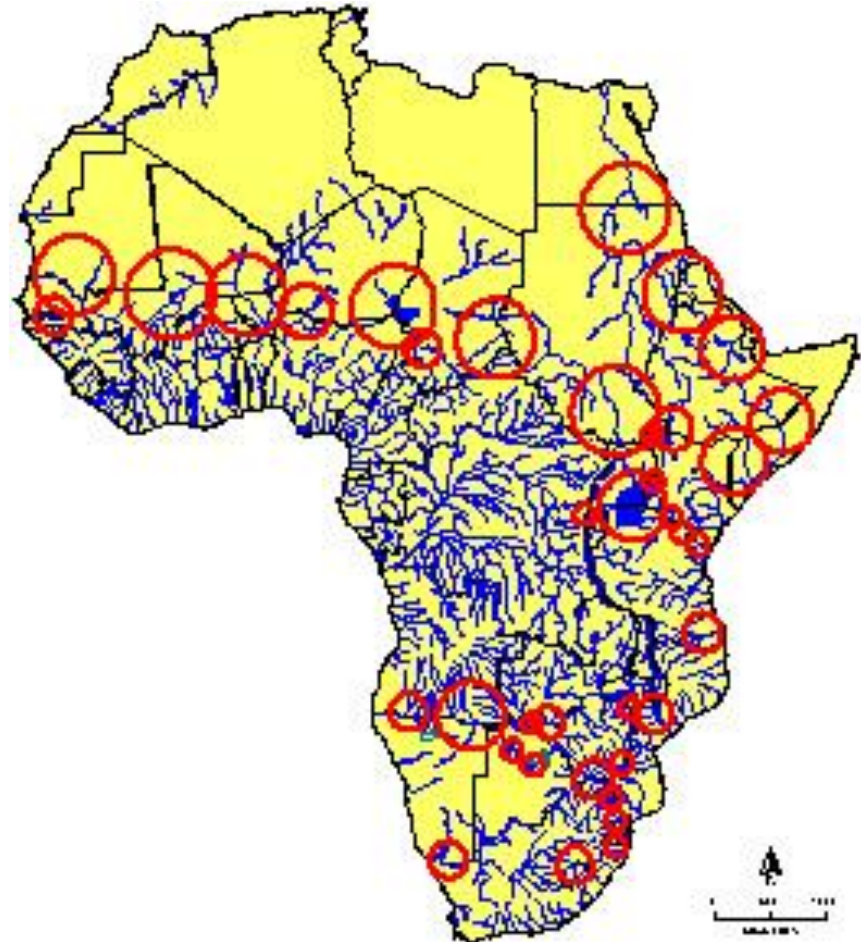
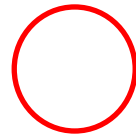


1. Transboundary Water Resources in Africa

- 63 transboundary river basins
- 93% freshwater of the Continent
- 77% of the population

– Convenient borders

– Tension points





2. Freshwater resources in Africa: one legal framework?

- 1997 UN Water Convention: 9 sub-saharan countries (and Morocco and Tunisia) have either ratified or acceded to the Convention (2015 data)
- One regional protocol: the SADC Protocol (entered into force in 2003)
- A number of river basin charters reiterating the customary principles of international water law:
 - equitable and reasonable utilisation
 - obligation not to cause significant harm
 - obligation to cooperate

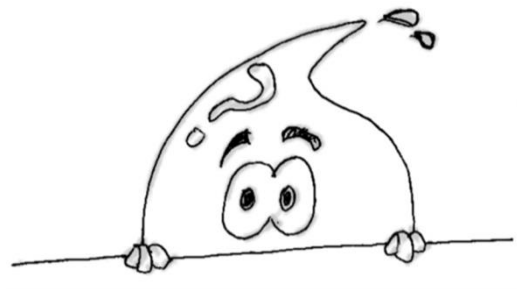


3. The right to water in transboundary water management

3.1 An emerging recognition of the right to water in river basins charters:

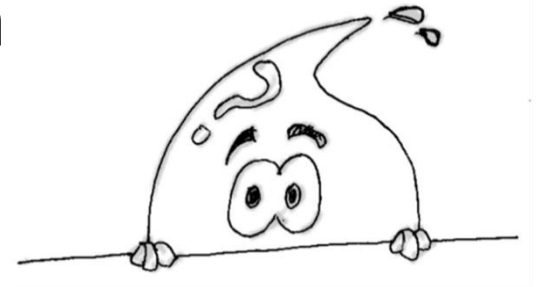
- Senegal River Basin Charter (2002), Art.4
- Niger River Basin Charter (2008), Art 4
- Lake Chad Charter (2012), Art 72

=> Legal implications ?





3. The right to water in transboundary water management



3.2 Legal implications...?

Criteria

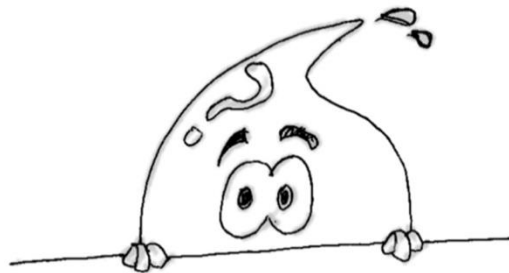
- Availability
 - Sufficiency
 - Continuity
- Accessibility
 - Physical
 - Economic (affordability)
- Acceptability
- Quality

Guiding principles

- Non discrimination
- Access to information
- Participation
- Sustainability
- Accountability
- Access to justice



=> Need for a consolidated interpretation of the implications of the right to water in the case of transboundary water management





4. The right to water at the African Commission on Human and Peoples' Rights



African Commission on Human and Peoples' Rights

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Commemorative Activities of the Africa year of Human Rights with particular focus on the Rights of Women

Commemorative Activities of the Africa year of Human Rights with particular focus on the Rights of Women



59th Ordinary Session: 21 October - 4 November 2016, Banjul, The Gambia



20th Extra-Ordinary Session: 9 - 18 June 2016, Banjul, Gambia




58th Ordinary Session: 6 - 20 April 2016, Banjul, The Gambia




Submission of State Reports

In accordance with Article 62 of the African Charter on Human and Peoples' Rights, States Parties to the Charter are required to submit every two years, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the Charter.

The following Initial/Periodic State reports have been submitted to the African Commission on Human and Peoples' Rights as per Article 62, and are hereby made public in accordance with Rule 74 of the Rules of Procedure of the African Commission:

 [Cote d'Ivoire: Periodic Report, 2012-2015](#)

• Received: 28 June 2016

 [Mauritius: 6th to 8th Combined Periodic Report, 2009-2015](#)

• Received: 5 May 2016

Announcements

NOTICE TO MEMBER STATES

The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) presents its compliments to embassies of Member States of the African Union in Addis Ababa, Ethiopia, and has the honour to write further to the invitations to Member States to participate in the upcoming 59th Ordinary Session of the African Commission on Human and Peoples' Rights (the Commission), scheduled to be held at the Headquarters of the Commission in the **Islamic Republic of The Gambia, from 21 October to 4 November 2016**, which invitations were copied to their respective embassies in Addis Ababa.

[Read more.....](#)



4. The right to water at the African Commission on Human and Peoples' Rights

Role of the African Commission:

- _ **Interpretation** of states' human rights obligations on the basis of the African charter and subsidiary instruments (e.g. Protocol on Women's rights)
- **Monitoring** of the implementation by the States of their human rights obligations
 - States reporting
 - **Complaints mechanisms**



4. The right to water at the African Commission on Human and Peoples' Rights

- **1981:** African Charter on human and people's rights (1981). Art.21: peoples' rights over natural resources
- **2011:** Guidelines on Economic, Social and Cultural Rights. Right to water (paras 87-92)
- **2012:** Resolution (224) on a human rights-based approach to natural resources governance
- **2015:** Resolution (300) on the right to water
- **2016:** Draft guidelines and principles on the right to water in Africa



2011 African Guidelines on ESCR

- Para 92.
 - e: « Take appropriate measures for the national management of water resources and the protection of **water against pollution**”
 - f: “Promote **sustainable use of water resources**. Ensure that there is appropriate education concerning the hygienic use of water, **protection of water sources and methods to minimize water wastage**. “



2011 African Guidelines on ESCR

- Para 92:
 - g: « Adopt comprehensive and integrated strategies and programmes to ensure that **there is sufficient and safe water for present and future generations**. Such strategies may include:
 1. **reducing depletion of water resources** by halting unsustainable extraction, diversion and damming;
 2. reducing and **eliminating contamination** of watersheds and water-related eco-systems;
 3. monitoring water reserves;
 4. ensuring that proposed developments do not interfere with **access to adequate water**;
 5. **assessing the impacts** of actions that may impinge upon water availability and natural ecosystem watersheds;
 6. reducing water wastage in its distribution;
 7. response mechanisms for emergency situations; and
 8. establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes”



2012 Res.224 on HRBA to natural resources management

The Commission calls upon States to:

- 1. **Natural resources stewardship with, and for the interest of, the population** and must fulfill its mission in conformity with international human rights law and standards;
- 2. **Participation of communities**, in decision making/prioritisation and scale of and benefits from natural resources governance;
- 3. **Fight against corruption**
- 4. **Independent monitoring and accountability mechanisms**
- 5. **Ensure independent social and human rights impact assessments** that guarantee free prior informed consent; effective remedies; fair compensation; women, indigenous and customary people's rights; environmental impact assessments; impact on community existence including livelihoods, local governance structures and culture, and ensuring public participation; protection of the individuals in the informal sector; and economic, cultural and social rights.



2015 Res. 300 on the right to water

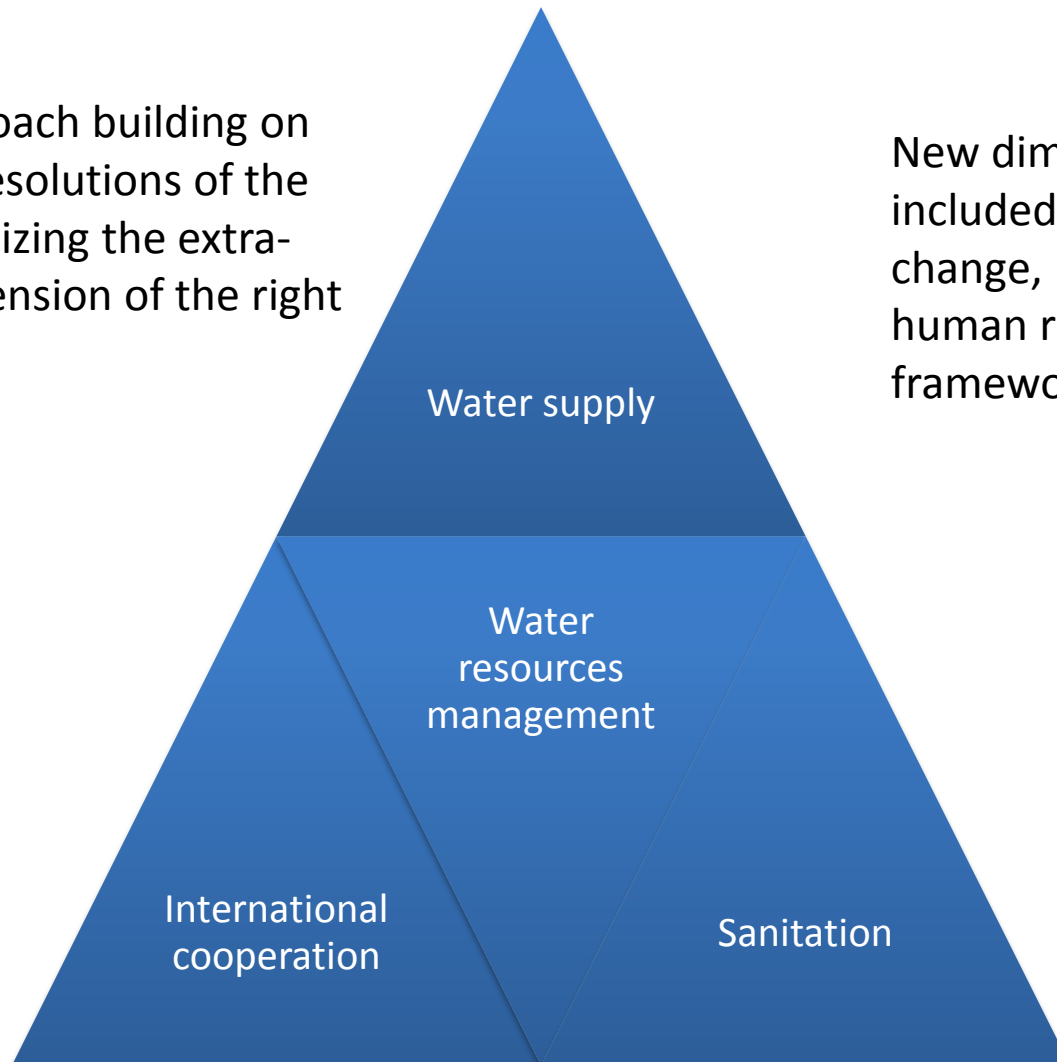
- **Urges** African Union Member States to meet their obligations in providing clean drinking water for all their populations and to conscientiously cooperate in the management and protection of water resources, and to:
- protect the **quality of national and international water resources and the entire riverine ecosystem, from watersheds to oceans;**
- ensure the rational and equitable use of water resources through the distribution of water resources to meet, in priority, the vital human needs of the populations concerned, in particular access to drinking water in sufficient quantity for personal and domestic use, sanitation, agriculture and other means of subsistence;
- recognize, protect and develop traditional and local water management systems for indigenous populations on their ancestral lands as well as local communities, and protect water resources from abusive use and pollution;
- establish mechanisms for the **participation of individuals and communities in decision-making on the management of water resources;**
- guarantee the **justiciability of the right to water;**
- build the capacity of populations in human rights education, including the right to water and protection mechanisms; and
- comply with the principle of non-discrimination within and among riparian populations, and take into account the needs of vulnerable persons, in particular women and children, persons with disabilities, elderly persons, rural populations living in geographically inaccessible areas, displaced persons, refugees and persons deprived of their liberty.



2016 Draft Guidelines on the right to water

A unified approach building on the previous resolutions of the ACHPR, recognizing the extra-territorial dimension of the right to water

New dimensions included, e.g. climate change, business and human rights framework





5. Next steps

- Consultation process on the draft guidelines soon to be launched: 3 months
- Collaboration with AMCOW for the ACHPR guidelines and the AMCOW regional indicators for SDG6 to follow the same lines
- Launch of the Guidelines (April?) - opportunities for new litigation for the protection of the right to water at the level of the ACHPR