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## 7

## THE RIGHTS TO WATER AND SANITATION AND THE UNDROP

### The implementation challenges of a comprehensive approach

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and Tadesse Kebebew*

#### Introduction

Rights to water and sanitation are explicitly recognised under Article 21 of the UNDROP, stating that peasants and rural workers have the right to water for personal and domestic use, farming, fishing, and livestock. Moreover, the Declaration explicitly states their right to equitable access to water and to be free from arbitrary disconnections and the contamination of water supplies. It also emphasises that states have to prioritise water necessary for human needs, small-scale food production, ecosystem needs, and cultural use.

Research and evidence show that people in rural areas are disproportionately affected by poverty and lack of access to water and sanitation services.<sup>1</sup> According to the FAO, globally, the poverty rate in rural areas is more than three times higher than in urban areas, with rural areas accounting for over half of the world's population and 79% of the total poor.<sup>2</sup> Out of the two billion people without basic sanitation services, 70% live in rural areas. Furthermore, girls and women are significantly affected by lack of access to water and sanitation since they often have to collect water from far away, preventing them from attending school and often exposing them to sexual violence.<sup>3</sup>

Article 21 includes the obligation to prevent third parties from impairing peasants' and rural communities' enjoyment of the right to water. This dimension is particularly relevant in the context of the impacts of farmland investments on the human rights of peasants and rural communities. The UNDROP generally recognises that 'States shall take all necessary measures to ensure that non-state actors . . . such as . . . transnational corporations and other business enterprises, respect and strengthen the rights of peasants and other people working in rural areas.'<sup>4</sup>

The chapter first provides an overview of the content of the rights to water and sanitation and their relationship to the UNDROP. It then delves into the nexus

between land and water rights, taking into account the case law of human rights and investment mechanisms.

## **The linkages between the rights to water and sanitation and the UNDROP**

In 2002, the UN Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment No. 15 on the Right to Water, which states that the right to water is implicitly recognised in Article 11.1 on the right to an adequate standard of living and Article 12.1 on the right to health of the ECSCR Covenant. Emphasising the interdependence of human rights, the General Comment demands that priority has to be given to the uses of water required to prevent starvation and underscores the need to consider the right to water beyond personal and domestic use. This right also covers water for securing livelihoods, including food production, which is pivotal for ensuring priority and sustainability of access to water for use in agriculture and pastoralism.<sup>5</sup>

The General Comment further enunciates the importance of providing equitable access to water for disadvantaged and marginalised farmers and indigenous communities, including women farmers. The General Comment also emphasises the need for sustainable rain harvesting and irrigation technology, as states are under obligation to ensure that local communities are not deprived of their means of subsistence.<sup>6</sup> Concerning sanitation, it stresses that access to adequate sanitation is not only fundamental for human dignity and privacy but one of the principal mechanisms for protecting the quality of drinking water supplies and resources.<sup>7</sup> Accordingly, states should progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.

In 2010, the UNGA and the Human Rights Council adopted two resolutions signalling the recognition of the rights to water and sanitation in international law.<sup>8</sup> Since then, both bodies regularly adopt resolutions on the rights to water and sanitation. In particular, the resolution of 2015 adopted by the General Assembly relies on the General Comment No. 15 to define the right to water as entitling 'everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.' Therefore, the normative contents of the right include adequacy, availability, quality, accessibility, and affordability of water for personal and domestic use.

The human right to sanitation is considered as entitling

everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity while reaffirming that both rights are components of the right to an adequate standard of living.<sup>9</sup>

In 2012, the UNGA adopted by consensus the UN Guiding Principles on Extreme Poverty and Human Rights. The UN Guiding Principles are the first global policy guidelines focused specifically on the human rights of people living in poverty, including people living in rural areas, with a strong emphasis on the importance of the right to water as a means to eradicate extreme poverty in rural areas.<sup>10</sup> Although non-legally binding per se, they stem from legally binding provisions included in international human rights instruments. The UN Guiding Principles are instrumental for concrete steps to be taken to ensure meaningful implementation of the UNDROP. In implementing the UNDROP as regards water provision, governments can be inspired by the guidance enshrined in its principles to ensure that public policies, including poverty eradication efforts, reach the poorest members of the society.

### ***The right to water for peasants and rural communities***

The UNDROP takes into account the aspects of the rights to water and sanitation, which have been analysed earlier. Indeed, it explicitly states under Article 21.1 that:

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 non-discriminatory and acceptable in cultural and gender terms.

When we compare the scope of the human rights to safe drinking water and sanitation under the UN resolutions specifically devoted to these rights and the content of Article 21 of the UNDROP, we can generally note that the Declaration broadens the extent of protection. First, although the rights to water and sanitation are developed as self-standing rights, they are also inextricably connected to the right to an adequate standard of living, the right to health, and the right to life. Thus, the recognition of these freedoms and entitlements under Article 21 with similar normative content is reasonable.

Second, in human rights discourse, though the right to water has been recognised as a 'prerequisite for the realisation of other human rights,' the scope is principally limited to personal and domestic uses.<sup>11</sup> The UNDROP recognises these linkages and broadens the right to water to include water necessary to ensure food security as well as the duty of states to ensure environmental conservation and restoration of water resources. The recognition of sustainable access to water resources for productive and agricultural use, which naturally exceeds what is traditionally understood as 'domestic use of water,' is pivotal as people in 'rural and peri-urban areas require water not only for personal and domestic uses but also for other uses relating to the broader goals of poverty reduction and livelihood security.'<sup>12</sup>

Third, the UNDROF supports a comprehensive approach to the reading of the human rights to safe drinking water and sanitation. The different Articles of the Declaration confirm this assertion. For example, its preamble states that ‘peasants and other people working in rural areas suffer from the burdens caused by environmental degradation and climate change,’ and Article 18 is devoted to environmental protection, also covering water resources. This provision explicitly recognises the right to a safe, clean and healthy environment for peasants and rural communities, as well as the conservation and protection of the productive capacity of the resources they use and manage, including water.<sup>13</sup>

The resolutions on the rights to safe drinking water and sanitation adopted by both the General Assembly and the Human Rights Council often mention the disparities in the access to water in rural areas and the necessity to improve their water services.<sup>14</sup> Among persons living in extreme poverty, rural communities’ right to an adequate standard of living is heavily based on their access to land, water, and forests, not only as a source of food and shelter but also as a ‘basis for social, cultural and religious practices and a central factor for economic growth.’<sup>15</sup> For example, the report of the mission of the UN Special Rapporteur on Extreme Poverty and Human Rights in Timor Leste highlighted that:

Access to adequate water and sanitation facilities remains poor, particularly in rural areas, where approximately 43% of households do not have access to clean water and 74% of households do not have access to improved sanitation. . . . Income inequality has risen significantly. Disaggregated data reveals that the 75% of Timorese people who live in rural areas suffer disproportionately from poverty and disadvantage.<sup>16</sup>

This aspect is directly related to Article 21 of the UNDROF, which emphasises the obligation of states to ensure the respect and protection of access to water, in particular, ‘for rural women and girls, and persons belonging to disadvantaged or marginalised groups, such as nomadic pastoralists, workers on plantations, all migrants regardless of their migration status, and persons living in irregular or informal settlements.’<sup>17</sup> States also have the duty to promote appropriate and affordable technologies to reuse treated wastewater and for water collection and storage.<sup>18</sup>

The reports of the former Special Rapporteur on the rights to safe drinking water and sanitation have pointed out the importance of ensuring access to water for rural communities. In some of his reports, he identifies some programs targeting rural areas, including Mexico and Ethiopia.<sup>19</sup> Such programs may help to realise the objectives of the UNDROF, notably the rights of peasants and other people working in rural areas to safe, clean drinking water, and sanitation.<sup>20</sup>

In many regions, rural communities are deprived of their right to access water. In Mexico, indigenous groups live in rural areas where access to water is often sporadic, its quality is unsafe, and the cost is high. Indigenous communities complain about the pollution of water resources due to unregulated mining and hydrocarbon extraction.<sup>21</sup> Concessions concluded with private companies have been adopted

by the government without taking into account the availability and the impact on the quality of water resources.<sup>22</sup> Although the Constitution of Mexico explicitly includes the rights to water and sanitation, there are still significant gaps in domestic water laws. National legal frameworks should be updated to be consistent with the rights enshrined in the Constitution. The right to water includes the States' obligation to ensure universal access to water for rural and indigenous communities. Moreover, the government should support the management of water at a community level and promote eco-technologies.<sup>23</sup> This last demand is included in UNDROP Article 21.3 as it determines that states shall respect and protect 'customary and community-based water management systems' on a non-discriminatory basis and promote technologies for collection and storage of water as well as treatment of wastewater.

International investments have significantly contributed to water scarcity in rural environments globally. Many African countries attract a large number of investments in land and, since land without water has no value and it is a critical resource for agriculture, water's role in investments in land is often underestimated. For example, in Ethiopia, considered the 'water tower' of East Africa,<sup>24</sup> investments in land have significantly increased. From 2009 to 2015, the government leased around 3.3 million hectares of land to private investors.<sup>25</sup> Indigenous communities are not involved in the negotiation of contracts between the government and investors, as their land is often considered 'wasteland' without prior users.<sup>26</sup> As has been rightly noted, weak domestic laws have curtailed the rights of indigenous communities in the planning and approval of large-scale agricultural projects.<sup>27</sup>

The UNDROP has addressed the critical normative gap concerning the interplay between water and land as well as the need for special protection of peasants and other people working in rural areas in this respect.

## The nexus between water and land under the UNDROP

Under the UNDROP, the rights to water and sanitation cannot be fully understood without considering land rights. In its preamble, the Declaration recognises 'the special relationship and interaction between peasants and other people working in rural areas, and the land, water and nature to which they are attached and on which they depend for their livelihood.' Moreover, Article 17.1 recognises the individual and collective dimension of the right to land in accordance with Article 28 of the Declaration and specifies that 'the right to have access to, sustainably use and manage land' includes the use of water bodies.

The right to land has an increasingly important role in international human rights law, especially when one considers farmland investments.<sup>28</sup> Land rights are reflected in property rights owned by individuals, collective groups, or legal persons. They may also find expression in customary land tenure systems. Land rights may be connected to the right to food, the right to water, or the right to property. The enjoyment of these human rights may be dependent on the right to land. International human rights law recognises the particular attachment specific groups, such

as indigenous peoples, have to their land. The right to land of indigenous peoples is duly recognised in the United Nations Labour Organisation (ILO) Convention No. 169 Concerning Indigenous Tribal Peoples in Independent Countries and the UNDRIP.<sup>29</sup>

Moreover, the United Nations FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security deal with the tenure rights of local communities and provide guidance on how to ensure equitable access to land, fisheries, and forests. Since their adoption in 2012, the implementation of the Voluntary Guidelines has been largely encouraged in interstate meetings and summits, e.g., the G-20, Rio+20 as well as the UNGA. International corporations and businesses have equally supported the document. Transnational companies such as Coca-Cola, Nestlé, and Unilever have announced they would incorporate the Voluntary Guidelines in their corporate policies.<sup>30</sup>

Although the Guidelines do not explicitly mention water, they note that the governance of land, fisheries, and forests includes the management of water resources.<sup>31</sup> Moreover, the document sheds particular light on procedural rights relevant to examining the nexus between land and water rights. They recommend seeking 'the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken' and they note that 'power imbalances between different parties' should be taken into consideration to ensure 'active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.'<sup>32</sup> Lastly, the Guidelines emphasise the linkages between civil and political rights and social, economic, and cultural rights.<sup>33</sup>

Other sets of human rights-relevant principles to be considered in the context of private investments in land are the 2014 Principles for Responsible Investment in Agriculture and Food Systems endorsed by the CFS. Contrary to the 2012 Guidelines, this document explicitly takes into account the protection of water. The Principles aim to safeguard 'legitimate tenure rights,' including water rights and the environment, from risks that could arise from investments. Among other measures, states should take the necessary corrective action in addressing water use by farmland investments to ensure coherence with obligations under environmental and human rights law.<sup>34</sup>

While it might be argued that the Voluntary Guidelines, the UNDRIP, and the UNDROP have a limited legal impact given their soft-law nature, universal and regional human rights bodies have developed consistent jurisprudence on the protection of the rights of indigenous communities.

### ***The UN Human Rights Committee (HRC)***

In the landmark decision, *Portillo Cáceres and Others v. Paraguay case*,<sup>35</sup> the HRC drew upon the UNDROP. The Committee found Paraguay in violation of its international obligations to protect the rights to life and respect for private and

family life and the home. The Committee points out that Paraguay failed to protect individuals from severe environmental contamination from large-scale farms' use of illegal chemicals. The Committee explained that Portillo Cáceres and his family members depend on their crops, fruit trees, livestock, fishing, and water resources for their livelihoods. It added that they have a 'special attachment to and dependency on the land' using the words of, and referring to, Article 1 of the UNDROP (paragraph 7.8). As the pollution has had direct repercussions on the Cáceres family's livelihood, their right to privacy, family, and their home had been violated.

### ***The Inter-American human rights system***

The Inter-American human rights system has rich jurisprudence on protecting indigenous rights to land and indirectly to the right to water. In *Mayagna (Sumo) Community of Awas Tingni v. Nicaragua*, the IACHR interpreted the protection of 'property' as entrenched in Article 21 of the American Convention on Human Rights transcended the right of possession under state domestic law so as to guarantee maximum protection of indigenous communities as individuals and peoples. The court affirmed that indigenous peoples' right to make use of natural resources, including water, is based on their special relationship with the territory and their dependence on nature for their physical and cultural survival.<sup>36</sup> In the words of the Court in the *Saramaka* case against Suriname, indigenous people's land rights would be rendered meaningless 'if not connected to the natural resources that lie on and within the land.'<sup>37</sup> In *Kakmok Kasek Indigenous Community v. Paraguay*, the court detailed the connection between indigenous people's use of natural resources and their particular cultural identity.<sup>38</sup>

The IACtHR was the first regional human rights body to refer to the UNDROP to protect the right to land and other natural resources. In the case *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, the court recognised for the first time autonomous violations of the rights to a healthy environment, adequate food, water, and cultural identity.<sup>39</sup> The case involves a claim from indigenous communities in Argentina composed of over ten thousand members and united under the association *Lhaka Honhat* ('our land'). They claimed Argentina violated their right to communal property by failing to provide legal security to their territory and allowing Creole settlers to reside on their lands. In doing so, their rights to a healthy environment, adequate food, participation in cultural life, and judicial protection were also breached. The IACtHR ordered Argentina, among other things, to grant titles to the indigenous communities, to refrain from doing anything on the indigenous property that might affect the property's value or use without prior consultation, to create a fund for community development, and to prepare a study on actions to be taken for water conservation and to remedy contamination and to avoid loss of forest resources and recover lost food sources.

### ***African human rights system***

A similar set of concerns and relationships have been emphasised in the African human rights system. The African Commission on Human and People's Rights (the African Commission) has repeatedly used Article 21 of the African Charter on Human and People's Rights (African Charter) and other provisions to recognise and protect indigenous peoples' rights to natural resources.

Relying heavily on the jurisprudence of the IACtHR, the African Commission has interpreted Article 21's right to make use of wealth and resources in conjunction with Article 14's protection of property so as to provide vital protection for indigenous peoples' rights to resources found in their traditional lands.<sup>40</sup> In *Centre for Minority Rights Development v. Kenya*, the African Commission linked land and water rights with freedom of religion and the right to development.<sup>41</sup> In addition, access to information and public participation has been found to be means for exercising the right to use natural resources. In this sense, the African Commission found Kenya in violation of Article 21 of the African Charter for failing to properly consult with the concerned indigenous community and not having obtained their consent.<sup>42</sup>

The duty to consult placed on the state implies that the land and resource rights vested in indigenous groups are not absolute. Indeed, the African Commission has been clear that, so long as appropriate consultations occur, restrictions on these rights can be justified if they are in the 'general interest of the community.'<sup>43</sup> However, there are strict limits on the state's power to grant concessions against indigenous resources rights. Much in line with the structure of Article 21, and its analogue in Article 1 of the United Nations Covenants on Civil and Political Rights and Economic Social and Cultural Rights of 1966, no restrictions to or violations of rights can be allowed when the subsistence and thus the survival of the indigenous people are at risk. The landmark decision of the African Commission on Human and Peoples' Rights in the *Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria* case confirms this assertion. The Commission found that the government's complicity and participation in the destruction and contamination of water, soil, and crops as well as the destruction of food sources as a result of oil company activities constituted a breach of Article 21 of the African Charter by both destroying the community land and 'devastatingly affecting' the well-being of the Ogoni people.<sup>44</sup>

### **The role of international investment law in farmland disputes and the right to water**

In the discussion on the nexus between water and land rights, investment law has to be considered. This area of international law often governs disputes around land rights, including the uses of water resources. For example, foreign investors may conclude a contract with a country regarding a farmland investment that includes

water rights. Moreover, private investors may seek to protect their land and water rights necessary to operate their contract on farmland investment through an investment treaty, mainly BITs. These treaties secure investors' rights, including the right to arbitration claims against the host state, potentially impacting its ability to manage water resources and securing associated individual and collective rights.

The reasons for disputes around land and water rights may be various. For example, in the case of long-term drought or a political change, the host state may decide to expropriate the land or reallocate water rights.<sup>45</sup> On the other hand, among the main standards applicable to protecting investors' rights is the fair and equitable treatment standard and the prohibition against expropriation without compensation.<sup>46</sup> According to customary law and many investment treaties, a state has the right to expropriate landholdings under the condition it pays compensation. This also includes the cases of land reform programs that may have the objective to protect rural communities' rights. This could lead to investment disputes under the investment treaty on the basis, for example, of the clauses on expropriation. In this context, farmland investments raise complex issues on how to reconcile the investments with peasants' and local communities' human right to water and the protection of the environment.<sup>47</sup>

Naturally, the protection of foreign investment cannot be viewed in isolation from human rights law. The recognition of the human right to water has legal implications for host states: they have to ensure that farmland investments do not interfere with peasants' and rural communities' right to water. In realising the human right to water, the Human Rights Council calls upon states to 'pay particular attention to persons belonging to vulnerable and marginalized groups.'<sup>48</sup> Farmland investments often take place in rural areas where local communities have customary rights, which are vulnerable compared to the rights of investors. This means that host states must pay particular attention in this context to ensure that peasants and rural communities have adequate access to water as required by international law. Specific to this point, Article 16.4 of the UNDROP enunciates that states' investment policies should 'contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable modes of agricultural production.' Similarly, Article 21.5 refers to states' obligation to 'prevent third parties from impairing the enjoyment of the right to water of peasants and other people working in rural areas.' Host states must ensure that water use by foreign investors does not interfere with the realisation of the right to water for local communities. In our view, the main challenge in such cases remains the short-sided take of the human right to water according to which this right focuses solely on water for drinking and sanitation services and ignores the inextricable link between water, land, and agricultural production.<sup>49</sup> The time is ripe for expanding this understanding: the protection of the right to water should encompass states' duty to guarantee individual and groups' access to water of sufficient quantity and good quality for domestic and small-scale agricultural activities.<sup>50</sup>

The legal obligations owed to investors under investment law must be viewed in connection with the states' wider international obligations. International human rights law is as equally binding on host states as investment law.<sup>51</sup> The arbitral jurisprudence

has recognised the linkages between human rights law and investment law. In the *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic* case, the tribunal recognised that the BIT was not an isolated or closed system, since the BIT itself allows reference to other sources of international law, including ‘general principles of international law.’<sup>52</sup> It stated that the reference to the ‘general principles of international law’ would become meaningless if

the BIT is to be construed as an isolated set of rules of international law for the sole purpose of protecting investments through rights exclusively granted to investors. Such a view, which claimants favor, is not correct for more than one reason.<sup>53</sup>

Concerning international human rights law, the tribunal did not accept the argument that ‘the human right to water is a duty that may be born solely by the State, and never borne also by private companies.’<sup>54</sup> For the tribunal, ‘[w]hile such principle had its importance in the past, it has lost its impact and relevance in similar terms and conditions as this applies to individuals.’<sup>55</sup> It further explained its position by arguing that:

International law accepts corporate social responsibility as a standard of crucial importance for companies operating in the field of international commerce. This standard includes commitments to comply with human rights in the framework of those entities’ operations conducted in countries other than the country of their seat or incorporation.<sup>56</sup>

## Concluding remarks

The right to water has been traditionally understood as the right to access water of good quality for domestic purposes. While this understanding may well reflect the challenges of individuals leaving and working in urban settings, it falls short of addressing the needs of rural workers and communities. Indeed, one of the main contributions of the UNDROP with respect to the right to water is to broaden the notion and the contents of the right to water so as to include water uses for food production, especially farming, fishing, and livestock. Furthermore, in tune with recent developments on the rights of indigenous peoples and local communities, the UNDROP draws special attention to the duty of states to ensure the conservation and restoration of water resources.

## Notes

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- 2 FAO, ‘FAO hails landmark UN resolution that enshrines rights of peasants and rural workers’ (2018) <[www.fao.org/news/story/pt/item/1175208/icode/](http://www.fao.org/news/story/pt/item/1175208/icode/)> accessed 25 April 2021.

- 3 Alison Graham (main), Francesca Restifo, and Janet Nelson, *Making Human Rights Work for People Living in Extreme Poverty: A Handbook for Implementing the UN Guiding Principles on Extreme Poverty and Human Rights* (International Movement ATD Fourth World and Franciscans International 2015).
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- 5 UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)' (20 January 2003) UN Doc E/C.12/2002/11, para. 6.
- 6 *Ibid.*, para.7.
- 7 *Ibid.*, para. 29.
- 8 UN General Assembly, 'The Human Right to Water and Sanitation' (28 July 2010) UN Doc A/RES/64/292; UN Human Rights Council, 'Human rights and access to safe drinking water and sanitation' (6 October 2010) UN Doc A/HRC/RES/15/9.
- 9 UN General Assembly, 'The Human Rights to Safe Drinking Water and Sanitation' (22 February 2016) UN Doc A/RES/70/169, para. 2.
- 10 UN Human Rights Council, 'Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona' (18 July 2021) UN Doc UN A/HRC/21/39.
- 11 CESCR, *supra* note 5, para. 1.
- 12 Inga Winkler, 'Water for Food' in Malcom Langford and Anne A. Russel (eds), *The Right to Water: Theory, Practice and Prospects* (Cambridge University Press 2017) 84.
- 13 UNDROP, *supra* note 4, art. 18(1).
- 14 UN General Assembly, 'The Human Rights to Safe Drinking Water and Sanitation,' *supra* note 9, para. 5.
- 15 UN Human Rights Council, 'Final Draft of the Guiding Principles on Extreme Poverty and Human Rights, submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona,' *supra* note 10, para. 71.
- 16 UN Human Rights Council, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona' (24 May 2021) UN Doc A/HRC/20/25/Add.1, para. 8.
- 17 UNDROP, *supra* note 4, art. 21(3).
- 18 *Ibid.*
- 19 UN Human Rights Council, 'Progress Towards the Realization of the Human Rights to Water and Sanitation (2010–2020), Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation' (6 August 2020) UN Doc A/HRC/45/11.
- 20 UNDROP, *supra* note 4, art. 21(1).
- 21 UN Human Rights Council, 'Report of the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation on his Mission to Mexico' (2 August 2017) UN Doc A/HRC/36/45/add.2, paras. 45 and 48.
- 22 *Ibid.*, para. 19.
- 23 *Ibid.*, para. 45.
- 24 Emily Ingebretsen, 'A Thirsty Third World: How Land Grabs are Leaving Ethiopia in the Dust' (2017) 4(1) *The Journal of Gender and Water* 97.
- 25 *Ibid.*, 98.
- 26 Lorenzo Cotula, Sonja Vermeulen, Rebecca Leonard and James Keeley, *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa* (IIED, FAO and IFAD 2009) 62 and 70.
- 27 *Ibid.*
- 28 Lorenzo Cotula, 'Land, Property and Sovereignty in International Law' (2007) 25(2) *Cardozo Journal of International and Comparative Law* 219–86.

- 29 International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention C169* (27 June 1989).
- 30 Makane M. Mbengue and Susanna Waltman, *Farmland Investments and Water Rights in Africa: The Legal Regimes at Stake* (International Institute for Sustainable Development 2015).
- 31 Subsequent to 2012 Guidelines, FAO developed the concept of 'water tenure.' This concept is defined as 'the relationship, whether legally or customarily defined between people, as individuals or groups, with respect to water resources.' See FAO, 'Exploring the Concept of Water Tenure' (2016) <[www.fao.org/3/a-i5435e.pdf](http://www.fao.org/3/a-i5435e.pdf)> accessed 27 May 2021 and Waterlex and FAO, 'Revisiting the Concept of Water Tenure: Filling the Gap between Water Rights and Water Governance' (2019) <<http://humanright2water.org/wp-content/uploads/2020/04/191130-Water-Tenure-Paper-1.pdf>> accessed 27 May 2021.
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- 33 *Ibid.*, Rights and responsibilities related to tenure, para. 4.8.
- 34 Committee on World Food Security, 'Principles for Responsible Investment in Agriculture and Food Systems' (2014), Principle 5.
- 35 Human Rights Committee, *Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 2751/2016*, 'Portillo Cáceres v. Paraguay' (20 September 2019) CCPR/C/126/D/2751/2016.
- 36 *Indigenous Community Sawhoyamaya v. Paraguay*, Inter-American Court of Human Rights Series C No 146 (26 March 2007), para. 118; *Indigenous Community Yakye Axa v. Paraguay* Inter-American Court of Human Rights Series C No 125 (17 June 2005), para. 137.
- 37 *Saramaka People v. Suriname*, Inter-American Court of Human Rights Series C No 172 (28 November 2007), para. 122.
- 38 *Kakmok Kasek Indigenous Community v. Paraguay*, Inter-American Court of Human Rights Series C No 214 (24 August 2010), para. 174.
- 39 *Ibid.*, para. 289.
- 40 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, African Commission on Human and Peoples' Rights 276/2003(4 February 2010), para. 267.
- 41 *Ibid.*, para. 173.
- 42 *Ibid.*, paras. 266–8.
- 43 *Ibid.*, para. 267.
- 44 *Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples' Rights Communication 15/96 (27 October 2001), paras. 55–8.
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- 46 See Makane and Susanna, *Farmland Investments and Water Rights in Africa: The Legal Regimes at Stake*, supra note 30.
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- 51 *Ibid.*
- 52 Article 10(5) of the Spain–Argentina Bilateral Investment Treaty states that ‘The arbitral tribunal shall make its decision on the basis of this Agreement and, where appropriate, on the basis of other treaties in force between the Parties . . . and the general principles of international law.’
- 53 *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic*, International Centre for Settlement of Investment Disputes Case No ARB/07/26(8 December 2016), para. 1189.
- 54 *Ibid.*, para. 1193.
- 55 *Ibid.*, para. 1194.
- 56 *Ibid.*, paras. 1194–5.

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