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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Water and economy nexus: managing water for productive uses from a human rights perspective

**Report of the Special Rapporteur on the human rights to safe drinking
water and sanitation, Pedro Arrojo Agudo***

Summary

The crucial role of water requires managing aquatic ecosystems, the water cycle and water itself in a fair and sustainable way, involving local, regional and global populations in a nested governance structure. Water and aquatic ecosystems should be managed as commons in the public domain. Priorities should be set for water use, and strategies should promote efficient and responsible water use based on principles such as non-deterioration, restoration, cost recovery and cost-effectiveness. Key strategies include non-profit tariff systems, precautionary-based planning and public financing strategies to ensure autonomy at different levels, and public-public and public-community partnership strategies.

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I. Introduction

1. After 46 years, a second United Nations Water Conference took place in March 2023.¹ Although, in his remarks at the closing of the Conference, the President of the General Assembly briefly referenced the human rights to water and sanitation, the Conference itself lacked a human rights-based approach.² Instead, the entire focus was on the potential impacts of climate change on water-dependent productive activities. In addition, the preparatory documents for the 2024 Summit of the Future overlooked the global water crisis, the human right to water, and the social and economic impacts of climate change, not giving sufficient attention to adopting a human rights-based approach to managing essential resources for the future.
2. However, it was encouraging that, in a resolution adopted in 2023,³ the General Assembly decided to convene Water Conferences in 2026 and 2028 and requested the Secretary-General to prepare a United Nations system-wide water and sanitation strategy,⁴ strengthening the United Nations leadership in water governance.
3. The Special Rapporteur argues that, in implementing the strategy, it is crucial to adopt a sustainable, human rights-based approach to water management, with water being understood as a common good rather than a commodity or simply a productive input.
4. Adopting such an approach implies addressing sustainability challenges in economic water uses like irrigation, hydroelectric production, industry and mining, managing all water uses from an integrated approach, prioritizing human rights dependent on water and ensuring no one is left behind.

II. Values at stake in water management

5. The Spanish poet Antonio Machado wrote that: “Every fool confuses value and price.” That idea is similar to that of the Greek philosopher Aristotle, who lived 2,300 years ago. Aristotle distinguished between economics and chrematistics,⁵ two concepts often confused today. Chrematistics refers to managing money and market-valued goods, while economics refers to managing household goods. The Special Rapporteur understands that modern economics and legal approaches, such as ecological economics,⁶ which considers Aristotle’s wise conceptual distinction by addressing the concept of natural patrimony, could apply these concepts to the entire planet instead of the household.

A. Water functions and values

6. Water, like other renewable natural goods, has multiple functions and values. However, if we compare those functions and values with those derived from the use of timber, for example, important differences emerge.
7. Water management and timber management require preserving the sustainability of aquatic and forest ecosystems: forests cannot be managed as timber stores and rivers cannot be managed as H₂O channels but as living ecosystems, guaranteeing their sustainability.

¹ Officially known as the United Nations Conference on the Midterm Comprehensive Review of the Implementation of the Objectives of the International Decade for Action, “Water for Sustainable Development”, 2018–2028.

² President of the General Assembly, closing remarks at the United Nations Water Conference, 24 March 2023, available at <https://www.un.org/pga/77/2023/03/24/pga-remarks-to-the-closing-of-the-2023-un-water-conference>.

³ General Assembly resolution 77/334.

⁴ See <https://www.unwater.org/publications/united-nations-system-wide-strategy-water-and-sanitation>.

⁵ Gloria Vivenza, “A re-assessment of Aristotle’s economic thought”, *History of Economics Review*, vol. 63, No. 1 (2016), pp. 68–71.

⁶ H. Neo, “Resource and environmental economics”, in *International Encyclopedia of Human Geography*, Rob Kitchin and Nigel Thrift, eds. (Elsevier, 2009), available at <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/ecological-economics>.

However, substantive differences arise once timber and water are obtained. For timber, it seems reasonable that the company that harvested the timber sell the logs to the sawmill of its choice; the sawmill will sell the timber boards and beams to construction companies, furniture factories or shipyards, and these companies will sell their products to society at the appropriate prices. In other words, once the sustainability of the forest ecosystem is guaranteed, insofar as the values and utilities of wood are substitutable and interchangeable with capital goods, it is reasonable and consistent to manage them according to the market's logic, with the appropriate regulatory measures.

8. However, in the view of the Special Rapporteur, applying the same approach to water would lead to serious errors because many of the functions and values related to water use cannot be easily converted into monetary terms; they do not fit into the realm of Aristotelian chrematistics. For instance, how could water's value be determined to safeguard the health of families and communities? How could the value of water needed for maintaining public health be compared with the value of water required for growing avocados for export? Those values belong to different ethical categories making it challenging to equate them solely based on monetary considerations.

B. Ethical order of priorities

1. Water for life

9. As the Special Rapporteur noted, promoting a human rights-based approach to water management requires prioritizing life-sustaining uses and functions, particularly people's lives and dignity. The Special Rapporteur conceptualizes that as water for life.⁷

10. The concept of water for life should encompass three key elements:⁸ ensuring access to water for drinking and sanitation as a basic human right; providing water for rural communities to produce their own food, which is in line with the human right to food; and preserving and maintaining aquatic ecosystems to ensure a healthy and sustainable environment. Those three aspects are interconnected and vital for promoting a dignified life and environmental sustainability.⁹

2. Water in functions, uses and services of general interest

11. Water intended for general-interest functions, uses and services should be managed as a secondary priority.¹⁰ For the Special Rapporteur, a water service, value or function is of general interest or public interest when it is determined in a transparent, participatory and democratic manner that it should be preserved and guaranteed to the community over private interests. For example, this could involve protecting river flows, as in the United States of America through the Wild and Scenic River Act,¹¹ or allocating specific water flows to ensure the survival of family farming if it is deemed to be in the best interests of society.

3. Water for economic development

12. Water is used for economic development in productive activities, such as extractive industries and large-scale agriculture, that generate profits. However, those activities also generate higher demand for water and the risk of water pollution. Therefore, giving specific attention to them is important, albeit assigning them a third priority level.

13. Lastly, productive activities that generate toxic pollution, such as heavy metals, which pose serious risks to public health and ecosystem sustainability, must be outlawed and avoided at all costs, no matter how profitable they are for their promoters.

⁷ A/76/159, para. 22.

⁸ A/HRC/48/50, para. 14 (a).

⁹ Ibid.

¹⁰ In the scope of the present report, general interest refers to the public interest, which is the well-being of society, as considered in economics and social sciences.

¹¹ See <https://www.rivers.gov/about>.

4. Need for multi-criteria methodologies beyond monetary valuation

14. The Special Rapporteur believes that the market is not the right tool to manage ethical priorities, human rights or ecosystem health. As the Spanish proverb goes, we should not ask for pears from an elm tree; we should ask for pears from pear trees. Adopting a sustainable management approach based on human rights goes beyond a monetary value-based approach.

15. The development of new conceptual and methodological approaches is needed in the field. The Special Rapporteur highlights the landscape of values approach, which acknowledges the diversity of values and provides a practical methodology to guide decision-making processes. From an interdisciplinary perspective, it identifies non-monetizable values, including essential values related to health, sustainability, spirituality and principles associated with water governance, such as equity, environmental justice and intergenerational justice. That approach also helps recognize the political aspects of water management and identify power imbalances in decision-making, which can be beneficial in preventing and managing conflicts.¹²

III. Vision of water as a common good

16. The Special Rapporteur considers that the water we extract from nature for various uses should be managed as a common good, accessible to all and not owned by anyone. In his view, the ecosystems from which water is obtained should be viewed as a common natural heritage, and their sustainability must be ensured for the benefit of everyone, including future generations. As part of the climate system, the water cycle should also be recognized as a global resource, along with the rainfall pattern that wild flora and rainfed food production rely on and the fertile soils that retain and store essential moisture for plant life.

17. The fact that water is a vital necessity, which has guided the settlement of communities, structured collective coexistence and induced common management practices that generate social cohesion and a strong link with the natural environment, motivated and continues to motivate its consideration as a common good.¹³

18. For Indigenous Peoples, water management, as the blue soul of life, is integrated into a holistic vision of territory and nature. In that vision, the community, together with other living beings and ecosystems, is part of a natural order that must be treated with sacred respect.¹⁴

19. That approach aligns with the current emphasis on sustainability and the need for integrated land management. It prioritizes water for life, recognizes its functions and uses as essential human rights and manages it as a shared resource accessible to all rather than owned by individuals. Since water is limited and divisible, the community must mediate and resolve any conflicts over its use, applying priorities and criteria to ensure that no one is excluded.

20. In addition to the existing community water management in peasant and Indigenous communities, there are many other experiences, such as those offered by traditional irrigation communities,¹⁵ that have managed irrigation water as a common good in changing social situations.¹⁶

21. The Special Rapporteur acknowledges that the current complexity of societies, with an unprecedented variety of interests and uses of water, goes beyond the scope of local community experiences. However, it is crucial to note that managing those diverse interests

¹² Christopher Schulz and others, “Valuing water: a global survey of the values that underpin water decisions”, *Environmental Science & Policy*, vol. 153 (March 2024).

¹³ Waheed Hussain, “Common good”, in *The Stanford Encyclopedia of Philosophy*, Edward N. Zalta, ed. (Stanford University, 2018), available at <https://plato.stanford.edu/entries/common-good>.

¹⁴ A/HRC/51/24, para. 23.

¹⁵ An irrigation community is a group of farmers who jointly manage, on a non-profit basis, the public waters allocated to them by the State; see <https://www.iagua.es/respuestas/que-son-comunidades-regantes> (in Spanish).

¹⁶ Jaime Hoogesteger and others, “Communitarity in farmer-managed irrigation systems: insights from Spain, Ecuador, Cambodia and Mozambique”, *Agricultural Systems*, vol. 204 (2023).

involves handling values such as the local community's experiences. Furthermore, the imperative to ensure sustainable management of aquatic ecosystems and to address global challenges related to water management, such as climate change, emphasizes the importance of considering water as a common good.

22. That involves developing nested management at various levels, from local to global.¹⁷ Community management of water requires local organization and coordination with other communities along the river, at the basin level, and an understanding of the river ecosystem as a common heritage. That integrated organization of commons at various levels is what is known as nested management of commons.

A. Aquatic ecosystems as common natural heritage

23. Aquatic ecosystems, such as rivers, lakes, wetlands, aquifers and connected ecosystems, like fertile soils, forests and plant cover, are vital in managing the water cycle on both islands and continents. They also provide essential ecosystem services for human beings, which can be categorized as provision (e.g. fishing, irrigation, domestic uses and energy), regulation (e.g. on managing flows and decomposing organic matter) and culture (e.g. recreational, aesthetic, spiritual and ceremonial activities). To recognize the value and functions of those ecosystems; they should be considered as common natural heritage.

24. The management of that common natural heritage must be closely linked to the territories in which the rivers flow and the populations that depend on it. An ecosystem-based approach is required to ensure the ecosystem's sustainability from an intergenerational perspective. The whole river basin must be managed as an organic whole, which cannot be divided without disturbing its proper functioning.

25. Also, Agenda 21 establishes that sustaining ecosystems is essential to meeting the needs of the world's population and protecting the rights of future generations.¹⁸ Aquatic ecosystem sustainability also oversees the Sustainable Development Goals, the Convention on Wetlands of International Importance especially as Waterfowl Habitat (the Ramsar Convention), the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, and the work of the International Law Commission on transboundary aquifers.

26. Likewise, the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes¹⁹ and the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses²⁰ emphasize the importance of conserving and restoring ecosystems, including transboundary aquifers.²¹ Those international agreements aim to overcome the tensions arising from the sovereignty of water flows within State territories. Notably, significant transboundary agreements have been established worldwide, particularly in regions such as Africa, including the Senegal Basin, the Niger Basin, Lake Chad and Okavango River. Those agreements involve the creation of transboundary management institutions and mechanisms for mediating conflicts.²²

27. Furthermore, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive) establishes the obligation for shared responsibility in managing transboundary basins and aquifers in the European Union.²³ Its goal is to ensure good conditions and sustainability while managing the risks of climate change without interfering with the State's sovereignty. The directive emphasizes that water is not a

¹⁷ Derek Wall, *Elinor Ostrom's Rules for Radicals: Cooperative Alternatives Beyond Markets and States* (Pluto Press, 2017).

¹⁸ See <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.

¹⁹ See https://unece.org/DAM/env/water/documents/brochure_water_convention.pdf.

²⁰ General Assembly resolution 51/229, annex.

²¹ Stephen C. McCaffrey, "The International Law Commission's flawed draft articles on the law of transboundary aquifers: the way forward", *Water International*, vol. 36, No. 5 (2011), pp. 566–572.

²² [A/78/253](#), para. 38.

²³ See https://environment.ec.europa.eu/topics/water/water-framework-directive_en.

commercial good but a heritage to be protected and defended. The European Parliament considers aquatic ecosystems and their associated terrestrial ecosystems a common natural heritage.²⁴

B. The water cycle as a global common natural heritage

28. Managing and structuring rights and responsibilities on global heritages, such as biodiversity and the climate system, is more complex as they affect all of humanity.

29. The notion of common heritage has been employed in the United Nations Convention on the Law of the Sea, in which the oceans are regarded as global commons that cannot be owned or appropriated by any single entity.

30. Likewise, the United Nations Educational, Scientific and Cultural Organization (UNESCO) introduced the concept of natural heritage in the 1972 Convention for the Protection of the World Cultural and Natural Heritage,²⁵ a concept that was taken up by the Convention on the Conservation of European Wildlife and Natural Habitats in 1979.

31. As regards the conclusion of agreements, there have been political challenges due to concerns about the national sovereignty of each country. To address that, the concept of the “interest of humankind” or the “common concern of humankind” was introduced.²⁶ The idea of common concern is based on the principle of common but differentiated responsibilities,²⁷ and the do-no-harm principle. The Convention on Biological Diversity and the United Nations Framework Convention on Climate Change use the term “common concern of humankind”.²⁸

32. The Special Rapporteur believes that the climate system is a natural heritage that knows no borders and that everyone depends on it. Therefore, it should be considered a global common heritage. As part of the climate system, the water cycle should also be recognized as a global common good, as stated by the President of the General Assembly at the closing of the United Nations Water Conference in 2023.

33. However, the Special Rapporteur believes that conceptualizing the water cycle as a common global heritage is insufficient. Aquatic ecosystems must be considered a common heritage linked to specific territories and populations that depend on them. Also, the water available for a community’s needs should be considered a common good, since it is shared by all its members.

34. When discussing the concept of the common good, it is crucial to identify the fundamental values that are significant to everyone. Acknowledging the community that relies on that common good is also important. The community has rights and responsibilities in developing and safeguarding those essential values.

35. Defining and clarifying that social and territorial linkage of the common good at the local, basin, national or global level is fundamental in defining rights and obligations concerning its management. The general consideration of water that some authors make,²⁹ as a global common good, is correct regarding the vital values at stake, but it blurs the participatory linkage of populations in communities and territories.

²⁴ Resolution on the technological feasibility of trans-European hydraulic networks (1998), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:1998:056:TOC>.

²⁵ See <https://whc.unesco.org/en/convention>.

²⁶ Thomas Cottier, “The principle of common concern of humankind”, in *The Prospects of Common Concern of Humankind in International Law*, Thomas Cottier and Zaker Ahmad, eds. (Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press, 2021), pp. 3–92.

²⁷ Charlotte Epstein, “Common but differentiated responsibilities”, *Encyclopaedia Britannica*, 20 March 2023), available at <https://www.britannica.com/topic/common-but-differentiated-responsibilities>.

²⁸ See <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

²⁹ Potsdam Institute for Climate Impact Research, “Water has to become a common good – two new reports show”, 22 March 2023, available at <https://www.pik-potsdam.de/en/news/latest-news/water-has-to-become-a-common-good-2013-two-new-reports-show>.

36. The global water cycle, which is linked to the climate system, is a common heritage for all of humanity. Unfortunately, there is a lack of global institutions that can effectively govern those commons democratically.

37. Establishing a system to manage the global water cycle and promoting sustainable management of aquatic ecosystems are crucial. Effectively addressing the risks posed by climate change will likely involve taking an ecosystem approach at the basin level.

IV. Water management under the public domain

38. Recognizing water and aquatic ecosystems as commons means entrusting their management to the communities involved. However, as the scope of values to be managed and the communities involved have become so complex – such as ensuring the sustainability of large river basins – it is essential to involve the capacities of States. As representative institutions of societies, States need to take responsibility and assume the public domain over those waters and aquatic ecosystems.

39. With the establishment and strengthening of nation States, the conception of water as a common good has been increasingly equated with its consideration as a public good. However, the bureaucratization and distancing of State structures from the essential needs of the population make it more important than ever to emphasize the values involved in the management of common goods. That calls for the effective implementation of a human rights-based approach that guarantees the participation of right holders, transparency, access to information and accountability, as occurs with other essential services.³⁰

40. Social movements are calling for water to be recognized as a common good, opposing the trend of privatization allowed or encouraged by many Governments. The Water Justice Manifesto, presented at the 2023 Water Conference by hundreds of non-governmental organizations, unions and movements, urges water to be managed as a common good. That means it should be accessible to all without discrimination, under public control, and not treated as a commodity.³¹

41. The Special Rapporteur has advocated for managing water as a common good under the State's responsibility, in accordance with general comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights, in which the Committee recognizes water as a fundamental public good essential for life, health and the realization of all other rights.³²

A. Responsibility of the State in the management of water as a common good

42. Water has always been a key factor in territorial settlement and structuring of human communities. Therefore, there is a widespread historical and even ancestral tradition of local management of water and sanitation services. It is reasonable that town councils and community authorities should assume responsibility for managing water and sanitation services locally, leaving no one behind.

43. However, notably attributing those competencies to municipalities and community institutions does not ultimately exempt States from their obligation to guarantee human rights.

44. The Special Rapporteur believes that the principle of subsidiarity must be upheld by ensuring that the Government and supra-municipal institutions support local entities in realizing human rights. To that end, strategies for non-profit public-public partnerships, particularly public-community partnerships, should be developed.

³⁰ Rita Locatelli, "Education as a public and common good: reframing the governance of education in a changing context", Education Research and Forecast Working Papers (Paris, UNESCO, 2018).

³¹ People's Water Forum, "The Water Justice Manifesto", 28 February 2023, available at <https://thepeopleswaterforum.org/2023/02/28/water-justice-manifesto>.

³² A/HRC/48/50, para. 10.

45. Inter-municipal collaboration, or consortia between neighbouring municipalities to enhance service management, is a form of public-private partnership. That also includes institutional collaboration between higher-level entities and municipalities.

46. In Colombia³³ and Mexico,³⁴ the public-community partnership strategy is the backbone of legislative proposals promoted by the networks of aqueducts and community systems that bring together tens of thousands of rural communities. That strategy is based on respect for traditional community water management in impoverished rural areas. However, it includes the Government's support, as it is ultimately responsible for compliance with the human rights at stake. Interesting cases are also emerging in Africa: in the peri-urban settlements of Maputo and in Ghana, Kenya, Malawi, the United Republic of Tanzania and Zambia.³⁵

47. At the international level, interesting non-profit initiatives, such as the Global Water Operators' Partnerships Alliance, promote collaboration and the exchange of experiences and capacities between operators and institutions from the global North and those from the global South.³⁶ The Water Operator Partnerships and Solidarity offer another international reference of non-profit collaboration between public operators from the global North and those from the Global South, in this case around Sustainable Development Goal 6.³⁷

48. Logically, such local management must be integrated into the sustainable management of basins and aquifers, which should follow similar principles.

49. In summary, managing water and aquatic ecosystems in all their complexity requires the nested management of commons. That entails corresponding local, territorial and national institutional responsibilities, aligning with Ostrom's concept of nested management.³⁸

50. In that complex management context, it is crucial to establish a regulatory framework for the public water domain to develop democratic governance from a human rights-based approach. The State must ensure non-discriminatory access to the means for administrative or judicial complaints of any irregularity, damage or violation of rights in water management.

B. Concession systems as the key to managing the public water domain

51. Water use concession or permit systems,³⁹ in countries in which water is in the public domain,⁴⁰ are key to developing public water management.⁴¹ Those systems, often managed

³³ Senate, Bill No. 271 of 2022 on community water management, available at <https://www.senado.gov.co/index.php/documentos/comisiones/constitucionales/comision-quinta/proyectos-de-ley/proyectos-de-ley-y-ponencias-periodo-constitucional-2022-2026/proyectos-de-ley-y-ponencias-legislatura-20-julio-2022-20-julio-2023/p-de-l-no-271-2022-senado-gestion-comunitaria-del-agua> (in Spanish).

³⁴ Portal Ambiental, "Presentan iniciativa para reconocer jurídicamente la gestión comunitaria del agua", 24 November 2023, available at <https://www.portalambiental.com.mx/legislacion/20231124/presentan-iniciativa-para-reconocer-juridicamente-la-gestion-comunitaria-del> (in Spanish).

³⁵ United Nations Office for Disaster Risk Reduction, "People of African cities are taking charge of their water supplies – and it's working", 19 March 2018, available at <https://www.preventionweb.net/news/people-african-cities-are-taking-charge-their-water-supplies-and-its-working>.

³⁶ See <https://unhabitat.org/programme/global-water-operators-partnerships-alliance>.

³⁷ Aqua Publica Europea (European Association of Public Water Operators), "Water Operator Partnerships and Solidarity: a global effort to realise the human right to water and sanitation" (2021).

³⁸ Graham Marshall, "Nesting, subsidiarity, and community-based environmental governance beyond the local scale", *International Journal of the Commons*, vol. 2, No. 1 (2008), pp. 75–97.

³⁹ Antônio Pereira Magalhães Junior and Pedro Brufao Curiel, "Instruments of administrative concessions of water use rights in Spain", *Revista Brasileira de Recursos Hídricos: Brazilian Journal of Water Resources*, vol. 22 (2017).

⁴⁰ Hilmer J. Bosch, Joyeeta Gupta and Hebe Verrest, "A water property right inventory of 60 countries", *Review of European, Comparative and International Environmental Law*, vol. 30, No. 2 (2021), pp. 263–274.

⁴¹ Food and Agriculture Organization of the United Nations, "The granting of permits for the use of water", available at <https://www.fao.org/4/Y5051E/y5051e05.htm>.

by powerful public institutions, offer a wealth of experience in public water management that should be exploited for its many positive aspects. However, serious biases induced by private interests with levers of influence in public institutions have often perverted the principle of the general interest that should govern those concession systems. Properly identifying the challenges and objectives that govern the general interest of today's society is a democratic challenge that requires a broad public debate.

52. The Special Rapporteur believes that it is important to shift from traditional supply-side strategies, according to which the State meets growing demand by building new infrastructure with significant public subsidies, regardless of the cost and impact. Instead, the focus should be sustainable demand management strategies promoting economic and environmental rationality and responsibility.

53. The Special Rapporteur also believes that there is a need to move from traditional technocratic management models to new participative approaches,⁴² in line with the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.⁴³ New approaches should include intercultural dialogue that acknowledges the knowledge and practices of Indigenous Peoples.⁴⁴

V. Neoliberal vision of water as an economic good

54. From a neoliberal perspective, water is viewed as a commodity subject to market logic; access to, use of and benefit from water depends on an individual's ability to pay according to supply and demand. The primary goal is to maximize efficiency through the incentives of open competition. The management of water and sanitation services becomes a corporate domain, in which access to information is left in the hands of corporate majority shareholders. That contradicts the conception of water as a common good and is inconsistent with a human rights-based approach to water management.

55. However, the institutional and legal strength of public management of water and the public domain over aquatic ecosystems that was imposed throughout the twentieth century, following the failure of liberal models of water privatization in the nineteenth century,⁴⁵ led to the development of sophisticated privatization strategies that avoid challenging the public domain over water head-on.⁴⁶ Privatization models for managing water and sanitation services based on public-private partnership strategies and markets for concessionary rights have emerged. Multiple strategies for the financialization of water, such as entering concessionary rights in futures markets under the logic of financial speculation, have also emerged.

A. Risks and impacts of privatization of water and sanitation services

56. Privatization strategies for water and sanitation services and water management in general usually start with formally recognizing the public domain over water and aquatic ecosystems and the competence of public institutions, usually municipal, to manage water and sanitation services.

57. The dominant strategies for privatizing water and sanitation services focus on managing these services through contracts in which public institutions cede management of these services to the operator concerned for long periods of time.

⁴² Pedro Arrojo Agudo, "Times of change in water management", *Quaderns de la Mediterrània 16: Ecology and Culture* (2011), pp. 29–39.

⁴³ See <https://unece.org/DAM/env/pp/documents/cep43e.pdf>.

⁴⁴ A/HRC/51/24.

⁴⁵ Pedro Arrojo Agudo, *El Plan Hidrológico Nacional: Una Cita Frustrada con la Historia* (Barcelona, RBA Integral, 2003), pp. 16–18.

⁴⁶ David Hall, Emanuele Lobina and Violeta Corral, "Trends in water privatization", report commissioned by Public Services International (2011), available at https://gala.gre.ac.uk/id/eprint/30760/3/30750%20LOBINA_Trends_in_Water_Privatisation_2021.pdf.

58. A regulatory framework is necessary, whether publicly or privately managed. In consultations, private operators themselves insist on their interest in establishing clear regulations, which could include compliance with the human rights to safe drinking water and sanitation, guaranteeing the corresponding compensation of costs to the operator.⁴⁷

59. However, contracts often pose challenges for developing a human rights-based management approach for several reasons. The concession periods, which are often longer than 25 years, make it difficult to terminate without significant costs, as the operator would seek compensation for the expected profit over the entire concession period. Additionally, the concession fee, which is an advance payment to the public institution by the operator who recovers it through tariffs, is an incentive for privatization that takes advantage of the financial difficulties of local institutions since it is not used to improve the service. Furthermore, the ability of the operator to make purchases and contracts with companies linked to its business group without public tendering disrupts market competition. It leads to increased costs that are eventually passed on to the consumer.⁴⁸

60. Those problems are generally compounded by a lack of transparency and public participation, the private operator's right to preserve information about its corporate strategy, the inability of local institutions to control and regulate operators effectively, given the existing power asymmetries, and the lack of political will on the part of those in power, who are often co-opted or captured by the operators.

61. Remarkably, the ultimate responsibility lies with competent public institutions or specific regulators, and adequate legislation and regulatory standards are lacking to ensure rights-based management approaches beyond the promoted management model.

62. In the United Kingdom of Great Britain and Northern Ireland, where a privatized model was imposed under the government of Prime Minister Margaret Thatcher, a powerful and expensive regulatory institution, the Water Services Regulation Authority or Ofwat, was created. However, the lack of transparency and public participation,⁴⁹ and its complacency towards the financial strategies of private companies to benefit their shareholders at the detriment of the service received by the public, call into question its effectiveness.⁵⁰

63. Even though the World Bank is a public institution, it sponsored the privatization of water services in the global South, making its loans conditional on these privatization processes.⁵¹

⁴⁷ Submission by AquaFed – International Federation of Private Water Operators, as a contribution to the consultation on human rights to water and sanitation and private sector participation in the provision of water and sanitation services, organized by the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation in 2010, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Water/ContributionsPSP/Aquafed5.pdf>.

⁴⁸ Pedro Arrojo Agudo, “Las funciones del agua: valores, derechos, prioridades y modelos de gestión”, in *Lo Público y lo Privado en la Gestión del Agua: Experiencia y Reflexiones para el Siglo XXI*, Pedro Arrojo Agudo, ed. (Madrid, Fundación Alternativas–Ediciones del Oriente y del Mediterráneo, 2005).

⁴⁹ David Hall, “Water and sewerage company finances 2021: dividends and investment – and company attempts to hide dividends”, working paper of the Public Services International Research Unit (London, University of Greenwich, 2022), available at https://gala.gre.ac.uk/id/eprint/34274/14/34274%20HALL_Water_and_Sewerage_Company_Finances_28Rev.2%29_2021.pdf. See also Emanuele Lobina, “UK – strong and weak lock-in of water governance outcomes in England”, in *Facing the Challenges of Water Governance*, Simon Porcher and Stéphane Saussier, eds., Palgrave Studies in Water Governance: Policy and Practice (Basingstoke and New York, Palgrave Macmillan, 2019), available at https://gala.gre.ac.uk/id/eprint/23267/7/23267%20LOBINA_Strong_and_Weak_Lock-in_of_Water_Governance_Outcomes_in_England_2018.pdf.

⁵⁰ David Hall, “Ownership without investment in English water – net capital extraction by shareholders of English & Welsh water and sewerage companies 1990–2023”, working paper (London, University of Greenwich, 2024), available at <https://gala.gre.ac.uk/id/eprint/47165>.

⁵¹ Right Livelihood, “Maude Barlow: tackling the water crisis is the only way to safeguard people and the planet”, 23 March 2023, available at <https://rightlivelihood.org/news/maude-barlow-tackling-the-water-crisis-is-the-only-way-to-safeguard-people-and-the-planet>.

64. Under the priority of maximizing profits, which is logical for a business approach, privatization has not solved the problems of marginalization of the most impoverished. In Jakarta, with water services under private concession since 1998, the low profitability of connecting poor people, many of whom were displaced by large mining operations and settled irregularly on the outskirts of the capital, has exacerbated patterns of exclusion. The unserved population is forced to buy water, in jerry cans, which is 25 per cent more expensive than the average water tariff or to dig wells to access heavily polluted groundwater.⁵²

65. The Special Rapporteur follows with concern cases in Africa, where the privatization of community water management in rural areas was promoted.⁵³

66. In the French territory of Guadeloupe,⁵⁴ after several decades of privatized management, the network has a 60 per cent leakage rate, forcing a shift service, which generates systematic polluting intrusions and makes it impossible to supply safe drinking water.

67. However, since the beginning of the century, with the so-called water war in Cochabamba,⁵⁵ a social mobilization against water privatization began. The referendum on water in Uruguay,⁵⁶ which recognized the human right to drinking water in the Constitution and ended the privatization of water, was an example that other countries in Latin America and elsewhere have followed.

68. The Italian referendum against water privatization opened the way for European “remunicipalization”, in which cities, such as Paris, Berlin, Lyon and Valladolid, returned to full public ownership.⁵⁷

69. With its 100 per cent municipally owned Eau de Paris, the French capital has demonstrated the transformative power of public ownership, prioritizing human rights, reinvesting profits into the system, ensuring transparent governance, reducing tariffs and increasing its self-financing capacity.⁵⁸ From 2012 to 2018, the customer satisfaction rate of Eau de Paris ranged between 96 per cent and 90 per cent, and it won the Best Customer Service of the Year prize for seven consecutive years.⁵⁹ In 2017, it received the United Nations Public Service Award.

B. Risks and impacts of commodification and financialization of water

70. Surface water and groundwater are mostly in the public domain, and the State distributes licences to use them through a concessional system, although there are exceptions. Groundwater is sometimes considered the landowner’s property and enters free markets.

71. Even under these concessionary systems, countries such as Australia, Chile, Spain and the United States have legalized various options for concessional rights markets.⁶⁰ The main

⁵² Emanuele Lobina, Vera Wegmann and Marwa Marwa, “Water justice will not be televised: moral advocacy and the struggle for transformative remunicipalisation in Jakarta”, *Water Alternatives*, vol. 12, No. 2 (2019), pp. 725–748.

⁵³ Oumar Diallo, “Levers of change in Senegal’s rural water sector” (World Bank Group Water and Sanitation Programme, 2015).

⁵⁴ See communication [FRA 1/2024](https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28729), available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28729>.

⁵⁵ Oscar Olivera and Tom Lewis, *Cochabamba! Water War in Bolivia* (Cambridge, Massachusetts, South End Press, 2004).

⁵⁶ Redes Amigos de la Tierra Uruguay, “Uruguay, decisión soberana por el agua. Más del 60% dijo sí”, 30 November 2004, available at <https://www.redes.org.uy/2004/11/30/uruguay-decision-soberana-por-el-agua-mas-del-60-dijo-si> (in Spanish).

⁵⁷ Emanuele Lobina, Vera Wegmann and Katrin Nicke, “Water remunicipalisation in Paris, France and Berlin, Germany”, project report of the Public Services International Research Unit (London, University of Greenwich, 2021), available at <https://gala.gre.ac.uk/id/eprint/31646>.

⁵⁸ Public Services International, “UN Public Services Award: Paris water win highlights benefits of remunicipalisation”, 23 June 2017, available at <https://www.world-psi.org/en/un-public-services-awards-paris-water-win-highlights-benefits-remunicipalisation>.

⁵⁹ Lobina, Wegmann and Nicke, “Water remunicipalisation in Paris, France and Berlin, Germany”.

⁶⁰ [A/76/159](#), paras. 30–32.

argument to justify those options is to make the concession system more flexible, especially to address the scarcity in drought cycles. However, the experiences show contradictions between the effective defence of the general interest that should govern those concessional systems and the human rights approach that should be promoted.

72. Although water remains in the public domain on paper, management induces de facto a progressive private appropriation of water. During droughts, speculation and abusive prices are encouraged, prioritizing the interests of concessionaires over human rights. Likewise, uses and functions that cannot compete in the market are marginalized, putting the human rights of the most impoverished and the sustainability of ecosystems at risk. Peasants and family farms tend to be left out of the game, accelerating migration processes towards the cities.

73. Furthermore, under the growing influence of financial power, water management is increasingly subject to financialization strategies. Arguing insufficient public funds, strategies for the financialization of nature and public services, such as water and sanitation, are being promoted. The recovery of wetlands, for example, is offered as a business space in financial markets through the purchase and sale of carbon credits. From this logic, private financial interest replaces general interest. Similarly, the public domain over water is displaced by the speculation of financial markets, breaking the intrinsic values linked to water and ecosystems as commons.⁶¹

74. In his report on the risks and impacts of the commodification and financialization of water on the human rights to safe drinking water and sanitation, presented to the General Assembly in 2021, the Special Rapporteur addressed the entry of Californian water rights into the Wall Street futures markets.⁶² Given the uncertainty generated by climate change, the speculative logic that governs those markets would allow the value of water to be anticipated and managed. That was the central argument on which this initiative was based. However, the speculative bubbles that that logic induces have catastrophic consequences on the human rights of those living in poverty and vulnerability and in aquatic ecosystems and small farmers. Although that attempt has so far been unsuccessful, in the view of the Special Rapporteur, the door has been left open for further attempts.

C. Water for productive development in contexts of poverty

75. Although the world economy has doubled since the end of the Cold War, half the world's population lives on less than \$5.50 a day. The key is that most of the wealth generated has gone to the richest. Moreover, poverty goes beyond low income to encompass institutional and social abuse, as well as discrimination. Eradicating poverty requires building inclusive societies.⁶³

76. In line with the Special Rapporteur on extreme poverty and human rights, the Special Rapporteur believes that it is necessary to change the prevailing model of development based on growth of gross domestic product (GDP) and combat poverty beyond growth, changing the concept of progress and how it is measured.⁶⁴

77. The Secretary-General, in *Our Common Agenda*,⁶⁵ also insists on the need to measure progress based on parameters that should go beyond GDP, to consider how the wealth produced is distributed, the value of ecosystem services and of caring for others borne by women, among other ignored values.

78. The Special Rapporteur believes that it is necessary to effectively recognize the limits of the planet and take on the democratic challenge of ending the growing inequality that condemns billions of people to extreme poverty and marginalization. We must overcome the

⁶¹ Julia Martin-Ortega and others, "Ecosystems: ecosystem services and the commodification of nature", in *The Routledge Handbook of Commodification*, Elodie Bertrand and Vida Panitch, eds. (Oxford, Routledge, 2023).

⁶² [A/76/159](#), paras. 27–67.

⁶³ OHCHR, "Ending poverty by 2030 now a fading dream, says UN Expert", press release, 7 July 2020.

⁶⁴ [A/HRC/56/61](#).

⁶⁵ [A/75/982](#), paras. 38 and 39.

current development model, based on the suicidal principle of unlimited growth, and promote a new concept of progress based on sustainability and human rights and not on the growth of production and consumption. He supports the suggestion of the Special Rapporteur on extreme poverty and human rights in his 2024 report on eradicating poverty beyond growth, calling for a reflection on this issue at the Summit of the Future in September 2024.⁶⁶

79. As the Special Rapporteur insists, the majority of the 2 billion people without guaranteed access to drinking water are people living in poverty or even extreme poverty. Many of them, Indigenous Peoples and members of peasant communities, are victims of land/water grabbing and productive developments that, far from eradicating poverty, eradicate people from their territories and aggravate their poverty. Communities discriminated against on the basis of work and descent, more than 260 million people on different continents,⁶⁷ are even excluded from using safe drinking water.

80. To combat poverty by promoting economic development based on exploiting a territory's water resources, attention must focus on those who live in poverty in that territory and the sustainability of aquatic ecosystems rather than on GDP growth and alleged productive efficiency.

81. Taking a human rights-based approach to water management, understanding water as a common good, and respecting the rights of Indigenous Peoples⁶⁸ and peasant and fishing communities,⁶⁹ as recognized by the United Nations, will lead to considering values and priorities very different from those that dominate classical economic analysis.

82. Considering water as a common good requires applying equity criteria in distributing available resources and avoiding hoarding water rights. In situations of scarcity, such as droughts, beyond prioritizing drinking water and sanitation for all, the equity principle should lead to modulated restrictions on productive uses based on social criteria, protecting the most vulnerable producers.

83. In Mexico, 22.3 per cent of the concessioned water is in the hands of 1.1 per cent of the users.⁷⁰ The constitutional reform that recognizes the human right to drinking water motivated the presentation to Parliament of a new general water law that addresses the problem.

VI. Principles, strategies and economic tools for water management

84. Neoliberalism equates value with price determined by the market, and free competition is presented as the sole driver of productivity, economic rationality and responsible water use. In the present section, the Special Rapporteur presents public economic tools and management strategies that promote economic rationality and responsibility in productive water uses without responding to the market logic, aligned on a consideration of water as a common good and sustainable management based on human rights.

85. The Special Rapporteur believes that common goods should not be managed as open-access resources. The idea of common goods as "free access", used in colonization and land and water grabbing, argues for land and water rights to belong to the first occupant or be appropriated by the State and allocated to large producers to increase productivity. Instead, they should be managed through shared community responsibility, with established rules of

⁶⁶ A/HRC/56/61, para. 59.

⁶⁷ Sustainable Development Goals Knowledge Platform, "Communities discriminated on work and descent", available at <https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=2956&menu=3170>.

⁶⁸ Ibid., and United Nations Declaration on the Rights of Indigenous Peoples.

⁶⁹ United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.

⁷⁰ Wilfrido A. Gómez Arias and Andrea Moctezuma, "Water millionaires: an approach to water grabbing in Mexico", *Argumentos. Estudios críticos de la sociedad*, No. 93 (2020), available at <https://argumentos.xoc.uam.mx/index.php/argumentos/article/view/1198/1145> (text in Spanish, abstract in English).

use that include providing the necessary economic means for effective management of the property in question.

A. Tariff systems

86. In an African village visited by the Special Rapporteur, a woman explained her struggle to regain community management of their wells, concessioned by the Government to a multinational company. She said that, based on the principle of shared responsibility with the community management, families unable to pay for water were exempted and everyone helped them with tools and other means, while the private company cut off their water. The community agrees on tariffs or compensatory works and elects a committee for day-to-day management, treating water and sources as common goods.

87. Regarding water and sanitation services in towns and cities, the Special Rapporteur recommends promoting non-profit tariff systems based on consumption blocks and increasing tariffs. The first block should provide an affordable or free rate for what is considered and regulated as the minimum vital for a decent life (the World Health Organization proposes between 50 and 100 litres daily for each person, at least for people in situations of poverty and vulnerability. The second block should be adjusted to cost recovery. In contrast, luxury uses should be priced higher, guaranteeing excellent service for all residents, even those with payment difficulties.

88. When comparing those criteria with market logic, it is clear that the market lowers prices for good customers to encourage consumption and maximize profits. However, in the proposed tariff system, the opposite is done. The key is that the objective is not to generate profit but to guarantee a good universal access service, ensuring its economic viability and minimizing the ecological footprint.

89. For instance, in Lyon, France, the pricing system includes a fixed connection fee, free initial usage, a second tier with a cost for each cubic metre and a third tier at double the cost. For families and vulnerable persons, the guaranteed cost of standard consumption is less than 3 per cent of their income.⁷¹

90. In irrigation, rates are frequently applied in proportion to the irrigated surface and not to the water used.⁷² However, the amount of water used can vary greatly, depending on the irrigator's more or less responsible use and, to a large extent, on the irrigated crop. It is, therefore, essential to establish tariffs that are proportional to the water used, which makes it necessary to instal meters or flow measurement and control systems.⁷³

91. The installation of meters is even more important in the case of groundwater, especially in aquifers at risk of overexploitation. In the case of groundwater, participatory governance of aquifer users under public supervision will entail management costs beyond the pumping costs covered by each user, to be shared responsibly with the corresponding tariff.

B. Effective sustainability constraints

92. The market approach allows for the degradation of ecosystems as long as the appropriate cost is paid. Under that approach, the market determines the level of environmental deterioration that can be tolerated. On the other hand, the principle of sustainability enforces the constraints of ecosystems on the market and recognizes and respects the laws governing the natural order. For instance, the Water Framework Directive

⁷¹ Amandine Le Blanc, "Des changements à venir pour les tarifs de l'eau potable", MeT, 6 March 2024, available at <https://met.grandlyon.com/des-changements-a-venir-pour-les-tarifs-de-leau-potable> (in French).

⁷² See https://hispagua.cedex.es/sites/default/files/especiales/Tarifas_agua/tarifa_utilizacion_riego.html (in Spanish).

⁷³ Eduardo Andréé Zavala García and Xavier Horacio Valencia Zambrano, "Políticas tarifarias de riego y su incidencia en el desarrollo agrícola aguas abajo del sitio de presa Poza Honda", *Polo de Conocimiento*, vol. 6, No. 9 (2021) (in Spanish).

in the European Union normatively imposes sustainability constraints that must be observed, both in terms of quantity and water quality, as well as the state of ecosystems. Based on that, and using the best available knowledge, the concession system must decide whether to grant use rights and discharge licences.

93. The Special Rapporteur believes that restricting water availability for productive uses and services to guarantee sustainability will lead to a higher opportunity cost of the available water, generating an economic projection on productive activities. However, the market does not set the availability of water.

94. Also, recovering and preserving the good condition of aquifers, as strategic reserves against the drought risks that climate change is aggravating, saves costs that far exceed the short-term benefits derived from their overexploitation.

95. Avoiding the draining of wetlands and the narrowing of river channels often saves more costs (as well as avoiding disasters), by expanding and slowing down flooding, than the benefits of potential economic activities in those areas. Effective respect for the principle of sustainability in managing aquatic ecosystems inspires nature-based strategies and sustainable and cost-effective alternatives. Notably, that does not justify commodifying nature but learning from it. One example is the catastrophic floods in Calgary (Canada) in 2013: the lessons learned have led to an appreciation of conserving wetlands as natural “infrastructures” that can soften and manage floods and prevent urban flooding.⁷⁴

C. Public investment and financing strategies to address social challenges

96. Regulating flows, transporting them to be available for various uses and guaranteeing adequate wastewater sanitation usually require large investments and management, replacement and maintenance costs.

97. Following the French Revolution in the nineteenth century, due to the size of the investments and the long periods of amortization required, the liberal model of promoting large infrastructure through private initiative failed, leading to new approaches based on public financing for hydraulic works. Large public water management institutions were established and significant public investments were made and justified as serving the general or public interest. Those investments featured very low interest rates and long periods of amortization, enabling users to benefit from affordable rates.⁷⁵

98. Significant subsidies were and continue to be applied worldwide to cover social objectives, providing essential resources, such as drinking water, to rural and urban areas and developing irrigation for millions of low-income farmers.⁷⁶

99. The Special Rapporteur acknowledges that undue subsidies were and are being created under the influence of powerful lobbies, manipulating the concept of general interest. However, despite those perverse drifts, the positive impact of public investments and fair social subsidies in water management should be appreciated.

100. In that regard, encouraging private investment is often proposed as a solution to achieve Sustainable Development Goal 6, offering unrealistic business prospects to major private investors. The Special Rapporteur remarks that fulfilling the human rights to water and sanitation of 2 billion impoverished right holders is a democratic challenge, not a business opportunity.

101. Implementing a human rights-based approach to achieving Goal 6 requires focusing attention on the populations that live in poverty and assigning priority to public budgets, both

⁷⁴ Canadian Institute for Climate Choices and Smart Prosperity Institute, “Wetlands can be infrastructure, too” (2021).

⁷⁵ Pedro Arrojo Agudo and José Manuel Naredo, *La Gestión del Agua en España y California* (Bilbao, Bakeaz, 1997) (in Spanish).

⁷⁶ Manuel Díaz Marta, “Evolución de las políticas hidráulicas españolas desde la Ilustración hasta nuestros días”, in *El Agua a Debate desde la Universidad: Hacia una Nueva Cultura del Agua – I^{er} Congreso Ibérico sobre Planificación y Gestión de Aguas*, Pedro Arrojo Agudo and Javier Martínez Gil, eds. (Zaragoza, University of Zaragoza Press, 1999), pp. 67–77 (in Spanish).

at the national and international levels. Strengthening international financing for the most impoverished countries on this front is necessary as are co-responsible efforts from national budgets, guaranteeing transparency, public participation and accountability.

102. India shows that public finance and multi-level political commitment can deliver large-scale investment in water infrastructure. In 2019, the Har Ghar Jal scheme was launched, financed entirely by public money, to connect every rural household with affordable and regular access to safe drinking water through taps by 2024.⁷⁷

103. In recent decades, service privatization has seen minimal private investment. In a report published in 2010, the World Bank and the French Development Agency revealed that, in the water sector in sub-Saharan Africa, 99.6 per cent of the investment came from the public sector or aid, with only 0.4 per cent coming from private sources.

104. Water and sanitation services should be prioritized for soft public financing (long repayment periods, low interest and even subsidies). Likewise, financial strategies combine those efforts with other extrabudgetary resources. The Water Financing Platform in Spain provides a good example in that regard, with public participation, transparency and accountability methods, seeking to strengthen and diversify public financing and advise local institutions on project preparation.⁷⁸

D. Principle of cost recovery

105. The principle of cost recovery, including environmental costs, based on non-profit tariff systems signifies the responsibility of those who benefit from the service. The fees for water and sanitation services, being essential for human rights, should account for the actual costs of the service, including appropriate social measures and infrastructure depreciation, replacement and maintenance.

106. That principle should promote incentives for savings, efficient use and ecosystem protection through an adequate tariff system and fair cross-subsidies to benefit impoverished people. Among the costs to consider are maintenance and replacement of networks and other infrastructure. Budgets should address that issue, preventing networks from deteriorating as is happening in many systems.

107. Public subsidies for certain goals or social sectors can complement the contribution of tariffs to cost recovery if adequately justified. After all, subsidies come from the tax contributions of rights holders.

108. However, the Special Rapporteur discourages applying indiscriminate subsidies through tariffs, such as for irrigation based on the irrigated surface, as indiscriminately subsidized rates encourage irresponsible and inefficient water use. Direct subsidies should provide fair support to small and medium irrigators, while meters and rates should be implemented in proportion to the flows used.

E. Principle of non-deterioration

109. Far from being a utopia, the principle of non-deterioration already operates in advanced environmental legislation, such as the European Union Water Framework Directive, avoiding discharges that ecosystems cannot digest, particularly toxic discharges, and preserving the flows necessary to maintain the good state of water ecosystems. That was the principle on which the European Union based its decision not to finance the Ebro River Transfer in the National Hydrological Plan of Spain at the beginning of this century when it was assessed that such a transfer would accelerate the degradation of the delta.⁷⁹

⁷⁷ See <https://ejalshakti.gov.in/jjmreport/JJMIndia.aspx>.

⁷⁸ See <https://ptea.es> (in Spanish).

⁷⁹ See also Arrojo-Agudo, *El Plan Hidrológico Nacional: Una Cita Frustrada con la Historia*, p. 158.

1. Principle of who deteriorates restores

110. The principle is often stated as “the polluter pays”. However, that expression can be understood as the right to pollute by those who can pay. This principle logically applies to reversible impacts. Irreversible impacts must be avoided through dissuasive fines that clearly exceed the possible benefits of causing the damages. In any case, this principle must be applied from the outset as a preventive instrument, charging the costs of the risk prevention measures to the cause of the risk.

2. Cost-effectiveness principle

111. Cost-effectiveness analysis is a classic and useful tool for selecting the most appropriate solutions from various sustainable options.

112. That should be a legal requirement for all publicly funded investments. It involves considering all possible options to achieve goals and selecting the most cost-effective one. The analysis must allow public participation to prevent costly and inefficient investments influenced by pressure groups. That often leads to identifying nature-based solutions, which are usually more cost-effective.

3. Competition through transparency and citizen participation

113. Water and sanitation services are natural monopolies under the responsibility of municipalities. Market competition is not possible, whether management is privatized or not. At most, competition for the market can be promoted during the tender for awarding contracts, which economic science considers inefficient. In that context, the main incentives for good management must be transparency, the participation of right holders and accountability.

114. For that, a regulation should ensure homogeneous public information through meaningful and understandable parameters, enabling a comparison of the quality and efficiency of the service among similar municipalities. That is known as benchmarking, that is, competition strategies through transparency. The creation of citizen water observatories, with the corresponding legal and institutional recognition, can and should facilitate effective public participation and the development of this type of strategy.⁸⁰ The observatories of Terrasa, Spain,⁸¹ and that of Lima serve as a reference.⁸²

4. Marginal costs of growth

115. As a city grows, the size of the population increases and costs tend to decrease by spreading them among more users. However, certain urban growth can lead to exceeding the structural capacities of cities’ supply systems or sources by imposing structural investments that tend to be socialized and paid for by all through tariff increases, representing an unfair subsidy to those promoting such growth. Urban planning should prevent and discourage unsustainable growth; however, making growth more expensive instead of subsidizing it may be a way to slow it down.

5. Combating financialization strategies in water management

116. As many economists explain, the financialization of the economy poses a threat to the proper functioning of productive economic activities. Nowadays, instead of serving the traditional banking function of managing savings to support productive development, major financial corporations have taken control of these productive activities with a speculative approach that creates risks and can even lead to the collapse of productive enterprises.⁸³

⁸⁰ L. Babiano Amelibia and A. Fraguas Herrero, *Manual para el Diseño e Implementación de Observatorios Ciudadanos del Agua* (Seville, Asociación Española de Operadores Públicos de Abastecimiento y Saneamiento, 2024) (in Spanish).

⁸¹ See <https://www.oat.cat> (in Catalan).

⁸² See <https://observatoriodelagua.ciudad.org.pe/index.php> (in Spanish).

⁸³ Olivier De Schutter, “Food commodities speculation and food price crises: regulation to reduce the risks of price volatility”, Briefing Note No. 2 (2010), available at http://www.srfood.org/images/stories/pdf/otherdocuments/20102309_briefing_note_02_en_ok.pdf.

117. The financialization of water management is inducing new privatization strategies that, far from strengthening water and sanitation services, distance them from control and effective public participation, inducing new speculative risks. An example is the speculative operation carried out by Macquarie Bank with the purchase and subsequent sale of Thames Water.⁸⁴

118. The argument for privatization shifted from claiming that public institutions cannot manage complex services to arguing that these institutions lack the financial capacity to make necessary investments, especially in new technologies. It is important to remember that cost-effective strategies often involve affordable solutions rooted in nature and good governance.

119. The Global Commission on the Economics of Water even discerns investments that should remain public, such as the development of supply and sewage networks, with long payback periods and little attractiveness for the private sector, while sanitation, regeneration and reuse plants, or inverse osmosis technologies for desalination, with shorter payback periods and interesting profit expectations, should lead to open those spaces to private initiative.⁸⁵

120. The impact on human rights is overlooked by not considering power asymmetries and the impact of cost increases on tariffs. For example, in Zaragoza, Spain, the privately financed La Cartuja treatment plant cost twice as much a cubic metre treated compared with the publicly financed La Almozara plant, despite being much larger.⁸⁶

121. The Special Rapporteur also disagrees with the optimism of the Global Commission on the Economics of Water about the potential socioecological benefits of private investments. The accumulated historical evidence, both in the global North and the global South, shows that most of the social, environmental and public health progress in water and sanitation was achieved through public and community-funded public financing, as acknowledged by the World Bank.⁸⁷

6. Prevention and management of risks derived from climate change

122. In his special thematic report on climate change and the human rights to water and sanitation, the Special Rapporteur presented strategies and measures to prevent and minimize damage derived from climate change, based on strengthening environmental and social resilience.⁸⁸

123. Hydrological, territorial and urban planning constitute the basis of adaptation strategies that must prevent and minimize impacts and risks derived from climate change. Rigorously applying the precautionary principle in those planning processes as a legal obligation and not as a simple recommendation saves both suffering and economic costs. Avoiding the development of flood-prone areas or limiting consumption to store water reserves to manage future droughts usually saves more costs than the benefits produced by reckless developments.

124. The Special Rapporteur believes that it is urgent to end the contamination and overexploitation of aquifers from certain productive activities. That requires rigorously pursuing illegal wells and installing meters. The State must supervise the effective control of extractions.

125. Removal or setting back of river embankments in the middle basins of rivers or installing gates that allow soft flooding of riverine spaces after negotiating compensation for the owners are usually cost-effective measures to prevent and minimize downstream flood

⁸⁴ A/76/159, para. 68.

⁸⁵ Mariana Mazzucato and others, “Turning the tide: a call to collective action (Global Commission on the Economics of Water, 2023), pp. 19 and 20.

⁸⁶ See <https://mareazuldearagon.blogspot.com/2023/11/depuradora-de-la-cartuja-1.html> (in Spanish) and Léo Heller and others, “What water will the UN Water Conference carry forward: a fundamental human right or a commodity?”, *The Lancet*, vol. 402, No. 10404 (2023).

⁸⁷ Heller and others, “What water will the UN Water Conference carry forward”.

⁸⁸ Special Rapporteur on the human rights to safe drinking water and sanitation, “Special thematic report on climate change and the human rights to water and sanitation: part 3 – a rights-based approach to adaptation, mitigation, finance, and cooperation” (March 2022), available at <https://www.ohchr.org/sites/default/files/2022-03/climate-change-3-final.docx>.

risks. The Room for the River Programme, in the Kingdom of the Netherlands, deserves mention, with a public investment of 2.3 billion euros.⁸⁹ It is also important to keep wetlands in good condition due to their ability to expand floods.

126. Promoting new permeable urban designs with flood-prone spaces adapted to the growing flooding risks saves costs and avoids damage with limited investments.

127. To bolster social resilience, it is essential to protect the human rights of the most vulnerable, focusing on them at all stages, from pre-alert to emergency. In territories facing scarcity due to climate change, it is crucial to develop adaptation strategies for reallocating water rights to protect human rights and the most vulnerable. Public insurance policies, especially for droughts, with support for vulnerable farms, are also important.

128. Public water banks can improve drought management by making the concession system more flexible, but only if transparency, public participation and accountability are ensured based on adequate regulation. Public institutions should offer fair compensation for the recovery of rights, avoiding speculation in situations of scarcity. On the other hand, in reallocating flows during droughts, they should prioritize human rights, the most vulnerable sectors and the sustainability of ecosystems.⁹⁰

129. There is a wide range of measures for adaptation plans based on appropriate public policies that do not involve manipulating water in future markets or engaging in speculative strategies.⁹¹

VII. Conclusions and recommendations

130. **Given the need for the United Nations to develop a general strategy on water and sanitation, the Special Rapporteur recommends:**

(a) **Recognizing water as a common good, with responsibilities nested at the local, basin and global levels;**

(b) **Recognizing aquatic ecosystems, rivers, wetlands and aquifers as common natural heritage, linked to the populations that depend on them and that must assume responsibility for guaranteeing their good condition and sustainability from an intergenerational perspective;**

(c) **Recognizing the waters extracted from these ecosystems as a common good of the populations that are supplied with them for multiple uses, under the responsibility of guaranteeing the primacy of human rights, as well as equitable and responsible use from the logic of general interest;**

(d) **Recognizing the water cycle and climate system as humanity's common global heritage, establishing fair criteria of responsibility and agreements and institutions that allow effective democratic governance.**

131. **The Special Rapporteur recommends promoting a water management approach presided over by the principle of sustainability and based on human rights, assuming the following priorities:**

(a) **Water for life, as the highest priority, in uses and functions that support sustainability, biodiversity and, in particular, the life and dignity of people;**

(b) **Water for the general interest, in uses and functions established as being of general interest to society, at a second level of priority;**

(c) **Water for economic development, at a third priority level, in productive activities, beyond basic needs and the fulfilment of human rights.**

⁸⁹ Alberta WaterPortal Society, "Room for the river: a Dutch approach to flood management", 5 January 2015.

⁹⁰ [A/76/159](#).

⁹¹ Ibid.

132. **The Special Rapporteur recommends:**

(a) **Effectively establishing the public domain over rivers, wetlands and aquifers, as well as the waters extracted from them, in order to promote sustainable, equitable, participatory, transparent and accountable management;**

(b) **Developing water planning and management at the basin level, from institutions open to broad public participation;**

(c) **Ensuring non-profit management of drinking water and sanitation services from local competencies, strengthening local capacities through public-public partnership strategies and developing public-community partnership strategies where community-based management is in force;**

(d) **Clarifying and justifying the general interest in public investments in water management, guaranteeing transparency and social participation when defining objectives and promoting projects that deserve that characterization;**

(e) **Avoiding land and water grabbing processes and respecting the water and land rights of Indigenous Peoples and rural communities.**

133. **To enhance the efficient and responsible use of water in the face of increasing scarcity caused by climate change, the Special Rapporteur recommends:**

(a) **Prioritizing compliance with human rights and the sustainability of aquatic ecosystems, avoiding their overexploitation and pollution, as bases for economic and social progress;**

(b) **Applying economic incentives for the efficient and responsible use of water and penalties for abusive or irresponsible use, developing the principles of non-deterioration, of who deteriorates restores, cost recovery and cost-effectiveness;**

(c) **Applying increasing rates by consumption segments in order to ensure cost recovery, encouraging responsible use, guaranteeing universal access to water services and minimizing the ecological footprint;**

(d) **Developing adaptation plans from hydrological, territorial and urban planning, open to public participation and based on the precautionary principle to address climate change; guaranteeing the good condition of aquifers as strategic reserves for future droughts; developing public policies on agricultural insurance to protect the most vulnerable producers; creating public water banks to make concessional systems more flexible; and conserving wetlands and riparian ecosystems to soften floods.**

(e) **Adapting concession systems to the changes imposed by climate change, to ensure the sustainability of ecosystems, with transparency and public participation; and redistributing use rights in situations of scarcity based on the social criteria to protect those living in the most vulnerable situations.**

134. **After the second United Nations Water Conference in 2023, the Organization needs to be institutionally strengthened in relation to water and sanitation policies, above and beyond the powerful economic interests surrounding water. In that context, the Special Rapporteur recommends that the United Nations:**

(a) **Strengthen UN-Water, on the basis of defining an overall strategy on water and sanitation, based on prioritizing the sustainability of aquatic ecosystems and compliance with water-related human rights;**

(b) **Promote the idea of negotiating a convention on water, human rights and climate change, which would clarify the commitments of States to develop adaptation strategies based on the water transition to prevent the risks arising from climate change, especially for those living in situations of greatest vulnerability;**

(c) **Assume the periodic organization of the Water Conference as a space for listening and dialogue with the peoples and, in particular, with the rights holders who see their human rights to drinking water and sanitation frustrated and who are often criminalized for demanding them;**

(d) Accelerate the pace of achieving Sustainable Development Goal 6 as a democratic challenge and not as a business opportunity, prioritizing public budgets on this front at all levels and promoting a specific support plan for impoverished countries based on the swap of external debt for climate change adaptation projects based on the water transition;

(e) Foster international support for developing the United Nations Water Convention, favouring signing agreements in transboundary basins to promote sustainable management of shared aquatic ecosystems, adaptation plans in the face of climate change, compliance with water-related human rights over borders, and peaceful cooperation.
