

THE RIGHT TO WATER IN THE FACE OF EXTRACTIVE ACTIVITIES

CIVIL SOCIETY MOBILISATION



Defending human rights
and the commons



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INTRODUCTION

In 2014, France Libertés – Fondation Danielle Mitterrand launched a call for proposals relating to the right to water in the face of extractive industries. Using those proposals, the Foundation intends to highlight the efforts of those who work to promote and defend the right to water in areas that are affected by extractivism.

Closely in line with the work it has carried out since 1986 to promote human rights, France Libertés has dedicated more than 15 years to protecting the right to water for all. Taking a stand against the purely commercial vision of that common good, the Foundation campaigns actively for participatory, democratic, public and sustainable water management.

As emphasised by Danielle Mitterrand, “it is water, that vital element, on which the rights of individuals and peoples depend”¹.

This was the premise on which France Libertés based its commitment to the recognition of the right to water as established by the United Nations. That recognition was endorsed in 2002 by the Committee on Economic, Social and Cultural Rights², then in 2010 and then unanimously in 2013 by the General Assembly³. France Libertés now focuses on the implementation and observance of that right.

1. *Ce que je n'accepte pas*, Danielle Mitterrand, entretiens avec Gilles Vanderpooten, Conversation pour l'avenir, l'aube, p.54

2. E/C.12/2002/11, General Comment No. 15, 20 January 2013

3. A/RES/64/292, General Assembly Resolution, 3 August 2010

A/C.3/68/L.34/Rev.1, General Assembly Resolution, 19 November 2013

This report aims to present the phenomenon of extractivism and its impact on the right to water for all. Using the many testimonies collected during the call for proposals, we hope to put forward a major concern – that of the threat hanging over a fundamental right of thousands of people around the world. Moreover, we wish to highlight the work conducted on the ground by local associations that defend the right to water on a daily basis.





WHAT IS EXTRACTIVISM ?

The term “extractive industries” covers the extraction of mineral products that occur naturally in the form of solids, liquids or gases (INSEE definition). Those products include ores, hydrocarbons and gases, all of which are non-renewable natural resources. Extraction methods vary from one resource to another and can be conducted either at surface level or underground. Notable widespread exploitation processes include opencast mines and hydraulic fracturing, also known as “fracking”.

The term “extractivism”, which comes from the Portuguese “extrativismo”, has been given a number of different definitions over the years. In the context of this report, it should be understood as **the increasing exploitation of non-renewable natural resources in response to the growing needs of our societies, in order to supply raw materials and energy.**

1 - EXTRACTIVISM AT THE CENTRE OF DEVELOPMENT CHOICES



RAW MATERIALS SOUGHT AFTER BY ECONOMIC STAKEHOLDERS

Copper, gold, iron, nickel – all these mineral resources are essential for the manufacturing of modern consumer goods in a world where electronic devices have become ubiquitous. Faced with the relentless growth of consumer needs, companies are seeking to further accelerate the exploitation of mineral products. Given the increasing scarcity and gradual depletion of resources, these companies must expand their geographical scope and diversify their exploitation techniques.

The least economically advanced countries are not left untouched by this race for commodities and are bearing the brunt of costly and extreme “unconventional” methods such as hydraulic fracturing - a process that involves the intensive exploitation of resources, often with very serious consequences for local populations and the environment.



FROM NORTH TO SOUTH : GOVERNMENTS SEDUCED BY THE GROWTH OF EXTRACTIVISM

In order to achieve sufficient growth to ensure the economic development of national territories, many countries are turning to the extractive industries. States that are endowed with natural mineral resources tend to be seduced by the economic appeal represented by the extraction of these commodities (large-scale investment, inflows of foreign currency, taxes, etc).

An increasing number of governments in both the northern and southern countries are engaging in an economic policy based on the exploitation of subsurface resources. This is the case, for example in Canada. With the third largest freshwater reservoir in the world, this giant of the Americas chose to prioritise the economic promise presented by the extraction of its rich underground resources over its exceptional water resources by helping industrial extraction groups to become established in its territory. Preferential tax and regulatory flexibility thus convinced 75 per cent of the world's mining companies to register their headquarters in Canada¹. For several years, that policy has generated increasing public protest in response to its impact, in particular, on the fundamental right to water.

1. Deneault A. et Sacher W., « L'industrie minière reine du Canada » in *Le Monde Diplomatique*, September 2013
<http://www.monde-diplomatique.fr/2013/09/DENEAULT/49598>

FRACKING, THE NEW AMERICAN ELDORADO

By making domestic energy production a national priority, the United States opened the door wide to unconventional methods. Those methods were developed in response to the increasing scarcity of resources that could be exploited in a “traditional” way using so-called “conventional” methods. Unconventional techniques use advanced technology, are more costly and present uncertainties with regard to the environmental and sanitary risks they pose. Hydraulic fracturing, or “fracking”, is one such method. It enables the extraction of shale gas and oil through the injection of large volumes of a mixture of water, sand and chemicals into the rocks, which frees trapped gases.

Three of the numerous affected communities in the United States expressed concern about the impact of this technology on their water resources. Subsequently, the Environmental Protection Agency¹ clearly identified fracking as being at the origin of an incident of water contamination in 2011 but did not investigate further. Since then, American citizens have been waiting for a preliminary report on the effects of hydraulic fracturing on water resources, the publication of which has been delayed repeatedly.

Source : Earthwork

1. Environmental Protection Agency (EPA)

This economic strategy adopted by the northern countries has since gained ground in the southern countries, notably those in Latin America. While several States (Bolivia, Ecuador, Mexico, Nicaragua and Uruguay) have made the pioneering decision to establish the constitutional right to water, that progress has been undermined by measures taken to boost the economy, which have focused on the export of raw materials. Since the funds generated by extractive industries significantly boost the economies of countries that are endowed with a wealth of ores and hydrocarbons, many governments are choosing to pursue the extractivist route in order to fund social policies, sometimes to the detriment of the fundamental right to water. In Mexico, for example, the right to water has been constitutional since 2012 but has never been complemented by legislation that would ensure the application of that principle. On the contrary, a constitutional reform of the energy sector in 2013 led to the enactment of complementary legislation that established the public utility of the oil industry and its priority status compared with other land uses¹.

DISRUPTION OF WAYS OF LIFE

The establishment of an extraction megaproject has a far-reaching impact on the daily lives of local populations. Sometimes forced to leave their homes to make way for exploitation sites, communities must suffer radical and often irreversible changes to their way of life, which can severely weaken social ties. Often unaware of the implications of the sale of their land, or the fact that they are entitled to claim compensation for that loss, they must find new places to live and refocus their income-generating activities, their traditional livelihoods (agriculture, fishing, etc.) having been threatened. Those who pay the price for this development choice, which is favoured by the majority of States, are therefore local populations, who are only involved in the latter stages of the decision-making process and are sometimes left out of it altogether.

1. Decree of 11 August 2014



THREAT TO MONGOLIAN NOMADIC LIFE

In Mongolia's South Gobi province, local communities practise nomadic herding. Situated at the frontline of climate change for several years, they are now facing a new threat – the mining of copper. Particularly sought-after by neighbouring China, copper is a source of wealth for the Mongolian economy, which is currently booming. Nomadic herding, which depends on the use of local wells to water the animals and supply domestic uses, is currently in jeopardy. Herders are concerned by the increasing scarcity of water resources, and more importantly the threat to water quality. Mining company Oyu Tolgoi made the decision to use deep, non-drinking water for the extraction of copper, with the intention of preserving aquifers that were closer to the surface for local communities. Unfortunately, a flaw in the design of the drill used to tap that deepwater resulted in leaks. The consequences of those leaks on drinking water supplies have not yet been identified or confirmed.

Source : Steps without borders

CRIMINALISATION OF SOCIAL MOVEMENTS

As societies increasingly question the implications of extractivism, governmental support for the extractive sector seriously exacerbates social conflicts. Currently, a large number of projects are being met with major public outcry as people denounce the numerous violations of their fundamental human rights, including the right to water.

The financial challenge posed to companies and States by the implementation of extractive activities leads to collusion among those players at the expense of local populations. That collusion is accompanied by the criminalisation of social movements, sometimes with the involvement of the armed forces or police in States that are particularly badly affected by corruption. Against a backdrop of lawsuits, repression and other intimidation methods, a very effective arsenal of tactics is established to silence advocates of fundamental rights.



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2 - THE DEGRADATION OF WATER AND ITS IRREVERSIBLE CONSEQUENCES FOR HUMANITY AND LIVING THINGS





WATER AT THE HEART OF EXTRACTIVISM

Whether it is carried out at surface level or underground, the extraction of ores and hydrocarbons requires the intensive use of water resources. From the site preparation stage to the completion of the extraction operation, water resources undergo major impacts. Deforestation, the stripping of topsoil, the pumping of groundwater, acid rock drainage and the addition of chemical substances – all these processes have a qualitative and quantitative effect on water resources.

Water is used during the ore extraction stage of hydraulic fracturing at a rate of 10,000 to 15,000m³ per drilling operation, which equates to the volume of four Olympic swimming pools¹. The resulting decrease in the quantity of available water has an adverse effect on domestic and agricultural uses, which leads to inevitable conflict over the distribution of resources.

During the processing and enrichment stage, in which the ore is isolated from the other unwanted elements using various chemical substances, water is subject to major contamination. Infiltration and seepage into the aquifer is all the more likely when the topsoil has been stripped, enabling toxic chemicals to penetrate the earth. That water contamination is further encouraged by soil erosion, which displaces suspended solids laden with chemicals and moves them through the river system.

1. <http://www.connaissancedesenergies.org/fiche-pedagogique/fracturation-hydraulique>

THE DESTRUCTIVE GOLDRUSH

Whether it is used to manufacture jewellery or electronics or viewed simply as a financial hedge, gold remains the most sought after metal in the world. In order to isolate this precious metal from other ores in which it may be contained, the gold industry has long used mercury in the amalgamation process. Although that remains the preferred method among illegal gold miners and is at the root of true environmental devastation, the high toxicity and sometimes-low efficiency of mercury has led companies to abandon the technique in favour of the cyanidation process. However, the use of cyanide poses just as many environmental risks as the use of mercury. Although its use is strictly regulated, that does not prevent accidental spills into waterways. Over the last 25 years, there have been 30 major accidents worldwide.

In the year 2000 in Romania, the River Tisza – a tributary of the Danube – was irreversibly polluted by a spill of 100,000m³ of water containing cyanide that had been used in the gold mining industry. Despite the terrible environmental damage caused by cyanidation, 10 new projects using the process are about to be launched in Europe.

Source : Albernus Maior Association

RIGHT TO WATER FOR ALL THREATENED

The contamination of surface water and groundwater by chemical elements impacts water quality and has both direct and indirect consequences on human beings. That also applies to the environmental damage caused by the saturation of suspended solids. The concentration of pollutants inevitably alters the drinkability of water and can even put human health at risk, causing birth defects, developmental disorders and infertility.

Since it is used for personal hygiene, contaminated water can also cause particularly damaging external injuries to the skin and the eyes. Likewise, water that has become turbid owing to the presence of a large amount of suspended solids can be unfit for consumption. Polluted water also has indirect effects on human health. Bioaccumulation, a process in which fish absorb chemical substances that subsequently become concentrated in one part of their body, exacerbates the effects of the water pollution caused by extractive industries on the human body. This can cause serious health problems when local communities subsist on a diet that is rich in fish.

LACK OF ACCESS TO SAFE WATER AND FOOD INSECURITY

The Higaonon, an indigenous tribe of Mindanao Island in the Philippines who live on Mount Sagyaan, have been forced to live side-by-side with mining activities for around 20 years. In this remote region, it is becoming increasingly difficult to access clean water. Local communities are seeing the gradual degradation of their habitat since it is not just water resources, but wildlife in general, which is affected. That degradation threatens the food security of the Higaonon people, who are faced with the growing scarcity of animal resources (fish, game, etc).

Source: Tribes and Nature Defenders – Trinad Inc

The decreased availability of water due to its intensive use for extractive projects also prevents people from exercising the right to water for all. The excessive pumping of water resources, for example when the desired ore is located below the water table, weakens the subsoil and causes aridity. By promoting the industrial use of water resources, other domestic and agricultural uses (market gardening, herding, cooking, hygiene, etc.) can be adversely affected, thus generating conflicts over water availability. Unfortunately, that competition between water users all too often favours industry over local communities.

The degradation of water resources inevitably affects the right to water for all. Water is one of humanity's common goods and therefore a vital element. By violating what is recognised as a fundamental right – and at times even putting human lives at risk – the practice of extractivism does little to promote the idea that the right to water and the intensive exploitation of subsoil resources can coexist.

WHEN OIL COMPANIES LOSE CONTROL OF THEIR INSTALLATIONS

Damaged equipment, leaks... The list of contamination incidents caused by equipment defects is long. In the United States, the pollution of a number of water tables during the extraction of shale gas has highlighted the presence of defects in the structure of the drills, thus enabling the infiltration of chemical compounds. In the Niger Delta, an oil-rich region in which a number of multinational companies operate, the situation is even more critical. The lack of maintenance and failure by Shell to respond to numerous leaks and oil spills in this region have irreversibly violated the right of local communities to water resources. That violation has been recognised by the Dutch courts¹, which convicted a Shell subsidiary company, and by the British courts in 2014², which recognised the liability of the parent company itself.

In Ijegun in Nigeria, the National Petroleum Corporation has not yet succeeded in ensuring the monitoring of its installations. That shortcoming has led to major oil spills in waterways with terrible humanitarian consequences – unsafe drinking water, skin rashes, inflammation of the eyes and other ailments that have affected the local population with a characteristic indifference.

Source : Environmental Rights Action - Friends of the Earth Nigeria

1. http://www.lemonde.fr/planete/article/2013/01/30/pollution-la-justice-neerlandaise-rejette-la-plainte-de-4-nigériens-contre-shell_1824317_3244.html

2. http://www.opinion-internationale.com/2014/06/20/shell-condamnee-pour-la-plus-grande-catastrophe-petroliere-de-lhumanite_26957.html

3 - PROMISING LOCAL INITIATIVES



In the face of growing extractivism, stakeholders around the world are speaking out and choosing to promote and defend the right to water, which is understood as “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”¹. They are also working to ensure the preservation and management of that resource, which is one of humanity’s common goods. By contributing to the funding of such initiatives, Fondation France Libertés seeks to protect patterns of development that are sustainable from both a social and human point of view and an environmental and economic point of view.

RAISING AWARENESS ABOUT THE IMPACT OF EXTRACTIVISM

The establishment of a commodities extraction business is a complex process. From the concession stage, to prospecting and exploration, to the extraction and processing of the desired mineral product, extractivism has a continuous effect on water resources. It is vital that neighbouring communities should be able to understand the implications of that business on their daily lives.



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1. Committee on Economic, Social and Cultural Rights, General Comment No. 15/2002, 20 January 2003, E/C.12/2002/11, p.2

For several decades, transnational companies have been exploiting the black gold of the Amazon Basin and the damage caused by that extractive industry is manifold. For example, 2011 saw the historic ruling by the Ecuadorian courts against oil giant Chevron (formerly Texaco), which had been polluting nearby waterways for many years. In the Ecuadorian province of Sucumbios, where mining camps have been established by the company Petroecuador, the population is divided on the issue of the exploitation of their land, which for some represents a source of employment and income.

However, the association **Acción Ecológica** has wasted no time in conducting substantive work on the consequences of the oil industry on water resources in the region. The organisation seeks primarily to raise awareness among the inhabitants of Pacayu of the reality of the situation by organising training sessions and holding debates and discussions. By engaging local communities using an approach based on environmental monitoring – notably through carrying out assessments of water quality - Acción Ecológica involves citizens constructively in a participatory process that is vital for the proper management of resources in their territory.

In Uruguay, the association **REDES – Amigos de la Tierra** has been implementing another initiative to raise awareness and provide training based on in-depth scientific research. Accordingly, it produced a map of extractive projects in the country and identified their potential impact on river basins. Subsequently, it reported comprehensive information to local communities. That reporting led to rich debate and local residents expressed a desire to hold continued discussions on the issue. The production of a report on the effects of mining and hydraulic fracturing also enabled REDES to inform people of the incompatibility of certain extraction techniques with the constitutional reform of 2005, which gave domestic water use priority over other uses.

INFORMING PEOPLE ABOUT THEIR RIGHTS

We cannot exercise our rights without knowing what they are. The right to water is a fundamental human right recognised by the United Nations under the International Covenant on Economic, Social and Cultural Rights. The States Parties to the United Nations are bound by the Covenant and must uphold the right to water for all, especially when it is threatened by industry, including extractive activities. Since national and international laws are poorly understood and local communities are all too often unaware of their provisions, it is vital that public awareness of such legislation should be improved through the popularisation of legal information.



This knowledge-building work is being conducted by various partners of Fondation France Libertés. For example, the FUNDAR research centre in Mexico works on a daily basis to better promote the rights of local and indigenous communities in the region of Sierra Norte de Puebla. **FUNDAR** places a particular emphasis on the principle of conducting consultations with residents prior to the implementation of any megaproject, as provided for by the Environmental and Social Impact Assessment process.

Since the law is becoming increasingly dense and difficult to master, FUNDAR also decided to support the legal strategy to defend local communities' right to water by contributing to the drafting of an "Amparo" law - a mechanism that allows Mexican citizens to invoke violations of their fundamental rights in court.



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CONSOLIDATING A NETWORK

The economic and financial stakes represented by the extraction of non-renewable raw materials tends to place civil society on the back foot in the debate on extractivism. The only thing that seems to matter is the relationship between the State and big business, especially during the concession phase of a project. In that context, it is particularly important to create and reinforce networks in order to give a more powerful voice to those who are bearing the brunt of extractive activities.

In four African countries – Ghana, Uganda, South Africa and Kenya – **the Gaia Foundation** is creating a network-based system in order to encourage communities that are affected by extractive projects to defend their right to clean water. Starting with community-based dialogue, the Foundation works to create national coalitions that will then reinforce the views expressed by individual communities. Eventually, it aims to interconnect the various coalitions internationally in order to reach the largest possible audience, including the authorities and the general public.

ENSURING LEGISLATIVE PROTECTION OF THE RIGHT TO WATER

There remains work to be done to bridge the gap between the United Nations recognition of the fundamental right to water to the full implementation of that right by States. Currently, legislation in many countries does not provide for the effective protection of the right to water in the face of the mining industry. In the United States, the Community Environmental Legal Defense Fund (**CELDF**) denounces the lack of legal protection of the right to water for all in the face of activities by extractive companies that, for their part, enjoy regulatory flexibility. The organisation highlights the lack of representation at federal government level owing to the close collusion between the State and big business. In that context, CELDF promotes local governance structures that are able to oppose the unsustainable development models adopted on a federal and state level.



Fighting law with law is a lengthy process. Initially, one must study the way in which institutions work with communities that wish to take control of their local development. Subsequently, it is necessary to draft legal texts that enable local authorities to exercise their right to local governance.

Pittsburgh was the first city in the United States to unanimously adopt a ban on the use of hydraulic fracturing in its territory, through a vote by its city council. That ban was accompanied by a bill of rights including the right to water, the right to sustainable development and rights of nature.

The movement is now spreading to various other towns in the States of Pennsylvania, New York, Maryland, Ohio and New Mexico, despite the fact that it is challenged by certain companies that are seeking to invalidate such mechanisms.

Supported by the Fondation Danielle Mitterrand, this ambitious initiative is giving hope to local citizens. The approach adopted by CELDF could eventually lead to an amendment, not only to the legislation of several States, but also to federal law in a country that has still not ratified the International Covenant on Economic, Social and Cultural Rights.

PROMOTING LOCAL WATER MANAGEMENT

In many cases, once an extraction project has taken place or is underway, it has already interfered with water resources. In order to absolutely guarantee the right to water, associations throughout the world are campaigning for the local and sustainable management of water resources.

In the Kabale District of Uganda, many people have been forced to leave their land to make way for iron ore exploitation operations. Displaced populations have had to adapt to ensure access to a sufficient quantity of safe water. The organisation Gender Equality and Women Empowerment for Development (**GWEFODE**) campaigns actively for local and participatory water management in order to give communities control over their resources and to guarantee affordable and fair access to water. With funding from France Libertés, GWEFODE is implementing a programme that focuses on the collection of rainwater to ensure sustainable access to water resources. In order to manage this community-based initiative, the association is working to create committees of water users, which operate based on the principles of participation, democracy and transparency. The programme focuses in particular on women and children, who are traditionally responsible for carrying out water collection duties.



Village de Rurembo, Muko Subcounty – Ouganda © GWEFODE



© PARIBARTAN

In the state of Odisha in India, coal mining has affected the quantity and quality of available water in aquifers, since that water has been damaged by micropollutants. With the support of Fondation France Libertés, the association **Paribartan** is implementing a number of local initiatives to protect local communities' right to water. Those initiatives include: the training focal points to enable them to raise awareness among local inhabitants (or "water carriers"); the identification of methods to access and protect water resources; the establishment of rainwater collection systems; the restoration of existing water collection points; and the conservation of existing resources. All such measures help to foster an approach that is based on local and participatory water management.



INFLUENCING THE FUNDING POLICIES OF INTERNATIONAL FINANCIAL INSTITUTIONS

International financial institutions (IFIs) provide financial support to governments and the private sector in struggling States in order to support investment. In certain cases, such funding is fuelling serious controversy owing to the environmental and social implications of the programmes that are benefiting from investment.

Tunisia has one of the highest levels of water stress in the world, which means that water demand in the country greatly exceeds available resources. Any industrial use of water therefore has a particularly serious impact. Despite that, however, 45 permits to exploit hydrocarbons and 60 concessions have already been allocated in the country.

Following the people's revolution of 2011, the international community announced its intention to support Tunisia's investment effort, notably by involving the European Bank for Reconstruction and Development (EBRD). Accordingly, EBRD provided a \$60-million loan to the company Serinus Energy to fund drilling projects aimed at the extraction of unconventional hydrocarbons.

Convinced of the inherent threat to the right to water posed by the hydraulic fracture in Tunisia, the organisation **Bankwatch** decided to implement a programme to monitor Serinus Energy's megaproject. By collecting as much data as possible, Bankwatch hoped to provide local communities with the means to claim that EBRD had committed a violation of their fundamental rights, using one of the bank's own mechanisms – the Project Complaint Mechanism (PCM). The PCM enables an individual or organisation to submit a complaint concerning a project that has caused or is likely to cause damage.

Through that programme, Bankwatch is hoping, on the one hand, to issue a warning about the funding policies of IFIs and, on the other hand, to raise awareness about the procedures put in place by IFIs to enable people to contest extractive projects.

DENOUNCING THE PRACTICES OF EXTRACTIVE INDUSTRIES

For many years, measures have been taken to enable a better understanding of extractive projects. As the Environmental and Social Impact Assessment process has become more widely adopted, the general public must be properly informed and allowed to participate and authorities must be able to make educated decisions. Likewise, initiatives such as the Extractive Industries Transparency Initiative have sought to ensure greater transparency with regard to funding in the extractive sector. Despite such advances, however, there are still a number of grey areas in terms of the conduct of such companies around the world.

The French organisation **Alter-Médias** conducts investigative work on multinationals in the extractive sector and passes information on to civil society via its two websites - bastamag.net and multinationales.org. Under that project, which is supported by France Libertés, a series of articles (surveys, interviews, etc.) relating to the economic, social and environmental impact of the extractive industry around the world are being posted online on an ad hoc basis. Eventually, a summary report presenting case studies and critical assessments will also be published.

This monitoring and reporting mission is of vital importance in an area where power relations are seriously unbalanced.

Consolidating information, grouping issues relating to extractivism and raising awareness among French readers of the conduct of French companies abroad (involvement of French parent companies, European IFIs, etc.); all of this contributes to the global dissemination of information and ensures a better understanding of a vital issue – that of the preservation of our water resources.

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“Water is the common denominator in all forms of life on Earth. Life is the offspring of water.”



Danielle Mitterrand



DEFENDING HUMAN RIGHTS AND THE COMMONS

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