



France: Water “mega-basins” and human rights violations

This report was elaborated by Confédération paysanne - France, and Centre Europe – Tiers Monde (CETIM)¹

Human rights violation report addressed to the following United Nations Special Procedures mandate holders:

- **Ms. Mary Lawlor**, Special Rapporteur on the situation of human rights defenders
- **Mr. Michael Fakhri**, Special Rapporteur on the right to food
- **Mr. Pedro Arrojo-Agudo**, Special Rapporteur on the right to water and sanitation
- **Mr. Clément Nyaletsossi Voule**, Special Rapporteur on the right to freedom of association and peaceful assembly
- **Mr. David R. Boyd**, Special Rapporteur on human rights and the environment

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1 Organization with consultative ECOSOC status

Context

Water “mega-basins” are projects of water-stocking developed in France. They are surrounded by 10 meters dikes, erected with the excavated earth, with a mean size of 10 hectares (1'000m x 1'000m). These hydraulic works, waterproofed by a plastic sheeting, are water-filled taken from subterranean waters. The objective is to pump a large quantity of water during winter, to stock it and irrigate during the summer, by pumping a second time. A basin can contain more than hundreds of thousands cubic meters of water.

In France, only about 7% of the usable agricultural areas are irrigated, for a water consumption already too high in certain territories, compared to what nature can sustain. Beyond irrigation, farming challenges are therefore more related to the maintenance of agricultural systems based on a natural water supply and the development of practices that sustain the soils' life, as well as irrigation systems with limited impact on water resources. These mega-basins answer exactly the opposite of these issues.

These projects undermine the right to water of peasants and the right to a healthy environment for the entire population, while also weakening the fulfilment of the right to food.

Mega-basins' projects are mainly supported by farmers involved in large-scale industrial agriculture. They see their constructions as an opportunity to secure their access to water in times of drought. These irrigation projects sustain an agricultural model that confiscate the commons and means of production at the expense of peasants. They promote also larger scale projects and activate possible speculation problems. This privatization of water produces a land-grabbing dynamic, thus reinforcing inequalities in the rural world. In the end, water is used to boost yields and to increase profits of already large farms or agro-industry, which forces water consuming practices to insure larger volumes, mainly for exportation. What is more, this grab is rendered possible by very large public funds, generally with more than 70 % of the costs' projects.

Peasants' organizations and other civil society sectors mobilized to question these projects and to claim the respect of human and environmental rights. In the face of the massive demonstrations, the governmental response has been limited to bloody repression against peasants and human rights defenders, criminalization of the protests and of the protesters, and various types of violations (in particular of the freedom of association and peaceful assembly).

Environmental degradation

For all peasants concerned by rain-based agriculture, i.e. who depends mainly on rainfall, but also on the soils, it is urgent to transform the agricultural practices, in order to insure water presence in the soils. Only living soils which can filter water can enable agriculture to tackle the challenges of climate change and water scarcity. Basins' projects, when implemented, require to be cost effective, enacting short-term practices in order to insure the project's profitability. They are heavy consumers of synthetic chemicals, developing agronomic

practices that destroy the soils (poor rotation, little crops diversity, prominence of corn, etc.) and ultimately need more and more irrigation for plants. In reality, these projects only accentuate the harmful impact of agriculture on the resource.

The water used for filling the basins is tapped from underground water bodies during winter by pumping, to be used in summer for irrigation. Called « substitutes reserves » by their supporters, these basins are presented as projects that should reduce the pressure on the water resource, by substituting spring/summer pumping by winter pumping. However, pumping during winter cannot prevent a pressure on the resource. With a sometimes insufficient pluviometry as well as a late recharging of underground water bodies, the pressure exercised by the basins filling, puts in jeopardy the stock renewal of natural water. Thus it is the biological life cycle, the life of waterways and swamps during summer which are endangered by these projects.

The water stored in open-air in these mega-basins becomes stagnant and thus undergoes a phenomenon of evapotranspiration. Finally, under the effect of light and heat, the development of algae and bacteria, in particular toxic cyanobacteria, can render water unsuitable for irrigation. Several researchers (hydrogeologists, hydrologists, aquatic systems specialists, etc.) have spoken out these last months against these projects and their impacts on water resource².

Water mega-basins and the right to food

In the face of climate change and increasingly severe droughts, the industrial agricultural model based on monocultures and massive use of chemical inputs increasingly needs to irrigate crops to maintain yields. Most of the crops that are irrigated through the mega-basins are not intended for human consumption: they are mainly maize for animal feed, and sometimes even for natural gas production via methane plants. Moreover, a large proportion of these crops are not destined for the local and national food market, but rather to be exported as commodities on international markets.

The vast majority of farmers who produce food for the population will never benefit from the water stored in the mega-basins: let us remember that barely 7% of the useful agricultural area is irrigated in France. Those who have their own boreholes, whether they are small market gardeners or livestock farmers who need water for their animals, see their installations rendered inoperative because the boreholes at a depth of 50 or 80 metres are dry due to the excess withdrawals for the mega-basins. Thus, this water grab calls into question the ability to produce healthy, local food for the population.

These water mega-basins are a glaring example of miss-adaptation to climate change. Rather than trying to perpetuate agricultural models by putting them on a mass irrigation drip, the answer must be an agricultural model that relocates food, produces quality food and, in fine, limits its abstraction and protects water resources.

2 https://www.confederationpaysanne.fr/sites/1/mots_cles/documents/4_pages_EAU_2020_BD.pdf

To ensure the right to food, agricultural production that relocates food and promotes jobs in agriculture must be given priority in accessing water, in particular diversified market gardening. A ceiling must also be placed on the volumes of water granted per farm according to the number of workers and productions, and funding relating to water in agriculture must be massively redirected towards supporting and developing practices that allow water to be retained in the soil (agro-ecological practices such as plant cover, hedges, permanent grasslands, farmer seeds, hedges, grass strips, etc.), protecting water (reduction in synthetic chemical inputs) and saving water resources.

Intimidation of activists, repression, criminalization and violations of the right to freedom of association and peaceful assembly

In the department of Deux-Sèvres, particularly since 2017, citizens are mobilized against these projects. A public enquiry took place from the 27th of February to the 29th of March 2017. More than 70 % of transcripts were against these mega-basins' projects in this department. This was followed by numerous legal appeals, including to the European Commission, the majority of which were won, demonstrations, actions, events on the subject, etc. The mobilization is spreading to other territories (Vienne, Center, etc.) and to many organizations, like the peasant union "Confédération paysanne".

The repression of anti-basin activists has been increasing during these past months in order to discourage the protest. Recently some trials against protesters have taken place. The 28th of November 2022, five people were sentenced by Niort correctional court to suspended sentences of 2 to 3 months and bans on appearing in the Deux Sèvres department for 2 to 3 years. Two other trials have taken place the 5th and 6th of January 2023. For one of them, the judgement was postponed. For the other, although the five defendants did not take part in the violence that occurred during the demonstration, they were sentenced to 2 to 3 months' imprisonment with a suspended sentence and 3 years' ban from the Deux-Sèvres department. This judgement has been rendered on the ground of « participation in a group with the objective to commit degradation or violence », thus on the simple fact of their presence at a massive protest which took place Saturday the 29th of October 2022 at Sainte-Soline (more than 7'000 people where on site). This automatic sentencing for having participated in a rally in defence of a common good, water, is a heavy blow to freedom of expression as well as freedom of association and peaceful assembly. Moreover, it strikes the demonstrators arbitrarily.

A circular from the Minister of Justice, dated November 9th, 2022³, calling for systematic penal repression in the context of manifestation against land management projects, denotes a political will to silence by all possible means opponents to these mega-basins projects. The usage of the term « eco-terrorist » without ground, during the manifestation of Sainte-Soline against the mega-basins (November 2022) is a symptom of this political will.

3 Reference to the circular : JUSD 2232087C, CRIM-2022-20/E1-09.11.2022

Surveillance material found close to an anti basin activist's home, a few days after the demonstration of Sainte-Soline ; GPS beacon found on the car of another, death threats on the "Confédération paysanne's" spokesperson of the department of Deux-Sèvres ; slap and shove against the "Confédération paysanne's" spokesperson during the "Salon de l'Agriculture" in 2022: these are but some examples of the climate of repression and violence perpetrated against anti-basins activists, which have not been object of any judicial follow-up, nor been condemned by States' representatives.

A large mobilization was organized from March 24 to 26 in the Deux-Sèvres departement against the mega-basins, with conferences, concerts, workshops and a large demonstration on March 25. The three organizations promoting this mobilization were the Confédération Paysanne, the collective "Bassines Non Merci" and the "Soulèvements de la Terre". A few days before, the spokesman of "Bassines Non Merci" was placed in police custody. The prefecture then banned the demonstration⁴. On the morning of March 25, convoys of cars wanting to go to the mobilization from seven major cities were obstructed by the police. Despite the government's desire to prevent the mobilization at all costs, about 30,000 people gathered in Sainte Soline on March 25.

The mobilization began on Friday, March 24, with the convergence of demonstrators and tractors towards the camp. The demonstration was intended to be peacefully, showing the convergence between peasants and citizens and their mobilization for the defense of water. But from the first day the authorities tried to prevent the organization of this demonstration. With the help of an already consequent police disposition, the authorities tried to prevent the tractors from joining the camp. Finally, the convergence was possible, as the tractors managed to divert attention and take another route.

The next day, Saturday 25 March, protesters gathered at the camp to launch the largest mobilization of the weekend. They marched through the fields towards the basin site, divided into three processions. An impressive police force was waiting for the demonstrators: 3200 policemen, more than a hundred trucks, a fence surrounding the 18 hectares of the mega-basin construction site. Before they could even get close, the first procession was drowned under tear gas. In two hours, more than 5000 shots of tear gas grenades, stun grenades, explosive grenades of type GM2L and GENL are recorded. Some of these grenades are considered by international law as weapons of war. Police officers mounted on quads fired LBD 40s from moving quads, a practice prohibited by French law. Even demonstrators who had come with their families and were several hundred meters away from the lines of gendarmes were fired with tear gas grenades and rocket propelled grenades. Observers from the "Ligue des Droits de l'Homme" were able to observe *"an immoderate and indiscriminate use of force on all the people present at the scene, with a clear objective: to prevent access to the basin, whatever the human cost"*⁵.

4 <https://www.deux-sevres.gouv.fr/Actualites/Arretes-pris-dans-le-cadre-des-manifestations-organisees-les-24-25-et-26-mars-2023/Arretes-pris-dans-le-cadre-des-manifestations-organisees-les-24-25-26-mars-2023>

5 <https://www.ldh-france.org/premiere-synthese-observations-des-24-26-mars-2023-a-sainte-soline/>

From the very first minutes, the medical teams were overwhelmed by the number of injured demonstrators. The elected representatives who were wearing a tricolor scarf identifying them made a human chain around the injured to protect them and allow their evacuation, but they were themselves victims of tear gas shots in their direction, forcing them to move back.

The rescue teams, as well as the doctors present on the spot and the observers of the LDH were able to "*observe several cases of obstruction by the police forces to the intervention of the rescue services, both ambulance and firemen*"⁶. In a telephone conversation attended by three lawyers from the LDH, the emergency medical services (known as SAMU in France) indicated that they could not intervene to rescue an injured person in a state of vital emergency because the command had given the order not to do so. However, the area where the injured person was had been completely calm for several tens of minutes when this indication was given. This area was located 200 meters northwest of the gendarmerie surrounding the basin and 500 meters from all the demonstrators. A recording of the telephone calls proves that the SAMU was prevented from intervening.

During this day, more than 200 people were injured, about forty of them seriously and two people were in a coma. On the day of the submission of this report, a young man is still in a coma with a life-threatening prognosis following head injuries caused by the firing of grenades by the police. Several complaints were lodged by the families of the injured. Four investigations were opened against gendarmes for violence allegedly committed during the demonstration against the mega-basins in Sainte-Soline.

The French human rights Defensor has taken up the case of two demonstrators who were seriously injured during the demonstration.

The case of “Les Soulèvements de la Terre”

On Tuesday, March 28, Interior Minister Gérald Darmanin announced the government's intention to dissolve the organization “Les Soulèvements de la Terre”. The latter is a collective that fights for the defense of life and the commons, for an agriculture that is more respectful of the environment and workers' rights, against land and water grabbing, against extractivism and its environmental consequences, and against the industrial agriculture model. Dissolution is the most severe sanction that can be taken against an association, since it means the end of its legal existence. "*It is a decision that violates the freedom of association, which is one of the fundamental principles recognized by the laws of the Republic,*" according to public law professor Antoine Claeys.

In October 2022, the Minister of the Interior had described this collective as "eco-terrorist". In an interview given to the Journal du Dimanche on April 1, 2023, the Minister of the Interior used the term "intellectual terrorism" with regard to environmental activists. The use by members of the government of the term "terrorism" about environmental activists, at a time when France has been hard hit by attacks, notably in November 2015, could be a way of

6 Idem

insidiously justifying the use of methods of repression and criminalization of social movements.

The Minister's public attacks against the “Ligue des droits de l’homme” (LDH)

On Wednesday 5 April, the Minister of the Interior threatened, during a hearing at the National Assembly, to question the public subsidies allocated to the "Ligue des droits de l’homme " (League of Human Rights). He criticized the role played by this association in the citizens' observatories that documented the law enforcement system in the Sainte-Soline area during the mobilizations against the "megabassines", on March 24-26, 2023. The LDH responded in depth to the Minister of the Interior in a press release dated 5 April 2023⁷.

LDH is an association for the defense of human rights founded in 1898 with the objective of observing, defending and promulgating human rights within the French Republic in all spheres of public life. The questioning of the role of this association is a new step in the criminalization of those who work for the respect of human rights and public liberties in France.

Violations of human rights

The development of these water grabbing projects in France, as well as the bloody repression of the demonstrations and the criminalization of rural organizations, are at the origin of various types of violations of international human rights instruments.

The violations are particularly concerning as they violate numerous rights enshrined in the International Covenant on Economic, Social and Cultural Rights and in the International Covenant of Civil and Political Rights, both ratified by France.

These water projects flagrantly violate the human right water, as recognized within the UN human rights system following the terms enshrined at the UN Water Conference in Mar del Plata in 1977, the General Comment No.15 of the Economic, Social and Cultural Rights Committee and 2010 General Assembly Resolution 64/292.

Finally, these projects violate the United Nations Declaration on the Rights of Peasants and other rural workers (UNDROP), adopted the 17th December 2018. In its article 21.2, the Declaration establishes the rights of peasants and other rural workers « to have access to water for personal and domestic use, for agriculture, fisheries, and livestock production, and for other water-related livelihoods, ensuring water conservation, restoration, and sustainable use. They have the right to equitable access to water and water management systems ». Today, due to the aforementioned situation, these rights are in jeopardy.

7 <https://www.ldh-france.org/retour-sur-les-propos-de-gerald-darmanin-au-sujet-de-la-ldh-audition-a-lassemblee-nationale-du-5-avril-2023/>

Judicial decisions concerning water mega-basins

The construction of these water mega-basins is the subject of numerous legal challenges. Several court decisions have already been rendered that annul the administrative authorizations granted for the construction of the basins, notably the decision of the Administrative Court of Appeal of Bordeaux on May 17, 2022⁸ and the decision of the Administrative Court of Poitiers on June 6, 2019⁹. Other legal decisions invalidate the authorization decisions to fill these water basins, notably with regard to the low level of the water tables.¹⁰

These legal decisions are motivated by the insufficient quality of the environmental impact studies that accompany the authorization of the works, as well as by the overestimation of storable volumes by certain projects¹¹.

Some mega-basins have unfortunately been built and are filled in spite of legal decisions. The case of the five Cram-Chaban ponds is a distressing example of non-compliance with court rulings: the promoters of this project are playing with a *fait accompli* to refuse to dismantle infrastructure that is deemed illegal.

The collective "Bassines non merci" and the Confédération paysanne have referred to the Petitions Committee of the European Parliament on the subject of the water basins. The answer of the European Commission in September 2021 was without appeal. For it, the construction and the operation of the mega-basins flout numerous European directives: the Water Framework Directive, the Habitats Directive, the Groundwater Protection Directive, the Nitrate Directive and the Birds Directive.

Conclusion

In the light of the above, we request the UN Special Procedures cited herein to urge the French government to:

- respect its international commitments with respect to human rights, and in particular regarding right to food, water, freedom of association and peaceful assembly;

8 <https://www.actu-environnement.com/media/pdf/news-39686-tribunal-appel-bordeaux-jugement-asa-roches.pdf>

9 <http://poitiers.tribunal-administratif.fr/A-savoir/Communiqués/Annulation-de-l-autorisation-de-creation-de-huit-reserves-de-substitution-d-eau-sur-le-sous-bassin-de-la-Clouere-bassin-du-Clain>

10 <https://bordeaux.cour-administrative-appel.fr/decisions-de-justice/dernieres-decisions/mega-bassines-la-cour-confirme-que-le-prelevement-d-1-6-million-de-metres-cubes-d-eau-pour-l-irrigation-d-exploitations-agricoles-en-charente-mar>

11 <https://www.lemondedudroit.fr/decryptages/86684-mega-bassines-projets-sont-ils-juridiquement-legitimes.html>

- put an end to the criminalization of protesters and respect of the freedom of association and peaceful assembly of all organizations;
- cease repressive actions perpetrated by governmental forces, and thus respect the right to life and physical integrity of demonstrators, human rights defenders, and in particular of peasants' organizations;
- create a national independent commission of inquiry to effectively investigate the human rights violations denounced herein;
- put a moratorium on these projects.

Finally, we urge the Special Rapporteurs to plan a mission in France, in order to investigate the impacts of these water mega-basins on human rights and the environment, as well as to investigate on policy brutality and repression against the demonstrations.