

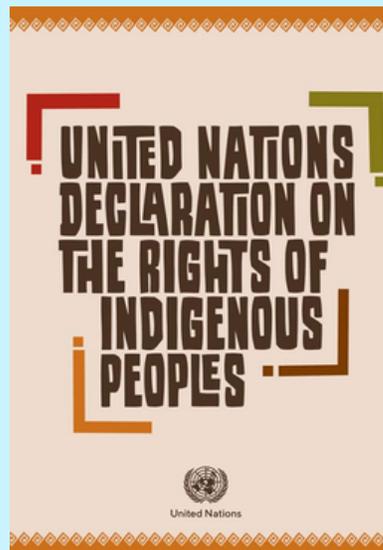
INDIGENOUS PEOPLES AND THE RIGHT TO WATER

What is the Right to Water?

- The right to water stems from the rights to an adequate standard of living, adequate food and housing, health, and life.[1] It is also an aspect of the Human Right to a Healthy Environment recently recognized by the UN General Assembly.[2]
- The UN Committee on Economic, Social and Cultural Rights describes water as “indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”[3] Adequate water must be available, accessible, of good quality,[4] sustainable,[5] and acceptable.[6]
- While personal and domestic uses take priority, water is “necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health)” and is “essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life).” [7] Water is necessary for agriculture, including “farming, fishing and livestock keeping.”[8]
- Non-consumptive uses of water are crucial to Indigenous communities, including its central role in a biological habitat, its spiritual value as a source of healing, and its aesthetic value.[9]
- The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) specifically recognizes, “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used. . . waters and coastal seas . . . and to uphold their responsibilities to future generations in this regard.”[10]



(photo by Caroline LaPorte, Anishinaabe, Descendant and Associate Judge, Little River Band of Ottawa Indians; Director, Indigenous Safe Housing Center, NIWRC)



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What are Violations of Indigenous Peoples' Right to Water?

Availability

- Due to significant climate issues and extractive industry activities impacting Indigenous lands, the availability of safe water has diminished.[11]

Accessibility

- Indigenous territories are often in disadvantaged areas with insufficient access to water and sanitation infrastructure and services.[12]
- Extraction and climate change have disrupted Indigenous sustainable water practices.[13] This has resulted in a lack of access to water in “customary and community-based water management systems.”[14]
- Due to water scarcity and contamination, Indigenous women may be forced to walk long distances to access water, increasing vulnerability to gender-based violence.[15]
- Indigenous Peoples are disproportionately represented within the extremely poor and often have difficulties accessing affordable water sources.[16]

Quality

- Many natural water sources on which Indigenous Peoples rely are contaminated with chemicals or other toxic pollutants.[17]

Decision-Making

- Indigenous Peoples are insufficiently consulted on policies and projects affecting the right to water and lack the opportunity to provide free, prior, and informed consent (FPIC) to developments.[18]
- While Indigenous women traditionally serve as caretakers of water and bear the burden of carrying water, they are often sidelined in water management decisions.[19]
- Indigenous Peoples serving as environmental human rights defenders experience violence and criminalization. [20]

Acceptability

- Indigenous Peoples' practices and knowledge are often disregarded when implementing safe water programs resulting in disinterest of these programs. [21] Moreover, these programs often fail to consider issues that specifically impact Indigenous Peoples.[22]

Sustainability

- Water is seen as an economic commodity rather than a common good resulting in disruption of Indigenous sustainable, cultural, and spiritual practices.[23]

What are Lessons from Indigenous Peoples regarding Water?

“We, the Indigenous Peoples from all part of the World . . . recognize, honor, and respect water as sacred and sustains all life. Our traditional knowledge, laws, and ways of life teach us to be responsible in caring for this sacred gift that connects all life.”

- Indigenous Peoples Kyoto Water Declaration states [24]

- As the Special Rapporteur on the right to water and sanitation sets out, many Indigenous Peoples believe that “water belongs to everyone and should remain available to all as a common good.”[25]
- For many Indigenous populations, “water is life itself” and “is considered to be part of an interconnected whole that encompasses other natural resources and living beings, so that its management is based on an integrated territorial vision and on deep respect and care for rivers, springs, lakes and wetlands.”[26]
- Indigenous Peoples have created “participatory, holistic, and sustainable community water management systems, providing water for drinking, spiritual ceremonies, cooking, washing, livestock and farming.”[27]

What Should States Do?

- Incorporate Indigenous lessons regarding the sustainable management of aquatic ecosystems and the democratic governance of water and sanitation.[28]
- Guarantee “adequate access of Indigenous women and girls to sufficient food, water and seeds, and acknowledge their contribution to food production, sovereignty and sustainable development.”[29]
- Protect “customary and community-based water management systems.”[30]
- Protect environmental human rights defenders from threats, violence, and criminalization.[31]
- UNDRIP calls on states to “**consult and cooperate in good faith** with the Indigenous Peoples concerned through their own representative institutions in order to obtain their **free and informed consent prior to the approval of any project affecting** their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of . . . **water**.”[32]
 - Governments need to identify and consistently implement requirements for meaningful consultation with Indigenous groups.[33]
 - Indigenous Peoples must have the opportunity to reject to any development that has the potential to affect their water sources. It is not enough to consult with Indigenous groups. FPIC entails the ability to decline a development, and Indigenous groups are best able to weigh the costs and benefits to their communities[34].



Endnotes

- [1]Comm. on Econ., Soc., and Cultural Rts., General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), ¶ 3, U.N. Doc. CESCR/C/12/2002/11 (Jan. 23, 2003) [hereinafter CESCR General Comment No. 15].
- [2]UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment, INT'L INSTITUTE FOR SUSTAINABLE DEVELOPMENT, (Aug. 3, 2022), [https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/#:~:text=The%20UN%20General%20Assembly%20\(UNGA,and%20sustainable%20environment%20for%20all](https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/#:~:text=The%20UN%20General%20Assembly%20(UNGA,and%20sustainable%20environment%20for%20all).
- [3]CESCR General Comment No. 15, supra note 1, ¶ 1.
- [4]CESCR General Comment No. 15, supra note 1, ¶ 12.
- [5]CESCR General Comment No. 15, supra note 1, ¶ 11.
- [6]Hum. Rts. Council, Report of the Special Rapporteur on the human rights to safe drinking water and sanitation, Human rights to safe drinking water and sanitation of indigenous peoples: state of affairs and lessons from ancestral cultures, ¶ 45, U.N. Doc. A/HRC/51/24 (2022) [hereinafter Special Rapporteur on the human rights to safe drinking water and sanitation].
- [7]CESCR General Comment No. 15, supra note 1, ¶ 6.
- [8]United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, G.A. Res. 73/16, U.N. Doc. A/RES/73/16 (Dec. 17, 2018) [hereinafter UNDROP].
- [9]Julie Nania & Julia Guarino, Restoring Sacred Waters: A Guide to Protecting Tribal Non-Consumptive Water Uses in the Colorado River Basin (Getches-Wilkinson Ctr. for Natural Res., Energy, and the Env't, Univ. of Colo. Law Sch. 2014); Interview with Ethan Schuth, Water Resources Manager, Choctaw Nation of Oklahoma (September 26, 2020).
- [10]United Nations Declaration on the Rights of Indigenous Peoples, Art. 25, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), adopted Sept. 13, 2007 [hereinafter UNDRIP].
- [11]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 10, ¶ 35.
- [12]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 37.
- [13]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 35.
- [14]UNDROP, supra note 8, art. 21.
- [15]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 56.
- [16]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 42.
- [17]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 41. See also UNDROP, supra note 8, art. 21.
- [18]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 21.
- [19]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 45.
- [20]*Id.*
- [21]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 52.
- [22]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶¶ 3, 57.
- [23]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶¶ 14, 73.
- [24]Declaration from Indigenous Peoples Kyoto Water Declaration, Third World Water Forum (Mar. 2003), https://www.activeremedy.org/wp-content/uploads/2014/10/indigenous_peoples_kyoto_water_declaration_2003.pdf.
- [25]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 23.
- [26]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 19. See also Indigenous Peoples Kyoto Water Declaration, supra note 15.
- [27]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 23.
- [28]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 2.
- [29]Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 39: On the rights of Indigenous women and girls, ¶ 58, U.N. Doc. CEDAW/C/GC/39 (Oct. 31, 2022) [hereinafter CEDAW Comm. General Comment No. 39].
- [30]UNDROP, supra note 8, art. 21.
- [31]UNDRIP, art. 32(2). See also Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 10, ¶¶ 8, 25.
- [32]Hum. Rts. Council, End of Mission Statement by the UN Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to the United States of America, ¶ 10 (Mar. 3, 2017).
- [33]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 9.
- [34]Special Rapporteur on the human rights to safe drinking water and sanitation, supra note 5, ¶ 84(i).