

State of affairs and lessons from ancestral cultures

Report of the Special Rapporteur on the human rights to safe drinking water and sanitation

Pedro Arrojo Agudo



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Summary

Indigenous peoples, who have endured centuries of colonization, violence and domination, often relegated to live in marginal territories, in harsh conditions, offer us valuable ways to address the global water crisis through their traditional practices, both in terms of the sustainable management of aquatic ecosystems and the democratic governance of safe drinking water and sanitation.

Today, however, mining, the construction of immense hydroelectric dams, the development of large agricultural and livestock farms, massive land- and water-grabbing processes and the development of large tourism projects in their territories are damaging and contaminating their water sources and putting their livelihoods at risk.

Governments have the obligation to guarantee indigenous peoples their rights to self-determination, to free and well-informed consultations and to consent prior to any intervention in their territories: States must put in place the necessary means to ensure that indigenous peoples enjoy their human rights to safe drinking water and sanitation, inclusive of an intercultural dialogue that is respectful of their ancestral worldviews, knowledge and practices.

The friendly version of the report is taken by the official report A/HRC/51/24 by the Special Rapporteur on the human rights to safe drinking water and sanitation, issued in consultation with indigenous peoples and organizations, Governments and other stakeholders.

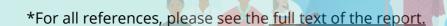


I. Introduction

The present report focuses on indigenous peoples living in their own territories and on indigenous peoples who have been displaced and resettled in rural areas. It does not assess the situation of indigenous peoples who have migrated and live outside their communities.

In recent years indigenous peoples have achieved international recognition of their right to self-determination and to own and use their territories and resources, including waters and aquatic ecosystems. However, they face many problems and challenges in realizing these rights. In some States, the lack of recognition of the existence of indigenous peoples as distinctive peoples jeopardizes their human rights. When formal recognition exists, it does not necessarily translate into respect for their worldviews nor effective control over their territories and water sources. When they defend these rights and in particular their right to free, prior and informed consent in their territories, they are often criminalised and suffer threats, violence and even the killing of their leaders and human rights defenders.

Throughout the report, the Special Rapporteur not only identifies the risks and violations of the human rights to safe drinking water and sanitation suffered by indigenous peoples, but also the lessons they offer from their worldviews, knowledge and practices in sustainable and community-based water management.







II. Water management from the worldviews and **knowledge of indigenous peoples**



Who are indigenous peoples and where do they live?

- Indigenous peoples been subjected to colonization and violent domination, entailing cultural extermination and forced integration into mainstream societies. As a result. many indigenous peoples have been displaced from their territories to areas that are often difficult to access, with fewer resources and harsh living conditions, where States do not, or are unwilling to, provide public services, particularly drinking water sanitation.
- There is no single universally agreed definition of "indigenous peoples" and the term remains contested in Asia and Africa.

The world population of Indigenous people is estimated at:

representing the of the world population, who live in more than countries across sociocultural regions.

Milions individuals,

They have preserved of the remaining terrestrial biodiversity.

- Water, territory and respect for nature from the worldviews of indigenous peoples
- The term indigenous peoples embodies their beliefs, languages, cultures and livelihoods linked to their traditional territories and, in particular to their aquatic ecosystems.
- To ensure their survival, dignity and wellbeing and to exercise their inherent rights, they must own, conserve and manage their territories, lands and resources.



Water is a fundamental gift of Mother Earth & is life itself.

The Indigenous Peoples Kyoto Water Declaration, presented at the third World Water Forum in Kyoto (Japan, 2003) conceives of water as a fundamental gift of Mother Earth and affirms responsibility to transgenerational stewardship.

In the traditions of many indigenous peoples, water is life itself.

Water is not considered or managed as a resource but is considered to be part of an interconnected whole. Its management is based on an integrated territorial vision and on deep respect and care for rivers, springs, lakes and wetlands.

In this report, the Special Rapporteur expresses his concern about the approach that treats water as a mere resource, which can be parceled, appropriated and managed as a mere economic good.

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In line with indigenous peoples views the Special Rapporteur advocates moving from this resource approach to an ecosystem approach to promote the sustainable management of the water cycle.

Self-determination, community-based water management and ancestral knowledge of indigenous peoples

- In the worldviews of indigenous peoples, water belongs to everyone and should remain available to all, as a common good. They have developed participatory, holistic, and sustainable community water management systems for centuries.
- The Special Rapporteur observes that mainstream approaches to water management often dismiss indigenous peoples' water knowledge and management systems as unscientific or folkloric, disregarding the fact that their knowledge is based on empirical experience, resulting from living in their territories from generation to generation.

Examples of some indigenous peoples's knowledge:

- The ancestral system of Waru Waru or camellones used in the Andean region is a way to manage soil and water for agricultural purposes through the use of temporary flooding.
- The Konso people in southwest Ethiopia are considered to be world leaders in soil conservation practices by terracing hillsides, direct rainfall runoff, and build sediment traps where they store water in the rainy season.
- The Indigenous Observation Network is the largest indigenous water quality network in the world and develops community monitoring programmes to protect water and lands in Canada and the United States".

Indigenous peoples have long traditions of self-determination, decision-making and institutional autonomy, as recognized in the **United Nations Declaration on the Rights of Indigenous Peoples**.

Fulfilling the right to self-determination of indigenous peoples in the management of their territories must include their effective participation in the management of large aquatic ecosystems, such as river basins or large aquifers, that go beyond the territorial limits of indigenous peoples' territories, ensuring their representation in decision-making bodies on an equal footing with the non-indigenous populations involved.

Self-determination
of Indigenous
people in decisionmaking process &
effective
participation



For instance, in New Zealand, the Government and the Ngāti Maniapoto Māori have secured co-governance agreements to co-manage the Waipā River



Indigenous women and their relationship with water





In many indigenous cultures, the role of women as carriers and stewards of water is linked to their role as life-givers.

They have a sacred mission to care for water for present and future generations.

Indigenous women and girls not only ensure the availability of quality water. They play an essential role in spiritual ceremonies, protect water bodies from pollution, care for the forests, plants and herbs to maintain the ability of the soil to absorb and retain water.

Art. 22
United Nations
Declaration on the
Rights of Indigenous
Peoples.

Indigenous women have been prominent in the Working Group on Indigenous Populations and actively participated in the formulation of the United Nations Declaration on the Rights of Indigenous Peoples.

Women's leadership in advocating for the human rights to safe drinking water and sanitation is growing worldwide

III. State of realization of the human rights to safe drinking water and sanitation for indigenous peoples

Human rights to safe drinking water and sanitation in connection with indigenous peoples' rights

The human rights to safe drinking water and sanitation have been recognized in:

- General Assembly resolution 64/292.
- Human Rights Council resolution 15/9.
- General comment No. 15 of the Committee on Economic, Social and Cultural Rights.
- General Assembly resolution 70/169.
- Human Right Council resolution 33/10.

Water and sanitation are distinct but interrelated human rights

 Article 25 of the United Nations Declaration on the Rights of Indigenous Peoples:

Indigenous peoples have the right to own, occupy and use lands, resources and waters in their territories, with legal recognition and due respect for their customs, traditions and land tenure systems.

 Articles 7, 13, 15.1 and 32, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) recognized:

the rights of indigenous peoples to access natural resources, including water, and to decide their priorities in relation to water and territories.



B Availability



Until some decades ago, the availability of quality water in many indigenous peoples' territories was preserved on the basis of their sustainable practices.



However, the impact of **extractivism** on natural resources worldwide, jointly with **climate change**, has reversed this trend and many indigenous peoples no longer have access to safe drinking water.

C Accessibility



The fact that indigenous peoples' territories are often located in the most disadvantaged areas combined with the lack of the necessary investment, means that they do not have adequate infrastructure to access services.

Water is usually taken directly from rivers, ponds, streams, wells or springs, many of which are polluted, requiring women to seek out distant sources that do not meet adequate accessibility conditions.

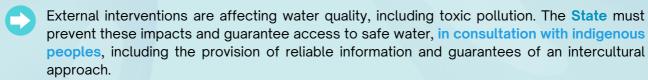
In terms of access to sanitation, many indigenous peoples still defecate in the open or use pit latrines, notwithstanding the human right to sanitation.

There is a persistent failure by States to provide infrastructure, to maintain water and sanitation services, particularly with regard to indigenous peoples forcibly displaced from their territories.



Quality of drinking water





Organic or biological contamination can be treated, but toxic contamination can neither be purified by the usual means nor solved by chlorination. Pesticides and toxic discharges in addition to compromising the drinkability of water, have serious consequences, for forestry, agriculture, livestock and fisheries.



E Affordability

States must guarantee access to safe water in consultation with indigenous peoples.



Available data estimates that indigenous peoples represent **a high percentage** of the extremely poor, particularly the ones living in extreme poverty in rural areas.

They often have difficulty in paying for water and sanitation or providing the necessary investment to ensure such services.



Indigenous peoples affirmed that water and sanitation programmes and infrastructures can fail due to a lack of funding, monitoring and maintenance.

Due to water scarcity, lack of infrastructure and/or unsafe water quality in their communities, indigenous peoples are facing many struggles.

Moreover, State' programmes are usually limited to a certain period, with no sustainable strategy, and finish when funding is exhausted.

Some Governments provide subsidies to make water affordable, but such programmes are often challenging for indigenous peoples to access.

F Acceptability

The implementation of programmes related to safe drinking water and sanitation often fail due to the lack of an intercultural approach and respect for indigenous peoples' worldviews, practices, knowledge and traditional water management systems.



It is essential to include intercultural dialogue in discussions on all water and sanitation projects.





The role of the courts in securing indigenous peoples' control over their aquatic ecosystems and ensuring their drinking water supply.

Indigenous peoples often resort to strategic litigation in national and international courts or to indigenous laws and institutions to realize their rights.

Some notables but non exhaustive examples:

- In North America, the Yinka Dene' Uza'hné (hereditary chiefs) of the Nadleh Wut'en and Stellat'en First Nation developed its own water management policy and successfully advocated for their implementation in their traditional territories.
- The Government of Canada reached a settlement with First Nations communities on prolonged drinking-water advisories on their reserves across the country.
- The Inter-American Court of Human Rights has issued landmark decisions favouring the Yakye Axa, Sawhoyamaxa and Xákmok kásek indigenous peoples, ordering the Government of Paraguay to provide a sufficient supply of drinking water and to build latrines.
- The Court ruled against the **Government of Ecuador** for having granted an oil exploration and exploitation licence without the required prior consultation with the **Kichwa** indigenous people of **Sarayaku**.

The Special Rapporteur acknowledges the importance of recognizing legal personhood by courts, governments and parliaments to rivers as a way of preserving aquatic ecosystems in indigenous peoples' territories, ensuring their access to safe drinking water.



IV. Constraints and failures in the fulfilment of the human rights to safe drinking water and sanitation of indigenous peoples



Lack of recognition of the existence of indigenous peoples and realization of their collective rights

The first barrier for indigenous peoples arises in states that do not recognize the existence of indigenous peoples within their national borders, despite the existing solid international legal framework.

The absence of adequate legal recognition allows States to take actions that disregard the practices and knowledge of indigenous peoples, including water management.

Lack of respect of the right to free, prior and informed consent and participation in water and sanitation decision-making processes

Laws, regulations and programmes on drinking water and sanitation are embedded in dominant Euro-Western legal concepts and rarely adopt an indigenous approach that addresses their holistic relationship to water, land and natural.

In that context, indigenous peoples are not allowed to challenge laws and policies or projects that seriously affect the safety of drinking water and sanitation.





During the consultations for the present report, indigenous peoples argued that they are barely consulted on policies and projects affecting their rights to safe drinking water and sanitation.

- Indigenous peoples do not trust Governments and others when participating in consultations because of:
 - A lack of transparency
 - The reluctance of Governments, companies and organizations to share reliable and complete information.
 - There is no translation provided in the Indigenous people's languages.
 - The right to free, prior and informed consent.

The SR is concerned about the processes of privatization of rural water and sanitation management and the negotiations of governments with transnational corporations in some countries, without any consultation with the affected communities and in particular with indigenous peoples.

C Specific challenges for indigenous women



Like non-indigenous women, indigenous women face multiple forms of discrimination.



It is estimated that they dedicate 200 million hours annually, carrying an estimated 100 litres of water every day, taking time away from school, work or leisure, and suffering risks such as sexual violence.

For instance, in the case of Maasai women who walk 5 kilometers a day to fetch water, they are also at risk of being attacked by wild animals.

Due to growing water scarcity and contamination in the nearest sources, indigenous women are forced to walk longer distances to seek drinkable water.



The vast majority of water-related laws and programmes fail to embody indigenous women's traditional knowledge and the cultural and spiritual values that they cultivate with regard to water and do not guarantee their effective participation.





D Lack of data

The Special Rapporteur observes that there is great difficulty in finding data on the access of indigenous peoples to safe drinking water and sanitation.



This leads to their invisibility, and makes it more difficult to understand and address their problems, and it affects their active participation in consultations and policies decision processes.



V. Challenges faced by indigenous peoples in the context of the global water crisis



A Climate change

The Human Rights Council has asserted that the adverse effects of climate change have a disproportionate impact on populations in situations of vulnerability, such as indigenous peoples, due to their direct dependence on aquatic ecosystems the lack of protection of their self-governance rights and adequate infrastructure.

Climate change, has affected the availability of water resources, including drinking water for human consumption and water for basic needs for irrigation or livestock.



Factors that exposes indigenous peoples to the dangers of climate change are:

- Their geographical location in areas that are particularly susceptible to its effects.
- Their vulnerability to drought, flooding and other risks especially when their aquatic ecosystems are degraded or affected by megaprojects or aggressive developments.

Unfortunately, the richness of indigenous peoples' knowledge and their evolution to adapt to climate change in their territories are often ignored, marginalising them from planning and strategic decision-making in climate change prevention and adaptation, which often increases the risks they face in water and sanitation.

B Land and water grabbing





The lands of indigenous people are also very often exposed to land grabbing for large-scale farming, i.e. expropriated, sold or leased, including water rights attached to these lands, without even prior, free and well informed consent of the indigenous peoples concerned, under the pretext that their territories or tenure are not legally registered.

It is estimated that the crops of the total land grabbing globally imply a yearly consumption of about 450,000 cubic hectometres of water.



















Protected and conservation areas and the human rights to water and sanitation of indigenous peoples



While the establishment of protected areas and national parks is aimed at safeguarding biodiversity and ecosystems, their establishment in indigenous territories, without prior, free and well informed consent of the affected indigenous peoples, has sometimes had adverse effects on their human rights to safe drinking water and sanitation.

Indigenous peoples may lose their lands, resources and sacred sites, in fact preserved by them for centuries, under agreements on environmental conservation that ignore their right to self-determination*.

Megaprojects and extractivism





Mining, generally open-pit mining, destroys vast territories, including wetlands, underground aquifers, springs and rivers. It also creates unacceptable risks of toxic contamination, not only of indigenous peoples' drinking water supplies on site, but also of downstream populations, often occurring in river headwaters.



Oil and gas exploitation often entails not only the physical occupation of indigenous territories, but also risks of water pollution due to leaks or the production processes themselves.



The construction of **large dams** often floods populated areas, in this case by indigenous peoples, as well as the areas in which they produce their livelihoods, often involving their forced displacement to territories and in conditions that disrupt their ways of life and often even their human rights to safe drinking water and sanitation.

Some examples:

- In Brazil, illegal mining activities and the associated mercury pollution and deforestation have threatened access to safe drinking water for the indigenous Munduruku people in the Tapajós River basin.
- In the Philippines, the Didipio River, contaminated by heavy metals, has affected indigenous peoples' access to safe drinking water and water for irrigation.
- In the United States, a Lakota reservation in South Dakota has reported mercury levels in the public water supply eight times above the accepted limit as the result of mining activities.



Criminalization, attacks and the killing of indigenous peoples



The opposition of indigenous peoples to mega-projects or legislation that seriously affect their territories and drinking water supplies often leads to criminalisation and repression of these protest movements, including threats, violence and even assassinations of indigenous leaders.

The Special Rapporteur on the rights of indigenous peoples has expressed concern about the alarming growth of criminal acts, including violence against and the killing of indigenous peoples defending their natural resources and territories worldwide.

- In Honduras, in 2016, the indigenous woman defender of water and rivers, Berta Cáceres, was murdered for opposing the Agua Zarca dam.
- In Colombia, many indigenous leaders have been murdered, including Kimy Pernía of the Embera indigenous people, and threats against environmental human rights defenders are on the rise.

Some examples:

- In Brazil, measures adopted to address the coronavirus disease (COVID-19)
 pandemic that promote racial inequality and degrade indigenous rights have
 prompted the Inter-American Commission on Human Rights to call for specific
 protection measures for the Yanomami people.
- The killings and excessive use of force against indigenous peoples in the provinces of Papua and West Papua, Indonesia, have resulted in the displacement of over 5,000 indigenous Papuans, who face a lack of access to food, water and sanitation.

F Impact on health



The degradation of the water bodies from which indigenous peoples draw their water, often with toxic contamination, together with the impacts of climate change and the lack of investment in necessary infrastructure, have disproportionate impacts on the health of indigenous peoples, especially women and children:

 For the Inuit people, limited access to drinking water and rudimentary sanitation systems have contributed to a higher prevalence of infectious diseases and illnesses.

Some examples:

- In Brazil, about a quarter of indigenous children are at a greater risk of being affected by diarrhoea due to the unavailability of safe drinking water and adequate sanitation facilities.
- For indigenous populations the destruction of their sacred rivers, lakes and springs and drinking water sources can induce depression and forms of solastalgia, post-traumatic stress disorder and feelings of loss of individual and collective identity and heritage.

The implementation of potabilisation processes, by chlorination or other means, requires information processes and respectful intercultural dialogue between states and indigenous peoples, in order to ensure the most appropriate strategies to guarantee the potability of the water used.

VI. Conclusions

- The Special Rapporteur observes with deep concern that indigenous peoples, as a result of multiple factors arising from colonization and decolonization processes, such as systemic discrimination, marginalization, expropriation and displacement, face increased barriers to their access to safe drinking water and sanitation regardless of their geographic location.
- The majority of representatives of indigenous peoples and indigenous organizations reported on the lack of infrastructure, inadequate or underfunding and lack of resources to support water management in indigenous peoples' territories.
- States must legally recognize the status of indigenous peoples and their rights to land, territory and resources, including aquatic ecosystems, as a precondition to ensuring the realization of their human rights to safe drinking water and sanitation.
- External factors, such as lack of recognition of their rights, the development of large-scale projects, lack of consultation and participation in decision-making, land- and water-grabbing processes, climate change and even the criminalization of the claims of indigenous peoples hamper their rights to safe drinking water and sanitation worldwide.
- Indigenous peoples are willing to exchange their knowledge and experience of water management practices and to work collectively with States and other stakeholders to provide access to safe drinking water and sanitation. However, collaborative dialogue and efforts must be carried out with mutual respect and must acknowledge the authority.
- The worldviews of indigenous peoples, including in the management of aquatic ecosystems based on respect for nature, and their concept of water as a common good involving the community management of drinking water and sanitation, offer valuable lessons in the sustainable management of aquatic ecosystems and the democratic governance of drinking water and sanitation.

It is important to reminder some examples as the:

• The intersectional water management systems of indigenous peoples in Totonicapán, Sololá and Chimaltenango in Guatemala have similar decision-making mechanisms organized through community assemblies: they share a vision of water as a sacred living being, including the people and forests in their territories.



• The Borana people, in Ethiopia, have a traditional system for the community management of water, known as Gedaa, based on a local governance system of well councils.

As pastoralist people who move with their livestock, they have the right to obtain water from the nearest well by requesting permission from the relevant well council. Neighbouring communities work together to maintain their wells and approach the central Gedaa if a problem cannot be solved at the local level.

- In Malaysia, the state of Sabah recognizes the tagal system, a traditional community water management practice used by indigenous peoples for generations, based on conserving and protecting waterways and water sources in their territories to ensure clean and uncontaminated water.
- Indigenous peoples, African descendants and other non-indigenous persons in the two Caribbean coast autonomous regions of Nicaragua have joint autonomy over the management of water.
 Water and sanitation committees promote equal governance over such services the between indigenous peoples and non-indigenous person.
- Indigenous women have a responsibility to protect and care for water for present and future generations.

Lessons from indigenous visions and practices to address the global water crisis

Lessons in sustainable ecosystem management

The holistic vision of rivers, springs, lakes and wetlands, integrated in their territories, and the sacred respect for water and aquatic ecosystems, are an expression of the ecosystemic vision that today is necessary to develop a sustainable management of river basins and aquifers in the current climate change perspectives.



Lessons in democratic governance of water and sanitation

Understanding water as a common good and not as a commodity, and therefore managing water and sanitation from community systems, offers multiple and valuable lessons on how to promote democratic and participatory governance of water and sanitation services, leaving no one behind, as human rights.



These lessons should be recognized and valued as ways to resolve the challenges facing humanity in the present global water crisis.

VII. Recommendations

- In line with the United Nations Declaration on the Rights of Indigenous Peoples and the international human rights standards, the Special Rapporteur proposes the following framework to ensure the rights of indigenous peoples to safe drinking water and sanitation and recommends that all States implement it by:
 - Recognizing in national legislation the existence of indigenous peoples within their borders and their collective rights to lands, territories and natural resources, including aquatic ecosystems.
 - Ensuring, in law, the right of indigenous peoples to consultation, including their right to free, prior and informed consent.
 - Recognizing and supporting indigenous peoples' concept of water as a common good.
 - Recognizing in national legislation the existence of indigenous peoples within their borders and their collective rights to lands, territories and natural resources, including aquatic ecosystems.
 - Ensuring the effective participation of indigenous peoples in decision-making processes related to safe drinking water and sanitation at the local, national and international levels.
 - Guarantee equal participation of indigenous peoples and non-indigenous persons: equal participation must also be guaranteed when decisions are taken on water sources, drinking water and sanitation that affect indigenous peoples.
 - Prioritizing indigenous peoples' territories in order to address the existing discrimination gap in water and sanitation.
 - Adopting policies, guidelines and protocols to effectively protect environmental human rights defenders in indigenous territories and ensuring access to justice and redress for indigenous peoples, particularly regarding their human rights to safe drinking water and sanitation.
 - Bringing possible violations of indigenous peoples' rights before the courts in the countries of origin of companies involved, in addition to national courts.
 - Promoting and supporting indigenous peoples' sovereignty through the collection and storage of data on access to safe drinking water and sanitation and by incorporating such information into official statistics.
 - The Special Rapporteur recommends that United Nations agencies, intergovernmental development organizations and international financial institutions:
 - Respect, support and monitor the effective exercise of indigenous peoples' rights to participation and to free, prior and informed consent in all programmes and projects related to safe drinking water and sanitation.
 - Support, together with Governments, initiatives driven by indigenous peoples on documenting traditional knowledge and water management practices.

VII. Recommendations



The Special Rapporteur on the rights of indigenous peoples endorses the present report and its recommendations.

