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Programme



Indigenous peoples and local communities' water rights, international law and water security

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Outline

- I. How are indigenous peoples' rights included in the Sustainable Development Goals (SDGs)?
- II. How are the rights of indigenous peoples protected under international law?
- III. How can we strengthen the protection of indigenous rights in the management of water resources?

Section 1

How indigenous peoples' rights are included in the SDGs?



- While **indigenous peoples** account for about **5%** of the world's population, estimated over 370 million persons (UN Permanent Forum on Indigenous Issues (UNPFII)), they constitute approximately **15% of the global poor**.
- UNPFII considers that **73 out of the 169 SDGs' targets** can be linked to provisions in the UN Declaration on the Rights of Indigenous Peoples (**UNDRIP**) and the International Labor Organization (ILO) Indigenous and Tribal Peoples **Convention No. 169**.

- Indigenous peoples' knowledge systems and traditions have often maintained a **sustainable balance with their living environment**, including its water, for thousands of years. Recognizing the **experience of indigenous peoples in sustainable living** with and maintaining water
- Natural systems can deliver **keys to implementing vital practices** and policies towards sustainable development

Food security

SDG 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture

Target 2.3 By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, **indigenous peoples**, family farmers, pastoralists and fishers, including through **secure and equal access to land**, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment

Quality education

SDG 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all (gender equality)

- Target 4.5: By 2030, eliminate gender disparities in education and ensure **equal access to all levels of education** and vocational training for the vulnerable, including persons with disabilities, **indigenous peoples** and children in vulnerable situations

Indicators for the implementation of SDGs

2.3.2 Average income of small-scale food producers, by sex and **indigenous status**

4.5.1 Parity indices for **indigenous peoples** for all education indicators

➔ Human rights, equality and non-discrimination

➔ Full respect of international law

Transforming our world: the 2030 Agenda for Sustainable Development” (Agenda 2030), Resolution adopted by the UN General Assembly, 25 September 2015, paras. 8, 10, 18, 67.

Water and Sanitation

SDG 6: “Ensure availability and sustainable management of water and sanitation for all”

Targets referring to “all” or “the needs of [...] those in vulnerable situations, relating to the **living conditions** of Indigenous peoples

6.1 on **universal and equitable access** to safe and affordable drinking water;

6.2 on accessing **adequate and equitable sanitation** and hygiene;

6.4 on addressing **water scarcity** and substantially reducing the number of people suffering from water scarcity;

6.6 on protecting and restoring **water-related ecosystems**, including mountains, forests, wetlands, rivers, aquifers and lakes.

6.b on supporting and strengthening the participation of local communities in improving water and sanitation management

Indicators for the implementation of SDGs

6.1.1 Proportion of population using safely managed drinking water services

6.2.1 Proportion of population using safely managed sanitation services, including a hand-washing facility with soap and water

6.6.1 Change in the extent of water-related ecosystems over time

6.b.1 Proportion of local administrative units with established and operational policies and procedures for participation of local communities in water and sanitation management



Life in dignity



“Leaving no one behind” – but no mention of Indigenous peoples

Section 2

How are the rights of indigenous peoples protected under international law?



Relevant instruments of international law

- International Covenant on Civil and Political Rights (1966) (168 Parties); International Covenant on Economic, Social and Political Rights (1966) (164 Parties)
- ILO Convention No.169 (1989) : specifically dealing with the rights of indigenous and tribal peoples (20 ratifications) (ILO member States 185)
- Regional human rights instruments
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the UN General Assembly in 2007

- “States shall 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 mineral, **water** or other resources (Article 32 of the UNDRIP)
- “The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote **respect for and full application of the provisions of this Declaration** and follow up the effectiveness of this Declaration” (Article 42 of the UNDRIP)

Main points of the protection of indigenous peoples' rights under international law

- Property rights linked to the survival of indigenous communities
- The right to land includes the right of access to water resources
- Obligation to consult and obtain the consent of indigenous peoples

Section 3

How can we strengthen the protection of indigenous rights in the management of water resources?



Linkages between human rights law and international water law

- Principle of equitable and reasonable utilization: protection of water needs

Art. 10.2 of the UN Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention); Art.5.2 of the 2008 *International Law Commission's (ILC) Draft Articles on the Law of Transboundary Aquifers* (ILC Draft Articles)

- Obligation not to cause a significant damage: protection of the environment

Art. 7 of the UN Watercourses Convention; Art. 6 of the ILC Draft Articles

Meaning of water needs

1994 ILC Memorandum of Understanding (UN Watercourses Convention)

- Priority of utilization for satisfaction of vital human water needs is defined as “sufficient water to sustain human life, including both drinking water and water required for the production of food in order to prevent starvation”

2004 International Law Association – Berlin Rules on Water Resources

- Vital human needs means “waters used for immediate human survival, including drinking, cooking, and sanitary needs, as well as water needed for the immediate sustenance of a household”

Water needs and the right to water

- 1999 Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes
- Charters of the Senegal River (2002), Niger River (2008) and Chad Lake (2012)

General Comment No. 15 on the Right to Water

“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use”

- Availability : sufficient and continuous water
- Quality : safe water
- Accessibility : indiscriminate and affordable

UN Committee on Economic, Social and Cultural Rights, General Comment on the Rights to Water, 2002, par. 12

Implications of the right to water

- **Obligation to respect:** it is strictly connected with the principle of non-discrimination
- **Obligation to protect:** requires State parties to prevent third parties from interfering in any way with the enjoyment of human rights
- **Obligation to fulfil:** adoption of domestic legislation for the full realization of human rights

Final remarks

- ➔ SDGs refer to indigenous peoples. Are the indicators sufficient?
- ➔ Human rights law protects indigenous rights including the right to water. How can we strengthen this right?
- ➔ Need of a holistic approach between human rights law and international water law

Thanks!

Platform for International Water Law

www.unige.ch/droit/eau

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