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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Human rights to safe drinking water and sanitation of
indigenous peoples: 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***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.



I. Introduction

1. Indigenous peoples have preserved much of the existing biodiversity and aquatic ecosystems and the quality of their waters in their ancestral territories for their own benefit as well as that of society at large. Moreover, their concept of water as a common good, available to all but not owned by anyone, offers a valuable example of community-based management of safe drinking water and sanitation.
2. Indigenous peoples can teach us lessons about how to tackle the global water crisis, both in terms of the sustainable management of aquatic ecosystems and the democratic governance of safe drinking water and sanitation.
3. Indigenous women have traditionally occupied the role of water caretakers, including rites and spiritual practices. Nevertheless, despite bearing the burden of carrying water for consumption, domestic use and sanitation, they are often sidelined in decision-making.
4. 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.
5. 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 the worldviews of indigenous peoples nor effective control over their water sources.
6. As a consequence, land and water grabbing are ongoing in the territories of indigenous peoples, including through the construction of large hydroelectric dams and the growth of agribusiness, mining operations, deforestation and tourism developments, which ignore the rights of indigenous peoples and damage their sources of water, often with toxins.
7. Increasingly, there are cases of the criminalization of indigenous leaders that oppose such projects, often accompanied by threats, violence and the killing of indigenous leaders and environmental human rights defenders.
8. In order to guarantee compliance with the rights of indigenous peoples and effective control over their territories, their right to free, prior and informed consent should be implemented before any action that affects them, including actions that affect their water and aquatic ecosystems.
9. Enforcing this right is an obligation of all Governments, which must also effectively guarantee the right of indigenous peoples to oppose projects, the security of human rights defenders and leaders and adequate access to justice, remedy and compensation.
10. The right to self-determination also implies that indigenous peoples participate as equals with non-indigenous persons in the management of basins outside their territories that affect their water sources and in the planning and implementation of actions on climate change.
11. 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.
12. Following the methodology of the sociologist Johan Galtung, inspired by health sciences, diagnosis, prognosis and treatment,¹ the Special Rapporteur identifies: (a) the risks and violations of the human rights to safe drinking water and sanitation of indigenous peoples; and (b) the lessons that indigenous peoples have to offer from their worldviews, knowledge and practices in community-based water management.
13. In the preparation of the present thematic report, the Special Rapporteur consulted indigenous peoples and organizations, Governments and other stakeholders.

¹ J. Galtung, C.G. Jacobsen and K.F. Brand-Jacobson, *Searching for Peace: The Road to TRANSCEND* (London, Pluto Press, 2002).

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

A. Who are indigenous peoples and where do they live?

14. Indigenous peoples have 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 and sanitation.

15. The Special Rapporteur acknowledges that there is no single universally agreed definition of indigenous peoples and that the use of the term “indigenous peoples” remains contested in Asia and Africa.² In some countries, indigenous peoples are called, inter alia, tribal peoples, hill tribes, scheduled tribes, *Adivasis*, *Janajatis*, hunter-gatherers, pastoralists, ethnic, vulnerable, marginalized or minority groups, First Nations/peoples, aboriginals and natives. In this regard, in line with the United Nations Declaration on the Rights of Indigenous Peoples, the scope of the report is based on the self-identification of indigenous peoples.

16. The world population of indigenous peoples, estimated at 476 million individuals, representing 6.2 per cent of the world population, live in more than 90 countries across seven sociocultural regions. There are approximately 335 million indigenous peoples in Asia and the Pacific, 77 million in Africa, 54 million in Latin America and the Caribbean, 7 million in North America and 0.4 million in Europe and Central Asia.³

17. The territories of indigenous peoples comprise about 25 per cent of the world’s land surface, including approximately 40 per cent of all protected land areas and ecologically intact landscapes:⁴ on their territories, indigenous peoples have preserved 80 per cent of the remaining terrestrial biodiversity.⁵

B. Water, territory and respect for nature from the worldviews of indigenous peoples

18. The term indigenous peoples embodies their beliefs, languages, cultures and livelihoods and their intrinsic connection with traditional territories and ecosystems.⁶ Indigenous peoples, living within their territories, maintain and reinforce their ancestral traditions and their economic, social and cultural activities by exercising their right to self-determination.⁷ To ensure their survival, dignity and well-being and to exercise their inherent rights, indigenous peoples must own, conserve and manage their territories, lands and resources.

19. The Indigenous Peoples Kyoto Water Declaration, presented at the third World Water Forum in Kyoto, Japan, in 2003, conceives of water as a fundamental gift of Mother Earth

² African Commission on Human and Peoples’ Rights and International Work Group for Indigenous Affairs, *Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities* (Copenhagen, 2005); and Office of the United Nations High Commissioner for Human Rights (OHCHR), *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions* (Geneva, 2013).

³ International Labour Organization (ILO), *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable and just future* (Geneva, 2019), appendix A.2, pp. 139–145.

⁴ S.T. Garnett and others, “Nature Sustainability: A spatial overview of the global importance of Indigenous lands for conservation”, *Nature Sustainability*, vol. 1, No. 7 (2018), pp. 369–374.

⁵ C. Sobrevila, *The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners* (World Bank, Washington, D.C., 2008), p. 102.

⁶ Food and Agriculture Organization of the United Nations (FAO), *The White/Wiphala Paper on Indigenous Peoples’ Food Systems* (Rome, 2021).

⁷ See [E/C.19/2020/7](#).

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 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.

20. In Mexico, the Zapotecan people believe that water is life and that, to preserve life, they need to preserve their forests and territories.⁸ In the language of the Lakota nation in North America, “*mni wiconi*” means “water is life”. For the Saami people from Northern Europe and Siberia, access to and use of traditional lands and waters is a precondition for the development of their *árbediehtu* (traditional knowledge) and they are under an obligation to diligently manage those resources.

21. The Special Rapporteur is concerned about the approach that sees water as an economic good. In his view, water should not be parcelled out or appropriated as a resource to be extracted from nature. Instead, he advocates transitioning from a water resource-based approach to a new paradigm centred on an ecosystem-based approach to water management that promotes the sustainability of the water cycle. Indigenous peoples’ integrated vision of water, rivers, springs and wetlands is in line with this ecosystem approach and the consideration of water as a common good.⁹

22. After centuries of caring for their rivers, wetlands, lakes and springs and managing water as a common good, indigenous peoples have been actively opposing the commodification and privatization of water for decades.¹⁰ Following the approach of indigenous peoples within the current complex environment where water is needed for multiple uses, sustainable water management requires planning and management at the basin level, which, in many cases, goes beyond the borders of the territories of many indigenous peoples. In this regard, the quality and the flow of all rivers in indigenous peoples’ territories depend on how they are managed, both upstream and downstream, even beyond the territorial boundaries.

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

23. In the worldviews of indigenous peoples, water belongs to everyone and should remain available to all, as a common good. For centuries, they have developed participatory, holistic, and sustainable community water management systems, providing water for drinking, spiritual ceremonies, cooking, washing, livestock and farming. For instance, the intersectional water management systems of indigenous peoples in Totonicapán, Sololá and Chimaltenango in Guatemala, which have similar decision-making mechanisms organized through community assemblies, share a vision of water as a sacred living being, including the people and forests in their territories.¹¹ 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.¹²

24. The Special Rapporteur observes that mainstream approaches to water management often dismiss indigenous peoples’ water knowledge and management systems as unscientific

⁸ T.E. Martinez-Cruz, “Encounters in between modernity and tradition: the hybridization of the culture of maize”, *On Continuities and Discontinuities: The Making of Technology-driven Interventions and the Encounter with the MasAgro Programme in Mexico* (Wageningen University, the Netherlands, 2021), pp. 83–104.

⁹ A/HRC/48/50, para. 10.

¹⁰ See the Kari-Oca Declaration and Indigenous Peoples’ Earth Charter (1992).

¹¹ “Estudios de caso de comunidades indígenas en Totonicapán, Sololá y Chimaltenango, Guatemala”, Observatorio Económico Sostenible, Universidad del Valle de Guatemala, 2019.

¹² B.M. Behailu, P.E. Pietilä and T.S. Katko, “Indigenous practices of water management for sustainable services: Case of Borana and Konso, Ethiopia”, *SAGE Open*, vol. 6, No. 4 (2016).

or folkloric,¹³ disregarding the fact that their knowledge is based on empirical experience, resulting from living in their territories from generation to generation. For instance, the ancestral system of *Waru Waru* or *camellones* used in the Andean region (Ecuador, Peru and the Plurinational State of Bolivia) 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:¹⁴ they terrace hillsides to retain and direct rainfall runoff and build sediment traps to prevent the clogging of strategically placed ponds where they store water in the rainy season.¹⁵ The Indigenous Observation Network, coordinated by the Yukon River Inter-Tribal Watershed Council and the United States Geological Survey, involves First Nation tribes in the Yukon and British Columbia in Canada and Alaskan native tribes in the United States of America. The Network develops community monitoring programmes to protect the waters and lands of their territories and to strengthen indigenous environmental governance: it is the largest indigenous water quality network in the world.¹⁶

25. 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 (articles 3, 4 and 32 (para. 1)). A key element of the right of indigenous peoples to self-determination includes their right to be consulted on projects that may affect their lives and territories and to give or withhold their free, prior and informed consent. In Mexico, in 2021, after a long negotiation, the Government recognized the role of the *Coordinadora de pueblos unidos por el cuidado y defensa del agua* (an organization formed by 16 indigenous peoples' communities in the central valleys of Oaxaca) as representing their rights to self-determination, autonomy and participation in the administration of an aquifer. The Government granted a concession title for the extraction of groundwater managed by the indigenous peoples' communities on the basis of their own laws.

26. 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.¹⁷

27. The Special Rapporteur is of the opinion that self-determination and effective participation of indigenous peoples in the management of water in large territorial spaces, such as river basins or aquifers that extend beyond the boundaries of their territories, require their representation in corresponding decision-making bodies, on an equal footing with the non-indigenous populations involved.

28. 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 between indigenous peoples and non-indigenous persons. In New Zealand, the Government and the Ngāti Maniapoto Māori have secured co-governance agreements to co-manage the Waipā River.¹⁸

¹³ M. J. Xón Riquiac, "Ri oj qawinakil: Enunciaciones de los pueblos indígenas sobre el agua: debates endógenos en diálogo", in L. Viaene and M. J. Xón Riquiac, *Aguas Turbias: Extractivismo (neo)liberal, acción jurídica indígena y la transformación del Estado en Guatemala* (Proyecto ERC RIVERS, Universidad Carlos III de Madrid, 2022), pp. 131–157.

¹⁴ Y. Mulat, "Indigenous knowledge practices in soil conservation at Konso people, south-western Ethiopia", *Journal of Agriculture and Environmental Sciences*, vol. 2, No. 2 (2013).

¹⁵ B. M. Behailu, P. E. Pietilä and T. S. Katko, "Indigenous practices of water management for sustainable services".

¹⁶ N. J. Wilson and others, "Community-based monitoring as the practice of indigenous governance: A case study of indigenous-led water quality monitoring in the Yukon River Basin", *Journal of Environmental Management*, vol. 210, 2018, pp. 290–298.

¹⁷ See submissions from the PACOS Trust for the present report (<https://www.ohchr.org/en/calls-for-input/call-input-2022-reports-indigenous-peoples-and-people-living-rural-areas>).

¹⁸ M. Parsons, K. Fisher and R.P. Crease, "Transforming river governance: The co-governance arrangements in the Waikato and Waipa Rivers", in *Decolonising Blue Spaces in the Anthropocene* (Palgrave Macmillan, Cham, Switzerland, 2021), pp. 283–323.

D. Indigenous women and their relationship with water

29. In many indigenous cultures, the role of women as carriers and stewards of water is linked to their role as life-givers.¹⁹ They have a sacred mission to care for water for present and future generations. Water is therefore essential to the identity of indigenous women, their cultural traditions, spiritual practices, knowledge and wellness. For the First Nations, just as water from Mother Earth carries life to us, women carry life and water in their wombs during pregnancy.²⁰

30. Indigenous women and girls not only ensure the availability of quality water, they also play an essential role in spiritual ceremonies. They protect water bodies from pollution, care for the forests and plant trees, plants and herbs to maintain the ability of the soil to absorb and retain water. For instance, indigenous women of the *Anmatyerre* people in Australia organize camping trips to waterholes to transmit their knowledge on to young girls and to fence water points to prevent access by animals to protect water quality.²¹

31. From its inception, 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, article 22 of which draws attention to their rights and special needs. Women's leadership in advocating for the human rights to safe drinking water and sanitation is also growing worldwide, including, for example, the case of the indigenous women of the Mazahua people. The women led the march to Mexico City to demand drinking water and sanitation in their home territories, from which area the Cutzamala water supply system transfers massive amounts of water to the capital. With overwhelming support from the population, an agreement was reached with the Government to build drinking water systems in the communities and to support community reforestation and wetland conservation projects.²²

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

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

32. The human rights to safe drinking water and sanitation have been recognized by the General Assembly in its resolution 64/292, the Human Rights Council in its resolution 15/9 and the Committee on Economic, Social and Cultural Rights in its general comment No. 15. Furthermore, the Assembly, in its resolution 70/169, and the Council, in its resolution 33/10, have recognized that water and sanitation are distinct but interrelated human rights.

33. According to 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. In addition, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) recognized, in articles 7, 13, 15.1 and 32, the rights of indigenous peoples to access natural resources, including water, and to decide their

¹⁹ K. Anderson, B. Clow and M. Haworth-Brockman, "Carriers of water: aboriginal women's experiences, relationships, and reflections", *Journal of Cleaner Production*, vol. 60 (2013), pp. 11–17.

²⁰ See submission from the Assembly of First Nations for the present report (<https://www.ohchr.org/en/calls-for-input/call-input-2022-reports-indigenous-peoples-and-people-living-rural-areas>).

²¹ L. Wirf, A. Campbell and N. Rea, "Implications of gendered environmental knowledge in water allocation processes in central Australia", *Gender, Place and Culture*, vol. 15, No. 5 (2008), pp. 505–518.

²² A. C. Gómez-Fuentes, "Un ejército de mujeres. Un ejército por el agua. Las mujeres indígenas mazahuas en México", *Agricultura, sociedad y desarrollo*, vol. 6, No. 3 (2009), pp. 207–221.

priorities in development processes, including respect for their spiritual and cultural values and their relationship with their lands.

34. When indigenous peoples claim sovereignty over their waters, they include the use of their rivers, wetlands, lakes and springs not only for safe drinking and domestic uses but also as sources of food, including for fishing, irrigation purposes or watering livestock. The so-called “Water War” involving the indigenous peoples around Cochabamba, Plurinational State of Bolivia, was triggered when a joint venture, *Aguas del Tunari*, informed them that all of the water coming down from the mountains, which they drank and used to irrigate their lands, would become the property of the company and that they would have to pay for it.²³

B. Availability

35. Until some decades ago, the availability of quality water in indigenous peoples’ territories was preserved on the basis of their sustainable practices and was favoured by the difficult accessibility of their territories. However, the impact of extractivism on natural resources, jointly with climate change, has reversed this trend and many indigenous peoples no longer have access to safe drinking water under international human rights standards.

36. In Canada, First Nations peoples experience a disproportionately higher number of drinking water advisories, warning people to not drink water that may be unsafe or is known not to be safe, and more drinking water advisories are issued for extended periods of time than in communities of non-indigenous persons.²⁴ In the United States, approximately 9.5 per cent of American Indian and Alaska native homes lack adequate sanitation facilities and 1.8 per cent lack access to a safe water supply and/or waste disposal facilities, in comparison to less than 1 per cent of homes in communities of non-indigenous persons.²⁵ Available data for countries in Latin America reveal that 57.5 per cent of indigenous peoples’ households in rural areas have a safe water supply and 24 per cent have sanitary facilities.²⁶ In Southeast Asia, many indigenous peoples live in rural communities where they face challenges in accessing clean water and basic sanitation due to the impact of dams, mining and agribusiness.²⁷

C. Accessibility

37. Indigenous peoples’ territories are usually located in the most disadvantaged areas in terms of access to infrastructure and services.²⁸ Water sources are often far from where indigenous peoples live and water is generally taken directly from rivers, ponds, streams, wells or springs, many of which are contaminated with various toxins. Some indigenous peoples have water delivered to their houses through tubing, but in most cases it is untreated and the water is not safe to drink.²⁹ There is a persistent failure by States to provide infrastructure, to maintain water and sanitation services and to control polluting factors,

²³ R. Rocha Monroy and Engineers Without Borders, “La lucha contra la privatización en Cochabamba – Bolivia”, *Agua Ríos y Pueblos*, 2009 (<https://fnca.eu/aguarios/la-lucha-contra-la-privatizacion-en-cochabamba-%e2%80%93-bolivia/>).

²⁴ Government of Canada, “About drinking water advisories”, Indigenous Services Canada, 2021 (cited 30 April 2022) (<https://www.sac-isc.gc.ca/eng/1538160229321/1538160276874>). Health Canada issues drinking water advisories off-reserve: there are three types of drinking water advisories: “Boil water”; “Do not consume”; and “Do not use”.

²⁵ Department of Health and Human Services, United States of America, “Safe water and waste disposal facilities”, Indian Health Service, 2021 (cited 15 March 2022) (<https://www.ihs.gov/newsroom/factsheets/safewater/>).

²⁶ World Bank, “LAC [Latin America and the Caribbean] equity lab: ethnicity – access to services” (<https://www.worldbank.org/en/topic/poverty/lac-equity-lab1/ethnicity/ethnicity-education>).

²⁷ Association of Southeast Asian Nations, *Regional Consultation on the Right to Safe Drinking Water and Sanitation*, Malaysia, 2018.

²⁸ A/74/183, para. 11.

²⁹ A. Fernández-Llamazares and others, “A state-of-the-art review of indigenous peoples and environmental pollution”, *Integrated Environmental Assessment and Management*, vol.16, No. 3 (2020), pp. 324–341.

particularly with regard to indigenous peoples forcibly displaced from their territories. For instance, many people from the Orang Asli community in Malaysia have been displaced and relocated to make way for economic development initiatives. Although they initially enjoyed acceptable living conditions, over time, the lack of maintenance of facilities and their limited capacities have led to the failure to ensure access to safe water and sanitation.³⁰

38. During consultations held in the lead-up to the present report, indigenous peoples indicated that when available water is polluted, reliance on bottled water, in addition to being expensive, poses serious problems for people with disabilities, the elderly, children and pregnant women. Moreover, extreme weather events, aggravated by climate change, hinder access to water sources. In terms of access to sanitation, many indigenous peoples still defecate in the open or use pit latrines, notwithstanding the human right to sanitation. Oftentimes, there are no drainage systems and septic tanks are not properly built and maintained, leading to contamination of the water sources from which they are supplied. Generally speaking, there is no system for the collection of wastewater, which is left untreated, and water points used for cooking are also where community members wash their hands.

39. In many cases, indigenous peoples in the Arctic collect their water themselves from lakes and rivers or receive unsafe water delivered by tanker truck.³¹ Furthermore, they must remove human waste in plastic containers, commonly called “honey buckets”. Due to the difficulty in transporting water and limited storage capacity in households, indigenous peoples lack sufficient water to meet their needs.³² Partnerships between indigenous peoples, States, non-governmental organizations (NGOs) and research centres promote effective solutions to ensure access to safe drinking water and sanitation. The Alaska Native Tribal Health Consortium worked jointly with the Cold Climate Housing Research Center and the community of Kivalina to construct the portable alternative sanitation system pilot, which provides handwashing facilities using treated water, eliminating the use of honey buckets and reducing exposure to human waste.³³

D. Quality of drinking water

40. Indigenous peoples often consider the clear water of rivers, springs and wells to be safe for drinking because, traditionally, that has been the case. But this is no longer true, however, as external interventions are affecting water quality, requiring action by the State to prevent contamination and to ensure drinkability. The Special Rapporteur considers that the State must guarantee access to safe water, in consultation with indigenous peoples, including the provision of reliable information and guarantees of an intercultural approach. Poor water quality and lack of adequate sanitation affect the right to health of indigenous peoples, particularly women and children.

41. 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 from mining, in addition to compromising the drinkability of water, have serious consequences, inter alia, for forestry, agriculture, livestock and fisheries, on which many indigenous peoples depend. For instance, in the United States, as a result of mining in the

³⁰ A/HRC/42/47/Add.2, paras. 28–29.

³¹ A.L. Moore-Nall, “Issues related to water affecting indigenous peoples of North America”, in *Practical Applications of Medical Geology*, (Springer, Cham, Switzerland, 2021), pp. 769–832; K. Daley and others, “Chemical and microbial characteristics of municipal drinking water supply systems in the Canadian Arctic”, *Environmental Science and Pollution Research*, vol. 25, No. 33 (2018), pp. 32926–32937.

³² T.W. Hennessy and J. M. Bressler, “Improving health in the Arctic region through safe and affordable access to household running water and sewer services: an Arctic Council initiative”, *International Journal of Circumpolar Health*, vol. 75, Issue 1 (2016), p. 31149.

³³ A.L. Moore-Nall, “Issues related to water affecting indigenous peoples of North America”, p. 788.

Black Hills, South Dakota, the ground water on the Pine Ridge Indian reservation has been polluted by mercury and other toxins.³⁴

E. Affordability

42. Globally, indigenous peoples represent 18.7 per cent of the extremely poor³⁵ and around 33 per cent of those living in extreme poverty in rural areas.³⁶ In such conditions, they often have difficulty in paying for water and sanitation or providing the necessary investment to ensure such services. Due to water scarcity, lack of infrastructure and/or unsafe water quality in their communities, indigenous peoples are faced with several options: paying for bottled water, which is unaffordable for many families; building wells and water supply networks, which are unaffordable investments for many communities;³⁷ and boiling water, which takes time, especially for women, and incurs costs in electricity or for other fuels. In this context, indigenous peoples are often forced to rely on a supply of poor quality water through informal systems.³⁸

43. Indigenous peoples affirmed that water and sanitation programmes and infrastructures can fail due to a lack of funding, monitoring and maintenance. Programmes are usually limited to a certain period, with no sustainable strategy, and finish when funding is exhausted. Although some Governments provide subsidies to make water affordable, such programmes are often challenging for indigenous peoples to access.³⁹ In Cambodia, the Government has provided wells to some indigenous peoples, although they are insufficient to meet their water needs. In addition, monitoring of water quality seems to be lacking,⁴⁰ and while the technology used is new to indigenous peoples, there is a lack of financing to provide training to operate the technology adequately.⁴¹

44. In the Marshall Islands, through a collaboration among universities, international cooperation and the Ailuk Ook local fisheries committee, an innovative low-cost and low-tech version of a solar-powered water distillation system has been developed.⁴² This is a positive initiative that provides affordable and effective solutions to ensure safe drinking water and sanitation.

F. Acceptability

45. 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, resulting in

³⁴ See submission from the International Indian Treaty Council for the present report (<https://www.ohchr.org/en/calls-for-input/call-input-2022-reports-indigenous-peoples-and-people-living-rural-areas>).

³⁵ ILO, *Implementing the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169)*.

³⁶ A/HRC/36/4, para. 7.

³⁷ A. L. Moore-Nall, "Issues related to water affecting indigenous peoples of North America", p. 789.

³⁸ Special Rapporteur on the human rights to safe drinking water and sanitation, Special thematic report on climate change and the human rights to water and sanitation, "The impacts of climate change on the human rights to water and sanitation of groups and population in situations of vulnerability" (part 2, para. 28) (<https://www.ohchr.org/en/special-procedures/sr-water-and-sanitation/annual-reports>).

³⁹ M. Pearce, E. Willis and T. Jenkin, "Aboriginal people's attitudes towards paying for water in a water-scarce region of Australia", *Development and Sustainability*, vol. 9, No. 1, 2007, pp. 21–32.

⁴⁰ Association of Southeast Asian Nations (ASEAN), Regional Consultation on the Right to Safe Drinking Water and Sanitation, Malaysia, 2018.

⁴¹ C.C. Teixeira, "Water supply on indigenous territories: policies and politics in Brazil", in *Crisis on Tap: Seeking Solutions for Safe Water for Indigenous Peoples*, University of Victoria, Canada, 2011, p. 42.

⁴² L. Paeniu and others, *Overview of Water Security in Pacific Islands With Recommendations for Best Practices*, Pacific Centre for Environment and Sustainable Development, University of the South Pacific, Suva, 2016.

their disinterest in such initiatives.⁴³ Water and sanitation projects for remote rural areas are sometimes promoted without understanding the specific issues affecting indigenous peoples communities compared to communities of non-indigenous persons. It is essential to include intercultural dialogue in discussions on all water and sanitation projects.⁴⁴

46. The National Water Initiative in Australia includes social, spiritual and customary values that are essential to indigenous peoples in water planning by ensuring their effective participation in planning, policies and projects that affect them.⁴⁵ Safe drinking water projects led by the World Bank in Chaco, Argentina,⁴⁶ and in la Guajira, Colombia,⁴⁷ have also benefited the Wichi and Qom peoples and the Wayuu people by reducing the time they spend in fetching water.

G. Role of the courts in ensuring access to bodies of water and safe drinking water

47. Indigenous peoples often resort to strategic litigation in national and international courts or to indigenous laws and institutions to realize their rights. In North America, this has brought about some level of recognition and different institutional and operational outcomes. Some notable examples include the Yinka Dene' Uza'hné (hereditary chiefs) of the Nadleh Wut'en and Stellat'en First Nation, which has developed its own water management policy and quality standards and successfully advocated for their implementation in their traditional territories.⁴⁸ In 2021, the Government of Canada reached a settlement with First Nations communities on prolonged drinking-water advisories on their reserves across the country.⁴⁹ The plaintiffs sought compensation for suffering from a lack of reliable access to clean water and a declaration that the Government must work with First Nations communities to provide access to clean water.

48. The Inter-American Court of Human Rights has issued landmark decisions favouring the Yakye Axa,⁵⁰ Sawhoyamaxa⁵¹ and Xákmok kásek⁵² indigenous peoples, ordering the Government of Paraguay to provide a sufficient supply of drinking water and to build latrines while setting a minimum supply of drinking water per person. Meanwhile, in the case of the indigenous peoples of the Lhaka Honhat, the Court ordered Argentina to adopt measures to ensure the enjoyment of the right to water by guaranteeing permanent access to drinking water and ensuring the conservation of surface and/or groundwater in their territories.⁵³ In

⁴³ M. Tinoco and others, "Water cooperation between cultures: partnerships with indigenous peoples for sustainable water and sanitation services", *Aquatic Procedia*, vol. 2, 2014, pp. 55–62.

⁴⁴ A. Jiménez, M. Cortobius and M. Kjellén, "Working with indigenous peoples in rural water and sanitation: recommendations for an intercultural approach", Stockholm International Water Institute, Stockholm, 2014.

⁴⁵ See submission from Australia for the present report (<https://www.ohchr.org/en/calls-for-input/call-input-2022-reports-indigenous-peoples-and-people-living-rural-areas>).

⁴⁶ World Bank, "Sustainable water access for all: providing water for remote settlers in the Chaco region of Argentina", Results Briefs, Washington, D.C., 2020.

⁴⁷ World Bank, "Improving water supply and sanitation services in La Guajira, Colombia", Results Briefs, Washington, D.C., 2019.

⁴⁸ Carrier Sekani Tribal Council, "Yinke Dene 'Uza'hne' Guide to surface water quality standards", 2016.

⁴⁹ Government of Canada, "Courts approve settlement agreement to resolve class action litigation related to safe drinking water in First Nations communities", Indigenous Services Canada, Ottawa, 2021 (<https://www.canada.ca/en/indigenous-services-canada/news/2021/12/courts-approve-settlement-agreement-to-resolve-class-action-litigation-related-to-safe-drinking-water-in-first-nations-communities.html>).

⁵⁰ Inter-American Court of Human Rights, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005.

⁵¹ Inter-American Court of Human Rights, *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment, 29 March 2006.

⁵² Inter-American Court of Human Rights, *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, Judgment, 24 August 2010.

⁵³ Inter-American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment, 6 February 2020.

2012, 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.⁵⁴

49. The Special Rapporteur also acknowledges the importance of recognizing legal personhood by courts, governments and parliaments to rivers for the preservation of aquatic ecosystems in indigenous peoples' territories and ensuring their access to safe drinking water. Some emblematic cases are the Atrato River in Colombia,⁵⁵ the Yarra River in Australia,⁵⁶ the Turag River in Bangladesh,⁵⁷ the Vilcabamba River in Ecuador,⁵⁸ the Muteshekau Shipu (Magpie River) in Québec, Canada,⁵⁹ and the Whanganui River in New Zealand.⁶⁰ The Plurinational State of Bolivia legally recognizes Mother Earth and her rights as a collective subject of public interest.⁶¹

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

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

50. The Special Rapporteur notes that the first barrier to indigenous peoples' access to water and sanitation is that several States, despite the solid international legal framework, do not recognize the existence of indigenous peoples within their national borders.⁶² The absence of adequate legal recognition allows States to take actions that disregard the practices and knowledge of indigenous peoples, including water management.

51. In addition to the formal recognition of indigenous peoples, recognition of their tenure over their territories and resources is an essential precondition in order to ensure that they conserve the ecologically stable conditions of water bodies in their territories and harvest and provide safe drinking water for their people, following their traditional water management systems or to adopt other practices when they freely choose to do so.

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

52. 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. They have been excluded from the decisions made by their respective States and are not included in discussions on finding solutions to their demands related to water and sanitation. Additionally, there is a lack of legal frameworks regulating the supply of drinking water and sanitation in their territories. 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

⁵⁴ Inter-American Court of Human Rights, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment, 27 June 2012.

⁵⁵ Constitutional Court of Colombia, *Center for Social Justice Studies et al. v. Presidency of the Republic et al.*, Judgment T-622/16, 2016.

⁵⁶ Parliament of Victoria, Australia, Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017, No. 49, 2017.

⁵⁷ High Court of Bangladesh, ruling of 30 January 2019.

⁵⁸ Ecuador, Loja Provincial Court, Constitutional Injunction No. 11121-2011-0010, March 2011.

⁵⁹ See Innu Council of Ekuanitshit, Canada, resolution No. 919-082, 18 January 2021; and the Regional Municipality of the County of Minganie, Canada, resolution No. 025-21, recognition of the legal personhood and rights of the Magpie River – Mutehekau Shipu, February 2021.

⁶⁰ See Parliament of New Zealand, Te Awa Tupua (Whanganui River Claims Settlement) Act (2017).

⁶¹ Constitution of the Plurinational State of Bolivia, arts. 289–290.

⁶² See [A/72/186](#).

resources.⁶³ 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.

53. Furthermore, indigenous peoples do not trust Governments and multisector organizations when participating in consultations because of a lack of transparency and the reluctance of Governments, companies and organizations to share reliable and complete information. In many circumstances, the relevant information is not translated into indigenous peoples' languages and technical information that is difficult to understand is not adequately explained to indigenous peoples. The right to free, prior and informed consent is often pursued through manipulative strategies, disregarding indigenous authorities and assembly processes. For instance, the Guji people living near the Lega Dembi gold mine in southern Ethiopia, who have experienced adverse impacts of large-scale mining on safe drinking water, have been denied their rights to free, prior and informed consent and access to information.⁶⁴

54. The Special Rapporteur is concerned about the processes of privatization of rural water and sanitation management,⁶⁵ in particular in countries in Africa and Asia that do not recognize their indigenous peoples and where Governments negotiate with transnational corporations without mandatory prior consultation processes with affected communities and indigenous peoples.

C. Specific challenges for indigenous women

55. Like non-indigenous women, indigenous women face multiple forms of discrimination, including in access to education, health care and land ownership, while suffering the risks of domestic violence and sexual abuse. It is estimated that they dedicate 200 million hours annually, taking time away from school, work or spare time,⁶⁶ carrying around 100 litres of water every day.⁶⁷ The Special Rapporteur on the rights of indigenous peoples reports the case of Maasai women who walk 5 kilometres to fetch water, at the risk of attack by wild animals. In spite of the specific challenges facing indigenous women, there is often a reluctance to address the gender dimensions of indigenous peoples' issues, as to do so is seen as "interfering with culture" or "imposing western values".⁶⁸ However, the Special Rapporteur believes that it is necessary to specifically identify and address the differentiated needs and capacities of women in all social and cultural contexts, including those of indigenous peoples.

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

⁶³ L. Viaene, "Indigenous water ontologies, hydro-development and the human/more-than-human-right to water: a call for a critical engagement with plurilegal water realities" *Water*, vol. 13, Issue 12, 2021.

⁶⁴ See submissions from Development by Unity and Brotherly Action for the Future and the Centre for International Human Rights of the Northwestern University Pritzker School of Law for the present report (<https://www.ohchr.org/en/calls-for-input/call-input-2022-reports-indigenous-peoples-and-people-living-rural-areas>).

⁶⁵ M.F. Ndaw, *Private sector provision of water supply and sanitation services in rural areas and small towns: the role of the public sector*, World Bank, 2016.

⁶⁶ United Nations Office for Outer Space Affairs, Participatory workshop for indigenous women on their roles and responsibilities related to water, Online workshop, October 2002 (cited 10 April 2022) (https://www.unoosa.org/oosa/en/ourwork/psa/schedule/2022/participatory-workshop-for-indigenous-women-on-their-everyday-lives-related-to-water.html?utm_content=buffer8ff6&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).

⁶⁷ T.R. Zolnikov, "My Walk to Water", *American Journal of Public Health*, vol. 106, No. 4 (2016), pp. 623–624.

⁶⁸ Office of the Special Adviser on Gender Issues and Advancement of Women and the secretariat of the Permanent Forum on Indigenous Issues, "Gender and indigenous peoples", Briefing Note No. 1, 2010, p. 1.

vulnerable to gender-based violence, discrimination and exploitation⁶⁹ and directly affecting their autonomy.

57. The voices and experiences of indigenous women are often excluded from discussions and decisions about water management. 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.

58. Furthermore, the Special Rapporteur notes that gender stereotypes and stigma linked to taboos on menstruation and childbirth seriously affect the realization of the human rights of women and girls to water and sanitation.⁷⁰ Some cultures ban girls and boys from sharing latrines, forcing girls to use bushes near schools as toilets.⁷¹ In addition, for girls going to school, menstruation is a serious inconvenience given the social pressures exerted on them as it is seen as shameful.⁷²

D. Lack of data

59. The Special Rapporteur observes that there is great difficulty in finding data on the adequate access of indigenous peoples to safe drinking water and sanitation. During the consultations for the present report, indigenous peoples highlighted the persistent lack of disaggregated and adequate data on their human rights to safe drinking water and sanitation. This leads to their invisibility, makes it more difficult to understand and address their problems and hinders their effective participation in public policies on water and sanitation based on their world views, knowledge and community management approaches. Moreover, while indigenous peoples frequently collect such information, oftentimes States do not accept it and reject its incorporation into official statistics.

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

A. Climate change

60. 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,⁷³ due to their direct dependence on aquatic ecosystems. Climate change, has affected the availability of water resources, including drinking water for human consumption and water for agricultural use, including for irrigation or livestock. In this regard, there is an increase in the number of conflicts in the Sahel among nomadic pastoralist indigenous peoples and settled non-indigenous communities for access to water resources.⁷⁴

61. The vulnerability to drought, flooding and other risks is heightened when the aquatic ecosystems on which indigenous peoples depend are degraded or affected by megaprojects or aggressive developments alien to their communities.⁷⁵ Another factor that further exposes indigenous peoples to the dangers of climate change is their geographical location in areas that are particularly susceptible to its effects. For example, the Inuit and Saami peoples are already experiencing major consequences of climate change because of the warming in the

⁶⁹ A/HRC/36/46, para. 11.

⁷⁰ A/HRC/33/49, para. 19.

⁷¹ E. Korir, F. N. Okwara and G. Okumbe, "Menstrual hygiene management practices among primary school girls from a pastoralist community in Kenya: a cross sectional survey", *The Pan African Medical Journal*, vol. 31, Issue No. 222 (2018), p. 3.

⁷² A/HRC/33/49, para. 19.

⁷³ See Council resolution 29/15 and A/HRC/39/55, para. 63.

⁷⁴ E/C.19/2022/7, paras. 21–25.

⁷⁵ Special Rapporteur on the human rights to safe drinking water and sanitation, Special thematic report, "The impacts of climate change on the human rights to water and sanitation of groups and population in situations of vulnerability" (part 2, para. 24).

Arctic region. In the Pacific, climate change, including sea level rise, storm surges and the salinization of aquifers in coastal areas and islands, threaten the very existence of many indigenous territories and the availability of drinking water.⁷⁶ Indigenous peoples in Arizona, United States, and in northern Mexico are experiencing droughts that further challenge farming and habitability of the territories.⁷⁷

62. Even though indigenous peoples are affected by climate change, their knowledge systems continue to evolve, adapting to changing environments and climates.⁷⁸ However, despite the increasing recognition of indigenous peoples as gatekeepers of biodiversity and ecosystems, their participation as equals in decision-making on climate change strategies and biodiversity protection is not substantial, hindering plans to adapt their territories to the risks that climate change poses to their communities in terms of drinking water and sanitation.⁷⁹

B. Land and water grabbing

63. Land grabbing is the large-scale acquisition or leasing of land, including water rights attached to that land, for wide-ranging farming and ranching, biofuel, mining and logging concessions or tourism facilities. These lands, which in many cases are part of indigenous territories, are de facto expropriated and sold or leased without the agreement of indigenous peoples, often under the pretext that the territories or their tenure are not legally registered.⁸⁰ According to Oxfam data, between 2000 and 2011, land grabbing involved some 227 million hectares of indigenous territories.⁸¹ In 2022, a legal initiative in Brazil that attempted to allow the use of water resources in indigenous peoples' territories for mining and hydropower initiatives raised alarms worldwide.⁸²

64. It is estimated that the crops of the total land grabbing imply a yearly consumption of about 450,000 cubic hectometres of water, seriously affecting the availability of drinking water for the indigenous peoples affected.⁸³

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

65. While the establishment of protected areas and national parks is aimed at safeguarding biodiversity and ecosystems, in several instances their establishment has had adverse effects on indigenous peoples. In 2016, the Special Rapporteur on the rights of indigenous peoples noted that indigenous peoples may lose their land, sacred sites, resources and livelihoods under agreements on environmental conservation that ignore their right to self-determination and their authorities, leading to forced displacement and land expropriation.⁸⁴ For example, forced evictions of indigenous peoples in India were allegedly justified by asserting that the presence of human beings was harmful to tigers.⁸⁵

⁷⁶ Secretariat of the Permanent Forum on Indigenous Issues, "Indigenous peoples in the Pacific region", Fact Sheet, New York, 2022

(https://www.un.org/esa/socdev/unpfii/documents/factsheet_Pacific_FINAL.pdf).

⁷⁷ See submissions from International Indian Treaty Council for the present report (<https://www.ohchr.org/en/calls-for-input/call-input-2022-reports-indigenous-peoples-and-people-living-rural-areas> (in Spanish)).

⁷⁸ FAO, *The White/Wiphala Paper on Indigenous Peoples' Food Systems*, p. 2.

⁷⁹ OHCHR, *The United Nations Declaration on the Rights of Indigenous Peoples*, p. 29.

⁸⁰ Protected and conservation areas and the human rights to water and sanitation of indigenous peoples.

⁸¹ Oxfam, *Land and Power: The Growing Scandal Surrounding the New Wave of Investments in Land*, Oxford, 2011.

⁸² See communication BRA 4/2022 and related response by the State. All communications and replies thereto mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁸³ M. C. Rulli, A. Savioli and P. D'Odorico, "Global land and water grabbing", in *Environmental Sciences*, vol. 110, No. 3 (2013), pp. 892–897.

⁸⁴ See A/71/229, para. 60.

⁸⁵ See communication IND 9/2017.

66. Similarly, the Special Rapporteur on human rights and the environment noted that the post-2020 global biodiversity framework draft, which aims to protect 30 per cent of land and waters by 2030, enhances the risk of violating indigenous peoples' rights owing, inter alia, to their absence in decision-making processes, with devastating impacts on their access to safe drinking water and sanitation once their effective participation is marginalized and their right to free, prior and informed consultation is ignored.⁸⁶

67. In the United Republic of Tanzania, thousands of indigenous Maasai pastoralists are at risk of being forcibly evicted from their traditional lands and their homes demolished in the Ngorongoro conservation area, which could result, among other serious impacts, in the loss of access to their traditional water sources both for human consumption and livestock.⁸⁷

D. Megaprojects and extractivism

68. In 2019, the former Special Rapporteur on the human rights to safe drinking water and sanitation noted that the socio-environmental collapse brought about by megaprojects often has a devastating effect on access to water and sanitation and essential livelihoods for many indigenous peoples.⁸⁸ In fact, activities such as mining, oil and gas extraction, hydropower projects, including and the construction of large dams, and logging, industrial fishing and farming, livestock grazing and tourist developments have come at a disproportionate cost to indigenous peoples.⁸⁹

69. Megaprojects and extractivist ventures are frequently accompanied by land grabbing, forced displacement, deforestation and degradation, impacting indigenous peoples' government systems, livelihoods, social cohesion and health. In arid and semi-arid territories, competition for water has led to the appropriation of rivers and springs traditionally used by indigenous peoples to develop irrigation schemes, generally headed by large landowners. Lakes, wetlands, aquifers, rivers, springs and streams that are water sources for indigenous peoples are often depleted or polluted by toxic residues from extractive industries or by pesticides from agribusinesses.⁹⁰

70. In Brazil, illegal mining activities and the associated mercury pollution and deforestation have threatened access to safe drinking water for the indigenous Mundurucu people in the Tapajós River basin.⁹¹ In the Philippines, the Didipio River, contaminated by heavy metals, has affected indigenous peoples' access to safe drinking water and water for irrigation.⁹² In Colombia, the Wayuu people claim that they have been deprived of access to safe drinking water due to the deviation and pollution of water sources by a coal company.⁹³ 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.⁹⁴ In Sonora, Mexico, as the result of large-scale irrigation and diversion for urban uses, the waters of the Yaqui River belonging to the Yaqui indigenous people have dried up; fortunately, after years of indigenous protests, the federal Government has initiated prospects for a negotiated solution.⁹⁵

71. Massive diversion of water or mining upstream can undermine the human rights of indigenous peoples, even if these activities originate outside their territory. Frequently, it is not only drinking water that is affected but also sources of food, including fishing, which is

⁸⁶ Special Rapporteur on human rights and the environment, "Human rights-based approaches to conserving biodiversity: equitable, effective and imperative", Policy Brief No. 1, Geneva, 2021.

⁸⁷ See communication TZA 3/2021 and related State reply.

⁸⁸ [A/74/197](#), paras. 4 and 82.

⁸⁹ See [A/HRC/24/41](#).

⁹⁰ See [A/HRC/18/35](#), paras. 30 and 31.

⁹¹ See communication BRA 3/2021 and related State reply.

⁹² See communication PHL 1/2019 and related State reply.

⁹³ See communication COL 8/2016 and related State reply; and COL 7/2020 and related State reply.

⁹⁴ See submissions from International Indian Treaty Council for the present report (<https://www.ohchr.org/en/calls-for-input/call-input-2022-reports-indigenous-peoples-and-people-living-rural-areas>).

⁹⁵ See communication MEX 7/2017.

key to the diet and the economies of some indigenous peoples.⁹⁶ For instance, in Guatemala, it is claimed that the chemical runoff from an oil palm plantation has polluted the San Roman River, the only water source for the Q'eqchi people who live in the area.⁹⁷

72. The Special Rapporteur considers that the responsibility to ensure respect for the rights of indigenous peoples by transnational corporations operating in indigenous territories extends beyond the Governments of the countries where such territories are located to include the responsibility of the Governments of the countries from which the corporations originate.

E. Criminalization, attacks and the killing of indigenous peoples

73. 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.⁹⁸

74. In Honduras, in 2016, the indigenous woman defender of water and rivers, Berta Cáceres, was murdered for opposing the Agua Zarca dam.⁹⁹ In Guatemala, 444 people, mostly women and children, were killed for opposing the construction of the Chixoy hydroelectric dam. The case, which was tried in the Inter-American Court, is of particular relevance to the rights of indigenous peoples.¹⁰⁰ 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.¹⁰¹ In Brazil, measures adopted to address the coronavirus disease (COVID-19) pandemic that promote racial inequality and degrade indigenous rights¹⁰² have prompted the Inter-American Commission on Human Rights to call for specific protection measures for the Yanomami people.¹⁰³ 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.¹⁰⁴

F. Impact on health

75. Illnesses caused by a lack of access to safe drinking water and sanitation continue to increase among indigenous peoples, particularly among children, including¹⁰⁵ respiratory, skin, invasive bacterial and intestinal infections, dental diseases and reproductive health problems such as miscarriages, stillbirths and congenital disabilities.¹⁰⁶ In 2021, the Special Rapporteur reported that during the ongoing COVID-19 pandemic, the lack of essential health services and sanitation has increased the vulnerability of indigenous peoples.¹⁰⁷ For the Inuit people, limited access to drinking water and rudimentary sanitation systems have contributed to a higher prevalence of infectious diseases and illnesses.¹⁰⁸

76. Because of poor access to piped drinking water, indoor sanitation facilities and trash collection services, indigenous children are more susceptible to being stunted or

⁹⁶ A/74/197, paras. 4 and 82; A/HRC/18/35, paras. 30 and 31; and A/HRC/39/17, para. 29.

⁹⁷ See A/HRC/40/3/Add.1.

⁹⁸ A/HRC/39/17, para. 4.

⁹⁹ See communication HND 4/2017.

¹⁰⁰ See https://www.corteidh.or.cr/docs/casos/articulos/resumen_250_esp.pdf.

¹⁰¹ See communication COL 3/2022.

¹⁰² FAO, "Sustainable Development Goal 16 & indigenous peoples' collective rights to land, territories & resources", Rome, 2021.

¹⁰³ See communication BRA 15/2021.

¹⁰⁴ See communication IDN 11/2021.

¹⁰⁵ D. Sanderson and others, "Nursing, indigenous health, water and climate change", *Witness: The Canadian Journal of Critical Nursing Discourse*, vol. 2, No. 1 (2020), pp. 66–83.

¹⁰⁶ Ecojustice Canada, "Exposing Canada's Chemical Valley", Toronto, Canada, 2007.

¹⁰⁷ See A/HRC/48/54.

¹⁰⁸ See submission from Inuit Circumpolar Council and Inuit Tapiriit Kanatami for the present report (<https://www.ohchr.org/en/calls-for-input/call-input-2022-reports-indigenous-peoples-and-people-living-rural-areas>).

underweight.¹⁰⁹ 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. 110

77. Oftentimes, as a result of water-related conflicts, mental and emotional health problems arise among indigenous peoples, and there are disproportionately higher suicide and depression rates among indigenous peoples worldwide compared to the non-indigenous population.¹¹¹ Although researchers and policymakers seldom address such problems, 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.¹¹²

VI. Conclusions

78. **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.**

79. **It is paramount that States 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. The situation of poverty and marginalization in which indigenous peoples have been forced to live increases the responsibility of States to provide indigenous peoples with the necessary means to guarantee those human rights through the exercise of their self-determination.**

80. **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.**

81. **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, knowledge and ways of life of indigenous peoples, who should be able to determine their priorities regarding the use and management of water,**

¹⁰⁹ B.L. Horta and others, "Nutritional status of indigenous children: findings from the First National survey of indigenous people's health and nutrition in Brazil", *International Journal for Equity in Health*, vol. 12, No. 1 (2013), pp. 1–13.

¹¹⁰ A.L. Escobar and others, "Diarrhoea and health inequity among indigenous children in Brazil: results from the first national survey of indigenous people's health and nutrition", *BMC Public Health*, vol. 15, No. 1 (2015), pp.1–11.

¹¹¹ A. Cohen, "The mental health of indigenous people: an international overview" (World Health Organization, Geneva, 1999); R.J. Walker, J.A. Campbell, A.Z. Dawson and L.E. Egede, "Prevalence of psychological distress, depression and suicidal ideation in an indigenous population in Panama", *Social psychiatry and psychiatric epidemiology*, vol. 54, No. 10 (2019), pp. 1199–1207; and M.J. Kral, "Suicide and suicide prevention among Inuit in Canada", *The Canadian Journal of Psychiatry*, vol. 61, No. 11 (2016), pp. 688–695.

¹¹² A. Wutich, A. Brewis and A. Tsai, "Water and mental health", *Wiley Interdisciplinary Reviews: Water*, vol. 7, No. 5 (2020), p. 1461; and M. O'Gorman, "Mental and physical health impacts of water/sanitation infrastructure in First Nations communities in Canada: an analysis of the regional Health Survey", *World Development*, vol. 145 (2021), Article 105517.

including their traditional practices and spiritual relationships with water, and the design and implementation of sanitation practices.

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

83. Indigenous women have a responsibility to protect and care for water for present and future generations. Moreover, as in communities of non-indigenous persons, women often bear the burden of ensuring safe drinking water and sanitation although they frequently have little voice in decision-making about water and sanitation.

VII. Recommendations

84. 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:

(a) 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, with legal communal ownership of the lands, resources and water rights of indigenous peoples in their territories, in accordance with current international agreements and bilateral treaties: this legislation must respect the worldviews, knowledge and customary laws and practices of indigenous peoples;

(b) Ensuring, in law, the right of indigenous peoples to consultation, including their right to free, prior and informed consent, when formulating, adopting, implementing and monitoring legislative and administrative measures, policies, programmes and projects involving their lands, territories, resources or aquatic ecosystems that may directly or indirectly affect their human rights to safe drinking water and sanitation, including the provision of information in their languages and culturally appropriate communication: States and stakeholders intervening in the territories of indigenous peoples should ensure their right to choose their own experts during such consultations and should respect the dynamics of participation organized by indigenous peoples, based on their right to self-determination and their representative institutions;

(c) Guaranteeing the human rights to safe drinking water and sanitation of indigenous peoples and establishing a minimum essential supply of safe drinking water for all, without discrimination, when extraordinary circumstances beyond their control, such as those resulting from extreme water-related events, endanger access to safe drinking water and sanitation;

(d) Recognizing and supporting indigenous peoples' concept of water as a common good and their community-based management systems of safe drinking water and sanitation in their territories, as well as their use of aquatic ecosystems based on their worldviews and ancestral practices and customs;

(e) 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, in particular in designing and implementing plans for the prevention, adaptation and management of water-related risks arising from climate change, including droughts, floods, melting glaciers and rising sea levels;

(f) Ensuring the full and adequate participation of indigenous women in discussions and decision-making related to safe drinking water and sanitation at the local, national, regional and global levels, as well as ensuring their own spaces for

deliberation and elaboration of proposals to strengthen their active participation, recognizing their involvement in drinking water and sanitation tasks and their ability to protect, manage and care for water;

(g) Ensuring indigenous self-determination concerning watersheds and aquifers that are entirely within their territories, as well as the democratic governance of watersheds and aquifers shared with others, thus guaranteeing 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;

(h) Prioritizing indigenous peoples' territories in order to address the existing discrimination gap in water and sanitation and ensuring access to the necessary investments, means and measures to indigenous authorities so that they can guarantee their human rights to drinking water and sanitation: drinking water and sanitation programmes must respect the worldviews of indigenous peoples, take their socioeconomic conditions and technical capacity gaps into account, promote intercultural dialogue that enhances the engagement of indigenous peoples from the beginning of all negotiations and increases their autonomy over the management of their systems, including budget allocations for adequate training, technical support and maintenance;

(i) 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;

(j) Bringing possible violations of indigenous peoples' rights before the courts in the countries of origin of companies involved, in addition to national courts;

(k) 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.

85. The Special Rapporteur recommends that United Nations agencies, intergovernmental development organizations and international financial institutions:

(a) 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, as well as in all programmes and projects affecting their aquatic ecosystems;

(b) Support, together with Governments, initiatives driven by indigenous peoples on documenting traditional knowledge and water management practices through the provision of funding and mechanisms to ensure that such traditional knowledge is not lost;

(c) Advance the view that water and sanitation projects require a human rights-based approach to guide strategies, based on intercultural dialogue, respect for indigenous peoples' traditional knowledge and worldviews and the participation of indigenous women;

(d) Establish an international protocol to follow up and monitor compliance with international agreements on indigenous rights in projects affecting their territories, with the participation of indigenous peoples themselves.

86. The Special Rapporteur recommends that companies and investors:

(a) Publicly commit to the Guiding Principles on Business and Human Rights and carry out human rights due diligence in order to identify, prevent, mitigate and account for any adverse or potentially adverse impacts of their activities on the human rights of indigenous peoples;

(b) Conduct free, prior and informed processes to obtain the consent of indigenous peoples before carrying out activities in their territories, including the

allocation of adequate resources for this purpose: the consent of indigenous peoples could include the sharing of benefits generated;

(c) Establish grievance mechanisms for individuals and communities who may be adversely impacted, based on engagement and dialogue with indigenous peoples, in line with the guiding principle 31, ensuring that mechanisms and remediation are culturally appropriate;

(d) Comply with internationally recognized human rights standards, including free, prior and informed consent, even in the absence of national legislation, as enshrined in the Guiding Principles;

(e) Make sure not to compromise the security of indigenous peoples and environmental human rights defenders in indigenous territories and hold themselves accountable under international human rights obligations if found to be doing so.

87. The Special Rapporteur recommends that academia and research centres:

(a) Promote collaborative research with indigenous peoples, based on knowledge-sharing, build shared results and promote effective public policies for water and sanitation in their territories;

(b) Develop, in partnership with indigenous peoples, protocols that strengthen indigenous peoples' knowledge, methods of research and scientific knowledge construction to face extractivist interests.

88. The Special Rapporteur strongly recommends that all actors and stakeholders comply with the recommendations of the Permanent Forum on Indigenous Issues in implementing the United Nations Declaration on the Rights of Indigenous Peoples, in particular regarding their human rights to safe drinking water and sanitation.

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