Operationalising Indigenous Peoples’ Water Rights

Integrating their specific rights in the implementation of the right to water

Yseult ARNAL
Master Thesis

Prepared under the supervision of Dr. Luis Rodríguez-Piñero Royo
Ramón y Cajal Senior Researcher
Department of Administrative Law, Public International Law and International Relations
University of Seville
Indigenous peoples have a special relationship with their traditional territories and the natural resources pertaining to them, obviously including water. On view that their very existence as peoples depends on their relationship with these territories, international law now affirms indigenous peoples’ right to use, control and develop those resources.

On the other hand, the international community has come to recognize in recent decades the existence of a distinct human right to water, including the right to access to a sufficient amount of safe drinking-water. With respect to the right to water, States bear the threefold duty to respect, to protect and to fulfill this right, as well as, like other economic, social, and cultural rights, the obligation to realise it progressively.

This thesis argues that the right to water, as currently articulated in international legal discourse, fails to fully take into account the specificities of indigenous peoples’ water rights, within the context of the broader international indigenous rights regime. The thesis makes the claim that, by virtue of the principle of non-discrimination, State domestic policies and legislation aiming at the implementation of the right to water should integrate the specific rights of indigenous peoples as affirmed in international standards. Indeed, such policies and legislations should at least pay attention to the States’ duty to consult indigenous peoples, to conduct an impact assessment when measures foreseen affect their lands and resources, as well as to integrate them in the benefit-sharing.
TABLE OF INTERNATIONAL INSTRUMENTS AND DOMESTIC LEGISLATION

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*Case of Saramaka People v. Suriname*, (Preliminary exceptions, merits, costs and reparations), Series C No. 172, 28 November 2007.


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### Canada

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Peru

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United States of America

Winters v. United States, 207 U.S. 564 (1908)
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<th>ACRONYM</th>
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<td>Convention on Biological Diversity</td>
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<td>CHR:</td>
<td>Commission on Human Rights</td>
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<td>CONIAG:</td>
<td>Consejo Interinstitucional del Agua (Water Interinstitutional Council)</td>
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<td>COP:</td>
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UNDP: United Nations Development Program
UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples
WB: World Bank
WHO: World Health Organisation
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