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Operationalising Indigenous Peoples' Water Rights

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

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ABSTRACT

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.

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TABLE OF ACRONYMS

CBD:	Convention on Biological Diversity
CERD:	Committee on the Elimination of Racial Discrimination
CHR:	Commission on Human Rights
CONIAG:	Consejo Interinstitucional del Agua (Water Interinstitutional Council)
COP:	Conference of the Parties (Convention on Biological Diversity and Ramsar Convention)
CESCR:	Committee on Economic, Social and Cultural Rights (UN)
COHRE:	Centre on Housing Rights and Evictions (NGO)
ESCRs:	Economic, Social and Cultural Rights
FPIC:	Free, Prior and Informed Consent
UN GA:	United Nations General Assembly (UN)
GC:	General Comment
HRC:	Human Rights Council (UN)
IACHR:	Inter-American Human Rights Commission (OAS)
IACtHR:	Inter-American Human Court of Human Rights (OAS)
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
IE:	Independent Expert
ILO:	International Labour Organisation
NGO:	Non Governmental Organisation
OAS:	Organisation of American States
OHCHR:	Office of the High Commissioner on Human Rights (UN)
OP:	Operational Policy
SENEGUA:	Ecuadorian National Water Secretary
SR:	Special Rapporteur
UDHR:	Universal Declaration of Human Rights
UN:	United Nations
US:	United States of America

UNDP: United Nations Development Program
UNDRIP: United Nations Declaration on the Rights of Indigenous Peoples
WB: World Bank
WHO: World Health Organisation

TABLE OF CONTENTS

Introduction	12
Chapter 1: The Human Right to Water	18
1. The Work of UN Human Rights Bodies and Mechanisms	18
1.1. The Sub-Commission on the Promotion and Protection of Human rights	18
1.2. The Human Right Council	21
1.3. UN Special Procedures	22
1.4. The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation	27
2. The Human Right to Water in International Human Rights Law: A Progressive Development	30
2.1. Progressive recognition of the human right to water	30
2.2. The Extensive interpretation of article 11 and 12 of ICESCR	34
2.3. The basic contents of the human right to water	37
Chapter II: Indigenous Peoples' Rights Over land and Resources including Waters Rights	41
1. Indigenous Peoples' Water Rights as part of the Right to Property over Land, Territories and Natural Resources	42
1.1. Use, develop, and control of the natural resources	42
1.2. The customary origin of the right	45
1.3. A collective right	49
2. Water as part of the Right to Cultural Identity: Element of Indigenous Peoples' Cultures and Ways of Life	52
3. Environmental Protection	54
3.1. Right to live in a healthy environment	55
3.2. Indigenous peoples' sustainable management of water	57
Chapter III: Operationalising indigenous water rights: State obligations	62
1. The Obligation to Take Positive Steps	63
2. States' Duties to Implement the Right to Water	66
3. Principles guiding the Implementation of the Human Right to Water including Indigenous Peoples' Rights	68
3.1. Prioritisation of water uses	68
3.2. Public participation and States' duty to consult	69
3.3. Sustainable use of the water and impact assessment studies	78
4. Assessing the Implementation of the Right to Water	81
4.1. Monitoring system	81

4.2. Institution-building	82
5. Registration of Water Rights	84
6. Access to Judicial Remedies and Reparation	87
Conclusions	90
Bibliography	95