

To:

UN Special Rapporteur on human rights and the environment
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Subject:

The Global Water Crisis and Human Rights

Dear UN Special Rapporteur on Human Rights and the Environment,

The report below provides examples of issues impacting the global water crisis. As participants of the Indigenous Permanent Forum on Indigenous Issues each year, and partners with Indigenous Peoples organizations, there are fundamental actions to be considered as responsive and solution-oriented approaches. For example, predominant western forums and interagency initiatives at multiple levels convene water forums and dialogues with which to advance their agendas, collaboration, coordination, reports and input on water.

However, Indigenous Peoples do not have key interagency water forums within the United Nations with which to convey an agenda, action items, and input. For example, our team and partners have initiated an annual water convening, *Mni Ki Wakan (Water is Sacred): World Indigenous Peoples' Decade of Water, or Indigenous Water Decade (2017-2026)*, as a model.

In conjunction with the input below, the Mni Ki Wakan Indigenous Water Assembly offers the following *recommendations* from partner and stakeholders in the midwest United States and globally, which have been provided each year at the United Nations Permanent Forum on Indigenous Issues:

- Convene an annual water summit of Indigenous Peoples and youth.
- Initiate a global Indigenous water study
- Establish a global Indigenous water coordinating body and relevant platforms.
- Provide a water item and initiatives at the UNPFII and EMRIP.

REPORT**Question 1**

In South Dakota, United States, uranium mining has produced extraction zones which in some cases were left uncapped. This has led to contamination of aquifers near Tribal Nations in South Dakota. For example: "In South Dakota, a study was done to determine

water movement in an area that held uranium deposits. In this case, water from a uranium-bearing layer was pushing up into an aquifer above it due to artesian pressure. The authors believed that the water was moving through old unplugged uranium exploration holes. Water was also moving through a shale rock layer that separated the two aquifers because of “joints and fractures” in the shale” (Clean Water Alliance, p.4). Uranium mining is not new to South Dakota and has faced decades-long opposition by Indigenous Peoples who state the high risks of uranium contamination to the broader region (Nebraska, South Dakota), the potential of depleting critical water resources, and creating inhabitable environments.

For example, one article (Native Sun News, 2018) cites a testimonial from South Dakota on the issue of in situ leach mining: “This contamination will pollute and render unusable ground and surface water southwards into Nebraska and surface waters within the White River drainage northeastwards into greater South Dakota.” Similar uranium mining projects have resulted in contamination of aquifers. According to Clear Water Alliance, ““A study of water contamination in the Laramie-Fox Hills aquifer in northern Colorado showed that there were leaks from the upper layer of an aquifer to lower levels of the aquifer as a result of improper well abandonment. As a result, the water in the lower levels had become contaminated” (Clean Water Alliance, p.4). Issues of natural resource extraction sites leading to contamination continue to appear.

In situ mining, also known as “solution” mining can lead the reversal of pre-mining groundwater flows (Clean Water Alliance, p. 2). Issues such as these leave Indigenous Peoples lacking efficient water rights concerning corporations. In fact, “When a uranium company cannot clean up water at an in situ mine to the level promised in their permit, regulating agencies often “relax” the water restoration standard” (Clean Water Alliance). Water regulations are curtailed to meet corporate rights, instead of Indigenous Peoples in cases cited by the Clean Water Alliance.

Geographical locations on or near Indigenous Peoples’ communities have retained higher amounts of biodiversity, ecosystems, and water. Increasingly, corporations have set their sights on these areas for their natural resource extraction and water used in the extraction process. This issue is compounded by fossil fuel extraction projects which also require unsustainable water usage for the process.

The examples above if they continue to increase as many studies predict violates the right existence of Indigenous Peoples on their traditional territories, the right to clean water and sanitation, culture which is dependent on the land. The projects have also failed to adhere to the *Declaration on the Rights of Indigenous Peoples* and relevant conventions which these articles derive from:

Article 32, subsection 2: the *right to free, informed, and prior consent*.

Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 29, subsection 1: Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories

and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

Subsection 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

Projects have persisted due to continuous granting of projects and permits with little consideration of Indigenous Peoples, who then use the court system to litigate their treaty and legal rights or are left with little to no recourse for address. Water pollution in these cases can increasingly lead to *water scarcity* as water resources in South Dakota depend on key aquifers and rivers which are highly dependent on each other in a dry arid region. Exposure to deadly chemicals through the examples of natural resources extraction subverts and breaches article 29 of UNDRIP in this regard. Numerous studies predict an increase of these and similar projects by corporations and states in the coming years.

Sources:

Clean Water Alliance. In Situ Leach Uranium Mining and Water: What do we know?. 12/15/12. Retrieved from <https://bhcwateralliance.files.wordpress.com/2017/03/waterbooklet-bhcwa.pdf>

Native Sun News. Uranium Mining near Pine Ridge Reservation halted. 2018. Retrieved from indianz.com/News/2018/03/27/native-sun-news-today-uranium-mining-nea.asp

United Nations. Declaration on the Rights of Indigenous Peoples. 10 September 2007.

Question 2. How has climate change exacerbated water-related problems?

Indigenous Peoples in diverse regions are expected to feel the impacts of climate change. Many returning to traditional localized agricultural practices may experience seasonal instability, making crop production unstable. Droughts are increasingly rendering food sovereignty and security unpredictable. Such localized and agricultural production which incorporates buffalo (Rosebud Sioux Tribe) contributes to ecosystem restoration which invariably leads to cleaner water. As climate change continues to present increasingly unpredictable conditions, mitigation and adaptation become critical at all levels. Unpredictable climate and weather patterns may negatively impact traditional plant medicines, flora, fauna, and species, negatively impacting the cultural continuity, identity, and transmission of Indigenous knowledge.

As corporations consider integrating climate change transition plans, part of corporate social responsibility (CSR) must also include the human rights of Indigenous Peoples, such as: *free, informed, and prior consent*, where they have veto power in consultations should it pose risks to the enjoyment, fulfilment and respect of their rights.

The United States in the past four years has removed itself from the Paris Climate Agreement which was central to establishing sustainable standards for climate change mitigation and adaptation amidst rollbacks of environmental protections, nationally.

Question 3

According to the Declaration of Indigenous Peoples, article 18 states: "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures...." Indigenous representation across water sectors and levels remains highly deficient, with a minimal history of Indigenous Peoples participation in their own water rights in nation-states. This is indicative of the growing consensus of Indigenous Peoples with agreements like UNDRIP who experience corporate non-renewable energy projects which increase risks of water pollution.

Article 32, subsection 2, provides, “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.”

Sources:

United Nations. United Nations Declaration on the Rights of Indigenous Peoples. 13 September 2007. Retrieved from https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Question 4

Recently within the United States, major protections in the Clean Water Act were removed. This means corporations, the agricultural industry, and state actors can now use groundwater for their projects. Prior to 2020, 60% of waterways were protected, this included ground water and smaller streams. Today, Indigenous Peoples who traditionally use coastal seas, and rivers for cultural practices and continuity may experience an increase of corporate projects and disruption to this end.

Sources:

<https://www.npr.org/2020/01/23/798809951/trump-administration-is-rolling-back-obama-era-protections-for-smaller-waterways>

Question 5

Indigenous Peoples are utilizing ecosystems restoration which leads to cleaner water in the United States; Restoration of buffalo can also lead to water remediation with ecosystems restoration, being utilized by the Rosebud Sioux Tribe; Treaties of Indigenous Peoples, such as the Fort Laramie Treaties include large riverways which provide water to millions of people, if respected, the Lakota people will be allowed to advance key water rights and sustainable practices; Indigenous Peoples have sought positions within key water sectors and have continued to be precluded from it at different levels. Indigenous Peoples’ representation within the water sector, regulatory bodies, and in broad sweeping legislation concerning water is needed; integration of UNDRIP in the water sector can lead to and expand of water governance sustainability in the United States by including Indigenous water governance which contains cultural and ecological components.

Question 6

According to the Clean Water Alliance (organization in South Dakota), in the Black Hills region of South Dakota, “when a uranium company cannot clean up water at an in situ mine to the level promised in their permit, regulating agencies often “relax” the water restoration standard”(Clean Water Alliance, p. 2). A lax water permitting process presents ongoing potential for water contamination and leaks. The black hills is the traditional Lakota territory where many of their traditional customs and ceremonies occur throughout the year.

Question 7

The original boundaries laid out in the 1868 Fort Laramie treaty were signed between the United States and the Lakota Nations, federally known as the Sioux Nation. The treaty is outlined by rivers and various other watersheds which provide water to Indigenous Peoples and millions of citizens downstream. The honouring and enforcement of this treaty would help protect and ensure the water rights for all within the Lakota Nation located in the original boundaries of the treaty.

The United Nations Declaration on the Rights of Indigenous Peoples

Article 37 applies:

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have states honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Sources:

United Nations. Declaration on the Rights of Indigenous Peoples. 10 September 2007.

Question 8

Historically, protections of environmentalists and human rights defenders have been inefficient in the United States. For example, South Dakota recently passed a “riot boosting” law which provided harsher sentencing for Indigenous environmentalists who opposed the Dakota XL Pipeline which transgressed against their 1851 and 1868 Fort Laramie Treaties and water rights at the Oceti Sakowin (Seven Council Fires).

Coupled with the militarization of state and county police forces, Indigenous water protectors still face repression. To help protect Indigenous Peoples working on Indigenous water rights and human rights, Indigenous organizations and allies have started legal groups to provide representation in courts. Still, efficient legal protections in law are all but missing, and with the recent militarization of state police forces, Indigenous Peoples face the potential of harsher treatment by authorities and states.

Sources:

Associated Press. March 24, 2020. South Dakota governor signs riot boosting penalties. Associated Press. Retrieved from <https://apnews.com/article/be8c8ca5130fe946598a344ec59e004e>