



NEXT STEPS FOR FRESH WATER: SUBMISSION OF THE HUMAN RIGHTS COMMISSION

This is a general response to the Ministry for the Environment's Consultation document "Next Steps for Fresh Water."

The Human Rights Commission would like to highlight the importance of human rights principles when considering the freshwater management proposals contained in the consultation document.

The human rights principles of the most direct relevance are set out in:

- the right to water and sanitation
- the right to self-determination

The right to self-determination: International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the United Nations Declaration on the Rights of Indigenous Peoples

Water is a taonga of paramount importance to Māori. To Māori water is everything – an ancestor, a life force, the provider of food, and a meeting place full of history. For Māori water has been, and remains, an integral political, economic and spiritual resource. Water is central to Māori culture.

The discussion paper notes the government recognizes the relationship of Māori with water.

The relationship between Māori and water can be characterized in a number of ways. It is incontrovertible that one way of describing the relationship is cultural.

There are a number of human rights treaties that New Zealand has ratified that deal with cultural rights.

International Covenant on Civil and Political Rights
International Covenant on Economic, Social and Cultural Rights

Articles 1.1 of the International Covenant on Civil and Political Rights (ICCPR) and of the International Covenant on Economic, Social and Cultural Rights (ICESCR) are identical and say:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 25 of the ICCPR says:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives

Article 27 of the ICCPR says:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 3 of the ICESCR says:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 15 of the ICESCR says:

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;

The UN's Human Rights Committee (UNHRC) has a mandate to examine individual complaints with regard to alleged violations of the ICCPR by a state that is a party to the Optional Protocol to the ICCPR. New Zealand acceded to the Optional Protocol on 26 May 1989.

The UNHRC has considered a number of complaints which have centred on the meaning and scope of Article 27 of the ICCPR. The tenor of the UNHRC's decisions has been whether there has been an interference with an individual's right to enjoy a minority culture cannot be determined in abstracto, it has to be placed into a context. Examples of activities that have been decided to come within the ambit of the enjoyment of a minority culture are:

- economic activities essential to the minority's culture, e.g. hunting or fishing
- spiritual activities.

The UNHRC has said that:

- that measures that have a certain limited impact on the way of life of persons belonging to a minority will not necessarily amount to a denial of the Article 27 right
- the availability of measures to ensure effective participation by the minority in relevant decisions is an important factor which includes any future decisions that may lead to an encroachment of the right.

One of the complaints considered by the UNHRC in which there was an alleged violation of Article 27 was a claim brought by Apirana Mahuika and 18 others in relation to the Sealords settlement. The UNHRC found that there had been no breach of Article 27. In its decision the UNHRC commented:

The Committee emphasises that the State party continues to be bound by article 27 which requires that the cultural and religious significance of fishing for Māori must deserve due attention in the implementation of the Treaty of Waitangi

(Fisheries Claims) Settlement Act. With reference to its earlier case law ... the Committee emphasises that in order to comply with article 27, measures affecting the economic activities of Māori must be carried out in a way that the authors continue to enjoy their culture, and profess and practice their religion in community with other members of their group. The State party is under a duty to bear this in mind in the further implementation of the Treaty of Waitangi (Fisheries Claims) Settlement Act.

Making the necessary changes for context it is essential for all decision makers involved in freshwater management to be aware that they are required by Article 27 to give due attention to its requirements.

United Nations Declaration on the Rights of Indigenous Peoples

In 2007 the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the United Nations' General Assembly. While it does not create binding obligations on the New Zealand government the UNDRIP does form part of the international human rights framework.

International human rights bodies – such as the UN Committee on the Elimination of Racial Discrimination – have affirmed that the UNDRIP should be used when interpreting human rights obligations and resulting government responsibilities.

An examination of the relevant Articles in the UNDRIP also provides appropriate context for decision makers in interpreting the Articles in the ICCPR and the ICESCR cited above.

Article 3 of the UNDRIP says:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 25 of UNDRIP affirms that:

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.

The UNDRIP affirms indigenous peoples' right to "own, use, develop and manage" these traditional lands, territories and resources (Article 26(1) (2)).

Other provisions in UNDRIP relating to lands, territories and resources, provide for their legal recognition and protection, with due respect for indigenous custom, laws and systems (Article 26(3), Article 27).

The UNDRIP also contains provisions relevant to authority and control over resources, conservation and protection of the environment, and consultation and cooperation in relation to projects that affect resources and involvement in decision-making.

The recent development of models of co-governance and co-management by Māori of fresh water and the recognition of the legal status of the Whanganui River (including its tributaries) as Te Awa Tupua, reflecting the view of the River as a living whole, provide ways to give full and appropriate recognition of the relationship between Māori and fresh water.

The UNDRIP's principles should be taken into account in deciding the next steps for freshwater management. The Commission supports initiatives to enhance the involvement and participation of local Māori and communities in the development of proposals to improve the management of fresh water.

Annexure 1 is a human rights analysis undertaken by the Danish Institute for Human Rights in relation to one of the UN's Sustainable Development Goals:

<http://www.humanrights.dk/our-work/sustainable-development/human-rights-sdgs>

The relevant sustainable development goal is to: "Ensure availability and sustainable management of water and sanitation for all." There are eight targets to be met as part of achieving the goal. The analysis looks at each target and then identifies the relevant provisions in the human rights instruments. Undertaking such an exercise provides decision-making bodies with a means of ensuring that the relevant human rights obligations and principles are an integral part of the decision-making process.

The right to water and sanitation

In 2010 the UN General Assembly and the UN Human Rights Council explicitly recognized the human right to water and sanitation. This right is derived from the right to an adequate standard of living as stipulated in Article 11 of the ICESCR and other international human rights treaties. New Zealand has ratified the ICESCR and the other treaties from which the right to water and sanitation is derived.

Human Rights and Water Tika Tangata me te Wai, a paper published by the Commission in February 2012 <https://www.hrc.co.nz/files/5314/2398/4129/Human-Rights-and-Water-2012.pdf> sets out a human rights approach which is intended to be of help to legislators, policy-makers and communities in balancing conflicting interests and points of view in the management of fresh water.

Human rights considerations are relevant to:

- the debate, nationally and regionally, about water ownership, governance, management and administration
- fundamental issues related to access to water and the supply and quality of water, that affect economic, social and cultural, and civil and political rights.

The right to water and sanitation requires that water and sanitation be available, accessible, of proper quality, acceptable and affordable for all without discrimination.

In the context of this consultation the two most pertinent elements of the right to water are proper quality and cultural acceptability.

Water has to be safe for consumption and other personal uses and should not present a threat to human health. Whether water quality is maintained or improved

within a freshwater management unit rather than within a region it is paramount that the quality of the water should present no threat to human health.

This requirement should be the keystone of the standards being set for freshwater management, whether the standards are associated with fresh water and the environment or the economic use of fresh water.

While the discussion document does states at page 32 that the provision of clean, safe drinking water is a fundamental requirement for human health and a right of all New Zealanders, the Commission believes that more explicit reference to the human rights basis for this requirement would be desirable.

The Commission recommends that the Ministry read and consider the Commission's paper, referred to above, and adopt a human rights approach in the further work that will follow on from the consultation document.

Conclusion

It is essential that human rights considerations be explicitly taken into account when considering future management strategies for fresh water. It is encouraging to see the Ministry for the Environment consulting publicly on this issue and the Commission encourages ongoing active involvement with local iwi and communities as proposals for change are developed and implemented. Participation, accountability and sustainability are important components of a human rights approach and these principles are particularly significant in the context of any discussion of freshwater management.

The Commission's paper, *Human Rights and Water Tika Tangata me te Wai*, <https://www.hrc.co.nz/files/5314/2398/4129/Human-Rights-and-Water-2012.pdf> sets out more information about the human rights approach and its application in the New Zealand context.

Further information

The Commission would welcome an opportunity to meet with the Ministry's representatives to discuss the matters it has raised in this submission or to respond to any questions or provide clarification about any matter that is required by the Ministry.

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Contact information

Name	[REDACTED]
Organisation	Human Rights Commission
Address	[REDACTED]
Telephone	[REDACTED]
Email*	[REDACTED]
Submitter type	Independent Crown Entity

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Your submission may be released under the Official Information Act 1982 and may be published on the Ministry's website. Unless you clearly specify otherwise in your submission, we will consider that you have consented to website posting of both your submission and your name.

Please check this box if you would like your name, address, and any personal details withheld.

Annexure 1

**THE HUMAN RIGHTS GUIDE TO THE SUSTAINABLE DEVELOPMENT GOALS:
DANISH INSTITUTE FOR HUMAN RIGHTS**

The Human Rights Guide to the Sustainable Development Goals (SDG) developed by the Danish Institute for Human Rights lists the following instruments as pertaining to SDG #6 which is: “Ensure availability and sustainable management of water and sanitation for all.”

Universal Declaration of Human Rights

- 22 Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

International Covenant on Economic, Social and Cultural Rights

- 11.1 The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
- 12.1 The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- 12.2.b The improvement of all aspects of environmental and industrial hygiene;

Convention on the Rights of the Child

- 24.2.c To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

Convention on the Elimination of All Forms of Discrimination Against Women

- 14.2.h To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Convention on the Rights of Persons with Disabilities

- 28.2.a To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

SDG #6 has eight targets and the above articles are cited in relation to the targets relating to:

- achieving universal and equitable access to safe and affordable drinking water for all
- achieving access to adequate and equitable sanitation and hygiene for all

The target of improving water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials ... cites Art 12.1& 12.2.b of the ICESCR plus article 29.2 of the UNDRIP:

- 29.2 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.

The targets of:

- substantially increasing water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater ...
- implementing integrated water resources management at all levels ...

cite the articles in the ICESCR, the CRC, CERD & the CRPD set out above as well as Art 22 of the UDHR:

- 22 Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

The target of protecting and restoring water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes cites Art 29.1 of the UNDRIP:

- 29.1 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.

The target of supporting and strengthening the participation of local communities in improving water and sanitation management cites Article 25a of the ICCPR:

- 25a. To take part in the conduct of public affairs, directly or through freely chosen representatives;

and various Articles of the UNDRIP

- 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.

- 23 Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.
- 32.2 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.

The Indigenous and Tribal Peoples Convention, 1989 (No. 169) was also cited but New Zealand is not a signatory to that ILO Convention.

The target of expanding international cooperation and capacity-building support to developing countries in water- and sanitation-related activities cites additional articles in the UDHR, ICESCR, the CRC, CRPD and the UNDRIP but they are not pertinent to the submission.