Submission regarding the Action for healthy waterways - discussion document on the national direction for our essential freshwater

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Submission of the New Zealand Human Rights Commission to the Ministry for the Environment on the Action for healthy waterways discussion document on the national direction for our essential freshwater

A. Introduction

1. The Human Rights Commission ("Commission") welcomes this opportunity to provide a submission on the Ministry’s Action for healthy waterways discussion document on the national direction for our essential freshwater ("discussion document").

2. The Commission supports the purpose of the discussion document, which is to respect te mana o te wai, end degradation of Aotearoa New Zealand’s waterways and restore them to a healthy state.

3. The right to water is an important human right. Access to water and to a healthy environment are both vital to the enjoyment of a range of fundamental human rights. Aotearoa New Zealand has obligations under international law to protect the human right to water. Therefore, consideration of human rights is essential to the discussion regarding Aotearoa New Zealand’s waterways.

4. The purpose of this submission is to provide the Ministry with an overview of the human rights relevant to water, including obligations arising under te Tiriti o Waitangi ("te Tiriti"). The Commission recommends that the Ministry:
   a. Ensure explicit recognition of human rights principles in laws and policies relating to our essential freshwater;
   b. Include explicit reference to te Tiriti in laws and policies relating to our essential freshwater;
   c. Ensure equality and non-discrimination in access to freshwater and sanitation and in respect of other human rights related to water; and
   d. Ensure accountability in the realisation of the right to freshwater and sanitation.

5. The Commission invites the Ministry to meet and discuss how human rights may be incorporated into the national direction for our essential freshwater.

B. Human Rights and Water

6. Access to safe water is a fundamental human right. As stated by the United Nations General Assembly: “The right to safe and clean drinking water and sanitation is a human
right that is essential for the full enjoyment of life and all human rights”.¹ Having access to safe drinking water and water for sanitation is vital for human survival and central to living a life with dignity. It also critically impacts on a wide range of other human rights.

7. The right to water is a component of both the right to health and the right to an adequate standard of living. These rights are protected under several international human rights instruments that New Zealand is a party to and is obliged to uphold.² The right to water is also directly referred to in three of these treaties.³

8. Access to clean water and sanitation is one of the 17 United Nations Sustainable Development Goals (SDGs).⁴ The United Nations Guiding Principles on Business and Human Rights also includes a “Protect, Respect and Remedy” framework that is relevant to any discussions around water.⁵

9. A number of United Nations treaty bodies and special mandate holders have emphasised that water is a human right.⁶ The Special Rapporteur on water encourages States to build human rights impact assessments into the process as a tool for ensuring compliance with human rights, including the rights to water and sanitation.⁷

10. The Special Rapporteur identified ten criteria against which to assess a practice from a human rights perspective. These criteria are: availability; accessibility; affordability; quality/safety; acceptability; non-discrimination; participation; accountability; impact and sustainability.⁸

11. The Office of the High Commissioner for Human Rights (OHCHR) has also developed illustrative human rights indicators on the rights to water and sanitation, linking these to the SDGs.⁹ This framework is attached at Annex 3.

² See Annex 1: Table of international human rights instruments relating to water for further details.
⁴ New Zealand signed up to the Sustainable Development Goals in September 2015.
⁶ See Annex 2: Table of international human rights treaty bodies and mandates relating to water.
⁸ Ibid.
⁹ Office of the High Commissioner for Human Rights, Table 15.
12. Clean water has been linked to the right to a healthy environment. This requires States to ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.\textsuperscript{10}

13. Water has cultural significance and reduced access to it, or detrimental impacts on water quality, can violate cultural rights.\textsuperscript{11}

14. The United Nations Declaration on the Rights of Indigenous Peoples ("the Declaration") guarantees the collective right of indigenous peoples to self-determination of their resources including water. The rights of indigenous peoples to water under the Declaration is outlined further below.

**C. Obligations under te Tiriti and the Declaration**

15. Te Tiriti is one of the major sources of New Zealand's constitution.\textsuperscript{12} The Cabinet Manual states the Treaty is a founding document of government in New Zealand and that it:\textsuperscript{13}

\begin{quote}
may indicate limits in our polity on majority decision-making. The law may sometimes accord a special recognition to Māori rights and interests such as those covered by Article 2 of the Treaty.
\end{quote}

16. Under te Tiriti, Māori are guaranteed the right to tino rangatiratanga (self-determination) of their taonga.\textsuperscript{14} Freshwater has long been recognised as taonga, essential to the life and cultural identity of Māori.\textsuperscript{15} This has been emphasised by the Waitangi Tribunal.\textsuperscript{16}

\begin{quote}
Rivers and other water bodies could be living beings or ancestors. In whakapapa, Māori had kin relationships with these water bodies. Each had its own mauri (life force), its taniwha (spirit guardians), and a central place in tribal identity. […] The importance of these water bodies to Māori cannot be overstated. These things have long been known.
\end{quote}

17. The Declaration complements and reinforces the text of te Tiriti. New Zealand courts and the Waitangi Tribunal have interpreted te Tiriti and the Declaration alongside one

\begin{flushleft}
\textsuperscript{11} As protected under the International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as CRC, CPRD, CEDAW, and the Declaration as it applies to those groups.
\textsuperscript{12} Cabinet Office Circular *Te Tiriti o Waitangi / Treaty of Waitangi Guidance* CO (19) 5 (22 October 2019) at [2].
\textsuperscript{13} Cabinet Manual 2017, p. 2.
\textsuperscript{14} Things of importance to Māori including language, culture, land, natural resources.
\textsuperscript{15} This is because of the spiritual and genealogical connection that Māori share with Papatūānuku (the earth) and the elements of the natural world, under te ao Māori. Under this system of reciprocal rights and responsibilities, Māori have a responsibility to be kaitiaki (guardians or stewards). References to water also often precede the saying of a pepeha (introduction).
\textsuperscript{16} Waitangi Tribunal *Wai 2358: Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (2012) at 2.8.3(1).
\end{flushleft}
another. The Declaration provides that indigenous peoples have the right to the resources they have traditionally owned or used.

18. The Declaration recognises the fundamental importance of water and other natural resources to indigenous peoples’ identity and the need to respect indigenous knowledge, cultures and traditional practices contributing to sustainable and equitable development and proper management of the environment. Article 25 provides indigenous peoples:

\[
\text{The right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources to uphold their responsibilities to future generations in this regard (emphasis added).}
\]

19. The Declaration explicitly recognises the right of indigenous peoples to the conservation and protection of the environment and to determine and develop priorities and strategies for the development or use of their lands or resources, including water.

20. The Declaration provides that the State must consult with indigenous peoples in good faith and endeavour to obtain their free, prior and informed consent prior to the approval of any project affecting their resources including water. This important procedural principle under the Declaration is central to the right of indigenous peoples to participate.

D. Application of human rights to the national direction for freshwater

Recognition of human rights

21. Human rights are essential to any discussion about water. Water related human rights should be explicitly referenced in law and policy documents relating to essential freshwater.

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18 Article 26 of the Declaration.
19 Preamble of the Declaration.
20 Article 29 of the Declaration.
21 Article 32 of the Declaration.
22 Articles 19 and 32(2) of the Declaration.
24 This includes the National Policy Statement, National Environmental Standards, Sources of Drinking Water and Wastewater, the Resource Management Act and any other laws and policies relating to freshwater.
22. Laws and policies relating to freshwater should be assessed from a human rights perspective against the ten criteria outlined by the United Nations Special Rapporteur and the human rights indicators set out by the OHCHR.25

23. Not only does this approach align with New Zealand’s international obligations, it will result in more comprehensive laws and policies that are less susceptible to challenge in the Courts or on the international stage.26

**Recognition of te Tiriti o Waitangi**

24. Water is a taonga and te Tiriti provides that Māori have the right to self-determination of freshwater under their territory. It is therefore essential that te Tiriti is explicitly recognised and incorporated in the national discussion, and in relevant laws and policies. This must occur at both central government and local government levels. For guidance on consideration of te Tiriti in policy development and implementation, see the Cabinet Guidance on te Tiriti.27

25. While noting the inter-connectedness between the three tiers of the proposed hierarchy of obligations, the Commission supports the proposal to elevate the health of the water as the first priority and then meeting the essential human health needs over other consumption. This is consistent with te ao Māori and obligations under te Tiriti and it could be said, is consistent with recent recognition of water as a legal entity.

26. The Waitangi Tribunal has stated that the Māori treaty right in the management of freshwater taonga is situated at the co-governance / co-management point on the scale.28 There have been significant co-governance and co-management successes from Treaty Settlement arrangements that have recognised this treaty right. It has also improved the relationship between Māori and local councils and led to improvements in te mana o te wai.

27. There is an opportunity with this review to consider these types of co-governance and co-management arrangements on a more systemic basis. The Waitangi Tribunal has recommended specific amendments to the RMA along with other suggestions in order to

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25 For further information relating to the ten criteria, see Human Rights Commission, *Human Rights and Water* (2012), provided with this submission as an attachment.
26 It is noted that New Zealand’s human rights obligations are much broader than the New Zealand Bill of Rights Act 1990.
27 Cabinet Office Circular *Te Tiriti o Waitangi / Treaty of Waitangi Guidance* CO (19) 5 (22 October 2019)
achieve this. The Commission supports the implementation of these recommendations to ensure adherence to te Tiriti and fulfilment of the rights under the Declaration.\textsuperscript{29}

28. The Commission is also of the view that the associated management and decision-making should be made as a partnership between the Crown (or local government) and Māori on an equal basis. For example, the proposed panels should have an equitable division of Māori representatives and government representatives (including both local government and central government appointed Commissioners). In a model consistent with co-governance, the final decision making should rest with this panel rather than local government as in the current proposals. It is essential that Māori are adequately resourced in order to enable this participation.\textsuperscript{30}

29. The Waitangi Tribunal found that “the nature and extent of the propriety right was the exclusive right of hapū and iwi to control access to and use of the water while it was in their rohe [territory].”\textsuperscript{31} The discussion document notes the issue of ownership, including Māori rights to water, as an outstanding issue that needs addressing but this is not covered in the document. This issue should be addressed as a priority. This right has been recognised by the Waitangi Tribunal and is addressed in the Declaration which provides for a right of redress where resources, including water, have been confiscated without free, prior and informed consent.\textsuperscript{32}

\textbf{Non-discrimination and equality of access to freshwater}

30. International human rights law demands that the fundamental human rights principles of non-discrimination and equality must be respected in access to water.\textsuperscript{33} Non-discrimination means that groups should not be directly or indirectly discriminated against in access to water. The principle of equality demands that everyone benefits from access to \textit{adequate} services as defined in the human rights to water and sanitation and associated commentaries and guidance.\textsuperscript{34}

31. Water and sanitation must be affordable and accessible for all. There are certain groups and individuals that are particularly disadvantaged in access to water and sanitation.

\textsuperscript{29}\textit{Ibid.}, at [7.7.3].
\textsuperscript{30}\textit{Ibid.}, at [7.7.5], noting also the Tribunal’s statement “we found that under-resourcing has contributed to a lack of capacity and capability for many Māori entities in freshwater management.”
\textsuperscript{31}Waitangi Tribunal \textit{Wai 2358: Stage 1 Report on the National Freshwater and Geothermal Resources Claim} (2012) at [3.1].
\textsuperscript{32}Article 28 of the Declaration.
\textsuperscript{33}These principles are enshrined in all major human rights treaties adopted since the UDHR, including: Art. 2(2), 3 of ICESCR; Art. 2(1), 3 of ICCPR; Art. 1, 2, 3 of CEDAW; Art. 1, 2 of the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD); Art 2(1)(2) of CRC; and Art. 1 of CRPD.
\textsuperscript{34}UN Water, \textit{Eliminating discrimination and inequalities in access to water and sanitation}, (May 2015), at 7.
These groups include people living in poverty, those living in rural areas, and those living on marae and papakāinga. The principles of non-discrimination and equality can require positive measures to be taken to overcome these inequalities.

32. The proposed exceptions for major hydro schemes, that water quality would be allowed below a national bottom line where it is in the interests of securing hydro-electricity infrastructure, may impede the enjoyment of the human rights to water and sanitation. The potential negative impacts include impacts on safe drinking water, reduction in availability or in accessibility to water services or water sources which in turn can affect other aspects of the human rights to water and sanitation, such as acceptability, privacy and dignity, participation, rights to health, housing and education. It also impacts the rights of Māori (including propriety rights) as guaranteed under te Tiriti and protected by the Declaration. Consideration of these human rights are essential in discussions about this major hydro scheme exemption.

Accountability

33. Accountability is a core human rights principle. Those whose human rights are violated should have the right of access to an effective remedy and redress. In 2018 the Special Rapporteur on water reported to the United Nations General Assembly about the challenge of accountability in the realisation of the right to water and sanitation:

[...] the adequate implementation of accountability requires a clear definition of who is accountable, who may hold actors accountable and what actors must be accountable for. Affected populations can hold States and other accountable actors to account for failing to adhere to predetermined performance standards or to comply with human rights obligations. Yet, the challenge lies in the difficulty of ascertaining who is accountable for access to water and sanitation services, particularly given the often complex architecture of governmental institutions in that sector, the involvement of private and informal service providers, the existence of regulators and situations where no one is formally identified as accountable.

34. The Waitangi Tribunal recommended that the Crown should monitor Treaty performance, and that for freshwater matters, this should be carried out by a co-governance body.

35 Wai 2358: Stage 2 at [7.7.9].
36 UNGA Report of the Special Rapporteur on the human rights to safe drinking water and sanitation (16 July 2018) UN Doc A/73/162 at [6].
37 Ibid., at [84].
38 Wai 2358: Stage 2 at [7.7.8].
Tribunal emphasised the importance of regular reports to enable monitoring and enforcement. This is in line with international law obligations relating to accountability.

35. The Commission recommends that the Ministry clearly identify the roles and responsibilities of all entities involved in freshwater decisions and management and ensure these roles and responsibilities are transparent to individuals so that there are clear avenues of accountability.39

36. Set out below at Annex 1 is a table that highlights relevant provisions of international human rights instruments relevant to discussion about water and in Annex 2 guidance from United Nations oversight bodies and experts about the application and requirements of these provisions.

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### Annex 1

**Table of international human rights instruments relating to water**

<table>
<thead>
<tr>
<th>TREATIES</th>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)</td>
<td>Article 14</td>
<td>State parties shall take all appropriate measures to ensure women the right to enjoy adequate living conditions particularly in relation to housing, sanitation, electricity and <strong>water supply</strong>...</td>
</tr>
<tr>
<td>Convention on the Rights of the Child (CRC)</td>
<td>Article 24</td>
<td><strong>clean drinking water</strong>, taking into consideration the dangers and risks of environmental pollution.</td>
</tr>
<tr>
<td>Convention on the Rights of Persons with Disabilities (CRPD)</td>
<td>Article 28</td>
<td>State Parties recognize the right of persons with disabilities to social protection...including measures to ensure equal access by persons with disabilities to <strong>clean water services</strong>...</td>
</tr>
<tr>
<td>United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)</td>
<td>Article 25</td>
<td>Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, <strong>waters</strong> and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.</td>
</tr>
<tr>
<td></td>
<td>Article 32</td>
<td>1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 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, <strong>water</strong> or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.</td>
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<tr>
<td></td>
<td>Article 21</td>
<td>1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, <strong>sanitation</strong>, health and social security.</td>
</tr>
<tr>
<td><strong>International Covenant on Economic, Social and Cultural Rights (ICESCR)</strong></td>
<td>Article 11</td>
<td>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.</td>
</tr>
<tr>
<td>Universal Declaration of Human Rights (UDHR)</td>
<td>Article 25</td>
<td>Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family</td>
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<tr>
<td><strong>CRC</strong></td>
<td>Article 27</td>
<td>States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.</td>
</tr>
<tr>
<td><strong>CRPD</strong></td>
<td>Article 28</td>
<td>States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.</td>
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<tr>
<td><strong>Right to Health</strong></td>
<td><strong>ICESCR</strong></td>
<td>Article 12</td>
</tr>
<tr>
<td><strong>UNDRIP</strong></td>
<td>Article 24</td>
<td>1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services. 2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.</td>
</tr>
<tr>
<td><strong>UDHR</strong></td>
<td>Article 25</td>
<td>(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.</td>
</tr>
<tr>
<td><strong>CRC</strong></td>
<td>Article 24</td>
<td>States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.</td>
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<tr>
<td><strong>CPRD</strong></td>
<td>Article 25</td>
<td>States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.</td>
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<td><strong>Right to culture</strong></td>
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<tr>
<td><strong>ICESCR</strong></td>
<td>Article 1</td>
<td>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.</td>
</tr>
</tbody>
</table>
| **ICESCR** | Article 15 | 1. The States Parties to the present Covenant recognize the right of everyone:  
(a) To take part in cultural life; |
| **UNDRIP** | Article 31 | 1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.  
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights. |
| **UDHR** | Article 27 | (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. |
| **International Covenant on Civil and Political Rights (ICCPR)** | Article 27 | 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. |
| **Rights of indigenous peoples relating to resources including water** |  |  |
| **UNDRIP** | Article 29 | 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. |
| **UNDRIP** | Article 26 | 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. |
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27
States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 18
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, as well as to maintain and develop their own indigenous decision-making institutions.

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.

OTHER INTERNATIONAL LAW OBLIGATIONS

<table>
<thead>
<tr>
<th>Sustainable Development Goals</th>
<th>Goal 6</th>
<th>Ensure access to water and sanitation for all Targets</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td><strong>6.1</strong> By 2030, achieve universal and equitable access to safe and affordable drinking water for all</td>
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<td><strong>6.2</strong> By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations</td>
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<td><strong>6.3</strong> By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally</td>
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<td><strong>6.4</strong> By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable</td>
</tr>
<tr>
<td>Agenda 21</td>
<td>18. Protection of the quality and supply of freshwater resources: application of integrated approaches to the development, management and use of water resources</td>
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<td><strong>Agenda 21 has a comprehensive plan for the sustainability of water. Below are just some of the relevant paragraphs:</strong></td>
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<td></td>
<td><strong>18.2.</strong> Water is needed in all aspects of life. The general objective is to make certain that adequate supplies of water of good quality are maintained for the entire population of this planet, while preserving the hydrological, biological and chemical functions of ecosystems, adapting human activities within the capacity limits of nature and combating vectors of water-related diseases. Innovative technologies, including the improvement of indigenous technologies, are needed to fully utilize limited water resources and to safeguard those resources against pollution.</td>
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<td><strong>18.8.</strong> Integrated water resources management is based on the perception of water as an integral part of the ecosystem, a natural resource and a social and economic good, whose quantity and quality determine the nature of its utilization. To this end, water resources have to be protected, taking into account the functioning of aquatic ecosystems and the perenniality of the resource, in order to satisfy and reconcile needs for water in human activities. In developing and using water resources, priority has to be given to the satisfaction of basic needs and the safeguarding of ecosystems. Beyond these requirements, however, water users should be charged appropriately.</td>
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<tr>
<td>United Nations Guiding Principles on Business and Human Rights</td>
<td>Protect, Respect and Remedy framework</td>
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<td>---------------------------------------------------------------</td>
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<tr>
<td></td>
<td>• The State duty to <strong>protect</strong> human rights</td>
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<td>• The corporate responsibility to <strong>respect</strong> human rights</td>
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<td></td>
<td>The need for rights and obligations to be matched to appropriate and effective <strong>remedies</strong> when breached</td>
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Annex 2
Table of international human rights treaty bodies and mandates relating to water

<table>
<thead>
<tr>
<th>Treaty Body or Mandate</th>
<th>Document</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNGA <em>Human Rights to Safe Drinking Water and Sanitation</em>, (19 July 2019) UN Doc A/74/197</td>
<td>Special Rapporteur Report on megaprojects and the impact on the human rights to water and sanitation</td>
<td>[2] Throughout the stages of their lifecycle, megaprojects have a long-lasting impact on various aspects of the society, including human lives, the economy and the environment. Such projects are promoted through a narrative of contributing towards the enhancement of the livelihood of the people, but they often impede the enjoyment of the human rights to water and sanitation. In particular, the extensive usage of land required for the implementation and the <strong>massive exploitation of water sources</strong> may have dire consequences for the availability and quality of water and, in general, for the way the population accesses water and sanitation services. [86] Megaprojects are double-edged: they may contribute towards the enhancement of people’s livelihoods but may also impede the enjoyment of the human rights to water and sanitation. Megaprojects may potentially lead to various negative impacts on the enjoyment of the human right to safe drinking water in particular and, consequently, to the human right to sanitation. The potential negative impacts include reduction in availability or in accessibility to water services or water sources, due to over-exploitation, blockage, deviation or quality deterioration. The impact on availability, accessibility and quality of water in turn can affect other aspects of the human rights to water and sanitation, such as affordability, acceptability, privacy and dignity, and other rights, such as the rights to health, housing and education. These also affect other interlinked rights arising from social conflict, which are aggravated by megaprojects and power imbalances between the proponents of megaprojects and those that are negatively affected. Given the wide range of negative impacts that megaprojects have on the human rights to water and sanitation and other interlinked rights, it is necessary to assess the feasibility and necessity of those projects vis-à-vis the human rights framework. In order to prevent and mitigate risks arising from megaprojects and to ensure that human rights are complied with at every stage of their lifecycle, the Special Rapporteur recommends that accountable actors use the list of questions provided in the report as guidelines for the implementation of their human rights obligations and responsibilities.</td>
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[85] the Special Rapporteur recommends that all accountable actors, including States, international organizations, bilateral and multilateral funders, non-governmental organizations (NGOs), private and informal services providers, independent regulators, transnational and national companies:

(a) Clearly identify the roles and responsibilities of entities whose influence, actions, inaction and decisions affect the provision of water and sanitation services, making those roles and responsibilities transparent and clear to the affected individuals;
(b) Ensure that resources, knowledge, capacity and corresponding accountability mechanisms are properly transferred when roles and responsibilities are transferred from one actor to another;
(c) Adopt the normative content of the human rights to water and sanitation and human rights principles as the fundamental basis for performance standards;
(d) Prioritize the provision of water and sanitation in line with the human rights to water and sanitation in situations of multiple accountability demands.

Specifically, States should:

(a) Establish clear coordination mechanisms within governmental institutions so that individuals do not need to resort to multiple actors in the Government to claim their rights;
(b) Strengthen the capacity of local governments and service providers to implement their mandates through a clear accountability process;
(c) Clearly allocate, define and attribute the responsibilities of all stakeholders involved in the water and sanitation sector in accordance with the framework on the human rights to water and sanitation, and regulate the implementation of those responsibilities;
(d) Identify informal service providers of water and sanitation services to individuals and communities and put in place regulations for those providers, making accountability mechanisms available;
(e) When responsibilities for service provision are transferred to communities, ensure that accountability measures for any human rights violations that may occur owing to aggressive and abusive practices are in place.

| Human Rights Council, Resolution adopted by the Human Rights Council on 22 March 2018: 37/8 Human rights and the environment (9 April 2018) UN Doc A/HRC/RES/37/8 | Resolution 37/8 | Recognizing that sustainable development and the protection of the environment, including ecosystems, contribute to human well-being and to the enjoyment of human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to safe drinking water and sanitation and to housing, and cultural rights |
Recognizing also that, conversely, the impact of climate change, the unsustainable management and use of natural resources, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems may interfere with the enjoyment of a safe, clean, healthy and sustainable environment, and that environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of all human rights,

Recognizing further that, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by those segments of the population that are already in vulnerable situations,

Recognizing that the exercise of human rights, including the freedom to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and the right to an effective remedy, is vital to the protection of a clean, healthy, safe and sustainable environment,


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Human rights and environmental protection are interdependent. A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights, including the rights to life, to the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to safe drinking water and sanitation, to housing, to participation in cultural life and to development, as well as the right to a healthy environment itself, which is recognized in regional agreements and most national constitutions. At the same time, the exercise of human rights, including rights to freedom of expression and association, to education and information, and to participation and effective remedies, is vital to the protection of the environment.

UNGA, Resolution 72/178 (29 January 2018) UN Doc A/RES/72/178

Resolution 72/178

1. Reaffirms that the human rights to safe drinking water and sanitation, as components of the right to an adequate standard of living, are essential for the full enjoyment of the right to life and all human rights;

2. Recognizes that the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, and that the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe,
hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living; [...] 

4. Calls upon States: [...] 

(b) To ensure the progressive realization of the human rights to safe drinking water and sanitation for all in a non-discriminatory manner while eliminating inequalities in access, including for individuals belonging to groups at risk and to marginalized groups, on the grounds of race, gender, age, disability, ethnicity, culture, religion and national or social origin or on any other grounds; 

(c) To continuously monitor and regularly analyse the status of the realization of the human rights to safe drinking water and sanitation; (d) To identify patterns of failure to respect, protect or fulfil the human rights to safe drinking water and sanitation for all persons without discrimination and to address their structural causes in policymaking and budgeting within a broader framework, while undertaking holistic planning aimed at achieving sustainable universal access, including in instances where the private sector, donors and non-governmental organizations are involved in service provision; 

United Nations General Assembly (UNGA) Resolution 64/292 (3 August 2010) UN Doc A/RES/64/292 

Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights; 


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29. From a human rights perspective, it is imperative to determine whether service delivery contributes to or undermines the realization of human rights. Therefore, the provision of services must be assessed against the standard of the human rights to sanitation and water. [...] 

[...] the independent expert offers the following recommendations: 

(a) States must develop a national plan, including legislation and other appropriate measures, to progressively achieve the full realization of the rights to water and sanitation, including in currently unserved and underserved areas, independent of the modalities of the service provision chosen. These measures should be based on the explicit recognition of the rights to water and sanitation; 

(b) States must not discriminate (de jure or de facto) against any groups or individuals in the provision of
services, but rather adopt targeted measures to reach the most marginalized;

(c) Regardless of its modalities, the decision of the State to delegate or not delegate service provision must be taken in a democratic and participatory process. All those concerned must be enabled to participate throughout the process and to monitor, evaluate and report on possible human rights abuses. Participation has to be active, free and meaningful and allow for a genuine opportunity to influence decision-making; [...] 

(h) States should carry out human rights impact assessments before and throughout the process, building these into the process of deciding on the means of service provision as well as a monitoring provision to determine the actual and potential impact on the realization of human rights, including the rights to water and sanitation. They are encouraged to adopt legislation that imposes obligations on service providers to also carry out human rights impact assessments. Service providers should undertake such assessments as part of exercising due diligence to become aware of the actual and potential impact of their activities on the realization of the human rights to water and sanitation;

(ii) States must adopt strong regulatory frameworks for all service providers in line with human rights standards; [...] 

(m) To ensure accountability, States and other actors involved should clearly designate roles and responsibilities;

(n) States must put into place accountability mechanisms at the national level. They should also adhere to mechanisms at the regional and international levels and should, in particular, ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;

(o) States should ensure that economic, social and cultural rights, including the rights to sanitation and water, are justiciable before national courts and other accountability mechanisms. They must ensure access to justice in practical terms, including physical and economic access on an equitable basis;

| UN Committee on Economic, Social and Cultural Rights, 2002 | General Comment 15 | The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. |
Annex 3: OHCHR: Human Rights indicators on the rights to water and sanitation

### Table 15: Illustrative indicators on the right to water and sanitation (Universal Declaration of Human Rights, art. 25)

<table>
<thead>
<tr>
<th>Safety and Acceptability</th>
<th>Sufficiency and Continuity</th>
<th>Affordability</th>
<th>Physical Accessibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>International human rights treaties relevant to the rights to water and sanitation ratified by the State</td>
<td>Date of entry into force and coverage of the rights to water and sanitation in the constitution or other form of superior law</td>
<td>Date of entry into force and coverage of law requiring service providers to ensure that all the persons in their service area have access to adequate water and sanitation, including access to information on water and sanitation issues</td>
<td>Time frame and coverage of national action plans for universal access to water and sanitation, including within or in the immediate vicinity, of each household, health centre, educational institution and workplace, and for all population groups (e.g. nomadic and traveller communities, prisoners, detainees, slum dwellers, persons with disabilities)</td>
</tr>
</tbody>
</table>

**Structural**
- Date of entry into force and coverage of national standards for safe drinking water and secure and hygienic sanitation facilities in line with WHO guidelines.
- Date of entry into force and coverage of mechanisms to oversee water and sanitation quality and review performance of suppliers.
- Time frame and coverage of hygiene awareness programme contained in the national health strategy and educational curricula.

**Process**
- Proportion of schools with access to (e) basic drinking water, (f) single-septic sanitation facilities, and (g) basic handwashing facilities (as per the WASH indicator definitions) [4.6.1].
- Proportion of schools and institutions with separate sanitation facilities for men and women or boys and girls with Menstrual Hygiene Management (MHM) (e.g. privacy for changing materials and for washing body, access to water and soap, disposal facilities).
- Proportion of water suppliers or sanitation service providers inspected for conformity with adopted quality standards and the proportion of inspections resulting in administrative action or prosecution.
- Proportion of the water and sanitation budget spent on operating and maintenance costs.
- Proportion of total water devoted to household consumption compared to proportion of total water devoted to other uses.
- Proportion of households disconnected from the water supply due to bills not met within X working days.
- Proportion of households’ requests for financial support to pay their water bill or sanitation costs met during the period.
- Proportion of health centres, prisons and other institutions with access to safe drinking water, sanitation and hand-washing facilities.
- Proportion of sector performance data or reports publicly available according to plan.

**Outcome**
- Mortality rate attributed to unsafe water, unsafe sanitation and lack of hygiene (exposure to unsafe water, sanitation and hygiene for all (WASH) services) [3.9.2].
- Proportion of women and adolescent girls that are able to manage menstruation hygienically and with dignity (e.g. privacy for changing materials and for washing body, access to water and soap, disposal facilities).
- Proportion of households who experienced disruptions in water supply more than X hours per year.
- Proportion of households spending more than X% of expenditure or income on water and sanitation.
- Proportion of households in which the toilet or latrine is used by all members of household, (including men and women, boys and girls, older persons, persons with disabilities) whenever needed.
- Proportion of household taking more than X minutes round trip time to go to water source, queuing time, collect the water, and come back to the household.

*All indicators should be disaggregated by prohibited grounds of discrimination (17.18.11), as applicable and reflected in metadata sheets.*