



**International Indian Treaty Council**  
*Consejo Internacional de Tratados Indios*

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**RE: Response to Questionnaire for non-States calling for Support Reports to the 51<sup>st</sup> Session of the Human Rights Council and the 77<sup>th</sup> Session of the UN General Assembly (2022)**

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*“For Indigenous Peoples, their relationship with the rivers, streams, waterfalls, lakes, oceans, hot and cold springs, groundwater, rain and snow, coastal seas and sea ice which they have traditionally used and protected since time immemorial provides the basis for their traditional subsistence economies (farming, hunting, gathering, herding and fishing), physical health, sanitation and collective material survival. But this relationship is also a fundamental requirement and prerequisite for their spiritual relationship with the natural world which is, in turn, the basis of their cultural identity, ceremonial practices and sacred responsibility to the survival of their future generations.”* – IITC Submission to the United Nations High Commissioner on Human Rights by the International Indian Treaty Council to the UN Economic and Social Council, 13 April 2007

**I. The Treaty Right to Water**

Many of the legally binding Nation to Nation Treaties concluded between Colonial States including the British Crown and their successors (Canada and the US) affirm the right of Indigenous Treaty Nations to their means of subsistence (hunting, trapping, fishing and gathering) as well as land and water rights, which are essential for the exercise of Food Sovereignty.

To cite one of many examples, the 1837 United States Treaty with the Chippewa Nation affirmed that *“The Privilege of hunting, fishing, and gathering the wild rice upon the lands, the rivers and the lakes is guaranteed...”*

These Nation-to-Nation Treaties, as well as other types of Agreements between States and Indigenous Peoples and the consensual relationships they are based on, if honored and

upheld, can also be the foundation and model for respectful partnerships to address Food Sovereignty, Sustainable Development, Water rights and management and a range of related issues.

This is true, in particular, when there is an urgent need for joint and or/shared decision-making in order to correct current injustices, respond to critical violations, redress and provide restorative measures to correct historic and ongoing wrongs that undermine Indigenous Peoples food sovereignty and Treaty rights to food and water.

The UN Permanent Forum on Indigenous Issues specifically recognized the Treaty Right to Water in the report of its 10th Session, in response to an intervention made by IITC, IOIRD, Confederacy of Treaty 6 First Nations, Seventh Generation Fund and others, as follows:

*80. The Permanent Forum recognizes treaty rights, including associated rights to water, as a key element in the comprehensive discussion of indigenous peoples' understanding and interpretation of treaties, agreements and constructive arrangements between indigenous peoples and States. - Report of the 10th session on the United Nations Permanent Forum on Indigenous Issues, 16 – 27 May, 2012, [E/2011/43- E/C.19/2011/14]*

The Ft. Laramie Treaty concluded on April 29th, 1869, between the United State of America and the “Great Sioux Nation” 14 also states in Article 16:

*“The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or without the consent of the Indians first had and obtained, to pass through the same;”*

The IITC and International Organization of Indigenous Resource Development (IOIRD) submission referenced here stressed the denial of the inherent right to water and effects of climate change on the rights affirmed in Treaties in keeping with their original spirit and intent, in particular, their cultural and spiritual relationships with water and traditional subsistence foods. They also highlighted the impacts on the rights affirmed in the UN Declaration on the Rights of Indigenous Peoples including rights to lands, natural resources, rights to traditional subsistence and food, cultural and spiritual rights and responsibilities, self-determination, free, prior and informed consent, spiritual relationship to traditional lands and territories, health, responsibilities to future generation and participation in decision making, among others.

These inputs were reflected in the “Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments”:

*“In the case of indigenous peoples, guaranteeing their access to safe drinking water might require action to secure their customary arrangements for managing water and the protection of their natural water resources,”*

## **II. Threats to Indigenous Peoples Treaty Right to Clean, Accessible and Protected Waters**

## A. Alberta Tar Sands

The Alberta Tar Sands and Subsequent Pipelines running throughout North America, violating numerous treaties with US Tribes and First Nations in Canada. Northern Alberta has produced oil for the open market for the last 6 decades. Bitumen is the raw ore that is mined and requires processing. To produce 1 barrel of oil it takes approximately 4 barrels of fresh water. Toxic chemicals including arsenic are used to refine the oil. The contaminated water is then stored in tailings ponds. To date, these ponds total 1.4 trillion liters of water, 220 square kilometers or the size of 650 thousand Olympic size swimming pools. The ponds leach into the environment and Mackenzie water basin flowing north to the Arctic Ocean and into the circumpolar world.

People downstream have had to cut back consumption of fish and game because of the contamination. Reports of high numbers of rare cancers are within the population. The Canadian government is in the early stages of developing regulations to permit treated tailings ponds water back into the environment and water system. The legislation is expected to pass by 2025. First Nations want the water to be “drinkable” before being released, while industry and the surrounding municipalities say that is too costly.

The continued contamination of fresh water and damage to the environment and Indigenous Peoples downstream is a direct violation and breach of First Nations Treaty and Aboriginal rights enshrined in the Canadian Constitution Act 1982, and Treaties made with Native peoples in the US – in the states of Minnesota, Wisconsin, Michigan and North Dakota.

Most Treaty rights violations occurring around the world also involve violations of rights to lands, territories, natural resources and means of subsistence as affirmed in Articles 20, 25, 26 and 32 among others. Tar Sands development continues to violate Treaty Rights, and rights to lands, subsistence and Free, Prior and Informed Consent of a number of impacted Treaty Nations in Canada and the US. Currently, in Minnesota, the Red Lake and White Earth Nations have enacted a lawsuit to halt the construction of a new replacement Line (3) that is being constructed without the FPIC of the Tribes and First Nations in which it runs under.

This issue has been addressed at the UN as far back at 2012, at the Elimination of Racial Discrimination’s review of Canada at its 80<sup>th</sup> Session in Geneva in February 2012. Dene Nation Chief Bill Erasmus and IITC Board member from Beaver Lake Cree Nation Ronald Lameman made the following submission regarding the devastating impacts of the Tar Sands development:

*The area of north-eastern Alberta within the Treaty No. 6 and Treaty No. 8 territories known as the “Tar Sands” continues to be a national sacrifice area as it pertains to the Indigenous Peoples affected by this, the most destructive project on earth. Although the Chiefs of Treaty No. 6, Treaty No. 7 and Treaty No. 8 (Alberta) through their All Chiefs Assembly known as the AoTC (Assembly of Treaty Chiefs) have called for a moratorium on any further expansion of this development, the government of Alberta continues to grant leases, licenses and permits to the extraction companies.*

*Our Treaty partner, the federal Crown, sits back and does nothing to support the actions and concerns of the Indigenous Treaty Nations of this*

*part of Canada. ... At present there are numerous problems that have been attributed to continued unabated extraction activities of a majority of the oil companies that have converged on this sensitive ecosystem from all parts of the globe. A few examples include increased cancer rates amongst Indigenous peoples who are downstream from the project; huge toxic tailings ponds leaching poison, including arsenic, into the environment and water sources; the diversion of water from the Athabasca River on a daily basis with no thought about the short or long term effects on the health of one of the most pristine rivers in the world; destruction of wildlife habitat, pollution of lakes and streams by the ever expanding nature of the exploration and extraction activities of the oil companies, 24 hours a day, 7 days a week, 365 days a year; and total disregard for the Treaty Rights to fish, gather, hunt and trap of the Indigenous Treaty Peoples within the Tar Sands area as this activity is going ahead without the free, prior and informed consent of the Indigenous Treaty Nations concerned. The tar sands developments have effectively placed significant limitations on our ability as Indigenous peoples to exercise our economic, social and cultural rights in our lands and territories, which is not only an immediate impact but will stretch far into the future and the livelihoods of future generations.*

## **B. The Black Hills – Ĥe Sápa**

In 1980, the United States Supreme Court agreed that the United States had illegally annexed the Black Hills in violation of its Treaty with the Sioux Nation. However, they only agreed to monetary compensation which has never been accepted by the Tribal Nations in question, who have maintained the position to this day that “the Black Hills are not for sale.”

The 1999 United Nations Study on Treaties, Agreements, and other Constructive Arrangements between States and Indigenous [People] also concluded that this land had been illegally taken. In this study, Special Rapporteur Miguel Alfonso Martinez cited the opinion of the US Supreme Court in this regard, that “... a more ripe and rank case of dishonorable dealing will never, in all probability, be found in the history of our nation” and considered that “...President Ulysses S. Grant was guilty of duplicity in breaching the Government’s treaty obligations with the Sioux relative to ... the Nation’s 1868 Fort Laramie Treaty commitments to the Sioux”.

Since the onset of colonialism among the Oceti Sakowin Tribes, there have been a total of 1368 mines in the Black Hills, of both gold and uranium mining nature. Recent data set shows that only 4% of those mines have been reclaimed whereas the remaining 96% are left unclaimed. In accordance with reclamation, there needs to be accountability to restore sites in accordance with not just water and air quality laws but to the quality standards directed by the Tribes. There is also record of these mines affecting nearby streams such as the Bear Butte Creek which is located next to the Bear Butte sacred site.

Currently there are 13 pending mining sites (both gold and uranium). There is one operating large scale mine named WARF by the French COURIER company. Gilt Edge mine (U.S federal) is an active site. Furthermore, the Northern part of Black Hills is claimed by gold mining companies. The Rapid Creek watershed is 198,000 acres and 24% of this acreage is under gold claims under the aforementioned two companies. Mining is expected to rise within the next few years with pending mining sites further contaminating lakes, waterways, fresh water, access to aquifers and in-turn food systems and safe drinking water.

### C. Mercury Contamination in California

Mercury was widely used to extract ore in gold mining the U.S. and Canada before the 1950s and is still used in small scale "artisanal" gold mining in many countries today.

Many of these "legacy" mines were closed but never cleaned up, and continue to leach mercury into waterways. Mercury is a neurotoxin with particularly detrimental impacts on babies, small children and the developing fetus exposed in utero. A principle means of human exposure is through consumption of contaminated fish, a principle means of traditional subsistence for many Indigenous Peoples.

For example, during the California Gold Rush in the 1800's to early 1900's miners dug up 12 billion tons of earth and used approximately 26 million pounds of mercury to extract gold ore. Clear Lake, the traditional homeland to Pomo Indian fishing communities, contains over 100 tons of mercury, while the amount of mercury required to violate U.S. federal health standards is equivalent to one gram in a small lake. Abandoned gold and mercury mines left contaminated sites that continue to produce toxic runoff into Northern California waterways including rivers and the San Francisco Bay. In 2021, the California Office of Environmental Health Hazard Assessment (OEHHA) identified over 100 site-specific advisories for lakes, rivers, bays and reservoirs. For more information, including a study guide and two videos, please visit <https://www.iitc.org/gold-greed-genocide/>.

### III. General questions

#### A. The roles and responsibilities of IITC in relation to Indigenous Peoples, people living in impoverished rural and, in particular, their human rights to safe drinking water and sanitation:

The International Indian Treaty Council (IITC) is an organization of Indigenous Peoples from North, Central, South America, the Caribbean and the Pacific working for the Sovereignty and Self Determination of Indigenous Peoples and the recognition and protection of Indigenous Rights, Treaties, Traditional Cultures and Sacred Lands.

In relation to **access to safe drinking water and sanitation**, and the human and **treaty rights to water**, IITC supports Indigenous Peoples' struggles for human and Treaty rights, self-determination, food sovereignty, environmental health and justice through information dissemination, coalition building, advocacy, training and technical assistance. The IITC builds the direct, effective participation of Indigenous Peoples in regional, national and international events, gatherings and policy discussions addressing their rights, ways of life and survival.

#### B. In the cases of Indigenous Peoples living in impoverished rural areas that do not have access to water and sanitation fulfilling the normative content of the human rights to water and sanitation, namely, availability, accessibility, affordability, safety, quality, acceptability, privacy and dignity the IITC reports and references the following:

A majority of Reservations (U.S.) and Reserves (Canada) are located in **rural areas**. At the time of colonization by England and France, the desirable and plentiful lands were identified and separated, and the undesirable / unfarmable lands and wetlands were designated for Native peoples. The **socio-economic situation of or context in which Indigenous Peoples live** including **education, health, employment levels, land rights, housing and security of tenure** varies greatly from community to community and statistics tend to be inaccurate, outdated and taken without the full and effective participation of those who

live there. It is important to note that the **level of autonomy and self-governance and the existence of a community organization to manage common goods, such as water** also varies Tribe to Tribe, Nation to Nation.

In this regard, please refer to IITC's additional submission to the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation for the Thematic Report: The Human Rights to Safe Drinking Water and Sanitation of People Living in Impoverished Rural Areas.

**C. The IITC has been involved to ensure meaningful participation of and ensure to obtain free, prior and informed consent of indigenous peoples and people living in impoverished rural areas relating to decisions, policies and projects affecting their human rights to safe drinking water and sanitation, and highlighting the following:**

Free Prior and Informed Consent: An Original Treaty Principle

For Indigenous Peoples, the Right of Free, Prior and Informed Consent (FPIC) is a requirement, prerequisite and manifestation of the exercise of their fundamental right to self-determination as defined in international law.

FPIC is a fundamental underpinning of Indigenous Peoples' ability to conclude and implement valid Treaties and Agreements with other parties, to exert sovereignty over their lands and natural resources, to develop and participate in processes that redress and correct violations, to accept any results that emerge from these processes, and to establish the terms and criteria for negotiations with States over any and all matters affecting them.

A number of United Nations bodies, including Treaty-monitoring Committees, as well as other U.N. processes, have underscored the failure of States and other parties to respect the rights to self-determination and FPIC for Indigenous Peoples, resulting in a range of pervasive human rights violations. For example, the 1990 U.N. Global Consultation on the Right to Development stated that, "the most destructive and prevalent abuses of Indigenous Rights are the direct consequences of development strategies that fail to respect their fundamental right to self-determination."

Experts at the 1st United Nations Seminar on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples which met in Geneva from December 15th to 17th, 2003, underscored the vital importance of consent in paragraph 2 of their final conclusions and recommendations. They affirmed that "that treaties, agreements and other constructive arrangements constitute a means for the promotion of harmonious, just and more positive relations between States and Indigenous Peoples because of their consensual basis and because they provide mutual benefit to Indigenous and non-Indigenous peoples."

This consensual basis of Treaties and Agreements is an essential component upon which their original validity and ongoing viability is based. The failure of the United States to fully accept the rights to Self-determination and FPIC of Indigenous Nations as stated in the United Nations Declaration on the Rights of Indigenous Peoples constitutes another example of the Treaty violations and abrogations which have characterized its history in relation to the sovereign Indigenous Nations of this land. Treaties, by definition, can be concluded only between two equally sovereign Nations. The continuing legal validity of the Treaties concluded by the settler government of the U.S. with the Indigenous Nations of this land reaffirms the ongoing nature of the Treaty relationship based on equal standing and rights, mutual recognition, and

respect. The Treaty relationship continues to be legally binding per the U.S. Constitution, International Law and the sacred original understandings of Indigenous Nations.

**Please provide information on legal and regulatory framework, policies and programmes in the country that your organization works in or is aware of which aims to guarantee and improve the access to safe drinking water and sanitation for indigenous peoples and people living in impoverished rural areas, including:**

**A. What are the gaps and elements that could be improved to guarantee access to safe drinking water and sanitation?**

Indigenous Peoples' Right to Water including the right to safe drinking water and many other interrelated rights has been and continues to be violated by a range of policies and practices being carried out, condoned and/or allowed by states. These include:

- i. The implementation and domination of globalization and free trade, which includes the privatization, commodification and wide-spread appropriation of water without the free prior informed consent of the Indigenous Peoples affected.
- ii. The imposition of non-sustainable development projects by the governments and private companies. These include mining and other extractive industries, damming, deforestation, high-pesticide use, toxic waste dumping and incineration, and energy generation based on fossil fuels which directly result in widespread contamination, diversion and depletion of clean natural water sources as well as promotion of desertification and climate change.
- iii. National policies and legal systems that allow, favour and give precedence to private and or/industrial use of water rather over traditional subsistence use by Indigenous Peoples which is based on collective use, responsibility for protection and sustainable methods.
- iv. National laws and policies adopted by States which restrict access and control for Indigenous Peoples of their traditional lands, territories and natural resources including water, often in violation of existing Treaties, Agreements and Constructive Arrangements with these same States.

These policies and practices result in violation of a wide range of internationally recognized human rights of Indigenous Peoples around the world. These include the Rights of the Child under the Convention Article 24, the Rights to Health, Food Security, Development, Life, Physical Integrity, Permanent Sovereignty over Land and Natural Resources, Treaty Rights, Free Prior Informed Consent, Self-determination, Cultural Rights, Religious Freedom and the Right of Peoples not to be Deprived of their own Means of Subsistence.

**B. The legal recognition, or lack thereof in some cases, of the status of Indigenous Peoples, in the U.S. and Canada, impacts their rights – both negatively and positively. This hinders the full recognition and realization of their human rights to safe drinking water and sanitation.**

In the United States, Indigenous Nations are classified as “Tribes”. It is important to note that the U.S. Federal Government has enacted a system in which they choose which Indigenous Peoples, or Tribes, to recognize. The Federal Government only recognizes 574 Tribal Nations. There are also state-recognized and non-recognized, with an estimated 800 in total.

This system has resulted to extreme disparities and inconsistencies amongst the different communities regarding access to natural resources, access to adequate sewage and clean running water and access to remedies to assert their rights as Indigenous Peoples / First Nations – Treaty signers.

#### **United States:**

In the U.S., as mentioned above, the Federal Government – Bureau of Indian Affairs (formerly housed in the Dept. of War) implements a system of recognition that determines the status of Indigenous Peoples and Nations within the borders of the US.

- See a full list of Federally Recognized Tribes here:  
<https://www.ncsl.org/legislators-staff/legislators/quad-caucus/list-of-federal-and-state-recognized-tribes.aspx#federal>
- See a full list of State Recognized Tribes here:  
<https://www.ncsl.org/legislators-staff/legislators/quad-caucus/list-of-federal-and-state-recognized-tribes.aspx#State>
- See Index on Non-Recognized Tribes here:  
<http://www.kstrom.net/isk/maps/tribesnonrec.html>

#### **Canada:**

In Canada, there are more than 630 First Nation communities – broken up into 6 Treaty Territories, representing more than 50 Nations and 50 Indigenous languages. Additional information regarding First Nations in Canada, Tribal governance and status can be found here: <https://www.afn.ca/about-afn/>

#### **C. Indigenous Peoples in North America faced specific changes in legal, regulatory and policy frameworks and programmes related to access to water, clean water (i.e. free from toxics) and sanitation services for indigenous peoples and people living in both impoverished rural areas as well as urban areas since the outbreak of COVID-19.**

The President, Prime Minister and Federal Agencies in both the U.S. and Canada exploited the pandemic, using the chaotic time push through detrimental environmental rollbacks, fast track permits for mining, pipelines and other extractive industry projects, and disregard peoples, communities, and Nations' rights to Free, Prior and Informed Consent (FPIC).

Indigenous Peoples in the United States and Canada have suffered violations of their inherent right to health for centuries, making them disproportionately vulnerable to new infectious diseases. Such violations include resource exploitation, destruction of traditional food systems and toxic contamination of Indigenous Peoples' lands, air, and waters have caused disproportionate disease rates including cancers and asthma which compromise immune and respiratory systems among all ages. Poverty, overcrowding, and long-standing lack of access to health care and even potable water in some remote communities in both the U.S. and Canada, further increased vulnerabilities.

As many local grocery stores were depleted at the start of pandemic, Indigenous Peoples were also experiencing the impacts of Climate Change causing extreme heat waves and droughts as they struggled to find sources of fresh, safe, and healthy foods.

Also, in the Southwest region of the U.S., the Diné (Navajo) Nation has been particularly hard hit. The Navajo Nation has the largest federally recognized land base of any Indigenous Nation in the US. Despite



being in a “developed” country, approximately 30% of the Nation’s citizens live in remote areas without running water and/or electricity. Many live hours from the nearest health care clinics.

During the first wave of the pandemic, in May 2020, the Navajo Nation surpassed the states of New Jersey and New York in the number of cases per capita.

**In relation to human rights defenders and activists:**

**A. Are human rights defenders and activists who stand up for the human rights to safe drinking water and sanitation of indigenous peoples and people living in impoverished rural areas free from fear, criminalization and harassment?**

The situation of Indigenous human rights defenders has become a focus of international concern in recent years, and especially as COVID-19 provided a cover for states and corporations seeking to access Indigenous Peoples lands and waters without impunity. Many Indigenous leaders and community members who have faced criminalization and even assassination have been targeted for defending their lands, water and ecosystems against all forms of imposed development, including those specifically impacting their water rights.

On March 6, 2016, well-known Lenca Indigenous leader Berta Cazerias was assassinated, and other members of her organization Council of Popular and Indigenous Organizations of Honduras (COPINH) received death threats for their opposition to the Agua Zarca mega dam that would destroy the river that provided their communities with water for drinking and irrigation.

In 2019, 28 Indigenous defenders were killed in South America alone.

In 2016 and 2017 more than 147 peaceful “water protectors” as they choose to be called on the Standing Rock Reservation in North Dakota were arrested, shot with rubber bullets, gassed, beaten, jailed and fined for opposing the Dakota Access Pipeline (DAPL) which threatened to contaminate the Missouri River and water table within Oceti Sakowin (“Great Sioux Nation”) Treaty territories. Their united position was “Mní Wičhóni” (“water is life”). The pipeline, with expedited permits avoiding environmental and cultural impact statements as well as U.S. Treaty obligations were issued by the Trump Administration and the pipeline was built. It has already leaked oil into the environment , causing contamination predicted and feared by the water defenders and the Tribal Nations of the Oceti Sakowin (Lakota, Dakota and Nakota).

The UN Human Rights Councils’ urged states to take measures to address the urgent situation of Indigenous Human Rights Defenders in paragraph 32 of resolution on the Rights of Indigenous Peoples adopted by consensus on October 8<sup>th</sup> 2021 at the Council’s 48<sup>th</sup> session, as follows:

*“Urges States to take all measures necessary to ensure the rights, protection and safety of indigenous peoples and indigenous human rights defenders, including indigenous women human rights defenders, and to ensure that all human rights violations and abuses against them are prevented and investigated and that the perpetrators are held accountable”*