universität wien

MASTER THESIS

Titel der Master Thesis / Title of the Master's Thesis

„The Drought: Indigenous Reserves and the Human Right to Water“

verfasst von / submitted by

Carley Beth Willis

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

Master of Arts (MA)

Wien, 2019 / Vienna 2019

Studienkennzahl lt. Studienblatt / Postgraduate programme code as it appears on the student record sheet:	UA 992 884
Universitätslehrgang lt. Studienblatt / Postgraduate programme as it appears on the student record sheet:	Master of Arts in Human Rights
Betreut von / Supervisor:	Assoz. Prof. Mag. Mag. Dr. Christina Binder

I. Statutory Declaration

I declare that I have authored this thesis independently, that I have not used other than the declared sources / resources, and that I have explicitly marked all material which has been quoted either literally or by content from the used sources.

Vienna, 22 July 2019

Carley Beth Willis

II. Acknowledgements

I would like to thank my supervisor, Professor Dr., Christina Binder for her guidance and assistance during this process, her direction and words of advice allowed me to fully explore my topic of interest and her questioning pushed my research and analysis forward. I would like to acknowledge the *Vienna M.A. in Human Rights* program at the University of Vienna, specifically Dr. Manfred Nowak and Walter Suntinger, who were involved in early commentary of the writing of this thesis and offered support and recommendations. Additionally, I would like to thank all those involved in the *Vienna M.A. in Human Rights* for their dedication, fostering critical thinking and contribution to an experience I will never forget.

To my friends, thank you for all your support and encouragement not only during this process but over the past two years.

To my parents, thank you for helping me along this life change opportunity. I truly couldn't have done it without you.

III. List of Acronyms and Abbreviations

ACHR	American Convention on Human Rights
BS11	Bill S-11: The Safe Drinking Water for First Nations Act
CEDAW	Convention of the Elimination of all Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CHCR	Canadian Human Rights Commission
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CWA	Canadian Water Act
ECOSCO	United Nations Economic and Social Council
EJ	Environmental Justice
GC15	General Comment No. 15: The Right to Water
IA	Indian Act
IACHR	Inter-American Commission on Human rights
IACrHR	Inter-American Court of Human Rights
IK	Indigenous Knowledge
NGO	Non-Governmental Organization
REP	Report of the Expert Panel on Safe Drinking Water for First Nations
SCC	Supreme Court of Canada
TEK	Traditional Ecological Knowledge
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

I. Table of Contents

I. Statutory Declaration……...…….i

II. Acknowledgements……...……...ii

III. List of Acronyms and Abbreviations…….……iii

1. Introduction……...…….……..1

2. Methodology……..…….….3

3. Indigenous Peoples and the Role of Water…….…….4

3.1 Anthropology and Indigenous Peoples and Culture……..…….....5
3.1.2 Rights Perspective……...……...10
3.2 Indigenous Knowledge Sources ……...……14
4. International Standards Concerning Indigenous Persons and the Right to Water…….....17
4.1 General Treaties…….19
4.2 General Comment No. 15: The Right to Water…….....22
4.3 Special Rapporteur on the Right to Safe Drinking Water and Sanitation Reports……...28
4.4 United Nations Declaration on the Rights of Indigenous Peoples…….30
5. Canadian Legal Framework with a focus on Indigenous Peoples…….34
5.1 National Law…….....35
5.1.1 The Indian Act……...37
5.1.2 Canada Water Act……..40
5.1.3 Report of the Expert Panel on Safe Drinking Water for First Nations……..43
5.1.4 Bill S-11: The Safe Drinking Water for Frist Nations Act……46
5.2 Case Law……49
5.2.1 *Delmauuk v. British Columbia*……50
5.2.2 *Chaoulli v. Quebec*……52
5.2.3 *Pikangikum First Nation v. Nault*……54
5.3 Canada in Relation to International Standards……...56
5.3.1 Short Comings……...62
6. Moving Forward…….....67
6.1 How to Bring a Case……..67
6.1.1 National Mechanisms…….68
6.1.2 Inter-American System……..69
6.1.3 Treaty Bodies…….70
6.2 Environmental Justice……....71
7. Conclusion ……....74
7.1 Recommendations……..78
IV. Bibliography……...……vi

Bibliography (Legislation and Case Law)……..……..x
V. Appendices……xii
VI. Abstract……..……xiii
VII. Abstract (German)……xiv

1. Introduction

Fundamental for existence, water is necessary in almost every facet of a persons life. Housing and shelter, food, livelihood and transportation all rely on water in some stage of development. Due to the large and encompassing role that water holds, it has become a topic of both discussion and concern on the international stage. General Comment No. 15: The Right To Water[1] established the international recognition with reference to water and outlines key communities in which the realization of this right must be ensured. As the rights discourse surrounding water increases, Indigenous peoples and communities have emerged as requiring distinct attention regarding the recognition of the right to water. Indigenous communities have, for centuries been aware of the role of water and in fact have implemented practices such as 'ecological knowledge'[2] and 'water protectors'[3] to ensure water is respected, yet colonialism and historical exclusion from rights discourse makes the attainment of the right to water complex.

The role of anthropology through history has played a part in putting forward notions of Indigenous inferiority, which have elevated exclusionary practices at the hands of national governments globally. Indigenous communities were previously regarded as a subject of study and moves to bring Indigenous communities into "civilization" in joining with European colonizers and settlers were employed. This anthropological practice has not only influenced the sheer concept of Indigeneity but also sought to remove Indigenous peoples from their distinct cultures towards assimilation. As anthropology as a study grew, as did the scope and methods of research, turning to differing schools of anthropological thought and the study of Indigenous peoples without necessary intentions of assimilation.

---

[1] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11.

[2] R. B. Larson, 'Water, Worship and Wisdom: Indigenous Traditional Ecological Knowledge and The Human Right to Water', *ILSA Journal of International and Comparative Law*, vol. 19, 2012, p. 56, (accessed 23 May 2019).

[3] K. Cave, 'Water Song: Indigenous Women and Water', *The Solutions Journal*, vol. 7, no. 6, p. 67, (accessed 4 June 2019).

This study reveled new knowledge sources such as 'traditional ecological knowledge'[4] and the role of the environment in culture.

Colonized by British and French forces, Indigenous peoples and communities in Canada experienced many forms of assimilation measures, which were exacerbated by and supported through early anthropological schools. The influence of anthropology and colonialism can be observed within the Canadian context through review of legislation and case law. Through premising the changing nature of anthropology in the study of Indigenous peoples, international and national legislation can be understood as having roots in colonial thinking. With regards to legislation, both international and national will be examined in the application of the right to water as well as the applicability of this right to Indigenous peoples and communities. It will become clear that gaps exist within all forms of legislation, in part due to the current understanding of Indigenous people, which remains influenced by a colonial history. This applicability of this legislation is then further examined through three court cases at the national level.

Stemming from this, this thesis seeks to answer the question: Has Canada complied with international human rights obligations regarding the right to water in reference to Indigenous peoples? This question will be answered through examining the anthropological aspect of Indigeneity and the rights discourse that has emerged from this, alongside international legislation in comparison to Canadian national legislation and case law. Shortcomings are addressed regarding this relationship and how to bring a case forward concerning the right to water alongside discussion regarding the concept of environmental justice.

To this end, this thesis seeks to relate historical colonial thinking and the anthropological study of Indigenous peoples to discrepancies of Indigenous access to water in Canada. Excluded from the scope of this thesis are the persisting tensions between Government and Indigenous peoples as well as the loss of languages and cultures due to a history of neglect and appropriation. The resulting health concerns from this neglect are also not noted in detail. Additionally, the privatization of water is not explored in detail,

[4] Larson, p. 56.

though through other materials, experts have approached and discussed at length these topics.

To premise this research, I would like to acknowledge the traditional territories upon which Canada exists. These territories are vast and differing in languages, cultures, traditions and populations yet have all been impacted by colonialism, of which the effects are still seen today.[5]

> If we think of territorial acknowledgements as sites of potential disruption, they can be transformative acts that to some extent undo Indigenous erasure. I believe this is true as long as these acknowledgements discomfort both those speaking and hearing the words. The fact of Indigenous presence should force non-Indigenous peoples to confront their own place on these lands.[6]

2. Methodology

This research is based upon secondary sources and analyses primary document evidence regarding international legislation, Canadian federal and provincial legislation as well as Canadian court cases. Qualitative in nature, this research takes a historical approach in examining the changing role of anthropology with reference to Indigenous peoples and culture stemming from colonialism. Following this, document analysis of international standards such as General Comment No. 15: The Right to Water[7] will be compared through additional document analysis of Canadian national legislation. The national legislation of reference are the Indian Act,[8] the Canada Water Act[9] as well as Bill S-11: The Safe Drinking Water for First Nations Act,[10] which will be accompanied by analysis of Canadian case law. From here, due to the exploratory nature of this paper, shortcomings, the process of bringing forward a case and concepts of environmental justice are examined.

---

[5] A territorial acknowledgement is a means of recognizing the histories of Indigenous peoples in a given location and raising awareness in regards to a colonial history of assimilation.

[6] 'Territory Acknowledgement', Native Land, https://native-land.ca/territory-acknowledgement/, (accessed 2 July 2019).

[7] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11.

[8] Indian Act, RSC 1985, c I-5.

[9] Canada Water Act, R.S.C., 1985, c. C-11.

[10] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21.

Through the use of secondary sources, a historical trajectory of the role of anthropology in shaping conceptions of Indigenous peoples and culture can be traced regarding the corresponding influence in legislation. This is of the utmost importance as this historical approach is necessary in understanding Indigenous rights and the complexities that a colonial history has resulted in, especially with reference to adequate rights and protections at the federal level. With use of a historical approach, the lack of access to water in Indigenous communities in Canada will be explored. By situating key historical and legal developments regarding clean water availability in Indigenous communities, this paper seeks to explore if a lack of basic human rights in regards to water availability has become a continual and circular issue on Indigenous reserves in Canada.

By combining legal scholarship, secondary sources as well as a historical approach, I hope to provide a well-rounded thesis, which takes into account established international human rights and applies this to the national context in Canada. This paper will then answer the question if Canada has, in fact, violated international human rights regarding Indigenous water rights. Following this I will note shortcomings and recommendations on how to improve the current gap in legislation at both the federal and provincial levels.

3. Indigenous Peoples and the Role of Water[11]

This chapter seeks to introduce various forms of anthropology, such as scientific anthropology and practical anthropology as well as the emergence of new approaches to anthropology, being 'ecumenical and translationsim anthropology.'[12] The anthropological schools are then briefly discussed pertaining to how these schools impacted the established thoughts of the time regarding Indigenous peoples and their distinct cultures. The rights discourse regarding Indigenous peoples is also discussed as a result of the culmination of

[11] This chapter is by no means an all-encompassing look into the study of anthropology but rather an introduction of certain anthropological beliefs and how these have contributed to the general study and understanding of Indigenous peoples and cultures.

[12] U, J. Dahre, 'Searching for a Middle Ground: Anthropologists and the Debate on the Universalism and the Cultural Relativism of Human Rights', *The International Journal of Human Rights*, vol. 21, no. 5, 2017, p. 619, (accessed 22 May 2019).

years of anthropological study. In this way, two avenues of thought in reference to the rights of Indigenous peoples and culture are brought forward and investigated. Discussion then moves to Indigenous knowledge sources, mainly the concept of Indigenous knowledge itself as well as 'traditional ecological knowledge.'[13] Often misunderstood or disregarded in early anthropological study, these Indigenous knowledge sources will be explained in their importance in preserving culture and mainly the traditional importance of water throughout Indigenous communities. Through tracing varying forms of anthropological study throughout history to the emergence of a rights discourse, the anthropology of Indigenous peoples is shown to rely on various traditional knowledge sources, placing a key importance on the role of water for both survival and traditional use.

3.1 Anthropology and Indigenous Peoples and Culture

Anthropology has played a large and sweeping role in defining Indigenous people, Indigenous culture and perpetuating notions of difference between those who are viewed as Indigenous[14] and those who do not identify as such. Paul Sillitoe notes, 'Indigenous knowledge studies are challenging not only because of difficulties in cross-cultural communication and understanding but also because of their inevitable political dimensions.'[15] Expounding on this idea, the sheer concept of Indigeneity[16] has been influenced through colonization and the misunderstandings of Indigenous people themselves. In this way, any understanding of Indigenous people, in this case through an anthropological lens, must be understood as a perspective and by no means an all-encompassing view of Indigenous people and culture.

---

[13] Larson, p. 56.

[14] The use of Indigenous in this context refers to persons who identify as such and is by no means of derogatory use. The term Indigenous is used in place of 'native' to avoid historical connotations of derogation and is not all encompassing of the varying identities and cultures of Indigenous people globally.

[15] P. Sillitoe, 'The Development of Indigenous Knowledge: A New Applied Anthropology', *Current Anthropology*, vol. 39, no. 2, 1998, p. 223, (accessed 22 June 2019).

[16] Concept of Indigeneity in this context will refer to the broad understanding of the various Indigenous people, languages, and beliefs in an inclusive manor.

Indigenous anthropological studies are recognized to begin in the late 1800s and early 1900s, and took the form of 'scientific anthropology,' in which an Indigenous population is studied from an outside perspective.[17] This outsider observation, known as 'etic knowledge,'[18] perpetuates stereotypes and can result in the misunderstandings of Indigenous peoples and the various cultures. This gross misunderstanding is exemplified in the moves of select anthropologists of the time who believed that Indigenous peoples existed in a state of "savagery,"[19] as the lives and culture of the Indigenous peoples did not reflect those of the anthropologists or European colonizers of the time.

The goal of 'scientific anthropology'[20] then, became the civilizing of the "savage" Indigenous populations across the globe. As acts of civilizing the Indigenous began, taking the form of forced adoptions, residential schooling[21] and land transfer, it was quickly seen that Indigenous peoples were not in agreement with these practices and took up resistance. This resulted in a shift in the anthropological relationship with Indigenous peoples and studies, mainly in that anthropologists now believed that Indigenous peoples would find their own route to civilization over time without necessary assistance.[22]

In 1929, 'scientific anthropology' lessened in popularity with the influence of Bronislaw Kasper Malinowski. A social anthropologist, Malinowski proposed 'practical anthropology' as a means of lessening the divide between the colonizers and Indigenous peoples by 'studying the white savage [colonizer] side by side with the coloured.'[23] In this way, an understanding of both cultures, the European colonizers and Indigenous peoples, would theoretically be reached and the current system of colonization would be less

---

[17] T. W. Purcell, 'Indigenous Knowledge and Applied Anthropology: Questions of Definition and Direction', *Human Organization*, vol. 51, no. 3, 1998, p. 261, (accessed 31 May 2019).
[18] ibid., p. 260.
[19] Use of quotation marks represent the use of the word "savage" in reference to historical connotations of Indigenous people by colonizers. Where the use of this word is necessary, quotations represent the historical usage of this term.
[20] Purcell, p.261.
[21] P. Wilk. et al, 'Residential Schools and the Effects on Indigenous Health and well-being in Canada- a scoping review', *Public Health Reviews*, vol. 38, no.8, 2017, p. 2, (accessed 13 June 2019).
[22] Purcell, p. 261.
[23] ibid.., p. 262.

intrusive and destructive, in theory. Malinowski expounded on this idea through his 'functionalist theory of natural needs,'[24] which puts forward the idea that anthropology must transform itself and must also distance itself from previous anthropological goals of transforming all societies that are considered "primitive" towards colonized societies. Instead, Malinowski believes anthropology itself must adjust according to the progress of colonization and the impacts of this given colonization on societies globally. Additionally, Malinowski called for anthropological training for colonizers[25] in the hopes that they would better understand the difference and difficulties encountered through colonization measures.[26] By premising the colonization of Indigenous populations by way of the means of anthropological understanding, the methods colonizers took became justified through the guise of research leading to greater understanding of Indigenous peoples. This was further justified through the important role of Christianity in "civilized" societies and the view of Indigenous peoples as "heathens" who must be "saved," often through residential schooling and forced assimilation as mentioned on page 7.[27]

On the other hand, anthropologist and professor, Franz Boas founded the Boasian school of thought, which gained prominence in the late 1900s. Boasian anthropology rests on the concept of 'cultural relativity,' a common topic in the 1940s. At its core, 'cultural relativity' or 'cultural realism' is a means of understanding different cultures and peoples through the examination of the local culture and peoples to gain an understanding of cultural traits, behaviors, beliefs and symbols. In this way, 'cultural relativism' seeks to purport that the only culture one truly can know is ones own, yet through study one is able to better understand cultures other than their own. In 1945, Boas published a book titled *Race and Democratic Society*, in which he states,

---

[24] Purcell, p. 262.

[25] The role of colonialism at this time was paramount, as seen for the call for colonizers to study anthropology to better implement colonial practices on those who stood before colonialism. In most cases, this was Indigenous peoples, this shows that anthropology took both roles in seemingly protecting Indigenous cultures as well as training colonizers in how to better implement colonization. The dueling roles of anthropology are something that still exists today, as will be seen in this chapter through the universalism and cultural relativism debate.

[26] Purcell, p. 262.

[27] ibid., p. 262.

> I have always been of the opinion that we have no right to impose our ideals upon other nations, no matter how strange it may seem to us that they enjoy the kind of life they lead, how slow they may be in utilizing the resources of their countries, or how much opposed their ideals may be to our own.[28]

It is here where the dueling roles of anthropological study emerge, as Boas takes a stern stance regarding the role of colonialism and anthropology itself, as the main position in anthropological studies at the time was universalist in nature. In 1947, ahead of the United Nations Universal Declaration of Human Rights (UDHR), Melville Herskovitz, a student of Boas, released a statement on the impending Declaration. Herskovitz noted,

> [I]n terms of which the Declaration is ordinarily conceived, concerns the respect for the personality of the individual as such, and his right to its fullest development as a member of his society. In a world order, however, respect for the cultures of differing human groups is equally important.[29]

Through this statement, Herskovitz put cultural relativism at odds with the universalist stance the United Nations (UN) was taking through the UDHR. In his opinion,[30] universalism was the staunch belief that all individuals must be regarded as equal, regardless of individual characteristics such as ethnicity, culture or background. Furthermore, by putting forward such universalist norms, human rights was to become a means of closely examining 'local cultures and practices, lending credence to the assumption that local cultures and practices were often the grounds for oppression and inequality.'[31]

The response to this belief held by Herskovitz expounded the universal and cultural relativist divide yet also played a role in brining forward a 'middle ground approach.'[32] An anthropological 'middle ground approach' seeks to combine key positions held within cultural relativism, with specific reference to Boas, as well as universalist ideals regarding

---

[28] F. Boas, *Race and Democratic Society,* New York, J.J. Agustin Publishers, 1945, p.170.

[29] Dahre, p. 613.

[30] It is important to note that this was Herskovitz' opinion of the time and was later clarified through his further works on the topic of cultural relativism, which, in fact leaned to a more universalist belief in the applicability of human rights through an anthropological lens.

[31] Dahre, p. 614.

[32] ibid., p.618.

the applicability of established human rights norms. In 1993, Sally Engle Merry echoed the 'middle ground approach' in an article where she coined the term translationsim.[33] Merry viewed translationism as a merging of local cultures with international human rights so as to satisfy the discourse on global human rights seen with universalism as well as maintaining the respect of varying differences in cultures within a culturally relativist stance. In this way,

> They [societies] mobilized Western law in their demands for human rights. They reinterpret and transform Western law in accordance with their own local legal conceptions and with the resources provided by the global human rights system.[34]

Another means of approaching the cultural relativist and universalist divide can be seen with Mark Goodale, who brought forward 'ecumenical or critical anthropology of human rights.'[35] In this belief, the idea of human rights itself should be disregarded due to the historical and political influences that have affected the efficient implementation of human rights in the past. Instead, the critical anthropology of human rights would 'speak of "normative humanism" as an analytical tool to strike a balance between universalism and relativism, to make people's lives more concretely linked to human rights.'[36] In other words, critical anthropology of human rights would not align with either universalism or cultural relative notions but would see individuals and cultures as basic human nature at the core.

Contrary to the Boasian school of thought regarding cultural relativism, as well as the 'middle ground approach,'[37] the dominant means of thinking for most of history and arguably to date stands to be universalism. The change in anthropology brought on by the aftereffects of the Second World War, seen through the Boasian school of anthropology, was manifested in the development of 'cultural knowledge' as an anthropological concept. Cultural knowledge was then used in assisting with the formulation of national and

---

[33] Dahre, p.619.
[34] ibid., p.619.
[35] ibid., p.620.
[36] ibid., p.620.
[37] ibid., p.618.

international policies.[38] This was reflected in the questioning of some anthropologists regarding the concept of power and power relationships and the manifestation of these relationships having tangible consequences. Through approaching concepts of power, anthropology itself, as well as established views of Indigenous people to date were all confronted.

Following this reflection on the role of anthropology thus far, Indigenous peoples and culture began to become a topic of discussion on the international stage. The discussion of Indigenous people internationally is not something that is new, but the involvement of Indigenous people in discussions regarding themselves was, at this time, a new concept. This is due in part to the change in the role of anthropology and the use of 'emic knowledge.'[39] Emic knowledge refers to 'attempts to study the behaviors of interest through the lens of a member of the culture.'[40] Emic knowledge replaced the previous etic knowledge based anthropology, which, as mentioned earlier, garners knowledge from an outside source.[41] In this way, Indigenous people themselves were beginning to actively become involved in the discussions surrounding their personhood and culture.

3.1.2 Rights Perspective

As the human rights discourse surrounding Indigenous people and Indigenous rights in general emerged, two avenues have developed. The first seeks to create new and distinct rights regarding Indigenous peoples where as the second looks to implement existing human rights into the Indigenous narrative. Regardless of the stance taken, both avenues have the ability to positively add to the narrative of Indigenous rights. An important note here is that Indigenous people themselves have been historically left out of any roles which have constructed the second avenue of rights. In this way, although more easily

---

[38] Purcell, p. 263.

[39] S. X. Chen, 'From Emic to Etic: Exporting Indigenous Constructs', *Social and Personality Psychology Compass*, vol. 4, no. 6, 2010, p.365, (accessed 2 July 2019).

[40] Purcell, p. 260.

[41] See page 6 for the definition of etic knowledge.

implemented as the safeguards and laws are already in place, the lack of input on the part of Indigenous people in these laws makes their applicability questionable. The key element seen in both of these avenues is the reliance on specified and clear rights for Indigenous people, an Indigenous rights perspective.[42]

In more detail, the first avenue in the human rights discourse is the creation of new rights and responsibilities regarding Indigenous peoples and culture. In this way, new norms with respect to Indigenous people and culture would be created and would then be able to take into account international legal instruments that already exist and then adjust these established instruments for the fair implementation of these new norms. Contrary, the second avenue seeks to use existing human rights instruments and apply this to Indigenous people and culture. As these instruments and legal safeguards already exist, the implementation of these norms would occur at a faster rate than the creation of new norms. Concretely,

> […] the second stream has one significant advantage over most of the instruments that are specific to Indigenous peoples insofar as the existing human rights instruments all provide some sort of judicial or quasi-judicial forum, or supervisory body, in which to articulate grievances as rights interferences and obtain the opportunity for reasoned decisions/ judgments on these grievances based upon rules of international law.[43]

The hard norms, or established standards, which align with this avenue of thought provide the possibility of strong judicial safeties, yet severely lack in Indigenous input as these established norms were created without the involvement of Indigenous peoples. Within the human rights discourse regarding Indigenous rights, the distinction between individual rights and cultural rights must also be approached.

Human rights, as mentioned previously, have historically sought to put forward positive and negative rights of individuals or the state.[44] There was, however, a challenge in the acceptance of cultural rights being as important as individual rights. This challenge is

[42] N. Banks, 'The Protection of the Rights of Indigneous Peoples to Territory through the Property Rights Provisions of International Regional Human Rights Instruments', *The Yearbook of Polar Law,* vol. 3, no. 1, 2011, p. 59, (accessed 14 June 2019).

[43] Banks, p. 59.

still present today, as will be mentioned in forthcoming chapters regarding property rights, as cultural rights can sometimes be at odds with established notions of rights and duties. Anthropology has played in role in analyzing the applicability of human rights approaches to different cultures through identifying the concept of 'personhood,'[45] and how this concept manifests in a given culture.

The discussion of the role of the state regarding Indigenous rights is an important topic as well. As many national laws were, and arguably still are, constructed without input from Indigenous persons, there is a distinct divide in applicability. As an example, in 1917 there was a move to create a homogeneous nation of Mexico. In this move, Spanish was recognized as the only national language and impositions took place to create an equal society.[46] In this way, there were no distinctions regarding culture, economic wealth or social difference. By framing these impositions as a right to equality, culture was used as a means of justifying exclusion. The 1990s saw the idea of a national identity undergo changes, throughout the years of Indigenous resistance to the homogenizing moves of the state and 'pro-Indigenous legislation'[47] began to emerge recognizing Mexico as a multicultural nation. Of course, parallels still exist between national laws and Indigenous laws, yet this example serves to show that there are embedded cultural differences, such as language preference or ideas of community, regarding rights perspectives.

The case of *Yakye Axa v. Paraguay*, further explores the notion of cultural rights.[48] The Yakye Axa, an Indigenous community in Paraguay, brought a complaint to the Inter-American Court of Human Rights stating that the communal property rights of the Indigenous community were not being recognized by the state. It was noted that;

---

[44] Positive rights refer to rights upon which an action is required from the State, for example the right to a minimum standard of living. On the other hand, negative rights reference a lack of action which must be observed, for instance the right to religious freedoms requires a State as well as individuals respect difference and not interfere.

[45] Banks, p. 59.

[46] J. Fox and L Hernández, 'Mexico's Difficult Democracy: Grassroots Movements, NGOs, and Local Government', *Alternatives: Global, Local, Political,* vol. 17, no. 2, 1992, p. 169, (accessed 20 July 2019).

[47] Fox, p. 169.

[48] Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, IHRL 1509 (IACHR 2005).

> […] Indigenous territorial rights encompass a broader and different concept that relates to the collective right to survival as an organized people, with control over their habitat as a necessary condition for reproduction of their culture, for their own development and to carry out their life aspirations. Property of the land ensures that the members of the Indigenous communities preserve their cultural heritage.[49]

In this way, the distinction between individual and cultural rights was formally recognized. The court stated that cultural rights must be recognized, and in some cases may require a rights discourse that varies from established notions of individualist rights. Furthermore, the court noted the importance of Indigenous land and how this influences corresponding rights;

> Disregarding the ancestral right of the members of the Indigenous communities to their territories could affect other basic rights, such as the right to cultural identity and to the very survival of the indigenous communities and their members.[50]

Surrounding the human rights discourse regarding Indigenous people and culture, there have been multiple challenges not only for Indigenous involvement but the general acceptance of a prime importance placed on cultural rights rather than individual rights. The court case *Yakye Axa v. Paraguay*[51] served as an example that Indigenous rights are interrelated, so much so that it was stated that the neglect of one right may influence the health and survival of the Indigenous community as a whole.

Through briefly introducing varying schools of anthropology, 'scientific anthropology' and 'practical anthropology' emerge as support for etic and emic knowledge respectively. The popularity of the Boasian school of anthropology and 'practical anthropology,' made clear the divisions between a cultural relativist and a universalist approach to anthropology. Through analysing the changing anthropological methods and schools of thought, one can see a reflection of these beliefs in the rights discourse of a given time such as prominence placed on individual rights or community rights as well as on national laws or Indigenous traditional laws.

---

[49] Banks, p. 103.

[50] Banks, p. 103.

[51] Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, IHRL 1509 (IACHR 2005).

3.2 Indigenous Knowledge Sources

Stemming from emic anthropological study and further investigated through Indigenous rights discourses, Indigenous knowledge (IK) takes into account distinct Indigenous cultures and peoples. IK at its core represents the history of study of Indigenous peoples with their own involvement in telling this history.[52] In this way, despite the struggles of colonialism, IK is able to reconstruct knowledge central to the peoples and culture. Born out of IK, traditional ecological knowledge (TEK) represents knowledge stemming from Indigenous cultural practices regarding the environment and sustainability. Concretely,

> TEK is a body of knowledge, practice and belief, evolving by adaptive processes and handed down through generations by cultural transmissions, about the relationship of living beings with one another and with their environment.[53]

In this way, TEK and the larger scope of IK draw upon a history of Indigenous peoples knowledge regarding sustainability and traditions to ensure cultural survival.

Anthropologists became cognizant of this knowledge and noticed the potential benefits of harnessing IK, and more specifically TEK, to aid in sustainable development initiatives.[54] Although TEK became useful for anthropologists in understanding the reliance on natural resources or sustainable communities, this understanding echoed throughout Indigenous communities as it was finally a recognition of Indigenous knowledge systems. It is necessary to note, however, that IK and TEK, as anthropologists came to know or how we know of it today has been forever impacted by a colonial history of relocation efforts and moves to permanently redirect these knowledge systems to reflect the colonizers. This is mirrored in legislative gaps regarding Indigenous peoples due to identity politics and cultural politics.

---

[52] Purcell, p. 260.
[53] Larson, p. 56.
[54] Purcell, p. 265.

Through TEK, the role of water emerged as a source of traditional prominence. When looking into the role of water within Indigenous communities the issue becomes complicated due to previous forced relocations, ownership of land, and the inevitable politics involved in discussions between Indigenous communities and political actors. This was mentioned on page 6 and can been seen within the contested relation between individual and cultural rights as well as national law and Indigenous cultural tradition. As a result of this complex relationship, the concept of 'water territory'[55] has emerged as a means of noting the importance of water in a given community and taking care to respect the role that water plays in the health of that community.

Stemming from 'water territory' comes 'water culture.[56] Water culture refers to the meanings individuals and groups associate with a body of water rather than the physical role of water as seen through water territory. 'Water culture,' then plays a part in traditional symbols, values and connections between Indigenous communities and the spiritual world.[57] The North American Assembly of Frist Nations points out that water is essential to the lives of Indigenous peoples, taking both a health and traditional practice stance. From the health perspective, water is necessary for agriculture and basic sanitation. In the traditional sense, water symbolizes the 'blood of Mother Earth,'[58] necessary for traditions dating back thousands of years. The Assembly states;

> The sacred water element teaches us that we can have great strength to transform even the tallest mountain while being soft, pliable, and flexible. Water gives us the spiritual teaching that we too flow into the Great Ocean at the end of our life journey. Water shapes the land and gives us the great gifts of the rivers, lakes, ice and oceans.[59]

Furthermore;

---

[55] R. Boelens et al, 'Contested Territories: Water Rights and the Struggles over Indigenous Livelihoods', *The International Indigenous Policy Journal*, vol. 3, no. 3, 2012, pp. 3, (accessed 3 June 2019).
[56] ibid., p. 3.
[57] Boelens, p. 3.
[58] The Assembly of First Nations, 'Honouring Water', *The Assembly of First Nations*, [website], 13 May 2019, http://www.afn.ca/honoring-water/, (accessed 29 May 2019).
[59] Assembly of First Nations.

> The First Nations peoples of North America have a special relationship with water, built on our subsistence ways of life that extends back thousands of years. Our traditional activities depend on water for transportation, for drinking, cleaning, purification, and provides habitat for the plants and animals we gather as medicines and foods.[60]

Illustrated here is the role that water holds in some Indigenous cultures. Traditionally, women are viewed as 'water protectors,' this is exemplified in the belief that women, like water, create life. The North American Assembly of Frist Nations also states that;

> Indigenous women have a strong and distinct physical and spiritual relationship with water and have traditionally been tasked with caring for it as it provides us with our first water environment in the womb, announces our birth, and sustains life.[61]

It becomes clear then that water represents more than just a natural resource, but holds a spiritual role in Indigenous communities.

With emic study, Indigenous knowledge sources materialized through IK and TEK.[62] Although forever influenced by etic and scientific anthropology as well as colonialism, IK puts forward concepts of water territory and water culture which will be the foundation for upcoming chapters regarding the right to water for Indigenous peoples and culture.

> Our strength and peace and well being have come from our faith in the creator, from the application of our customary law, from our sense of community and from our stewardship of the waters, lands and resources […] guided by the collective knowledge of our ancestors.[6364]

This chapter seeks to draw parallels between the emergence of differing anthropological schools and how they have reflected upon the thinking and rights discourses of the time. Of note is the shift from 'scientific anthropology' to 'practical

---

[60] ibid.

[61] Cave, p. 3.

[62] Purcell, p. 262.

[63] 'Report of the Expert Panel on Safe Drinking Water for First Nations', vol. 1, 2006, p. 33, (accessed 13 May 2019).

[64] Chief Sydney Garrioch of Manitoba Keewatinowi Okimakanak inc. in Manitoba speaks of the role of water.

anthropology,' which brought with it a divide along the lines of cultural relativism and universalism. Through this divide, established international documents such as the UDHR are confronted as holding a universalist vision of human rights which could potentially influence traditional practices. It is then noted through an increase in emic knowledge, that differing cultures have different knowledge sources. IK and TEK emerge as culturally distinct sources of knowledge for Indigenous groups, which was not recognized during anthropological studies that relied on etic knowledge. The participatory approach inherent in emic knowledge leads not only better understanding of differing cultures but also community empowerment.[65] In summation, it is with the evolution of the study of anthropology itself and the move towards a culturally relative stance, that cultures and knowledge sources such as those held by Indigenous groups are recognized.

4. International Standards Concerning Indigenous Persons and the Right to Water

Drawing upon ideas presented in the previous chapter such as the evolution of anthropology and how this has influenced the perception of Indigenous peoples and culture as a whole, this chapter seeks to outline international documents which reference a right to water. Although early notions of a right to water were often inferred rather than explicitly mentioned, the four Geneva Conventions, the Convention on the Elimination of all Forms of Discrimination against Women,[66] the Convention on the Rights of the Child[67] and the Convention of the Rights of Persons with Disabilities[68] will be discussed regarding water rights. Albeit these documents do not necessarily address water rights for Indigenous persons directly, they do address specific rights for children, women, rural and underserved areas as well as the principle of non-discrimination in accessing rights, from which water

[65] Sillitoe, p.223.

[66] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249.

[67] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577.

[68] Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, entered into force 3 May 2008) UNTS 2515.

rights can be deduced. From this, General Comment 15: The Right to Water,[69] the first document explicitly addressing water inequality and accessibility is discussed through reference to articles which pertain to Indigenous rights regarding water.

Following this, two Special Rapporteur reports are examined from the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, which delve into the role of State and non-State actors regarding providing and upholding the right to water. Additionally, violation procedures are introduced which will be further discussed in Chapter 6.1 on how to bring a case forward. Finally, the United Nations Declaration on the Rights of Indigenous People[70] is discussed as it echoes international law and ties in concepts mentioned previously such as the role of water, to Indigenous communities and notes influential historical events, such as residential schooling, which have altered Indigenous heritage.[71]

In order to premise this chapter, regarding international human rights law, individuals are the subjects. In this way, a State is obliged to the individuals residing on that given land, regardless of how the obligations and actions impact the State itself. At the international level accountability is placed on the State to respect the human rights of individuals as well as fulfill and protect the human rights of persons through ensuring non-interference of human rights by non-state actors or other persons. In this way, international human rights law sets the standard of how a State should implement given human rights. The follow-through of these rights however, depends on the State itself, with exception regarding few preemptory norms. Due to this, international standards are somewhat idealistic due to the role of state sovereignty; yet provide avenues for individuals and groups to hold States accountable as well as other States to implement means of

[69] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11.

[70] United Nations Declaration on the Rights of Indigenous Peoples,' A/RES/61/295.

[71] Importantly, it is mentioned that the Canadian Government was one of four countries to vote against the adoption of UNDRIP. Although arguments have been made that national legislation in place previously covered these rights, the vote against implementing the Declaration is one that cannot be forgotten, especially when looking at the history of colonial actions the State implemented. Currently, Canada does support UNDRIP.

condemning the actions of another State in the event that human rights are not respected, such as sanctions. The realization of the right to water through international standards and the influence of these international standards on Canadian domestic legislation is further explained in chapter 5.3.

4.1 General Treaties

Although seemingly referenced, there is little to no explicit mention regarding the role of water in early treaties. Early documents that do cite the importance of water are the four Geneva Conventions,[72][73][74][75] which share a common article, being Article 3. This Article represents a steadfast rule of which no derogation is permitted. Common Article 3 states that in conflicts which are not considered international in character;

> Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.[76]

Article 3 further states, 'the wounded and sick shall be collected and cared for.'[77] From this statement, it has been deduced that to be treated humanely and be cared for, one must be provided with a standard of health, which includes access food and water. Ameur Zemmali, a member of the Legal Division of the International Committee of the Red Cross, notes

---

[72] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949) 75 UNTS 31.
[73] Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949) 75 UNTS 85).
[74] Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949) 75 UNTS 135.
[75] Geneva Convention Relative to the Protection of Civilization Persons in Times of War (adopted 12 August 1949) 75 UNTS 287.
[76] Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949), 75 UNTS 135.
[77] ibid.

'assistance and care for the wounded and sick is inconceivable without water.'[78] He further explains that medical staff require water to provide services, and general hygiene and maintenance of said services also requires the use of water. There are some instances where water is referenced explicitly throughout the Geneva Conventions, such as in Article 20 of the Third Geneva Convention, which notes, 'the Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention.'[79] The Fourth Geneva Convention, Article 127, states also that 'the Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health.'[80] From 1949, then, there has been both reference and explicit mention in internationally binding instruments regarding the importance of water for humane treatment and survival, firmly noting the fundamental importance of access to safe drinking water in all settings.

Moving on, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 also notes the importance of water.[81] Article 14 states all States party to the Convention must ensure to the highest degree that women located in rural areas 'enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.'[82] CEDAW continues in reasoning that a direct denial of these services can be considered discrimination. We can assume then, that by not taking all measures possible to provide access to water for rural women, necessary for an adequate standard of living, discrimination is present.

---

[78] A. Zemmali, 'The Protection of Water in Times of Armed Conflict,' *International Review of the Red Cross*, No. 275, 1995, (accessed 17 June 2019).
[79] Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949) 75 UNTS 135, Article 20.
[80] Geneva Geneva Convention Relative to the Protection of Civilization Persons in Times of War (adopted 12 August 1949) 75 UNTS 287.
[81] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249.
[82] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249, Article 14.

Additionally, the Convention on the Rights of the Child (CRC),[83] which entered into force in 1990, mentions access to water. Article 24.2 (c) explicitly mentions the role of the State in ensuring appropriate measures;

> […] 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.[84]

The CRC also contains a right to life and the right to the full development of a child, seen in Article 6.[85] As mentioned previously, the health of a person and the health of the environment, supported by IK and TEK, rest on access to clean water. In this way, it can be deduced that water is necessary to provide for the fulfillment of multiple Articles within the CRC.

The Convention on the Rights of Persons with Disabilities, (CRPD)[86] adopted in 2006, also references water. Article 25 notes the requirement of the highest attainable standard of health for disabled persons.[87] Article 28 notes States parties responsibility 'to ensure equal access by persons with disabilities to clean water services.'[88] Once again, the CRPD references explicit rights to a standard of water, and a right to water can again be deduced from the noted right to health.

With this, it can be seen that there are a variety of treaties which reference access to water of which is explicitly mentioned or can be deduced from reasoned interpretation of other rights. The four Geneva Conventions, which govern international humanitarian law,

---

[83] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577.
[84] ibid., Article 24.2 (c).
[85] ibid., Article 6.
[86] Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, entered into force 3 May 2008) UNTS 2515.
[87] ibid., Article 25.
[88] Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, entered into force 3 May 2008) UNTS 2515.Article 28.

all mention the importance of water. Zemmali interpreted the Conventions as referencing a right to water in multiple general Articles. This reasoning can be carried forward to CEDAW,[89] the CRC[90] as well as the CRPD[91], all of which mention explicitly the necessary role of water in the protection of rights. From inspecting three Conventions and the four Geneva Conventions it becomes clear that water has historically been regarded as necessary for an acceptable standard of health and the full enjoyment of life.

4. 2 General Comment No. 15: The Right to Water

As water had been generally referenced in previous treaties and covenants, it was not until General Comment No. 15: The Right to Water (GC15), [92] where water as a distinct and separate right was addressed. Adopted at the Twenty-ninth Session of the Committee on Economic, Social and Cultural Rights (CESCR), dated 20 January 2003, GC15 outlines the right to water from a legal basis, obligations of parties to this Comment as well as the response mechanisms if a violation by a state party or other party was to take place. It is important to note also, that in the introduction of GC15, water is recognized as a 'public good' through which other human rights rest upon.[93] Moving onto the legal bases of a right to water, water is mentioned as 'one of the most fundamental conditions for survival,' of which a minimum standard of clean and accessible water is necessary.[94]

The right to water is regarded as so fundamental, that its realization greatly impacts the fulfillment of other rights such as the right to an adequate standard of living, right to

---

[89] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249.
[90] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577.
[91] Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, entered into force 3 May 2008) UNTS 2515.
[92] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11.
[93] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 1.
[94] ibid., Article. 3.

shelter, as well as the right to food.[95] As mentioned, water is necessary for the production of food, the creation of shelter and housing, as well as ensuring general health and living standards yet the right to water must firstly protect water for personal use.[96] Importantly point 8 states;

> Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.[97]

This mention of the concept of environmental hygiene can be compared to TEK as mentioned on page 14 of this thesis. TEK and more specifically 'water culture,' seek to uphold the cleanliness of water sources as they are crucial to the survival of Indigenous communities and traditions. So much so, that 'water protectors' have been designated in certain Indigenous communities to ensure the health and well being of the water sources located on Indigenous reserves.[98]

The normative content regarding the right to water is also mentioned in GC15 and distinctly states 'the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.'[99] Also, once again, similar concepts central to TEK can be seen within GC15, through the mention of water as a cultural good as well as the necessity of ensuring the long term health of water sources through sustainable practices.

GC15 annotates conditions regarding water that must be present in all circumstances. These are availability, quality and finally accessibility.[100] Availability is in

---

[95] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNTS 993, Article 11.
[96] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 6.
[97] ibid., Article 8.
[98] Cave, p. 3.
[99] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 10.
[100] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 12.

reference to the supply of water that is necessary for personal and domestic use.[101][102] Quality references the cleanliness of water, in that it must be safe for consumption and pose no health threats through use.[103] Finally, accessibility is divided into four categories, being, physical accessibility, economic accessibility, non-discrimination and information accessibility. Of note, physical accessibility mentions, 'all water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements.'[104]

GC15 notes 'special topics for broad application,' and contains four paragraphs regarding non-discrimination and equality measures within the right to water. Point 16 explicitly mentions that accessing the right to water for Indigenous persons has been historically difficult and therefore must be given special attention regarding access to water and water services. This point outlines eight subtopics being;

(a) Women;

(b) Children;

(c) Rural and deprived areas;

(d) Indigenous peoples;

(e) Nomadic and traveller communities;

(f) Refugees, asylum-seekers, internally displaced persons and returnees;

(g) Prisoners and detainees;

---

[101] The current minimum standard of water is 20 liters per person per day, inclusive of basic hygiene, food and hydration requirements. In an emergency situation, the minimum standard is lowered to 15 liters per day per person.

[102] 'What is the minimum quantity of water needed?', World Health Organization, https://www.who.int/water_sanitation_health/emergencies/qa/emergencies_qa5/en/, (accessed 7 May 2019).

[103] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 12 (b).

[104] ibid., Article 12 (c) i.

(h) Groups facing difficulties with physical access to water.[105]

Of these subtopics, women, children and rural and deprived areas are applicable to the situation of water access for Indigenous persons. First, women's role with respect to water is mentioned with importance, as they must not be dismissed in decision-making with reference to water access. This view is echoed as mentioned on page 16 with the belief held by The North American Assembly of Frist Nations of women as 'water protectors.' Second, GC15 notes the 'provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency.'[106] The third subsection regards water sources and access to these. It notes,

> Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution […] no household should be denied the right to water on the grounds of their housing or land status.[107]

The explicit mention of traditional water sources as well as land status is important to recognize and will be further investigated with regard to a States obligation to fulfill. Finally, subsection (d) references Indigenous peoples and notes that water resources on traditional land must be protected and Indigenous persons must be provided opportunities to be involved in water discourses.[108] Until this point, GC15 has been analyzed regarding the recognition of water as a right, minimum standards and water as a cultural good. Additionally, to fulfill the right to water, water must be accessible and of a certain quality, with Indigenous peoples having been recognized as a distinct group with challenges in accessing water.

A State parties' obligation will now be looked at with regards to the obligation to respect, protect and fulfill movement towards the realization of the right to water. Although GC15 is implemented within the framework of progressive realization, States parties to this

---

[105] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 16.
[106] ibid., Article 16 (b).
[107] ibid., Article 16 (c).
[108] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 16 (d).

document must put forward select immediate obligations such as non-discrimination. When looking at a States obligation to respect, a state must not interfere, albeit directly or indirectly, with water access. Additionally, 'arbitrarily interfering with customary or traditional arrangements for water allocation' must not take place.[109] Moving to the obligation to protect, the State must prevent interference with water sources from outside parties. Finally, the obligation to fulfill encompasses facilitating, promoting and providing water services. Regarding facilitating, the State must take moves in an effort to provide and assist individuals as well as communities with water access. Promotion references education regarding water and hygiene as well as natural water source protection.

Finally, in an effort to provide, the State must, in situations where individuals or communities are unable to provide clean and accessible water themselves, step in and provide these services. Additionally, the obligation to fulfill encompasses national recognition of the role of water and therefore the recognition of a right to water. This must be recognized with a national water strategy and ensuring that water is, indeed, accessible for all. In fact, Article 34 further notes, 'the economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.'[110] GC15 references 'core obligations' as minimum standards being;

(a) To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;

(b) To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;

(c) To ensure physical access to water facilities or services that provide sufficient, safe and regular water, that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household;

[109] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 21.
[110] ibid., Article 34.

(d) To ensure personal security is not threatened when having to physically access water;

(e) To ensure equitable distribution of all available water facilities and services;

(f) To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups;

(g) To monitor the extent of the realization, or the non-realization, of the right to water;

(h) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups;

(i) To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.[111]

Moving from this, a process is laid out in GC15 in the case of a violation of the right to water. If a violation takes place, the State holds the burden of proof in determining if it was either unwilling or unable to fulfill the right to water.[112] If a State party is unwilling to fulfill this right, it can be through an 'act of commission,' being through the direct actions of a State, or through an 'act of omission,' which references the neglect of fulfilling a duty with regards to the right to water.[113] In the event that national and provincial or regional water policies do not align, coordination must take place to ensure a cohesive national water policy.[114] Of important note, this point specifically will be discussed in further detail in the following chapter where national and provincial laws regarding Indigenous persons and access to water with reference to Canada will be investigated in their application.

---

[111] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 37.
[112] ibid., Article 41.
[113] ibid., Article 41.
[114] ibid., Article 51.

In general, this subchapter seeks to outline GC15 and note the paramount importance regarding the right to water in this document. Mentioned as a 'public good' of which the realization of additional rights, such as the right to life, rest upon, the right to water is paramount. Parallels between Indigenous knowledge sources, as mentioned on page 14, and the role of environmental hygiene are noted in addition to the role of women in water activities, seen with the role of 'water protectors' mentioned with the North American Assembly of Frist Nations. Furthermore, land status and customary water allocation are noted as important concepts to take into consideration when approaching the right to water but must not be reason for a State party to fall short on the obligation to fulfill. Finally, core obligations that a State party must implement as well as a violation procedure is outlined and will be further discussed in the following chapters.

4.3 Special Rapporteur on the Right to Safe Drinking Water and Sanitation Reports

The Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation is a relatively new role. The first Special Rapporteur, Catarina de Albuquerque, was appointed by the Human Rights Council, with her mandate beginning 1 November 2008 and ending in October of 2014. Her 'Report of the Independent Expert on the issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation' (2010)[115] will be reviewed as it addresses State obligations as well as State accountability. With regards to the provision of water related services, de Albuquerque outlines three options being;

(a) Direct management;

[115] C. de Albuquerque, 'Report of the Independent Expert on the Issue of Human Rights Obligations related to access to Safe Drinking Water and Sanitation,' A/HRC/15/31, (accessed 12 June 2019).

(b) Delegated service provision;[116][117]

(c) Informal provision.[118]

Direct management references State parties taking ownership and control of water services, where as delegated service provision looks to services given to other actors such as private companies, non-governmental organizations (NGOs) or other parties which are not aligned with the State but the State has given consent for the transfer of provision. Informal provision references action by third parties who provide water services where the State has not intended this transfer of provision and is regarded as 'de facto participation of non-State actors.'[119] Regardless if water services are provided through direct management or delegated service provision, the State is not exempt from ensuring the human right to water is respected, protected and fulfilled. As mentioned in GC15[120] and reiterated in this report, progressive realization regarding the right to water, addressing underserved locations and marginalized persons as well as the creation of a national strategy must be paid specific attention to.

On 1 November 2015, Léo Heller was appointed as the second Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation. In his 'Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation,' (2018)[121] Heller outlines accountability, which encompasses the roles, responsibilities and standards pursuant to both State and non-state parties. He also addresses service decentralization in the event that a State has a central government and regional governments sharing responsibilities regarding water provisions. While this sharing of responsibly does not

---

[116] There is a general low percentage of people who rely on private water sources. In Canada, as of 2012, approximately 15 per cent of the population relied on a private water supply, such as private wells.

[117] 'Private Water Supplies', Canadian Water and Wastewater Association, https://www.cwwa.ca/faqprivate_e.asp. (accessed 10 July 2019).

[118] de Alburquerque, p. 4.

[119] de Albuquerque, p. 4.

[120] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11.

[121] L, Heller, 'Report of the Independent Expert on the Issue of Human Rights Obligations related to access to Safe Drinking Water and Sanitation,' A/73/162, (accessed 20 June 2019).

exempt a State from fulfilling the right to water it may 'obscure national accountability mechanisms and hamper clarity as to who is accountable, when it is implemented without a clear allocation of roles and responsibilities.'[122] With this obscuring, an issue may persist long past the point where it should be addressed and corruption may flourish.

In the event that the right to water has not been achieved and a State is to be held accountable, Heller outlines a justification procedure. Within this, it is noted that a State must explain, to those affected by a lack of service provision, why said service was not provided. Regarding a State being held accountable, Heller notes two models being; an answer to the public when a service is not provided or by operating in a transparent manor whereby information is readily accessible.[123] Alongside this, Heller also notes the importance of monitoring and reporting procedures primarily by the State in order to curtail efforts to areas of most need but also through external monitoring, such as NGOs or third parties in an effort to hold the State accountable. Specifically, the treaty body of the CESCR must monitor the international implementation of GC15 as noted previously.[124]

Through analysis of two 'Special Rapporteur reports on the Human Right to Safe Drinking Water and Sanitation' spanning eight years, it can be seen that key issues remain. The divisions emerging from direct, delegated and informal service provisions still exist and pose problems with regards to implementation and accountability procedures. Additionally, the grave importance of having a national strategy in regards to water accessibility is again mentioned alongside the burden of proof being placed on the State to ensure the respect of, protection of and fulfillment of the right to water for all, with explicit mention of marginalized groups.

4. 4 United Nations Declaration on the Rights of Indigenous Peoples

[122] Heller, p. 7.
[123] Heller, p. 18.
[124] See page 22 for more on GC15.

The United Nations Declaration on the Rights of Indigenous Peoples[125] (UNDRIP) was adopted by the UN 13 September 2007, with four votes against the adoption, including Canada.[126] This Declaration aims to address the gaps in previous international documents where the focus has been on individual rights rather than collective rights. UNDRIP is the product of a 1982 study conducted by UN Special Rapporteur of the Sub-commission on the Prevention of Discrimination and Protection of Minorities, José R. Martinez Cobo.[127] Through this study Martinez Cobo outlined discrimination faced by Indigenous groups at a global level. In his report, 'Study of the Problem of Discrimination against Indigenous Populations,'[128] Canada is noted as one of the countries visited. In his report, Martinez Cobo notes the situation of Indigenous peoples in Canada;

> 70 per cent of the Indian[129] population here have no water in their homes. Approximately 25 per cent use water hauled from sources known to be contaminated and another 40 per cent rely on surface water as a source. As many as 90 per cent use pit privies for sewage disposal and 10 per cent have no means of disposal.[130]

Although this is in reference to the situation of Indigenous persons in Canada in 1976, it becomes clear that adequate housing, water and sanitation access is an issue that has persisted for decades. In summation of the living standards of Indigenous peoples in Canada, Martinez Cobo notes;

> General living and sanitary conditions are far below accepted standards. Over a period of 30 years, the Government's various housing programs have resulted in

---

[125] United Nations Declaration on the Rights of Indigenous Peoples,' A/RES/61/295.

[126] Although the Canadian Government has released a Statement of Support for UNDRIP in 2010 and Canadian national laws regarding Indigenous rights were in place previous to UNDRIP, the vote against an international declaration for Indigenous peoples is one that must be noted.

[127] J. R. Martínez Cobo, 'Study of the Problem of Discrimination Against Indigenous Populations' Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1983/21, (accessed 27 June 2019).

[128] ibid.

[129] The term 'Indian' is noted for its usage in this text as the dominant term at this time, and will only be used through quoted material to avoid stigmatic usage.

[130] Martínez Cobo, p. 23.

> 31,164 houses for Indians. Of this number, only 14,145 are, by any modest standard, habitable at the present time.[131]

In response to the Martinez Cobo study, the United Nations Economic and Social Council (ECOSOC) created a Working Group on Indigenous Populations that began the process of drafting UNDRIP in 1985. The 22 years of drafting were marred by debates and revisions, mainly surrounding state sovereignty.

UNDRIP as a document seeks to counter previously held beliefs concerning Indigenous peoples and culture and put forward a document in which Indigenous people themselves have taken part in creating. As mentioned on page 6, early schools of anthropology took part in etic knowledge, where Indigenous peoples were not involved in the knowledge process but were viewed as a subject of study. In response to this historically common method within anthropology, UNDRIP states;

> Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust.[132]

Also of important note, UNDRIP states;

> Indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests. [133]

Historical injustices such as residential schooling, relocation measures and forced adoptions, as mentioned in chapter 3, have impacted the recognition of Indigenous peoples as rights holders. By noting the history of cultural racism, discrimination and colonization, the signing parties recognize these actions as having taken place. Emphasis is also placed

---

[131] Martínez Cobo, p. 22.

[132] United Nations Declaration on the Rights of Indigenous Peoples,' A/RES/61/295, p. 3.

[133] ibid., p. 3.

on the recognition of the resources and territories of Indigenous peoples and cultures as well as Indigenous knowledge sources such as IK and TEK.[134]

Article 8 puts forward that a State must provide mechanisms to halt 'any action which has the aim or effect of dispossessing them of their lands, territories or resources.'[135] Article 25 reiterates this and explicitly mentions water;

> 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.[136]

The mention of the importance of resources, crucially water, and how this relates to the culture of Indigenous peoples as a whole is important. The environment is central to Indigenous culture as seen within Chapter 3.2 with TEK and 'water protectors.'[137] UNDRIP emerged through a difficult process of recognizing discriminatory practices in multiple countries, which was followed by years of deliberation, which finally culminated in the Declaration. Drawing on other international documents, UNDRIP concretely ties the rights of Indigenous peoples and culture with the health and well-being of the environment and resources, seen with the traditional use of water.

In summary, this chapter has noted international hard law, of which agreeing states are bound to as well as soft law practices. Beginning with the Geneva

---

[134] See page 14 for more information regarding IK and TEK and the prominence of these belief systems in Indigenous communities.
[135] United Nations Declaration on the Rights of Indigenous Peoples,' A/RES/61/295, Article 8.
[136] ibid., Article 25.
[137] See page 16 for more information.

Conventions,[138][139][140][141] in which all four share common Article 3 regarding humane treatment, it has been reasoned that from this Article, humane treatment includes access to adequate amounts of food, medical care and shelter all of which are unable to be satisfied without water. Building upon this, general treaties, being CEDAW,[142] CRC[143] and CRPD[144] are mentioned to further entrench the notion that water is in fact a human right, protected in multiple treaties. GC 15[145] is examined regarding its important stance on water rights and the acknowledgement of States in upholding this right and fulfilling the corresponding duties. In partnership with Special Rapporteur reports, which explicitly call on States to implement national guidelines, the concept of State responsibly is broached.

Finally, this chapter explores international law and corresponding State responsibilities while introducing State disapproval of Indigenous legislation, seen with UNDRIP,[146] which will be further investigated in the following chapters. Furthermore, civil and political rights, economic, social and cultural rights as well as collective rights are included in these international standards. As human rights in international law are applicable to every person or in some cases, groups of peoples, fundamental rights at the Canadian national level will be discussed.

---

[138] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949) 75 UNTS 31.
[139] Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted, 12 August 1949) 75 UNTS 85).
[140] Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949) 75 UNTS 135.
[141] Geneva Convention Relative to the Protection of Civilization Persons in Times of War (adopted 12 August 1949) 75 UNTS 287.
[142]Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249.
[143]Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577.
[144] Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, entered into force 3 May 2008) UNTS 2515.
[145] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 6.
[146] United Nations Declaration on the Rights of Indigenous Peoples,' A/RES/61/295.

5. Canadian Legal Framework with a focus on Indigenous Peoples

As mentioned in the previous chapter, Canada is bound by international documents such as CEDAW,[147] CRC[148] and more recently UNDRIP.[149] Where there is no authority or hierarchy within international law, the Canadian legal framework works within a centralized authority with a hierarchy and separation of powers of the legislature and judiciary. This chapter seeks to explore Canadian domestic legislation and laws in regards to water provisions and Indigenous rights as well as three court cases, which further expound upon the legislation. The international legal framework of laws regarding Indigenous rights dictates what Canada is obliged to in the international sphere, such as UN documents and treaties, yet it is national legislation which looks to rules and procedures within the country. National legislation at the federal level as well as provincial legislation and legal cases will be examined with regards to the implementation of said legislation. Through these legislative and legal frameworks, the applicability of international norms with reference to human rights of Indigenous peoples and the right to water in the national sphere are approached.

5.1 National Law

The Constitution Act of 1867 outlines the division of powers between the Federal and Provincial powers.[150] This is the foundation of legislation in Canada as it is the first piece of legislation that recognizes Canada as a distinct country. All following legislation at the national level is influenced by the Constitution Act of 1867,[151] including the Indian

---

[147] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249.
[148] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577.
[149] United Nations Declaration on the Rights of Indigenous Peoples,' A/RES/61/295.
[150] Constitution Act (1867) 30 & 31 Victoria, c.3 (U.K.).
[151] ibid.

Act[152], and Bill S-11.[153] Both of these acts of legislation straddle federal and provincial roles regarding Indigenous peoples, which falls in the federal jurisdiction, and access to water, which is provincial issue. The Indian Act[154] will be looked at with reference to the changing nature of Indigenous peoples in Canada and how the governing of Indigenous peoples and communities takes place.

Of important note is the complex situation of territorial autonomy regarding Indigenous Reserves and how this influences National legislation and jurisdiction. Fundamentally though, territorial autonomy in the case of Reserves in Canada is in reference to the sharing of power over governance, in that the State must still ensure that rights are respected and realized. Additionally, in a self-governing territorial autonomy such as the vast amount of Indigenous Reserves in Canada, there is no participation regarding politics. In this way, Indigenous peoples have little say in the political direction of the country or representation in federal or provincial politics.[155] [156]

In this analysis, parallels will be drawn from Chapter 3 regarding anthropological views of Indigenous peoples, as the influence of colonialism can be seen in both national and provincial legislation as it follows prior anthropological trends. Following this, the Canada Water Act[157] is examined with regards to the implementation of water services for Indigenous peoples, which through analysis is found to be absent. The Report of the Expert Panel on Safe Drinking Water for First Nations[158] as well as the resulting Bill S-11: The Safe Drinking Water for First Nations Act[159] are examined in first their coverage and then

---

[152] Indian Act, RSC 1985, c I-5.
[153] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21.
[154] Indian Act, RSC 1985, c I-5.
[155] T. Benedikter, 'Human Rights of Minorities' Moodle, https://moodle.univie.ac.at/mod/folder/view.php?id=1701839, (accessed 17 July 2019).
[156] See page 51 regarding The Delgamuukw Test for Indigenous sovereignty.
[157] Canada Water Act, R.S.C., 1985, c. C-11.
[158] Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, 'Report of the Expert Panel on Safe Drinking Water for First Nations' vol. 1, 2006.
[159] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21.

the resulting implementation of water services regarding Indigenous populations and communities.

5.1.1 The Indian Act

Passed under provisions of the Constitution Act of 1867,[160] the Indian Act (IA) has been amended multiple times regarding the changing nature of society and the role of colonialism.[161] The IA[162] was created in a time heavily influenced by colonialism and the paternalistic nature of the Crown and Indigenous relations.[163] This can be seen in the following figure, which outlines treaties to show the long lasting relationship between Indigenous people, the State and the right to land and recognition as a distinct peoples and culture.

[160] Constitution Act (1867) 30 & 31 Victoria, c.3 (U.K.).
[161] Indian Act, RSC 1985, c I-5.
[162] ibid,.
[163] The term 'Indian' will be used here in reference to The Indian Act, but note should be made to the derogatory term and will not be used past referencing this act.

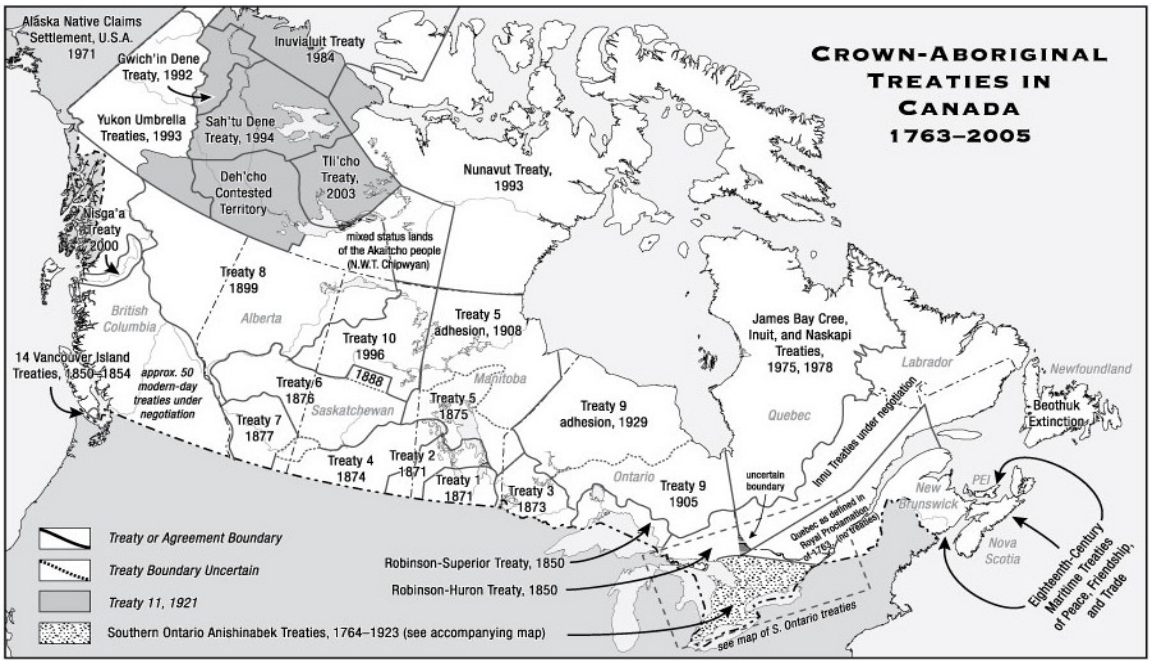


Figure 1) Treaties between Indigenous communities and the Crown, 1763-2005[164]

There have been sections in the IA which overtly ban traditional practices of Indigenous peoples as well as define who is to be considered Indigenous and who is not. It is in this IA that federal and provincial roles regarding Indigenous peoples are pronounced and the strict definition of the term 'Indian' is defined. Of note, there are three broad distinctions regarding Indigenous peoples in Canada, being Indigenous, Métis and Inuit[165]. Within these categories are multiple variations of Indigenous peoples such as status and non-status,[166] as well as regional differences, language and culture.[167]

---

[164] 'Crown-Aboriginal Treaties in Canada 1763-2005', Southern Chiefs' Organization Inc. http://scoinc.mb.ca/, (accessed 15 June 2019).

[165] The distinct experience of Inuit peoples and cultures in Canada will not be mentioned as this does not fall within the scope of this paper.

[166] If an Indigenous person attended university, they would then loose their Indian status; this reinforces the paternalistic relationship between the State and Indigenous people. Additionally, if a status woman married a man without Indian status, she and her children would loose status. This rule has now been reformed.

[167] This is a very brief note on the complexities of Indigenous populations and in no ways seeks to categorize Indigenous peoples and culture into these three main groups. For the sake of this paper, these groups are mentioned in reference to the Indian Act, yet the varying traditions, languages, histories and cultures cannot be approached due to the scope of this paper.

As noted in Chapter 3, reforms such as residential schooling and forced adoptions were commonplace with regards to the Indigenous population. These were far from the only limitations placed on Indigenous peoples, a 1925 amendment of the Indian Act outlawed Indigenous dancing both on and off reserves, although later repealed. Of important note, in 1927 there was an amendment to IA in which Indigenous persons and communities were unable to bring forward land claims addressing the Government of Canada without prior consent from the Canadian Government.[168]

Within the broad distinctions of Indigenous peoples in Canada, there were roughly 1,673,785 people who identify as Indigenous in 2016, as seen with the following image. In comparison to the previous image, it is apparent that differing Indigenous identities exist throughout the landscape of Canada, producing a vast and varying Indigenous experience depending on how an individual identifies. Be it Métis, Inuit, an Indigenous person residing on a Reserve or the multiple Indigenous identities that fall under the encompassing term of Indigenous, each individual experience is different, yet the Indian Act seeks to govern Indigenous peoples as the same.

[168] W. B. Henderson, 'Indian Act', The Canadian Encyclopedia, 23 October 2018, https://www.thecanadianencyclopedia.ca/en/article/indian-act, (accessed 13 June 2019).

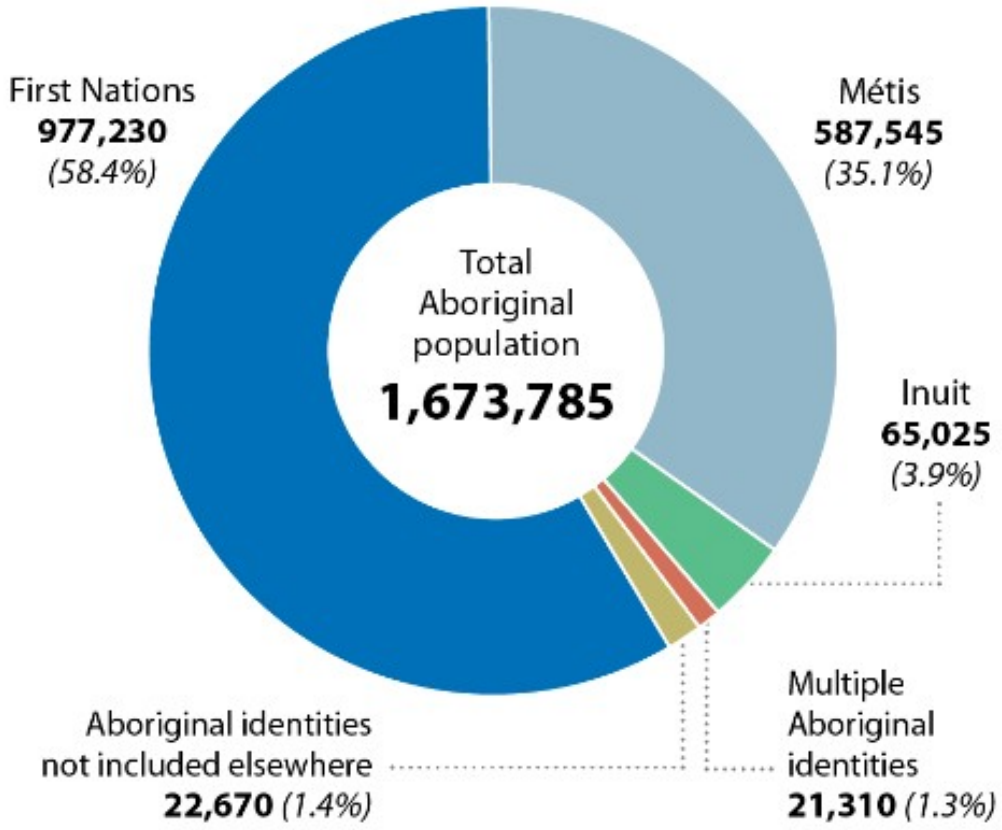


Figure 2) Population of Indigenous peoples in Canada as of 2016[169]

The current IA[170] includes the definition of Indigenous peoples, with reference to parental lineage as well as the definition of reserves, taxation guidelines, wills, guardianship and the management of reserves and natural resources found on these reserves in conjunction with the State. In regards to reserves, they are owned by the Crown (Federal Government of Canada), but must be for the benefit and use of the Indigenous group that it is designated for. In this way, the Government still holds possession of this land;

[169] K. Kirkup, 'Canada's Indigenous population growing 4 times faster than rest of country', Global News, 25 October 2017, https://globalnews.ca/news/3823772/canadas-growing-indigenous-population/, (accessed 2 July 2019).
[170] Indian Act, RSC 1985, c I-5. was last modified 26 June 2019.

> The Minister may authorize the use of lands in a reserve for the purpose of Indian schools, the administration of Indian affairs, Indian burial grounds, Indian health project or, with the consent of the council of the band, for any other purpose.[171]

It is seen here, that the State must maintain a standard of health within these reserves as they are under the jurisdiction of the Federal Government, yet there is no explicit mention of water health or accessibly on behalf of the State. There is however, mention that Reserve councils[172] may govern over wells or water supplies. By examining this legislation it is clear that there is a gap in national laws which cannot be fully fulfilled through the implementation of international legislation such as GC15[173] and UNDRIP.[174]

5.1.2 Canada Water Act

Proclaimed on 30 September 1970, the Canada Water Act (CWA) outlines roles and responsibilities for the sustainable use of water resources in Canada.[175] CWA contains three main chapters being, comprehensive water resource management, water quality management as well as a general chapter, which looks to the role of inspectors and advisory committees, informing the public as well as punishment in the case of violations.

The first chapter of the CWA outlines federal and provincial arrangements regarding the health and use of water resources as well as 'intergovernmental committees.' Article 4 notes that water resources must benefit all Canadians and that these intergovernmental committees should be established in order;

---

[171] Indian Act, RSC 1985, 18 (2).

[172] Reserve Councils refer to the government on an Indigenous Reserve composed of Indigenous representatives regarding the governance of that area.

[173] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 6. ibid., Article 8.

[174] United Nations Declaration on the Rights of Indigenous Peoples,' A/RES/61/295.

[175] Canada Water Act, R.S.C., 1985, c. C-11.

(a) to maintain continuing consultation on water resource matters and to advise on priorities for research, planning, conservation, development and utilization relating thereto;

(b) to advise on the formulation of water policies and programs; and

(c) to facilitate the coordination and implementation of water polices and programs.[176]

This then outlines the cooperation of various levels of government, in that the division of provincial and federal powers cannot hinder the implementation of water related programs. Furthermore, this serves as a national water policy, which was greatly advocated throughout GC15[177] as well as both Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation Reports.[178]

Regarding water quality management, the availability of water resources in Canada is important to note. Approximately nine per cent of renewable water supply for the world is found in Canada. Additionally, the Great Lakes, the largest fresh water surface area globally, can be found in North America.[179] To put this into perspective, the below map notes various watersheds in Canada, which is the most efficient means of showcasing the availability of groundwater available in Canada. Concretely,

> A watershed is an area that drains all precipitation received as a runoff or base flow (groundwater sources) into a particular river or set of rivers. Canada's ocean watersheds are the Atlantic Ocean, Hudson Bay, Artic Ocean, Pacific Ocean and Gulf of Mexico.[180]

---

[176] Canada Water Act, R.S.C., 1985, 4.

[177] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 6. ibid., Article 8.

[178] See page 28 for further information.

[179] 'Water', Natural Resources Canada, 30 October 2017, https://www.nrcan.gc.ca/earth-sciences/geography/atlas-canada/selected-thematic-maps/16888, (accessed 2 July 2019).

[180] 'Threats to Water Availability in Canada', *Environment Canada: National Water Research Institute*, 2004, no. 3. (accessed 26 June 2019).

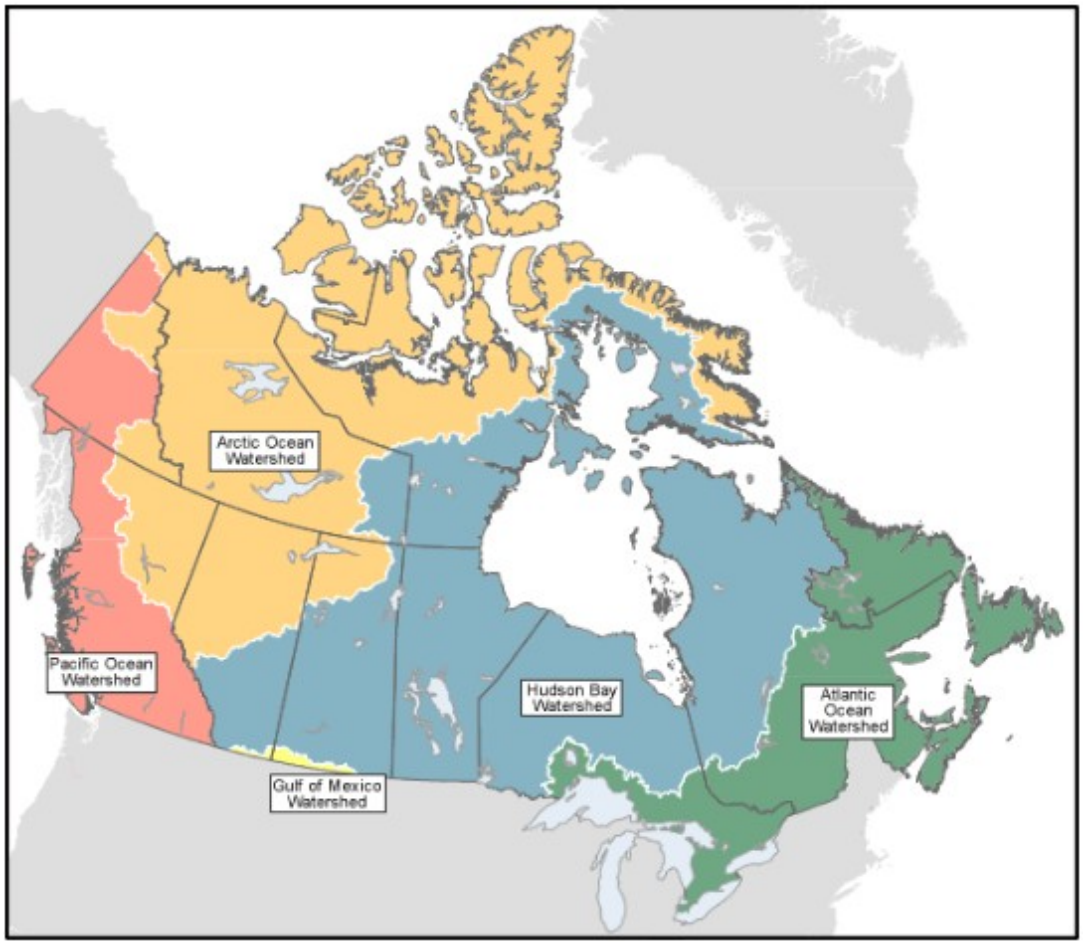


Figure 3) Watersheds in Canada[181]

It is important to note the abundance of water resources in the country so as to premise the unnecessary nature of a lack of access to water.

The final chapter of the CWA brings attention to a 'public information program.' This public information program aims to fulfill a notion of transparency yet involves a level of discretion on behalf of the government, in that;

[181] 'Watersheds', Atlas of Canada 6th Edition, 1999-2009, https://www.nrcan.gc.ca/science-and-data/science-and-research/earth-sciences/geography/topographic-information/geobase-surface-water-program-geeau/watershed-boundaries/20973, (accessed 14 July 2019).

> The Minister may, either directly or in cooperation with any government, institution or person, publish or otherwise distribute or arrange for the publication or distribution of such information as the Minister deems necessary to inform the public respecting any aspect of the conservation, development or utilization of the water resources of Canada.[182]

By stipulating the dissemination of information regarding water resources, the CWA[183] broaches the key concepts of transparency and trustworthiness, yet falls short in that this information sharing is at the discretion of the Minister. Transparency is crucial in national programs, especially those that straddle the provincial and federal divide, in order to maintain efficient and representative programs and ensure that there are no gaps in the measures being implemented. Additionally, although there is reference to different levels of government, groups and individuals, there is no explicit mention of Indigenous communities or an Indigenous right to water.

5.1.3 Report of the Expert Panel on Safe Drinking Water for First Nations

In June of 2006, the Report of the Expert Panel on Safe Drinking Water for First Nations (REP) was published.[184] The REP[185] emerged out of a need for a cohesive water strategy for Indigenous persons as well as the necessity of implementing a reporting strategy. Throughout the information gathering process for this report, a call for submissions was made for Indigenous individuals and communities to voice their concerns regarding water issues. It is this participatory approach, which is paramount to the health and wellbeing of these communities, which have been historically left out of legislation and aids in the creation of applicable and respectful legislation.

---

[182] Canada Water Act, R.S.C., 1985, 29.
[183] ibid.
[184] Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians.
[185] ibid.

The REP[186] notes the complexities in ensuring access for Indigenous peoples to water, as many communities are remote and population density is low. Although a water-rich country, remote areas incur obstacles in accessing water and implementing sewage treatment programs, often relying on water to be delivered in trucks and stored on site. This translates into large expenses in order to construct and maintain water facilities. Additionally, the REP notes the various levels of government involved in the allocation of water for Indigenous persons, which can hinder effective implementation and cause gaps in even service provision. Due to Treaty Rights and other existing agreements between Indigenous communities and the Federal Government, there exist self-governing communities that do not have the resources to ensure water availability for those living on the lands. In this way;

> The gaps and uncertainties that characterize the current situation underline the importance of understanding the bigger picture- the historic legal and legislative context- before undertaking any effort to improve the safety of drinking water on reserves.[187]

By understanding the histories of Indigenous peoples in Canada, a pattern of legislative gaps and governmental provisions, which sought to assimilate, can be seen. The effects of these measures can still be felt in the communities who have to live within this distinct role of being self-governing as well as governed by the Federal Government regarding some areas.

The REP[188] notes the necessity of progressive realization and implementation regarding the accessibility of water and availability of services. The role of progressive realization is also noted on page 22 in the context of GC15[189] with regards to a States creation of a national water plan. Also of note is the importance of general water source

[186] Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians.
[187] ibid., p. 23.
[188] ibid. p. 23.
[189] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 6. ibid., Article 8.

protection due to the role of water in Indigenous communities and history. While the right to water must be fulfilled, this right will be short lived if water sources are not monitored and protected from contamination through methods such as TEK. Furthermore;

> Cultural and traditional attitudes to water could be used effectively in the development of principles incorporated in new statutes or regulations dealing with water quality. This would likely provide a more holistic basis for legislation than is typical of the provincial water regimes.[190]

This clearly demonstrates the need to incorporate TEK and IK practices into legislation to ensure fair and adequate protections as well as incorporating cultural characteristics so as to assure the longevity and applicability of said legislation.

The idea that provincial water legislation can be implemented into Indigenous communities is one that has been critiqued widely. Although the hard norms already exist, echoing Indigenous rights discourse on the international stage, they fault in comparison to the distinct needs of these communities. Furthermore, this argument 'presumes the universal willingness of provinces to extend their services across the wide scope of waste and wastewater regulation.'[191] REP[192] puts forward three approaches to confront this legislative gap being; new federal legislation directly regarding Indigenous water accessibility, new federal legislation stating a minimum standard of water accessibility or customary law. In all of these options, the Federal Government would have a role regarding the implementation of certain rules and procedures, yet the customary law option would allow Indigenous communities to take part in creating legislation that directly affects them as a recognized peoples.[193]

The influence of the REP[194] can be seen within BS11[195], but falls short on areas the REP deemed of great importance. As an example, the role of Indigenous peoples in taking

[190] Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, p. 43.
[191] ibid., p. 48.
[192] ibid.
[193] ibid., p. 57.

part during the creation of legislation, as well as the importance given to provincial laws over a minimum standard put forward by the Federal Government. This will be further discussed in the following pages that look at BS11[196] and the regulations it puts forward.

5.1.4 Bill S-11: The Safe Drinking Water for First Nations Act

Entered into force 1 November 2013, Bill S-11: The Safe Drinking Water for First Nations Act (BS11), looks to adjust the federal and provincial divide with regards to Indigenous persons, to provide more comprehensive coverage in regards to water accessibility.[197] BS11 contains 15 Articles including interpretation of the term First Nation and First Nations lands as well defining an offence and limitations with regard to the implementation of this Bill.[198]

In general BS11 seeks to fill the gap between provincial and federal legislation regarding water and Indigenous peoples. In an effort to do this, provincial powers are given an increased role regarding Indigenous peoples, which was previously the sole jurisdiction of the Federal Government. Article 7 notes;

> Regulations made under this Act prevail over any laws or by-laws made by a First Nation to the extent of any conflict or inconsistency between them, unless those regulations provide otherwise.[199]

---

[194] Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians.

[195] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21.

[196] ibid., c.21.

[197] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21.

[198] ibid., Article 2 (1) for definition. The recognition of Indigenous peoples is an issue that still persists today, as can be seen with the governmental definition of a peoples and culture. Addressing this is beyond the scope of this paper but note must be given. Additionally, BS11 references Indigenous Peoples as First Nations, for the sake of cohesiveness; I will continue to use the term Indigenous.

[199] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21, Article 7.

Through this Article it can be seen that yet another level of government, first federal now provincial, have powers regarded as higher than those already in place on Indigenous lands. For this reason, BS11[200] has been criticized for the lack of Indigenous input and respect for Indigenous governmental processes.

Regarding new roles and responsibilities for Provincial Governments and water accessibility for Indigenous peoples, BS11 outlines eight regulations. These regulations aim to provide a more encompassing and holistic approach to water services for Indigenous communities. The regulations stated are;

(a) the training and certification of operators of drinking water systems and waste water systems;

(b) the protection of sources of drinking water from contamination;

(c) the location, design, construction, modification, maintenance, operation and decommissioning of drinking water systems;

(d) the distribution of drinking water by truck;

(e) the location, design, construction, modification, maintenance, operation and decommissioning of waste water systems;

(f) the collection and treatment of waste water;

(g) the monitoring, sampling and testing of waste water and the reporting of test results; and

(h) the handling, use and disposal of products of waste water treatment.[201]

Importantly, guidelines for monitoring have been introduced which address the ideas Heller put forward in the 2010 Special Rapporteur report regarding transparency in service provision.[202] The need for a transparent process is also noted in GC15,[203] in reference to the

[200] ibid.
[201] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21, Article 4(1).
[202] Heller, p. 18.
[203] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 6.

importance of transparency in a national water strategy within reporting and sampling procedures.[204]

Although BS11[205] seeks to fill gaps within the legislation regarding Indigenous peoples, lands and access to water, gaps still remain. The REP noted the unequal nature of water standards, which may emerge due to including Provincial powers within the Federal jurisdiction of Indigenous persons.[206] Put concretely discrepancies within provincial legislation may manifest in 'unequal results at the national level in that some Reserves would have an undue advantage because of provincial schemes that are more advanced than others.'[207] In this way, BS11 exists within the gaps of provincial and federal jurisdiction and delegates the role of water for Indigenous persons to the province while also ensuring that a cohesive national water strategy is not implemented, as provincial variations are inherent. The eight regulations put forward in BS11[208] can be seen as a step in the right direction, yet gaps remain in the implementation of these.

Through a comparative analysis regarding how international law with reference to the right to water is integrated into Canadian domestic legislation, it is clear that there are discrepancies. International law contains safeguards to ensure that human rights are realized and that States parties make an effort to fulfill and protect these rights. If they are not realized, safeguards exist which can hold a State accountable. On the Canadian national level, there exists no such safeguard to hold the State accountable for disrespecting human rights. Additionally, as Canada has not recognized the jurisdiction of the IACrHR, another avenue for individuals to access redress is closed. In this way, the safeguards that the

---

ibid., Article 8.

[204] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 37.

[205] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21.

[206] Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians.

[207] 'Legislative Summary of Bills S-11: The Safe Drinking Water for First Nations Act', House of Commons: Legislative Summary, 6 July 2010, https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/403S11E, (accessed 11 June 2019).

[208] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21.

international human rights bodies possess is not implemented in some way in the national context. Furthermore, a lack of human rights legislation and corresponding follow-through exists on the national level. There exists select human rights legislation at the national level, yet they are not specific in their scope and the lack of supervisory bodies or avenues for redress in the event that a given right is not realized. Due to this, there are many rights, especially referencing minority groups, such as Indigenous peoples, that are not respected and remain this way due to a lack of implementation. In this way, when comparing international human rights law to Canadian domestic legislation, gaps exist regarding the Indigenous right to water in general. Additionally, adequate legislation that recognizes and ensures access to water and follow-through on said legislation is partly due to a lack of recognition of cultural rights at the national level, seen in the slim involvement of the State of Canada in the ACHR as well as the disregard for the jurisdiction of the IACrHR. This comparison is further expounded upon in chapter 5.3.

5.2 Case Law

The role of the judiciary in Canada is sweeping and has also been referred to as overreaching due to the principle of *stare decisis,*[209] or the judicial power to veto. This power to veto pertains to legislation and policies that are put in place and if they do not conform to established laws and precedent, can be deemed void by the Court. Due to the power of the Courts, three cases will be examined as they relate to various human rights and the obligations of the State. There are no cases regarding a lack of access to water that are seen as precedent setting, and for this reason, cases pertaining to the right to Indigenous land claims, healthcare and a lack of action on behalf of the government are examined. From this, the resulting decisions are then discussed and the arguments applied to the current context of Indigenous rights to water.

---

[209] 'Primary Sources of Law: Canadian Case Law', University of Toronto: Bora Laskin Law Library, https://library.law.utoronto.ca/legal-reseach-tutorial/legal-research-process, (accessed 21 May 2019).

5.2.1 *Delamuuk v. British Columbia*

The case of *Delamuuk v. British Columbia*[210] emerged out of a land claims dispute in which the province of British Columbia would not recognize a land claim and as a result began to remove the natural resources from that land without consent from the Indigenous peoples located there, being the *Gitxsan* and *Wet'suwet'en.* The suit was brought in 1984 against the province of British Columbia, when the Chiefs of *Gitxsan* and *Wet'suwet'en* noted that approximately 58,000 squared kilometers of Indigenous land along the Skeena River, had been not been recognized by the province and compensation for the use of this land should take place and the land returned. The case was premised on Indigenous self-governance as well as title and land claims, seen in the Constitution Act of 1867.[211]

Though the case was dismissed, it speaks of the important relationship between the Government and Indigenous peoples, which as seen in Chapter 5 with regard to anthropological study and colonization, is marred by trouble. Chief Justice McEachern ruled on the case stating, that any right to land was removed when the Province of British Columbia joined Confederation. Furthermore, Chief Justice McEachern noted;

> It would not be accurate to assume that even pre-contact existence in the territory was in the least bit idyllic. The plaintiffs' ancestors had no written language, no horses or wheeled vehicles, slavery and starvation was not uncommon, wars with neighboring peoples were common, and there is no doubt, to quote Hobbs, that aboriginal life in the territory was, at best, "nasty, brutish and short." [212]

Referencing Chapter 3 and the role that colonialism has had in the telling of history regarding Indigenous peoples, it is clear that these thoughts still persist. Dara Culhane compares this statement on behalf of Chief Justice McEachern, and many other cases, which deal with Indigenous rights, to the positivist school of law, where rights recognized

---

[210] *Delgamuuk v. British Columbia*, [1997] 3 SCR 1010, 1997 Carswell BC 2358.
[211] Constitution Act (1867) 30 & 31 Victoria, c.3 (U.K.).
[212] *Delgamuuk v. British Columbia*, [1997] 3 SCR 1010, 1997 Carswell BC 2358.

by the ruling government are viewed as the only rights that are enforceable.[213] In this way, if an Indigenous person would like the formal recognition of a certain right, they must find corresponding rights which the Government recognizes and base their case on this right.

Brought to the British Columbia Court of Appeal, it was found that there must be cooperation between Government and Indigenous peoples previous to any measures which may impact Indigenous rights or land. Yet, this appeal once again noted that the land did not have Indigenous title. Then to the Supreme Court of Canada (SCC), issues such as Indigenous land rights and oral testimony were addressed. The role of oral histories was deemed an important cultural characteristic that must be accepted in a court of law as evidence. Also, the case reaffirmed the role of the federal and provincial governments regarding Indigenous peoples and created a test for Indigenous communities to show that they, in fact, had title on a given piece of land.

The Delgamuukw Test centers on three points of evidence being; sufficient, continuous and exclusive. In order for an Indigenous community to prove territorial 'ownership;'[214]

(a) the Indigenous nation must have occupied the territory before the declaration of sovereignty;

(b) if present occupation is invoked as evidence of occupation before sovereignty, there must be a continuity between present occupation and occupation before the declaration of sovereignty;

(c) at the time of declaration of sovereignty, this occupation must have been exclusive.[215]

---

[213] D. Culhane, *Delgamuukw* and the People Without Culture: Anthropology and the Crown. Doctorate Thesis, Simon Fraser University, 1994, p. 361,https:///core.ac.uk/download/pdf/56369329.pdf, (accessed 29 June 2019).

[214] Ownership in this case does not refer to the actual owning of a piece of land, as this is contrary to some Indigenous held beliefs that land cannot be owned. It is in reference to recognition of Indigenous peoples and communities being legally allowed to reside on these lands and use these lands for survival.

[215] M. Filice, 'Delgamuukw Case', The Canadian Encyclopedia, 11 January 2019, https://www.thecanadianencyclopedia.ca/en/article/delgamuukw-case, (accessed 1 July 2019).

It is seen then, that in order for an Indigenous community to declare sovereignty, said group must have been and still be residing on the given piece of land. An acknowledgement of sovereignty on behalf of the Canadian Government results in greater Indigenous governance on the Reserve and therefore less involvement of the Government.

Although dismissed, *Delamuuk v. British Columbia*[216] is an important case due to the impact of the Delgamuuk Test and the established role of oral histories in court. It also serves as an example of the provincial and territorial divide regarding Indigenous peoples and communities as having little to no Indigenous input as well as complicating the processes necessary to ensure Indigenous land, culture and rights are respected. Also of important note is the long lasting effects of colonial measures of which influence how Indigenous peoples are able to interact with the law and access rights. This case is regarded as a precedent setting case on how treaty rights are understood and governed within Canada.

5.2.2 *Chaoulli v. Quebec*

The case of *Chaoulli v. Quebec* was a case that reached the SCC in 2005.[217] The case is premised on the right to health and healthcare services, and although the decision is only binding in the Province of Quebec due to the tied judgment, the right to health and the roles and responsibilities of the government are discussed. Of the seven judges presiding, three found violations in regards to the Canadian Charter of Rights and Freedoms, more specifically Section 7. Section 7 states;

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.[218]

---

[216] *Delgamuuk v. British Columbia*, [1997] 3 SCR 1010, 1997 Carswell BC 2358.
[217] *Chaoulli v. Quebec* (AG) [2005] 1 S.C.R. 791, 2005 SCC 35.

It was found that the Quebec Health Act[219] violated Section 7 and was therefore unconstitutional due to the fact that delays in medical treatment may influence the psyche of a person, result in adverse health effects, as well as the reasoning that a delay in medical treatment corresponds directly to a violation of the security of the person, which then triggers a Section 7 violation.

Although this case does not involve Indigenous issues, it can be deduced that water is necessary for the health of a person, from this reasoning; water is central to healthcare services that a State must respect regarding the security of a person.[220] When the security of a person is in violation it is then regarded as unconstitutional. In order to ensure a Section 7 violation has taken place, the court requires two elements, which must be present;

1) that a deprivation of the right to life, liberty and security of the person has occurred; and;

2) that the deprivation was not in accordance with the principles of fundamental justice.[221]

David R. Boyd notes that security of the person is in reference to 'notion[s] of personal autonomy involving, at the very least, control over one's bodily integrity free from state interference and freedom from state-imposed psychological and emotional stress.'[222] When this reasoning is applied to Indigenous peoples and the lack of access to clean drinking water, Boyd states that the Federal Government has violated Section 7.[223] He further reasons that the international community has noted the role of water in maintaining the health of a person, and the Government of Canada has deemed water a necessary

---

[218] *Canadian Charter of Rights and Freedoms*, s7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
[219] Health Insurance Act, CQLR c A-29.
[220] This reasoning is supported in Chapter 3.1.1 with regards to the Geneva Conventions.
[221] D. R. Boyd, 'No Taps, No Toilets: Frist Naions and the Constitutional Right to Water in Canada', *McGill Law Journal*, vol. 57, no. 1, 2011, p. 101, (accessed 12 March 2019).
[222] ibid., p. 102.
[223] ibid., p. 104.

requirement for the health of all Canadians, yet water accessibility issues remain on Indigenous Reserves across the country.[224]

From this case, it is clear that health and security of the person, is a fundamental right of which derogation from can trigger a violation. With this information, it can then be reasoned that failure to fulfill the right to water as it rests on the security of the person, is in violation. This case shows the lack of protections regarding the right to water for Indigenous persons as the right to water must be deduced from corresponding rights, such as the right to health.

5.2.3 *Pikangikum First Nation v. Nault*

The case of *Pikangikum Frist Nation v. Nault*,[225] brought forward in 2012, addresses gaps in initiatives to amend and improve the water services in the community of Pikangikum. The community has an approximate population of 2,500 people, with around 86% of the population below 39 years old and is located in a remote area bordering Pikangikum Lake. In 2006, the community of Pikangikum was assessed by the Northwestern Health Unit of the Ontario Government regarding current water and sewage systems in place. The report compiled concluded;

> The most basic of twentieth century health-supporting water/sewage infrastructures are not available to Pikangikum First Nations residents. This includes housing/air/water/soil contamination control and regulation, drinking/water provision and sewage disposal.[226]

---

[224] It is important to note the various and increased rates of health problems, both physical and mental, persist in Indigenous communities. This is often tied to histories of oppression, lack of funding, lack of education, lack of opportunity, lack of healthcare services, as well as many other factors. It is not within the scope of this paper to examine these factors.

[225] *Pikangikum First Nation v. Nault,* 2012 ONCA 705.

[226] Boyd, p. 9. Originally cited in *Inspection Report*, *supra* note 57 at 14.

Furthermore, the report included input from Director of Environmental Health and Director of Health Protection at Ontario's Northwestern Health Unit, Bill Limerick. The Health Unit quoted Limerick as saying;

> Everyone has basically a five-gallon bucket to take their water from nearby Pikangikum Lake. In the summer, raw sewage from the community can flow directly into the lake from overburdened septic systems […] In the winter, Limerick estimated, roughly about half the residents take their water from a hole in the ice of the lake, just offshore of the community, in an area contaminated by animal wastes and fuel from snowmobiles.[227]

This is a clear disregard to not only the right to water but also the right to health and an adequate standard of living on the international level as well as a violation of national law demonstrated through legislation such as the CWA, BS11 and the IA.

This report followed the visit from then Minister of Indian Affairs Robert Nault in 2000. Nault noted a six to eight week period following his visit would be needed to improve the living conditions of peoples living in Pikangikum. It was not until 2006 that the Government proposed funding 200 outhouses, which was not accepted by the community leaders as it was deemed inadequate and unable to make lasting change. Again in 2007, it was announced that funding would be made available for the community to improve water and sewage services, yet the government noted more research would be necessary before any funding would be released.[228] It is here where the Pikangikum community decided to bring suit against Nault due to 'damages, arguing that water and sewer infrastructure projects previously approved by the government were unlawfully frozen years ago.'[229]

---

[227] Boyd, p. 91. Originally cited in *Inspection Report, supra* note 57 at 9.

[228] OnPoint Legal Research Law Corp, 'First Nations; Crown Liaibility; Misfeasance in Public Office', CanLIIConnecte, 20 March, 2014, https://canliiconnects.org/fr/r%C3%A9sum%C3%A9/25236, (accessed 2 June 2019).

[229] Boyd, p. 92.

The case against Nault was rejected due to the view of the Court that both parties of the suit played equal roles in the state of the community, by both prolonging assistance and refusing said assistance. Regardless of the court decision, *Pikangikum Frist Nation v. Nault*[230] serves to show the dire state of Indigenous Reserves in Canada. By bringing attention to this issue, involving governmental agencies and initiating a case against the Government, the state of water accessibility is discussed in a national context.

In summary, the above cases note the role of the judiciary in mitigating the relations between Indigenous people, communities and national and provincial governments. As gaps exist between international and national legislative frameworks as well as federal and provincial legislation and jurisdiction, the courts have taken on the role of filling these gaps. The judicial dialogue that emerges attempts to lessen these gaps, although it is noted that legislation with increased roles of the governments as well as legislation including Indigenous people in its creation is needed.

5.3 Canada in Relation to International Standards

As international legislation, Canadian national legislation and court cases have been examined; some disparities and discrepancies have emerged. These disparities exist both between international legislation and national legislation as well as between national legislation and court cases, which show the lack of implementation of these national laws. The following three concepts can be seen when Canadian national law is related to international standards regarding the right to water and Indigenous peoples and communities;

(a) regulatory abandonment;

(b) under-inclusivity;

---

[230] *Pikangikum First Nation v. Nault,* 2012 ONCA 705 (CanLII).

(c) state negligence.

In this context, the concept of regulatory abandonment refers to how national and provincial governments have avoided implementing legislation which addresses Indigenous people and the recognition of the right to water. By not implementing regulatory procedures, such as a national minimum standard regarding the right to water, the State allows discrepancies to exist. Under-inclusivity follows the same reasoning in that national and provincial legislation are not inclusive in its scope or general implementation. Noted on page 39, as of 2016 there was an Indigenous population of more than 1.6 million peoples, yet legislation or case law does not support the fulfillment of multiple Indigenous rights, including the availability of water and the right to clean and consumable water.

Finally, state negligence encompasses both regulatory abandonment and under-inclusivity, as it is the end result. Through inadequate legislation and protections regarding Indigenous peoples and communities due to a lack of inclusive measures, regulatory abandonment occurs. By way of this, state negligence occurs, and without inclusive measures addressing the whole of a population as well as regulation and monitoring procedures tailored to specific community needs, state negligence occurs. Regarding the role of the courts in Canada, and through principles such as *stare decisis*,[231] state negligence can be confronted through litigation if legislation does not, or will not, implement suitable measures for the population.

In order to compare Canada to the international standard of human rights, the case of *Pikangikum First Nation v. Nault*,[232] will be analysed. When looking at a human rights case, the scope of application, the severity of interference as will as the States justification is examined. Regarding the scope of application, the lack of water and sanitation services available on Pikangikum First Nation do involve human rights. The main rights in question involve the right to water and sanitation, the right to adequate housing and shelter, the right

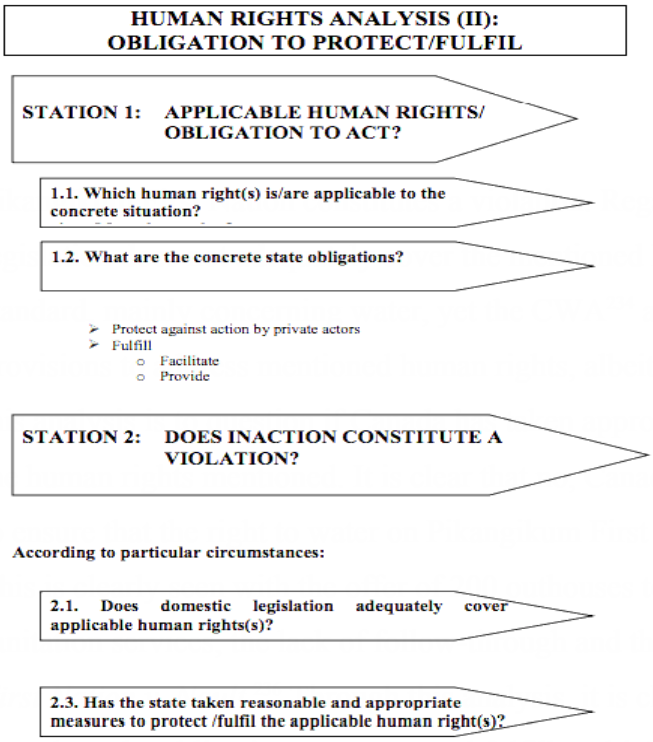
[231] 'Primary Sources of Law: Canadian Case Law', University of Toronto: Bora Laskin Law Library, https://library.law.utoronto.ca/legal-reseach-tutorial/legal-research-process, (accessed 21 May 2019).
[232] *Pikangikum First Nation v. Nault,* 2012 ONCA 705 (CanLII).

to an adequate standard of living and the right to health. Referencing page 54, which outlines the status of Pikangikum First Nation, it is clear that through the scope of application, the actions do involve multiple human rights, of which all of the mentioned rights have been violated. Regarding interference, the lack of service provision as well as a lack of adequate legislation and follow though on current legislation can be seen to result in interference with human rights. Finally, regarding justification, the interference of the Pikangikum First Nation in accessing adequate water and sanitation is not provided for by law as Government agents have noted the severity of the situation and made attempts to rectify the situation. The interference of the Reserve in accessing the mentioned human rights serves no purpose and is not proportionate as the right to water and sanitation, the right to adequate housing and shelter, the right to an adequate standard of living and the right to health are respected for other persons throughout Canada.

Precisely referencing the violation of the human right to water regarding Indigenous peoples, the Pikangikum First Nation case will continue to be examined through Walter Suntingers human rights analysis model concerning a States obligation to protect and fulfill.[233] First, the human rights applicable to this situation are the right to water and sanitation, the right to adequate housing and shelter, the right to an adequate standard of living and the right to health, as mentioned previously. In this case, the corresponding state obligations are to facilitate dialogue with Pikangikum First Nation regarding their needs, taking into account progressive realization yet ensuring that severe needs are met abruptly. Following this, the State must provide what is deemed necessary to fulfill the right to water through consultation with the community.

In general the State, Canada, must implement necessary actions to ensure that Pikangikum First Nation has access to adequate water, sanitation and shelter, which will in turn benefit health, so as to fulfill the human rights of the community. Regarding the above, it is clear that the inaction on behalf of Canada to ensure select human rights on

[233] W. Suntinger, 'Human Rights Analysis (I) Obligation to Respect', Moodle, https://moodle.univie.ac.at/mod/folder/view.php?id=1701807, (accessed 17 July 2019).



ding this violation, domestic
ıman rights to an acceptable
d BS11[235] are in place and contain
o a lower standard. The final step in
riate measures to protect and fulfill
ı has not taken reasonable measures
lation has been protected or fulfilled.
address the lack of water and
dismissal of the case *Pikangikum*
ar that Canada has fallen short in
regards to the obligation to protect and fulfill multiple rights on Pikangikum First Nation and, furthermore, has violated the right to water for Indigenous peoples.

[234] Canada Water Act, R.S.C., 1985, 4.
[235] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21, Article 4(1).
[236] *Pikangikum First Nation v. Nault,* 2012 ONCA 705.

Figure 4) Human Rights Analysis (II): Obligation to Protect/ Fulfill[237]

Implementing Suntingers human rights analysis regarding discrimination pertaining to the general situation of Indigenous peoples right to water offers the possibility of further argumentation of a violation of human rights at the hands of the Canadian Government. First, regarding unequal treatment, there are many indicators that Indigenous peoples in Canada are treated differently, resulting in difficulty accessing basic human rights. The main indicator of unequal treatment is the lack of adequate legislation regarding Indigenous water rights as well as the lack of follow-through in situations such as Pikangikum First Nation, where multiple rights are being infringed upon. Additionally, similar situations such as whole communities being unable to access safe and consumable water for years do not exist on non-Reserve lands.

The final step in the analysis of determining unequal treatment is questioning if the disparity in services is due to a protected ground. Simply, the lack of services available are made on the basis of a protected ground due to the fact that this lack of accessing basic human rights influences Indigenous peoples, a protected ground, disproportionally. The final step in analysing if the actions or lack thereof, on the part of the Canadian Government are discriminatory is through questioning if the actions of the State are justified. The first question to be answered is if the treatment has a corresponding aim, which, in this case it does not. There is no legitimate goal in the lack of protection and legislation regarding the right to water for Indigenous peoples and there is no legitimate aim that is in line with the fundamental principles of human rights to hinder accessing the right to water for Indigenous peoples. Finally, as this distinction between Indigenous and non-Indigenous right to water is not founded on reasonable grounds, it is clear that there exists discrimination by Canada in regards to Indigenous peoples accessing the right to water.

---

[237] Suntinger.

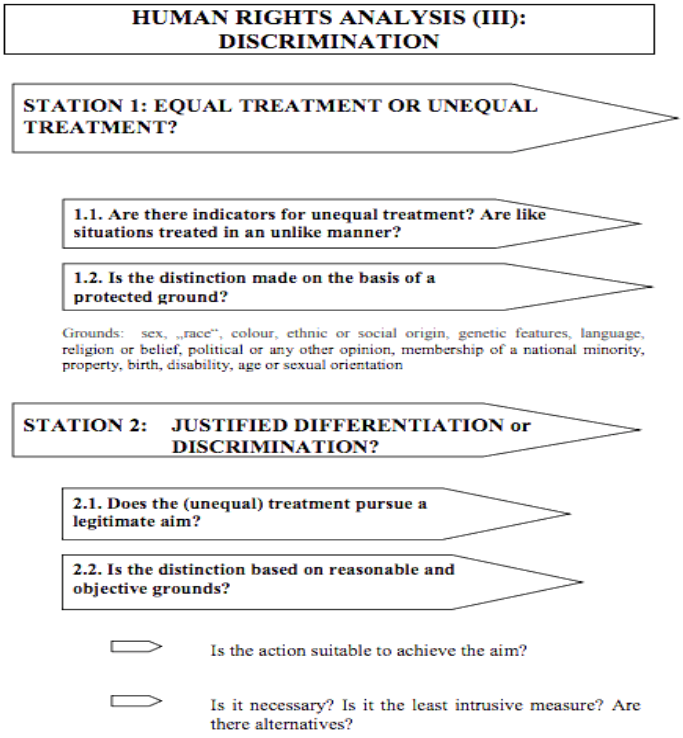


Figure 5) Human Rights Analysis (III): Discrimination[238]

It becomes clear then, that by analysing the situation on Pikangikum First Nation, there has been a systematic violation of Indigenous human rights regarding access to water. Through tracing the situation on the Reserve, the applicable human rights in question and the corresponding State obligations on the part of Canada and analysing legislation, partnered with the findings of unjustified differential treatment, it is clear that Indigenous rights are violated. This analysis concerns only one Reserve, yet these situations persist throughout the country. Even still, one Reservation that is systematically denied basic rights due to discrimination is too many.

5.3.1 Shortcomings

[238] Suntinger.

Regarding the above-mentioned violations and the relation of Canadian legislation to international legislation, shortcomings with reference to the Canadian legal framework are noted below. The most pressing shortcoming are;

(a) the lack of a national minimum standard of water services;

(b) the division between federal and provincial governments regarding Indigenous peoples;

(c) the lack of progressive implementation on pressing issues regarding water access and water health on Indigenous Reserves;

(d) the lack of follow-through regarding national obligations.

The lack of a national minimum standard regarding water services effects the whole nation of Canada as service provisions are dictated by the respective provinces. This allows for a variation of services of which are not uniformly provided throughout Canada. In this way, the providing of clean and accessible water services rests on the province and the amount of provincial monies that are able to be devoted to this service. In reference to the division between federal and provincial governments regarding Indigenous peoples, the issue of accessing suitable water and sanitation services is further complicated. Indigenous peoples fall under the jurisdiction of the Federal Government, yet water services are the responsibility of Provincial Governments. It was not until BS11[239] that Indigenous peoples and water strategies were discussed at a national level in the same context. Although BS11 transfers some federal Indigenous roles to the provinces, this coverage still does nothing to address the lack of a national minimum standard for water accessibility in Canada. Furthermore, the transfer of Indigenous services from one arm of government to another, without input from Indigenous peoples themselves, reflects paternalists tendencies which first emerged in scientific anthropology.

[239] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21.

With reference to the lack of progressive implementation on pressing issues regarding water access and water health on Indigenous Reserves, there has been no, or not enough, pressure on Government to ensure this realization and implementation. It is noted in international documents such as GC15,[240] that implementing water related services pose a strain on a countries resources and for this reason the progressive realization of water rights should take place, while also implementing some necessary procedures immediately. Additionally, on the national level there should be minimum standards of water access implemented immediately, accompanied by legislation to progressively increase and ensure these rights and corresponding duties are realized. Finally, it is of the utmost importance that a mechanism is in place to ensure that Canada abides by its own national legislation. As noted in 5.2, the role of the courts, especially regarding *stare decisis*[241] and the role of judicial dialogue, are a means of ensuring legislation does not contravene against national human rights instruments and laws. Although useful, there needs to exist more safeguards and means of ensuring compliance with national human rights policies which can be implements in a short amount of time.

Through these shortcomings, it can be argued that more pressure needs to be placed on the national government to ensure comprehensive coverage in all legislation for all peoples. Additionally, national human rights instruments need to be implemented to ensure that marginalized populations, especially Indigenous peoples who straddle federal and provincial governance, are provided with inclusive legislation that cannot be used as a loophole to omit service. As noted on page 56, Canadian domestic legislation does not adequately reflect the international standards regarding the right to water in general and the right to water for Indigenous peoples specifically. There are no legislative processes that reflect the treaty Committees on the international stage which work to ensure rights are realized and provided for. Furthermore, cases in which Indigenous communities have taken steps to hold the Canadian Government accountable regarding the right to water have had

[240] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11, Article 6. ibid., Article 8.
[241] 'Primary Sources of Law: Canadian Case Law.'

to do so through corresponding rights, such as the right to health, which have been infringed upon. Therefore, the lack of legislation on the Canadian domestic level is not consistent with the international standard regarding the right to water.

These shortcomings can be seen in regards to the following maps which outline current do not consume warning as well as boil water advisories. According to Figure 4, there are a total of 1,138 boil water advisories in effect. Boil water advisories are issued when water has the potential to be harboring bacteria or viruses resulting in the required boiling of water prior to consuming water or using water to cook. With reference to the Cobo Study,[242] a boil water advisory may result in consumption of unfit water if communities are not equipped in dealing with these advisories, such as a lack of access to electricity. Figure 5 addresses do not consume advisories, which total 46 currently. In a do not consume warning, tap water should not be consumed as it contains impurities which cannot be removed through the process of boiling water. In these warnings, water cannot safely be consumed, used in cooking or bathing children or elderly peoples.[243] Although do not use advisories are considered more extreme, in that tap water should not be used in any circumstance, the sheer number of boil water advisories as well as do not consume warnings in a country such as Canada that has suitable access to water for all, proves that there are discrepancies in the protection, fulfillment and respect of the right to water.

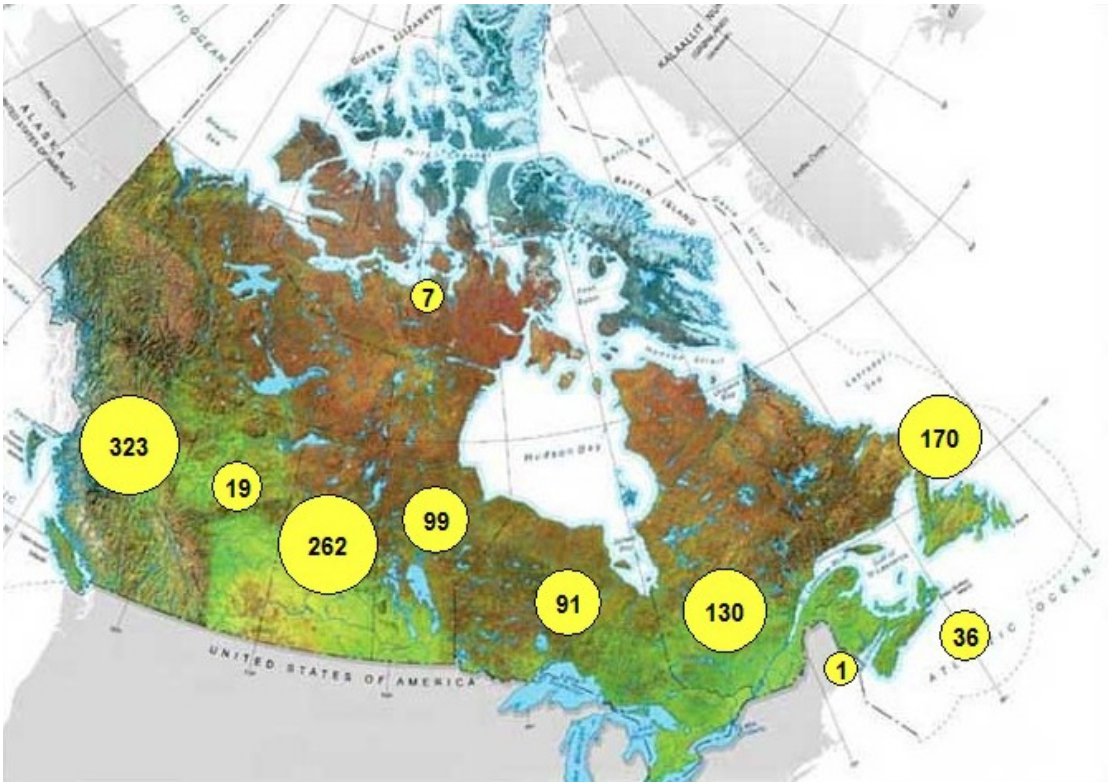


Figure 6) Boil water advisories currently in place in Canada[244]

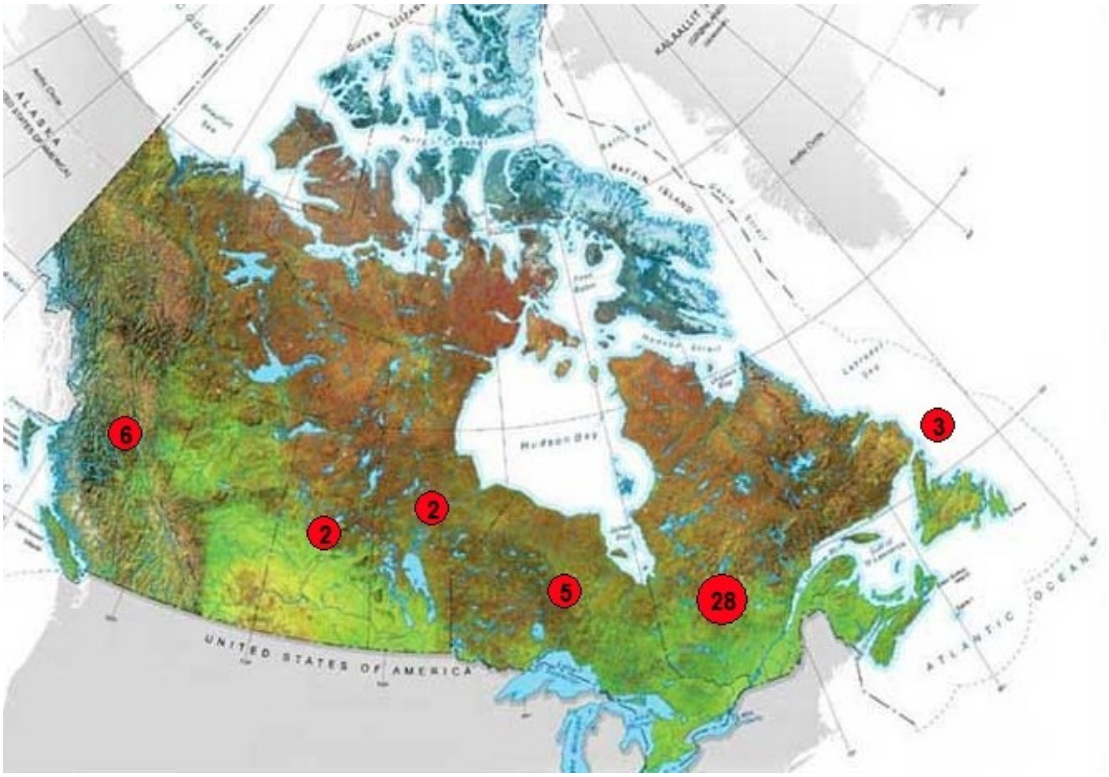


Figure 7) Do not consume warnings currently in place in Canada[245]

[244] 'Boil water map', WaterToday, http://www.watertoday.ca//map-graphic.asp?alerts=yellow, (accessed 24 July 2019).

In summation, this chapter introduced the Canadian legal framework with regards to Indigenous peoples with a comparison to the international legal framework. This comparison is necessary to note any gaps in legislation and confront questions of why these gaps exist. The IA[246] and the CWA[247] were both investigated and questioned as to their applicability in ensuring water rights for Indigenous peoples. Following this, the REP[248] as well as the resulting BS11[249] were referred to in both the scope and application. Moving onto case law, three cases were discussed pertaining to treaty rights and land claims, the right to health as well as unsuitable living conditions on Reserves. Although these cases do not explicitly reference Indigenous water rights, mainly due to regulatory abandonment and the sheer complexities in the division of powers which make bringing a suit difficult, they reference corresponding rights which can be applied to the situation of Indigenous water rights.

6. Moving Forward

Drawing upon previous material, this chapter seeks to outline how accessing the right to water and redress in the event of a violation of the right to water were to occur. Outlining the steps one must take in the event of bringing a case forward will be noted, taking into account the prior exhaustion of local remedies rule. Violation procedures marked in national legislation will be compared in their application to international legislation procedures such as GC15.[250] Following this, the concept of environmental justice will be discussed as another avenue of accessing justice in respect to the right to

[245] 'Do not consume map', WaterToday, http://www.watertoday.ca//map-graphic.asp?alerts=yellow, (accessed 24 July 2019).
[246] Indian Act (R.S.C., 1985, c. I-5).
[247] Canada Water Act, R.S.C., 1985, c. C-11.
[248] Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians.
[249] Safe Drinking Water for First Nations Act ,S.C. 2013, c.21.
[250] General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11.

water. Furthermore, a connection between distinct Indigenous knowledge sources and beliefs and environmental justice emerges and offers new possibilities in confronting the right to water.

6.1 How to Bring a Case

As noted in chapter 5.2, cases regarding the right to water for Indigenous peoples are lacking in the Canadian context. Due to this, the Indigenous right to water is framed through correlating rights such as the right to life, right to an adequate standard of living, non-discrimination as well as many other rights. Bearing this in mind, how to bring a case of a violation of the right to water forward will be discussed through the resolution sphere of settling a claim, provincial and federal judiciary as well as the Intern-American Court and various UN committees will be traced.[251]

6.1.1 National Mechanisms

The national mechanisms in place when bringing a case forward in regards to a human rights complaint in Canada contains a resolution opportunity as well as the provincial judiciary and the federal judiciary or the SCC.[252] In the event of a violation, the point of first instance can be the launch of a complaint with the Canadian Human Rights Commission (CHRC) or through another administrative tribunal or through the provincial judiciary. An individual or group can begin the process of dispute resolution through launching a complaint with the CHRC, which will then be filed if it is deemed reasonable. A report is then compiled regarding the complaint and the CHRC will offer mediation

[251] See page 31 for accountability procedure laid out in Heller report regarding lack of access to water.

[252] Indigenous centered justice measures do exist, such as the Inuit Circumpolar Council which focus on TEK and the protection of the environment and environmental resources but the importance of recognizing the shortcomings throughout history regarding Indigenous peoples and access to water must also be recognized at national and international levels. Additionally, to bring a case forward against a state, in this case Canada, it is necessary to follow traditional routes of accessing justice which entails the exhaustion of the national judiciary followed by the international systems.

services. If through mediation no conclusion has been reached, an investigative procedure is initiated leading to the decision of the Commission. If no resolve has come forward after the decision of the Commission is made, the complaint can be deferred to the Canadian Human Rights Tribunal, where the complaint will be judged and the possibility of financial compensation can be invoked in the event that the complaint is found to be valid. Finally, if no resolution can be made, the complaint can be referred to the Federal Court.[253]

Regarding the use of the judiciary system directly, the use of provincial or federal courts will depend on the violation in question and if provincial or federal legislation governs over the given issue. The provincial judiciary is composed of lower courts and superior courts; once again the seriousness of the complaint launched will determine the location of the case and finally a court of appeals. At the federal level, the Federal Court presides over matters which concern both federal and provincial jurisdiction or legislation. It is in this court that the right to water regarding Indigenous populations would be brought as water remains within provincial jurisdiction whereas Indigenous affairs are federal. Finally, the SCC is the final court available at the national level.[254]

6.1.2 Inter-American System[255]

The Inter-American System is two-fold when it comes to addressing violations of human rights. First, domestic remedies must be exhausted prior to bringing a case forward. In practice, this rule requires that all applicable and relevant domestic courts and processes must be tried before a complaint can be raised at the Inter-American level.[256] Once

---

[253] 'Complaints', Canadian Human Rights Commission, 2019, https://www.chrc-ccdp.gc.ca/eng/content/about-process, (accessed 11 June 2019).

[254] 'The judicial structure: How the courts are organized'. Department of Justice, https://www.justice.gc.ca/eng/csj-sjc/just/07.html, (accessed 18 July 2019).

[255] Canada does not recognize the jurisdiction of the Inter-American Court of Human Rights. The complaint mechanisms within the Inter-American system are still relevant as they will bring attention to issues of human rights abuses and a report will be composed if a complaint is deemed valid outlining general findings.

[256] 'Exhaustion of Domestic Remedies in the Inter-American Human Rights System', International Justice Resource Center, p. 1, https://ijrcenter.org/wp-content/uploads/2018/04/9.-Exhaustion-of-Domestic-Remedies-Inter-American-System.pdf, (accessed 17 July 2019).

domestic remedies have been exhausted, a complaint can be made through the 'individual petition system' so long as the petition is launched within six months of the exhaustion of domestic remedies.[257] Both individuals and groups can enter the system and the petition will be presented to the Inter-American Commission on Human rights (IACHR). If the IACHR deems this petition suitable and valid, it may be sent to the Inter-American Court of Human Rights (IACrHR) for a ruling. The American Convention on Human Rights (ACHR) states in Article 44;

> [a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violations […] by a State Party.[258]

Although the complaints process is still available, Canada has not signed, ratified, or recognized the jurisdiction of the Inter-American Court. In the petition raised by Charles Toodlican, an Indigenous person, against Canada pertaining to recognition of Indigeneity, the State responded;

> With respect to the issue of *ratione material,*[259][260] the State submits that Canada is not a signatory to the American Convention. Accordingly, the Commission lacks the jurisdiction to entertain any claims made by the Petitioner under the Convention.[261]

This serves to show that although international measures are in places to ensure the respect of human rights, the State, in this case Canada is able to obstruct avenues of access to justice. By simply failing to recognize the jurisdiction of a judicial body which seeks to ensure access to human rights and enable individuals to realize these rights, Canada is placing national sovereignty over human rights.

6.1.3 Treaty Bodies

[257] ibid., p. 10.

[258] OAS Treaty Series No. 36; 1144 UNTS 123; 9 ILM 99 (1969), Article 44.

[259] This term refers to the jurisdiction of the court and the applicability of the case. In this regard, the jurisdiction of the IACHR was void, as Canada has not ratified the ACHR.

[260] Jurisdiction Ratione Materiae Law and Legal Definition', US Legal, https://definitions.uslegal.com/j/jurisdiction-ratione-materiae/, (accessed 11 July 2019).

[261] Report No 61/07, Petition 543-01, Inter-American Commission on Human Rights, 2007, Note 26, (accessed 12 June 2019).

Violations can be brought through 'individual communications,' to the treaty bodies of the nine 'core' human rights, including CEDAW,[262] CRPD[263], CRC[264] and ESCR[265] so long as domestic remedies are exhausted prior.[266] The treaty bodies or Committees, are the monitoring mechanism for the implementation of various treaties. To begin the 'individual communications' process, the State in question must have ratified the treaty; in this case Canada has ratified the CRC, CEDAW and the ICESC with the exception of Optional Protocol (2013).[267] As the Optional Protocol must be signed for the communications procedure, CEDAW and the CRC are the only means of bringing forward a complaint. From here, an individual must complete a 'communication,' which is the issuing of a formal complaint that must include victim information, proof of violation and clearly mention the State addressed in this violation, interestingly, a complaint should include preferable forms of redress.[268] From the 'communication,' the Committee will decide to go forward with the complaint, if the complaint is registered, meaning moving forward, the State in question will be given opportunity to make a statement. When deliberation has concluded, the decision is public. If a violation is found, recommendations on behalf of the

---

[262] Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249.

[263] Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, entered into force 3 May 2008) UNTS 2515.

[264] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577.

[265] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 3.

[266] Individual Complain Procedures under the United Nations Human Rights Treaties', *Untied Nations Human Rights Office of the High Commissioner,* Fact Sheet No. 7/ Rev. 2, 2013, p. 6. (accessed 13 July 2019).

[267] 'Status of Ratification Interactive Dashboard', United Nations Human Rights Office of the High Commissioner, http://indicators.ohchr.org/, (accessed 19 June 2019).

[268] 'Committee on Economic, Social and Cultural Rights Inquiry procedure', United Nations Human Rights Office of the High Commissioner, https://www.ohchr.org/EN/HRBodies/CESCR/Pages/InquiryProcedure.aspx, (accessed 19 June 2019).

Committee will be provided regarding suitable means of addressing this violation. The State is then given 180 days to implement these changes.[269] [270] [271]

6.2 Environmental Justice

Mentioned with IK and TEK, the role of the environment plays a large role in accessing the right to water. The health of the environment impacts the realization of many other corresponding rights and it has been noted that disadvantaged and marginalized individuals and groups are often more impacted by environmental change.[272] Due to this, there has been movement towards environmental justice (EJ) which aims to hold states accountable for environmental protections through reasoning regarding human rights affected from environmental degradation. At its core, EJ looks to the relations between peoples and the environment. Emerging in the 1980s, EJ measures look to draw parallels between the human rights situation of peoples and cultures to the resulting effects within the environment. Ilaria Beretta notes;

> Environmental justice not only acknowledges the existence of environmental injustice in the form of humans harming nature, it also recognizes that environmental injustice arises from racial, gender and class discrimination.[273]

Generally, environmental justice seeks to detail emerging inequality, in reference with housing, health and living standards and how these relate to the environment in terms of environmental policies, environmental health or hazards and the opportunity of individuals in that given community to take part in the discourse.

---

[269] 'Human Rights Treaty Bodies- Individual Communications', United Nations Human Rights Office of the High Commissioner, https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#overviewprocedure, (accessed 1 July 2019).

[270] See page 31 for accountability procedure laid out in Heller report regarding lack of access to water.

[271] See page 27 for GC15 violation procedure.

[272] M. Mayrhofer, 'HR and Environment and Migration' Moodle**,** https://moodle.univie.ac.at/mod/folder/view.php?id=2244429, (accessed 17 July 2019).

[273] I., Beretta 'Some Highlights on the Concept of Environmental Justice and its Use', *Desigualdades ambientais: conflictos, discursos, movinentos*, vol. 17, 2012, p. 137, (accessed 12 June 2019).

These inequalities are often then compared with norms such as social status, race, gender and location to unveil systematic failure. [274] Leila M. Harris echoes this definition of EJ in that;

> […] concerns center on how particular populations (especially impoverished, racialized, or other marginalized groups) are affected by environmental conditions and changes, as well as how different groups engage in struggles for access to natural resources or improved environmental possibilities.[275]

With international literature and legislation concerning the right to water, EJ initiatives have found new avenues for discussion. EJ, similar to TEK, seeks to put forward respectful practices regarding the environment to ensure sustainable and lasting resources. Paired with the right to water and legislation specifically outlining non-discrimination and minimum standards in access to water, EJ is in line with the discourse surrounding the Indigenous right to water and the right to water in general as universally accessible regardless of personal status.

According to Beretta, EJ rests on two distinct forms of justice, being, 'distributive justice' and 'communicative justice.'[276] The former looks to how rights are distributed and the later regards how an individual is viewed in general during the rights process. In this way, who is considered a rights holder is analysed alongside how these rights are realized in relation to the rights holder. Harris expounds upon this, stating that;

> […] by moving beyond the notions of the autonomous individual, or a singular "state," and instead thinking about the range of actors and "things" that together condition variable water use and access, there is potential to open a wider range of possibilities to re-envision water in more environmentally sustainable and socially just ways.[277]

---

[274] ibid., p. 140.

[275] L. M., Harris, 'Revisiting the Human Right to Water from an environmental justice lens', *Politics, Groups and Identities*, vol.3, no. 4, 2015, p. 660, (accessed 12 June 2019).

[276] Beretta, p. 138.

[277] Harris, p. 663.

Here, similarities can be seen within Indigenous cultures regarding the rights of a community rather than an individual. As noted above, premising water rights as a community or cultural right will, in positive scenarios, aid in the implementation of sustainable practices relating to water treatment and use, so as to ensure long-term viability of this resource.

Expounding upon this, the right to water and EJ offer complementary yet differing routes to approaching water rights and accessibility applicable to Indigenous peoples. The right to water rests on a rights model, which should theoretically be available to all peoples as a human right. On the other hand, EJ disregards this universality and approaches water in regards to those who have been historically unable to access this resource or have been removed from discussions relating to this right. Whereas the rights model is most often conferred with individual rights, EJ looks to community rights of the marginalized. EJ and the right to water are not contrary, however, but can be used together to ensure adequate and accessible water rights while also paying extra care to those communities who many require more effort in the realization of this right due to historical forces. Finally, the right to water rests on the recognition of EJ in that the health and sustainability of water in general is necessary to ensure the lasting right to water. In this way, the influence of Indigenous knowledge, in approaches such as TEK, can be seen through EJ and right to water initiatives focused on sustainability.[278]

In summary, this chapter addresses the varying approaches of bringing a case of a violation of the human right to water for Indigenous peoples forward. National mechanisms such as administrative tribunals and the CHRC are noted as providing alternative dispute resolution methods as well as the provincial and federal judiciaries. The Inter-American System of human rights is noted for the comprehensive complaints procedure in place and the role of the ACHR. Although Canada does not recognize the jurisdiction of the ACHR, violations that take place in Canada remain able to be filed with the IACHR and brings

[278] Due to the scope of this paper, water privatization will not be addressed. There are many sources which address the role of privatization in regards to the right to water.

attention to gaps in human rights protections. The final method in regards to bringing a case forward is mentioned in various treaty bodies and the corresponding optional protocols. The chapter closes with a discussion of EJ and the opportunities that it presents in framing the right to water through an environmental justice lens.

7. Conclusion

In conclusion, through comparison of international and national documents regarding the right to water and recognized water protections, there emerges a gap in Canadian national legislation with reference to water rights for Indigenous peoples. This gap can be seen as influenced by a colonial history that has shaped Canadian legislation on both the provincial and national levels, culminating in a lack of inclusivity and Indigenous input. Arising from these gaps, there has been a systematic disregard for the access to water on Indigenous Reserves, resulting in regulatory abandonment.

This systematic exclusion has manifested in the discussion of an Indigenous rights perspective, in which the creation of new rights or the implementation and adaption of existing hard norms to the situation of Indigenous peoples is broached. From this the acceptance of cultural rights as equal in importance to individual rights is discussed as fundamental for the recognition of Indigenous peoples and culture. This is exemplified in the case *Yakye Axa v. Paraguay,*[279] where cultural rights are noted as necessary for the survival of Indigenous culture as a whole. Stemming from the recognition of cultural rights, Indigenous knowledge sources emerge as representing a distinct relationship with land and water. Through these Indigenous knowledge sources, ecological knowledge and the importance of water seen with roles such as 'water protectors', water emerges as having deep cultural conations for Indigenous persons.

---

[279] Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, IHRL 1509 (IACHR 2005).

When looking at international standards concerning Indigenous persons and the right to water, it is clear that there is little mention of water rights distinctly for Indigenous persons. This can be tied to the historical exclusion of Indigenous peoples in drafting these documents as well as the role of anthropological study in purporting an imagine of Indigenous peoples and culture that was, and remains, unfair or non-representative. Drawing upon general treaties and their included articles regarding access to water, it is possible to deduce a right to water for Indigenous peoples through related rights.

In the Canadian national context, the right to water for Indigenous peoples is further complicated due to federal and provincial jurisdiction. With federal jurisdiction encompassing Indigenous peoples and water falling under provincial jurisdiction, the issues surrounding Indigenous access to water becomes complicated. There have been efforts to address this complex situation by moving Indigenous water access to provincial jurisdiction, yet the problem of a lack of a national minimum standard of water access still remains. It can be seen that the sheer availability of water in Canada should pose no difficulties in the access of water, yet difficulties persist, especially in reference to historically marginalized groups such as Indigenous peoples. Although with a population of 1,673,785 as of 2016,[280] Indigenous peoples continue to be marginalized through legislation and denial of services such as water.

The national shortcomings with regards to Indigenous access to the right to water is exemplified through case law. Although the cases discussed do not explicitly mention water, they are able to draw parallels between the influence of anthropological study and colonization which have historically rendered Indigenous rights secondary to individual rights. It is also noted the all-encompassing role of the judiciary in determining the applicability and viability of legislation through *stare decisis*. Through these court cases, the right to health, Indigenous land claims as well as governmental negligence are discussed. From this, it can be deduced that the judicial powers only have so much

[280] Kirkup.

discretion and that it is legislation directly addressing Indigenous water rights that must be created and implemented. It is possible to deduce the right to water for Indigenous peoples through corresponding rights in legislation and the outcomes of case law, yet direct, explicit and binding legislation must be created and implemented along with an oversight body and communications procedures to ensure the Indigenous right to water.

When comparing national legislation to international legislation, the support for cultural rights emerges as a contested topic in Canadian legislation. This can be seen in the hesitation of supporting UNDRIP, and the lack of support for the IACrHR. Furthermore, under-inclusivity and regulatory abandonment have led to state negligence on the part of Canada in ensuring access to water for all. State negligence has been exacerbated through noted shortcomings such as the lack of a national minimum standard of water services as well as the division of federal and provincial governments regarding Indigenous services. The lack of follow through in reference to national obligations, can also be seen on the international level through the Canadian Government not recognizing the jurisdiction of the IACrHR.

In general, the right to water in the Canadian context is not paid enough attention to as seen with the sheer number of boil water advisories and do not consume warnings in place. Their needs to be a general overhaul of water related legislation and service provision throughout the country which implements TEK and EJ in order to realize sustainable water practices and protections. Environmental justice provides an alternative means of approaching rights, historically seen as individualistic, to communal right of a healthy environment. By framing environmental rights in this way, EJ approaches cultural rights and the importance of protective legislation to ensure sustainability.

The means of bringing a case forward in the event of a violation of the right to water is discussed through three options, being the national judiciary, the Inter-American system as well as treaty bodies. Through examination of these various methods of bringing

forward a case, the CHRC and the Federal court are found to be the most suitable means at the national level. Regarding the Inter-American system, Canada does not recognize the jurisdiction of the court, yet launching a complaint in this system can serve as a record that national legislation and judicial means have not remedied the violation. Regarding treaty bodies, the Optional Protocol must have been signed by the State. In the case of the ICESC, it has not, once again referencing the hesitation to fully recognize cultural rights.

In conclusion, there has been a systematic denial of the right to water for Indigenous peoples. This can been seen through legislation which rests on historic paternalistic notions of the State towards Indigenous peoples, as well as a lack of Canadian legislation which ensures adequate rights to water for Indigenous peoples taking into account the cultural importance of water. Due to the lack of sufficient national and provincial legislation in Canada, the judicial dialogue has become an avenue of accessing rights. Through this, it is clear that a gap in national legislation and protections regarding Indigenous water rights is not in compliance with international human rights obligations.

7.1 Recommendations

The below points reference recommendations, which, if implemented, would see Canada make the move to recognize the right to water for all as well as recognize the distinct experience of Indigenous peoples in accessing the right to water. Through strengthening national legislation, such as the implementation of minimum standards of water access at the federal level, provincial discrepancies will be minimized. This should be followed with the implementation of a national accountability mechanism, to ensure that provincial governments and legislation support this minimum standard and implement necessary measures to realize this right. Furthermore, the CWA mentions the establishment of inter-governmental committees to ensure coordination through various levels of government regarding water access. These committees must be strengthened and their

composition should include individuals and experts from various facets of society, including Indigenous peoples, ensuring fair representation.

As the above measures are put into place to address future water access for Indigenous peoples, the current situation regarding the right to water for Indigenous peoples in Canada must be evaluated. For this, an inquiry or expert panel should be composed to address state negligence, regulatory abandonment and under-inclusivity in the realization of the Indigenous right to water. From this, shortcomings would be fully visible and EJ as well as TEK can be implemented into future legislation regarding the right to water in order to secure the longevity of water rights for Indigenous peoples and sustainability of water for all. Additionally, the REP should be revisited in its call for stronger water laws and the further recognition of customary law. In regards to Indigenous rights, specifically for water, customary law must be integrated into national legislation to ensure fair and equal access to rights.

Many Indigenous Reserves currently do not have adequate access to water, therefore a national inquiry or report must commence regarding the current situation of Indigenous water rights and access on Reserves. This report would serve as the springboard to the implementation of the noted recommendations. Furthermore, Canada must recognize the jurisdiction of the IACrHR. Due to issues of sovereignty and the overarching role of cultural rights within the ACHR, Canada has neglected to recognize the court. Yet this recognition is fundamental in ensuring uniform access to rights on the national level and for individuals and groups to practice their rights and hold their country, Canada, accountable in the respect, protection, and fulfillment of human rights. Finally, the Government of Canada must revisit the various Optional Protocols, such as the ICESC, which allow communications of violations. Simply, Canada should recognize the Optional Protocol and allow for communications to be brought to the Committee, if there are no violations there is no need to take a stance against communications procedures.

Precisely, for Canada to comply with international human rights obligations regarding the right to water with a focus on Indigenous peoples, the following recommendations should be realized;

a) the need for cohesive federal water legislation;

b) the implementation of national accountability mechanism to ensure uniform and adequate access to water for Indigenous peoples;

c) to strengthen inter-governmental committees mentioned in the CWA;

d) the implementation of an inquiry or expert panel to address the lack of progressive realization regarding the right to water on Indigenous Reserves;

e) to implement EJ and TEK into national legislation to ensure the longevity of access to safe water for all, including consultation with Indigenous communities regarding sustainable solutions;

f) to revisit REP in the call for stronger laws and recognition of customary law;

g) an inquiry or updated report on the status of water on Indigenous reserves in Canada;

h) the recognition on behalf of the Canada Government regarding the jurisdiction of the IACrHR;

i) to revisit Optional Protocols which have not been signed regarding complaints procedures.

Through the realization of the right to water at the international level, which is echoed at the national level, Canada has made progress in the implementation of the right to water. The right to water, however, has not been equal in its implementation, seen through the lack of water on Indigenous Reserves and the general lack of input of Indigenous peoples in national legislation concerning water rights and traditional knowledge sources relating to environmentally sustainable water practices. Furthermore, the lack of action on the part of Canada regarding the ICESC Optional Protocol and recognizing the jurisdiction of the IAcrHR for redress of a violation at the hand of the State demonstrates that Canada is not in

line with international standards regarding the right to water for Indigenous peoples. Through exploring the role of anthropology in the perception of Indigenous peoples paired with international standards regarding water rights which are then compared to Canadian national legislation and case law, it becomes clear that Canada has not complied with international human rights obligations regarding the right to water in reference to Indigenous peoples.

IV. Bibliography

About drinking water advisories', Government of Canada, https://www.sac-isc.gc.ca/eng/1538160229321/1538160276874#a4-1, (accessed 17 July 2019).

Banks, N., 'The Protection of the Rights of Inidgneous Peoples to Territory through the Property Rights Provisions of International Regional Human Rights Instruments', *The Yearbook of Polar Law,* vol. 3, no. 1, 2011, pp. 57-112, (accessed 14 June 2019).

Benedikter, T., 'Human Rights of Minorities' Moodle, https://moodle.univie.ac.at/mod/folder/view.php?id=1701839, (accessed 17 July 2019).

Beretta, I., 'Some Highlights on the Concept of Environmental Justice and its Use', *Desigualdades ambientais: conflictos, discursos, movinentos*, vol. 17, 2012, 136-162, (accessed 12 June 2019).

Boas, F., *Race and Democratic Society,* New York, J.J. Agustin Publishers, 1945.

Boelens R., et al, 'Contested Territories: Water Rights and the Struggles over Indigenous Livelihoods', *The International Indigenous Policy Journal*, vol. 3, no. 3, 2012, pp. 1-15 (accessed 3 June 2019).

'Boil water map', WaterToday, http://www.watertoday.ca//map-graphic.asp?alerts=yellow, (accessed 24 July 2019).

Boyd, D. R., 'No Taps, No Toilets: Frist Nations and the Constitutional Right to Water in Canada', *McGill Law Journal*, vol. 57, no. 1, 2011, pp. 81- 134, (accessed 12 March 2019).

Cave, K., 'Water Song: Indigenous Women and Water', *The Solutions Journal*, vol. 7, no. 6, pp. 64-73, (accessed 4 June 2019).

Chen, X. S., 'From Emic to Etic: Exporting Indigenous Constructs', *Social and Personality Psychology Compass*, vol. 4, no. 6, 2010, pp.364-378, (accessed 2 July 2019).

Committee on Economic, Social and Cultural Rights Inquiry procedure', United Nations Human Rights Office of the High Commissioner, https://www.ohchr.org/EN/HRBodies/CESCR/Pages/InquiryProcedure.aspx, (accessed 19 June 2019).

‘Complaints’, Canadian Human Rights Commission, 2019, https://www.chrc-ccdp.gc.ca/eng/content/about-process, (accessed 11 June 2019).

‘Crown-Aboriginal Treaties in Canada 1763-2005’, Southern Chiefs’ Organization Inc. http://scoinc.mb.ca/, (accessed 15 June 2019).

Culhane, C., *Delgamuukw* and the People Without Culture: Anthropology and the Crown. Doctorate Thesis, Simon Fraser University, 1994, p.361, https:///core.ac.uk/download/pdf/56369329.pdf, (accessed 29 June 2019).

Dahre, U. J., ‘Searching for a Middle Ground: Anthropologists and the Debate on the Universalism and the Cultural Relativism of Human Rights’, *The International Journal of Human Rights*, vol. 21, no. 5, 2017, pp.611-628, (accessed 22 May 2019).

De Albuquerque, C., ‘Report of the Independent Expert on the Issue of Human Rights Obligations related to access to Safe Drinking Water and Sanitation,’ A/HRC/15/31, (accessed 12 June 2019).

Do not consume map’, WaterToday, http://www.watertoday.ca//map- graphic.asp?alerts=yellow, (accessed 24 July 2019).

‘Exhaustion of Domestic Remedies in the Inter-American Human Rights System’, International Justice Resource Center, p. 1, https://ijrcenter.org/wp-content/uploads/2018/04/9.-Exhaustion-of-Domestic-Remedies-Inter-American- System.pdf, (accessed 17 July 2019).

Filice, M., ‘Delgamuukw Case’, The Canadian Encyclopedia, 11 January 2019, https://www.thecanadianencyclopedia.ca/en/article/delgamuukw-case, (accessed 1 July 2019).

Fox, J. and Hernández L., ‘Mexico’s Difficult Democracy: Grassroots Movements, NGOs, and Local Government’, *Alternatives: Global, Local, Political,* vol. 17, no. 2, 1992, pp. 165-208, (accessed 20 July 2019).

Harris, L. M. ‘Revisiting the Human Right to Water from an environmental justice lens’, *Politics, Groups and Identities*, vol.3, no. 4, 2015, pp. 660-665.

Heller, L., ‘Report of the Independent Expert on the Issue of Human Rights Obligations related to access to Safe Drinking Water and Sanitation,’ A/73/162, (accessed 20 June 2019).

Henderson, W.B., 'Indian Act', The Canadian Encyclopedia, 23 October 2018, https://www.thecanadianencyclopedia.ca/en/article/indian-act, (accessed 13 June 2019).

'Honouring Water', The Assembly of First Nations, 13 May 2019, http://www.afn.ca/honouring-water/, (accessed 29 May 2019).

'Human Rights Treaty Bodies- Individual Communications', United Nations Human Rights Office of the High Commissioner, https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#overviewprocedure, (accessed 1 July 2019).

Individual Complain Procedures under the United Nations Human Rights Treaties', *Untied Nations Human Rights Office of the High Commissioner,* Fact Sheet No. 7/ Rev. 2, 2013, p. 6. (accessed 13 July 2019).

Jurisdiction Ratione Materiae Law and Legal Definition', US Legal, https://definitions.uslegal.com/j/jurisdiction-ratione-materiae/, (accessed 11 July 2019).

Kirkup, K., 'Canada's Indigenous population growing 4 times faster than rest of country', Global News, 25 October 2017, https://globalnews.ca/news/3823772/canadas-growing-indigenous-population/, (accessed 2 July 2019).

Larson, R.B., 'Water, Worship and Wisdom: Indigenous Traditional Ecological Knowledge and The Human Right to Water', *ILSA Journal of International and Comparative Law*, vol. 19, 2012, pp. 44-67, (accessed 23 May 2019).

'Legislative Summary of Bills S-11: The Safe Drinking Water for First Nations Act', House of Commons: Legislative Summary, 6 July 2010, https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/403S11E, (accessed 11 June 2019).

Martínez Cobo, J. R., 'Study of the Problem of Discrimination Against Indigenous Populations' Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1983/21, (accessed 27 June).

M. Mayrhofer, 'HR and Environment and Migration' Moodle, https://moodle.univie.ac.at/mod/folder/view.php?id=2244429, (accessed 17 July 2019).

Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, 'Report of the Expert Panel on Safe Drinking Water for First Nations' vol. 1, 2006, pp. 1-79, (accessed 13 May 2019).

OnPoint Legal Research Law Corp, 'First Nations; Crown Liaibility; Misfeasance in Public Office', CanLIIConnecte, 20 March, 2014, https://canliiconnects.org/fr/r%C3%A9sum%C3%A9/25236, (accessed 2 June 2019).

'Primary Sources of Law: Canadian Case Law', University of Toronto: Bora Laskin Law Library, https://library.law.utoronto.ca/legal-reseach-tutorial/legal-research-process, (accessed 21 May 2019).

Purcell, T.W.,'Indigenous Knowledge and Applied Anthropology: Questions of Definition and Direction', *Human Organization*, vol. 51, no. 3, 1998, pp. 258-272, (accessed 31 May 2019).

Report No 61/07, Petition 543-01, Inter-American Commission on Human Rights, 2007, Note 26, (accessed 12 June 2019).

'Report of the Expert Panel on Safe Drinking Water for First Nations', vol. 1, 2006, pp. 1-170. (accessed 13 May 2019).

Sillitoe, P., 'The Development of Indigenous Knowledge: A New Applied Anthropology', *Current Anthropology*, vol. 39, no. 2, 1998, pp. 223-252, (accessed 22 June 2019).

'Status of Ratification Interactive Dashboard', United Nations Human Rights Office of the High Commissioner, http://indicators.ohchr.org/, (accessed 19 June 2019).

Suntinger, W., 'Human Rights Analysis (I) Obligation to Respect', Moodle, https://moodle.univie.ac.at/mod/folder/view.php?id=1701807, (accessed 17 July 2019).

'Territory Acknowledgement', Native Land, https://native-land.ca/territory-acknowledgement/, (accessed 2 July 2019).

The judicial structure: How the courts are organized'. Department of Justice, https://www.justice.gc.ca/eng/csj-sjc/just/07.html, (accessed 18 July 2019).

Threats to Water Availability in Canada', *Environment Canada: National Water Research Institute*, 2004, no. 3, pp. 1-128, (accessed 26 June 2019).

'Water', Natural Resources Canada, 30 October 2017, https://www.nrcan.gc.ca/earth-sciences/geography/atlas-canada/selected-thematic-maps/16888, (accessed 2 July 2019).

'Watersheds', Atlas of Canada 6th Edition, 1999-2009, https://www.nrcan.gc.ca/science-and-data/science-and-research/earth-sciences/geography/topographic-information/geobase-surface-water-program-geeau/watershed-boundaries/20973, (accessed 14 July 2019).

'What is the minimum quantity of water needed?', World Health Organization, https://www.who.int/water_sanitation_health/emergencies/qa/emergencies_qa5/en/, (accessed 7 May 2019).

Wilk. P., et al, 'Residential Schools and the Effects on Indigenous Health and well-being in Canada- a scoping review', *Public Health Reviews*, vol. 38, no.8, 2017, pp. 2-23, (accessed 13 June 2019).

Zemmali, A.,'The Protection of Water in Times of Armed Conflict', International Committee of the Red Cross, 1995, https://www.icrc.org/en/doc/resources/documents/article/other/57jmra.htm, (accessed June 17).

Legislation and Case Law

Canada Water Act, R.S.C., 1985, c. C-11.

Canadian Charter of Rights and Freedoms, s7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

Chaoulli v. Quebec (AG) [2005] 1 S.C.R. 791, 2005 SCC 35.

Constitution Act (1867) 30 & 31 Victoria, c.3 (U.K.).

Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UNTS 1249.

Convention on the Rights of Persons with Disabilities (adopted 24 January 2007, entered into force 3 May 2008) UNTS 2515.

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577.

Delgamuuk v. British Columbia, [1997] 3 SCR 1010, 1997 Carswell BC 2358.

General Comment No. 15: The Right to Water (adopted 20 January 2003) E/C. 12/2002/11.

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949) 75 UNTS 31.

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted, 12 August 1949) 75 UNTS 85).

Geneva Convention Relative to the Protection of Civilization Persons in Times of War (adopted 12 August 1949) 75 UNTS 287.

Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949) 75 UNTS 135.

Health Insurance Act, CQLR c A-29.

Human Rights Obligations related to access to Safe Drinking Water and Sanitation,' A/HRC/15/31.

Indian Act, RSC 1985, c I-5.

Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay*, IHRL 1509 (IACHR 2005).

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNTS 993, Article 11.

Pikangikum First Nation v. Nault, 2012 ONCA 705.

Safe Drinking Water for First Nations Act ,S.C. 2013, c.21.

United Nations Declaration on the Rights of Indigenous Peoples,' A/RES/61/295.

V. Appendices

Figure 1) Treaties between Indigenous Communities and the Crown, 1763-2005……..…37
Figure 2) Population of Indigenous Peoples in Canada as of 2016……...…….....…39
Figure 3) Watersheds in Canada……...……...……42
Figure 4) Human Rights Analysis (II): Obligation to Protect/ Fulfill……..60
Figure 5) Human Rights Analysis (III): Discrimination…….…….61
Figure 6) Boil water advisories currently in place in Canada……...…...……65
Figure 7) Do not consume warning currently in place in Canada……...…….66

VI. Abstract

Water is necessary for the fulfillment of multiple human rights. Water is a method of transportation, requirement for agriculture, aids in the construction of shelter and is necessary for health and life. The human right to water has been a topic of discussion on the international stage for many years, but true access to this right depends on the recognition of water as a right by State parties. With an examination of Canadian legislative and judicial documents, the right to water with specific reference to Indigenous peoples will be examined. Through analysis, this thesis seeks to answer: Has Canada complied with international human rights obligations regarding the right to water in reference to Indigenous peoples? This will be answered through tracing the relationship between the study of anthology and Indigenous peoples, referencing international standards and treaties in comparison to the Canadian legal framework and finally, addressing shortcomings and ways of moving forward in reference to the protection, fulfillment and respect of the right to water for Indigenous peoples.

Key Words: right to water – Indigenous – anthropology – Canada – United Nations

VII. Abstract (German)

Wasser ist notwendig, um verschiedene Menschenrechte zu verwirklichen. Wasser ist eine Methode des Transports, eine Voraussetzung für Agrarkultur, hilft bei der Errichtung eines Obdachs und ist essentiell für Gesundheit und Leben. Das Menschenrecht auf Wasser wird seit vielen Jahren auf der Weltbühne diskutiert, aber wahrer Zugang zu diesem Recht hängt von seiner Anerkennung seitens der Staatengemeinschaft ab. In dieser Masterarbeit wird das Recht indigener Völker auf Wasser anhand von kanadischen rechtsgebenden und gerichtlichen Dokumente in Augenschein genommen. Während dieser Analyse soll die folgende Frage beantwortet werden: Kommt Kanada seinen internationalen Menschenrechtsverpflichtungen hinsichtlich des Rechts auf Wasser für indigene Völker nach? Diese Frage wird beantwortet, indem eine Beziehung zwischen anthropologischen Studien und indigenen Völkern hergestellt wird. Außerdem wird ein Vergleich von internationalen Standards und Verträgen zum kanadischen Rechtsrahmen aufgestellt. Schlussendlich werden Defizite bezüglich des Schutzes und der Erfüllung sowie des Respekts gegenüber des Rechts auf Wasser für indigene Völker sowie Problemlösungen herausgestellt.

Stichwörter: Recht auf Wasser – indigen– Anthropologie – Kanada – Vereinte Nationen