

Brasília Declaration of Judges on Water Justice **[10 Principle Declaration]**

8th World Water Forum
Brasília (Brazil)
21 March 2018

We, the judges who administer water justice and adjudicate cases regarding the utilization, management and protection of all forms of freshwater resources; equitable access to water and sanitation services; the impact of human activities on water and the environment; and restoration of ecological services and functions,

Acknowledging that availability of freshwater is rapidly becoming a pressing global problem, with global water requirements in 2030 expected to amount to double those in 2005 and to exceed current accessible and reliable supply levels by 40 per cent,

Aware that the impending water crisis, accelerated by the impact of climate change on the hydrological cycle, and on the availability of water resources to satisfy the demands of society and those of the environment, is also a crisis of governance and justice,

Recognizing that damage to water resources and related ecosystems, and deficiencies in water services provision, disproportionately impact vulnerable people and groups, including women, children, the elderly, the disabled, indigenous peoples and minority groups, and the need to mitigate these impacts,

Observing the importance of the hydrological cycle to ecological functioning; the interconnectedness of groundwater and surface water systems; and the importance of approaching water challenges on a watershed level,

Considering the fact that freshwater resources are a vital component of all aquatic and terrestrial ecosystems, and the fact that ecosystems provide a range of services essential to life,

Emphasising the key role of water resources in the maintenance and functioning of a range of critical ecosystems providing essential ecosystem services for the benefit of humanity and all life,

Having regard to the urgent need to achieve a high level of environmental protection of water resources in the light of humankind's total dependence upon water – biologically, ecologically, socially, economically and culturally – for its survival,

Acknowledging that actions should not be permitted or undertaken when their potential adverse impacts on water services, water resources or related ecosystems are unreasonable, disproportionate or excessive in relation to the benefits derived therefrom, *Anticipating* the critical role of effective water resources management in societal adaptation to the challenges of climate change,

Recognizing that domestic use should have priority over other uses in the allocation of water,

Respecting the importance of indigenous knowledge and cultures and their contribution to water sustainability,

Acknowledging the contribution that mountain and other people in upper water catchments make in the stewardship of vegetation cover and maintenance of the hydrological cycle in water catchments,

Recognizing that the rights to life, health, and an adequate standard of living are central to all legal systems and are recognized under the International Bill of Rights, and that water and related ecosystems are critical to the realization thereof,

Affirming the public's trust in courts to protect and realise human rights in general, and the human right to water and sanitation in particular, and to sustain and preserve water resources,

Affirming that water law and the environmental rule of law are essential for the protection of water resources and ecosystems,

Cognizant of the important contribution of the legal community worldwide to the enforcement of standards and safeguards for environmental sustainability,

Also cognizant of the need for the independent and impartial application of water law and the environmental rule of law by judges, and therefore for judicial independence and integrity to be protected by co-equal branches of government, by civil society and by the business community,

Further convinced that deficiency in the knowledge, skills and information relevant to water and environmental law is an important contributor to lack of effective implementation, development and enforcement of water and environmental law,

Aware of water's role in sustaining life and ecosystems, and of the importance of reflecting the interdependence of water and other elements of the natural environment, notably land, the sub-soil and forests, including the relevant ecosystemic connections, in the judicial resolution of water-related disputes and in the administration of water justice,

Reaffirming the values and principles enshrined in the Stockholm Declaration on the Human Environment (1972), the World Charter for Nature (1982), the Rio Declaration on Environment and Development and Chapter 18 of Agenda 21 (1992), the Earth Charter (2002), the Johannesburg Principles on the Role of Law and Sustainable Development adopted at the Global Judges Symposium (2002), the outcome document of United Nations Conference on Sustainable Development "The future we want" (2012), the Rio+20 *Declaration on Justice, Governance and Law for Environmental Sustainability* (2012), the Draft International Covenant on Environment and Development (2015), the OECD Principles on Water Governance (2015), the Oslo Principles on Global Obligations for Climate Change (2015), the Draft International Covenant on the Human Right to the Environment (2016), the IUCN World Declaration on the Environmental Rule of Law (2016) and the Draft Global Pact for the Environment (2017),

Mindful of the values and commitments reflected in "Transforming our world: the 2030 Agenda for Sustainable Development" (2015) and, in particular, in Sustainable Development Goal (SDG) 6 "Ensuring availability and sustainable management of water and sanitation for all", and in other SDGs instrumentally linked to water,

Welcoming the establishment of the Global Judicial Institute on the Environment, and its role in support of the independent application and enforcement of the environmental rule of law, in particular to water,

I – WE AGREE TO BE GUIDED BY THE FOLLOWING TEN FUNDAMENTAL PRINCIPLES IN PROMOTING WATER JUSTICE THROUGH APPLICATION OF WATER LAW AND THE ENVIRONMENTAL RULE OF LAW:

Principle 1 – Water as a Public Interest Good

The State should exercise stewardship over all water resources, and protect them, in conjunction with their associated ecological functions, for the benefit of current and future generations, and the Earth community of life.

Principle 2 – Water Justice, Land Use, and the Ecological Function of Property

Because of the close interlinkages between land and water and the ecological functions of water resources, any person with a right or interest to use water resources or land has a duty to maintain the ecological functions and integrity of water resources and related ecosystems.

Principle 3 – Water Justice and Indigenous and Tribal Peoples and Mountain and Other Peoples in Watersheds

(a) Indigenous and tribal peoples' rights to and relationships with traditional and/or customary water resources and related ecosystems should be respected, and their free, prior, and informed consent should be required for any activities on or affecting water resources and related ecosystems.

(b) In view of the contribution of mountain and other peoples living in upper water catchments to the conservation of ecological and hydrological functioning and integrity of water resources and related ecosystems in the entire water basin, appropriate mechanisms should be developed and implemented to encourage and facilitate people to undertake such conservation.

Principle 4 – Water Justice and Prevention

To avoid costly *ex-post* measures to rehabilitate, treat or develop new water supplies or water-related ecosystems, prevention of future harm to water resources and to related ecosystems should take precedence over remediation of past harm, having regard to best available technologies and best environmental practices.

Principle 5 – Water Justice and Precaution

The precautionary principle should be applied in the resolution of water-related disputes. Notwithstanding scientific uncertainty or complexity regarding the existence or extent of risks of serious or irreversible harm to water, human health or the environment, judges should uphold or order the taking of the necessary protective measures having regard to the best available scientific evidence.

Principle 6 – In Dubio Pro Aqua

Consistent with the principle *in dubio pro natura*, in case of uncertainty, water and environmental controversies before the courts should be resolved, and the applicable laws interpreted, in a way most likely to protect and conserve water resources and related ecosystems.

Principle 7 – Polluter Pays, User Pays and Internalisation of External Environmental Costs

Environmental factors should be included in the valuation and pricing of water resources and their services, including:

- (a) polluter pays principle – those who cause water pollution and ecosystem degradation must bear the costs of containment, avoidance and abatement, and of remedying, restoring and compensating for any harm caused to human health or the environment,
- (b) user pays principle – those who use water resources and their services in commerce or industry should pay prices or charges based on the full life cycle of costs of providing the water resources and their ecosystem services, including the use thereof, and the ultimate disposal of any waste; charges should also be levied on domestic use of water services to reflect the costs of providing such services, including the environmental costs, though appropriate social protection measures should be employed to ensure that those unable to pay such costs are not deprived of adequate water supply and sanitation services, and
- (c) enduring obligations – legal obligations to restore ecological conditions of water resources and their ecosystem services are binding on any user of the resource and any owner of the site of the resource, and liability is not terminated by the transfer of use or title to others (*propter rem* obligation).

Principle 8 – Water Justice and Good Water Governance

Consistent with the proper role of an independent judiciary in the upholding and enforcing of the rule of law, and ensuring transparency, accountability and integrity in governance, the existence of good water laws and their effective implementation and enforcement are essential for the protection, conservation and sustainable use of water resources and related ecosystems.

Principle 9 – Water Justice and Environmental Integration

Environmental and ecosystem considerations should be integrated into the application and enforcement of water law. In adjudicating water and water-related cases, judges should be mindful of the essential and inseparable connection that water has with the environment and land uses, and should avoid adjudicating those cases in isolation or as merely a sectoral matter concerning only water.

Principle 10 – Procedural Water Justice

Judges should strive to achieve water justice due process by ensuring that persons and groups shall have appropriate and affordable access to information on water resources and services held by public authorities, the opportunity to participate meaningfully in water-related decision-making processes, and effective access to judicial and administrative proceedings and to remedy and redress.

II – WE ACKNOWLEDGE the importance of ensuring that water law and environmental law feature prominently in academic curricula, legal studies and training at all levels, in particular among judges and others engaged in the judicial process.

III – WE ARE STRONGLY OF THE VIEW that there is an urgent need to strengthen the capacity of judges, lawyers and all persons who play a critical role at the international, regional, national and subnational level in the process of development, implementation and enforcement of water and environmental law, especially through the judicial process.

IV – WE ENCOURAGE collaboration among members of the Judiciary and others engaged in the judicial process within and across jurisdictions as essential to achieving a significant improvement in implementation and enforcement of water law and environmental law.

V – WE RECOGNIZE the need for water laws to: (a) progress, by being regularly revised and enhanced, and brought up to date, in order to protect, conserve and sustainably use water resources and related ecosystems, based on the most recent scientific knowledge and ethical considerations, and (b) not regress, by allowing or pursuing actions that have the effect of diminishing the legal protection of water resources and related ecosystems.

VI – WE REQUEST the Global Judicial Institute on the Environment to approve this Declaration.

This Declaration was presented at the Conference of Judges and Prosecutors on Water Justice at the 8th World Water Forum in Brasília (Brazil) from 18-23 March 2018. This declaration reflects and encapsulates the discussions and the views held by participants of the High-Level Preparatory Meetings held in Rio de Janeiro (Brazil) on 8 December 2017 and the Conference of Judges and Prosecutors on Water Justice from 19-21 March 2018. It does not represent a formally negotiated outcome and does not necessarily reflect the views of any individual, institution, State, or country represented at the Forum, or their institutional positions on all issues, or the views of any judge or member of the Global Judicial Institute on the Environment or the WCEL Steering Committee.