

Stockholm, 25 November 2020

**UN Special Rapporteur on Human Rights and the Environment
Call for Inputs
Too Dirty, Too Little, Too Much: The Global Water Crisis and Human Rights**

The following is the submission from the Stockholm International Water Institute (SIWI) in response to the Call for input and questionnaire circulated, aiming to inform the Special Rapporteur’s analysis and contribute to his report, which will be presented to the Human Rights Council in March 2021.

*SIWI is a water institute that leverages knowledge and convening power for a just, prosperous, and sustainable future—to contribute to poverty eradication. SIWI focuses on a range of applied research and development topics within and around water that support decision-makers and stakeholders around the world, in the belief that the best way to tackle water crises, and help bring about lasting change, is to strengthen water governance among public and private actors at all levels.*

i) Water is a connector and ‘blue thread’ across all Sustainable Development Goals, and the medium through which climate change impacts already affect people’s lives most directly. As the adage goes, water is life. This implies that we are dealing with a natural resource of critical importance for human dignity, health, standard of living, development, livelihood, subsistence, and self-determination.

ii) The current discourse under the human rights to water and sanitation (HRWS) emphasises the right *to* (safe and clean drinking) water, but limits this to the personal and domestic sphere. Notably, General Comment No 15 (2002), para. 6, states that “[w]ater is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant’s rights.”

iii) Similarly, ICESCR Article 1 lays down the right of all peoples to self-determination and to freely dispose of their natural resources; in no case may a people be deprived of its means of subsistence. This applies to indigenous peoples, but also to subsistence farmers. By definition, the latter have no source of income to purchase food on the market and their needs to access water resources should be prioritized in the State’s planning of and allocation between competing demands. Sufficient, and sufficiently clean, water are prerequisites for these groups to enjoy freedom from hunger and the right to adequate food. General Comments 12 and 15 note the importance of ensuring sustainable access to water resources for agriculture, emphasising the needs of disadvantages and marginalized farmers, including women farmers. Here, access to too little water can also cause mental distress, which jeopardizes the right to health.

The 2018 Declaration on the Rights of Peasants and Other People Working in Rural Areas, while recognizing that access to water is an increasing challenge, acknowledges the right to water for farming, fishing and livestock keeping and to securing other water-related livelihoods, ensuring the conservation, restoration, and sustainable use of water [bodies] on a non-discriminatory basis (Article 21).

iv) While the right *to* water is formally acknowledged in recognition of ICESCR Article 11 not being exhaustive (in enumerating that everyone’s right to an adequate standard of living *includes* food, clothing and housing), and as inextricably related to physical and mental health (ICESCR Article 12), there are numerous aspects of ‘water’ that intersect with international human rights law—not only as entitlements to basic needs fulfilment, but in terms of *freedoms* and autonomy. To enable freedom from [impacts of] too much water it should, consequently, be recognized that States Parties have a negative obligation to respect the right to property and adequate housing, and that there is a right to be free *from* impacts of extreme rainfall events, flooding, and sea level rise.

v) The obligation ‘to respect’ involves a duty not to undermine existing access to resources needed to provide for oneself. For drinking water, right-holders have a fundamental, correlating freedom to maintain access to existing water supplies necessary for enjoyment of the HRWS. This includes freedom from intrusion, interruption and disturbance where water access is arranged. The right to be *free from* interference—such as from contamination of one’s water supplies—also follows from the State’s obligation to respect (General Comment 15, para. 10). The State must especially respect traditional and customary arrangements for water allocation that (rural) communities and indigenous peoples rely on. Freedom from interference encompasses quantitative and qualitative dimensions, corresponding to State obligations not to arbitrarily disconnect, diminish, pollute or contaminate water supplies as well as to prevent third parties from doing so.

vi) The growing practice at national level of giving rivers legal personhood complements the importance awarded to ecosystem services from an instrumental point of view, and the work to make the human right to a healthy environment formally recognised. Today’s emerging rights conversation also centres on the *intrinsic values* of water as perceived by indigenous peoples, and the unheard voices of our ancestors and coming generations. These aspects are highlighted in the 2021 World Water Development Report.

1. **Please provide examples of ways in which water pollution, water scarcity and floods are having adverse impacts on human rights**.

Activities causing or contributing to water pollution, scarcity, and floods often take place upstream from where the impacts are felt, contributing to challenges in identifying causes and establishing accountability.

In the aquatic environment, including aquifers, and wastewater treatment plants the occurrence of bacteria that cause serious infections as well as of antimicrobial pharmaceuticals has a direct impact on the safety of drinking water (right to water), and is in part linked to poor sanitation in terms of the right not to be negatively impacted by unsafely managed wastewater (jeopardising the right to adequate sanitation) but also to the use of antibiotics in livestock and aquaculture to increase production by preventing infections and promoting growth (right to adequate food).[[1]](#footnote-1) Consumption of water from unsafe sources in turn increases the reliance on antibiotics and, accordingly, vulnerability to antimicrobial resistance (AMR), contributing to a vicious cycle (right to health). AMR in water—promoted by antibiotics—poses a serious threat to human and animal health, and for living organisms that inhabit the aquatic environment (environmental health, right to healthy environment). Water pollution from drug manufacturing, inappropriate use of antibiotics in veterinary and human medicine, and non-medical use promote antibiotic resistance. For instance, shrimp ponds, aquatic ecosystems and wastewater recipients function as hubs and vectors for AMR emergence. Taken together this endangers the human rights to health and to a safe, clean, healthy, and sustainable environment.

Globally, some 2.5 billion people depend solely on groundwater to satisfy their daily needs. The reliance on this resource through self-supply when service distribution is lacking or inadequate has increased manifold, but this is yet to be fully acknowledged. State Parties are further obliged to fulfil (provide) human rights when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. Interpreting the State’s duty ‘to fulfil’ the HRWS through direct water service provision ‘as a last resort’ implies that self-provision is the original norm for enjoying the right to water. This has implications on end-users’ right to be free from interference due to environmental pollution and water scarcity but also flooding, linked to climate change and natural disasters. Additionally, it is critical that the State takes an active role in promoting awareness concerning point source protection, the need for treatment before consumption, and aquifer recharge for water resources management to realise the rights to health and adequate standard of living. The need for measures upstream, including a whole of the environment-approach, increases when self-supply gets more common.[[2]](#footnote-2)

2. **How has climate change exacerbated water-related problems**?

The impacts of climate change augment existing water resources competition for a variety of human needs (entitlements) including for health, livelihoods, and socioeconomic development, and challenges are exacerbated because of the many intersectoral linkages between water and society. For instance, rising temperatures increase the demand for air-conditioning units, which drives the demand for electricity. Hydropower generation is vulnerable to water scarcity—while hydroelectric dam reservoirs themselves can produce significant methane emissions—and the production and processing of biomass for biofuel feed stock requires large amounts of water. Thermal power generation requires large quantities of water, primarily for cooling, which is also challenged by rising temperatures due to climate change.[[3]](#footnote-3)

Flooding and other problems related to ‘too much water’ are linked to increasing levels of water vapour in the atmosphere. Another problem attributed to a changing climate is wildfires. The fighting of them is affecting the quantity and quality of local water resources.

Climate change is linked to enhanced groundwater recharge rates, but also to more episodic recharge from heavy rains and unpredictable conditions due to seasonal precipitation unpredictability and intensification. Local subsurface heterogeneity and hydrogeology influence the type and sensitivity of precipitation–recharge relationships, and needs to be considered in water resources management to establish the availability of water per capita. The potential resilience of groundwater to climate variability is essential for informing adaptation strategies.[[4]](#footnote-4)

Coastal aquifers provide freshwater to more than one billion people who live along the coast and interact with coastal hazards and coastal ecosystems alike. Seawater intrusion into coastal aquifers is partially attributed to sea-level rise due to climate change and will degrade the quality and quantity of freshwater available.[[5]](#footnote-5)

3. **To protect a wide range of human rights, what are the specific obligations of States and responsibilities of businesses in terms of addressing water pollution, water scarcity and floods**?

In terms of States obligations, the principles of Integrated Water Resources Management (IWRM) are regarded soft law and hence politically binding for guiding planning and decision-making from a river basin perspective rather than, or complementing, existing administrative boundaries. In response to water security and governance issues, Ethiopia has adopted IWRM and put in place water policy, legislation, and a programme that embraces the management principles. However, implementation of IWRM in the country, as elsewhere, is constrained by capacity limitations and lack of coordination amongst the key government institutions and other stakeholders. In addition, few basin authority planners or decision-makers are aware that the human rights-based approach (HRBA) should be applied, enabling the realisation of the HRWS and reminding of how the State shall prioritise water for human needs before other uses in water resources allocation.

5. **Please provide specific examples of good practices in preventing, reducing, or eliminating water pollution, water scarcity and floods**.

With respect to the threat from AMR, the role of water, sanitation and hygiene (WASH) is vital for infection prevention and the world will not solve the problem with AMR as long as we use antibiotics as a substitute for safe water. The One-Health perspective necessitates looking at the interactions of people, domestic animals, wildlife, plants, and our environment, as well as the need to improve the communication between the involved actors.[[6]](#footnote-6) Environmental health and hygiene issues connected to water pollution and unsafe drinking water is still a blind spot in the One-Health community. Exploring these linkages also through a human rights lens has been an important joint learning that has contributed to placing the topic much broader on the radar of stakeholders including the UNDP. SIWI has contributed to pioneering this e.g. by providing a common multi-stakeholder platform with manufacturers and buyers of antibiotics, and proposing recommendations for better source control.[[7]](#footnote-7)

Similarly to IWRM, the Source-To-Sea (S2S) approach to water management links operations, practices, and governance across marine, coastal, freshwater and terrestrial systems and stimulates cooperation between upstream and downstream actors as well as coordination across sectors. The strength of this approach is its ability to ensure outcomes of mutual benefit from the source to the recipient sea by homing in on priorities that span traditional land–freshwater–marine boundaries. These linkages are highlighted by drawing focus to six flows: water, pollutants, biota, materials, sediments, and ecosystem services as well as designing courses of action that improve overall system health by reducing flows detrimental to the source-to-sea system and enhancing flows that maintain ecosystem functions and services. The need for an S2S approach to management has been increasingly highlighted as part of international policy outcomes, financing and operational strategies over the past years.[[8]](#footnote-8)

Citizens play a critical role in the protection of lakes, but also aquifers and streamflow connections. In India, actors have joined hands to develop the ‘Bangalore Citizen Science Lakes Dashboard’ to share knowledge and best practices for better management of lakes and wells to improve effectiveness.[[9]](#footnote-9) Other practical measures to enhance underground storage and thereby augment the availability of fresh water for climate change resilience use aquifers as natural buffers. By employing ancient rainwater harvesting techniques as well as modern Managed Aquifer Recharge infrastructure, the twin objective of defeating drought and empowering communities can also be achieved, as in the case of India’ *Water Man* Rajendra Singh, awarded the 2015 Stockholm Water Prize, and *Zen Rainman* who advocates for the use of urban rooftops to enhance groundwater recharge on YouTube.[[10]](#footnote-10) These practices prevent water scarcity and floods, but can also reduce water pollution through the ecosystem services that soil + aquifers provide.

6. **Please identify specific challenges that your organization has faced in attempting to employ a rights-based approach to address water pollution, water scarcity and floods and the impacts of these problems on human rights**.

The HRBA, as interpreted primarily by the UN in its Common Understanding (2003),[[11]](#footnote-11) is wide in its ambition but also demanding to implement in full. In order for development cooperation to contribute to the building of capacities of duty-bearers to meet their obligations and of rights-holders to claim their rights, access to established networks and other practical means on the ground is a prerequisite for creating lasting impact and achieve the outcome called for by this approach. Ahead of that stage, it can be challenging to collect adequate root cause information from and about those concerned to properly analyse the context without, for instance, arranging field trips to gather data.

Moreover, the official framing and criteria of the human rights at stake are decisive for determining what correlating obligations are to be fulfilled, and what claims are not valid. The HRBA furthermore presupposes a sufficiently well-functioning state against which it is possible to invoke the rights in question. If the State lacks capacity to effectively implement the human rights standards and take steps progressively towards full realisation, it should fall upon the world community and the UN system to provide assistance under ICESCR Article 2(1). However, even in the case of large dams, the HRBA cannot give assurances to those waiting to learn whether the threats of displacement will eventually become reality. These issues were revealed from an analysis of a hydropower project on the border between Nepal and India, that had been in the planning for decades.[[12]](#footnote-12)

7. **Please specify ways in which additional protection should be provided for populations who may be particularly vulnerable.**

The UN Conventions on the Elimination of All Forms of Discrimination Against Women and of the Rights of the Child expressly include the right to (clean) drinking water. In comparison, the Declaration on the Rights of Indigenous Peoples states 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 (Article 25), whereas the Declaration on the Rights of Peasants and Other People Working in Rural Areas provides, i.a., for the right to water for personal and domestic use, farming, fishing and livestock keeping and for securing other water-related livelihoods, ensuring the conservation, restoration and sustainable use of water, and that States shall take measures to guarantee affordable water for personal, domestic and productive uses, as well as prevent third parties from impairing the enjoyment of the right to water, and protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes, from overuse and contamination (Article 21).

The latter being the youngest of the UN instruments shows how the world community can now “build on a number of binding international treaties from which it has taken agreed language”.[[13]](#footnote-13) Similar far-reaching formulations should be adopted to protect members of Indigenous peoples and traditional communities. This recent Declaration can also serve as inspiration to provide protection of water resources at large, and to other vulnerable groups, including deprived urban dwellers, by recognising their right to have access to, sustainably use, and manage land and water bodies taken as a whole.

10. **For businesses, what policies or practices are in place to ensure that activities, products, and services across the entire supply chain minimize water use and water pollution and meet human rights standards, especially those articulated in the UNGPs**?

The responsibility of transnational corporations and other non-State business enterprises to respect the human rights has been outlined as a basic expectation society has of business enterprises that they will act with due diligence to avoid infringing on the rights of others. As such, this responsibility is affirmed through global voluntary commitments and multi-stakeholder initiatives (such as those launched by the CEO Water Mandate, Pacific Institute and Shift in 2015[[14]](#footnote-14)), and reinforced through soft law instruments that do not create legally binding obligations but, as expressed by Professor John Ruggie, “derive their normative force through recognition of social expectations by States and other key actors”. [[15]](#footnote-15)

The stumbling block here is not only that business companies are not legally bound by international human rights law. Companies are advised that the human rights at risk of the most severe (salient) negative impact through the company’s activities and business relationships can and should be prioritised (Commentary, UNGP Article 24, and the Reporting Framework[[16]](#footnote-16)). Child labour and similar grave work place issues tend to be investigated by buyers and auditors, while poor water conservation practices and pollution—that are in many places having well-known impacts on the HRWS, as well as the rights to adequate health and standards of living—come very far down the list of concerns. Oftentimes, water grabbing and pollution is invisible to the eye and challenging to document. Practices that cause water scarcity and make the available resources too dirty for consumption fly under the radar.

Calls for a legally binding instrument to regulate activities of transnational corporations have not suggested that the prioritisation that is allowed under the UNGPs runs contrary to the fundamental idea of human rights being indivisible, interdependent and interrelated.

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9. Srinivasan et al. (nd). <https://www.atree.org/media-feature/citizen-lake-dashboards>. [↑](#footnote-ref-9)
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14. <https://shiftproject.org/new-guidance-for-companies-on-how-to-respect-the-human-rights-to-water-and-sanitation/>. [↑](#footnote-ref-14)
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16. <https://www.ungpreporting.org/faq/reporting-framework-and-integrated-reporting/>. [↑](#footnote-ref-16)