

## **Request of Special Rapporteur on the Human Rights to Water and Sanitation Questionnaire 2018**

### **Topic Principle of accountability in the context of the human rights to water and sanitation**

#### **Preliminary Remarks**

The answers to the questionnaire are provided by the German Ministry for Economic Cooperation and Development (BMZ) and the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB). The responsibility to the water and sanitation sector lies with the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (**BMUB**). Given that the questions are addressing some key elements of the German policies of development cooperation, the BMZ has answered some questions from their perspective and give examples of where German development cooperation programs support national institutions.

#### **1. Definition and application of the principle of accountability**

No legal definition of the principle of accountability is included in the relevant German drinking-water and sanitation legislation. For details on how this principle is applied, please see details below.

The Human rights based-approach and the German Strategy paper “Human rights in German Development policy” are mandatory in German Development Cooperation. Using a set of guidelines all development programs are assessed with regard to their effects on human rights, and any risks. Germany supports partner countries in creating access to drinking water and sanitation in ways that respect and protect human rights and itself is committed to the human rights criteria relevant for the water sector.

#### **2. Challenges and gaps in application of the principle of accountability**

As Germany is a Federal Republic, responsibilities are shared between the national levels, the Federal States and the local levels, and information is not necessarily collected at all levels. No challenges or gaps in the application and implementation of the principle of accountability to ensure the realization of the human rights to safe drinking water and sanitation have been reported to the national level.

According to the JMP Progress report on Drinking Water, Sanitation and Hygiene, 2017 Update and SDG Baselines, the German population had 99% access to safely managed water supplies in 2015, accessible on premises, which was 100% piped and free of contamination. 96 % of the German population is connected to sewers, 3 % to septic tanks and 95% of the wastewater is safely managed.

Additionally Germany endeavors to continuously sharpen its pro-poor orientation, and will work on a response to the “Leave No One Behind” Agenda in its water development

cooperation during 2018. An indicator and data gathering on the goal on the provision of water supply and sanitation with assistance of German Development Cooperation, which is contained in the Germany Sustainability Strategy will be revisited in 2018.

## **Responsibility**

### **3. Roles and responsibility of actors involved**

Providing drinking water to the public is within the responsibility of the municipalities as part of public service tasks, as stipulated in the Federal Water Act (Wasserhaushaltsgesetz, WHG). Drinking water quality is governed by the German Drinking Water Ordinance (Trinkwasserverordnung), as well as by other regulations, various guidelines, recommendations, and rules. Under the Trinkwasserverordnung, the requirements governing drinking water quality must be met by all drinking water supplies, regardless of their size, the quantity supplied, the number of persons served, or organizational and ownership structures. Therefore, the minimum requirements cited in the Ordinance also apply to private wells. By adopting this approach, Germany ensures non-discriminating, undivided health protection with respect to drinking water for all citizens, irrespective of the type of drinking water supply that people are depending on. Such small and smallest facilities are also subject to surveillance by the authorities, as stipulated in the Trinkwasserverordnung.

Public wastewater disposal in Germany is a government task executed by municipalities and cities as a public responsibility. With just under 7,000 local authority wastewater management enterprises, the German wastewater sector is divided into extremely small units.

The potential operating forms are classified as follows:

- Publicly owned enterprise: Operated by the community within the context of general community administration
- Municipal utility: Operated by the community as a special asset with separate book-keeping
- Company in its own right: Enterprise under private law owned by the community.
- Operator model/cooperation model: Plant operation is transferred to a private contractor, while responsibility for the completion of tasks remains with the community. In Germany, a particular role is played by (usually) voluntary, in some cases Land-regulated cooperation between local authorities in associations, in order to ensure the efficiently structured organisation of water supply, wastewater treatment and waterbody maintenance from a technical and financial viewpoint, also with regard to waterbody conservation. These associations vary in terms of their assigned tasks, regional coverage and organisational form.

Wastewater disposal in Germany is predominantly carried out by public-law companies. They are dominated by municipal utilities, accounting for a share of 35%, together with special purpose/water associations of multiple local governments (single purpose association/wastewater association) with 34% (as a percentage of inhabitants). Public-law corporations account for a further 16 %. These are primarily found in the cities of Berlin and Hamburg Publicly-owned enterprises account for 7 %.

Wastewater disposal essentially comprises two main tasks: wastewater discharge via the sewer networks or wastewater pumping trucks (so-called rolling sewers), and wastewater treatment in plants. Both tasks may be mandated to various companies by the local authority.

Under the Federal Water Act, the emission of substances into a waterbody is a form of use. This also applies to the direct discharge of treated wastewater, as this contributes to material pollution of the waterbody and requires a permit. Since 1976, minimum nationwide requirements have applied to the discharge of wastewater into waters and hence to the incidence, avoidance and treatment of wastewater. The minimum requirements are defined in § 57 (input of wastewater into waters, so-called direct discharge) of the Federal Water Act (WHG). Since 1996, these minimum requirements have been based on the best available technology. The permissible pollutant load depends on each industry's ability to minimise emissions into water by observing technically and economically viable, progressive processes.

The requirements to be met are set out in the Wastewater Ordinance (AbwV), which contains provisions and emission limits and also defines the best available technology. The minimum requirements for wastewater quality are defined in sector-specific Annexes to the AbwV. To date, 57 such Annexes (in real terms 53 Annexes due to deletions) have been adopted. Annex 1 to the Waste Water Ordinance applies to domestic and public wastewater, while the other Annexes concern individual sectors of commerce and industry.

The licensing requirements and conditions for the discharge of wastewater into public and private wastewater installations (known as indirect discharges) are outlined in Articles 58 and 59 of the WHG in conjunction with the Wastewater Ordinance. Above and beyond this, the Länder may also adopt their own statutory provisions, e.g. containing more stringent licensing conditions, for the indirect discharge of wastewater.

The Wastewater Ordinance also serves to transpose into national law the wastewater-related technical provisions of EU law, such as the Directive concerning urban wastewater treatment, which obligates Member States to collect and purify wastewater from households and small businesses, and is designed to reduce organic pollution as well as nitrate and phosphorus emissions from these sources.

Implementing the Directive on Industrial Emissions (IE Directive) has particular implications. This Directive underlines the importance of best available technology (BAT) by developing and adopting BAT conclusions taken from industry-specific codes of practice.

From a development cooperation point of view, the duty bearer, i.e. the partner country and its institutions are supported. There are multiple roles and responsibility in our partner countries, differing from case to case, no generalized description is sensible here.

#### **4. Performance standards, monitoring and assessment mechanisms**

Information on drinking-water quality within Germany is regularly reported by the local health agencies to the authorities at the level of the Federal States, who then report it annually to the national level where summarizing information is published every 3 years. This information is reported to the European Commission every 3 years as well.

Waste water discharges are controlled regularly under German Law. The results are reported to the federal states authorities. Information on large waste water discharges is publically available under (<https://www.thru.de/search/?c=search&a=grid&L=0>).

Information on the implementation of the EU-Urban- Waste-Water-Treatment-Directive (UWWTD) is reported to the European Commission every two years. Under article 15 UWWTD, discharges from urban waste water treatment plants have to be monitored to verify compliance with the emission control standards. Member States and Commission have jointly developed technical specifications for such reporting within WISE (Water Reporting System for Europe) The results are published under:

- [http://ec.europa.eu/environment/water/water-urbanwaste/implementation/implementationreports\\_en.htm](http://ec.europa.eu/environment/water/water-urbanwaste/implementation/implementationreports_en.htm)
- <http://rod.eionet.europa.eu/obligations/613/overview>
- <https://www.thru.de/kommunales-abwasser/>.

Upon request, information on the status of achieving the Millennium Development Goals and now Sustainable Development Goals for Drinking Water and Sanitation is provided to the respective UN agencies.

The Federal Statistics Office regularly collects and publishes information on the degree of connection to the central water supply and to sanitation; however, decentralized water supplies prevailing in Germany are also considered improved systems.

Information on criminal offences and administrative offences against the requirements of the Trinkwasserverordnung or the federal water act is not collected at the national level.

From a development cooperation point of view, the duty bearer, i.e. the partner country and its institutions are supported. There are multiple standards, monitoring and assessment mechanisms in our partner countries, differing from case to case, no generalized description is sensible here.

#### **5. Which documents and mechanisms exist to define the responsibilities and performance standards of non-state actors, and to monitor and assess their behavior?**

Providing drinking water is within the responsibility of the municipalities as part of public service tasks. Should the municipality choose to contract non-State actors to provide drinking-water services or parts thereof, this is subject to contractual law, which is not within the jurisdiction of the Trinkwasserverordnung.

Generally, the requirements of the Trinkwasserverordnung apply to all operators of drinking-water supplies, irrespective of their legal structure

The obligations laid down in the Federal Water Act and the Waste Water Ordinance apply to public and private actors in the same way. Both are controlled by public water authorities.

From a development cooperation point of view, the duty bearer, i.e. the partner country and its institutions are supported. There are multiple documents and mechanisms in our partner countries, differing from case to case, no generalized description is sensible here.

### **Answerability**

#### **6. Examples – where state provided reasoned justifications for actions and decisions to those whose human rights were affected**

No such examples are collected at the national level. Generally, every German law or secondary legislation has to justify interferences with basic rights of the people, such as property or health. Additionally the German Environment Agency (Umweltbundesamt, UBA) informs the public about state, pressures and impacts of the environment, including drinking water and sanitation.

In many countries, annual sector reviews take place and report on progress, and against performance indicators, where representatives of civil society are involved next to representatives of the state, service providers and donors.

More concretely, with support from German Technical Cooperation, accountability mechanisms have been put in place with regulatory frameworks in Kenya, Uganda and Zambia (e.g. monitoring and reporting against Sector Performance Targets; service provider contracts/licenses, service level agreements including performance targets, rewards and penalty systems).

#### **7. Examples –good practices of where individuals and groups are informed of available accountability mechanisms, mechanisms to support and empower**

A joint working group on small-scale drinking water supply systems exists, and includes representatives of the Federal States (Länder) and Federal authorities. This working group developed an advice booklet containing recommended actions and information for private well owners to provide them with general information on the different types of wells, inform them of their statutory obligations, highlight the benefits of regular controls conducted by themselves, inform them on common hazards in the vicinity of wells as well as on potential structural damages, and highlight the options for repair, control and monitoring (<https://www.umweltbundesamt.de/publikationen/gesund-trinkwasser-aus-eigenen-brunnen-quellen>). In order to reach a wide audience, including those living in rural areas where such systems typically prevail, this publication was provided as a printed version as well as online, and promoted e.g. through local health agencies.

Furthermore, a booklet on general aspects of drinking water was drafted by UBA and published as a printed and online version

(<https://www.umweltbundesamt.de/publikationen/rund-um-trinkwasser>),

as well as a children's book on drinking water

(<https://www.umweltbundesamt.de/publikationen/auf-grosser-fahrt>).

The information platform

[www.thru.de](http://www.thru.de)

informs people about emissions in the environment, including large waste water discharges. So people are enabled to check which emissions into water take place in their neighborhood.

In many cases, German Development Cooperation supports partner countries to introduce or strengthen customer complaint mechanisms in utilities. Together with WIN and CEWAS, German GIZ developed a Water Integrity Toolbox where Customer Complaint Management is an important issue. Sometimes, as in Peru, the time required for processing complaints is a performance indicator of the utilities.

For example, in Peru and Bolivia, the population (in Bolivia, especially women, youth and indigenous groups), was informed on their rights and obligations, and in Bolivia was encouraged to be candidates for a population's representative in water service provision institutions. In Nicaragua, utilities are advised regarding customer friendliness.

Another example of German development cooperation assistance is Uganda, where the Parastatal Utility National Water and Sewage Corporation introduced a "Customer Service Charter" in 2018 and a toll-free number for service and customer care.

## **8. Provision of platform or forum for participation and discussions on remedy measures**

No such examples are collected at the national level. The summarizing reports on drinking-water quality which are published every 3 years are available on UBA's website (<https://www.umweltbundesamt.de/themen/wasser/trinkwasser/trinkwasserqualitaet>), and according to the requirements of the Trinkwasserverordnung, operators of drinking-water supplies are required to inform at least once a year their consumers of the quality of the drinking water they provide in an appropriate format, as well as e.g. of treatment chemicals applied, information on which to base the selection of materials of domestic plumbing systems, and the presence of lead in the distribution system.

According to the Federal Water Act every six years River Basin Management Plans have to be compiled by the River Basin Authorities for all water bodies in Germany. Within this planning process, the public has the opportunity to make suggestions to improve the water quality. This may also cover proposals for better wastewater treatment.

In many countries, annual sector performance reporting with multi-stakeholder representation takes place, and customers are represented in the utilities oversight mechanisms.

## **Enforceability**

### **9. Examples of effective mechanisms for enforceable sanctions or remedial actions**

Information on criminal offences and administrative offences against the requirements of the Trinkwasserverordnung is not collected at the national level. Given the high level of access to safely managed water supplies, the number of such cases, if they exist, is considered to be very low.

Violations against obligations for the treatment of waste water are considered as administrative offences which are enforced by the water authorities. If they lead to a larger contamination of a water body they can be punished as deliberate or negligent water pollution under the German Penal Code (StGB). Statistics on criminal offences (including water pollution) are published by the German Statistical office under

[https://www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/StrafverfolgungVollzug/Strafverfolgung2100300167004.pdf?\\_\\_blob=publicationFile](https://www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/StrafverfolgungVollzug/Strafverfolgung2100300167004.pdf?__blob=publicationFile)

Tough sanctions related to violations of rules and regulations like the withdrawal of licences are difficult in a sector where alternative service provision is often not given, as sanction should not hit the customers in the end.

In Peru, with the assistance of German Development Cooperation a law on the modernization of the water sector was passed with stipulates that service providers which to not attain a certain level of performance and good governance indicators, fall under a so called transition regime. In this regime, the national institution OTASS controls the respective utility. At the same time, the utility receives intensive support to facilitate a quick improvement of the performance indicators.

#### **10. Examples where State and non-state actors were held accountable in front of judicial /quasi-judicial, administrative, political or other mechanisms**

See above the example of Peru.

#### **11. Monitoring and holding accountable non-state actors for actions *negatively* affecting human rights within and outside of its borders**

(No example)

#### **12. How are outcomes of accountability mechanisms implemented and complied with?**

All operators of drinking-water supplies and waste water discharges are responsible to the local competent authorities for their acts. Information on how outcomes of accountability mechanisms are implemented and complied with has not been reported to the national level.