



## **Call for Contributions**

### **Mandate of the Special Rapporteur on the human rights to safe drinking water and sanitation**

#### **Thematic Report to the Human Rights Council 54<sup>th</sup> session: “Fulfilling the human rights of those living in poverty and restoring the health of aquatic ecosystems: two converging challenges”.**

#### **A general note on the interlinkages of the Human Rights for Water and Sanitation and the Human Right for a Healthy Environment.**

The progressive realisation of the Human Rights to Water and Sanitation (HRWS) should not undermine the realisation of other rights, such as right to a clean, healthy, and sustainable environment, which may be impacted by unsafe wastewater and faecal sludge discharge into the environment. The UNGA recognises the Human Right to a Healthy Environment (HRHE) which paves the way to protect the water sources – including groundwater, wetlands, and the oceans (UN-Water, 2021). HRWS and HRHE must be addressed in an integrated way. For example, the decision-making around allocation of water to different usage must be made in a fit-for-purpose manner that respects the needs of current and future needs of users to the extent that this is sustainable, and without causing negative impact on the environment. The fulfilment of the HRWS and HRHE in an integrated approach would require addressing the existing silos between water resources and WASH (UNDP, SIWI and UNICEF, 2023). Evidence shows that the water resources and WASH have evolved to become two distinct sectors with separate governance systems, infrastructures, expertise, and as fields of policy implementation that interact only partially. A study conducted by UNDP, SIWI and UNICEF, ‘Cooperation Opportunities for Improved Integration Across SDG6’ (2023), outlines this fragmentation and how to address it through several joint outcome and cooperation areas.

#### **The key interlinkage of SDG 6 targets.**

A safe, healthy and biodiverse ecosystem depends on ensuring a good-quality wastewater discharge and solid waste management to prevent pollution of water resources and the environment. The SDG6 goal sets out a comprehensive vision to establish the linkages between water and ecosystem health. To fully achieve the goal, countries must understand this connection and design policies and plans accordingly. For example, the interventions to meet the access to sanitation (SDG6.2) must be matched by increased wastewater treatment (SDG6.3) if good ambient water quality (SDG6.3) and healthy water-related ecosystems (SDG6.6) are to be sustained. Similarly, a good ambient water quality (SDG6.3) greatly facilitates the provision of safe drinking water (SDG6.1), which in turn must be allocated sustainably (SDG6.4), without negative consequences for water-related ecosystems (SDG6.6) (UNDP, SIWI and UNICEF, 2023). Thus, cooperation across the water sector and stakeholders

is critical but equally important is upscaling the good practices. Furthermore, commitments from countries will be needed to accelerate this transformative shift in facilitating this cooperation, leading to achieving the global agenda goals and protecting the HRWS and HRHE.

## Questionnaire

### Key information sought

To facilitate the reception of inputs, the Special Rapporteur prepared a list of key information which he considers essential for the report. The list could be answered **entirely or partially** according to the expertise and experience of those actors willing to contribute to the Report. Please find the list of topics here:

### The global, regional, national or local legal and/or policy framework that:

- Protects the conservation of aquatic ecosystems, including groundwater and promotes the sustainable use of aquatic ecosystems.
- Recognizes the importance of aquatic ecosystems for fulfilling the human rights to safe drinking water and sanitation.
- Establishes the linkages between the human rights to safe drinking water and the health of aquatic ecosystems.

The Stockholm International Water Institute (SIWI), the United Nation’s Children Fund (UNICEF), World Health Organization (WHO) and the Interamerican Development Bank (IDB) have developed an approach to map the regulatory functions around WASH. It is called the WASH REG<sup>1</sup>. The WASH REG tool analyses six regulatory functions related to WASH. One of these functions is the regulatory function on environmental matters, directly linked with the availability and quality of water for WASH. The approach comes with more than 50 action sheets with good practices from across the world on the matter. The table below summarises the action sheets related to the environmental function, where there is a collection of practical examples where the linkages between WASH and the water bodies are made clear.

**Table 1.** Summary of WASH REG action sheets on the environmental function.<sup>2</sup>

OBJECTIVE	ACTION	Examples from:
1. Regulatory requirements for water abstraction and management of faecal sludge, effluent or wastewater are in place	A. Set standards for quality of effluent discharges arising from wastewater services	Tanzania United Kingdom
	B Define the mechanism for the approval of water abstraction rights and faecal dislodging and wastewater effluent discharge permits	South Africa Ireland
	C. Establish environmental protection zones, associated rules, and regulatory compliance procedures	European Union

<sup>1</sup> More information can be found here at [www.washreg.org](http://www.washreg.org) (SIWI, 2022).

<sup>2</sup> Full action sheets can be found here at <https://siwi.org/the-washreg-approach-action-sheets/?iproject=unicef-accountability-for-sustainability>

2. Environmental compliance of water and wastewater service operators, industries and agriculture is monitored through the collected information about the status of water resources, its use and protection	A. Establish and manage the water resources abstraction and wastewater effluent discharge registers	Malaysia Ireland
	B. Develop systematic approaches for routinely sharing water resources information with the public	Zambia European Union
	C. Raise public awareness on rational use of water	United Arab Emirates
	D. Develop inspection protocol for water abstraction and discharge points and receiving waterbodies	Hong Kong Ireland
	E. Establish mechanism for receiving and dealing with citizen complaints related to water resources use	Canada (Quebec)
3. Water abstractors and polluters are sanctioned when committing environmental infringements	A. Penalize actors for their non-compliance with environmental legislation and policies	Germany Ireland
	B. Manage non-compliance cases as a knowledge practice for future recalls	Canada

- Recognizes and/or protects community-based water governance mechanisms such as the ones of peasants, indigenous peoples, afro-descendants, and local communities.

The concept of "water governance mechanisms" needs to be seen from a different and unique perspective when addressing it on the light of Indigenous Peoples. For an upcoming report from the Water Governance Facility at SIWI on Indigenous values related to water, Yaa Heen Koosge, several Indigenous Groups have outlined their relationships with their water bodies, where values like respect, reciprocity and relatedness sit at the heart of governance. "For many Indigenous communities, there is a concept of a 'dynamic balance' between all components within their territory, whether flora, fauna, water bodies, mountains etc. and that people's rights and obligations and 'acceptable activities' are tailored to uphold this 'dynamic balance'. Some authors note that things are not set-in stone, but there may be shifts over time (Gould et al 2019). Patterns of changing water sources dominate communal and cultural life and impact on the land and water directly impact all aspects of community wellbeing.

Most Indigenous communities express a strong ethic of stewardship or guardianship as central to governance opposed to resource-centric approaches that focus on ownership and management, as expressed through their respective worldviews, for example kaitiakitanga in Aotearoa New Zealand. Stewardship, in this conception, embodies a role in supporting water bodies and local environments to reach their fullest potential, especially level of health of the water body and ensuring the capacity for water bodies to play their own roles in the relationship with people. At a basic level, governance means that the water bodies should flow as appropriate to their character, that their health status and lifeforce are able to maintain a dynamic balance amongst all those that are dependent upon it. Water bodies such as rivers or lakes are thus enabled to reach their fullest potential. For these reasons, Indigenous Peoples should never be simply treated as stakeholders, as their rights and obligations continue to exist, irrespective of any formal recognition or support by States, but hold a place that is greater in meaning." (SIWI, forthcoming)

- Determines a framework or standards to protect aquatic ecosystems from overexploitation and pollution.

In Aotearoa New Zealand and Australia, a number of mechanisms, such as the cultural health index are being explored for ensuring the values of Indigenous Peoples are included in wider water governance. Moggridge, B., Thompson, R.M, Radoll, P. (2022) in the indigenous research methodologies in water management, highlights the learning from Australia and New Zealand for application on Kamilaroi country.

- Determined accountability and monitoring mechanisms to guarantee/promote transparency on the uses of water by large water users (large-scale agriculture, industries (including extractive industries), and commercial uses).
- Establishes procedural obligations and mechanisms to protect aquatic ecosystems as safe drinking water sources.

The Multiple-use water services (MUS) implemented in several countries (Water-use master planning in Nepal<sup>3</sup>, Multiples Uses of Water in Madagascar<sup>4</sup>: drinking water, agriculture and livestock) is a holistic approach that has contributed towards conservation and protection of local water sources through inclusion of a localized Payment for Ecosystem Service (PES) that implements catchment management activities using a portion of MUS user fees. Another example is the water tariff in Costa Rica that is designed to protect the water sources and to improve and guarantee its availability and quality. The previously mentioned study conducted by UNDP, SIWI and UNICEF on understanding the linkages between Water Resources and WASH highlights such best practices (UNDP, SIWI and UNICEF, 2023). Also, noteworthy is the initiative “Safeguard of water source-protected area” in Ecuador. Different from a traditional water protection area safeguarding, this specific mechanism is based on the provisions of recognition of water as a subject of rights, assuring collective management by indigenous peoples and nationalities, as it was stated in the Constitution of 2008 in Ecuador<sup>5</sup>. Until January 2023, 21 water protection areas have been declared in the country<sup>6</sup>.

- Incorporates a rights-based approach to the management of aquatic ecosystems.
- Environmental and/or social safeguards to guarantee that the health of aquatic ecosystems is not affected by external interventions.
- Guarantee rights holder access to justice if the health of the aquatic ecosystems they depend on is affected.
- Regional or national mechanisms that protect water in the framework of the human rights to a clean and healthy environment.
- Protect water rights defenders from retaliation and criminalization based on their activism.
- Minimizes/reduces the requirements or high standards to protect aquatic ecosystems, allowing the pollution and depletion of aquatic ecosystems.

<sup>3</sup> The details on MUS example in Nepal can be found here at [https://www.helvetas.org/Publications-PDFs/13\\_waterusemasterplan\\_wump\\_blaui\\_final\\_engl\\_a4\\_portrait.pdf](https://www.helvetas.org/Publications-PDFs/13_waterusemasterplan_wump_blaui_final_engl_a4_portrait.pdf)

<sup>4</sup> The details on MUS example in Madagascar can be found here at <https://www.unicef.org/media/91361/file/Multiple-Uses-of-Water-in-Madagascar-drinking-water-agriculture-and-livestock.pdf>

<sup>5</sup> Solis Carrion, Helder; Interview, November 2019.

<sup>6</sup> More information can be found here in the article ‘Ecuador already has 21 water protection areas’ at <https://www.ecuadortimes.net/ecuador-already-has-21-water-protection-areas/>

### **The global, regional and national court rulings that:**

- Determined linkages between the human right to safe drinking water and the health of aquatic ecosystems.
- Established linkages between the pollution of aquatic ecosystems and the lack of access to safe drinking water and sanitation.
- Urged states to protect aquatic ecosystems to guarantee the human rights to safe drinking water and sanitation.
- Established the legitimacy of an indigenous or non-indigenous community to manage a water source according to their governance mechanisms.
- Obligated a state to restore an aquatic ecosystem.
- Obligated a private company to compensate/remedy right holders for damaging the aquatic ecosystems they depend on.
- Recognized a river, lake, spring, creek or another water source as a right-holder.

For a listing of court's ruling on the matter, it is worth mentioning the repertoire created by the United Nations General Assembly's initiative 'Harmony with Nature'<sup>7</sup>. Initiated in 2009 under the leadership of the Plurinational State of Bolivia, the initiative puts together nine UN resolutions that were passed since its inception and that are based on recognizing rights from a non-anthropocentric paradigm. The initiative also has compiled an extensive list of national, regional and local regulations, as well as court ruling on the rights of nature and nature bodies as subject of rights. The repertoire contains information of 30 countries<sup>8</sup>. (Harmony with Nature UN, 2023).

- National and regional cases framed in the right to a clean and healthy environment.
- Applied at the national level the regional legal frameworks protecting water rights defenders (for instance Escazú agreement)

CEPAL's observatory on Principle 10 of the Rio Declaration compiles policies, legislation, jurisprudence and treaties that guarantees the access to information, public participation and access to justice in Environmental matters. Jurisprudence of several Latin American Countries are listed there in English and Spanish in the webpage.<sup>9</sup>

- Implemented at national or local levels regional directives or rules that protect water sources (for instance, the EU directives on water).

### **Statistics and Data sources**

- Available independent and official data on the health of aquatic ecosystems to assess the need for restoration or conservation.
- Good experience in applying non-state or state community-based monitoring of aquatic ecosystems.

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<sup>7</sup> More information about Harmony with Nature UN, 2023 can be found here at <http://harmonywithnatureun.org/rightsOfNature/>

<sup>8</sup> More information on the repertoire of the 30 countries can be found here at <http://harmonywithnatureun.org/rightsOfNature/>

<sup>9</sup> Jurisprudence of several Latin American Countries are listed there in English and Spanish and can be found here <https://observatoriop10.cepal.org/es/jurisprudence/language/en>

## **Institutions and governance mechanisms**

An important governance instrument to protect the ecosystem as well as the right to water and sanitation is effective enforcement of environmental, WASH services and public health regulation. In many countries, regulations may exist, but enforcement is weak. This can be as a result of overlaps and multiple institutions having mandated to regulate the same services, and with no clarity in the roles and responsibilities. Often the mandate of these regulations comes under different ministries, departments and levels, for instance, environmental under water resources or environment which is separate from the WASH services and public health regulatory body. Proactive cooperation between these regulators is needed on the overlapping areas of their mandates. Cooperation on environmental, service and public health regulation in practice can include; jointly setting standards for environmental water quality and wastewater and sewage sludge safety standards; setting appropriate wastewater tariffs with meeting the required level of wastewater treatment and enabling safe agricultural wastewater reuse that meets the environmental regulatory standards; establishing related regulatory zones, such as drinking source-water protection zones; cooperation on water use efficiency, demand management and conservation strategy development and implementation (UNDP, SIWI and UNICEF, 2023). Governance based tools such as the WASH REG approach mentioned earlier in the document, which has been implemented in several countries (Bolivia, Colombia, Iraq, Liberia,) can promote achieving these objectives, further strengthening regulatory mechanisms to protect the environment as well as providing safe WASH services to all.

- State and non-state actors involved in the governance of aquatic ecosystems.
- Governance mechanisms of aquatic ecosystems by state (including local authorities) or non-state actors (including community-based organizations)
- Financial means and budget allocation to state aquatic ecosystems' governance and accountability frameworks (including environmental safeguards to avoid water contamination and overexploitation of water sources)

## **To right holders**

- Examples of how aquatic ecosystems are linked to fulfilling the human rights to safe drinking water and sanitation in your personal experience or collective community experience.
- Provide examples on how the recognition of legal personhood of aquatic ecosystems has contributed to promote democratic governance and their restoration.

In recent years, interest has grown in the concept of empowering and granting legal rights for natural features, the most prominent of which are different river basins. In many jurisdictions, legal systems have followed the Roman law, based upon an anthropocentric worldvision, which considers humans as the center of the universe and all living matter around them as objects designed to fulfill their own needs. These jurisdictions treat nature, and specifically land and rivers or their constituent parts, as property under their respective laws, something that can be bought and sold for profit, including landforms and the water therein (Wilson & Lee, 2019). While the legal approaches vary in their jurisdiction, scale, and how they are anchored, rivers and natural features are being granted legal personhood or its equivalent around the world, through either legislative action or via judicial action (Ekstein et al, 2019). Legal standing enables a river or other natural feature to take legal action without necessarily having to demonstrate harm to human users of the river (Acosta & Martinez, 2010, 211; O'Donnell & Talbot-Jones, 2018).

The reason for transferring rights differ according to the specific context. Whilst Indigenous Peoples have been the driver of legal processes in several countries, other geographical regions may have different rationales for promoting the process. The transferal of legal rights is regarded as having potential for realizing and supporting healthy rivers (Maloney 2018; Wujits et al, 2019), with rights including both procedural and substantive elements. Procedural rights include the rights of access to information, participation, and access to the judicial system. Substantive rights to include protection from pollution, good ecological status, and potential free-flowing elements. In the first case, the Ecuadorian Constitution of 2008 enshrines nature with the rights of respect and maintenance of its natural cycles, including the right to evolve, which integrates the perspective of intergenerational justice. Overall, recent literature notes four main reasons for transferring rights to rivers and other natural features. The first is to give effect to the rights, values, and aspirations to Indigenous Peoples (such as in New Zealand and Canada); the second is to elevate a river or natural feature to equal status under the law (such as in Ecuador and Bolivia), the third is to give the river or natural feature the right to advocate for its own interests there (such as in the United States), and finally, to allow the system to participate in water and ecosystem services markets (such as in Australia).

As mentioned before, Ecuador recognized the constitutional right of Mother Earth (Constitution of the Republic of Ecuador, 2008, Section 71), whereas Bolivia adopted Law No. 071 on the Rights of Mother Earth in 2010. At a sub-national level, the Whanganui River (Te Awa Tupua) and the Te Urewera region in New Zealand (consisting of Lake Waikaremoana and surrounding lands) and the Amazon Basin and Atrato River in Colombia were recognized through legislative action, while the Ganges and Yamuna Rivers in India (although this is still being appealed in India’s Supreme Court) were recognized through judicial action (Ekstein et al 2018).

The effectiveness of using the granting of legal rights to rivers or other natural features as an alternative governance mechanism is highly dependent on how the changes are enacted and the broader framework in which it is embedded. In the case of the Whanganui River and Te Urewera, processes were led by Indigenous Groups who were granted mandate to speak on behalf of the rivers and natural features and have been allocated legal responsibilities in terms of the asserting these rights. Both recognition and transfer of such rights were through the results of Deeds of Settlement made between the New Zealand Government and the local Iwi (tribes) of Māori people in respect to legal claims, in a process specific to that country (Ekstein et al 2018). Lessons emerging from these, and other, processes, include the need to build and maintain community backing for why rivers need support, along with the need to articulate the benefits of healthy systems.

**Table 2.** Brief summary of integration of the rights of nature since 2008

<b>Year</b>	<b>Country</b>	<b>Situation</b>
2008	Ecuador	Included the Rights of Nature in its constitution.
2012	Bolivia	Passed the law of Mother Earth and holistic development for living well
2017	Colombia	Granted personhood to the Rio Atrato

2017	Mexico	Adopted the Rights of Nature in its constitution
2017	New Zealand	Recognized the rights of the Whanganui River
2017	India	Local-level government recognize the rights of the Ganges, Yumana, and Narmada rivers, although the national government overturned the recognition on the Ganges pending further planning
2019	Yurok	Declared personhood rights of the Klamath River in Tribal Law
2019	Bangladesh	The High Court recognized the Turag River as a living entity with legal rights and held that the same will eventually apply to all rivers in Bangladesh
2020	Chile	Working with the Mapuche Indigenous along with environmental organizations working to secure rights of the Biobio River
2020	Nepal	Working on a constitutional amendment to recognize the Rights of Nature to include rivers.

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The transfer of rights involves consideration of key questions and answers will be dependent on the local context where these are asked. Such questions include:

- If a river or natural feature has rights, does it also have responsibilities?

How does a natural feature such as a river represent itself in institutions such as courts? In the case of Bolivia, an Ombudsman was appointed to help deal with this role, whereas in the case of Ecuador, the use of the right was driven by individuals (as v.g., in the Vilcabamba River case and the Rio Blanco case). It can also be led by a group of people (such as in the Galapagos Case case) or a service provider operator the Estero Wincheles in Esmeraldas case case), or the Ombudsman (e.g., he AL Cofan Sinagoe case).

- In Aotearoa New Zealand, guardians were appointed.
  - Similarly, if a river can suffer harm and sue alleged polluters, might it also be subject to lawsuits for damages it might inflict as a result of flooding?
  - To what extent is it necessary to enshrine rights to nature, if duties for potential violators of environmental protection law are not enforced?
  - What resources might a river have at its disposal to protect its rights?
  - Does the recognition of such rights interact with the rights, interests and perspective of indigenous peoples?
- Describe experiences that reflect the intersectionality among the degradation of aquatic ecosystems, poverty and lack of access to safe drinking water and sanitation.



- Examples on how degraded aquatic ecosystems impact groups and population in situations of vulnerability, such as: Persons living in poverty, women and girls, children, persons with disabilities, black people, and Indigenous Peoples.
- Describe how the governance mechanisms of the river, lake, spring, or other aquatic systems provide safe drinking water for personal consumption and use. Kindly provide examples.
- Examples of how the unhealth of an aquatic ecosystem has affected the fulfilment of the human rights to safe drinking water and sanitation of you or your community.
- Examples of restoration of aquatic ecosystems with a human rights perspective.

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