

Questionnaire

Call for inputs - Special Rapporteur on the human rights to safe drinking water and sanitation – Questionnaire to inform the thematic report on "Fulfilling the human rights of those living in poverty and restoring the health of aquatic ecosystems: two converging challenges."

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.

Answer:

The Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes

(<https://www.umweltbundesamt.de/en/topics/water/drinking-water/protocol-on-water-health>)

aims to protect public health from water-related diseases in the UNECE region. It was adopted in 1999 and entered into force in 2005. The United Nations Economic Commission for Europe (UNECE) and the World Health Organization (WHO) provide the joint secretariat for the Protocol.

It is the first international, legally-binding instrument on water and health. Parties to the Protocol are required to establish national targets to achieve or maintain a high level of protection from water-related diseases. Thematic areas in which targets can be set include for example improving access to drinking water and provision of sanitation for everyone, the protection of waters used as sources for drinking water, the quality of waters which are used as sources for drinking water, for bathing or which are used for aquaculture or for the production or harvesting of shellfish, and the effectiveness of systems for the management, development, protection and use of water resources, including the application of recognized good practice to the control of pollution from sources of all kinds. Germany has been a Party to the Protocol since 2007, and has set and submitted initial national targets in 2011 and updated national targets in 2021.

The work on equitable access under the Protocol's Programmes of Work aims at enhancing access to water and sanitation for all, including poor, vulnerable and socially excluded people. Several tools have been developed on this topic, including the Equitable Access Score-card (<https://unece.org/environment-policy/publications/equitable-access-score-card-supporting-policy-processes-achieve>) that supports policy processes to achieve the human right to water and sanitation, however, this score card has not yet been applied in Germany.

The decisive national law relating to water resource management is the Federal Water Act (Wasserhaushaltsgesetz, WHG), which legislates a regulated management of surface and groundwater in terms of their quality and properties, and to control human interventions into waterbodies.

The Surface Waters Ordinance (Oberflächengewässerverordnung, OGewV) sets out the statutory provisions in greater detail and implements the Environmental Quality Standards Directive, the Directive laying down technical specifications for chemical analysis and the EU Intercalibration Decision.

Specific provisions on achieving management objectives to be met for groundwater are regulated in the Groundwater Ordinance, which transposes the EU Groundwater Directive into German law.

- Recognizes the importance of aquatic ecosystems for fulfilling the human rights to safe drinking water and sanitation.

Answer:

Intact ecosystems are prerequisite for drinking water supply. In addition to groundwater, bank filtrate and surface water are used as raw water in Germany. To safeguard these resources and their ecosystems regulations on different levels (European Union, National Law, Law of the German federal states) contain conditions for the quality of surface waters, groundwater and drinking water and for the use of water (discharges, water extractions). Transboundary cooperation is of importance in this regard. Germany is therefore Party to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes

- Establishes the linkages between the human rights to safe drinking water and the health of aquatic ecosystems.

Answer:

On 15th March, 2023, the National Water Strategy for Germany (https://www.bmu.de/fileadmin/Daten_BMU/Download_PDF/Binnengewasser/nationale_wasserstrategie_2023_en_bf.pdf) was adopted. Many of the water-related SDGs set forth in the 2030 Agenda, which were adopted by the UN member states in 2015, have been achieved in Germany. However, despite undeniable progress, shortcomings still exist in Germany, e.g. in the protection and improvement of aquatic and water-dependent ecosystems or the further reduction of water pollution caused by the discharge of hazardous substances. Water scarcity is an upcoming issue in Germany as well. This is where the National Water Strategy comes into play. It will contribute to the global implementation of the goals of the 2030 Agenda and the initiatives undertaken in this context such as the UN Decade of Action on Water for Sustainable Development and the UN Decade on Ecosystem Restoration.

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

Answer:

Not relevant for Germany

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

Answer:

On the European level the EU Water Framework Directive (WFD - 2000/60/EC) requires that rivers, lakes, transitional and coastal waters, and groundwater achieve "good status" by the year 2027 at the latest. The European Union has provided a clear timetable as well as three six-year management cycles for Member States to achieve that goal. This is a big challenge not only for Germany. (see report on the third management cycle under: <https://www.umweltbundesamt.de/en/press/pressinformation/only-ten-percent-of-germanys-water-ecologically>). All Member States are obliged to implement the provisions and quality standards laid down in the WFD and its daughter directives on environmental quality standards for surface water bodies (2008/105/EC) and for groundwater (2006/118/EC) as well as the management duties. The EU Directive on urban waste water treatment (UWWTD - 1991/271/EC) limits the emission of municipal waste water discharges by setting emission limits.

In Germany a comprehensive set of legislation exists, that implements these obligations and regulates interventions in water bodies with regard to discharge, use and water withdrawals (Federal Water Act - WHG and secondary legislation: surface water, groundwater and waste water ordinances). The water authorities are responsible for examining these interventions and aligning them with the objectives of water management. According to § 6 WHG, the objectives of water management are for instance to manage the waters in such a way that the functional capacity and efficiency of the water bodies as a component of the natural balance and as a habitat for animals and plants is maintained and improved, in particular by protecting them

against adverse changes of the characteristics of the water, impairments also with regard to the water balance of the terrestrial ecosystems and wetlands directly dependent on the water bodies are to be avoided and not only minor impairments are to be compensated for as far as possible.

- 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).

Answer:

The responsible water authorities not only approve water withdrawals via licences, they also check the compliance of specific conditions, e.g. the minimum discharge in a water body. In a large number of regions in Germany, water withdrawals are subject to charges and are therefore precisely recorded. All municipal and industrial waste water discharges are subject to the federal Waste Water Charges Act. The charge is based on the quantity and harmfulness of certain discharged ingredients so that they all have to be monitored and reported regularly.

- Establishes procedural obligations and mechanisms to protect aquatic ecosystems as safe drinking water sources.

Answer:

In Germany, about 70% of drinking water is extracted from groundwater, about 12.6% from lakes and reservoirs, and only about 1.2% from rivers. The protection of aquatic ecosystems not only ensures the preservation of safe drinking water sources, but also the protection of the aquatic ecosystems themselves in accordance with the requirements of the EU Water Framework Directive. Apart from the implementation and control of the environmental quality standards mentioned above the competent authorities of the Federal States have the additional opportunity to design special water protection areas or buffer stripes along rivers where certain uses are restricted or forbidden.

- Incorporates a rights-based approach to the management of aquatic ecosystems.

Answer:

Water is managed as a public good in Germany, i.e. that everyone who wants to use it (e.g. for extraction or for waste water disposal) needs a license from the competent water authority which will only grant it, if the legal requirements (e.g. environmental quality standards, emission limit values) are complied with.

Water management of aquatic ecosystems is also part of the legally binding objectives and requirements under the EU Water Framework Directive. This includes the identification of significant pressures, status assessment and, in case of failing environmental objectives for surface waters and groundwaters, the implementation of measures.

- Environmental and/or social safeguards to guarantee that the health of aquatic ecosystems is not affected by external interventions.

Answer:

See above

- Guarantee rights holder access to justice if the health of the aquatic ecosystems they depend on is affected.

Answer:

In accordance with the German Constitution (Basic Law – Grundgesetz, GG) anyone asserting that their rights are being infringed by public authority may have recourse to the courts (Section 42 (2) Code of Administrative Court Procedure – Verwaltungsgerichtsordnung, VwGO). To bring an action, claimants must be able to show that the intended act may violate their rights.

This is the case, for example, if an approved project would impair a person's property or health. Additionally, environmental and nature conservation law allows recognized environmental associations to bring actions before administrative courts without their own rights being affected (called "Verbandsklage"). These special remedies for environmental associations have their legal basis in the Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG). This serves to implement the requirements of international and European law, especially the EU's Public Participation Directive (2003/35/EC) and the Aarhus Convention.

- Regional or national mechanisms that protect water in the framework of the human rights to a clean and healthy environment.

Answer:

See above: Many of the water-related SDGs set forth in the 2030 Agenda, which were adopted by the UN member states in 2015, have been achieved in Germany. However, despite undeniable progress, shortcomings still exist in Germany, e.g. in the protection and improvement of aquatic and water-dependent ecosystems or the further reduction of water pollution caused by the discharge of hazardous substances. This is where the National Water Strategy comes into play. It will contribute to the global implementation of the goals of the 2030 Agenda and the initiatives undertaken in this context such as the UN Decade of Action on Water for Sustainable Development and the UN Decade on Ecosystem Restoration.

- Protect water rights defenders from retaliation and criminalization based on their activism.

Answer:

Everyone can commit to water rights within the constitutional freedom of speech and freedom to demonstrate.

According to Article 5 of the Basic Law (GG) everyone shall have the right freely to express and disseminate his or her opinions in speech, writing and pictures and to inform himself or herself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by radio and film are guaranteed. There shall be no censorship. Art and science, research and teaching are free.

According to Article 8 (1) of the Basic Law (GG), all Germans have the right to assemble peacefully and without weapons without registration or permission. This fundamental right enables citizens to actively participate in the political opinion-forming and will-forming process.

- Minimizes/reduces the requirements or high standards to protect aquatic ecosystems, allowing the pollution and depletion of aquatic ecosystems.

Answer:

See above: There exist high environmental quality standards for water bodies according to the EU Water Framework Directive (including some exemptions, like natural reasons, technical feasibility, disproportionate costs) and emission limit values for waste water according to the Urban Waste Water Treatment Directive both implemented by German law. Additionally, economic instruments like the waste water charge and the water extraction fee set incentives to reduce pressures on aquatic ecosystems.

The global, regional and national court rulings that:

- Determined linkages between the human right to safe drinking water and the health of aquatic ecosystems.

Answer:

The European Court of Justice and the German Administrative Courts are in charge for complaints against Member States or national authorities not implementing the European and national water requirements

- Established linkages between the pollution of aquatic ecosystems and the lack of access to safe drinking water and sanitation.

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- Urged states to protect aquatic ecosystems to guarantee the human rights to safe drinking water and sanitation.

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- Established the legitimacy of an indigenous or non-indigenous community to manage a water source according to their governance mechanisms.

Answer:

Not relevant for Germany

- Obligated a state to restore an aquatic ecosystem.

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- Obligated a private company to compensate/remedy right holders for damaging the aquatic ecosystems they depend on.

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- Recognized a river, lake, spring, creek or another water source as a right-holder.

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- National and regional cases framed in the right to a clean and healthy environment.

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- Applied at the national level the regional legal frameworks protecting water rights defenders (for instance Escazú agreement)

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

Answer:

One important judgment of the European Court of Justice (ECJ) in case C-543/16 was passed on 21st June, 2018. The subject matter of the dispute was Germany's failure to implement the EU Nitrate Directive (91/676/EEC) into national law. In the judgment, the ECJ decided, that Germany had violated the Nitrates Directive because no additional measures had been taken to revise the inadequate German action programme (in the form of the Fertilizer Ordinance) to reach the standards laid down for the groundwater status.

The European Court of Justice has also ruled in case C-535/18 on 28th May, 2020. that the environmental objectives of the WFD are not only programmatic obligations of the Member States, but are binding for every project. Accordingly, the deterioration of a surface water body leads to the mandatory prohibition of a project. This has for example affected the licensing procedures for further deepening of the rivers Weser and Elbe for navigation.

Statistics and Data sources

- Available independent and official data on the health of aquatic ecosystems to assess the need for restoration or conservation.

Answer:

It is the task of the Federal States' authorities to monitor the quality of the aquatic ecosystems. The data are reported regularly to the European Commission and to the European Environment Agency (EEA). The data are published on the websites of the German federal states in

comprehensive reports of the of the Federal Environment Agency, European Commission and the European Environment Agency.

- Good experience in applying non-state or state community-based monitoring of aquatic ecosystems.

Answer:

The chances and risks of citizens science for monitoring aquatic ecosystems are still in testing. The National Water Strategy (see above) addresses this issue and urges for the promotion of this tool.

Another example are stream sponsorships. A stream sponsorship consists of so-called stream sponsors, committed citizens and interested parties who actively help through their work to improve ecological status of streams, or just passively through their financial support. This is already implemented in many federal states in Germany.

Institutions and governance mechanisms

- State and non-state actors involved in the governance of aquatic ecosystems.

Answer:

State actors (competent authorities) are responsible for the execution of the water legislation. In certain cases, the provisions ask for the participation of other authorities or the public (e.g. when drafting the river basin management plans according to EU Water Framework Directive every six years).

The development of the National Water Strategy was preceded by a two years lasting stakeholder dialogue which included state actors and non -state actors. It recommends the participation of the public for several issues.

- Governance mechanisms of aquatic ecosystems by state (including local authorities) or non-state actors (including community-based organizations).

Answer:

See above: Water is managed as a public good in Germany, i.e. that everyone who wants to use it (e.g. for extraction or for waste water disposal) needs a license from the competent water authority which will only grant it, if the legal requirements (e.g. environmental quality standards, emission limit values) are complied with.

- 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).

Answer:

The establishment of an effective execution of the water legislation has to be ensured by the budget of the 16 German federal states. Additionally, economic instruments like the waste water charges and the water extraction fees are established in Germany to set incentives to reduce pressures on aquatic ecosystems. The revenues of these charges and fees regularly are legally bound for the protection of aquatic ecosystems.

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.

Answer:

Since more than 99% of the population in Germany is connected to the public drinking water supply with good quality according to European Drinking Water Standards laid down in the EU Drinking Water Directive (2020/2184/EU) and the German Drinking Water Regulation vulnerability due to bad drinking water quality is not an issue in Germany.

- Provide examples on how the recognition of legal personhood of aquatic ecosystems has contributed to promote democratic governance and their restoration.

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- Describe experiences that reflect the intersectionality among the degradation of aquatic ecosystems, poverty and lack of access to safe drinking water and sanitation.

Answer:

Not relevant to Germany. More than 99% of the population in Germany is connected to the public drinking water supply.

- 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.

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- 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.

Answer:

According to Article 7 EU Water Framework Directive Member States shall identify, within each river basin district all bodies of water used for the abstraction of water intended for human consumption providing more than 10 m³ a day as an average or serving more than 50 persons, and those bodies of water intended for such future use. Member States shall monitor those bodies of water.

For each body of water identified Member States shall ensure that under the water treatment regime applied, and in accordance with Community legislation, the resulting water will meet the requirements of the EU-Drinking Water Directive 80/778/EEC as amended by Directive 98/83/EC and 2020/2184/EU.

According to § 50 Federal Water Act (WHG) the government of a Federal State may insofar as the public good requires it

- protect water bodies from adverse impacts in the interest of the present or future public water supply,
- to recharge the groundwater or
- to prevent the harmful run-off of precipitation water and the washing away and entry of soil constituents, fertilizers or pesticides into water bodies,

establish water protection areas by ordinance.

According to § 51 WHG in these areas

1. certain activities may be prohibited or declared permissible only to a limited extent,
2. the owners of land may be obliged to,
 - a) to perform certain acts relating to the land, in particular to use the land only in a certain way,
 - b) to make and keep records of the management of the land and to submit them to the competent authority on request,
 - c) to tolerate certain measures, in particular the observation of the watercourse and the soil, the monitoring of protective regulations, the erection of fences as well as markings, planting and afforestation,
3. Beneficiaries are obliged to undertake the measures to be tolerated.

- 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.

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- Examples of restoration of aquatic ecosystems with a human rights perspective

Answer

An example of securing drinking water supply (not so much in terms of human rights) through the restoration of an ecosystem is Lake Constance, central Europe's third-largest lake. The International Commission for the Protection of Lake Constance is responsible to supply high-quality drinking water, and protect ecology of the lake. The Lake Constance Water Supply Company (Bodensee Wasserversorgung), supplies 17 million m³ of drinking water per year to 320 municipalities with a total of approximately 4 million inhabitants. In the 1950s Lake Constance was in a nutrient-poor ('oligotrophic') state 1950, resulted in algal blooms and anoxic conditions. To safeguard drinking water supply, investments over EUR 5 billion in constructing and modernising sewage channels and 220 water treatment plants, the water quality increased significantly and is still of high quality.