May 26, 2023

Dr. Pedro Arrojo-Agudo

UN Special Rapporteur on the Rights to Water and Sanitation

Via email: hrc-sr-watsan@un.org; daniela.chavezmendoza@un.org

RE: Input from the Environmental Law Institute and the Environmental Peacebuilding Association to the UN Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation’s Upcoming Thematic Report on “The Rights to Water and Sanitation as a Tool for Peace, Prevention and Cooperation”

Dear Dr. Arrojo-Agudo:

The Environmental Law Institute and the Environmental Peacebuilding Association have the privilege to submit the following input for consideration in developing the upcoming thematic report on “The Rights to Water and Sanitation as a Tool for Peace, Prevention and Cooperation.” Our remarks focus on questions 1, 2, 4, 5, 7, 11, 16, and 19 set forth in the [call for inputs](https://www.ohchr.org/en/calls-for-input/2023/thematic-report-78th-session-un-general-assembly-rights-water-and-sanitation).

1. *Please present examples of good or promising practices that highlight how transboundary cooperation can support the realization of human rights to water and sanitation.*
* Principles of customary international law governing transboundary watercourses and aquifers—including the duty of cooperation, the duty not to cause significant harm, and the reasonable and equitable utilization of shared resources—as well as the practice of free, prior informed consent *support and reinforce* the realization of human rights to water and sanitation.
* Examples of data sharing arrangements supporting shared understanding of a transboundary basin and enabling early warning include International Commission for the Protection of the Danube River’s Transnational Monitoring Network and the International Joint Commission (between the United States and Canada).
* Examples of long-term trust building engagements that complement governance, management, and data sharing cooperation in transboundary basins include the Shared Waters Partnership Program and IUCN’s Bridge Programme.
* Examples of inclusive consultation and decision-making processes that have strong involvement of women, Indigenous communities, and young people strengthening the sustainability and promoting durable peace in transboundary contexts include the Women in Water Diplomacy Network and the Indigenous Women’s Leadership Network.
* Application of human rights-based approaches within transboundary water cooperation processes often promote and institutionalize mapping of entitlements and claims, identifying State duties, rights-holders, and duty-bearers.
1. *How has water cooperation (transboundary, subnational, local) helped overcome conflicts and limit the stress on water systems and water-related infrastructure?*

Water cooperation and water diplomacy can play important roles in crisis and conflict situations as part of efforts to build resilience through enhanced cooperative management, data exchange, and trust building. These are also critical aspects of post-conflict and post-crisis recovery and rebuilding efforts ([Troell & Weinthal 2014](https://www.environmentalpeacebuilding.org/assets/Documents/LibraryItem_000_Doc_941.pdf)). Water cooperation and water diplomacy processes have contributed to bringing communities and decision-makers together around shared environmental objectives, supported efforts to establish joint frameworks and institutions, enhanced collaboration, and information sharing, and strengthening the foundations of peaceful and sustainable societies. Examples include establishment of river basin organizations, undertaking joint fact-finding missions, study tours, scientific seminars, and water dialogues.

The role of water cooperation in the former Yugoslavia is often highlighted as an example where water cooperation reinforced and institutionalized peaceful relations following civil war in the 1990s ([Colakhodzic et al. 2014](https://www.environmentalpeacebuilding.org/assets/Documents/LibraryItem_000_Doc_935.pdf)). The Framework Agreement on the Sava River Basin (FASRB) aimed to support water cooperation and prevent water-related hazards by enabling sustainable development, ensuring safe navigation, and safeguarding livelihoods was the first multilateral agreement in the post-conflict period to involve all riparian states following establishment of the Dayton Peace Agreement. Water cooperation through the FASRB greatly contributed to post-conflict trust building in the region.

Other examples of transboundary water cooperation continuing through ongoing conflicts include in the Jordan River ([Mehyar et al. 2014](https://www.environmentalpeacebuilding.org/assets/Documents/LibraryItem_000_Doc_934.pdf); [Haddadini 2014](https://www.environmentalpeacebuilding.org/assets/Documents/LibraryItem_000_Doc_933.pdf)) and Indus River ([Zawahri 2014](https://www.environmentalpeacebuilding.org/assets/Documents/LibraryItem_000_Doc_933.pdf)).

1. *What are some of the main challenges that right holders, civil society organizations and communities face in accessing and managing water resources in transboundary water ecosystems, and what strategies can effectively address these challenges?*

One of the critical challenges facing rights holders and communities (including Indigenous Peoples) in transboundary basins is the failure of national and transboundary legislative frameworks to legally recognize and effectively protect community-based and customary water tenure rights, particularly rights to access to information, participation in decision-making and access to justice in the context of transboundary decision-making ([RRI & ELI 2020](https://rightsandresources.org/wp-content/uploads/2020/02/WhoseWater.pdf); [Troell & Keene 2022](https://www.iwmi.cgiar.org/Publications/IWMI_Research_Reports/PDF/pub182/rr182.pdf)). At the national level, failures to recognize community-based water rights in ways that are meaningful and not overly burdensome to communities and the women within them (for example by requiring them to obtain a permit or form a legally recognized institution) frequently undermine communities’ water tenure security ([van Koppen & Schreiner 2018](https://www.iwmi.cgiar.org/Publications/IWMI_Research_Reports/PDF/pub173/rr173.pdf)). This, in turn, weakens communities’ standing to be notified and participate in decision-making around developments that can impact their water rights, as well as their rights to life, healthy environment, and identity, among others.

Community-based water tenure rights frequently depend on the legal recognition of their land and/or forest rights ([RRI & ELI 2020](https://rightsandresources.org/wp-content/uploads/2020/02/WhoseWater.pdf); [van Koppen & Schreiner 2018](https://www.iwmi.cgiar.org/Publications/IWMI_Research_Reports/PDF/pub173/rr173.pdf)). This land-water nexus is particularly critical in supporting the water tenure rights of women in Indigenous and local communities. Conversely, the water tenure rights of many women cannot be adequately safeguarded if their land and forest rights are not also legally recognized and secure. There is thus an even stronger imperative for countries in transboundary basins to unpack the legal and practical linkages between women’s land, forest, and water tenure (and other relevant legal provisions under marriage and inheritance laws, for example) that shape women’s access to water governance and decision-making. Compounding this is the fact that the vast majority of international and basin level treaties fail to explicitly recognize the right of communities to be notified of or participate in decision-making related to their water resources (for example, through transboundary environmental impact assessment processes) ([RRI & ELI 2020](https://rightsandresources.org/wp-content/uploads/2020/02/WhoseWater.pdf)). Related good practices include: (1) water tenure assessment (with a specific focus on Indigenous and local community rights and the rights of women within those communities) (([RRI & ELI 2020](https://rightsandresources.org/wp-content/uploads/2020/02/WhoseWater.pdf); [FAO 2020](https://www.fao.org/3/cb1230en/cb1230en.pdf)); and (2) gender-sensitive budgeting and gender audits across engagements.

Another, related challenge faced by rights holders, civil society organizations and communities in accessing and managing water resources in transboundary water ecosystems is the lack of data that would enable analysis and comprehension of the quality and quantity of shared water. Yet, shared data is a critical component of cooperation, which in turn is critical to effective management of transboundary water resources ([IWMI 2021](https://www.iwmi.cgiar.org/Publications/Water_Policy_Briefs/PDF/wpb43.pdf)). Each water resource requires its own separate monitoring system, and, to further complicate the analysis, techniques for gathering data for surface water ([Wang 2023](https://journals.ametsoc.org/view/journals/hydr/24/3/JHM-D-22-0098.1.xml?rskey=bMLpGA&result=8)) differ from techniques for monitoring groundwater. Indeed, gathering data for groundwater often requires expensive and extensive operations, such as drilling boreholes, in order to estimate the depth and volume of the groundwater supply ([Khan 2023](https://pubs.acs.org/doi/10.1021/acsomega.2c06854)). Accurate data for groundwater are very difficult to obtain, since water-bearing geological layers can shift abruptly due to ancient faults and upheavals ([Fronzi 2021](https://www.mdpi.com/2073-4441/13/11/1499)). Developing countries often lack financial resources to acquire the necessary equipment to monitor water quality and quantity and can also lack the professional capacity to analyze the results.

In a transboundary context where parties lack both the data on local water resources and the capacity to gather such data, reaching common understanding on shared water resources can be challenging. Even when such data is available, parochial, nationalistic interests can prevent sharing of the data. In such cases, overuse and misuse of the shared water resources can result, leading to less quantity and lower quality of the resource, with both humans and ecosystems suffering.

Solutions to the lack of data require a multifaceted approach ([UNECE 2021](https://unece.org/sites/default/files/2021-11/ece_mp.wat_68_eng.pdf)). As reliable data is obtained, the parties must take steps to share it with one another in order to develop a common understanding and approach to protecting the water resources ([Safaraz 2022](https://www.frontiersin.org/articles/10.3389/frwa.2022.982605/full)). An agreement on the terms of sharing data can provide clarity and assurance, and examples of such transboundary agreements can be found across the globe.

1. *What participation, access to information, and transparency measures could be promoted to involve rights holders, communities, civil society organizations and women in possible dynamics of dialogue, negotiation, and decision-making on transboundary ecosystems management?*

International legal agreements governing shared watercourses should explicitly recognize the rights of Indigenous Peoples and local communities (IPLCs) to actively participate in planning and decision-making processes that could impact their water resources, regardless of whether their water tenure is legally recognized at the national level. The [Niger Basin Charter](http://www.abn.ne/attachments/article/39/Charte%20du%20Bassin%20du%20Niger%20version%20finale%20francais_30-04-2008.pdf) provides a rare example of a treaty that incorporates communities’ (and all water users’) transboundary rights of prior notice and consultation. A specific tool for such prior notification and consultation is transboundary environmental impact assessment (TEIA) ([Cassar & Bruch 2004](https://www.researchgate.net/publication/313528853_Transboundary_Environmental_Impact_Assessment_in_International_Watercourse_Management)).

International water law recognizes the duties of States to avoid using watercourses in their territories in such a way as to cause significant harm to other watercourse States, and the International Court of Justice (ICJ) has ruled that transboundary environmental impact assessments (TEIAs) are a “requirement under general international law” for any proposed activity that could have a significant adverse impact in a transboundary context (Gabcikovo-Nagymaros Project (Hungary v. Slovakia), [Judgement 1997](https://www.researchgate.net/publication/313528853_Transboundary_Environmental_Impact_Assessment_in_International_Watercourse_Management).) Additional good practices related to improved engagement of women and girls include:

* Enact policies and legal frameworks to increase gender equity in water decision-making such as affirmative action and quotas.
* Ensure dialogues and decision-making bodies are reflective of the whole of societies to safeguard against reinforcing or exacerbating existing power structures.
* Support male decision makers to be gender equality champions and raise awareness of the need for women as leaders and decision-makers.
* Reform land tenure and property rights and inheritance regimes that fail to ensure women’s equal rights to economic and water resources.
* Adopt policies and regulations to prohibit workplace discrimination, including pregnancy discrimination, and ensure that women have realistic mechanisms for redress in cases of sexual harassment or other forms of discrimination.
* Support and resource broad capacity building, networking, training, and mentoring opportunities for women and other marginalized groups to broaden their experience and increase their profile as effective leaders.
* Collect and use sex-disaggregated data as part of policy and development engagements. Quantifiable data on the current state of gender diversity in the water sector is critical to motivate and support social and political change. Further, extensive evidence demonstrates that diverse organizations have better decision-making, are more innovative, and even have higher profit margins.

*7. How can public and private entities be held accountable for fulfilling their responsibilities in transboundary water management?*

* Apply due diligence processes and standards to prevent significant harm and enable processes of judicial redress for both public and private entities. Examples include the Equator Principles and the UN Guiding Principles on Business and Human Rights.
* Ensure that required Environmental and Social Impact Assessments are undertaken to the highest standard. Examples include the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context and policies of many international lending agencies.
* Central American Water Tribunal ([Picolotti & Crane 2005](https://collections.unu.edu/eserv/UNU%3A2453/pdf9280811061_content.pdf)).
1. *To what extent is climate change affecting water-related conflict in your transboundary river basin (interstate, sub-national, and local)?*

There is widespread agreement that climate change is affecting water availability and that contestations over decreasing amounts of water can drive conflict. It is important to note, though, that while climate change can be a threat multiplier and a conflict accelerant that it is a dangerous overstatement to say that climate change is causing these conflicts.

In the context of Darfur, [Kevane and Gray (2008)](https://iopscience.iop.org/article/10.1088/1748-9326/3/3/034006/meta) note that while the Darfur conflict is often referred to as the first climate change conflict, the evidence does not support this assertion. They provide compelling evidence that other countries across the Sahel experienced the same climatic stresses but did not experience serious war. Moreover, they note that the argument that the conflict was caused by climate change removed responsibility from the leaders that inspired the genocide.

 A similar analysis applies to Syria. Following a serious drought (also experienced by Lebanon and Jordan), people moved from rural areas to urban centers, and civil war ensued. But that was only in Syria – not in Lebanon or Jordan.

 In short, climate change is causing stresses on water resources and on societies. Whether that leads to conflict, though, depends on how the government and society respond. Human agency is central to whether there is a conflict. And more often than not, there is no violent conflict.

[This comment also applies to question 10.]

1. *Please present examples and/or good/promising practices of transboundary water management measures that support the realization of human rights to water and sanitation.*

The [Women in Water Diplomacy Network](https://siwi.org/swp-women-in-water-diplomacy-network/) is an informal community of practice comprising women decision-makers and experts, representing over 500 years of collective experience and expertise in transboundary water management and decision-making engaged in some of the most water insecure regions of the world. Originating in the Nile Basin in 2017, the Network has expanded in 2021 to include Central Asia and Afghanistan and is now a global community of women water leaders (and male champions supporting gender equality) working collectively to strengthen women’s leadership in transboundary water decision making with support from a global coalition of partners in basins across Africa, Asia, Europe, and the Americas.

1. *What are some of the most promising examples of collaborative efforts between governments (national and local), civil society organizations, communities, individuals and/or private sector in promoting sustainable water management, including pollution reduction and ecosystem protection, in the context of transboundary waters?*

Many of the most promising examples of collaborative transboundary efforts arise when communities and civil society organizations are able to participate in the dialogues informing management of water resources ([Bruch et al. 2005](https://collections.unu.edu/eserv/UNU%3A2453/pdf9280811061_content.pdf)). In the North American Great Lakes, civil society-led efforts have shaped decisions on how to use water resources during drought ([Jackson 2005](https://collections.unu.edu/eserv/UNU%3A2453/pdf9280811061_content.pdf)). In Lake Victoria, communities pioneered the use of beach management units that helped sustainably manage and enforce fishing ([Gitonga 2005](https://collections.unu.edu/eserv/UNU%3A2453/pdf9280811061_content.pdf)). Civil society involvement is central to the effective management of the Chesapeake Bay, which includes many U.S. states as well as the federal government ([Hoagland 2005](https://collections.unu.edu/eserv/UNU%3A2453/pdf9280811061_content.pdf); [Hanmer 2005](https://collections.unu.edu/eserv/UNU%3A2453/pdf9280811061_content.pdf)).

\* \* \*

ELI and EnPAx applaud the Special Rapporteur for his initiative and leadership in highlighting the human rights linkages between water and peace. If we can we of any further assistance, please do not hesitate to contact us at bruch@eli.org.

Sincerely,

Jessica Troell, Renee Martin-Nagle, Elizabeth Koch, Elizabeth Hessami, and Carl Bruch