Geneva Water Hub

Thematic Report to the 80th session of the United Nations General Assembly "Democratic water governance under a human rights-based approach"

Contribution from the Geneva Water Hub supporting the Special Rapporteur on the human rights to safe drinking water and sanitation

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A. Actors

The Geneva Water Hub knows that when water is shared equitably and spared from conflict, peace can prevail. The GWH maintains the Geneva Principles on the Protection of infrastructure and builds the evidence base required to mitigate the impact of armed conflict on civilians. The Geneva Water Hub is a co-Centre of the University of Geneva and the Geneva Graduate Institute and it engages in research, policy development, capacity building, and diplomatic engagement to promote the use of water as an instrument for peace. It works closely with governments, international organizations, academia, and civil society to develop innovative approaches to water governance, particularly in fragile and conflict-affected regions.

B. Management of freshwater ecosystems

The following information is primarily derived from the publication *"Tools for Transboundary Management of Water and Water Uses in Greater Geneva,"* available at this link. In addition to the information below regarding the case of Switzerland, we suggest to the Special Rapporteur to consult some of the existing reports and literature that compiles this sort of information about property rights to water in a cohesive and systematic fashion. Some articles and reports for consideration are:

In the OECD Studies on Water (2015) "Water Resources Allocation – Sharing Risks and Opportunities", 37 examples of allocation regimes from 27 OECD and partner countries (BRICS as well as Colombia, Costa Rica, and Peru) are surveyed. The survey captured information on the current design and functioning of allocation regimes. More information is available here.

- On participation there is a section beginning on page 107 "Stakeholder engagement has become common practice in water allocation reforms".

- On ecological flows, there is a section beginning on page 70 " Defining environmental flows".

Question 2: State Laws and Public Participation:

- In Switzerland, water regulatory powers lie with the Confederation, which is responsible for legislating on water conservation and use. However, the cantons and municipalities implement these directives and adapt them to local conditions.
- France has a more centralized system but has transferred some water management powers to regional and intermunicipal authorities. The Water Framework Directive (WFD) influences national legislation, and implementation occurs at multiple levels.
- Ecosystem Management Approach: Water is managed on a river basin scale through tools like the Water Development and Management Master Plans (SDAGEs) in France and transboundary agreements such as the Convention on the protection of Lake

Geneva against pollution and the Convention on the protection, use, recharge and monitoring of the Franco-Swiss Geneva Aquifer.

- Public Participation: Participation is facilitated through mechanisms like the Local Water Commission (CLE) for the Arve Basin, which includes elected representatives, government services, and user groups. These spaces for dialogue are essential if good transboundary management of water resources is to be achieved in the context of climate change.

Question 3: Water User Communities and Collective Management:

- The Geneva Aquifer Management Commission coordinates water use for the transboundary Geneva Aquifer, considering different users' needs.
- Transboundary river contracts involve multiple stakeholders, including farmers, conservation groups, and municipal authorities, for integrated water management.

Question 4: Rights of Nature:

- There is no mention of explicit legal personhood for rivers or recognition of rights of nature in the document.

C. Water rights and water tenure

Question 5: Water Permits:

- Much information on this can be found in the 2015 OECD report ("Water Resources Allocation – Sharing Risks and Opportunities"). On private vs. Collective entitlements there is a section beginning on page 72 ""Legal Definition of Water Entitlements"
- In addition, the Special Rapporteur could consider the long-term *quasi* property rights that are granted to large multinational companies in river basins around the world through foreign direct investment contracts. This poses real challenges and threats to meeting other water demands during times of scarcity, as investors usually secure clauses that prioritize their use and ""stabilize" their position against force majeure (companies will demand this of host governments before they establish operations or in renegotiations). This also poses a potential threat against the realization of the human right to water in water scarce basins. See more at https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12436.
- In Greater Geneva, water management follows a mix of Swiss and French regulations. The Geneva Aquifer Convention includes a 30-year agreement (2008–2038) for transboundary groundwater use. Water allocation is subject to seasonal management, ensuring sustainable use.

Question 6: Indigenous rights:

- In Switzerland there is an interesting effort to preserve traditional ancient irrigation management systems organized by the "*consotrages*" and to nest them in modern day water governance systems managed by the Cantons. On how the commons "meets" the state see: https://www.taylorfrancis.com/chapters/oa-edit/10.4324/9781003043263-4/commons-meet-state-political-science-perspective-fran%C3%A7ois-xavier-viallon-st%C3%A9phane-nahrath.

Question 7: Water Rights in Impoverished Rural Areas:

- The transboundary agreements and river contracts aim to ensure water access, quality, and sustainability, but there is no specific mention of targeted initiatives for impoverished rural communities.

D. Water and sanitation services (selection of relevant questions that the GWH is addressing)

The Geneva Water Hub focuses on the role of water in building peace, including how restricted access to drinking water and sanitation - an increasingly concerning trend in armed conflicts - undermines prospects for lasting stability. A well-established body of literature suggests that when water distribution is perceived as fair and reliable, it enhances trust in and legitimacy of water service providers. In post-conflict and fragile contexts, there is evidence that this can contribute to peacebuilding. The core argument is that fragile, conflict-affected, and violence-affected (FCV) states must provide essential services, such as water and sanitation, not only to stabilize immediate conditions (restoring a sense of normalcy and reducing protests), but also to establish long-term political legitimacy. More broadly, research on water and peace highlights equity as a crucial factor in strengthening state legitimacy. To avoid perpetuating historical inequalities, particularly in regions that have been marginalized from central governance, water services must be distributed fairly and inclusively.

The Special Rapporteur might consider the remunicipalization movement across Europe. There is a particularly interesting case study from the city of Naples: https://www.jstor.org/stable/48807673?seq=1.

E. Institutional frameworks, policies and legislation (selection of relevant questions that the GWH is addressing)

The Geneva Water Hub recognizes that effective water governance requires inclusive legal and institutional frameworks that promote equity, participation, and accountability. Our work focuses on water for peace, highlighting how governance gaps can contribute to instability and how inclusive, transparent policies can foster long-term peace. Below, we outline key challenges and areas for improvement based on our expertise.

Question 12: Challenges and Gaps in Legal and Institutional Frameworks:

- One of the main challenges in water governance is the fragmentation of legal and institutional frameworks across different levels of governance. This is particularly evident in transboundary contexts, where overlapping national regulations, weak enforcement mechanisms, and jurisdictional disputes hinder equitable cooperation. Furthermore, the lack of recognition of marginalized groups as rights holders often limits their participation in decision-making processes.

Questions 13 and 14: Participation and Institutional Capacity:

- The legitimacy of water governance depends on ensuring that service beneficiaries not only understand their responsibilities, such as fee payments, but also have a voice in water management decisions. In many contexts, however, participation remains limited to consultation rather than meaningful engagement. Often, institutional capacity must be strengthened at multiple levels, particularly in conflict-affected and fragile contexts where technical assistance, financial resources, and cross-sectoral coordination are often lacking.

Questions 15 and 16: Transparency, Accountability, and Public Participation:

- While various legal frameworks and policies exist to promote transparency and accountability in water governance, their implementation remains inconsistent. Limited access to information, weak oversight mechanisms, and lack of enforcement allow governance failures to persist. The Geneva Water Hub emphasizes the importance of multi-stakeholder dialogue and conflict-sensitive governance approaches to ensure water governance processes are inclusive, transparent, and accountable.

Questions 17 and 18: Good Practices and Public Investment for Reducing Inequalities:

- There are positive examples of transparency and public participation in water governance, particularly in transboundary water cooperation mechanisms where joint management institutions have facilitated equitable resource sharing. However, public investment must be better targeted to address inequalities in water access, particularly in marginalized and conflict-affected regions. Mixed financing models, including public, private, and international funds, should be structured to ensure that commercial interests do not undermine the right to water and sanitation.

Questions 19 to 21: Concerns Over Privatization and Commercial Interests:

- There is growing concern that privatization and commercialization of water services, when not properly regulated, can negatively impact affordability, accessibility, and sustainability. In some cases, private sector involvement has led to increased tariffs without corresponding improvements in service delivery, exacerbating inequalities. Furthermore, privatization processes have sometimes restricted public participation in

water governance. Legal safeguards must be in place to ensure that private investments align with human rights obligations and environmental sustainability.

- In addition to the privatization of utilities for municipal supply, the property rights granted to multinational corporations through bilateral investment contracts create a type of privatization also, particularly through the establishment of stabilization clauses for investors. More information available at: https://onlinelibrary.wiley.com/doi/full/10.1111/reel.12436.

The Geneva Water Hub remains committed to advancing policies that promote water as a vector for peace, ensuring that governance frameworks are inclusive, transparent, and conflict sensitive. We continue to support efforts that enhance institutional capacity, strengthen public participation, and safeguard the human right to water and sanitation. One of the critical challenges to democratic governance in fragile and conflict-affected regions **is the breakdown of law and order and the dysfunction of institutions**. In such contexts, the collapse of governance structures often leads to the emergence of alternative power holders who exploit resources and impose discriminatory practices.

Yemen provides a stark example of this dynamic. Armed groups and other entities have seized control of critical resources, including water. This has led to restricted access to safe drinking water through inflated prices and imposed limitations. Furthermore, discriminatory practices have emerged, where supporters of controlling groups gain privileged access, while perceived opponents or enemies are deliberately deprived.

A 2023 UNDP report highlights this situation, noting that the weak rule of law in Yemen creates opportunities for powerful individuals, such as sheikhs, to claim water resources without facing local resistance. The report further indicates widespread feelings of oppression among respondents, who see themselves increasingly subjected to a corrupt system.

F. Good practices under a human rights-based approach

Question K: Laws and standards for a human rights-based approach:

Many water laws and water policies support a human rights-based approach indirectly, through the prioritization of water to different uses/sectors. In national or subnational constitutions and water policies, human drinking water is in most cases always the use to be prioritized (then agriculture, industry etc. See OECD 2015 report for examples). The challenge in practice is aligning these priorities and implementing them in light of a) *contradictory* institutions (e.g. grandfathered water rights to users historically) and b) the actual functioning of the water storage and distribution system. In the following article, the issue of aligning current priorities (such as the human right to water) with outdated institutions and infrastructure operations is explored in Rajasthan, Colorado, and Aragon: https://journals.plos.org/water/article?id=10.1371/journal.pwat.0000097.

Among the existing good practices, the Geneva Water Hub would like to mention that several countries in South America, including Ecuador, Bolivia, Colombia include constitutional provisions emphasizing the importance of the human right to safe drinking water, the rights of indigenous peoples and the rights of nature. (Tignino, Mara. Derechos de la naturaleza y derechos a la naturaleza: tendencias emergentes en el derecho internacional. In: *Naturaleza y Sociedad*, 2022, nº 4, https://revistas.uniandes.edu.co/index.php/nys/article/view/4748).

There is also evidence of an emerging customary duty to consult with local communities that risk being affected by a project on an international watercourse. Some treaties offer local communities an opportunity to participate in the notification and consultation process. Under the Espoo Convention on Environmental Impact Assessment in a Transboundary Context and the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), consultation with the public is an integral part of the preparation of an Environmental Impact Assessment. The country of origin of a project and the affected state must distribute the documentation on the project to the communities likely to be affected by a project and provide sufficient time to submit comments. These obligations of concerned states of information, notification and consultation with the public are not only applicable to specific projects but also to "plans, programmes and policies." (see the 2003 Protocol on Strategic Environmental Impact Assessment to the Espoo Convention).

Another example of an agreement setting out an obligation to consult with local communities is the 2018 Escazù Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. This agreement clearly states that the public must be involved in the early stages of a project and that "due consideration" is given to its comments and observations. The information provided must also be "clear, timely and comprehensive." Before adopting a decision, public authorities must "give due consideration to the outcome of the participation process." (see Arts. 7.4 and 7.7).

The extent of the community rights of participation in the notification and consultation process is particularly important in the context of indigenous rights. This includes water-related projects that risk having a negative impact on transboundary water resources and that may affect the rights of indigenous peoples. The Inter- American Court of Human Rights recognized the right of free, prior, and informed consent in its jurisprudence.

In the case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina, the Inter- American Court of Human Rights examined the impact of constructing a route and an international bridge over the Pilcomayo River from Argentina to Paraguay. The Court interpreted Article 23 of the Inter-American Convention on Human Rights as including the obligation to consult the indigenous peoples adequately through their representative institutions. The Court concluded that Argentina "did not comply with its obligation to ensure adequate mechanisms for a free, prior and informed consultation of the indigenous communities concerned." (see Case of the Indigenous Communities of the Lhaka Honhat

Association (Our Land) v. Argentina, Interpretation of the Judgment on Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 420, para.184 (Nov. 24, 2020)). From the treaty practices observed and the existing jurisprudence, there seems to exist an emerging customary law duty to inform the public and allow it to consult regarding planned measures. (Mara Tignino, "Prior notification and water rights", *American Journal of International Law, Unbound*, 2021, vol. 115, p. 189–194, https://www.cambridge.org/core/journals/american-journal-of-international-law/article/prior-notification-and-water-rights/D425FE117FF5BD80BD0EC5F5624DC2DE).

The African Commission on Human and Peoples' Rights adopted 'Guidelines on the Right to Water in Africa' in 2019. According to General provision 7.1.: "States shall ensure, in laws and practice, that the principles universally recognized, and defined below, of participation, non-discrimination, access to information, sustainability and accountability are respected, protected, promoted and fulfilled in the planning, decision-making, implementation, and monitoring processes in the water sector, as integral to the realization of the right to water". The Guidelines not only recognize water as a human right, including in transboundary contexts, but also set conditions for delegating water supply services to private entities and establishes mechanisms to regulate the activities and impacts of all other private actors on the right to water. https://www.legal-tools.org/doc/lxdh0s/pdf.