

25
SEPTEMBER
2020

3 P.M. -
4 P.M.
CEST



THE MANDATE
OF THE SPECIAL
RAPPORTEUR

AND THE

UNIVERSAL
PERIODIC REVIEW

10 YEARS OF THE HUMAN RIGHTS
TO WATER AND SANITATION AND
HRC MECHANISMS

HRC45 VIRTUAL SIDE-EVENT

Moderator

Ms. Natacha Foucard, Chief of Sustainable Human Development Section, Special Procedures Branch, OHCHR

Panelists

“Preliminary findings of a study on recommendations related to the human rights to water and sanitation in the Universal Periodic Review” - Ms. Elisabeth da Costa, Human Rights Officer, Universal Periodic Review Branch, OHCHR

“Role of States and contribution to the development of the human rights to water and sanitation through UPR mechanism” - Mr. Carlos Domínguez, Deputy Permanent Representative, Permanent Mission of Spain

“Synergies between activities of the Special Rapporteur and the Universal Periodic Review mechanism” - Mr. Léo Heller, Special Rapporteur on the human rights to safe drinking water and sanitation

“Special Procedures and Universal Periodic Review, example of El Salvador and role of civil society organizations” - Mr. Ulises Quero, Americas Program Coordinator, Franciscans International

ORGANIZED BY THE UN SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS TO
SAFE DRINKING WATER AND SANITATION, MR. LÉO HELLER

TO REGISTER, SEND EMAIL TO FFOPPIANO@OHCHR.ORG

OBJECTIVES

- To take stock of how the Human Rights Council mechanisms – Special Procedures and UPR – have contributed to the development of the human rights to safe drinking water and sanitation since the UN General Assembly and the Human Rights Council recognized water and sanitation as a human rights in 2010.
- To discuss the impact that Human Rights Council mechanisms have on the development and the realization of the human rights to safe drinking water and sanitation, particularly when working in an integrated matter and creating synergy, and how the focus on those rights could influence other economic, social and cultural rights.
- To identify gaps and challenges in enhancing the integration of the two Human Rights Council mechanisms in relation to the rights to water and sanitation.
- To discuss roles of stakeholders and their engagement in the UPR and Special Procedures to advocate for the realization of the human rights to safe drinking water and sanitation
- Explore ways for stakeholders to strengthen engagement with UN human rights mechanisms, including reporting and formulation of recommendations.

BACKGROUND

HUMAN RIGHTS COUNCIL AND ITS MECHANISMS (SPECIAL PROCEDURES AND UNIVERSAL PERIODIC REVIEW)

The Human Rights Council is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and making recommendations on them. The Special Procedures and Universal Periodic Review are mechanisms of the Human Rights Council which serve to assess and protect the human rights situations in all United Nations Member States.

The Human Rights Council's **Special Procedures** mandate-holders comprise special rapporteurs, independent experts and working groups who are appointed by the Council and who serve in their personal capacity. Special procedures mandate-holders carry out wide range of activities such as: undertake country visits; act on individual cases and concerns of a broader nature by sending communications to States and other actors bringing alleged violations or abuses to their attention; conduct thematic studies and convene expert consultations; contribute to the development of international human rights standards; engage in advocacy; raise public awareness; and provide advice for technical cooperation.

In particular, the mandate of the Special Rapporteur on the human rights to safe drinking water and sanitation was initially established by the UN Human Rights Council in March 2008 and appointed Ms. Catarina de Albuquerque as the first Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. In 2014, the Human Rights Council appointed Mr. Léo Heller as the second Special Rapporteur. His second term will finish in October 2020.

The **Universal Periodic Review (UPR)** is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. So far 112 out of 193 States have already been reviewed three times. The first UPR cycle took place between 2008-2011 and the second cycle between 2012-2016. The third cycle (2017-2022) is underway.

BACKGROUND

HUMAN RIGHTS COUNCIL AND ITS MECHANISMS (SPECIAL PROCEDURES AND UNIVERSAL PERIODIC REVIEW)

2020 marks 10 years since the General Assembly adopted resolution 64/292, the first instrument internationally adopted that recognized water and sanitation as a human right that is essential for the full enjoyment of life and all human rights. That landmark resolution paved the way for subsequent actions by the international community, including Human Rights Council resolution 15/9, adopted in September 2010, in which the Council affirmed that recognition. Five years later, the General Assembly, in its resolution 70/169, recognized the human right to safe drinking water and the human right to sanitation as two distinctive rights, affirming that they are integrated rights with distinct features. These features warrant their separate treatment in order to address specific challenges in their implementation.



The **human right to sanitation** entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity (HRC resolution 33/10 and GA resolution 70/169). Sanitation can be defined as a “system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity” (see A/HRC/12/24, para. 63).



The **human right to water** means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements. (General Comment 15).



Human rights standard for hygiene: Certain human rights obligations related to hygiene can be inferred from the rights to water and sanitation, as well as the right to health, the right to food, the right to privacy, human dignity and other human rights. Hygiene includes, among others, hand-washing at appropriate times, menstrual hygiene, management of child faeces and domestic food hygiene (see A/70/203, para. 20).

As requested by the Human Rights Council, in its resolution 42/5, the Special Rapporteur is currently conducting a year-long campaign celebrating the 10-year anniversary of the UNGA and HRC resolutions on the human right to water and sanitation. As part of that celebration, the Special Rapporteur is organizing this HRC45 virtual side-event to highlight the role of Human Rights Council mechanisms in the development of the human rights to water and sanitation and to discuss ways to enhance integration of UN human rights mechanisms, including the engagement of the various stakeholders.

ANNEX I.

Extract from reports by the Special Rapporteur on the human rights to safe drinking water and sanitation, Leo Heller: References to UPR



THEMATIC REPORTS

1. DIFFERENT LEVELS AND TYPES OF SERVICES AND THE HUMAN RIGHTS TO WATER AND SANITATION (A/70/203)

96. The Special Rapporteur encourages States to develop more specific monitoring processes, considering the relevant indicators for their specific context. [...] The Special Rapporteur encourages States to develop models that can associate a given type of service with the realization of the rights to water and sanitation, while carefully taking into consideration the context in which it is applied.

97. In the context of the sustainable development goals, for future review and follow-up, the Special Rapporteur encourages States to use and adapt existing platforms or partnerships for accountability. This may include using the universal periodic review in the Human Rights Council as a model. Such a platform should establish a country-led review process, which includes international and civil society organizations, and assesses progress and bottlenecks.

2. DEVELOPMENT COOPERATION (A/72/127)

93. Finally, the Special Rapporteur recommends:

(b) That the Human Rights Council consider in the universal periodic review the issue of development cooperation in the context of water and sanitation services.

3. PRINCIPLE OF ACCOUNTABILITY (A/73/162)

17. Relations among actors in the accountability framework are also influenced by the type of institution mandated to ensure accountability. A national human rights institution may hold a local municipality accountable for a violation or omission relating to the rights to water and sanitation, while international human rights mechanisms interact primarily with central Governments. At the international level, there are several processes that ensure that States and international monitoring bodies engage in an interactive manner, whereby the State is bound to provide information concerning its conduct and may face consequences if it fails to comply with its obligations under a given treaty. These bodies and processes include human rights treaty bodies that monitor the implementation of the core international human rights treaties, the universal periodic review of the Human Rights Council, which is a peer review mechanism that examines the implementation of human rights obligations, and the Compliance Committee under the Protocol on Water and Health, which aims to secure compliance with the obligations under the Protocol.

4. HUMAN RIGHTS TO WATER AND SANITATION IN SPHERES OF LIFE BEYOND THE HOUSEHOLD WITH AN EMPHASIS ON PUBLIC SPACES (A/HRC/42/47)

65. In line with the above, the Special Rapporteur recommends that:

(d) International human rights treaty mechanisms and bodies, including but not limited to treaty monitoring bodies and the universal periodic review, must include public spaces and other relevant spheres of life beyond the household in their assessments and monitoring of the enjoyment of human rights, both in specific States and globally.

5. PROGRESSIVE REALIZATION OF THE HUMAN RIGHTS TO WATER AND SANITATION (A/HRC/45/10)

B. Monitoring mechanisms

71. At the international level, the human rights treaty bodies play a notable role in monitoring States' obligation to progressively realize rights. When the Committee on Economic, Social and Cultural Rights reviews States parties' compliance with Covenant obligations, it prepares a list of issues that often lacks specific requests for information on access to water and sanitation, often subsuming the monitoring of the human rights to water and sanitation under the dimension of the rights to an adequate standard of living and health. Therefore, the monitoring of binding obligations is left to peer review mechanisms such as the universal periodic review and to regional human rights mechanisms such as the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes. In addition, bodies such as the WHO-UNICEF Joint Monitoring Programme for Water Supply, Sanitation and Hygiene and other statistical bodies also play a monitoring role – not necessarily linked to the human rights framework – based on the data provided by national statistical offices. Moreover, the UN-Water Global Analysis and Assessment of Sanitation and Drinking Water initiative examines whether there is an enabling environment for the provision of water supply, sanitation and hygiene services, including through national policies and plans.

75. The full realization of the human rights to water and sanitation cannot be left to States alone. The larger human rights ecosystem is composed of other actors, particularly those that monitor State compliance, which ranges from treaty to statistical bodies, from national to international bodies and from governmental to non-governmental bodies. Private actors working in the water and sanitation sector must understand that they too are bound by human rights obligations, particularly when they provide services by delegation from States and when national legislation reflects a State's international human rights obligations. The Special Rapporteur recommends that monitoring bodies introduce and utilize the guiding questions contained in the present report in identifying and assessing the progressive realization of the human rights to water and sanitation.

COUNTRY VISIT AND FOLLOW-UP TO COUNTRY VISIT REPORTS

6. FOLLOW-UP ANALYSIS OF OFFICIAL COUNTRY VISITS (A/HRC/39/55, ANNEX)

The Special Rapporteur intends to continue the follow-up analysis of all the official country visits undertaken by him as well as those undertaken by the former Special Rapporteur. In 2019, he will focus on the follow-up analysis to India and Mongolia and visits undertaken by the former Special Rapporteur, the latter focusing particularly on those countries that will be reviewed by relevant treaty monitoring bodies or under the Universal Periodic Review of the Human Rights Council in 2019 and 2020.

10. The primary source of information for the preliminary analysis is official sources from Governments or international organizations. In particular, the Special Rapporteur consulted reports submitted and issued in the context of international treaty monitoring processes and the Universal Periodic Review of the Human Rights Council. He also consulted official information from national legislative, regulatory other governmental bodies to identify any recent developments on legislative, policy and regulatory measures related to the human rights to safe drinking water and sanitation. Finally, he examined reports from international cooperation partners and from international organizations that have a presence or activities in the country in question.

7. FOLLOW-UP REPORT ON COUNTRY VISIT TO BOTSWANA (A/HRC/42/47/ADD.5)

A. Recommendation on maximum available resources

RECOMMENDATION 4: “Increase the budget to the maximum available level to progressively realize the human rights to water and sanitation and target underdeveloped areas, such as rural areas and new settlements, to ensure equality.” (A/HRC/33/49/Add.3, para. 72(k))

21. The achievement of the progressive realization of the rights to water and sanitation requires that States utilise the maximum of their available resources when implementing their water and sanitation policies and programmes. The mission report of the Special Rapporteur identified that Botswana was badly lagging behind with regards to its water and sanitation investment and therefore could not be deemed to be utilising the maximum of its available resources in achieving the rights (A/HRC/33/49/Add.3, para. 49-53).

22. In response to this recommendation, the Government indicated that it accepted it should allocate greater resources to water and sanitation projects, and stated that the Ministry of Minerals, Energy and Water Resources undertakes continuous engagement with development actors to maximise the resources available to it. This is supported by the third cycle review of Botswana under the Universal Periodic Review (29th session of Universal Periodic Review Working Group in January 2018), wherein it was reported that “Botswana is faced with challenges of scarcity of water, delayed infrastructure development, and limited funding. In this regard, the country is sourcing funding for infrastructure development from its development partners.” (A/HRC/WG.6/29/BWA/1, para. 132)

RECOMMENDATION 15: “Revisit the National Settlement Policy in view of providing equal access to water and sanitation for all, regardless of where they live.” (A/HRC/33/49/Add.3, para. 72(i))

RECOMMENDATION 16: “Establish clear budget lines to provide assistance to the water and sanitation systems that are not connected to the central network, particularly in urban periphery, rural and remote areas.” (A/HRC/33/49/Add.3, para. 72(l))

59. At the time of his visit, there existed in Botswana a distinct disparity in water and sanitation service availability and adequacy between urban and rural areas, which, it was noted, was in part caused by the operation of the National Settlement Policy. To fix this inequality of access, the Special Rapporteur identified the need to revisit the National Settlement Policy and to provide greater funding for ensuring access to water and sanitation for resettled populations (A/HRC/33/49/Add.3, paras. 55-57).

60. In its response to the question posed by the Special Rapporteur in the follow-up questionnaire, which asked the Government to describe any measures it had taken to revisit the National Settlement Policy, the Government replied that it is “committed to ensuring that every Moptswana has access to basic social services wherever they are. To that effect, Government has developed a ten (10) years (2015-2025) Affirmative Action Framework for Remote Area Communities with Goal 4 of the Framework ensuring access to social and basic services which include amongst others, provision of potable water and improved access to adequate sanitation services.” The response noted that the main aims of Goal 4 are to provide water for drinking and for livestock needs in remote areas; to provide adequate sanitation amenities; and to provide services for the management of sanitation and wastewater. Under the framework, efforts are coordinated by the Ministry of Local Government and Rural Development and individual sectors must submit a progress report every quarter. Furthermore, during the Universal Periodic Review on Botswana, civil society stated that Botswana “had created the Remote Area Development Programme which benefits people living more than 15 km outside of villages. Those with no water, access to land, or access to other services such as healthcare and education qualify for support within this Programme. Qualifying citizens receive five cattle or fifteen goats, and children are provided with food, toiletries, bedding, and transportation to school.”

62. According to the report of the Working Group of the Universal Periodic Review on Botswana in April 2018, “[p]rogress had been made in improving the lives of members of communities located in remote areas under the Affirmative Action Framework for Remote Area Communities. Consultations were ongoing with the communities in question, including those located around the Central Kalahari Game Reserve, regarding issues affecting them. Six boreholes had been drilled in the Central Kalahari Game Reserve for use by its residents and plans were under way to increase that number. Furthermore, water containers with a capacity of 10,000 litres were filled on a monthly basis.” (A/HRC/38/8, paras. 13-14).

8. FOLLOW-UP REPORT ON COUNTRY VISIT TO TAJIKISTAN (A/HRC/42/47/ADD.6)

RECOMMENDATION 1: “Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and guarantee the human rights to water and sanitation as justifiable rights in national legislation.” (A/HRC/33/49/Add.2, para 59 (o))

RECOMMENDATION 2: “Accelerate its preparation for signing and ratifying the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes.” (A/HRC/33/49/Add.2, para 59 (p))

12. During his official visit to Tajikistan, the Special Rapporteur identified that more must be done by the Government to improve protections for the rights to water and sanitation under international law. Whilst Tajikistan has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), it is yet to ratify the Covenant’s Optional Protocol, which would ensure the justiciability of the human rights to water and sanitation in its national law. Furthermore, despite its strong participation in activities related to the UNECE-WHO/Europe Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (“the Protocol on Water and Health”), Tajikistan is yet to ratify this instrument (A/HRC/33/49/Add.2, paras. 7 and 42).

13. In addressing the Special Rapporteur’s recommendation regarding the ratification of the Optional Protocol to the ICESCR, the Government explained in its response to the follow-up questionnaire that it intends to properly consider whether it should now sign and ratify the Optional Protocol. As noted by the Government, the National Action Plan for the Implementation of the Recommendations of the Member States of the United Nations Human Rights Council under the Universal Periodic Review (Second Period) Procedure for 2017-2020, approved by the Presidential Decree of 7 June 2017, No. RP-901 for 2017-2020 envisages the study of the question of accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which will result in concrete proposals on that issue. The consideration by the Government of the ratification of the Optional Protocol is encouraging and the Special Rapporteur urges the State to look at this with due expediency. He reiterates that ratification would represent a positive step towards assisting in the realisation of the rights to water and sanitation, as well as all other rights contained within the ICESCR, by enabling those whose rights have not been adequately respected, protected or fulfilled to have their complaints heard by an independent body.

9. COUNTRY VISIT TO LESOTHO (A/HRC/42/47/ADD.1)

B. Policy framework

18. Finally, the water and sanitation policy of 2007 aimed to promote the provision of an adequate and sustainable supply of potable water and sanitation services to the whole population. Further, the policy explicitly elaborates on how Lesotho conceptualizes the issue of affordability, accessibility, availability and quality of water. However, in 2013, as part of the information compiled for the second cycle of the universal periodic review, the submission from the United Nations country team indicated that “the National Water and Sanitation Policy is in place, but the challenge remains actual implementation. The number of households with improved sanitation is on-track while slow progress is recorded on the number of households with improved water”.