



RECOMMENDATIONS OF THE SPECIAL
RAPPORTEUR ON THE HUMAN RIGHTS
TO WATER AND SANITATION
LÉO HELLER

**REPORT OF THE
OFFICIAL COUNTRY
VISIT TO LESOTHO
4-15 FEBRUARY 2019**

Conclusions and Recommendations

A/HRC/42/47/Add.1

During his two-week visit, the Special Rapporteur met representatives of a number of tiers of the Government, international organizations, international development funders and civil society, as well as a number of residents. He visited villages, towns, schools, health clinics, a church and correctional services in 6 of the 10 districts of Lesotho (Mafeteng, Maseru, Mohale's Hoek, Mokhotlong, Thaba-Tseka and Quthing). The Special Rapporteur thanks the Government for the invitation and the organization of his visit. He would especially like to thank those who welcomed him into their homes and took the time to discuss the situation of water and sanitation with him. He also expresses appreciation to the office of the United Nations Resident Coordinator in Lesotho for facilitating the visit.

Press Release

End of Mission Statement



THE HUMAN RIGHTS TO WATER AND SANITATION IN LESOTHO

In Lesotho, where over 1 million people are categorized as poor, water, sanitation and hygiene lie at the centre of the poverty cycle. The World Bank estimates for 2017 suggest that 51.8 per cent of the population is still trapped under the poverty line of \$1.90 a day. In search of jobs and better living conditions, there has been an increase in rural-urban migration, which has resulted in a significant rise in the urban population over the past 35 years, from 10.5 per cent of the total population to 23.7 per cent in 2011. Poverty, unemployment, a high degree of inequality and a high prevalence of HIV/AIDS and of orphans are some of the existing vulnerabilities of the people of Lesotho. The lack of adequate water and sanitation services constitutes a key additional layer of vulnerability.

The Special Rapporteur finds that water, sanitation and hygiene are a bottleneck that holds the Basotho back from improving their lives, making autonomous choices on their way of living and enlarging their freedom. In Lesotho, water, sanitation and hygiene are a driver and multiplier of vulnerability that lead to negative impacts on human development.

During his country visit, the Special Rapporteur observed that Lesotho faced significant gaps related to the safe access of the population to water and sanitation services at the household level and also in educational facilities and public spaces. Various pressing needs impede the Basotho from fully realizing their human rights to water and sanitation and those needs negatively impact their access to water and sanitation services, as well as other dimensions of human development. Without addressing water and sanitation as a national priority, it will be a long time until other social needs and interlinked human rights are fulfilled.

The Special Rapporteur strongly recommends that the Government of Lesotho use the framework of the human rights to water and sanitation to inform those criteria. Using the framework of human rights as a guide would help the Government to identify the highest priorities, and take into account key issues, such as people in vulnerable situations and questions surrounding equality and non-discrimination, as well as participation and access to information. The Special Rapporteur emphasizes that the adoption of a comprehensive approach to implementing the human rights to water and sanitation will guide Lesotho to focus on the most vulnerable populations and “leave no one behind” in accordance with its commitment to the 2030 Agenda for Sustainable Development.



LEGAL, INSTITUTIONAL, AND POLICY FRAMEWORKS

The Constitution of Lesotho does not explicitly stipulate the human rights to water and sanitation. The legal application of the human rights to water and sanitation, without explicit constitutional recognition, would therefore require interpretation by judicial bodies and policymakers, which can result in inconsistencies and the implementation of only selected elements of their normative content.

While the policy initiatives currently in place are commendable, the Special Rapporteur emphasizes that there is a need to ensure cohesion and consistency throughout the different instruments. Political instability in past decades in Lesotho, marked by alleged coups or attempted coups, have negatively impacted the continuity of implementation of such policies. Public policies with their lack of binding effect, coupled with political instability, discontinuity and the failure to guarantee their implementation, is a concern that requires further attention.

The Special Rapporteur wishes to highlight as a positive development, the establishment of the dedicated Ministry of Water, established in 2015, and the related institutions under its purview.

THE SPECIAL RAPPORTEUR RECOMMENDS THAT THE GOVERNMENT OF LESOTHO:

- (a) Enact national legislation explicitly recognizing the human rights to water and sanitation and fully incorporating the normative content of the human rights to water and sanitation;
- (b) Ensure the continuity of plans and policies on water and sanitation and the implementation of those policies in line with human rights;
- (c) In regard to the institutional framework:
 - (i) Make public the decisions of the quarterly water sector coordination meetings;
 - (ii) Adopt the human rights to water and sanitation as a permanent agenda item for the water sector coordination meetings;
 - (iii) Ensure that the Department of Rural Water Supply consults the National Information System for Social Assistance when deciding in which villages to implement its water and sanitation programmes;
 - (iv) Guarantee the independence and autonomy of the regulatory body for water and sanitation services;
 - (v) Enhance budgetary and technical resources for rural water and sanitation services with an emphasis on maintenance;
- (d) Finalize the establishment of the National Human Rights Commission with autonomy and ensure that its mandate includes issues of economic, social and cultural rights;



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International Cooperation

Lesotho is highly reliant on international development, particularly in the water and sanitation sector. Both international development funders and their counterpart entities in the Government that implement projects have human rights obligations and the responsibility to guarantee that the whole population of Lesotho benefits from those projects without discrimination. In that regard, the Special Rapporteur has highlighted the human rights obligations and the responsibility of international funders, implementing entities, as well as partner States (see A/72/127).

THE SPECIAL RAPPORTEUR RECOMMENDS THAT INTERNATIONAL DEVELOPMENT FUNDERS:

- (a) Prioritize water and sanitation projects in Lesotho in their portfolios;
- (b) Put in place guarantees and safeguards to ensure that their development cooperation will fully incorporate human rights, in particular by implementing human rights principles and standards at all stages of the cycle of development cooperation projects.



THE HUMAN RIGHTS TO WATER AND SANITATION

During his two-week visit, the Special Rapporteur undertook an assessment of the access to water and sanitation services from a human rights perspective, which differs from the traditional technical assessment. His focus was neither on figures, numbers or averages, nor how wastewater is treated or the length and diameters of water pipes, but on how the outcomes of those elements impact the rights of the Basotho people and particularly those who are in the most vulnerable situations.

In assessing the availability, accessibility, affordability, and quality of water and sanitation services in Lesotho, the Special Rapporteur was sensitive to the specific challenges faced in relation to water and sanitation in Lesotho. The topography of the country means that communities in more remote and poorer areas are more likely to be left out of water and sanitation provision plans. The country's vulnerability to drought also put communities at risk of periods of water scarcity.

The Special Rapporteur also notes the disparities and inequalities that impact the human rights to water and sanitation across Lesotho. For example, a scarcity of water sources means that girls and women, who are usually responsible for collecting water, have to travel a longer distance in search of it. During the visit, it was noted that the majority of latrines were built in such a way that they could not be used by people with disabilities.

While the government of Lesotho has put in place a tariff system to regulate the cost of access to water and sanitation, the Special Rapporteur noted that this system did not safeguard the rights of the poor, who could see themselves disconnected in case of inability to pay. These tariffs are not lowered for institutions such as schools, missing out on a crucial opportunity to widen the coverage of water and sanitation services in Lesotho.

Finally, the Special Rapporteur notes a need for national standards and more effective monitoring of water and sanitation services in Lesotho. The routine quality control undertaken by the Water and Sewerage Company and the Department of Rural Water Supply covers a limited number of parameters. The surveillance undertaken by the Ministry of Health lacks the resources and staff to collect a larger number of, and more representative, samples.

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THE SPECIAL RAPPORTEUR RECOMMENDS THAT THE GOVERNMENT OF LESOTHO:

- (e) In regard to availability:
 - (i) Include hygiene and menstrual hygiene management as part of national policy;
 - (ii) Prioritize the provision of water and toilets to all levels of schools, including preschools and day-care centres;
 - (iii) Review the process of identifying water sources, taking into account projections of water availability during periods of drought;
 - (iv) As an interim measure during droughts, provide water through alternative mechanisms, such as trucks and other transportation methods, in particular to hard-to-reach, remote areas;
- (f) In regard to accessibility:
 - (i) Review policies for abstracting water from the reservoirs in the highlands to provide water to the villages in need and nearby villages, based on an exercise to identify and map the needs of those villages;
 - (ii) Initiate efforts at the district level to create public water taps and public toilets, taking into account the needs of the street vendors and other workers on the streets;
 - (iii) Establish a concrete programme of maintenance of ventilated improved pit latrines;
- (g) In regard to affordability:
 - (i) Undertake an in-depth analysis of the current tariff scheme in order to ensure that access to water and sanitation services is affordable for those in a vulnerable situation and those with limited economic capacity;
 - (ii) Establish a special tariff for schools and health centres and ensure that disconnections owing to lack of payment do not occur;
 - (iii) Establish a clearer procedure on disconnection of water services;
- (h) In regard to drinking water quality:
 - (i) Increase the number of annual samples for water quality control;
 - (ii) Establish a national regulation on drinking water quality in accordance with the most recent version of the WHO Guidelines for Drinking-water Quality;
 - (iii) Establish a well-equipped, well-staffed and accredited national laboratory for drinking-water analyses;
 - (iv) Include water treatment in the rural areas at the community or household level as part of the national agenda;



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Mega-projects

Watersheds involved in the dams of the highlands water project correspond to over 40 per cent of the country's total area. As part of phase I of the project, the Katse and Mohale Dams were finalized in 1997 and 2003 respectively. During phase I, there were long delays in implementing the rural sanitation and village water supply component for impacted and displaced communities. To date, there are conflicting figures about the status of water and sanitation in those villages in the area of influence of the dams, although there is a consensus that gaps persist

It was explained to the Special Rapporteur that several villages surrounding the Katse Dam had lost their water supply in 1995 when their natural springs dried up as a result of seismic activity that occurred during the inundation of the dam, an impact likely attributable to this mega-project. As a consequence, villagers have to walk for more than two hours to gain access to water from other villages

- (i) In regard to mega-projects, including the highlands development project, document the lessons learned from previous projects and phases of projects, and conduct an ex-post human rights impact assessment.

