



RECOMMENDATIONS OF THE SPECIAL  
RAPPOREUR ON THE HUMAN RIGHTS  
TO WATER AND SANITATION,  
**LÉO HELLER**

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**REPORT OF THE  
OFFICIAL COUNTRY  
VISIT TO MALAYSIA  
14-27 NOVEMBER 2018**

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Conclusions and Recommendations  
A/HRC/42/47/Add.2

During his two-week visit to Malaysia, the Special Rapporteur met representatives of the various levels of the Government, representatives of civil society, human rights defenders and members of the general public. The Special Rapporteur wishes to thank the Government for its invitation and organization of the visit. In particular, he would like to thank those who took the time to meet with him and who generously opened their homes. He also expresses appreciation to the office of the United Nations resident coordinator in Malaysia.

*Press Release  
End of Mission Statement*



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# **THE HUMAN RIGHTS TO WATER AND SANITATION IN MALAYSIA**

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Malaysia is blessed with an abundance of water resources, that is to say some 971 billion cubic metres of rainfall each year. The Special Rapporteur visited the country during the monsoon season and saw several tanks to collect rainwater in both urban and rural areas. In terms of access to adequate water and sanitation services, the Special Rapporteur observes that Malaysia is a high performer and that the accessibility of water and sanitation services is truly impressive. According to the 2015 report of the World Health Organization/United Nations Children's Fund Joint Monitoring Programme for Water Supply, Sanitation and Hygiene – the first monitoring report after the adoption of the 2030 Agenda for Sustainable Development – 92 per cent of the population of Malaysia had access to safely managed water services and 82 per cent to safely managed sanitation services. Similarly, the Joint Monitoring Programme estimates near universal access to water, sanitation and hygiene services in schools.

The Special Rapporteur commends the Government and the population of Malaysia for these achievements, which are the result of a historic commitment to the provision of public services. However, when this picture is observed from a human rights perspective, it is a great concern that some groups still do not enjoy their human rights to water and sanitation as they collect water from surface sources that are often compromised in terms of quality, and use inadequate sanitation services.

The situation as regards access to drinking water and sanitation for all, with an emphasis on leaving no one behind, would be quite different if water and sanitation were legally recognized as human rights and if Malaysia explicitly recognized the obligation to realize those rights. Building on the current efforts to ratify the relevant international human rights treaties, the Special Rapporteur strongly encourages the Government to consider his observations and recommendations in the present report and to take urgent action to address the situation of access to water and sanitation by the groups that have been left behind.



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# **LEGAL, INSTITUTIONAL, AND POLICY FRAMEWORKS**

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The historical, cultural and economic development of Malaysia has had a direct effect on the water and sanitation sector and thus the way in which the resident population access water and sanitation services.

The autonomy of Sabah and Sarawak and the differing levels of economic development between Peninsular Malaysia and East Malaysia also influenced the reform of the country's water and sanitation sector, which commenced in 2006.

As part of the reform, an amendment to the Constitution in 2005 triggered enactment of the National Water Services Commission Act 2006 and the Water Services Industry Act 2006, which constitute the main legal framework for the water and sanitation sector in Peninsular Malaysia and the federal territories.

As Sabah and Sarawak did not participate in the reform, the two states have retained their own legal frameworks on water and sanitation services.

Prior to the reform of the water and sanitation sector, the water services industry was under the purview of each state government, which owned the water infrastructure and operated water services. Some states, such as Selangor and Johor, were exceptions in that water services operations had been privatized and private concessionaires were responsible for the treatment and supply of water to consumers.

As a result of the reform, the federal government is mandated to regulate water supplies and sanitation services with authority over water-based projects, while the states retain their power to declare and regulate water catchment areas, water sources and river basins. Institutional actors at the federal level have been consolidated to ensure provision, regulation, and funding for both water and sanitation.

## **THE SPECIAL RAPPORTEUR RECOMMENDS THAT THE GOVERNMENT OF MALAYSIA:**

75. Concerning the legislative framework:

- (a) Ratify those international human rights treaties that it has not yet ratified, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Convention relating to the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness;
- (b) Harmonize the legal standards on water and sanitation services and ensure their coherence across the entire country so that they are in accordance with the human rights to water and sanitation.

76. Concerning the institutional framework:

- (a) Implement a plan of action to realize the human rights to water and sanitation, including the normative content of those rights and the principles of human rights
- (b) Ensure that all policies prioritize the elimination of inequalities in access to water and sanitation services. Introduce mechanisms to collect relevant
- (c) disaggregated data on access to water and sanitation services by relevant groups, particularly those based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, wealth or other status.



## **RECOMMENDATIONS OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS TO WATER AND SANITATION**

Another outcome of the reform was the establishment of a water and sanitation regulator. All water and sewerage services in Peninsular Malaysia are licensed and regulated by the National Water Services Commission, under the Water Services Industry Act 2006. The Special Rapporteur finds the regulatory strategy currently in place at the federal level adequate. The National Water Services Commission does not play a role in East Malaysia and therefore the national regulatory strategy does not apply in those states.

Since 1966, Malaysia has pursued development through national planning. The Eleventh Malaysia Plan 2016–2020, based on the principle of “anchoring growth on people”, resonates with the underlying principle of the Sustainable Development Goals, namely “leaving no one behind”. To make its commitment to the Sustainable Development Goals tangible and to achieve universal access to water and sanitation for all, Malaysia needs to aim for a higher rate of progress for disadvantaged and marginalized groups.

### **76. Concerning the policy framework:**

- (a) Assess whether the absence of federal bodies, established as part of the water and sanitation reform, in Kelantan, Sabah and Sarawak have affected the quality of water and sanitation services and make every effort to remove the inequalities that have resulted from this situation;
- (b) Provide technical and financial support for the expansion and improvement of water and sanitation services in Kelantan, Sabah and Sarawak until they offer the same level of access to those services as the states in Peninsular Malaysia;
- (c) Harmonize regulation of water and sanitation services in the country, through bodies that are independent of the service providers;
- (d) Introduce measures to ensure the independence and autonomy of the National Water Services Commission and that the main objectives of regulation are aligned with the human rights to water and sanitation and the principles of human rights.



# LEAVING NO ONE BEHIND

The Special Rapporteur commends the Government and the population of Malaysia for the visible and notable achievements in collecting, managing, and distributing water and sanitation services across the country, and sees these achievements as the result of a historic commitment to the provision of public services. However, when this picture is observed from a human rights perspective, it is a great concern that some groups still do not enjoy their human rights to water and sanitation as they collect water from surface sources that are often compromised in terms of quality, and use inadequate sanitation services.

## Orang Asli indigenous peoples

The Special Rapporteur stresses that a targeted policy is needed to ensure that Orang Asli have proper access to water and sanitation services. The capacity of the Department of Orang Asli Development needs to improve so as to ensure that services are appropriate, sustainable and compatible with indigenous cultural values. He hopes to see more resources allocated to upgrade and maintain the water infrastructure of the Orang Asli villages so that indigenous peoples are no longer marginalized.

## Rural populations

Those living in rural areas require particular attention from the Government, in order to improve their access to water and sanitation services and to ensure sustainability of the water and sanitation services

## Populations affected by megaprojects

During the visit, the Special Rapporteur learned about several such projects that had affected access to safe drinking water, such as dams, logging projects, massive oil palm plantations and processing plants, and other agribusinesses systematically using pesticides and fertilizers.

## THE SPECIAL RAPPORTEUR RECOMMENDS THAT THE GOVERNMENT OF MALAYSIA:

**80. Concerning access to water and sanitation for specific groups:**

- (a) Ensure that Orang Asli access continuous and sustainable water and sanitation services by improving the capacity of the Department of Orang Asli Development, among other measures;
- (b) Establish a harmonized approach to the rural water supply with a coordination mechanism to guarantee harmonization throughout all areas;
- (c) Carry out human rights impact assessments at each stage of a megaproject, with the meaningful participation of those affected in a transparent manner, facilitating easy access to information;



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### **Populations living in informal settlements**

The outstanding statistics recorded by Malaysia as regards access to drinking water do not, unfortunately, include those living in traditional style houses, known as “longhouses”, which are located in coastal villages and mountain areas, as well as other forms of informal settlements. Throughout the visit, particularly in East Malaysia, the Special Rapporteur saw several types of informal settlements, occupied by Malaysian nationals, stateless persons, undocumented population or others with an irregular status.

### **Undocumented children in alternative educational facilities**

A large number of children born in Malaysia, particularly in Sabah, are stateless, either because they lack a birth certificate or are waiting for proper documentation. In the absence of identity documents, children have limited access to public education, although they are allowed to enrol in alternative learning centres operated by private organizations in accordance with the policy on alternative education. These alternative learning centres are not registered with the Ministry of Education and do not benefit from its financial support for water and sanitation services.

### **Refugees and asylum seekers**

As of the end of January 2019, there were some 164,620 refugees and asylum seekers in Peninsular Malaysia registered with the Office of the United Nations High Commissioner for Refugees, the majority of whom were from Myanmar, mainly Rohingya. Most live in Kuala Lumpur or other urbanized environments where they can secure work in the informal market economy. The low incomes of households and exclusion from Government policies, programmes and remedies negatively affect the ability of the refugees and asylum seekers in Peninsular Malaysia to fully enjoy their human rights to water and sanitation.

### **Prisoners and detainees**

The Special Rapporteur spoke to three refugee men who were in prison. Their stories indicate poor and almost inhuman conditions of access to water and toilets in prison.

### **Transgender and gender non-conforming persons**

Lesbian, gay, bisexual, transgender and intersex persons in Malaysia often face structural and systemic discrimination. Particularly under the civil and State-administered Sharia laws, there are many laws that criminalize persons based on sexual orientation, gender identity and gender expression.

For each of these groups, the Special Rapporteur would like to highlight some of the interactions that he had and stories that he heard during his visit, particularly from those that are unserved or underserved and, consequently, left behind. While these stories are not statistically representative, the Special Rapporteur emphasizes that a human rights-based approach prioritizes and focuses on those who are socially and economically marginalized and who may otherwise be rendered invisible.

(d) Commence a baseline survey in order to improve the availability of data on undocumented and statelessness persons in East Malaysia;

(e) Create a coordination body at the federal level to assess the best legal, political and budgetary strategies to provide access to adequate public water and sanitation services, including in alternative education centres, for those who are undocumented, stateless or otherwise in an irregular situation;

(f) Monitor how gender inequalities in access to toilets, including among gender non-conforming persons, manifest in spheres beyond the home.

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# THE HUMAN RIGHTS TO WATER AND SANITATION

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The Special Rapporteur stresses that a human rights-based approach provides a framework to identify the highest priorities in national water and sanitation policies and that such a framework would take into account key issues related to people in vulnerable situations, including questions surrounding equality, non-discrimination, participation and access to information.

During the meetings with government representatives, many said that there were no data available to answer several of the questions related to the disparities in access to adequate services by specific groups. It is essential that the Government take urgent action to collect adequate data that would allow disaggregation of data on access to water and sanitation services by relevant groups, particularly based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, wealth or other status. The Special Rapporteur wishes to emphasize that States are under an immediate obligation to implement a national plan of action to realize the human rights to safe drinking water and sanitation in full, utilizing indicators and benchmarks to monitor and report on their progress.

As regards the affordability of water and sanitation services, Malaysia has financially accessible tariffs for both water and sewerage provisions. In some states, the Government provides a universal subsidy to its population by not charging water and sewerage tariffs until a certain level of consumption, usually 20 cubic meters each month. In other states, this subsidy is applied to a targeted population, with less economic resources. As regards desludging of septic tanks, in some states, such as Sarawak, the service is subsidized and is charged together with property taxes. The Special Rapporteur notes that these are commendable achievements.

The Ministry of Health regulates the quality of drinking water for both Peninsular and East Malaysia. The Ministry collects and analyses 189,000 samples each year across the country, covering most of the urban and rural piped water facilities. Surveillance of the quality of drinking water is more limited in some rural communities, including surveillance of the so-called alternative supplies and the water supply in the most remote areas. During the interactions with actors in this field, the Special Rapporteur noted that the coordination of drinking water surveillance undertaken by the Ministry of Health and drinking water control by water providers should be strengthened. The Ministry needs to have a more active role in auditing and interpreting the results of the monitoring by providers so that a larger number of parameters can be tested and any violations of the standards can be properly resolved.

## THE SPECIAL RAPPORTEUR RECOMMENDS THAT THE GOVERNMENT OF MALAYSIA:

### 78. Concerning water quality:

- (a) Ensure that the Ministry of Health has a more active role in auditing and interpreting the results of the monitoring of water quality by providers;
- (b) Prioritize targeted monitoring of hazardous substances, such as pesticides in water sources.

### 79. Concerning affordability:

- (a) Incorporate the Special Rapporteur's guidelines for restructuring water and sanitation tariffs;
- (b) Monitor the reasons for disconnecting water services and the subsequent measures taken;
- (c) Set up legal mechanisms to prohibit the practice of disconnecting water due to an inability to pay.

