

SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS TO
WATER AND SANITATION,
MR LÉO HELLER



**FOLLOW-UP REPORT
SUMMARY**

OFFICIAL COUNTRY VISIT TO TAJIKISTAN,
4 -12 AUGUST 2015



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FOLLOW-UP REPORTS

The official visit to Tajikistan was undertaken upon the invitation of the Government from 4 to 12 August 2015. During his visit, the Special Rapporteur had the opportunity to meet with different interlocutors, including the Government, local authorities, the Human Rights Ombudsman, the Housing and Communal Service (Khojagii Manizliyu Kommunalii), Dushanbe Vodokanal, civil society organizations and international donors and agencies. He talked to community leaders, human rights defenders, women, children and medical practitioners. At the end of the visit, he shared his preliminary findings with the Government and then held a press conference and issued a press release and the end of mission statement on 12 August 2015. The report of the official visit (A/HRC/33/49/Add.2) was presented to the Human Rights Council in September 2016. The Government of Tajikistan submitted its comments to the report (A/HRC/33/49/Add.5).

In undertaking the present follow-up report, the Special Rapporteur, between 1 January and 14 November 2018, conducted desk research on the implementation of the recommendations provided to the Government in his country mission report, in order to develop a picture of the Government's current actions, inactions and progress. To support the research, questionnaires to the Government and to other stakeholders were sent. Whilst no response from other stakeholders was received, the Government of Tajikistan submitted a written response to the questionnaire on 11 June 2018.

GENERAL DEVELOPMENTS IN THE COUNTRY

After the period of the visit, the Government of Tajikistan has reiterated its leading role in promoting water management at the global level by initiating the 'International Decade for Action, "Water for Sustainable Development", 2018-2028', which was adopted by the General Assembly on 21 December 2016 (A/RES/71/222). To facilitate its implementation, the State held the International High-Level Conference on the Water Action Decade, from 20 to 22 June 2018, in Dushanbe. The leadership of Tajikistan on global water issues was recognized in the press statement made by the Special Rapporteur at the conclusion of his visit to the country. At the end of the visit, the Special Rapporteur noted that "Tajikistan is known as a champion of water at the global level. The Government should translate the commitment made at the global level into the national legislation, policies and budget and their implementation, particularly to eliminate disparities and address the needs of the most vulnerable groups.

At the time of the visit, it was identified, through data from the Joint Monitoring Programme (WHO/UNICEF), that 74 per cent of the population had access to improved water and 95 per cent access to improved sanitation as of the end of 2015. About 40 per cent relied on non-centralized water supply sources and 15 per cent had sewer connections (A/HRC/33/49/Add.2, para.5). However, more complete and updated information, from 2017 and the same source, but using the stricter definition of access to services adopted by the Sustainable Development Goals targets and indicators, highlights that, in actuality, only 48 per cent of the national population has access to safely managed water services (60 per cent accessible on premises, 48 per cent available when needed and 73 per cent free from contamination), whilst only 73 per cent of the national population has access to basic hygiene services (87 per cent in urban areas and 67 per cent in rural areas). Additionally, the updated information shows that 79 per cent of schools in Tajikistan have basic water services (93 per cent in urban areas and 73 per cent in rural areas), 44 per cent have basic sanitation services (58 per cent in urban and 38 per cent in rural areas) and 26 per cent have basic hygiene services (41 per cent and 20 per cent in urban and rural areas, respectively). There is a lack of data on safely managed sanitation services.



LEGAL, INSTITUTIONAL AND POLICY FRAMEWORK

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))

Progress
On-Going

The Special Rapporteur commends the efforts made by the Government to consider the ratification of the Optional Protocol to the ICESCR, and to continue and increase its activities in pursuance of the objectives of the Protocol on Water and Health. He continues to encourage Tajikistan to sign and ratify the two Protocols. He further regards as a positive step the Government’s decision to sign the Convention of the Rights of Persons with Disabilities. He urges the Government to also ratify this Convention so as to ensure its legally binding status, however he reminds the Government that by signing the Convention it is under a duty to refrain from acts which would defeat its object or purpose of the Convention, pending a decision on ratification.



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))

Progress
On-Going

The Special Rapporteur acknowledges several activities related to the Protocol on Water and Health and reiterates that only by ratifying the Protocol can the protections it affords be fully realisable as a matter of law. He therefore restates his recommendation that the Government should accelerate its preparations to sign and ratify the Protocol.



RECOMMENDATION 3: “Revise the Water Code and place the principles and normative content of the human rights to water and sanitation at the centre of the law. The Water Code should have an explicit provision on the prioritization of water for personal and domestic use.” (A/HRC/33/49/Add.2, para. 59(a))

Progress
On-Going

The Government of Tajikistan noted that a Working Group had been established for the analysis of the Water Code and the development of a new edition of the Code. The Special Rapporteur is pleased to learn that the Water Code is in the process of being revised and that the revised Code will reflect the human rights to water and sanitation within its content. He looks forward to continued progress being made and the revised Code becoming law.





RECOMMENDATION 4: “Clearly define the division of power and responsibilities between the Ministry of Energy and Water Resources, the Housing and Communal Service, Vodokanal and local authorities under the water sector reform” (A/HRC/33/49/Add.2, para. 59(b))

Progress
On-Going

The Special Rapporteur notes that some relevant progress has been made in relation to the fulfilment of this recommendation. The Special Rapporteur welcomes the on-going progress made by the Government on sectoral reform. However, he finds it unclear how such reform will clearly define roles and responsibility of actors in the water and sanitation sector and contribute towards the realization of the human rights to water and sanitation. Accordingly, the Special Rapporteur urges the Government to review the reform process to ensure that it is effective in streamlining water and sanitation provision in Tajikistan and that it clearly defines the roles and responsibilities of the various actors within the sector.



RECOMMENDATION 5: “Revise the national policy and strategy and prioritize rural water and sanitation” (A/HRC/33/49/Add.2, para. 59(c))

Limited
Progress

Whilst the Special Rapporteur appreciates the fact that the Government has developed a national strategy and programmes in which it addresses the quality of water and access to water and sanitation services by urban and rural populations, according to the information received, the national strategy and programme does not explicitly prioritize rural water and sanitation, as recommended. Accordingly, he reiterates his recommendation that the Government gives special priority to rural water and sanitation.



RECOMMENDATION 6: “Start a discussion without delay on the establishment of an independent regulator with competence to monitor the compliance of water and sanitation service providers with the normative content of the human rights to water and sanitation” (A/HRC/33/49/Add.2, para. 59(j))

Limited
Progress

The Special Rapporteur has not received a clear response from the Government regarding the progress it has made towards achieving this recommendation. According to research conducted for this follow-up report, the Water Sector Reform Programme for 2016-2025 does include discussion of some regulatory reform processes, however an assessment carried out by the World Bank in 2017, found that this reform is hindered by a number of obstacles such as “the presence of a large amount of debt within the sector; resistance from the SUE KMK (Housing and Communal Service) to partial decentralization of selected policy, regulatory, and operation functions; and lack of clarity as to whether or not the to-be-created regional structures will fit within the existing regulatory structures at the regional level.”



The Special Rapporteur makes clear that independent regulation is crucial to ensuring the rights to water and sanitation are respected, protected and fulfilled in accordance with Tajikistan’s human rights obligations. Accordingly, he restates his recommendation.



THE HUMAN RIGHTS TO WATER AND SANITATION

RECOMMENDATION 7: “Develop guidance and review financial support regarding latrine construction and sludge management to ensure that toilets are hygienic to use and to maintain and that waste matter is safely contained, transported, treated and disposed of or recycled” (A/HRC/33/49/Add.2, para. 59(d))

Progress
not Started

The Special Rapporteur strongly recommends that the Government urgently develop guidance and review financial support to individual households on this matter. Safely managed sanitation services is one of the indicators of Sustainable Development Goal 6.2, and, accordingly, the Government must act on this recommendation without delay if it is to fulfil its obligations to achieve SDG 6.2 by the year 2030.



RECOMMENDATION 8: “Urgently strengthen the capacity of water quality monitoring and surveillance to ensure safe water” (A/HRC/33/49/Add.2, para. 59(e))

Progress
not Started

Whilst the Government notes that water quality in Tajikistan is monitored pursuant to legislative provision, the Special Rapporteur is concerned that the water quality remain poor. The Special Rapporteur recommends that the Government urgently strengthen the capacity of water quality monitoring and surveillance.



RECOMMENDATION 9: “Review the tariff system comprehensively and increase the rate for those sectors which are capable of paying more, taking into consideration the sustainability of water and sanitation services and affordability for all.” (A/HRC/33/49/Add.2, para. 59(f))

Limited
Progress

In response to the recommendation of the Special Rapporteur to review the tariff system, the Government notes that as part of the implementation of paragraph 16 of the Action Plan for the implementation of the “Program for the reform of the water sector in Tajikistan for the period 2016 – 2025,” it is planned to develop a new methodology for determining the tariffs for drinking water supply services that allow full coverage of costs.



Whilst the Special Rapporteur acknowledges the Government’s plans to develop a new tariff methodology, he observes that little evidence can be seen regarding how this will assist in balancing affordability between those on lower-incomes and those on higher-incomes, and ensuring sustainability in this context. Accordingly, the Special Rapporteur restates his recommendation and encourages the Government to make better progress on the recommendation.



RECOMMENDATION 10: “Adopt safeguard mechanisms to protect access to essential water and sanitation for those who live in poverty and those who have special needs, including health conditions.” (A/HRC/33/49/Add.2, para. 59(g))

Progress
not Started

The Special Rapporteur is disheartened to not see any efforts made by the Government to protect access to water and sanitation for people on low-incomes and with special needs. He reminds the Government that under international human rights law they are obliged to give special consideration to vulnerable groups – a sentiment shared by the SDGs. The Special Rapporteur calls on the Government of Tajikistan to devise and initiate policies aimed specifically at vulnerable groups in order to better respect, protect and fulfil their water and sanitation rights.



RECOMMENDATION 11: “Invest in rehabilitation and reconstruction of old infrastructure, as well as in the maintenance and operation of new and existing services, in order to avoid deterioration in the services currently provided. The Government should seek international assistance with clear plans.” (A/HRC/33/49/Add.2, para. 59(h))

Good
Progress

In response to this recommendation, the Government stated that in the period of 2008 - 2017, more than 1.4 billion somoni was allocated for the construction, rehabilitation and reconstruction of drinking water and sanitation systems, and more than 1 million people in the framework of the “Program for providing the population of the Republic of Tajikistan with clean drinking water for 2008-2020” were provided with drinking water.” In addition, it explained that as part of implementation of paragraphs 28-29 of the Action Plan for the implementation of the “Water Sector Reform Program in Tajikistan for the period 2016-2025”, it is planning to restore water supply and sanitation infrastructure, replace worn-out mechanisms of use and protect water infrastructure with modern machinery and equipment” as part of water sector reform and an amount of 438.5 million somoni was allocated from all sources of financing.



The Special Rapporteur congratulates Tajikistan for the progress made in relation to this recommendation and looks forward to the Government continuing to utilise the maximum of its available resources in constructing, rehabilitating and reconstructing drinking water and sanitation systems.

RECOMMENDATION 12: “Improve access to water, sanitation and hygiene in public institutions, in particular schools and health facilities, as a matter of priority, and install menstrual hygiene management systems in all public institutions” (A/HRC/33/49/Add.2, para. 59(i))

Progress
On-Going

Whilst excellent progress has been made regarding promotion of water and sanitation in institutional facilities, and with regards to menstrual hygiene, the Special Rapporteur looks forward to seeing similar progress in relation to access in schools and health facilities. He recommends the Government increase its efforts in this regard to as to ensure it achieves its vital SDG commitments by 2030.





ACCESS TO INFORMATION, ACCOUNTABILITY AND JUSTICE

RECOMMENDATION 13: “Protect the right to information and strengthen the accountability mechanism, including through strengthening the power of the Ombudsman, as well as respecting the activities of civil society” (A/HRC/33/49/Add.2, para. 59(k))

Limited
Progress

The Government responded that it has taken legislative measures to boost the right to access information regarding the human rights to water and sanitation. As per the response, it was noted that the draft Law of the Republic of Tajikistan On Drinking Water and Drinking Water Supply reflects the procedure for issuing and obtaining information on drinking water and drinking water supply as well as providing information about quality and safety of drinking water to consumers.



The Special Rapporteur looks forward to the draft Law stipulating the right to information being adopted in due course. Protecting the right to information in law is a positive step forward, however the Special Rapporteur is disappointed not to receive information about the strengthening of accountability mechanisms. As such, he repeats his recommendation and looks forward to seeing progress made in relation to this.

RECOMMENDATION 14: “Review laws and policies that could potentially weaken civil society organizations, including newly adopted amendments to the Law on Public Associations, and provide a wider space for civil society to openly discuss policies and people’s needs relating to access to water, sanitation and hygiene, with capacity for actual influence in decision-making processes” (A/HRC/33/49/Add.2, para. 59(l))

Retgression

According to the information the Special Rapporteur received on 12 August 2015, changes to the Law on Public Associations came into force after official publication. The changes were signed by the Tajik President on 8 August 2015 and introduced a new inspection procedure for many civil society organizations, without spelling out the nature or frequency of such inspections. The amendments also require all foreign funding received by such organizations to be notified to the Ministry of Justice as registering authority. On 27 April 2016, the Government adopted the Procedure for Maintaining the Registry of Humanitarian Aid for Public Associations to implement the 2015 amendments to the Law on Public Associations. Furthermore, on 2 January 2018, President signed amendments to the Law on Public Associations, which were developed in line with Financial Action Task Force on Money Laundering requirements to ensure a stringent approach to preventing money laundering and financing of terrorism through civil society organizations. The amended Law requires all civil society organizations to annually publish financial reports about their incomes and expenditures on their own websites or the site of the state body that registers public associations, the Ministry of Justice.



The Special Rapporteur is deeply concerned that the potential control over civil society organizations has been further strengthened in law since his visit and reiterates his recommendation to provide a wider and more open space for civil society.



LEAVING NO ONE BEHIND

RECOMMENDATION 15: “Provide adequate reparation to the displaced population whose human rights, including the rights to water and sanitation, have been violated, and carry out human rights impact assessments for any development projects in order to guarantee non-repetition” (A/HRC/33/49/Add.2, para. 59(m)).

The Special Rapporteur is concerned that he did not receive specific information about reparation to the displaced population. He reiterates the importance of adequate reparation to the displaced persons affected by development projects and to prevent reoccurrence of such human rights violations by conducting human rights impact assessments.

The Special Rapporteur calls on the Government to make public information regarding reparations provided to displaced persons whose rights have been breached. He reminds the Government that displacing populations without ensuring their human rights are met in full is a retrogressive step and a violation of international human rights law.

No
assessment
can be made
due to lack of
information



RECOMMENDATION 18: “Revisit the policies on refugees and asylum seekers, as well as on nationality and statelessness, with a view to providing equal access to essential services, including water and sanitation, for everyone in the country without discrimination.” (A/HRC/33/49/Add.2, para. 59(n))

The Special Rapporteur regrettably did not receive information on positive actions to revise policies on refugees, asylum seekers and stateless people. He reiterates that providing a uniform norm of water and sanitation services is sometimes not sufficient to provide equal access to certain populations. He encourages the Government to take measures for refugees, asylum seekers and stateless persons.

The Special Rapporteur calls on the Government to publish information on its plans to revise policies relating to refugees, asylum seekers and stateless persons so that these can be scrutinised. He reminds the Government that their human rights obligations regarding water and sanitation extend to all people, including non-citizens and those who are currently stateless.

No
assessment
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CATEGORIES



Good progress

- Successful implementation of the recommendation and seeming likely to progress further.
- Recommendation not yet fully implemented, but implementation is imminent.



Progress On-going

- Some concrete and relevant actions have been taken towards implementing recommendation, but the recommendation is not fully implemented.
- Partial but relevant measures/actions taken are likely to lead to the achievement of the recommendation or of a significant content of the recommendation.
- Relevant actions have been taken which putatively address the recommendation, but the outcome of these actions is unclear.
- Signs of positive effort in good faith to progress consistently.
- A draft law is in the process of approval of the parliament or is being endorsed by the Parliament.



Limited Progress

- Actions have been taken that do not address the recommendation itself.
- Actions have been taken but these do not ensure compliance
- Actions have been taken towards improving access to water, but not sanitation, or vice versa, when the recommendation refers to both.
- Actions are being taken but progress is so slow it is doubtful whether the state is moving as 'expeditiously and effectively as possible'.
- Actions have been taken to address the recommendation in a short-term way, but do not address systemic issues targeted by the recommendation.
- A draft law has been in the works for a long period without making any progress.



Progress not Started

- No actions have been taken by the Government
- Some actions have been taken which do not address the recommendation itself



Retgressionion

- Any measure that may go against or translate in a significant retrogression in the situation on which a recommendation has been issued



No assessment can be made due to lack of information

- Irrelevant information provided by the Government and no other information found in research
- Information provided that pertains to the recommendation, but is out of date or has methodological issues.
- More information is needed to understand the broader impacts of a policy.
- Vague information and non-verifiable information has been provided on measures adopted and the recommendation has not been implemented.