**Expert Consultation on the impacts of mega-projects on the human rights to water and sanitation**

**Organized by the UN Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Léo Heller**

# *12 November 2018, Kuala Lumpur[[1]](#footnote-1)*

Pursuant to the UN Human Rights Council Resolutions 27/7 of 2014 and 33/10 of 2016, the Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Léo Heller, is mandated to work on identifying challenges and obstacles to the full realization of the rights, as well as protection gaps, good practices and enabling factors.

One of the Special Rapporteur’s next thematic reports will focus on the impacts of mega-projects on the realization of the human rights to water and sanitation. As part of the preparation, the Special Rapporteur convened a roundtable in Geneva on 11 September 2018 ([concept note](https://www.ohchr.org/Documents/Issues/Water/CN_MegaProjects.pdf)) and bilateral online consultations from 17 to 21 September 2018. Further to the roundtable, the Special Rapporteur is convening a series of regional expert consultations: in Asia-Pacific Region (12 November 2018, Malaysia); Latin America and the Caribbean Region (January 2019, Mexico); and African Region (February 2019, South Africa). In preparation of the Asia Pacific Regional consultation, the Special Rapporteur called for submissions ([call for inputs](https://www.ohchr.org/Documents/Issues/Water/Consultations/AsiaPacificConsultation12Nov2018.docx)).

# Objective of the report

* To examine the rationale behind the option for mega-projects, their evolution trends, and areas of improvement in order to understand the underlying causes and governance issues related to their impacts on the realization of the human rights to water and sanitation.
* To provide analysis of the potential impacts on and violation of the human rights to water and sanitation as a result of mega-projects and interlinkages with other human rights.
* To identify challenges, positive cases and enabling frameworks to respect, protect, promote or fulfil the human rights to water and sanitation related to the implementation and operation of mega-projects.
* To compile knowledge and tools to make mega-projects more in line with the human rights standards including identifying human rights obligation and responsibilities of actors and implementation of human rights principles in environmental and social impact assessment.

# Human rights cycle of mega-projects

Considering that mega-projects involve long life cycles, the following stages are identified where human rights are implicated (“human rights cycle of mega-projects”):

* First, from a macro planning perspective, the stage when mega-projects are identified as part of the national development agenda of a country;
* Second, the stage of planning and design of a given mega-projects, involving environment and social impact assessments;
* Third, the stage when the mega-project is licensed by public authorities;
* Fourth, the stage when the construction of the mega-project is in progress;
* Fifth, when the mega-project commences its operation; and
* Sixth, related to the impacts of the megaproject in the long term.

# PROGRAMME

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| **Introduction** | **9:00 – 9:30** |

Speaker: Special Rapporteur

* Purpose and objective of the expert consultation
* Tour de table: Introduction of participants

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| SESSION 1: Background | **9:30 – 10:30** |

Mega-projects or large-scale projects involve multiple layers of complexity, involving a wide range of aspects such as large budgets, technical means, long-life cycles or different natures of stakeholders. The report will not attempt to define nor adopt an existing definition of mega-projects and thus will not limit its scope to particular types of mega-projects. For the scope of this report, the following criteria are taken into account: (1) use of a large size of land or modification of water resources; (2) a long implementation period and; (3) significant impacts on the human rights to water and sanitation and on other related rights.

Mega-projects are expected to increase to 24 per cent of the global GDP in the coming ten years and the number, size and diversity of projects are on the increasing trend.[[2]](#footnote-2) Mega-infrastructure projects are implemented on the grounds of facilitating trade, economic growth and job creation through the connectivity of goods, services and people. However, “contrary to the idea of infrastructure as a means to sustainable development and fulfillment of human rights, too many mega-infrastructure projects seem to work in the opposite direction, leaving the vulnerable segments of the society under- or unserved, perpetuating exclusion and discrimination, and exacerbating inequalities between population groups”.[[3]](#footnote-3)

Introductory remarks: Aida Karazhanova (5 minutes)and Apichai Sunchindah (5 minutes)

Guiding Questions for discussion:

* What is the role of mega-projects and their contribution to the livelihood of people in the regional context in Asia and the Pacific as well as in national settings? What trends and evaluations are observed?
* How does the current trend and landscape of mega-projects potentially affect the enjoyment of human rights in general?
* What are the important root causes that trigger or lead to the violation and abuse of human rights related to mega-projects?
* Are civil society organizations and academics challenging government and international organization’ policies supporting mega-projects? Have alternative models of development being proposed by those actors?

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| **Break** | **10:30 – 10:45** |

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| **SESSION 2: Impacts of mega-projects on the human rights to drinking water and sanitation** | **10:45 – 12:15** |

Mega-projects have both negative and positive impact on the environment and the society, particularly on the human rights to water and sanitation. The analysis of the impact on those rights are based on the normative content of the rights to water and sanitation (quality and safety, accessibility, availability, acceptability, affordability, dignity) and relevant human rights principles (access to information, participation, equality and non-discrimination). In the course of his work, the Special Rapporteur has faced the following concerns related to mega-projects:

**Accessibility:** In the State of Manipur, India, communities downstream of the Thoubal multipurpose dam project could no longer rely on the river as their source of drinking water, due to the deteriorated water quality and its irregular flow caused by the dam. Therefore, they had to pay for access to the water source of a nearby village ([A/HRC/39/55/Add.1](https://undocs.org/A/HRC/39/55/ADD.1) para. 69).

**Quality:** In Mexico, zones hosting extractive industries (oil and shale gas extraction) in Emiliano Zapata, Papantla, Veracruz State, water resources have been recurrently contaminated due to accidents or degraded supply networks. Low-quality water, and lack of information and access to justice by populations have been reported [(A/HRC/36/45/Add.2](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/229/49/PDF/G1722949.pdf?OpenElement) paras. 58 to 62 and 68).

**Availability:** In Tajikistan, 42,000 people were relocated due to the Roghun Dam and Hydropower Plant project. Due to the lack of planning, people living in the new settlements were lacking from insufficient amounts of water for human consumption, and were sometimes forced to buy insufficient, unsafe and unaffordable water from trucks. Furthermore, resettled people had to build their own toilets [(A/HRC/33/49/Add.2](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/151/61/PDF/G1615161.pdf?OpenElement) paras. 49, 52 to 60).

**Participation:** In the United States, an oil pipeline underneath the Lake Oahe, less than a mile away from the Standing Rock Sioux Tribe’s reservation and directly upstream from their drinking water intake started its construction. It was reported that such project was carried out without proper consultation of the Tribe and without providing them with adequate information ([UA USA 7/2016)](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3344).

Introductory remarks: Seree Nonthasoot (5 minutes), and Yosepha Aloman (5 minutes)

Guiding questions for discussion:

* What are the most relevant impacts that different types of mega-projects may have on the enjoyment of human rights to water and sanitation in the Asia-Pacific region?
* What impacts on human rights principles are observed that will, in turn, affect the exercise of the human rights to water and sanitation?
* Are there groups that are more likely to be affected by mega-projects and that require a specific focus in the Asia-Pacific Region?
* What challenges exist to prevent and remedy the negative impact of mega-projects on the human rights to water and sanitation? What are positive examples in this respect?
* How do the challenges differ for different types of mega-projects? How do the challenges differ in various stages of the human rights cycle (introduced above)?

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| **Lunch break** | **12:15 – 14:00** |

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| **SESSION 3: Roles of actors and challenges** | **14:00 – 15:30** |

There are many actors involved in mega-projects and they bear human rights responsibilities or obligations for the impact mega-projects have on the human rights to water and sanitation. These actors may be States and public authorities (e.g. central, regional and local authorities, publicly owned corporations, regulators), non-State private actors (e.g. companies, groups, transnational companies, outsourced corporations), or multilateral and bilateral funders.

Throughout the stages of the “human rights cycle of mega-projects”, several challenges exist to realize the human rights to water and sanitation. These include, among others, corruption practices; imbalance of power between companies and affected populations; lack of transparency on the information related to projects; inadequate participatory spaces; difficulties in demonstrating the health impacts of mega-projects; violence or criminalization against affected population; lack of access to justice or to reparation mechanisms by affected populations; and weak normative frameworks and regulation.

In this connection, the Special Rapporteur emphasizes that the accountability must be upheld and reiterates the accountability framework introduced in his report ([A/73/162](http://undocs.org/A/73/162)):

First, the adequate implementation of accountability requires a clear definition of who is accountable, who may hold actors accountable and what actors must be accountable for. Affected populations can hold States and other accountable actors to account for failing to adhere to predetermined performance standards or to comply with human rights obligations.

Second, the provision of proper explanations and justification requires that States and other accountable actors be able to answer questions and give the information requested.

Third, enforceability is critical to ensure accountability by imposing sanctions and remedial actions for violations and abuses by different actors. This is preceded by a process whereby bodies and mechanisms oversee actors’ compliance trough performance standards that should be in line with human rights. Judicial, quasi-judicial and other accountability mechanisms need to be complemented by an enabling environment that empowers the affected populations to lodge claims and that builds trust and effectiveness in the mechanisms.

Introductory Remarks: Ming Chee Ang (5 minutes) and Scott Hawken (5 minutes)

Guiding questions for discussion:

* How has the roles of actors in the Asia-Pacific region related to mega-projects hindered the enjoyment of the rights to water and sanitation by the affected population?
* What challenges exist for the relevant actors to implement their human rights obligations and responsibilities throughout the stages of the human rights cycle of mega-projects (introduced above)? How have these challenges been addressed and overcome, if any?
* What are some successful cases or elements to prevent and redress harm and/or reduce power imbalances between affected populations and actors behind mega-projects?
* Which measures should be adopted by relevant actors to ensure that mega-projects respect, protect, and fulfill the human rights to water and sanitation and other interrelated rights?
* What are the strengths and weaknesses of the existing human rights framework and accountability mechanisms – at the regional and national level – that safeguards the human rights to water and sanitation from the impacts of activities related to mega-projects?

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| **Coffee Break** | **15:30 – 15:45** |

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| **SESSION 4: Way forward** | **15:45 – 17:30** |

The issue of how mega-projects affect human rights in general and particularly the human rights to water and sanitation has been addressed by different organisations, researchers and other UN Special Procedures mandates. Several measures are put forward for a better compliance of mega-projects in accordance with human rights standards.[[4]](#footnote-4) These include, among others, ensuring that project selection and design are in line with international human rights and environmental standards, develop policy and institutional frameworks to enhance disclosure of information and to improve transparency, participation and accountability in mega-project.

Introductory remarks: Vicky Taulicorpuz (5 minutes) and Cynthia Gabriel (5 minutes)

Guiding questions for discussion:

* What changes are required to the existing international, regional and national frameworks related to mega-projects in order to incorporate specific features of the human rights to water and sanitation?
* What elements are required for better compliance of mega-projects in accordance with the framework of the human rights to water and sanitation?
* How can human rights be integrated as core requisite in the environmental and social impact assessments?

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| **Wrap-up** | **17:30 – 18:00** |

Speaker: Special Rapporteur

* Remaining issues to be discussed
* Closing the session by the Special Rapporteur

1. Malaysian Centre for Constitutionalism and Human Rights (MCCHR), A-03-08, Pantai Business Park, Jalan Pantai Baharu 59200 Kuala Lumpur Tel / fax: + 6-03-2201-1454 Website: mcchr.org [↑](#footnote-ref-1)
2. Jonas Söderlund, Shankar Shankaran and Christopher Biesnthal, *“The Past and Present of Megaprojects”*, 2017 The Project Management Journal, Vol 48, pg 5. [↑](#footnote-ref-2)
3. OHCHR, [Baseline Study on the Human Rights Impacts and Implications of Mega-Infrastructure Investment](https://www.ohchr.org/Documents/Issues/Development/DFI/MappingStudyontheHRRiskImplications_MegaInfrastructureInvestment.pdf), 6 July 2017, pg 2. [↑](#footnote-ref-3)
4. OHCHR, [Baseline Study on the Human Rights Impacts and Implications of Mega-Infrastructure Investment](https://www.ohchr.org/Documents/Issues/Development/DFI/MappingStudyontheHRRiskImplications_MegaInfrastructureInvestment.pdf), 6 July 2017, pg 61; and OHCHR and the Heinrich-Böll-Stiftung, *“The Other Infrastructure Gap Sustainability, Human Rights and Environmental Perspectives, Executive Summary”,* 2018, pgs. 11-15. [↑](#footnote-ref-4)