The Permanent Mission of Portugal to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights and, with reference to the call for input by the Special Rapporteur on the human rights to safe drinking water and sanitation, dated 16 September 2021, has the honour to enclose herewith the reply of Portuguese authorities to the respective questionnaire.

The Permanent Mission of Portugal avails itself of this opportunity to renew to the Office of the UN High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 19 January 2022

Office of the UN High Commissioner for Human Rights
CH 1211 Geneva 10, Switzerland
Fax: +41 22 917 90 08
ohchr-srwatsan@un.org
Questionnaire to States
Reports to the 51th session of the Human Rights Council and
the 77th session of the UN General Assembly (2022)

I. General questions

1. Please provide information regarding the national legal and regulatory framework including on:
1.1. the legal recognition of the human rights to water and sanitation;

**Answer:** Portuguese legislation has no explicit recognition of the human rights to water and Sanitation (HRWS) as such. Portugal supported the UN resolutions regarding the HRWS, and it is a party to all relevant international agreements in this respect. It has the obligation to ensure the enforcement of the HRWS in Portugal. The principles underlying the HRWS are therefore embedded in the Portuguese legislation.

The Portuguese Constitution establishes several rights linked to the HRWS:

- The right of consumers to the good quality of the goods and services consumed and to the protection of health (article 60);
- The right of everyone to the protection of health, which requires the systematic improvement of living and working conditions and the development of people's health and hygiene education and healthy living practices (article 64);
- The right of everyone to adequately sized housing, that provides hygienic and comfortable conditions (article 65);
- The right of everyone to a healthy and ecologically balanced human living environment and the duty to defend it (article 66)
- This framework was the basis of a ruling by the Portuguese Constitutional Court in a case concerning the possibility to interrupt the water supply due to failure of payment, which was very much in line with human rights obligations (Ruling 685/2004 on the case file 817/2002, issued on 30th November 2004).

The Water Law (Law 58/2005, of 29th December) establishes the principle of the social value of water, with universal access to water to cover basic human needs at affordable prices. Access to water cannot be the basis for discrimination, and users shall be granted access on adequate conditions. The principle of the economic value of water recognized the need to ensure economically efficient use of water, namely by ensuring cost recovery based on the polluter-pays principle and the user-pays principle.

The Decree-Law 194/2009, of 20th August, includes several relevant rules:

- Water and wastewater services are considered accessible and must be provided whenever the public infrastructure is within a distance of 20 meters from the private property limit. If wastewater service infrastructure is further away, the service operator must guarantee the removal of sludge from septic tanks. The refusal to provide these services in the above-described conditions constitutes an infringement punishable with a fine (articles 59 and 72).
- Drinking water and wastewater services provided by public systems should be made available within five days after subscription request, or a fine may be applied (article 63 and 72);
- Interruptions are only allowed for unavoidable technical reasons or if the user fails due payments. Strikes are not considered a justifiable reason for interrupting these services (article 60);
- The service operator must give 48 hours prior notice to affected users about programmed interruptions justifiable for technical reasons, or a fine may be applied (article 60 and 72).
The Law 23/96, of 26th July, as amended by Law 10/2013, of 28th January, establishes that the operator may interrupt the service whenever the user fails to pay the service in due time. The operator has to inform the user 20 days in advance, allowing him to avoid interruption by paying his debt before the date set for disconnection.

This legislation establishes the framework and some fundamental rules regarding the fulfilment of the HRWS.

Finally, Law 24/96, of 31st July (Consumer Protection Act), not specific to the sector, generally provides a set of consumer rights, of which we highlight the right to quality of goods and services and the right to the protection of health and physical safety.

In addition, the HRW will be further enshrined in national law with the transposition of the new Drinking Water Directive, which PT is currently carrying out, since it includes a specific article to ensure access to water for all, particularly for persons in the most vulnerable situations.

1.2. The provision of water and sanitation services and facilities to people living in impoverished rural areas and indigenous peoples;

**Answer:** Concerning water and sanitation services, the Portuguese legislation and regulations require that access to these services is tendentially universal. These rights are to be guaranteed whether in urban or rural areas and regardless of the economic level of the population. There are mechanisms to ensure that those with weaker economic conditions will access water and sanitation, for example, through social tariffs.

1.3. The recognition of the status of indigenous peoples and their rights; and

**Answer:** Not applicable.

1.4. The regulation of service providers — whether private or public or even community-based — and other actors to ensure respect for the human rights to water and sanitation of indigenous peoples and people living in impoverished rural areas.

**Answer:** Please see the answer to question 1.2.

2. Please provide information on national or local policies and programmes that aim to improve access to safe drinking water, sanitation and hygiene for indigenous peoples (including those living in urban and peri-urban areas) and people living in impoverished rural areas, including:

2.1. Budgetary allocations for policies and programmes and other budgetary allocations at the local level to develop or improve water and sanitation services for indigenous peoples and people living in impoverished rural areas;

2.2. the recovery of the healthy state of their drinking water sources of indigenous peoples and people living in impoverished rural areas; and

2.3. any changes in policy related to access to water and sanitation services for indigenous peoples and people living in impoverished rural areas since the outbreak of the COVID-19 pandemic.

**Answer:** Please see the answer to question 1.2. In addition, we note that in the last decades Portugal has enacted and implemented national strategies for water services, and is currently finalizing a new Strategic Plan for Water Supply and Waste Water Treatment (PENSAARP 2030), which focuses, among others, on social concerns for people living in impoverished rural areas.

3. In the context of international development cooperation, please provide information regarding to your Government's role and responsibility to improve and ensure access to water and sanitation of indigenous peoples and people living in impoverished rural areas, including:
3.1. Any international development funds providing human, technical or financial resources to support the self-governance of indigenous peoples and people living in impoverished rural areas regarding access to water and sanitation; and
3.2. Measures in place to ensure that international development projects target and prioritize access to water and sanitation for indigenous peoples and people living in impoverished rural areas.

**Answer:** Portugal, through the various competent authorities, promotes the implementation of cooperation projects with developing countries in the fields of water supply and wastewater treatment.

4. Please provide information regarding the **accountability framework** related to the water and sanitation sector, in particular on:
4.1. The roles, responsibilities and standard of service providers (public, private or community providers) who provide access to water and sanitation to indigenous peoples and people living in impoverished rural areas;
4.2. Ways in which indigenous peoples and people living in impoverished rural areas can access information relating to access to water and sanitation services;
4.3. any effective mechanisms where indigenous peoples and people living in impoverished rural areas can submit complaints regarding their access to safe drinking water and sanitation as well as obtain information on how those complaints are handled and enforced; and
4.4. Mechanisms available for indigenous peoples and people living in impoverished rural areas to hold States and other relevant actors accountable for ensuring the enjoyment of the human rights to safe drinking water and sanitation and for their actions, inactions and decisions that affect the realization of those rights.

**Answer:** In Portugal there is not such category as “indigenous peoples”, and persons living in impoverished rural areas have the same rights as those living in urban areas. Existing service providers have the same responsibilities for urban and impoverished rural areas in their geographic territories. The Portuguese regulator for the water and sanitation sector (ERSAR) collects data and processes indicators regarding all service providers, both for urban and impoverished rural areas, published through yearly reports (Relatório Anual dos Serviços de Águas e Resíduos em Portugal, RASARP).

5. In the case indigenous peoples and people living in impoverished rural areas do not have access to water and sanitation fulfilling the **normative content of the human rights to water and sanitation**, namely, availability, accessibility, affordability, safety, quality, acceptability, privacy and dignity*:
5.1. Please provide information on the reasons and root causes that impair the full enjoyment of the human rights to water and sanitation;
5.2. Please provide information on the challenges faced by the Government to guarantee the human rights to water and sanitation; and
5.3. Please provide information on any actions that your Government plan to take in response to the challenges faced by indigenous peoples and people living in impoverished rural area in access to water and sanitation and full enjoyment of the human rights to water and sanitation.

* For more information on the normative content of the human rights to safe drinking water and sanitation see (English | Français | Español)

**Answer:** Please see answer to question 1.2. Both people living in impoverished rural areas and people in urban areas have access to water and sanitation fulfilling the normative content of the human rights to water and sanitation, namely, availability, accessibility, affordability, safety, quality, acceptability, privacy and dignity.
6. In what ways has your Government ensured meaningful participation and ensured to obtain the free, prior and informed consent of indigenous peoples and people living in impoverished rural areas relating to decisions, policies and projects affecting their human rights to safe drinking water and sanitation:
6.1. Please provide specific information on how your Government has facilitated democratic participation of indigenous peoples and people living in impoverished rural areas in decision making, monitoring and evaluation of such projects at local level;
6.2. Please provide information on how your Government monitors the consultation process by government agencies, service providers and private companies in implementation of projects affecting the human rights to safe drinking water and sanitation of indigenous peoples and people living in impoverished rural areas; and
6.3. Please provide information on measures and efforts taken by your Government to ensure meaningful participation by indigenous women and women in impoverished rural areas and steps taken to ensure that their voices are heard in decision-making processes, monitoring and evaluation relating to water and sanitation at local and national level, respectively.

**Answer:** Both persons living in impoverished rural areas and persons living in urban areas, as well as organizations representing them, have access to public consultation processes, namely during legislative procedures or the approval of certain projects.

**II. Specific questions on indigenous peoples**

7. Please provide a list of indigenous peoples residing within your State's territory or those under the jurisdiction of your Government who have self-identified themselves as indigenous.
8. Please provide any efforts and initiatives taken to collect and analyze information relating to indigenous peoples living in rural areas, in particular:
   8.1. the environment in which indigenous peoples live (climate, geography, topography, recent events/disasters that occurred in the area);
   8.2. the socio-economic situation of or context in which indigenous peoples live (education, health, employment levels, land rights, housing and security of tenure, etc.);
   8.3. the level of autonomy and self-governance and the existence of a community organization to manage common goods, such as water;
   8.4. their relationship with national and local (sub-national) government; and
   8.5. their relationship with neighboring communities and population living in impoverished rural areas.

9. Please provide any efforts and initiatives taken to collect and analyze information relating to indigenous peoples living in rural areas, and access to water and sanitation, in particular:
   9.1. how indigenous peoples living in rural areas access water (for drinking, for domestic and personal usage), and sanitation (toilet, pit latrines, sewerage, shower facilities, handwashing, menstrual hygiene);
   9.2. what agencies are responsible for the provision of water and sanitation services to indigenous peoples and what service providers – public or private; at community, municipal, or supramunicipal level – manage those services;
   9.3. the value, spirituality, beliefs and practices involving water and sanitation;
   9.4. the role of indigenous peoples and their communities relating to water management and the resources (human, technical, financial) they have; and
   9.5. the different gender roles that indigenous women and girls have in the provision of water for their families and community.

10. Please provide any efforts and initiatives taken to collect and analyse information relating to indigenous peoples living in urban or peri-urban areas, in particular:
    10.1. How indigenous peoples living in urban or peri-urban areas access water and sanitation and specific challenges observed; and
10.2. How indigenous peoples living in urban or peri-urban areas maintain and sustain their values, spirituality, beliefs and practices involving water and sanitation.

**Answer:** Not applicable.

**III. Specific questions on people living in impoverished rural areas**

11. Please provide a list of impoverished rural areas in your country and information regarding:
   11.1. how rural, urban, peri-urban areas are defined;
   11.2. if any, how rural areas are further categorized; and
   11.3. how levels of poverty in rural areas are defined and how poverty is defined differently in rural areas and urban areas.

**Answer:** Please see answer to question 1.2.

12. Please provide any efforts and initiatives taken to collect and analyse information relating to people living in impoverished rural areas, in particular:
   12.1. the environment in which people living in impoverished rural areas live (climate, geography, topography and recent events/disasters that occurred in the area);
   12.2. the socio-economic situation of or context in which people living in impoverished rural areas live (education, health, employment levels, land rights, housing and security of tenure, etc.);
   12.3. the specific types of groups, communities and populations that live in impoverished rural areas; and
   12.4. their relationship with neighbouring communities and indigenous peoples.

**Answer:** Please see answer to question 1.2.

13. Please provide information about any efforts and initiatives taken to collect and analyze information relating to people living in impoverished rural areas and access to water and sanitation, in particular:
   13.1. how people living in impoverished rural areas access water (for drinking, for domestic and personal usage), sanitation (toilet, pit latrines, sewerage, shower facilities, handwashing, menstrual hygiene);
   13.2. what agencies are responsible for the provision of water and sanitation services to people in impoverished rural areas and what service providers – public or private; at community, municipal, or supra-municipal level – manage those services;
   13.3. the usage of water by people living impoverished rural areas ranging from water for drinking, for domestic and personal usage to water for subsistence farming, livestock and other usage to sustain their livelihood.
   13.4. community organizations in impoverished rural areas which oversee water and sanitation management for their communities or any other role of people living in impoverished rural areas relating to water management; and
   13.5. the different gender roles that women and girls in impoverished rural areas have in the provision of water for their families and the community.

**Answer:** Please see answer to question 1.2.

14. Please provide information on measures and efforts undertaken to ensure equal access to water and sanitation in impoverished rural areas and to address the disparity between access to water and sanitation in rural areas and urban areas and disparity observed within areas, between remote rural areas and rural areas with populated centers.

**Answer:** Please see answer to question 1.2.