



PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

Mandate of the Special Rapporteur on the human rights to safe drinking water and sanitation

Questionnaire for States

Report to the 48th session of the Human Rights Council (2021) on planning and vision, and Report to the 76th session of the UN General Assembly (2021) on water commodification

Background

The Special Rapporteur on the human rights to safe drinking water and sanitation will dedicate his first thematic report to the 48th session of the Human Rights Council in September 2021 on planning and vision of the first three years of his mandate (2020-2023).

In addition, he will dedicate his thematic report to the 76th session of the UN General Assembly in 2021 on water commodification.

In order to prepare for these two reports and to have wide consultations, the Special Rapporteur invites States to submit their response to the below questions **by 15 April 2021.**

I. COVID19 and human rights to water and sanitation

1. In the context of COVID19 pandemic and recovery and relief measures, what measures and steps have been in place to ensure that all populations have access to adequate and sufficient water, sanitation, and hygiene services and facilities? In particular:

1.1. What measures and steps have been taken to identify the minimum vital amount of water required by specific individuals and groups in the context of COVID19 which emphasized handwashing as one of the preventive measures against COVID19?

DWS's answer: In Brunei Darussalam, the Water Authority assures continuous water supply to the public which in turn provide preventive measures against COVID19.

1.2. In the event that the water and sanitation services that are managed by private operators cannot be provided, what specific measures are in place to regulate and ensure that the population has adequate access to water, sanitation and hygiene services and facilities?

DWS's answer: N/A. In Brunei Darussalam, the water and sanitation services are not privately managed but are managed by the Government.

1.3. In the case of water and sanitation services that are managed by local and municipal (regional) governments, or by community systems, that cannot be performed, what specific measures are in place at the level of the central government to ensure that the population has adequate access to water, sanitation and hygiene services and facilities?

DWS's answer: N/A. However, during water supply shutdown for maintenance works, temporary water supply through water tanker services are provided to the affected consumers.

2. What temporary legislative or policy measures have been implemented in the context of COVID19 (including state of emergency, emergency laws, moratorium) to prohibit water disconnections for those who are not capable to pay the water and sanitation service tariffs?

DWS's answer: N/A.

2.1. In the event emergency laws or moratoriums have ceased to be in force, what subsequent measures and steps have been envisaged and planned to ensure that disconnection of water and sanitation services are prohibited for households that are unable to pay?

DWS's answer: In Brunei Darussalam, the Government has offered a discount on water bills to COVID19 affected business sectors.

2.2. What data is available on the impact that COVID19 has had on unemployment, how it has increased the numbers of people in poverty, increased inequalities and in particular, how these three dimensions impact people's capacity to pay for water and sanitation services and facilities?

DWS's answer: N/A.

2.3. What steps are being taken to ensure the affordability of water services for those who cannot pay their bills for reasons beyond their control, including unemployment and poverty, which have been exacerbated by the COVID19 pandemic?

DWS's answer: The people of Brunei Darussalam is enjoying one of the cheapest water tariff for portable; at B\$0.11/m³ for the 1st 54.54m³ and B\$0.44/m³ for the remaining usage (monthly). However, for people who cannot pay their bills, there is community support from the Government are available to assist.

3. What are the vulnerabilities that have been exacerbated by COVID19 that negatively impact people's access to water, sanitation and hygiene (WASH)? What measures and steps have been taken to identify and target individuals and groups that have been exposed to those vulnerabilities?

DWS's answer: N/A.

3.1. What are the specific challenges faced by the population living in rural areas and those areas that rely on community-based water and sanitation services? How have these challenges been addressed?

DWS's answer: The population of Brunei Darussalam have 99.99% access to piped water. The remaining population living in the rural and far reached areas are provided with communal onsite-water treatment facilities.

3.2. What are the specific challenges faced by population living in areas that are suffering hydric stress, and/or semi-arid regions?

DWS's answer: N/A.

3.3. What are the specific challenges faced by seasonal workers, by populations living in refugee camps, in host-communities that absorb refugees, displaced persons and other forcibly displaced persons, as well as slums and informal settlements in urban and peri-urban areas?

DWS's answer: N/A.

3.4. In addition to the above groups which have been identified as gaps in the Special Rapporteur's research thus far, which other groups and populations should be prioritized due to the increased vulnerability that COVID19 has created?

DWS's answer: N/A.

Public policies

4. What steps have been taken to address vulnerabilities that COVID19 has created for people and groups in public policies - the so-called "Building Back/Forward Better" policies - and other policies to build resilience and sustainability?

DWS's answer: N/A.

4.1. What are the lessons learned from responding to COVID19 to build social protection and resilience to prevent future possible public health crises?

DWS's answer: The importance of provision of clean water for domestic use and for hygiene.

4.2. What measures and steps have been taken to strengthen access to water, sanitation and hygiene as part of strengthening public health policy?

DWS's answer: Ensure population get access to adequate continuous water supply at all time.

Allocation of funding

5. What measures and steps have been taken to ensure that water, sanitation and hygiene is considered as a priority in the COVID19 response in terms of the allocation of funding?

DWS's answer: The Brunei Darussalam's government provide annual budgeting for operation and maintenance of water supply system and through a 5-year budget planning (known as National Development Plan) for expansion and development of water supply system asset inline with the population and socio-economic development needs (Brunei Darussalam Long Term Masterplan).

5.1. What percentage of the COVID19 response is allocated to water, sanitation and hygiene (including menstrual hygiene)?

DWS's answer: Water supply remains to be served to ALL.

5.2. What percentage of funding is allocated or planned to be allocated to improving water, sanitation and hygiene facilities and infrastructure in the context of COVID19?

DWS's answer: Water, sanitation and hygiene facilities as well as infrastructure are seen as first priority for the country, where it is supported in terms of funding especially in the context of COVID19.

6. What specific measures and steps are taken to ensure a safe environment for defenders of human rights to water and sanitation in response to protests and advocacy on water disconnections, access and quality?

DWS's answer: N/A.

II. Climate change and human rights to water and sanitation

Impact of droughts on availability and quality

1. During drought cycles, which climate change tends to intensify in frequency and duration, water reserves should be monitored and foreseen. Both domestic and drinking use must be prioritized in order to ensure the human rights to water and sanitation, with special attention paid to those groups in vulnerable situations. Likewise, an increase in the concentration of pollutants should be prevented as there are fewer dilution water flows that would normally preserve water quality. In this context, in order for climate adaptation strategies to ensure that the population has access to safe drinking water and sanitation:

1.1. Are there legal, policy and regulatory frameworks to ensure that drinking water and water for domestic and personal usages are prioritized over water used for industrial agricultural and other for-profit economic activities in case of scarcity during drought periods?

DWS's answer: The supply of domestic water will always be prioritized over water demand for industrial, agriculture and other for-profit economic activities. Alternative means of water supply such as ground water is considered for industry and agriculture.

1.2. Are there measures scheduled in drought emergency plans to ensure that priority is given to household water supply and water for domestic and personal use? Is there hydrological planning that establishes specific plans to prevent drought, in which the priority of said water supply is guaranteed?

DWS's answer: For Brunei Darussalam, the main source of the water supply is from surface water (river water). The Government also has provided regulating dams where water is only release when the river flow is not sufficient.

1.3. Have areas, neighbourhoods or populations in vulnerable situations and most exposed to water cuts in drought periods been identified? If so, please provide information on how they were identified and what has been planned to counter this greater vulnerability.

DWS's answer: Water is still served to ALL.

1.4. In periods of drought, how is the quality of drinking water guaranteed? If the water supply is seriously compromised, are there any alternative reserves in place, such as reservoirs, aquifers or drought wells that could provide the quality and quantity of water required, especially in the poorest regions and rural areas

DWS's answer: Regulating reservoirs/dams has been built and the water is only released when the river flow is low (such as during drought season).

Impact of droughts on affordability

2. During drought periods, when availability and accessibility to drinking water and water for domestic and personal use is affected by competing demands for water resources, there may be pressures to increase water and sanitation tariffs. On the other hand, the need for implementing additional water supply sources may increase supply costs. Is an increase in rates foreseen in drought cycles? And if so, what is planned for families and individuals in poverty with incapacity to pay for water and sanitation tariffs?

DWS's answer: Currently, the water tariff are still considered in the affordable range, since it is highly subsidized by the government.

Impact of floods on availability and quality

3. Floods caused by heavy rains and river floods, apart from causing risk to the lives of those affected, the flooding of homes, destruction of crops and various economic damages, have significant impacts on water and sanitation services. Often, domestic water supply is contaminated or supply facilities are affected, which implies drinking water supply cuts. Sanitation stations tend to collapse when they receive massive storm drains along with domestic and industrial discharges, which produces direct polluting discharges. Especially worrying is the situation of those sanitation stations located next to rivers, which tend to be flooded indefinitely. Sometimes the rise in the level of the rivers and the massive pluvial drainage generate black or grey waters urban floods through the sanitation sewers, even reaching inside the houses. In this context, in order for climate adaptation strategies to ensure that the population has access to safe drinking water and sanitation:

3.1. Are there plans for territorial and urban reorganization that make it possible to minimize the vulnerability of populations to flood risks? What specific measures are included for groups in vulnerable situations?

DWS's answer: For flood risks management, proper planning under the Town and Country Planning agency is enforced to avoid unnecessary burden to the public. Some immediate measures that are considered includes relocation of residential areas and adaptive home design.

3.2. Are there emergency flood plans for groups in vulnerable situations and generally poorer neighborhoods, guaranteeing in particular water, sanitation and hygiene services for these populations, including the eventuality of evacuation?

DWS's answer: Yes, under the National Disaster Management Centre (NDMC) with the integrated support from relevant agencies.

3.3. What alternative water supply provision is there to guarantee drinking water when floods contaminate habitual sources or affect storage and purification facilities, especially for groups in vulnerable situations?

DWS's answer: Utilization of polyethylene pipes.

Impact of Desertification on availability and quality

4. Rising temperatures and rainfall variability caused by climate change can increase desertification in arid, semi-arid and dry sub-humid areas. In addition, prolonged droughts increase fire risks, accelerating degradation and even destruction of plant protection, soil erosion and desertification. Desertification increases surface runoff and therefore increases the risk of floods, which can impact water supplies and sanitation. It also causes less water infiltration in aquifers, affecting the availability of water. What steps and measures are being taken to combat desertification processes and to ensure safe drinking water and sanitation in case of desertification, especially for groups in vulnerable situations?

DWS's answer: Proper planning and regulatory framework under the Town and Country Planning.

Impact on people and their vulnerabilities

5. What measures and steps are being taken into account when designing and planning climate change adaptation strategies and policies to ensure that affected groups and populations and their knowledge are part of the solution? How are affected populations involved from the beginning in the planning design and its subsequent development?

DWS's answer: To include every stakeholders at all levels.

6. What measures and steps are taken to identify the movement of populations, ongoing or foreseeable due to the impact of climate change on availability, accessibility and affordability of drinking water and water for other uses (what are called climate refugees or migrants)? What information is available on the situation of access to water and sanitation for temporary workers in informal settlements?

DWS's answer: N/A.

III. Financialisation/commodification questionnaire

The commodification of water and sanitation has been carried out through different mechanisms and policy programs. Each have had an impact on the payments to be covered by users. This includes the privatisation and inclusion of private actors in water, sanitation and hygiene (WASH) services and infrastructure, the transformation of public utilities into for-profit entities, market based mechanisms to manage water scarcity such as water trading and water banks, and the bottling of water by private companies. At each point, financial actors become involved when WASH services and infrastructure proves to be a profitable business. This report will explore the implications of these processes on the progressive realisation of the human rights to water and sanitation.

On the privatization of water and sanitation services.

1. The former Special Rapporteur, Leo Heller, dedicated a thematic report on the impact of privatization on the human rights to safe drinking water and sanitation (A/75/208) in 2020. Building on this report, the Special Rapporteur aims to follow-up on the recommendations made and to expand the scope to examine the role of private actors, the various ways private actors can take part in water, sanitation and hygiene service provision and to clarify challenges and ways to address compliance with human rights to water and sanitation. In this context:

1.1. Has the participation of private operators through long-term management contracts guaranteed the necessary investments in water and sanitation services filling the so-called financial gaps? If so, to what extent?

DWS's answer: N/A. Water utilities in Brunei Darussalam is run by the Government.

1.2. Is there a law that prohibits cutting off water to households in vulnerable situations? Is there by law a vital minimum amount of water set as a mandatory supply to impoverished households?

DWS's answer: N/A.

1.3. When the management of water and sanitation services is concessioned or contracted out to a private or mixed company, or when the operators are public but running as commercial for-profit entities, are households in vulnerable situations guaranteed a vital minimum amount of water? And if so, how is this compliance with human rights to drinking water and sanitation financed?

DWS's answer: Currently water and sanitation service is fully financed and provided by the government and its quality is in compliance with human rights.

1.4. When the management is public and non-profit, is a vital minimum amount of water established for households in vulnerable situations, in compliance with the human rights to drinking water and sanitation? And in such cases, how is this compliance financed?

DWS's answer: Water supply is served to all for Brunei Darussalam.

1.5. Is there a regulatory framework that guarantees transparency and citizen participation in the management of water and sanitation services, whether public or private, in line with the requirements related to human rights?

DWS's answer: Yes. In line with the country's National Vision 2035, water is supplied to all in the quality that meets human rights.

1.6. During the past financial crisis (2007 - 2008), due to austerity strategies, private investment was favoured to compensate for the lack of public financing in infrastructure and public services. In the present economic crisis accelerated by the COVID19 pandemic and given the need for investments to prevent the impacts of climate change, are there funds provided in public budgets to cover these costs? Or is the pressure for the privatization of water services growing again?

DWS's answer: Funds are provided by the Government.

1.7. From the current perspective of climate change, are there green funds established to finance investments in WASH services due to the impact of the climate emergency?

DWS's answer: In instigating the impacts of climate change, any necessary funds required will be provided by the Ministry of Finance and Economy upon its approval.

1.8. Are there prospects for higher service rates or charges to cover the costs of investments? Is there any provision to guarantee the affordability of services to households in poverty?

DWS's answer: N/A. Currently, water price in Brunei Darussalam are subsidised.

1.9. In relation to the impact of COVID-19, if WASH services were managed by private operators were the costs derived from the pandemic (for example, lower water consumption due to economic restrictions, higher rates of non-payment of tariffs) covered by private operators as contract risks or are they passed on to public institutions?

DWS's answer: N/A.

On market based mechanisms as a response to water scarcity

2. There are various market-based options for managing water scarcity and its distribution to competing users. Although there are different models, what is common to all is the need to separate water rights and land rights, so that water rights/concessions/allocations/entitlements can be traded and potentially managed as a consumer good. There are models, such as Water Banks, that organize transactions under public control and with strong regulations. There are also water trading markets that facilitate trade between entitlement holders and those who want to use that water. These water markets can be opened to speculators, who are not going to use the water rights at stake. Speculators are financial actors that promote speculative games (with high expectations of short-term benefits) between those who have water rights and those who seek to buy them. Although most water trading markets are localized, with the entry of new financial players, water rights can be integrated into global financial markets, where water will receive the same treatment as other tradable commodities, generating speculative impacts on the final costs to pay for water.

If water markets or water banks exist:

2.1. How are they designed and what is their purpose? i.e. to manage water scarcity, to deal with over-allocations, or to ease trading between water rights/entitlement holders to increase the efficiency of use? Is the water traded or banked understood as public or private property? And if private, what is actually privatised? For example, a set amount of water, a licence to extract a certain amount of water, or the concession.

DWS's answer: N/A.

2.2. Are there public institutions (such as Water Banks) that manage possible transfers of water rights? If so, are they set up only to manage drought cycles or do they also work when there is no drought?

DWS's answer: N/A.

2.3. To what extent do market based transfers under public control affect the affordability of water and sanitation services and the price of water? What about privately managed markets? What is the impact on families in vulnerable situations and the effective fulfilment of human rights to access to water and sanitation?

DWS's answer: N/A.

2.4. Are there direct markets for water rights? Does the supply of water and sanitation services depend on access to water through these markets? And if so, to what extent do these markets affect rate increases, especially for households in vulnerable situations?

DWS's answer: N/A.

2.5. In some water markets trading is limited to actors buying water for their own use (for example, agriculture, extractive industries, urban water services), while other markets are open to speculators. Who are the largest actors in the water trading market? And if markets are open to private investors what type of companies are they, for example hedge funds, individual investors, or international banks? Are there differences between the impact of each type of actor and design of the water market on the price and availability of water?

DWS's answer: N/A.

2.6. Water markets impact communities in vulnerable situations in different ways, for example cultural water rights of Indigenous people or its environmental functions are not taken into account, and small-scale farmers can be priced out of the market due to increasing prices. What regulatory bodies are in charge of water trading markets? How has accessibility of water for communities in vulnerable situations been affected? And how have they been included into the design, oversight and regulation of water trading markets? What vulnerabilities may be exacerbated by water trading markets?

DWS's answer: N/A.

2.7. Is there the opportunity for water futures trading such as the recently announced Nasdaq Veles California Water Index? If not, are there expectations that futures trading will occur in the future? And how would water futures trading impact affordability, accessibility, and availability of water for communities in vulnerable situations?

DWS's answer: N/A.

On the commodification of water through bottled water

3. The extraction of water for beverages is an increasingly profitable industry. Water extraction companies can be given licences to extract water from ground or surface water or given access to municipal water supplies at low or marginal costs. The beverage products created, including but not limited to bottled water, are sold at high profit margins and can target communities where there is limited access to public water services, they are of poor quality, or where suspicion of the quality of public water services exists. This can increase vulnerabilities in communities that need such surface or groundwater, when it is increasingly scarce. Bottled water can also increase vulnerabilities in these communities due to high costs and weakening of public utilities.

3.1. What regulatory and monitoring mechanisms exist to counter possible vulnerabilities caused by private water bottling?

DWS's answer: The product rates are being monitored by the Ministry of Finance and Economy.

3.2. How can impacted communities hold private companies to account within existing regulatory regimes for their impact on access, affordability and availability of water?

DWS's answer: Currently water supply is controlled by the government.

On Financialisation

4. Water and sanitation services and infrastructure can be "financialised" in different ways. This can mean a larger role for for-profit actors including investors and private companies and financial actors - banks, international financial institutions, hedge funds, pension funds, and increasingly insurance companies - involved in the provision of water, sanitation and hygiene (WASH) services and infrastructure. Financialisation can consist of: the commodification of water, with the corresponding water pricing processes; or the commercialisation and privatization of public water and sanitation services; or the inclusion of WASH services and infrastructure in global financial markets. The financial sector is defined by a short rather than long-term management focus that prioritises profit maximisation and shareholder returns, resulting in a concentration of investment in financial products rather than the production of goods. In this context, risk management is critical, and gives a leading role to the insurance sector and international rating agencies.

4.1. How has WASH services and infrastructure been turned into a financial asset? for example, as a financial product, or private companies traded in global financial markets. What regulations and legislation including private property laws were necessary for this to occur and how are those regulations and legislation compatible with the State's obligation to provide accessible, affordable, safe and acceptable water available to all without discrimination?

DWS's answer: N/A.

4.2. How has the financial sector (hedge funds, investment banks, pension funds) entered the WASH services and infrastructure sectors? And does this mark a difference to previous processes of privatisation such as Public-Private-Partnerships or long term concession contracts? And how has this impacted individuals access to water and sanitation and affordability of those services and infrastructure, especially for people in vulnerable situations?

DWS's answer: N/A.

4.3. What has been the impact of speculation - speculation in financialised WASH investments, water based hedge funds or in water trading markets - on access, availability and affordability of water and sanitation services?

DWS's answer: N/A.

4.4. Do you expect speculators to enter existing water trading markets? And If so, what regulations and accountability mechanisms are in place to prevent negative impacts of speculation on the affordability and access of water and sanitation services for communities in vulnerable situations?

DWS's answer: N/A.

4.5. Financial actors are accountable to their shareholders and governed by logics of profit maximization. How is the State able to meet its obligation to progressively realize the human rights to water and sanitation within these goals? How does the State regulate business and financial actors to respect human rights to water and sanitation?

DWS's answer: N/A.

4.6. What specific measures and steps are taken to ensure a safe environment for defenders of human rights to water and sanitation in response to the increased role of financial actors in the WASH sector, which have resulted in protests from communities impacted by the effects of financialisation? Please give specific examples of cases.

DWS's answer: N/A.
