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## الجمعية العامة



## مجلس حقوق الإنسان

الدورة السابعة والعشرون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية

والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## تقرير المقررّاة الخاصة المعني بحق الإنسان في الحصول على مياه الشرب المأمونة وخدمات الصرف الصحي، كاتارينا دي ألبوكيركي

إضافة

البعثة إلى البرازيل (٩ إلى ١٤ كانون الأول/ديسمبر ٢٠١٣)\*

موجز

لقد شهدت البرازيل تطوراً هاماً في العقود الأخيرة بحدوث نمو اقتصادي ملحوظ وطروء تحسّن على المؤشرات الاجتماعية وتقلّص الفقر. غير أن تلك المكاسب الكبرى لم تنعكس بعد، على الوجه الكامل، في شكل حصول الجميع على المياه وخدمات الصرف الصحي. وعلى الرغم من التطورات الكبرى التي طرأت على الأطر القانونية والمؤسسية والإرادة السياسية على المستوى الاتحادي والاستثمارات الموظفة في ذلك القطاع فإن هناك الملايين من الناس الذين لا يزالون يعيشون في ظروف غير صحية ولا يملكون فرصة الحصول على الماء وعلى خدمات الصرف الصحي. وأكثر الفئات السكانية تأثراً بهذا العجز هم من يعيشون في الأحياء الحضرية العشوائية وفي المناطق الريفية ومن هم في عداد أفقر الفقراء ومن ينتمون إلى الأقليات.

\* يُعمّم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز فيُعمّم باللغة التي قدّم بها فقط.



الرجاء إعادة الاستعمال

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وتشجّع المقرّرة الخاصة حكومة البرازيل على إعادة النظر في الأوضاع المتعلّقة بالحصول على مياه الشرب المأمونة وخدمات الصرف الصحي من منظور حقوق الإنسان وذلك لضمان إعمال حقوق الجميع الإنسانية تلك على الوجه الأكمل من حيث جودة الخدمات وتوافرها والقدرة على الحصول عليها والوصول إليها ومدى الرضا عنها. وهي تهيّب بالحكومة العمل على إيلاء المزيد من الأولوية لأكثر الفئات تهميشاً والقضاء على جميع أوجه اللامساواة في مجال الاستفادة من تلك الخدمات.

## Annex

[English only]

### **Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, on her mission to Brazil**

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## I. Introduction

1. The Special Rapporteur on the human right to safe drinking water and sanitation undertook an official visit to Brazil from 9 to 19 December 2013 to evaluate the improvements made, and the challenges the country faces, in realizing the human rights to water and sanitation.

2. During her mission, she met with the Minister of Cities, the Minister of Human Rights, the National Secretary of Environmental Sanitation of the Ministry of Cities and his staff, several members of the Ministry of Foreign Affairs, the Executive Secretary of the Ministry of National Integration, representatives of the Secretariat for Planning and Strategic Investment of the Ministry of Planning, Budget and Management, the National Secretariat for Food and Nutritional Security, the President of the National Health Foundation and several members of its staff, the Director-President of the National Water Agency, the Technical Committee for Environmental Sanitation of the National Council of Cities, representatives of the Federal Prosecution Office, and local authorities from Rio de Janeiro, São Paulo, Fortaleza and Belém do Pará. She also met with the United Nations Resident Coordinator and Country Team, as well as representatives of the water and sanitation service providers and regulators. She additionally had the opportunity to meet with academics and civil society organizations and to visit several communities in Baixada Fluminense and Complexo do Alemão in Rio de Janeiro; eastern São Paulo; Fortaleza and Itapipoca in Ceará; and Belém do Pará. The Special Rapporteur expresses her gratitude to all those with whom she met and who shared their knowledge and experiences with her.

## II. Evolution and general context of the situation of access to water and sanitation in Brazil<sup>1</sup>

3. In recent years Brazil has experienced significant development, with marked economic growth, an improvement in social indicators, and reduction in poverty. However, these major gains have not yet been fully reflected in water and sanitation services, the level of which still lags far behind that which the Government itself would like it to be.

4. The area of water and sanitation was neglected for many years, without any strategic planning or a long-term vision. As of the mid-1960s, water and sanitation services were provided directly by the municipalities. As of the early 1970s, as a fundamental part of the National Sanitation Plan, State-level sanitation companies were established and placed in charge of providing water and sanitation services in urban areas. The Plan required those services to be contracted out by the municipalities to State companies. The situation created by the Plan is reflected in the current institutional framework for water and sanitation services in Brazil. Nearly 70 per cent of Brazil's urban population is served by 24 State-level water and sanitation companies, and by one self-managed State company. More than 1,400 municipalities directly provide water and sanitation services in their urban areas. In 1986, the implementation of the Plan started to decline, giving rise to a lack of political and institutional definition in the sector. As of the mid-1990s, private concessionaries began to operate water and sanitation services in Brazil. They are currently responsible for supplying

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<sup>1</sup> The term "basic sanitation" as used in Brazil covers services, infrastructures and operational facilities for safe drinking water supply, sewerage, urban garbage collection, solid waste management, drainage and urban rainwater management. In the present report the term "sanitation" refers to what in Brazil is known as *esgoto*, i.e. sewerage, and "basic sanitation" is used as indicated above.

drinking water and sanitation services to nearly 3.88 per cent and 2.99 per cent, respectively, of the urban population of Brazil.<sup>2</sup>

5. More recently, a new method of organizing sanitation services came into use, in the form of consortia of municipalities, whose activity is based on Law 11,107/2005 – the Law on Public Consortia. Still in their infancy, consortia currently account for 0.5 per cent of the urban water supply in Brazil.

6. The sector continues to be impacted by the reforms to the National Sanitation Plan, adopted in the 1970s, during the military dictatorship. The Plan, in addition to the aspects noted above, accorded priority to self-regulation; the distancing of local government from decision-making; the application of market-based logic to the provision of services; prioritization of urban areas and the exclusion of the rural population; and suffered from a lack of social and democratic participation.<sup>3</sup>

7. Recent years have seen major advances in the legal and institutional framework for water and sanitation. In 2003, the Ministry of Cities was established, along with the Conference of Cities. In 2004, the National Council of Cities was established, with a specific chamber for the debate of policies regarding water supply, sewerage, solid waste management and rainwater drainage. The Council provides a forum for the debate on urban policy, as it brings together, inter alia, the production sector, social organizations, non-governmental organizations, sector professionals, academics and research organizations, trade unions, and government bodies.

8. The adoption in 2007 of Law 11,445, establishing national guidelines for basic sanitation, represented a significant step forward for the sector. The Law emphasizes the role of the State in providing those services, the commitment to universal coverage, comprehensiveness and equity, as well as the minimum rights and obligations of users and service providers, and recognition of the need for social control over its implementation, while facilitating access to services for low-income populations.

9. In December 2013 the publication of the National Sanitation Plan represented another breakthrough for the sector.

10. From 1996 to 2002, R\$8.1 billion in grants was devoted to basic sanitation interventions.<sup>4</sup> The relative weight of those investments in the gross domestic product (GDP) of Brazil dropped during the same period. The proportion of GDP earmarked for such investments varied from a maximum of 0.06 per cent in 1997 to a minimum of 0.017 per cent in 2000.<sup>5</sup> The Plan dictates investments of more than R\$500 billion over the next 20 years.

11. Another federal programme with significant investments in the sector is the Growth Acceleration Programme, launched in 2007, which brings together a set of economic policies, planned for four-year periods, with a view to accelerating the economic growth of Brazil. One of its priorities is investing in infrastructure in areas such as basic sanitation. Accordingly, since the Programme was adopted, there has been an increase in the volume of resources committed and disbursed to water and sanitation. For example, total

<sup>2</sup> National System of Sanitary Information, 2011.

<sup>3</sup> Heller, Leo, “Saneamento para todos com equidade: desafios contemporâneos para o Brasil”, available from [www.assemae.org.br/42assembleia/apresentacoes/Terca-feira%20\(12%20de%20junho\)/Leo%20Heller.pdf](http://www.assemae.org.br/42assembleia/apresentacoes/Terca-feira%20(12%20de%20junho)/Leo%20Heller.pdf).

<sup>4</sup> National Sanitation Plan, p. 53.

<sup>5</sup> Ibid., p. 52.

commitments grew more than 400 per cent from the 2000–2006 period to the 2007–2013 period.<sup>6</sup>

12. In addition, the extensive array of social programmes to eradicate extreme poverty and hunger has played a major role in improving the inclusion and social development rates. The Single Registry System, with over 77 million persons registered, is used to select the beneficiaries of social programmes, including “Brazil without Extreme Poverty”, whose objective is to be achieved through a combination of cash transfers, productive inclusion, and access to services such as social assistance, education and health.<sup>7</sup>

13. With regard to national rates of access to safe water and sanitation, about 40 per cent of the population – 77 million people – still lack a reliable and continuous supply of water and 60 per cent – 114 million people – do not have appropriate sanitation solutions, including a portion of the population that has its sewage collected and released into the environment without treatment.<sup>8</sup> Also worrisome is that nearly 8 million people nationwide practise open defecation.

14. There are still striking inequalities inside the country. The regions with the greatest deficits in terms of sanitation are the North and the North-east, where 69 per cent and 56 per cent, respectively, of the population with inadequate human waste disposal practices.<sup>9</sup> While Sorocaba, São Paulo, and Niterói, Rio de Janeiro, have a rate of sewage treatment of 93.6 per cent and 92.6 per cent respectively, in Macapá, Amapá, and Belém, Pará, it is 5.5 per cent and 7.7 per cent respectively.<sup>10</sup> In addition, in the North and the North-east, 31 per cent and 21.5 per cent of the population, respectively, are living with an inadequate water supply. It is also the North and North-east that have the highest rates of intermittent water supply, to the point that all households in the North experience at least one interruption per month.<sup>11</sup> The Special Rapporteur welcomes the Government’s commitment to universalizing water supply and sanitation services in Boa Vista, Roraima, in the North region, until the end of 2015.

15. Where the monthly income per resident is as much as a quarter of the minimum salary, the deficit in water supply is about 35 per cent, whereas it is less than 5 per cent where income is over five times the minimum salary. The deficit also increases (reaching almost 20%) where heads of household have either no education at all or up to one year of schooling, as opposed to less than 1 per cent when the education level is 16 years or more.<sup>12</sup>

16. Brazil still has a long way to go to ensure universal access to this human right, and to eliminate the inequalities that persist. The difficulties are compounded by the fact that water is becoming an increasingly scarce resource. Accordingly, the National Water Agency (Agência Nacional de Águas – ANA) sounded an alarm, indicating that 55 per cent of Brazil’s municipalities, which account for 70 per cent of total consumption in the country, may have water supply problems by 2015; 23 per cent of municipalities are already rationing water. There are also problems related to the maintenance and upgrading

<sup>6</sup> Between 2000 and 2006, R\$18.4 billion were spent, while in the 2007–2013 period, the expenditure on basic sanitation was R\$83.9 billion

<sup>7</sup> Ministry of Planning, Plano Mais Brasil PPA 2012-2015, p. 31.

<sup>8</sup> The definition of adequate water supply is “provision of drinking water, through distribution network or well, spring or cistern, without intermittency.” Adequate sanitation refers to “sewage, followed by treatment and/or use of septic tanks.” See the National Sanitation Plan, pp. 27-28.

<sup>9</sup> Ibid., p. 35.

<sup>10</sup> Instituto Trata Brasil, Ranking of sanitation in the 81 largest cities: [www.tratabrasil.org.br/datafiles/uploads/pdfs/ranking-81-cidades-release\\_final.pdf](http://www.tratabrasil.org.br/datafiles/uploads/pdfs/ranking-81-cidades-release_final.pdf).

<sup>11</sup> National Sanitation Plan, p. 33.

<sup>12</sup> Ibid., p. 31.

of the distribution network, which entails a loss of approximately 45 per cent of the water. The North-east is experiencing the worst drought in the last 50 years.<sup>13</sup>

### **III. Legal and institutional framework**

#### **A. International legal framework**

17. Brazil has ratified several international human rights treaties, whereby it has taken on legal obligations to take concrete steps to ensure the realization of the human right to water and sanitation. Brazil voted for General Assembly resolution 64/292 on human rights and access to safe drinking water and sanitation, explicitly recognizing the human right to water and sanitation. That right was later reaffirmed by the Human Rights Council in its resolution 15/9 on human rights and access to safe drinking water and sanitation, approved without vote.

18. The human right to water and sanitation is derived from the right to an adequate standard of living, as enshrined in articles 25 of the Universal Declaration of Human Rights and 11 of the International Covenant on Economic, Social and Cultural Rights, *inter alia*.

19. As defined in 2002 by the Committee on Economic, Social and Cultural Rights,<sup>14</sup> the human right to water consists of the right of everyone to sufficient drinking water of acceptable quality that is physically accessible and affordable, and available for personal and domestic use. Subsequently, the Special Rapporteur defined the right to sanitation as requiring access for all, without discrimination, to sanitation that is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.<sup>15</sup> That definition was subsequently endorsed by the Committee<sup>16</sup> and the Human Rights Council.<sup>17</sup> Brazil has regrettably not yet ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which allows for individuals to file complaints before the Committee in cases of alleged violations of the rights contained in the Covenant, including the human right to water and sanitation.

#### **B. National legal framework**

20. The right to water and sanitation is not explicitly recognized in the Brazilian Constitution of 1988, although it could be argued that it is recognized implicitly through the rights to life, health, housing and food.<sup>18</sup> The Special Rapporteur calls for an explicit inclusion of the right to water and sanitation in the Constitution. Such a guarantee will allow for greater legal certainty as regards the existence and specific content of the right.

21. The Water Law of 1997 instituted the National Policy on Water Resources and established the National System of Water Resources Management. The law ensures the priority use of water for human consumption, deriving from the recognition of water as a human right, and for animals.

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<sup>13</sup> Ministry of Social Development and Hunger Alleviation, *Plano Brasil Sem Miséria: 2 anos de resultados*, p. 28.

<sup>14</sup> E/C.12/2002/11.

<sup>15</sup> A/HRC/12/24.

<sup>16</sup> Committee on Economic, Social and Cultural Rights, E/C.12/2010/1.

<sup>17</sup> A/HRC/24/L.31.

<sup>18</sup> Article 6 of the Federal Constitution of 1988.

22. The Law on Basic Sanitation incorporates the principles of universal access, transparency of actions, preservation of public health and the environment, quality and regularity of the service, economic accessibility and social oversight. The law also establishes that public basic sanitation services will be provided on the basis of certain principles relating to the normative content of the human right to water and sanitation, such as quality, regularity and affordability of the services. According to the law, water and sanitation should be provided to guarantee public health and the protection of the environment. The principle of considering the payment capacity of the users and adopting gradual and progressive solutions addresses the obligation to ensure that such services are affordable. Actions must be transparent, based on institutionalized information systems and decision-making processes, and the principle of social oversight is incorporated into the law.<sup>19</sup> The law establishes national guidelines for basic sanitation and for the federal policy on basic sanitation, stipulating that a national plan, as well as municipal basic sanitation plans, be drawn up.

23. Government order No. 2,914 of 2011 sets forth the procedures for control and monitoring of water quality for human consumption and defines drinking water standards.

## C. Institutional framework

24. Article 21 of the Constitution stipulates that the Federal Government is responsible for “instituting guidelines for urban development, including ... basic sanitation.” Protecting the environment and promoting programmes to improve the conditions of basic sanitation fall under all three levels of government: federal, State and local.<sup>20</sup> The Federal Government also has authority over urban policy, which includes guaranteeing the right to water and sanitation.<sup>21</sup> Article 200 of the Constitution also establishes the competence of the national health system to “participate in policy formulation and implementation of basic sanitation”.

### 1. Federal competencies

25. In the federal sphere, the main body responsible for water and sanitation is the Ministry of Cities, created in 2003, with the mission of implementing the National Policy for Urban Development.<sup>22</sup>

26. In particular, it is the responsibility of the Ministry to coordinate action in this area, including water and sanitation services. The Ministry coordinated the development of the National Sanitation Plan with broad public consultation and participation. The Council of Cities played an important role in the design and adoption of the Plan and also oversees its implementation. Nonetheless, during the visit, representatives of civil society organizations referred to the desirability for the Council’s decisions to be binding and not merely advisory.

27. With regard to water and sanitation, it is the obligation of the Ministry of Cities to serve municipalities with populations of over 50,000. For those municipalities with a population of less than 50,000, in Metropolitan Regions and Integrated Regions of Development, the service is provided by the National Health Foundation (Fundação Nacional de Saúde – Funasa). The Ministry of the Environment is responsible for implementing programmes related to the revitalization of watersheds; and for proposing

<sup>19</sup> Art. 2.

<sup>20</sup> Federal Constitution, art. 23.

<sup>21</sup> Law No. 10,257/2001, arts. 2 and 3.

<sup>22</sup> Federal Law 10,257/2001.



and implementing the National Policy on Water Resources. The National System for the Management of Water Resources includes other entities, such as the National Council on Water Resources, the state councils on water resources, the National Water Agency, and watershed committees and water agencies.

28. There is a dispersion of competences over water and sanitation at the federal level, with a corresponding dispersion of programmes and action.<sup>23</sup> This dispersion may weaken the authorities' competency to define policies and actions for the sector. It is hence necessary to strengthen the leadership of the Ministry of Cities in coordinating programmes and action in the area.

29. The Special Rapporteur also observed a lack of communication between the various federal agencies with competences in the area of basic sanitation and the Growth Acceleration Program. The latter includes very high investments in the areas of basic sanitation and housing, with a total of R\$40 billion earmarked from 2007 to 2010 and R\$45 billion from 2011 to 2014 (equivalent to US\$20 billion and US\$22.5 billion respectively). Nonetheless, these programmes are not aligned with national planning for the sector, which is multiyear, and frequently the priorities defined for the sector are not contemplated therein. Moreover, they often do not follow the participation processes defined in the National Law on Basic Sanitation.

## 2. Municipal and state authorities

30. In the early 1970s, a State Basic Sanitation Company was established in each of the federative units. These were corporations with public and private capital in which almost all the capital was in the hands of the state governments, the idea being to provide the service to municipalities that sign concession contracts and sign up for the plan. From the outset, several municipalities resisted signing up to the model.

31. However in 1988 the Federal Constitution gave competencies for local-level public services to the municipalities. Even though basic sanitation was not expressly mentioned in the text, it is considered to be covered by the constitutional provision. The municipalities may delegate the provision of these services to third parties.

32. Thereafter a major debate began in Brazil around the role of the municipalities in the provision of basic sanitation services, and their relationship with State companies. The municipalities' competencies over basic sanitation services had to coexist with several state basic sanitation companies, leading some municipalities to seek to regain their autonomy in the management of these services.<sup>24</sup>

33. In the context of an unconstitutionality claim, the Federal Supreme Court ruled on the ownership of responsibility for the delivery of services in the metropolitan regions. The Supreme Court ruled in favour of constituting a model for the provision of basic sanitation in metropolitan areas, directed by a collegial organ with the participation of the relevant municipalities and of the State.<sup>25</sup> The decision, however, does not define how this model of shared responsibilities for ownership of competencies would work. In September 2013, a legal claim was filed in relation to this decision, requesting clarification on the ownership of responsibility for basic sanitation services.

34. In some of the municipalities visited during her mission, the Special Rapporteur was concerned at the fact that the franchising of services to State-level companies led to a

<sup>23</sup> National Sanitation Plan, p. 78.

<sup>24</sup> Heller, Leo, *Políticas Públicas de Saneamento: Por Onde Passam os Conflitos? O Caso da Delegação dos Serviços em Belo Horizonte*.

<sup>25</sup> ADI 1842 (06/03/2013).

situation in which the municipal governments were distanced from their obligations to realize the human right to water and sanitation, and in relation to progressively doing away with existing inequalities. When municipalities delegate the provision of such services to third parties such as the State-level companies, not only do the municipalities maintain their human rights obligations, they should also adopt specific measures to clearly define the functions delegated, and establish effective regulatory mechanisms.<sup>26</sup>

### 3. Planning

35. The National Sanitation Plan constitutes the core of federal policy for sanitation, promoting national coordination of federal entities to implement the directives of Law 11.445/07. It is a key instrument for the State to reassume its guiding role in public basic sanitation policy, with definitions of goals and strategies for the public sector in the next 20 years. The almost 6,000 municipalities have an obligation to draw up local plans based on the Plan – without them they cannot apply for federal funding for the sector – and implement projects in the area of basic sanitation following the guidelines contained in the Plan. The Plan also creates a monitoring and review process so that its implementation is subject to ongoing evaluation.

36. The main goals of the Plan up to 2033 include: attaining 99 per cent coverage for the drinking water supply and 92 per cent coverage for sewerage services.

37. The Plan promotes the progressive realization of the right to water and sanitation for all and incorporates the principles of equality, integrality, intersectorality, sustainability, participation and social oversight. The Plan also brings together planning and major financial support from the Federal Government, and provides finance of approximately R\$300 billion for the sector from the federal budget.

38. Nonetheless, the Plan still does not aim for universal coverage, leaving out 1 per cent of the population from access to drinking water and 8 per cent from access to sanitation. The Plan is not combined with a strong focus on the elimination of inequalities, and will very probably lead to the exclusion of the poorest and most vulnerable members of society in 20 years' time. The Plan should therefore include clearer measures for affirmative action aimed at promoting the elimination of existing inequalities, which could still be achieved in the efforts to attain each of the goals defined, giving priority attention to the most vulnerable, most discriminated against, most stigmatized and poorest sectors of the population. In addition, priority attention should be given to people living in "irregular" informal settlements, as well as to eliminating open defecation and to providing support in areas of the country that are least developed in terms of sanitation.

39. The Special Rapporteur heard concerns expressed by several professionals and mayors that a major obstacle in developing the municipal basic sanitation plans is the lack of human and financial resources of many municipalities to draw up the plans and projects to apply for federal funds. The smallest, most neglected municipalities, with the lowest rates of access to water and sanitation, are precisely those with the least capacity to apply for funds. Accordingly, proactive measures need to be taken by the Federal Government to target and support them.

40. It is also essential to establish an ongoing mechanism for follow-up and monitoring of the implementation of the Plan, once granted sufficient human and financial resources. In addition, a specific federal office or agency needs to be identified and assigned the role of coordinator of the basic sanitation policy in order to overcome the dispersion and

<sup>26</sup> A/HRC/15/31.

competence clashes among government institutions, and to ensure that the vision set forth in the Plan becomes a reality.

#### **4. Regulation**

41. The regulation of basic sanitation services in Brazil is a recent development, addressed in Law 11,445/2007. Sanitation services are public services; therefore the State's regulatory function is to protect the public interest. This goes beyond economic regulation, and includes the defence of human rights and adequate service delivery. According to the Law, it is the holder of responsibility for basic sanitation services who should "define the entity responsible for their regulation and inspection, as well as the procedures for performing its functions."<sup>27</sup> The regulatory function shall be informed by the principles of transparency and independence in decision-making, including the administrative, budgetary and financial autonomy of the regulatory agency.<sup>28</sup>

42. The objectives of regulation include establishing standards and rules for adequate service delivery and user satisfaction; guaranteeing the attainment of conditions and goals established; and defining rates that ensure both the economic and financial equilibrium of contracts as well as moderate rates, through mechanisms that enhance the efficiency and efficacy of the services and that allow for social appropriation of productivity gains.<sup>29</sup>

43. According to data by the Brazilian Association of Regulatory Agencies, it is estimated that there are currently only 50 regulatory agencies with the legal authority to act in the basic sanitation sector, 24 being State-wide, with one for the federal district, 22 municipal, and three in consortia. Furthermore, fewer than 45 per cent of the municipalities are regulated.<sup>30</sup> The report points to problems regarding the uniformity of regulation, as well as the independent decision-making powers of the agencies and their leaders.<sup>31</sup>

### **IV. The human right to water and sanitation**

#### **A. Water availability**

44. The normative content of the human right to water requires that water supply for each person be sufficient and continuous for personal and domestic use. Such use includes water for human consumption and sanitation, food preparation, and personal and domestic hygiene.<sup>32</sup>

##### **1. Continuity of water supply**

45. Water services must be continuous, yet the Special Rapporteur observed several cases of interruption in supply. For example, in Baixada Fluminense, the Special Rapporteur received direct testimony from residents according to which water would reach them only two or three times a week. Similar testimonies were received in Complexo do Alemão, where the water arrives only twice a week, leaving the community without water for more than a month in summer. The lack of continuous supply affects not only water

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<sup>27</sup> Article 9 of Law 11,445/2007.

<sup>28</sup> Article 21 of Law 11,445/2007.

<sup>29</sup> Article 22 of Law 11,445/2007.

<sup>30</sup> Brazilian Association of Regulatory Agencies, Basic Sanitation – Regulation 2013, pp. 9-15.

<sup>31</sup> Ibid.

<sup>32</sup> E/C.12/2002/11, pp. 5-6.

quality, but also health, since it forces people to store water at home in poor hygiene conditions, which can be conducive to the spread of dengue.

## 2. Priority for personal and domestic uses

46. It is clear in the legal framework governing the human right to water that water for personal and human consumption must take priority over any other types of use, whether for industry, tourism, or agriculture. Brazilian legislation also recognizes this important principle.<sup>33</sup>

47. However, the Special Rapporteur received several complaints from civil society according to which the creation of extensive irrigation areas, particularly in the Brazilian semi-arid region, is drying up the wells of people living traditionally in this region, appropriating water for large-scale agriculture. There is also a concern that the transposition of the São Francisco river will not fulfil its purpose, to guarantee water supply for personal and domestic use, but, rather, that water will be appropriated by large-scale farmers in the region, leaving local towns and villages without water and forcing local residents to migrate. The Federal Government has the duty to ensure that priority is given to fully realizing the human right to water of people living in the region.

## 3. Disconnection in case of incapacity to pay

48. Affordability does not require that water and sanitation services be provided free of charge. When people cannot afford water and sanitation for reasons beyond their control, however, the State needs to find ways to ensure such access.<sup>34</sup>

49. Law No. 11,445 regulates the conditions of continuity of service provision, and allows interruption in cases of failure of the user to pay. Yet the law also provides that such interruption may only occur 30 days after formal notice. In cases of failure to pay by health establishments, educational institutions and low-income residential users who enjoy lower tariffs, interrupting or restricting the water supply “shall comply with deadlines and criteria that preserve minimal conditions for maintaining the health of the persons affected.”<sup>35</sup> However, those legal requirements do not specify what these minimum conditions are, nor do they mention guaranteeing supply of a specific volume of water for users who enjoy lower tariffs.

50. The Supreme Court has in some cases decided that the Consumer Code<sup>36</sup> prohibits interruption of essential services such as water supply.<sup>37</sup> However, in a 2004 decision, the Supreme Court changed its interpretation, stating that the interruption of these services was legal and constitutional, since otherwise it would indirectly create an incentive not to pay, which would harm all users.<sup>38</sup> Nonetheless, the same Court has adopted decisions prohibiting the interruption of water supply due to the risks a cutoff would entail, for example in hospitals, public schools, day-care centres, and universities. In one decision the Supreme Court held that interrupting water supply in a hospital would mean “according

<sup>33</sup> Law on Waters (Law No. 9,433) of 1997.

<sup>34</sup> E/C.12/2002/11, pp. 10–11.

<sup>35</sup> Article 40, V, § 3 of Law 11,445, 2007.

<sup>36</sup> Article 22. Public organs, directly or through their enterprises, franchisees, permittees or any other form of enterprise, are required to provide services that are adequate, efficient, safe, and, in relation to those which are essential, safe.

<sup>37</sup> See Supreme Court of Justice, Special Remedy No. 201 112 – Santa Catarina – judgment of April 20, 1999.

<sup>38</sup> Supreme Court of Justice, Special Remedy No. 337 965, First Section, judgment of September 22, 2004.

priority, in the chain of values protected by the legal system, to the concession contract over and above human life and physical integrity of the patients”.<sup>39</sup>

51. The human right to water prohibits disconnection of services due to a proven lack of economic resources to pay for the costs of water and sanitation. The State has the obligation to guarantee the right to water and sanitation for those who lack the means to pay for such services. Among the measures to be taken by the State, the Committee on Economic, Social and Cultural Rights recommends the adoption of “... appropriate tariff policies, such as water supply free of charge or at a lower cost.”<sup>40</sup> The Special Rapporteur highlights the urgent need to establish national criteria regarding the suspension or interruption of water supply, which should be linked to the definition of a fair social tariff.

## B. Physical accessibility

52. Water and sanitation facilities and services must be within the physical reach of all sectors of the population in all spheres of their lives, particularly at home, but also in educational institutions, the workplace, prisons, and public places.

### 1. Informal settlements

53. Despite considerable progress in access to water and sanitation for a large part of the population, there are still vulnerable sectors whose situation is very deficient, as they are excluded from access to these services. Between 85 per cent and 95 per cent of the Brazilian population live in urban areas. According to official data from the Brazilian Institute of Geography and Statistics (IBGE), collected during the 2010 census, about 11.4 million people (6% of the population) live in “substandard clusters”, which is how the government refers to slums or *favelas* with at least 50 inhabitants. The cities with the largest proportion of people living in *favelas* were Belém, where more than half the population lives in such agglomerations, and the two largest cities, São Paulo and Rio de Janeiro, where 11 per cent and 22 per cent of the population respectively live in *favelas*.<sup>41</sup>

54. People living in *favelas* are often deprived of access to water and sanitation because public authorities and service providers avoid installing water and sanitation networks, fearing that using public resources for such works in these areas would be considered an illegal act. Indeed, in certain states the Public Prosecutor’s Office is adopting this position, declaring that it is illegal to provide water and sanitation services to informal settlements, as it would constitute an improper use of public resources.<sup>42</sup> Such legal impediments to bringing water and sewerage networks to those areas have led to some providers simply not considering the residents, and excluding them, as in the case of the São Paulo state Company for Water and Sanitation. In a different case, the provision of water and sanitation services by that company was authorized by the Court in the Community Itajuíbe, São Paulo, with the argument that the lack of land tenure could not be a condition for the implementation of those services.<sup>43</sup> There is hence an uncertainty in Brazil regarding the best way to deal with such situations, with several providers refusing to bring water and sanitation services to slum dwellers under the argument that they are allegedly legally prevented from doing so.

<sup>39</sup> Supreme Court, Special Remedy No. 943 850, judgment of 28 August, 2007.

<sup>40</sup> E/C.12/2002/1110-11.

<sup>41</sup> <http://exame.abril.com.br/brasil/noticias/6-dos-brasileiros-vivem-em-favelas-e-similares-diz-ibge>.

<sup>42</sup> Public Prosecutor’s Office of the State of Rio Grande do Sul. Civil Inquiry No. 01202.000128/2006, 29 September 2008.

<sup>43</sup> Ação civil pública. 7ª Vara de Fazenda Pública, 29/06/2013.

55. However, the right to water cannot be denied to anyone on the basis of the legal status of their housing or the land where it is situated.<sup>44</sup> The same reasoning also applies to sanitation. Regardless of the legal title and location of their dwelling, all persons, without exception, have a right to water and sanitation, which cannot be denied by the authorities nor by service providers.

56. Nonetheless, initiatives have been taken in various parts of the country that have sought innovative, low-cost and provisional solutions to ensure access to water for inhabitants of informal settlements. Despite some doubts as to the sufficiency of the amount of water supplied to larger households, the “Responsible Consumption Program” of the Water and Sanitation Department in Porto Alegre provides for the installation of public water networks in occupied public areas. The networks are of high-density polyethylene, and are provisional until the beneficiary areas are regularized or the communities removed.

57. Thus, solutions that allow for sufficient, regular, quality and dignified, albeit provisional, access to water for needy populations living in informal settlements should be mandatory and the rule, rather than the exception, nationwide.

58. The Special Rapporteur underlines that the current exclusion of such populations from water and sanitation services constitutes a case of discrimination, which is prohibited by international human rights law. The Special Rapporteur also emphasizes that, even in those cases where the services are provided by companies (public or private), the State continues to have human rights obligations in the area of water and sanitation, and must ensure that no one is excluded from or discriminated against in access to this right, such exclusion constituting a violation of the human right to water and/or sanitation.

## 2. Rural areas and the drought problem

59. The deficit in water supply in rural areas remains high: only 36 per cent of residents have access to treated water, 2.4 million having no access to piped water supply. Most of the rural population relies on other sources of water supply, such as water trucks, rivers, lakes, streams and cisterns, which can compromise water quality. Regarding sanitation, only 3.1 per cent of rural households are connected to the sewerage network, while 13.9 per cent use various types of tanks. It is striking that over 80 per cent of households in rural areas have no access to a service guaranteeing appropriate disposal of human waste.<sup>45</sup>

60. The semi-arid region is currently facing the worst drought in 50 years, with serious negative impacts on the enjoyment of the right to water for a large part of the population.<sup>46</sup> More than 500 municipalities are in a state of emergency. About 25 per cent of the more than 50 million North-easterners live in the rural areas of the region, most belonging to low-income families who survive due to federal social programmes.

61. “Water for All” is one of the main government programmes in rural areas to tackle the drought. The goal is to distribute 750,000 cisterns to low-income families living in rural communities, especially in the semi-arid region, by 2014. As of March 2014, the Program had delivered 545,000 cisterns, each with a capacity for 16,000 litres – to meet the needs of a family of five for eight months.<sup>47</sup>

62. Other programmes are being implemented, such as the “One Million Cisterns” programme, coordinated by the Semi-Arid Articulation, a network with more than 700 civil society organizations, with federal and other funding. Through that programme, more than

<sup>44</sup> E/C.12/2002/11, para. 16(c).

<sup>45</sup> IBGE, 2010 Census.

<sup>46</sup> See footnote 13.

<sup>47</sup> Id.

512,000 cisterns were built up to January 2014, benefiting over two million people across the semi-arid region.

63. During a visit to rural areas in Itapipoca, the Special Rapporteur received testimonies from very large families (up to 14 persons) who received a cistern with a capacity of 16,000 litres of water. However, they not only questioned the water quality, but also mentioned the cistern's capacity as being insufficient to meet their basic needs. It is essential that the Government, in allocating cisterns to populations in the semi-arid region, take into account the specific composition of each household, not relying simply on averages, in order to accommodate the number of cisterns distributed to the actual size of each family group.

64. One of the major projects implemented by the Government in the region to expand access to water is the transposition of the São Francisco River, which involves building canals to bring water to the region from the neighbouring states of Pernambuco, Ceará, Paraíba and Rio Grande do Norte. There is considerable resistance in relation to the project, including legal proceedings filed before the Supreme Court, questioning the environmental impact study conducted by the Brazilian Institute for the Environment. Other concerns include the fear that the transposition would damage the already severely degraded river, and that it would benefit large landowners, and the high cost. The Federal Government has revised some aspects of the project and started implementing measures to revitalize the river. The Special Rapporteur believes that the project could be a positive response to the problem of lack of water in the semi-arid region, on condition that the distribution of water resources effectively benefits those most affected by the drought and that priority is given to realizing the human right to water of populations, and to establishing a mechanism guaranteeing effective participation in the implementation and oversight of the project.

65. During her visit to Ceará, the Special Rapporteur visited one of the eight Integrated Rural Water Supply and Sanitation Systems in the region, and observed its operation and sustainability in small settlements, aimed at ensuring the populations' access to water and sanitation. The system, which is a self-sustaining way of resolving the problem of access to water and sanitation in small towns, could be more widely disseminated so that it can be replicated in other similar parts of the country.

### C. Financial accessibility

66. Water and sanitation should be affordable for everyone. The tariffs charged should be reasonable and not compromise the exercise of other rights, such as health or food. Internationally, there are recommendations indicating that the maximum percentage of the family budget that should be allocated to water and sanitation services should not exceed 5 per cent, or even 3 per cent.<sup>48</sup>

67. In Brazil there is no specific federal affordability standard. The authority for setting tariffs is vested in the municipalities, which have considerable latitude to decide whether and how much to charge for services. However, in practice, municipalities delegate their authority to service providers. The Special Rapporteur considers that it is urgent to have a binding determination, at the federal level, of the maximum percentage of the family budget that should be allocated to paying for water supply and sanitation services. The determination of a ceiling for water supply is intended to protect the poorest and most vulnerable users, as the Special Rapporteur observed in Sobradinho, Brasília, and in São Paulo, where residents spend 10 to 25 per cent of their income on water and sanitation.

<sup>48</sup> [http://www.wssinfo.org/fileadmin/user\\_upload/resources/END-WASH-Affordability-Review.pdf](http://www.wssinfo.org/fileadmin/user_upload/resources/END-WASH-Affordability-Review.pdf).

68. Some State companies have gone public on the Brazilian and foreign stock market. In those cases, a percentage (at least 25 per cent) of the profits obtained is distributed to public and private shareholders as dividends. Thus, “the part that is accounted for as net earnings of the companies is no longer used to fund investments in the neediest municipalities and populations”,<sup>49</sup> as it is first channelled to pay earnings to the shareholders. Some authors suggest that there is a real contradiction in such a procedure, since, as the companies are classified as “public” they receive various benefits, such as public resources and federal support, and those tariff and budgetary resources captured within the sector subsequently end up being transferred to external economic agents, which could even constitute evasion of revenues.<sup>50</sup> On the other hand, as the companies provide a service necessary to the realization of a human right, rules need to be adopted to require a greater allocation of the funds derived from the company’s profits to the provision of truly universal basic sanitation services, in order to ensure the use of the maximum available resources to guarantee the right to water and sanitation.

69. The Special Rapporteur met with the President of Sabesp, the company holding the concession for basic sanitation services in São Paulo. It is a mixed capital company, whose shares are traded on the stock exchanges of São Paulo and New York. Its main shareholder is the government of the state of São Paulo. Sabesp operates water and sewerage services servicing 27.7 million inhabitants. The annual profit of the company is R\$1.8 billion reais, 25 per cent of which is distributed to the shareholders.

70. Several Sabesp clients complained to the Special Rapporteur that the water and sanitation tariffs were a strain on their pocketbooks, accounting sometimes for almost 25 per cent of the family budget, which is clearly excessive for the lower-middle and lower classes. In addition, as mentioned above, State enterprises such as Sabesp have not taken services to “irregular” informal settlements, thus excluding millions of people – forcing many to buy water from informal vendors or to fashion “irregular” water connections, with a consequent impact on quality.

71. To overcome those problems, it is essential that the Federal Government holistically addresses the situation of lack of access to water and sanitation in “irregular” *favelas*. As stated above, criteria for physical and financial accessibility of water and sewerage services need to be established, and all providers should be required to supply the informal and irregular settlements.

## 1. Social tariff

72. The current system does not ensure affordability of water and sanitation for all, since major disparities persist. The deficit is significantly greater among the low-income population. The State has the obligation to provide alternatives to support the most vulnerable families, making access to water and sewerage financially feasible for all.

73. Law No. 11,445 provides that water and economic services’ economic and financial sustainability will be assured by charging for services. However, that statute also provides for the adoption of subsidies for lower-income users, who do not have the capacity to pay or the economic means to cover the services’ full cost. Tariffs should take into account the categories of users, patterns of water use, the minimum quantity of consumption for lower-income users and consumers’ capacity to pay.<sup>51</sup> The Brazilian legal framework therefore

<sup>49</sup> National Sanitation Plan, p. 103.

<sup>50</sup> Heller, Leo, *Saneamento para todos com equidade: desafios contemporâneos para o Brasil* (see footnote 3).

<sup>51</sup> Article 29, Law 11,445.



includes differentiated tariffs based on individual economic capacities in order to ensure affordability of water and sanitation.

74. The social tariff model used by most State companies that provide water and sanitation services provides for lower tariffs for those with low consumption. According to that model, the social tariff applies to users who consume up to 10 cubic metres per month, regardless of socioeconomic status or the size of the family group. However, associating the granting of this tariff to water consumption of less than 10 cubic meters per month may be clearly insufficient to guarantee this right, since the most underprivileged families are often the most numerous. It is pointed out in the National Sanitation Plan that a household's consumption does not indicate its wealth level, and therefore a tariff system based on such an assumption "may subsidize the consumption of water of those who do not need social protection while punishing the poor with a higher rate, due to the higher water consumption [due to] the larger number of residents in each household." Hence poor users subsidize "the consumption of the rich, the opposite of what is desired."<sup>52</sup> Some programmes also establish that in order to benefit from the social tariff, the consumer has to be up to date in payments – yet it is precisely the precarious economic situation that requires access to the social tariff.

75. Other criteria generally used to determine whether one qualifies for the social tariff include family income of half or one minimum salary per person, and the type of dwelling and its location. Some companies tie the social tariff to beneficiaries being enrolled in government social programmes.

76. Municipal public services use different models for social tariffs, but the way in which the benefits are granted does not differ substantially from that established by the State-level companies.<sup>53</sup>

77. Nonetheless, there is no federal legal provision providing a uniform definition of the criteria for benefiting from the social tariff. Law No. 11,445 does not establish social subsidies as a right that gives rise to obligations, but as a goal to be attained. In practice what happens is that every company establishes its own criteria and conditions under which low-income users may be eligible for social tariffs – criteria which are then formally validated by municipal authorities. That situation creates uncertainty as to how users can access benefits and might obviously lead to unjust situations where the human right to water and sanitation is threatened. In many cases, the lack of information and the disconnect between municipal social services and the State company providing the services, together with the difficulty of accessing documents required for registration, exclude many low-income residents from those benefits. Moreover, there are no legal mechanisms available to low-income users to claim this benefit.

## 2. Cost of connecting to the sewerage system and alternatives

78. The Special Rapporteur noted that in many places, despite the sewerage network passing right by dwellings, households were not connected to the network. Therefore, sewage is discharged directly into waterways or open sewers, a situation that poses a serious threat to public health. Often users do not connect to the network due to high fees, including connection costs and the monthly tariff.

79. The State should adopt public policies aimed at overcoming this situation, either by making small loans to enable people to pay for the sewerage works in their homes, or in some cases, a full subsidy for connecting to the network. Moreover, a more equitable tariff

<sup>52</sup> National Sanitation Plan, p. 104.

<sup>53</sup> Ibid.

system in the country would make the payment more affordable for low-income users and lessen the burden of paying the sewerage tax, which is proportional to the water tariff.

80. The Special Rapporteur received information that some sanitation companies charge a full fee for collection and treatment, even if they only collect and do not treat the sewage. According to information by the inhabitants in the Vila Bela community in São Paulo, the procedure adopted by Sabesp was to charge the full sewerage fee only for the removal of sewage. That practice, in addition to imposing an unjust financial burden on the consumer, does not create any incentive for the service providers to treat sewage, as they are already charging for the full service. It is important to have clear and unequivocal federal legislation in that respect, in order to relieve the consumer of paying for a service he or she is not receiving, and at the same time to encourage service providers to increase sewage treatment.

## D. Water and sanitation quality

81. The normative content of the human right to water requires it to be of quality and safe, so that its consumption and use do not adversely impact human health.<sup>54</sup> Sanitation services must be hygienic and prevent contact of faeces with humans, animals and insects.

82. According to data from the Brazilian Institute of Geography and Statistics from 2011, 66 million people received water in their homes that did not fully meet legal drinking water quality standards, and almost 10 million people had no access to the service. In the sanitation area, 39.7 per cent of the population had no access to adequate services.

83. Lack of access to a system for wastewater collection and treatment negatively impacts on human health, as it is the cause of various diseases, such as diarrhoea. According to a study on the relationship between inadequate basic sanitation and diseases conducted by a civil society organization in the 100 most populous municipalities for the period of 2008 to 2011, in 60 of the 100 cities analyzed in 2010, the low rates of coverage of sewage collection were accompanied by high rates of hospitalization for diarrhoeal diseases. The 20 cities with the highest coverage for sewage collection (78 per cent) had an average hospitalization rate of 17.9 per 100,000 inhabitants. By way of contrast, the 10 worst cities in sewage collection (29 per cent) had a hospitalization rate of 516 per 100,000 inhabitants. It is worth mentioning the case of the municipality of Ananindeua in Pará, which takes first place in Brazil for worst rate of sewage collection, and first place in the study, with the highest rate of hospitalization connected with lack of adequate basic sanitation: more than 900 hospitalizations per 100,000 population.<sup>55</sup>

84. Low investment in sanitation results in high public health costs, with about 400,000 hospital admissions due to diarrhoea in 2011, with expenditures by the Unified Health System of R\$140 million. Most of those affected (53 per cent) were children between 0 and 5 years.<sup>56</sup> Investment in sanitation has impacts on a country's economic and development indicators. Worldwide, for every dollar invested in sanitation, there is a return of around 5 dollars of costs avoided and productivity gained.<sup>57</sup>

85. Health problems caused by the lack of sanitation are exacerbated during periods of flooding. During her visit to Baixada Fluminense, the Special Rapporteur was able to directly observe the effects of the flooding of streets and drainage channels. An example

<sup>54</sup> E/C.12/2002/11, pp. 5–6.

<sup>55</sup> Trata Brasil, Esgotamento sanitário inadequado e impactos na saúde da população, pp. 12–13.

<sup>56</sup> Ibid., p. 16.

<sup>57</sup> <http://sanitationdrive2015.org/why-we-care/sanitation-is-good-economic-investment/>.

was the sewage mixed with rainwater that flooded homes and streets which people were forced to transit on foot, and the consequences that might have on people's health.

86. In rural areas the lack of sanitation, including toilets, also poses serious public health problems. During her visit to Itapipoca, the Special Rapporteur observed, in a community that had received some water cisterns from the Federal Government, that most homes did not have a toilet; children spontaneously explained that "the toilet is the bush". In more general terms, the existing programmes aimed at ensuring water supply, such as "One Million Cisterns", are not coordinated to ensure a holistic solution for sanitation guaranteeing not only access to water, but also access to sanitation, including toilets and collection and treatment of septage.

## **E. Non-discrimination and access for vulnerable and marginalized groups**

87. Water and sanitation facilities and services must be accessible to all, including the most vulnerable sectors of the population, in law and in practice, without discrimination on the basis of race, colour, sex, age, language, religion, or any other grounds.<sup>58</sup> States are required to facilitate and ensure the necessary water supply and sanitation for those who do not have sufficient means.<sup>59</sup>

88. Brazil continues to be a country marked by major inequalities. The Constitution prohibits any form of discrimination while also calling for the eradication of poverty and the reduction of social inequalities. Among the goals of the Basic Sanitation Law is the prioritization of projects aimed at implementing and expanding basic sanitation services and action in areas inhabited by low-income populations, and providing adequate environmental health conditions for indigenous peoples and other traditional populations.

89. Beyond the legal framework, many groups are marginalized from the water supply and sanitation, including the black population, and the indigenous and maroon communities. The proportion of black persons living in households with piped water climbed from 80.4 per cent in 2004 to 90.1 per cent in 2011, and, for those living in homes with a toilet connected to a sewage network or septic tank, rose from 62 to 72.3 per cent.<sup>60</sup> However, the percentage of black and maroon persons without access to those services is practically twice the percentage of white persons in the same situation.<sup>61</sup>

90. The Committee on Economic, Social and Cultural Rights also states that discrimination occurs both directly and through indirect forms of differential treatment. Thus, indirect discrimination occurs when a person receives less favourable treatment than another in a similar situation, in relation to any of the prohibited grounds of discrimination. Indirect discrimination refers to laws, policies and practices that appear to be neutral but have an impact on the exercise of the rights enshrined in the Covenant.<sup>62</sup> The State therefore also has the duty to adopt measures to combat and eliminate such indirect discrimination, and to ensure that the progress achieved in the normative and institutional framework in the area of water and sanitation actually reaches people in the most

<sup>58</sup> E/C.12/2002/11, para. 12 (c) (iii).

<sup>59</sup> E/C.12/2002/11, para. 14.

<sup>60</sup> Agendas Transversais, Plano Mais Brasil PPA 2012-2015, Volume I, Executive Summary, p. 22.

<sup>61</sup> IPEA, *Tão perto e tão longe das soluções*. In: *Revista Desafios do Desenvolvimento*, No. 41: [http://desafios.ipea.gov.br/index.php?option=com\\_content&view=article&id=2227:catid=28&Itemid=23](http://desafios.ipea.gov.br/index.php?option=com_content&view=article&id=2227:catid=28&Itemid=23)

<sup>62</sup> E/C.12/GC/20.

vulnerable situations. Affirmative action should be adopted to progressively eliminate those inequalities.

## V. Participation and social oversight

91. States should develop a strategy and a national action plan to implement the rights to water and sanitation, based on a participatory and transparent process with performance indicators that make it possible to closely monitor the result. Effective mechanisms for social participation in place are crucial in the process of designing and implementing public policies for water and sanitation.<sup>63</sup>

92. The Constitution stipulates that participation and social oversight are essential elements of the process of defining and implementing public policies. The Basic Sanitation Law also provides that in the context of services delivery, there should be “broad dissemination of proposals for basic sanitation plans and studies that justify these plans, including holding public hearings or consultations”.<sup>64</sup> The Law also creates the National Sanitation Information System, including information on the extent and quality of water supply and sanitation services in the country. In addition, the process of adopting the Law was an example of public participation, involving several civil society organizations, government authorities, and specialists in the area. However, the final text approved did not include several provisions, such as participation, and it was determined that establishing the municipal council would be optional, making it an advisory body rather than one with decision-making powers. The law also included participatory processes in the development of the National Basic Sanitation Plan and local plans, with broad public consultation.

93. During the preparation of the Plan the broad participation of different sectors of the population was a very positive factor. Participation took place through regional seminars, public hearings and consultations, sessions with the national boards of health, water resources, and the environment. In the context of the public consultation 448 contributions were received, 42.6 per cent of which were accepted in full or in part. That percentage rises to 67.8 per cent if one considers those proposals already contained in the text and those that were considered at later stages aimed at spelling out more detail and revising the plan.

94. Despite legal provisions on participation, in other programmes, such as the Growth Acceleration Programme, the Federal Government set out priority investments for the water and sanitation sector without active and meaningful public participation.

95. The Special Rapporteur received testimony from residents of Complexo do Alemão expressing their frustration with the lack of follow-up to the outcome of the consultation process that took place. In fact, local organizations conducted a participatory process which identified access to water and sanitation as the residents’ priority for future investments. However, the Government decided to prioritize building a R\$210 million cable car, currently used by a small percentage of the residents. The Special Rapporteur also observed open ditches with sewage, a lack of tap water, women spending several hours a day fetching water in buckets, houses in ruins and garbage piling up everywhere, in a community of almost 100,000 inhabitants. A similar case is that of people living in Rocinha, another large *favela* in Rio de Janeiro, who have publicly expressed their opposition to the construction of a cable car in the community, indicating that water and sanitation is their priority.

<sup>63</sup> A/HRC/18/33.

<sup>64</sup> Art. 19, para. 5.

96. That situation has led social movements to advocate giving decision-making power to formal participation mechanisms, rather having them be merely advisory. The Plan itself stipulates that participatory processes should not be limited to consultation, which would not allow citizens to have real influence.<sup>65</sup> It remains necessary to identify those areas of participation that would allow for genuine social oversight by citizens and include them as a requirement in all projects in the water and sanitation sector.

## VI. Conclusions and recommendations

97. The Special Rapporteur recognizes the significant gains Brazil has made in terms of improving its social indicators and reducing poverty. The wide array of social programmes has been essential for supporting the most vulnerable and excluded. Nonetheless, those gains have been limited in the area of water and sanitation. Despite the major advances in the legal and institutional framework, the political will at the federal level, and the present and anticipated investments in the sector, millions of people continue to live in unhealthy environments without access to water and sanitation, and exposed to various diseases. The groups most affected by this deficit are those who live in informal settlements in urban areas, those in rural areas, the poorest, and those who belong to minorities. The major challenge now is to move forward in accomplishing the goals established in the National Sanitation Plan and other government projects to ensure truly universal access to water and sanitation, with priority attention to the population that is most vulnerable, most discriminated against and poorest.

98. During her visit, the Special Rapporteur observed the great commitment of Brazil to bringing access to water and sanitation to the entire population. In a spirit of cooperation and dialogue, and in the hope that this report will serve as a tool for dialogue among civil society organizations, the population, the various actors in the sector, and the Government, with a view to ensuring universal access to the human right to water and sanitation in Brazil, she presents the following recommendations.

99. Accordingly, and in addition to recommendations made throughout the report, the Special Rapporteur recommends that Brazil:

(a) Ratify, as soon as possible, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, thereby allowing for communications to be submitted to the United Nations in the event of alleged violations of economic and social rights, including that of the human right to water and sanitation;

(b) Include the right to water and sanitation explicitly in the Constitution through a constitutional amendment;

(c) Pioneer the inclusion of the “progressive elimination of inequalities in achieving safe water and sanitation for all” in the post-2015 global development agenda, of any future development goals;

(d) Ensure that implementation of the National Sanitation Plan incorporates the principle of equality and the progressive elimination of inequalities. The Federal Government should also implement a programme to support the poorest and smallest municipalities to give them the qualified human and financial resources needed to develop water and sanitation plans based on the Federal Plan. In addition, she

<sup>65</sup> Plansab, pp. 95–96.

recommends establishing a central federal institution with the mandate to coordinate all the activities to be implemented by bodies at the federal, State and municipal levels in the context of the Plan;

(e) Implement the Growth Acceleration Programme investments within the existing legal framework, taking account of the priorities delineated for the sector in the context of existing annual planning;

(f) Accelerate the process of strengthening and creating water and sanitation regulators, which should be granted the authority to independently monitor all water and sanitation service providers, including the Autonomous Water and Sewerage Services, regarding the normative content of the human right to water and sanitation, and institute a carefully crafted methodology for monitoring and evaluating developments in the regulation of basic sanitation services in Brazil;

(g) Adopt a legal framework at the federal level to define criteria for disconnections of water supply and link these with the definition of a fair social tariff;

(h) Adopt unequivocal national legislation dissociating the need for land tenure from the conditions for accessing water and sanitation. She also recommends that such legislation require all water and sanitation service providers to provide solutions for access to water and sanitation in all informal settlements, including those considered irregular – including access to toilets and solutions for wastewater management and sewage or septage collection;

(i) Strengthen programmes aimed at bringing water to the semi-arid region, and that official entities be required to coordinate with initiatives aimed at bringing sanitation to these populations;

(j) Establish a mechanism for participation and social oversight in the implementation of the transposition project of the São Francisco river, and ensure the project effectively benefits those hardest hit by the drought and accord priority to the realization of the human right to water and sanitation for the local populations;

(k) Review the tariff system in force and establish, at the federal level, a mandatory fair affordability standard for such services. The subsidy policy should be regulated by law, with clear criteria and responsibilities for granting subsidies to low-income individuals;

(l) Use criteria based on users' socioeconomic status to determine who benefits from the social tariff. One option is granting the social tariff to users registered with the government's social programmes, such as the *Bolsa Família*, and to those living in informal settlements, and establish a fair social tariff tied to users' income;

(m) Reinvest the profits obtained by the states in the context of the activities of the State basic sanitation companies controlled by the government authorities and traded on the stock exchange, to achieve universal access to water and sanitation, with particular attention to the most underprivileged;

(n) Apply the mechanisms for participation established in the context of the National Sanitation Law and in the Plan to all projects in the water and sanitation sector;

(o) Establish a mechanism for participation in and social oversight of the Growth Acceleration Programme that takes into consideration the existing legal and institutional mechanisms.