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## الجمعية العامة



## مجلس حقوق الإنسان

## الدورة الثانية والأربعون

٩-٢٧ أيلول/سبتمبر ٢٠١٩

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## زيارة إلى ماليزيا

تقرير المقرر الخاص المعني بحقوق الإنسان في الحصول على مياه الشرب المأمونة وخدمات الصرف الصحي\*

موجز

قام المقرر الخاص المعني بحقوق الإنسان في الحصول على مياه الشرب المأمونة وخدمات الصرف الصحي، ليو هيلر، بزيارة رسمية إلى ماليزيا في الفترة من ١٤ إلى ٢٧ تشرين الثاني/نوفمبر ٢٠١٨، بدعوة من الحكومة.

ويشيد المقرر الخاص، في هذا التقرير، بماليزيا على تحقيق ما يقارب تعميم الوصول إلى المياه وخدمات الصرف الصحي والنظافة الصحية. ومع ذلك، عندما يُنظر إلى الوضع من منظور حقوق الإنسان، مما يثير القلق الشديد أن بعض الفئات لا تزال لا تتمتع بحقوق الإنسان في المياه وخدمات الصرف الصحي. وتشدد المقررة الخاصة على أن اتباع نهج قائم على حقوق الإنسان لحل مثل هذه القضايا ينبغي أن يعطي الأولوية والتركيز على المهمشين اجتماعياً واقتصادياً، مثل: (أ) شعوب أورانغ أصلي الأصلية؛ و(ب) من يعيشون في مناطق ريفية؛ و(ج) المتضررين من المشروعات الكبرى؛ و(د) من يعيشون في مستوطنات غير رسمية؛ و(هـ) الأطفال غير المسجلين في مرافق تعليمية بديلة؛ و(و) اللاجئين وطالبي اللجوء؛ و(ز) السجناء والمحتجزين؛ و(ح) المتحولين جنسياً والأشخاص ذوي الهوية الجنسية غير المطابقة. وللتصدي للفوارق في الحصول على المياه وخدمات الصرف الصحي، يوصي المقرر الخاص حكومة ماليزيا بإدماج حقوق الإنسان في جهودها المستمرة لتحسين المياه وخدمات الصرف الصحي للجميع و"عدم ترك أحد خلف الركب".

\* يعمم موجز التقرير بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بهذا الموجز، فيُعمم باللغة التي قُدِّم بها فقط.



الرجاء إعادة الاستعمال

GE.19-11512(A)



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## Annex

### **Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his visit to Malaysia**

#### **I. Introduction**

1. Pursuant to Human Rights Council resolution 33/10, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, undertook an official visit to Malaysia from 14 to 27 November 2018, at the invitation of the Government. The purpose of the visit was to examine the progress made and identify the remaining challenges in ensuring the full realization of the human rights to water and sanitation in the country.

2. During his two-week visit to Malaysia, the Special Rapporteur met representatives of the various levels of the Government,<sup>1</sup> representatives of civil society, human rights defenders and members of the general public. The Special Rapporteur wishes to thank the Government for its invitation and organization of the visit. In particular, he would like to thank those who took the time to meet with him and who generously opened their homes. He also expresses appreciation to the office of the United Nations resident coordinator in Malaysia.

#### **II. Legal, policy and institutional framework**

3. The historical, cultural and economic development of Malaysia has had a direct effect on the water and sanitation sector and thus the way in which the resident population access water and sanitation services. Malaysia is a federation of 13 states and three federal territories, which are located on the Malay Peninsula (generally known as “Peninsular Malaysia”) and the island of Borneo (generally known as “East Malaysia”). East Malaysia is composed of the States of Sabah and Sarawak, which were separate British colonies that did not become part of the Federation of Malaya until 1963. Since then, the two states in East Malaysia have retained a higher degree of local and legislative autonomy than the other states of Peninsular Malaysia.

4. The autonomy of Sabah and Sarawak and the differing levels of economic development between Peninsular Malaysia and East Malaysia also influenced the reform of the country’s water and sanitation sector, which commenced in 2006. The reform resulted in amendments to domestic legislation and the reorganization of the institutional framework of the water and sanitation sector at the federal level. The two states of East Malaysia did not take part in the reform, which only covered the states of Peninsular Malaysia and the federal territories.

<sup>1</sup> The Ministry of Education, the Ministry of Foreign Affairs, the Ministry of Health, the Ministry of Home Affairs, the Ministry of Housing and Local Government, the Ministry of Rural Development, the Ministry of Water, Land and Natural Resources, the National Water Services Commission, the Malaysian Water Association, the Department of Environment, the Department of Orang Asli Development, Sabah State Water Department, Sarawak Rural Water Supply Department, Sewerage Services Department Sarawak, water utility companies (Laku Management, Kuching Water Board and Sibu Water Board), Air Selangor, Indah Water Konsortium, and the Human Rights Commission of Malaysia in Kuala Lumpur and Kota Kinabalu.

## **A. Legal framework**

### **1. International human rights law**

5. Malaysia is not a State party to the International Covenant on Economic, Social and Cultural Rights. However, it has ratified three international human rights treaties that have explicit provisions on drinking water: the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of Persons with Disabilities. Additionally, Malaysia is one of the founding members of the Association of Southeast Asian Nations (ASEAN), which adopted the ASEAN Human Rights Declaration in 2012, which explicitly recognizes the right to safe drinking water and sanitation (art. 28 (e)). Furthermore, Malaysia voted in favour of the first General Assembly resolution (64/292) recognizing the human right to water and sanitation, in 2010.

6. The Special Rapporteur welcomes the commitment of the Government to improve its record regarding the ratification of international human rights treaties, as identified in the National Human Rights Action Plan of 2018. He particularly welcomes the intention of the Government to ratify the International Covenant on Economic, Social and Cultural Rights, which stipulates the right to an adequate standard of living, which is interpreted as including the human rights to water and sanitation. In its general comment No. 15 (2002) on the right to water, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. The Special Rapporteur encourages the Government to speed up its preparatory efforts to ratify the Covenant.

7. Furthermore, the Special Rapporteur encourages the Government, in line with its support for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, to consider ratifying the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169). He also recommends that the Government ratify the Convention on the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. All these treaties are closely related to and contribute towards the aim of progressively realizing the human rights to water and sanitation of the entire population of Malaysia.

8. During the visit of the Special Rapporteur, the Government announced its official decision not to ratify the International Convention on the Elimination of All Forms of Racial Discrimination. The Special Rapporteur reiterates his disappointment in relation to this announcement. Furthermore, he wishes to underscore that the principle of equality and non-discrimination, including on the grounds of race, is a fundamental component of international human rights law and essential to the realization of the human rights to water and sanitation.

### **2. National law**

9. As part of the reform, an amendment to the Constitution in 2005 triggered enactment of the National Water Services Commission Act 2006 and the Water Services Industry Act 2006, which constitute the main legal framework for the water and sanitation sector in Peninsular Malaysia and the federal territories. While these developments are commendable, the Special Rapporteur notes that the reform harmonized legislation in only part of the country, resulting in incoherent national laws on water and sanitation.

10. As Sabah and Sarawak did not participate in the reform, the two states have retained their own legal frameworks on water and sanitation services. In Sabah, the Water Resources Enactment 1998 and the Sewerage Services Enactment 2017 constitute the legal framework. The former recognizes the right to take and use water for household and subsistence agricultural purposes free of charge, without the need for a licence. The latter outlines the framework for the provision and regulation of sewerage services.

11. In Sarawak, three pieces of legislation govern the water and sanitation sector. First, the Water Ordinance 1994 regulates the conservation, protection, development and management of water resources and the supply and distribution of water. Second, the Water

Supply Regulations 1995 outlines technical and administrative standards related to the provision of water supply services, including tariffs related to abstracting groundwater and consumer tariffs. Third, the Sewerage Systems and Services Ordinance 2005 regulates the sewerage systems and services in urban areas.

12. The Special Rapporteur emphasizes that the Government should take steps to harmonize the legal standards and ensure that practices throughout Malaysia are in line with the human rights framework. He highlights the responsibility of the Government to ensure coherence across states in both Peninsular Malaysia and East Malaysia, particularly providing legal safeguards to protect the human rights to water and sanitation of the entire population.

## **B. Institutional framework**

13. Prior to the reform of the water and sanitation sector, the water services industry was under the purview of each state government, which owned the water infrastructure and operated water services. Some states, such as Selangor and Johor, were exceptions in that water services operations had been privatized and private concessionaires were responsible for the treatment and supply of water to consumers.<sup>2</sup> The decentralized system of the water sector was not centrally regulated, resulting in varying quality and differing charges for water and sanitation services, from state to state. In the states in which water services had been privatized, operations were fragmented with several private operators involved in providing water supplies to the states, in a highly inefficient manner.<sup>3</sup>

14. As a result of the reform, the federal government is mandated to regulate water supplies and sanitation services with authority over water-based projects, while the states retain their power to declare and regulate water catchment areas, water sources and river basins. Institutional actors at the federal level have been consolidated to ensure provision, regulation, and funding for both water and sanitation. Notably, in 2018, the Ministry of Water, Land and Natural Resources was established. It is responsible for developing integrated water management systems, from water catchment to households' access to water. Several other institutional bodies in the water and sanitation sector were established, including: the federal mechanism for the provision of sanitation; the National Water Services Commission, the national regulator; and the water asset management company, the custodian of water assets. Sabah and Sarawak decided not to be part of the new institutional architecture and retained their own institutional frameworks and autonomy over the provision of water and sanitation services.

### **1. Service providers**

15. In Peninsular Malaysia, responsibility for water resources rests with the state governments, which manage the existing water basins, canals, rivers and water catchment areas. Many states provide water directly, except for Johor, in which certain water services are privatized. As regards sanitation, Indah Water Konsortium provides sewerage services to states in Peninsular Malaysia, except for the State of Kelantan and the two districts in the State of Johor. The Special Rapporteur notes that it is essential that the Government assess whether the absence of federal bodies in those states has affected the quality of services. This assessment should be the fundamental guideline for assessing whether stronger support for sewerage services and individual sanitation solutions in East Malaysia and Kelantan and Johor is needed.

16. In Sabah, institutional actors in the water sector are divided between those involved in bulk water supply, including water treatment, and those involved in retail water distribution to households. Bulk water management in the urban areas of Sabah is privatized and managed by three private companies with concession contracts from the state. In areas in which the concessionaires are not present, particularly rural areas, the Sabah State Water Department manages bulk water and is responsible for retail water supplied to households in both rural and urban areas. In terms of sanitation, Sabah is

<sup>2</sup> See [www.paab.my/regulations/national-water-services-industry-restructuring-initiatives](http://www.paab.my/regulations/national-water-services-industry-restructuring-initiatives).

<sup>3</sup> Ibid.

striving to have a streamlined approach for all its divisions by consolidating the responsibility that is distributed among each local government. The Sabah Public Works Department is in the process of taking over responsibility for sewerage systems from local authorities in accordance with the Sewerage Services Enactment 2017.

17. In Sarawak, the provision of water services is under the purview of the Ministry of Utilities Sarawak. The water supply agencies under the Ministry are Kuching Water Board, Sibu Water Board, Laku Management and the Rural Water Supply Department. Both Kuching Water Board and Sibu Water Board are statutory bodies providing water supply to Kuching and Sibu, respectively, and their surrounding areas. Laku Management is a wholly owned company of the Sarawak Government and provides water supply to Miri, Bintulu and Limbang. The Rural Water Supply Department provides water supply to the remaining areas of Sarawak, including the other towns and rural areas. The Sewerage Services Department Sarawak, linked to the Ministry of Local Government and Housing, provides centralized sewerage services to parts of City of Kuching, while Bintulu Development Authority provides centralized sewerage services in Bintulu. Other areas rely on individual solutions and on the support of local and municipal authorities.

## **2. Financial sustainability of service providers**

18. In order to address the financial sustainability of service providers, the reform resulted in the creation of a water asset management company, a Government-owned entity responsible for water asset management. The company works on the concept of “build and lease”: after funding the construction of water infrastructure, the company leases it to water service providers. The company operates in Peninsular Malaysia, while the federal government supports the two states in East Malaysia to supply urban water and sewerage through loans, often in the form of soft loans. After listening to interlocutors in the two states, the Special Rapporteur observes that the budget allocated by the federal government is insufficient, particularly considering the high costs involved in providing water and sanitation services to the sparsely located population in remote rural areas, which account for the majority of the territory covered by those states.

19. The levels of water and sanitation services in Sabah, Sarawak and Kelantan are lower than in the rest of the country. In order to bridge this difference, the Government must implement focused policies that include sufficient and sustainable funding for those states. Those three states would benefit if the federal government allocated more financial resources in the form of grants specifically dedicated to improving water and sanitation services until they reach an acceptable level. Disparities in access to water and sanitation require focused attention in order to make the country progress towards more equal and adequate access to services in all its regions.

## **3. Regulation**

20. Another outcome of the reform was the establishment of a water and sanitation regulator. All water and sewerage services in Peninsular Malaysia are licensed and regulated by the National Water Services Commission, under the Water Services Industry Act 2006. The Special Rapporteur finds the regulatory strategy currently in place at the federal level adequate. The National Water Services Commission requests providers to develop a three-year plan. It provides institutional support linked to the achievement of agreed performance indicators. The Special Rapporteur recommends that the National Water Services Commission carry out its regulatory functions in a manner free from pressure from any illegitimate interests and that the main objectives of regulation are aligned with the human rights to water and sanitation (see A/HRC/36/45).

21. The National Water Services Commission does not play a role in East Malaysia and therefore the national regulatory strategy does not apply in those states. In Sarawak, the State Water Authority regulates water supply authorities. It also has the role of managing water resources and water catchment areas in the state. Since Sabah does not have an independent regulator, the water department in Sandakan performs that role. The Special Rapporteur encourages the Government, in consultation with state governments, to harmonize the regulation of water and sanitation services in the country, through bodies that are independent of service providers.

### C. Policy framework

22. Since 1966, Malaysia has pursued development through national planning. The Eleventh Malaysia Plan 2016–2020, based on the principle of “anchoring growth on people”, resonates with the underlying principle of the Sustainable Development Goals, namely “leaving no one behind”. Another way of “leaving no one behind” is to have “everyone on board” and to be able to keep track of how the Sustainable Development Goals are achieved for “everyone in all contexts”, especially for those who do not exist in national surveys. Malaysia has committed to achieving Goal 6 (ensure availability and sustainable management of water and sanitation for all), particularly by aligning its Eleventh Malaysia Plan with the Sustainable Development Goals.

23. To make its commitment to the Sustainable Development Goals tangible and to achieve universal access to water and sanitation for all, Malaysia needs to aim for a higher rate of progress for disadvantaged and marginalized groups. The Special Rapporteur stresses that, while meeting targets 6.1 and 6.2 of the Sustainable Development Goals is a pathway to realize the human rights to water and sanitation, it is only a proxy for the human rights to water and sanitation. Ultimately, Malaysia must strive to meet its human rights obligations and exercise regional leadership in this field and, in order to do so, all policies should focus on accelerating the elimination of inequalities in access to water and sanitation services. In this regard, the Special Rapporteur welcomes the National Human Rights Action Plan of 2018, which identifies priority areas, such as improving people’s economic opportunities and livelihoods through eradicating poverty and reducing gaps. The Action Plan is a positive step by the Government to ensure that everyone’s need for basic services, such as water, electricity, telecommunications and energy, is fully met. As the next positive step, the Special Rapporteur emphasizes that the implementation of the Action Plan must be ensured.

### III. Leaving no one behind

24. Malaysia is blessed with an abundance of water resources, that is to say some 971 billion cubic metres of rainfall each year. The Special Rapporteur visited the country during the monsoon season and saw several tanks to collect rainwater in both urban and rural areas. In terms of access to adequate water and sanitation services, the Special Rapporteur observes that Malaysia is a high performer and that the accessibility of water and sanitation services is truly impressive. According to the 2015 report of the World Health Organization/United Nations Children’s Fund Joint Monitoring Programme for Water Supply, Sanitation and Hygiene – the first monitoring report after the adoption of the 2030 Agenda for Sustainable Development – 92 per cent of the population of Malaysia had access to safely managed water services and 82 per cent to safely managed sanitation services. Similarly, the Joint Monitoring Programme estimates near universal access to water, sanitation and hygiene services in schools. The Special Rapporteur commends the Government and the population of Malaysia for these achievements, which are the result of a historic commitment to the provision of public services. However, when this picture is observed from a human rights perspective, it is a great concern that some groups still do not enjoy their human rights to water and sanitation as they collect water from surface sources that are often compromised in terms of quality, and use inadequate sanitation services.

25. The Special Rapporteur emphasizes that one of his responsibilities is to report back to the Human Rights Council the voice of affected individuals and groups and to speak on their behalf. Conscious of that responsibility, he would like to highlight some of the interactions that he had and stories that he heard during his visit, particularly from those that are unserved or underserved and, consequently, left behind. While these stories are not statistically representative, the Special Rapporteur emphasizes that a human rights-based approach prioritizes and focuses on those who are socially and economically marginalized and who may otherwise be rendered invisible.

## A. Orang Asli indigenous peoples

26. While the Orang Asli indigenous peoples constitute the majority of the population in East Malaysia, in Peninsular Malaysia they are a minority, and are known as Orang Asli. The Special Rapporteur visited seven villages in the Gua Musang District of Kelantan where Temiar-Orang Asli people live. He was able to see how Orang Asli villages have been resettled and regrouped after being displaced by flooding and megaprojects, including logging, oil palm and rubber plantations, and dam construction, which implies the loss of their traditional lands, the majority of which are not officially protected. The Special Rapporteur heard from various interlocutors that, for Orang Asli, losing their lands means the destruction of their way of life, including the possibility to transmit rituals, beliefs, knowledge, and practices. During his short yet valuable time with the indigenous peoples, the Special Rapporteur saw that the rivers neighbouring each community were used for several different purposes, including as sources of water for washing and as places in lieu of toilets.

27. The Department of Orang Asli Development is a dedicated government agency responsible for ensuring “the administration, welfare and advancement of the aborigines” (Aboriginal Peoples Act 1954, art. 4). From the beginning of the Second Malaysia Plan to the Eleventh Malaysia Plan, the Ministry of Rural Development has constructed several water facilities in Orang Asli villages, with a target of 90 per cent coverage. According to the Ministry, at the time of the visit, 701 of the 853 Orang Asli settlements had been provided with a water supply. The efforts to address access to water for the indigenous peoples were illustrated by a representative of the Department of Orang Asli Development, who emphasized that there was no one-size-fits-all solution, based on the lessons learned and the identification of problems in implementing water systems.

28. The Special Rapporteur saw these problems in person when he visited the villages. Several water treatment facilities were installed at the entrance to the communities by the Ministry of Rural Development and were managed by the district office of the Department of Orang Asli Development. The facilities were based on sophisticated technology that required proper maintenance and operation, which was beyond the capacity of the villagers without adequate training. In addition to the inappropriateness of the level of technology, the facilities were not maintained and operated due to a problem described as “gaps in outsourcing contracts”. Additionally, a lack of maintenance was also observed in resettled and regrouped villages. In the villages of Lansat and Kuala Betis, in which several indigenous peoples have been regrouped and relocated, the villagers enjoyed adequate living conditions during the initial phase of the settlement, but as time passed, services such as water supply were not maintained, leaving them without proper access to water.

29. As the water systems are not functional, villagers often rely on gravity-fed water supply from streams in the mountains and water from the river. Residents are left to find water sources on their own. In the village of Peralong, 40 inhabitants who live in traditional houses rely on one water point that the population themselves have constructed using pipes that had been left behind by the logging companies nearby. These alternative water systems, constructed by the indigenous peoples and outside the purview of government regulation, do not guarantee an adequate level of water quality. In the village of Kelaik, in where there are 50 families, comprising about 200 people in total, the water treatment plant was provided by the Department of Orang Asli Development in 2010, although it has never worked. The community has relied on a small stream for drinking water and the river flowing next to the village for washing and cooking. One of the villagers explained that, when it rained, the villagers compared the water from the small stream and the river. Whichever was cleaner, they drink it.

30. In villages in which facilities provided by the Department of Orang Asli Development are operating, the water supply is intermittent and inadequate for the entire community. To compensate for the lack of a continuous supply of water, in the two villages of Podek and Angkek, a relatively large community of 42 households comprising 420 people, the villagers use the functional water treatment facility provided by the Department of Orang Asli Development, which works for only one or two hours a day, as a source of drinking water, whereas the water from the boreholes dug by the community themselves is

used for washing and for the toilets. The Special Rapporteur observed a pattern of relying on alternative water supplies, such as water collected directly from rivers and streams, transported in bottles or supplied by non-sustainable gravity-fed water systems, or on systems connected to the central network with scarce water availability.

31. The Special Rapporteur observed that the lack of adequate water, particularly the scarce availability of water, clearly had consequences on sanitation: several toilets built inside brick houses and communal toilets in the villages did not function. When the Special Rapporteur asked a villager about the situation regarding sanitation, he replied with a rhetorical question: “without water, how can we use the toilet?” In terms of access to toilets, it was reported that, of the 850 indigenous villages, only approximately 700 villages had sanitation facilities. In some villages, the Special Rapporteur saw clean and sturdy toilets that had been built by the Department of Orang Asli Development following the flooding between December 2014 and January 2015. However, many explained that those toilets were unused because of a lack of water to flush with.

32. Furthermore, the lack of water services meant that Orang Asli had to rely on water from rivers for washing. Travelling from one village to another, on the side of the road, the Special Rapporteur saw one water point that had been installed by the community through a connection to the oil palm plantation nearby. A villager passing by had his ablutionary products in a basket and a towel on his shoulder and was about to take a shower. He explained that water was a basic human need and that it was clear that his basic needs had not been met. The Special Rapporteur travelled in a car between villages but the indigenous peoples had to walk or take a motorbike on the rough road to take showers. In addition to the quality of drinking water, the quality of water used for personal use, such as bathing, was another concern for the Special Rapporteur. In one village, the water flowing in the river was described as “chocolate” in colour during the rainy season, and like “tea with milk” during the dry season. This led the Special Rapporteur to question whether the river was clean enough for the indigenous peoples to use for washing, particularly for menstrual hygiene. When the Special Rapporteur was in one of the villages, he saw young children washing themselves in the river that ran next to the settlement. The indigenous women explained that they preferred to wash their entire body in the river during menstruation, which some of them did three times a day.

33. The Special Rapporteur stresses that a targeted policy is needed to ensure that Orang Asli have proper access to water and sanitation services. The capacity of the Department of Orang Asli Development needs to improve so as to ensure that services are appropriate, sustainable and compatible with indigenous cultural values. He hopes to see more resources allocated to upgrade and maintain the water infrastructure of the Orang Asli villages so that indigenous peoples are no longer marginalized. Furthermore, he highlights that indigenous peoples have the right to participate and be consulted on matters affecting them, particularly on decision-making related to technical solutions and other key issues of their water and sanitation facilities (see United Nations Declaration on the Rights of Indigenous Peoples, arts. 18–19).

## **B. Rural population**

34. Those living in rural areas require particular attention from the Government, in order to improve their access to water and sanitation services and to ensure sustainability of the water and sanitation services. In the rural areas of Malaysia, the main sources of water include rainwater, gravity-fed water from the mountains and groundwater. In the rural parts of states in East Malaysia, most of the gravity-fed water systems were installed after the 1980s as a result of a joint effort by the Ministry of Health and the communities. According to the Government, poor rural communities and those at higher risk of water-borne diseases are currently given priority when installing rural water supplies and sanitation facilities. While the water supply was available in rural areas, in some rural villages that the Special Rapporteur visited, responsibility for their maintenance had been handed over from the Ministry of Health to the community without any financial support from the Government. He highlights that, for the population to enjoy their rights to water and sanitation, it is



essential that any solutions found to the provision of water are sustainable and that the relevant maintenance and improvements are provided.

35. In order to improve the rural water supply, the Ministry of Rural Development embarked on a Rural Water Supply programme commencing with the Second Malaysia Plan 1971–1975 right up to the Eleventh Malaysia Plan 2016–2020. The main objective of the programme is to provide and expand the coverage of clean and treated water in rural areas throughout the country. It has a target to cover 90 per cent of the population. In addition, the focus on improving basic rural infrastructure in the Government Transformation programme, which was introduced in 2010, has contributed to increasing access to water supply and sanitation in rural areas. Despite the well-formulated policies focusing on the rural water supply, the Special Rapporteur observed that access to drinking water and sanitation services were fragmented for the rural population, including those living in rural areas in Sabah and Sarawak.

36. The fragmentation in the provision of rural water supplies reflects the fragmented roles and responsibilities distributed among the four government entities. The Department of Orang Asli Development oversees the social well-being of Orang Asli as regards their access to basic amenities, including water supply. The Ministries of Rural Development and Health both have water supply programmes in rural areas but they are separate programmes implemented in different areas and over different time periods. The Federal Land and Development Area of the Ministry of Agricultural Land is also responsible for water supply in its mandated area. The Special Rapporteur emphasizes that the fragmentation of the rural water supply and sanitation services must be addressed, in order to reach the 6.8 million people who comprise the 1.5 million households scattered all over rural areas. In order to reach such a rural population, the Government should have a harmonized approach to the rural water supply and sanitation, including a coordination mechanism to guarantee integration throughout all areas and bodies.

37. Another observation relates to the inequality across regions, particularly in rural areas. As of 2016, 80.5 per cent of the population living in Sabah and Sarawak were connected to centrally piped water services. This is a different situation compared with Peninsular Malaysia, in which the rural population of most states, except Kelantan, enjoys near-universal access to water supply.<sup>4</sup> These figures include only the Malaysian national population, suggesting that the disparities are even higher if one takes into consideration the significant presence of the undocumented population in Sabah and Sarawak. In Sandakan in the State of Sabah, according to official statistics, approximately 43,000 of the 47,000 registered households or premises are connected to a piped water network. However, there are those who are not included in these statistics, such as those who work in factories and plantations that have their own water supply for employees and neighbours, or those who live in remote villages that rely on rainwater as their main source of water.

38. In relation to sanitation in rural areas, the lack of appropriate facilities for the collection and disposal of human excreta remains a challenge. The Special Rapporteur urges the National Water Services Commission to finalize the ongoing initiative to shift the responsibility of emptying septic tanks from users to Indah Water Konsortium. This will be a step forward in ensuring equal access to sanitation for the rural population in relation to the urban population. The Special Rapporteur wishes to highlight this as a good practice on the part of the National Water Services Commission to periodically carry out the collection and disposal of excreta, shifting this responsibility from the users to a public body.

### C. Populations affected by megaprojects

39. Megaprojects, such as large-scale dams, can affect the human rights to water and sanitation of the population at different stages of their implementation, that is during planning, approval and construction, both in the short term and the long term. During the visit, the Special Rapporteur learned about several such projects that had affected access to safe drinking water, such as dams, logging projects, massive oil palm plantations and

<sup>4</sup> National Water Services Commission, number of connections for 2015–2016.

processing plants, and other agribusinesses systematically using pesticides and fertilizers. For all types of megaprojects, the Special Rapporteur urges the Government to carry out human rights impact assessments at each stage of the projects, while ensuring the meaningful participation of those affected in a transparent manner and facilitating easy access to information. The focus of his thematic report to the General Assembly at its seventy-fourth session is on how human rights can be incorporated into each stage of the megaproject cycle. As regards the present report, he would like to provide an analysis of the construction and operational stages, with a focus on dams.

40. Prior to the construction of dams, the residents living in villages that will be affected face challenges to ensure their basic needs even before being displaced. For instance, in Timpayasa, and the surrounding villages of Penampang District in Sabah, which will be affected by the construction of the proposed Kaiduan dam, the Special Rapporteur heard complaints that those villages were no longer receiving government support for their basic needs, anticipating that the villages would no longer exist once the dam was constructed. If the dam project were to go ahead, four villages would be submerged and another five would need to be relocated.

41. In a meeting with the affected villagers, the Special Rapporteur heard several rhetorical questions asking about the justification for a mega-dam and its potential costs and benefits. During the pre-construction phases, particularly at the stage of authorization, he urges the Government to carry out a careful comparative analysis of the different technical options to ensure water security for the entire population, before deciding to implement megaprojects for water supply. This analysis, as well as the final decision, must be carried out together with the communities involved, both those affected and those that would benefit from each solution. Decisions need to be taken together and any development project should not move ahead without the free, prior and informed consent of those affected, who must be consulted in good faith (United Nations Declaration on the Rights of Indigenous Peoples, art. 32).

42. After the construction and during the operation of dams, careful monitoring of the livelihoods, particularly access to water and sanitation, of the displaced population, as well as those who remain, is key. As a result of the construction of the Bakun hydroelectric dam, which began in 1998, approximately 10,000 people were resettled in 15 different villages with the promise of land, free housing and other support to sustain their livelihoods in a new home. Sungai Asap is now home to those displaced and, after almost two decades, the villagers still do not have proper access to safe water and are facing the problem of the quality of their self-supplied water.

43. In addition to the impact on the quality of water posed by certain development activities, there are risks to the lives of those living near those activities. In the village of Kelaik in Kelantan, located downstream of a river, one elderly Orang Asli man died while bathing in the river allegedly due to the release of water from a mine located upstream. The case was reported but no further action was taken due to a lack of evidence, particularly information from the mining company, about when the water was released from the mine. The Government and the private companies operating such development activities must assess the risks of harm posed to the population living nearby and take measures to prevent or mitigate those risks.

#### **D. Population living in informal settlements**

44. The outstanding statistics recorded by Malaysia as regards access to drinking water do not, unfortunately, include those living in traditional style houses, known as "longhouses", which are located in coastal villages and mountain areas, as well as other forms of informal settlements. Throughout the visit, particularly in East Malaysia, the Special Rapporteur saw several types of informal settlements, occupied by Malaysian nationals, stateless persons, undocumented population or others with an irregular status. The term "informal settlements" refers not only to the displaced homeless encampments and modalities, such as squats in abandoned buildings, improvised homes in containers, tents or boats or shacks made of whatever materials that can be scavenged, but it also

includes long-established informal communities consisting of durable housing of bricks and mortar (A/73/310/Rev.1, para. 7). In view of the specific features of water and sanitation services, the Special Rapporteur refers to those living in settlements and communities that are not within the purview of the Government due to a lack of legal recognition and are thus not provided with such services by public entities. For instance, longhouses on beaches are not recognized and registered as official residences by the state government and, hence, do not have access to the water provided by it.

45. Informal settlements are usually home to undocumented population, including persons who are stateless. In Sabah, the number of people affected by statelessness, those with an irregular status who are settled in villages by the coast or inland and those who are semi-nomadic are officially unknown. There is no publicly available data on the extent of statelessness in Sabah; however, it is recognized that the largest population of stateless persons, immigrants in irregular situations and those living in the streets in Malaysia are reportedly in that state and most are Bajau Laut, descendants of Indonesian and Filipino migrant workers. The Special Rapporteur was happy to hear that, in some states, such as Sabah, the Government had requested the water department to devise a solution to provide water and sanitation to the population living in informal settlements. He recommends that the Government implement feasible solutions for water and sanitation for the undocumented population so that they can enjoy their human rights to water and sanitation on the same terms as the documented population in Malaysia.

46. Those living in areas that are not recognized or registered as official residences do not benefit from formal water and sanitation services and must resort to informal provisions. In Sandakan, informal settlements are often in clandestine areas in which they remain undetected or are attached to factories or other economic enterprises in which people can work. In those areas, the population relied on self-provided water from rivers, water supplied from the factories or gravity-fed water from a nearby hill. In one village in Sandakan, the Special Rapporteur observed a complex water management system that involved the use of four different sources: a well, rainwater, a gravity-fed system and a river. The lack of a government presence in villages in which the undocumented population lives usually requires the villagers themselves to find their own solutions for water supply, which is sometimes costly, unsafe and lacking in availability.

47. In some coastal villages built on small adjacent islands, access to water is non-existent, with some residents having to travel by boat to another village in order to collect water. Seeing the sparse distribution of villages on the small islands, along the coast, in the mountains and in remote rural areas, the Special Rapporteur acknowledges the challenges in identifying those groups and monitoring whether they, both Malaysian citizens and non-citizens, are provided with adequate access to water. At the same time, there were settlements that had been recognized as refugee camps but, nonetheless, their level of water access remained the same. The Special Rapporteur suggests that the Government establish a plan to upgrade such settlements through an integrated human rights-based approach, namely, by focusing on securing adequate housing, in all of its dimensions, as a response to structural conditions and societal dynamics that deprive residents of the human rights to water and sanitation (A/73/310/Rev.1, para. 14).

48. Residents in informal settlements often do not have access to water and sanitation because they cannot afford the charges; such access is often controlled by cartels. In one village in Sandakan, there are three informal water providers that have set up their own systems to supply mountain water, using self-installed checkpoints to control water quality. The informal providers play the role of monitoring water quality, not supplying water when it looks muddy or when the colour changes. The fee was 1 ringgit (\$0.25) for 10 minutes supply of water that would feed up to three blue water tanks. By coincidence, the Special Rapporteur met the son of an informal provider, who at times managed turning the tap on and off and collecting the tariff. When the Rapporteur asked him about a theoretical situation in which people were too poor to pay for water, the boy immediately responded: "I give them water but don't tell my father. Recently, a fisherman came on his boat with two buckets. I did not charge him." Unlike this young boy who used different standards for those people who clearly could not afford to pay for the water, the Special Rapporteur notes that not all informal water service providers have the same understanding of the underlying

principles of human rights. He wishes to point out that, despite such good practices, the approximately 900 households in the village have a discontinuous water supply, through unregulated informal providers, which charge for their services without any control by a mandated public agency. From a human rights perspective, such a situation is clearly unsatisfactory.

## **E. Undocumented children in alternative educational facilities**

49. A large number of children born in Malaysia, particularly in Sabah, are stateless, either because they lack a birth certificate or are waiting for proper documentation (A/HRC/40/51/Add.3, para. 23). In the absence of identity documents, children have limited access to public education, although they are allowed to enrol in alternative learning centres operated by private organizations in accordance with the policy on alternative education. These alternative learning centres are not registered with the Ministry of Education and do not benefit from its financial support for water and sanitation services.

50. The Special Rapporteur visited two alternative learning centres and spoke to two groups of students, each consisting of between 40 and 50 children aged between 10 and 15 years. Students from both centres helped their parents collect drinking water from the water fountains (boreholes) or from a neighbour each morning or sometimes after school. In one centre, half of the children had access to toilets inside or just a few steps away from their houses. However, the other half had to walk some distance to use a toilet. When the Special Rapporteur asked how long it took, one girl said, with great precision, “four minutes. I can tell you exactly how long it takes because I need to time it. If I am late coming back from the toilet, my mother scolds me.” The Special Rapporteur heard that there was a risk of kidnapping and children disappearing in the area. In that regard, the Special Rapporteur wishes to reiterate the recommendation of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, namely that the Government should ensure the registration of alternative learning centres for undocumented children under the Education Act 1996 (A/HRC/40/51/Add.3, para. 64 (d)).

## **F. Refugees and asylum seekers**

51. As at the end of January 2019, there were some 164,620 refugees and asylum seekers in Peninsular Malaysia registered with the Office of the United Nations High Commissioner for Refugees, the majority of whom were from Myanmar, mainly Rohingya. Most live in Kuala Lumpur or other urbanized environments where they can secure work in the informal market economy. However, with no legal right to remain in Malaysia, refugees cannot work legally, which affects their livelihoods and particularly their access to water and sanitation. The low incomes of households and exclusion from Government policies, programmes and remedies negatively affect the ability of the refugees and asylum seekers in Peninsular Malaysia to fully enjoy their human rights to water and sanitation.

52. Most refugees rent housing in which multiple families or extended family members reside together, leading to limited availability of toilet and washing facilities. In addition, such overcrowding affects the amount of water consumed in each household and the cost thereof. One woman explained that the monthly rent of her house was 600 ringgit (approximately \$145), which, together with the other expenses, including water bills, was just covered by her husband’s monthly income of 900 ringgit (approximately \$217). The Special Rapporteur understands that overcrowding in those houses has become the norm, due to the vulnerable financial situation of the refugees, which affects the accessibility and affordability of water and sanitation.

53. The Special Rapporteur stresses that forcibly displaced persons – refugees, asylum seekers, undocumented persons and migrants in vulnerable situations – have the same rights as citizens of Malaysia, and are equally entitled to enjoy access to adequate drinking water and sanitation services (A/HRC/39/55). He strongly recommends that the Government create a coordination body at the federal level to assess the best legal, political and

budgetary strategies to provide access to adequate public water and sanitation services for those who are undocumented, stateless or otherwise in an irregular situation. Such an assessment must include the conditions of toilets and access to water in detention and reception centres.

## **G. Prisoners and detainees**

54. The Special Rapporteur spoke to three refugee men who were in prison. Their stories indicate poor and almost inhuman conditions of access to water and toilets in prison. He visited several blocks in Kajang Prison and observed varying levels of privacy for toilet usage. In most blocks, particularly those used for rehabilitation, the toilet inside each cell was located next to a low wall separating other parts of the cell. However, there were also blocks, particularly the Quarantine Block, where that wall did not exist and prisoners were left without any privacy when urinating or defecating.

55. The Special Rapporteur acknowledges the efforts of the public authorities to provide safe water and sanitation to detainees and highlights that their needs must be a continuous concern, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).<sup>5</sup> The Nelson Mandela Rules stipulates that drinking water should be available and that prisoners are required to keep their persons clean, and to this end they should be provided with water and with such toilet articles as are necessary for health and cleanliness.

## **H. Transgender and gender non-conforming persons**

56. Lesbian, gay, bisexual, transgender and intersex persons in Malaysia often face structural and systemic discrimination. Particularly under the civil and State-administered Shariah laws, there are many laws that criminalize persons based on sexual orientation, gender identity and gender expression. In his report on gender inequality in 2016, the Special Rapporteur emphasized that restrictive gender recognition laws not only severely undermined the ability of transgender persons to enjoy their rights to basic services, they also prevented them from living safely, free from violence and discrimination (A/HRC/33/49, para. 9).

57. Water and sanitation facilities must be safe, available, accessible, affordable, and socially and culturally acceptable, provide privacy and ensure dignity for all individuals, including transgender and gender non-conforming persons. These elements should be particularly prioritized in public spaces and the work environment. The Special Rapporteur heard that several transgender persons were often instructed by their employers to use toilets based on their sex assigned at birth, mostly due to complaints by co-workers or clients. As a result, transgender persons cannot use the closest toilet but are forced to use toilets on other floors in other buildings or in public spaces. According to a 2017 online survey on access to toilets by transgender persons in Malaysia by Justice for Sisters, 40 of the 97 transgender respondents had encountered discrimination of some form when using a public toilet, while 26 of the 97 respondents had experienced restrictions on access to toilets at the workplace. Fifteen of the transgender respondents reported having been forced to use toilets based on their sex assigned at birth.<sup>6</sup>

58. Working in such environments not only adds stress, anxiety and isolation, but also increases health risks, such as urinary tract infections, due to restricted use of toilets. In the above-mentioned survey, 42 per cent of the respondents reported that they felt emotional stress about using the toilet, whereas 39 per cent of them battled with self-esteem issues because of discriminatory experiences encountered when going to the toilet. In many cases, workplaces do not have policies that are inclusive of diversity. Furthermore, the Special

<sup>5</sup> Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 16 (g).

<sup>6</sup> The findings of the survey were reported at a symposium on access to public facilities for transgender persons, held in Penang in January 2017.

Rapporteur is concerned about the sexual harassment and violence that transgender persons face in educational institutions. Several transgender persons recalled their experiences of being teased by boys in the toilets during their school years. The Special Rapporteur recommends that the Government monitor how gender inequalities in access to toilets, including among lesbian, gay, bisexual, transgender, intersex and gender non-conforming persons, manifest in extra-household settings (A/HRC/33/49, para. 72).

## IV. Human rights to water and sanitation in policies

59. The Special Rapporteur stresses that a human rights-based approach provides a framework to identify the highest priorities in national water and sanitation policies and that such a framework would take into account key issues related to people in vulnerable situations, including questions surrounding equality, non-discrimination, participation and access to information. In this regard, he provides an analysis of the elements that the Government could improve in its policy considerations, aiming at accelerating the progressive realization of the human rights to water and sanitation.

### A. Monitoring

60. Apart from the largest groups of Bumiputera, Chinese and Indians, Malaysia is home to a number of minorities and indigenous peoples, including the Negrito, the Senoi and the Proto-Malay in Peninsular Malaysia, the Kadazan Dusun, the Bajau and the Murut mainly in Sabah, and the Iban, the Bidayuh, the Melanau and the Orang Ulu predominantly in Sarawak. During his two-week visit, the Special Rapporteur had the pleasure of interacting with people from different ethnicities and indigenous peoples.

61. During the meetings with government representatives, many said that there were no data available to answer several of the questions related to the disparities in access to adequate services by specific groups. It is essential that the Government take urgent action to collect adequate data that would allow disaggregation of data on access to water and sanitation services by relevant groups, particularly based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, wealth or other status. The Special Rapporteur wishes to emphasize that States are under an immediate obligation to implement a national plan of action to realize the human rights to safe drinking water and sanitation in full, utilizing indicators and benchmarks to monitor and report on their progress. Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation.<sup>7</sup> The policy should provide for mechanisms that collect relevant sex-disaggregated data, enable effective monitoring, facilitate continuing evaluation and allow for the revision or supplementation of existing measures and the identification of any new measures that may be appropriate.<sup>8</sup>

62. There is also a lack of information or data collected by the Government regarding the enjoyment of the human rights to water and sanitation by asylum seekers and refugees. Those groups have generally been excluded from the development agenda of Malaysia, including from discussions on the development of the country's road map on the Sustainable Development Goals, as well as the resulting targets and policies. The Special Rapporteur urges the Government to start a baseline survey in order to improve the availability of data on those affected by statelessness in East Malaysia, including the Bajau Laut and various minority indigenous peoples.

<sup>7</sup> Committee on the Rights of the Child, general comment No. 5 (2003) on general measures of implementation of the Convention, para. 48.

<sup>8</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 28.

## **B. Affordability**

63. Access to water and the use of sanitation facilities must be affordable for all personal and domestic uses (see A/HRC/30/39). As regards the affordability of water and sanitation services, Malaysia has financially accessible tariffs for both water and sewerage provisions. In some states, the Government provides a universal subsidy to its population by not charging water and sewerage tariffs until a certain level of consumption, usually 20 cubic meters each month. In other states, this subsidy is applied to a targeted population, with less economic resources. As regards desludging of septic tanks, in some states, such as Sarawak, the service is subsidized and is charged together with property taxes. The Special Rapporteur notes that these are commendable achievements.

### **1. Water and sanitation tariff-setting**

64. During his visit, the Special Rapporteur learned that the National Water Services Commission is undertaking studies to restructure the tariff scheme, which might include a joint billing for water and sewerage services and a reassessment of the levels of tariffs. From the human rights perspective, it is key to ensure the financial sustainability of services. Unsustainable services, even with a safe source of subsidies, are vulnerable and in the long term put the quality of services at risk.

65. For the restructuring of water and sanitation tariffs, the Special Rapporteur would like to provide a few elements to ensure that the exercise is carried out in accordance with the principles of human rights. It is important to reconcile the financial sustainability of the water and sanitation services with affordable access to those services by those in vulnerable situations. The Government must be mindful of the needs of those who lack the capacity to pay or who have limited means to do so. The reform of the water tariffs needs to take into account the implementation of social tariffs. Furthermore, its scope should also include the water tariffs of informal service providers, which are currently not regulated by the Government.

66. Additionally, in order to guarantee that those who are financially more vulnerable are not denied access to water and sanitation services, the Special Rapporteur recommends that the Government implement social tariffs and different types of cross-subsidization, including between non-residential consumers and residential users (see A/HRC/30/39). The current procedure of providing 20 cubic metres of water for free, which is implemented in some states, is a way to address affordability, but may not be fair when universally applied. It does not take account of the number of persons living in each household or their total income and therefore, ironically, it is the rich households with fewer persons living there and consuming less water that will ultimately benefit from this policy, sadly at the expense of large, poor families. The target group should be the poorest 40 per cent (B40) group by median monthly household income (that is to say a median of 3,000 ringgit) and other marginalized groups. To identify those groups in need of subsidies, the Special Rapporteur reiterates that data should be collected and disaggregated.

### **2. Disconnections due to an inability to pay**

67. Any discussion on affordability must also include the issue of disconnections due to an inability to pay. Currently, there are, on average, 24,000 disconnections each month for the entire country, out of a total of 6.9 million domestic connections. Although relatively low as a proportion, it is possible that a new tariff could aggravate the situation. The Special Rapporteur encourages the Government to carry out a survey looking into the reasons for disconnections as a preventive measure and encourages all service providers to monitor the reasons for disconnections and the subsequent measures taken. Given that disconnection due to an inability to pay is a violation of the human right to water, he urges the Government to set up legal mechanisms to prohibit such a practice.

### **3. Public toilets**

68. In Sabah, the Special Rapporteur learned that there were different types of toilets according to the price that individuals paid: the public toilet on the ground floor of a mall

was 0.50 ringgit per visit and in the same mall on the second and third floors, the fee was 0.30 ringgit. There also exist exclusive toilets, which cost 3.50 ringgit. One person that the Special Rapporteur met rhetorically commented: “the stool is the same whether you go to a 0.30 cent toilet or 3.50 cent toilet. We do the same business inside the toilets”. For those who are economically vulnerable, such prices are unaffordable, which means that they are unable to access those public toilets. Water and sanitation facilities and services must be physically accessible and affordable for everyone within or in the immediate vicinity of all spheres of their lives, particularly at home, but also in educational institutions, the workplace, prisons and public places (see A/HRC/42/47).

### C. Water quality

69. The water used by households and individuals for domestic and personal uses must be of adequate quality to protect their health.<sup>9</sup> Pollution of water by any means, including by agriculture, industry and wastewater, must, therefore, be prevented. This is especially important since untreated water is often used by rural communities and several micro-pollutants are often not sufficiently removed by conventional water treatment plants. In Malaysia, studies conducted over time in and around the Nerus River in Terengganu, for example, have shown a correlation between increased population density and industry along the river and reduced water quality.<sup>10</sup> With the advent of increasingly complex contaminant profiles, the challenge will be to deliver water to urban populations with an acceptable level of hazardous substances.

70. The Ministry of Health regulates the quality of drinking water for both Peninsular and East Malaysia. The Ministry collects and analyses 189,000 samples each year across the country, covering most of the urban and rural piped water facilities. Surveillance of the quality of drinking water is more limited in some rural communities, including surveillance of the so-called alternative supplies and the water supply in the most remote areas. During the interactions with actors in this field, the Special Rapporteur noted that the coordination of drinking water surveillance undertaken by the Ministry of Health and drinking water control by water providers should be strengthened. The Ministry needs to have a more active role in auditing and interpreting the results of the monitoring by providers so that a larger number of parameters can be tested and any violations of the standards can be properly resolved. Moreover, considering the impacts on water quality of pollutants in the water sources, especially from development projects, a targeted monitoring, for example of pesticides, is urgently required.

71. According to the information received, the national guidelines for the quality of drinking water are based on the second edition of the World Health Organization Guidelines for Drinking-water Quality. However, the national guidelines have been revised on the basis of the fourth edition of those Guidelines, with plans for their adoption later this year. The Special Rapporteur reiterates the vital importance of this update and the need to have, as soon as possible, properly adjusted parameters and limits for water quality monitoring, as well the frequency thereof, in accordance with the most up-to-date international guidance and scientific evidence.

## V. Conclusion and recommendations

**72. During his two-week visit, the Special Rapporteur examined access to drinking water and sanitation services for those living in urban and rural areas of Malaysia. In particular, he observed the various layers of inequalities in access to drinking water and sanitation services for groups in vulnerable situations. “Leaving no one behind” in access to those services is a matter of great concern from a human rights perspective. In order to address disparities in access to water and sanitation, the Special**

<sup>9</sup> Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 12 (b).

<sup>10</sup> H.M.A. Alssgeer and others, “GIS-based analysis of water quality deterioration in the Nerus River, Kuala Terengganu, Malaysia”, *Desalination and Water Treatment*, vol. 112 (2018), pp. 334–343.



Rapporteur recommends that the Government of Malaysia should incorporate human rights into its continued efforts to improve water and sanitation services for all.

73. The situation as regards access to drinking water and sanitation for all, with an emphasis on leaving no one behind, would be quite different if water and sanitation were legally recognized as human rights and if Malaysia explicitly recognized the obligation to realize those rights. Building on the current efforts to ratify the relevant international human rights treaties, the Special Rapporteur strongly encourages the Government to consider his observations and recommendations in the present report and to take urgent action to address the situation of access to water and sanitation by the groups that have been left behind.

74. In this connection, the Special Rapporteur offers the following recommendations to the Government of Malaysia.

75. Concerning the legislative framework, the Government should:

(a) Ratify those international human rights treaties that it has not yet ratified, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Convention relating to the Status of Refugees and the Protocol thereto, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness;

(b) Harmonize the legal standards on water and sanitation services and ensure their coherence across the entire country so that they are in accordance with the human rights to water and sanitation.

76. Concerning the institutional framework, the Government should:

(a) Assess whether the absence of federal bodies, established as part of the water and sanitation reform, in Kelantan, Sabah and Sarawak have affected the quality of water and sanitation services and make every effort to remove the inequalities that have resulted from this situation;

(b) Provide technical and financial support for the expansion and improvement of water and sanitation services in Kelantan, Sabah and Sarawak until they offer the same level of access to those services as the states in Peninsular Malaysia;

(c) Harmonize regulation of water and sanitation services in the country, through bodies that are independent of the service providers;

(d) Introduce measures to ensure the independence and autonomy of the National Water Services Commission and that the main objectives of regulation are aligned with the human rights to water and sanitation and the principles of human rights.

77. Concerning the policy framework, the Government should:

(a) Implement a plan of action to realize the human rights to water and sanitation, including the normative content of those rights and the principles of human rights;

(b) Ensure that all policies prioritize the elimination of inequalities in access to water and sanitation services;

(c) Introduce mechanisms to collect relevant disaggregated data on access to water and sanitation service by relevant groups, particularly those based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, wealth or other status.

78. Concerning water quality, the Government should:

(a) Ensure that the Ministry of Health has a more active role in auditing and interpreting the results of the monitoring of water quality by providers;

(b) Prioritize targeted monitoring of hazardous substances, such as pesticides in water sources.

79. Concerning affordability, the Government should:

(a) Incorporate the Special Rapporteur's guidelines for restructuring water and sanitation tariffs (paras. 65–66 above);

(b) Monitor the reasons for disconnecting water services and the subsequent measures taken;

(c) Set up legal mechanisms to prohibit the practice of disconnecting water due to an inability to pay.

80. Concerning access to water and sanitation for specific groups, the Government should:

(a) Ensure that Orang Asli access continuous and sustainable water and sanitation services by improving the capacity of the Department of Orang Asli Development, among other measures;

(b) Establish a harmonized approach to the rural water supply with a coordination mechanism to guarantee harmonization throughout all areas;

(c) Carry out human rights impact assessments at each stage of a megaproject, with the meaningful participation of those affected in a transparent manner, facilitating easy access to information;

(d) Commence a baseline survey in order to improve the availability of data on undocumented and statelessness persons in East Malaysia;

(e) Create a coordination body at the federal level to assess the best legal, political and budgetary strategies to provide access to adequate public water and sanitation services, including in alternative education centres, for those who are undocumented, stateless or otherwise in an irregular situation;

(f) Monitor how gender inequalities in access to toilets, including among gender non-conforming persons, manifest in spheres beyond the home.

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