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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Progressive realization of the human rights to water and
sanitation****Report of the Special Rapporteur on the human rights to safe drinking
water and sanitation***Summary*

A decade has passed since water and sanitation has been explicitly recognized as a human right, yet the specifics of how to implement the obligation to progressively realize those human rights still require further clarification and understanding. In the present report, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, examines the nature of the obligation of progressive realization as it relates specifically to the human rights to water and sanitation. In this context, the obligation comprises several components, each of which needs to be achieved if the obligation as a whole is to be satisfied. In the report, the concepts of progressive realization of human rights, of using the maximum of its available resources and of fulfilling the minimum core obligations are addressed. The Special Rapporteur unpacks the three constituent parts, clarifies each one and then provides an integrated analysis of the concept, illustrating ways to monitor its implementation.



I. Introduction

1. Pursuant to Human Rights Council resolution 42/5, the Special Rapporteur on the human rights to safe drinking water and sanitation, Léo Heller, was mandated to identify challenges and obstacles to the full realization of those rights, as well as protection gaps, good practices and enabling factors. During the six years of his mandate, from 2015 to 2020, the Special Rapporteur has prioritized translating existing legal principles and human rights norms into public policies and implementation mechanisms that contribute to the realization of the human rights to water and sanitation according to the vision he identified at the outset of his mandate.¹ As a continuation of that effort, in this last report to the Human Rights Council, he examines the nature of the obligation of progressive realization in the context of the human rights to water and sanitation to inform public policies on the operationalization of that obligation.

2. The year 2020 marks 10 years since the General Assembly explicitly recognized water and sanitation as a human right and also signals the fact that there are 10 years left to achieve the Sustainable Development Goals. In this era of the Goals, it is even more critical to clarify and unpack the generality of the obligation of progressive realization of human rights. Both the Goals and the progressive realization obligation have been criticized for being aspirational goals, the former because of the significant margins of discretion given to each State to set their own national targets² and the latter because it is viewed as vague, having no defined time frame or pace of implementation and therefore not imposing a clear positive obligation on States.³ However, both share the same idea of having to be implemented gradually, as a result of concerted and continuous efforts by States. The ambitious targets 6.1 and 6.2 of the Goals to achieve universal access to safe drinking water and sanitation by 2030 need to be articulated in conjunction with the obligation to progressively realize human rights.

3. The obligation to progressively realize human rights has several constituent parts, each of which needs to be achieved if the obligation as a whole is to be satisfied. States must progressively realize human rights, using the maximum of available resources. Furthermore, while article 2 (1) of International Covenant on Economic, Social and Cultural Rights requires that States take steps to achieve the rights enshrined in the Covenant progressively, some elements of those rights, including the minimum core obligations, must be guaranteed immediately. In the present report, the Special Rapporteur unpacks the constituent parts of the progressive realization of the human rights to water and sanitation, starting by defining the obligation of progressive realization (sect. II). Subsequently, he dissects the concepts of “maximum of available resources” and “minimum core obligations” (sects. III and IV). He then synthesizes the three concepts and provides an integrated analysis of their implementation (sect. V) and illustrates ways to monitor that implementation (sect. VI).

4. In preparation for the report, the Special Rapporteur held public consultations in October 2019 in New York and November 2019 in Geneva. In response to his call for input, 18 submissions were received.⁴

5. In conjunction with the present report, the Special Rapporteur presents a separate report in which he illustrates the progress made to realize the human rights to water and sanitation since the General Assembly recognized them as a human right in 2010.⁵

¹ A/HRC/30/39/Add.1, para. 4.

² Transforming our world: the 2030 Agenda for Sustainable Development (General Assembly resolution 70/1, para. 55).

³ Bruce Porter, “Rethinking progressive realization: how should it be implemented in Canada?” (4 June 2015).

⁴ See www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Progressiverealization.aspx.

⁵ A/HRC/45/11.

II. Progressive realization

6. The fulfilment of the human rights to water and sanitation cannot be accomplished in a short time frame and is often dependent on the availability and use of resources. In other words, States are required to take steps aimed at the progressive realization of those rights. In simple terms, the progressive realization can be defined and dissected by asking questions such as: where do you stand now, what are the challenges, what steps need to be taken to overcome those challenges, in what time frame and mobilizing what resources? Under international human rights law, this is translated into the States' duty to take steps to progressively realize rights which constitute States' binding obligation (International Covenant on Economic, Social and Cultural Rights, art. 2 (1)).

7. In the context of water and sanitation, the obligation of progressive realization requires analysing how the country has progressed in terms of service provision and what plans are in place, envisioning the expansion and improvement of those services while being compliant with the human rights to water and sanitation. It does not, however, simply mean a gradual improvement in and expansion of service levels but also calls for decreasing inequalities, as expeditiously and effectively as possible, between different groups and populations. States must clearly identify the requirements needed to achieve equal access, to an adequate level, of those services for all people without discrimination. Furthermore, they must take deliberate, concrete and targeted steps to the maximum of their available resources.⁶

8. Progressive realization does not mean that States can implement their obligations in a piecemeal fashion by choosing selected elements of the normative content or human rights principles. In acknowledging the vital task of States to progressively work towards compliance with the entirety of the framework of the human rights to water and sanitation, the question then is how to move towards the full realization of those rights, what does such movement look like and what does it mean for States to take steps? The specific steps taken might depend on the context – for example, on the level of water and sanitation development in a given State. Regardless of the dynamic contextual elements, what is clear in all contexts are two different strategies: progressively improving the level of service towards fully meeting the normative content of the human rights to water and sanitation and human rights principles (vertical realization); and progressively moving towards equal enjoyment of the human rights to water and sanitation by targeting the unserved and underserved (horizontal realization).⁷

A. Towards higher levels: vertical realization

9. Many practitioners understand the obligation of progressive realization as a focus on elevating the level of water and sanitation service provision, assuming that a higher level of services means better meeting human rights standards. Many who have such a focus then ask: what does a higher level mean? The answer is not left entirely to the discretion of States themselves but, rather, has been authoritatively determined through recognition of several criteria, known as the normative content of rights. Steps that States can take to progressively realize some of those criteria – namely, availability, accessibility and quality – are reflected in the Sustainable Development Goals framework through the “ladders” adopted by the Joint Monitoring Programme for Water Supply, Sanitation and Hygiene of the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF).⁸ The ladders are based on progression in terms of technical specifications of water and sanitation services. The ladder for water and sanitation includes the following five levels (from lower to higher): surface water/open defecation, unimproved, limited, basic and safely managed. Hygiene is represented by handwashing, which encompasses three levels: no facility, limited and basic.

⁶ Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 17, and general comment No. 3 (1990) on the nature of States parties' obligations, para. 2.

⁷ A/70/203, para. 80.

⁸ See <https://washdata.org/monitoring>.

10. It is important to clarify that the levels reflected on the ladders do not include some elements of the normative content, namely affordability, acceptability, privacy and dignity. Also, the operationalization of the indicators for targets 6.1 and 6.2 does not capture the human rights principles of affordability, equality and non-discrimination.⁹ Due to these limitations, monitoring States' progress through the ladders, or the indicators, cannot be considered as synonymous with the progressive realization of the human rights to water and sanitation but, rather, as a proxy to it.

11. By virtue of its definition, a ladder signals that States are expected to start at the lowest rung and move up towards the top rung, which represents the highest level of access possible. However, a State does not need to climb each rung of the ladder. Taking an example from the handwashing ladder: starting from the lowest rung, where there are no handwashing facilities, it is not necessary to take the intermediate step of making a new facility available without soap and water – a State can jump that rung by making available a facility where soap and water are also available. This simple example implies much more complexity when it comes to the water and sanitation ladders. If a State plans to climb all rungs, it may be required to invest twice in two different systems. For sanitation, as an example, one technology (e.g., pit latrines) cannot easily be converted into another (e.g., sewers), which means that the lower rung system may need to be abandoned in order to move to the higher rung. Therefore, progressively reaching higher levels of services calls for adequate planning that is grounded in a human rights framework.

12. There are various combinations of types of service, and each type of service combined with a different management model presents unique solutions. However, all solutions have different implications on the human rights to water and sanitation. As the Special Rapporteur has illustrated previously, there are no perfect water and sanitation services and many types can be adequate if they comply with human rights standards, taking into account their “appropriateness” to the specific circumstances.¹⁰ Conversely, some types – even if placed on the highest rung of the ladder – might not be compliant and might even provide outcomes far from human rights standards. An example is when the solution is piped water or sewerage and the price charged to users is very high, affecting the affordability of access, notably for people living in poverty.

B. Towards equal access: horizontal realization

13. The ladder used to monitor implementation of the Sustainable Development Goals, or the vertical approach to the progressive realization, reflects – to a certain extent – the underlying spirit of the progressive realization and partially addresses their normative content. However, with its focus on the levels of water supply, sanitation and hygiene services, the ladder alone is insufficient to assess all elements of the human rights to water and sanitation.

14. Therefore, the need for States to move beyond the minimum provision of water and sanitation and to progressively realize the related rights should not be seen as merely moving up the water supply, sanitation and hygiene ladder, particularly if this is only for part of the population. Rather, progressive realization points towards the need for States to take stock of the current situation of compliance with the human rights to water and sanitation and identify how best to achieve the adequate level of services for all without discrimination. Such a horizontal approach implies devising plans and schemes that aim to reduce the gaps in access to water and sanitation among individuals and groups. Furthermore, the horizontal approach is inclusive and encompasses elements beyond the normative content of the human rights to water and sanitation. More clearly than the vertical approach, it emphasizes human rights principles, including accountability, access to information, participation, prevention and the right to remedy. An example of a possible approach was reported in Colombia, where different schemes for rural and urban areas were

⁹ See www.ohchr.org/Documents/Issues/Water/OpenLetter_WHO_UNICEF_WASH.pdf.

¹⁰ A/70/203. See also Committee on Economic, Social and Cultural Rights, general comment No. 3, paras. 4–5.

established, addressing specificities in areas such as informal settlements and hard-to-reach populations by taking into account demographic, geographic and institutional elements.¹¹

15. The horizontal approach implies a wide range of elements or baselines that States should take into account in making decisions. To identify those steps towards equal access, the Special Rapporteur recommends that States take into account the social, economic, political, cultural and environmental context in assessing the best strategy from a human rights perspective. Specifically:

(a) What groups and areas have been left behind and do not have adequate access to water and sanitation? What inequalities have emerged related to access? Are the water and sanitation services actively contributing to reducing inequalities? What steps are being taken to address these inequalities and discrimination through national policies, programmes and other decision-making processes?

(b) What are the relevant social, economic, political, cultural and environmental elements that affect the extent to which different types of services comply with human rights? Do these elements inform policies and plans?

(c) In what ways are the human rights to water and sanitation integrated into the choice of water and sanitation services, so as to ensure that the services are available, safe, acceptable, accessible and affordable to all and that they uphold privacy and dignity?

(d) Have the current water and sanitation services been established with the free, prior and informed consent and with active, free and meaningful participation?

(e) Does the population using the service have access to information regarding the management and costs of the services, and how the services were chosen?

(f) How are the services being monitored? Are all relevant actors held to account for any violations of the human rights to water and sanitation?

16. Following an assessment, States should identify ways to address the questions and to continuously and progressively fulfil the human rights to water and sanitation. In doing so, States should use the concept of maximum of available resources as an operational guideline.

III. Maximum of available resources

17. While many elements of economic, social and cultural rights can be realized without significant resources, full realization is contingent on the availability of resources to implement those rights. Therefore, States parties to the International Covenant on Economic, Social and Cultural Rights are obliged to utilize the maximum of available resources to meet their obligations. In the context of water and sanitation, using the maximum of available resources is important, as achieving universal coverage of human rights-compliant services may be constrained by limited resources.

18. The concept of maximum available resources operates as a qualifier of how States are fulfilling the obligation to progressively realize economic, social and cultural rights. It qualifies both why a State has failed to meet that obligation and how States should progressively realize them. Firstly, limited available resources may constitute constraints to the progressive realization of rights, particularly for developing States. Secondly, the concept functions as a framework and a methodology for States to operationalize and implement the obligation of progressive realization. This affords States some level of flexibility, which in turn creates a need to clarify implementation standards and to provide a clearer interpretation of several aspects of what is meant by “maximum of available resources”.

¹¹ Submission from Colombia.

A. What constitutes “resources”?

19. The starting point for clarifying the maximum of available resources is a determination of what is meant by the term “resources”. The human rights to water and sanitation have specific implications for budgetary allocations and public finance, since large-scale water and sanitation systems often require public finance and subsidies.¹² The primary resources for the realization of the human rights to water and sanitation are usually considered to be financial resources, including revenues collected from water and sanitation services, through tariffs, taxes and transfers. The architecture of financial resources also includes budgetary allocations, expenditures and domestic and international macroeconomic policies. Therefore, the maximum of available resources touches upon a wide range of aspects, including debt, tax evasion and corruption. As the Special Rapporteur has clarified, various costs associated with water, sanitation and hygiene are not only direct costs but also costs related to time and to the burden caused by inadequate governance.¹³

20. Contrary to widespread understanding, the word “resources” does not refer solely to financial resources; other types of resources, such as natural, human, technological, institutional and informational resources, that are available to States are crucial in achieving the rights enshrined in the International Covenant on Economic, Social and Cultural Rights.¹⁴ Specific examples of non-financial resources include information platforms. For instance, the Government of Finland provides water and sanitation operators free-of-charge access to risk management software for water and sanitation safety plans.¹⁵ Another example is the Rural Water and Sanitation Information System, which is a joint initiative of 11 States in Latin America and a tool for sharing updated and comparable information on the rural water supply and sanitation services.¹⁶

21. Economic, social and cultural rights, particularly the human rights to water and sanitation, require a combination of financial and non-financial resources given that those rights are contextual and dynamic. To only require States to utilize the maximum of their financial resources is a simplistic approach that is limited and fails to recognize the importance of a wide range of other types of resources. Often, the non-mobilization of financial resources impedes the creation of an enabling environment in the water and sanitation sector. This, in turn further impedes the optimal usage of financial resources. As such, the scope of resources should be broadly understood to allow for the inclusion of a qualitative dimension to the obligation to use the maximum of available resources and for a comprehensive approach to the progressive realization of rights.

B. How can States maximize the availability of resources?

22. States should maximize their financial resources by making efforts to create more resources to ensure the enjoyment of human rights to water and sanitation. In general, financial resources can be made available through public finance, which includes a range of possible sources, such as government revenue, official development assistance, borrowing, monetary policy and financial regulation.¹⁷ The obligation to maximize available resources requires States to adopt fair and redistributive taxation and tariff policies and to create a greater pool of resources without affecting the affordability of services for people in poverty. One way to do this is through cross-subsidization, which can be regulated by legislation. Central Governments can also make financial resources available to local governments through budget allocations, grants, State aid and other forms of financial

¹² A/HRC/30/39.

¹³ Ibid., paras. 13–24.

¹⁴ Robert Robertson, “Measuring State compliance with the obligation to devote the ‘maximum of available resources’ to realizing economic, social and cultural rights”, *Human Rights Quarterly*, vol. 16, No. 4 (November 1994), pp. 693–714.

¹⁵ Submission from Finland.

¹⁶ Submission from Colombia.

¹⁷ Diane Elson and others, “Public finance, maximum available resources and human rights”, in *Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights*, Aoife Nolan and others, eds. (Hart Publishing, 2013).

support. For instance, in Finland, where water and sanitation services are not eligible for State aid, the State makes resources available to competent authorities at the regional level, funding innovative projects involving experiments and new technologies.¹⁸

23. Taking a broader view of the notion of resources, States are also required to increase the availability of non-financial resources, such as institutional, technical and workforce resources. These resources become even more important when we look at residents of informal settlements and rural areas who rely on informal providers or self-supply as they do not have access to formal services and do not benefit from public financing and cross-subsidization. Given the range of services that exist outside the formal system, States must pay particular attention to maximizing non-financial resources, for example through capacity-building, to support informal providers, as an interim measure.

24. Resources refer to both existing and potential resources available within a State and those available from the international community through international cooperation and assistance.¹⁹ This means that, where domestic resources are insufficient, it is incumbent on States to seek help from outside sources. States that are in a position to assist may be regarded as bound to do so as part of their own duty to utilize the maximum of their available resources to progressively realize rights.²⁰

C. What is “maximum allocation”?

25. In addition to the obligation to make efforts to maximize resources, the maximum of available resources refers to the obligation to efficiently and effectively allocate the potential resources available. The first step of maximizing the amount of the budget allocated, which is at the planning stage, is differentiated from the subsequent step of spending and using those resources. Concerning what constitutes the maximum allocation, some have suggested that States should aim to spend at least 1 per cent of their gross domestic product (GDP) on water and sanitation services provision, maintenance and improvement, while others have suggested 0.5 per cent of GDP for sanitation alone.²¹ Owing to the disparities in the spending powers of States and the reality that the necessary level of budgetary allocation for water and sanitation will depend on context, the human rights framework does not prescribe the precise proportion of the total domestic budget, nor does it give an indicative amount.

26. The Special Rapporteur emphasizes that States should move away from fetishizing numbers in budget allocations and move towards comprehensively assessing all the elements pertaining to such allocations. Specifically, making effective allocations includes identifying those responsible for the provision of water and sanitation services and making sure that the resources are allocated on the basis of their needs. Non-financial resources too should be identified, as they are particularly crucial in unserved or underserved areas. Moreover, some households may invest an important proportion of their income on self-supply and on carrying out their own maintenance and installations.²²

27. Also of relevance is States’ ability to allocate resources for the progressive realization of the human rights to water and sanitation so that it is not compromised by allocating disproportionate amounts of the budget to other areas. Where States allocate a large portion of their resources to defence, bank bailouts or subsidies to airline companies, for example, it will be incumbent upon them to justify why doing so is necessary and unavoidable and also to ensure that such spending does not compromise the enjoyment of the human rights to water and sanitation.

¹⁸ Submission from Finland.

¹⁹ Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 13. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. 26.

²⁰ Ibid.

²¹ United Nations Development Programme, *Human Development Report 2006: Beyond Scarcity – Power, Poverty and the Global Water Crisis* (New York, Palgrave Macmillan, 2006), p. 9.

²² Kerstin Danert and Guy Hutton, “Shining the spotlight on household investments for water, sanitation and hygiene (WASH): let us talk about HI and the three Ts”, *Journal of Water, Sanitation and Hygiene for Development*, vol. 10, No. 1 (2020), pp. 1–4.

D. What is “maximum usage”?

28. Budget allocations, even those which might on the face of it seem satisfactory and maximal, do not always provide evidence that States are, in fact, utilizing the maximum of their available resources to achieve a particular right. To focus solely on allocations fails to capture the detrimental impact on the actual spending of those resources by inefficiency and corruption, for example.²³ Once available resources have been allocated, States must ensure that they are indeed fully and effectively spent for the progressive realization of the human rights to water and sanitation, taking into account the life-cycle costing of the provision of water and sanitation services, which is relevant to the human rights principle of sustainability.²⁴ Life-cycle costing requires States to understand current costs related to the provision of services and how these costs might change in the future, for instance, through degradation of the services, changing user needs, climate change and increases in the cost of materials.

29. From a human rights perspective, effective usage means that States specifically target resources towards populations in vulnerable situations and underserved areas. Such a targeted approach requires disaggregated spending information accessible to a non-expert. That information might show that, even if spending on water and sanitation projects has increased, the additional funds have mostly benefited the capital city’s middle-income neighbourhoods and not peri-urban neighbourhoods, where the majority of the population lacks access to tap water. According to one report, only 6 per cent of the bottom 20 per cent of the poorest benefit from the US\$ 320 billion that Governments spend each year on water and sanitation services.²⁵ Using disaggregated information as well as demographic and geographic data can reveal that a budget spending may not meet real needs or may have a discriminatory effect instead of enabling progress in the reduction of inequalities in the enjoyment of the human rights to water and sanitation.²⁶ For instance, through a project for tracking financing to the sanitation, hygiene and drinking water sector (TrackFin), which is part of the UN-Water Global Analysis and Assessment of Sanitation and Drinking Water initiative, WHO identifies and tracks water supply-, sanitation- and hygiene-related expenditures, thereby providing information on geographic spending and spending in rural and urban areas.

30. Effective and efficient usage of resources is closely related to transparent and accountable budgeting. For instance, it is questionable whether the provision of State funds to for-profit providers through subsidies is in line with the effective and efficient usage of resources. Resources transferred to private operators are rarely reinvested in service improvements or in expansions aimed at servicing those living in hard-to-reach areas.²⁷ Using non-financial resources effectively and efficiently is also essential, particularly for service provision. By avoiding the mismanagement of operations and of workforce resources, the provision of services tends to improve and, in turn, result in better and more equal services for all. Furthermore, from the perspective of integrity and transparency, the so-called “capture” of regulators by providers creates an invisible impediment to the effective and efficient usage of non-financial resources.

IV. Minimum core obligations

31. All human rights are fundamental, and each right gives rise to inviolable entitlement, namely, the most basic, lowest levels of rights that all people should be afforded in all circumstances. The inviolable element of a right is the intangible baseline or an essential

²³ Eitan Felner, “Closing the ‘escape hatch’: a toolkit to monitor the progressive realization of economic, social and cultural rights”, *Journal of Human Rights Practice*, vol. 1, No. 3 (November 2009) pp. 402–435.

²⁴ A/HRC/30/39, para. 14.

²⁵ Luis Andres and others, *Doing More with Less: Smarter Subsidies for Water Supply and Sanitation* (Washington, D.C., World Bank Group, 2019).

²⁶ Office of the United Nations High Commissioner for Human Rights, *Manual on Human Rights Monitoring* (2001), chap. 8, p. 22.

²⁷ Aoife Nolan, “Privatization and economic and social rights”, *Human Rights Quarterly*, vol. 40, No. 4 (1 November 2018), pp. 815–858.

minimum that must be guaranteed for all persons in all contexts.²⁸ It indicates a minimum below which no State should perform, even in unfavourable conditions or against any compelling interests. In simple terms, the minimum core content of each right can be compared to a floor below which the conditions should not be permitted to fall and a house providing feasible structure and an enabling environment for people to enjoy entitlements as part of their rights. Within the framework of international human rights treaties, this minimum essential level or essence of a right translates into States' obligations. Each human right enshrined in the International Covenant on Economic, Social and Cultural Rights has been determined to contain a set of minimum core obligations that States parties are obliged to meet immediately and maintain at all times.²⁹ Compliance with the minimum core obligations is intrinsically linked to the long-term objective of progressively realizing the human rights to water and sanitation.

A. Minimum core as a floor: minimum standards

32. In the context of the human right to water, the Committee on Economic, Social and Cultural Rights, in paragraph 37 of its general comment No. 15 (2002) on the right to water, stipulated nine minimum core obligations as an initial baseline. Even though the Committee does not make any explicit reference to the core obligation of the right to sanitation, it can be assumed as what every person needs for health and survival and to live in dignity.³⁰ The standard set by the Committee provides a general framework but it does not, however, provide sufficient guidance for States to comply with those obligations, and needs to be complemented by practical elements.

33. Does the minimum standard refer to 25 litres of water per person per day or to a latrine 500 metres away from the house? To the disappointment of many practitioners, international human rights law does not offer a prescriptive, simple answer to such questions. The reason behind such a lack of prescriptive standards becomes clear when we contextualize the questions. The daily intake of water depends on the age and health status of a person, as well as the climate of the area where he or she lives, among other factors. The amount of water required by women for their personal hygiene and for drinking differs from that required by men, just as it might differ from that required by a person who regularly takes a particular medicine. For a range of reasons, some people require more water than others.³¹ Taking these contextual elements into account, the human rights to water and sanitation provide guidance that we must ensure an adequate standard of living, which could, for instance, require a latrine or toilet inside the house, an adequate quantity of water supplied or a water tap within the home for handwashing, as well as adequate facilities to practice menstrual hygiene.

34. The minimum standard required by each individual differs according to the context and cannot apply universally. It therefore follows that the core minimum obligations need to be set taking into account that context. Human rights require a transformation to the qualitative approach and moving towards questions centred on people and the social and economic environment in which they live and work. Therefore, the Special Rapporteur does not attempt to set or suggest minimum core obligations of the human rights to water and sanitation. Instead, he provides conceptual and empirical elements to inform States' processes for complying with the minimum core obligations of the human rights to water and sanitation.

1. Availability

35. The availability of water and sanitation requires States to ensure access to the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease.³² In specifying the "minimum essential amount" of water, the Committee on Economic, Social and Cultural Rights notes that while 20–25 litres per

²⁸ Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 10.

²⁹ *Ibid.*

³⁰ A/HRC/39/55, para. 14.

³¹ Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 12 (a).

³² *Ibid.*, general comment No. 15, para. 37 (a).

person per day is enough to ensure human survival, that amount poses a high health risk, as hygiene cannot be assured.³³ The minimum amount of water which is considered essential varies across States: in Italy, for instance, people living under the national poverty line are entitled to 50 litres per person per day.³⁴

36. The average amount of water required for human survival needs to be applied in context. For instance, during the coronavirus disease (COVID-19) pandemic, the level of water considered necessary for domestic use must include water for frequent handwashing, which is the primary means of preventing the spread of the disease. The following questions could provide guidance:

(a) What is the minimum essential amount of water and what is the minimum essential level of sanitation needed for a specific person or group in a specific social, economic and environmental condition to avoid intolerable health risks and provide privacy and dignity?

(b) How long does it take individuals to collect the minimum amount of water they need?

2. Accessibility

37. The Committee on Economic, Social and Cultural Rights provides guidance on physical access to water facilities or services, in other words on how to ensure that there is a sufficient number of water outlets at a reasonable distance from the household and that personal security is not threatened when having to physically access water. In a progress report, the WHO-UNICEF Joint Monitoring Programme for Water Supply, Sanitation and Hygiene refers to 30 minutes as a standard time for someone to go to and return from a water source. Such a quantitative way of measuring what is a reasonable distance does not, however, take into account the environment of the pathway and the individual travelling that distance.

38. A measurement of the minimum essential level of accessibility should not focus on the distance but on elements that affect physical access and the potential threats and risks associated with such access. For instance, the following questions should be considered:

(a) Who is travelling to collect water or to use the toilets and what are their physical and social characteristics?

(b) What types of water and sanitation facilities ensure access to all those concerned, including older persons, children and persons with disabilities?

(c) What is the surrounding environment like and what are the characteristics of the path between the home to the destination?

(d) Are threats or risks prevalent in the area?

3. Affordability

39. Affordability, as a human rights criterion, requires that water, sanitation and hygiene facilities and services be accessible at a price that is affordable to all. An easy way to calculate affordability is to use the ratio of water, sanitation and hygiene expenditure to the total household expenditure or income – the threshold generally set between 2 per cent and 6 per cent.³⁵ Furthermore, affordability thresholds adopted by international agencies differ: for example, the threshold set by UNDP is 3 per cent, that by the Organization for Economic Cooperation and Development is 4 per cent and that by the Asian Development Bank is 5 per cent. These thresholds, which are based on figures, can be arbitrary and do not account for the diversity of households' composition and needs. Moreover, it does not reflect the costs of non-networked services, which the most vulnerable and disadvantaged rely on. Another way to identify minimum affordability is related to the notion that paying

³³ Ibid., general comment No. 15, footnote 14.

³⁴ Submission from Italy.

³⁵ Henri Smets, "Quantifying the affordability standard", in *The Human Right to Water: Theory, Practice and Prospects*, Malcolm Langford and Anna Russell, eds. (Cambridge, Cambridge University Press, 2017), pp. 293–294.

for these services must not limit people's capacity to acquire other basic goods and services guaranteed by human rights.³⁶

40. It is inadequate to set a generally applicable affordability standard at the global level, as any such standard would be arbitrary and cannot reflect the challenges people face in practice and the context in which they live, including how much they need to spend on the realization of other human rights. The human rights framework stipulates, however, an important set of parameters for the process of setting affordability standards, one that gives rise to the following questions:

(a) What are the specific economic circumstances in which the individuals and groups concerned live?

(b) What impact does the cost of water and sanitation have on the enjoyment of other rights?

(c) Do national policies and programmes include specific and targeted measures to protect people living in poverty, such as subsidies, protection floors and social tariffs? Do those measures have sufficient specificity and sensibility to target those most in need?

41. A minimum obligation that cuts across the normative content is the prohibition on disconnecting water and sanitation services when users are unable to pay for those services. Disconnecting individuals and households from water and sanitation supplies because they do not have the financial means to pay for them is a violation of the human rights to water and sanitation. States have an immediate obligation to enact legislation, policies or regulatory frameworks to prohibit the disconnection of services due to the inability to pay. For instance, in Italy disconnecting residents living below the national poverty line and public institutions is specifically prohibited.³⁷

4. Safety

42. States are required to take measures to prevent the transmission of diseases through water, sanitation and hygiene. The Special Rapporteur notes the WHO guidelines for drinking-water quality.³⁸ On the basis of these global guidelines, each State identifies standards and parameters to regulate water quality, depending on the context and priority in terms of water quality, as well as measures for quality control and surveillance. Parameters for testing should be contextualized in relation to the main environmental and economic drivers of water contamination in each State. Regarding the safety of sanitation, the adequate disposal of excreta, wastewater and sludge needs to be regulated and implemented in order to protect people's health and safeguard the right of sanitation workers to just and favourable working conditions.

43. It is incumbent on States to plan the baseline of policies, regulations and interventions for the safety of water and sanitation services, to ensure that these services do not contribute to the spread of diseases. As part of setting up the baseline, and in order to ensure minimum safety, the following questions should be considered:

(a) Are there laws or regulations that establish drinking water standards in line with the most recent international guidelines?

(b) Is there a government body, within the health sector, with the mandate to comply with water quality surveillance?

(c) Are there clear requirements for water providers to conduct water quality controls?

(d) Are there laws or regulations on the safe disposal of excreta, wastewater and sludge? Is there a government body with the mandate to oversee such safe disposal procedures?

³⁶ A/HRC/30/39, para. 25.

³⁷ Submission from Italy.

³⁸ WHO, *Guidelines for Drinking-water Quality*, 4th ed. (2017).

B. Minimum core as a house: an enabling environment

1. Policies, laws and regulations

44. The minimum core obligations under the International Covenant on Economic, Social and Cultural Rights include initial and immediate steps that States need to take in order to adopt and implement a national water and sanitation strategy and plan of action addressing the whole population, with a specific focus on those in vulnerable situations.³⁹ They also include efforts to make the human rights to water and sanitation justiciable by explicitly recognizing the human rights to water and sanitation in the domestic legal system. These are of immediate effect and constitute part of the State's minimum core obligations.

45. In the water and sanitation sector, creating an enabling environment involves building and maintaining institutions, regulations and processes that ensure a sustainable provision of services.⁴⁰ In a human rights context, this enabling environment requires States to ensure that actors are bound to realize human rights, with the creation of mechanisms to hold them accountable. Central to this is the introduction of domestic legal and regulatory frameworks that recognize the human rights to water and sanitation, which generates a legal foundation for clarifying the roles and human rights obligation and responsibility of accountable actors, their obligation to provide clarification and information and to establish enforcement mechanisms to hold actors accountable.⁴¹

2. Non-discrimination and equality

46. The Committee on Economic, Social and Cultural Rights has stated that States' minimum core obligations encompass the obligation to ensure equitable distribution of all available facilities and services.⁴² In other words, water and sanitation services must be provided on a non-discriminatory basis and it is not adequate to proceed as if all are departing from an equal baseline in terms of their likelihood to get access to services. Rather, those who are unserved or underserved must be afforded greater attention to ensure that the disparity between the unserved and served is progressively eliminated. Efforts to end inequalities in access to water and sanitation must be undertaken in a comprehensive manner, ensuring that communities are able to actively participate in the process and to convey their concerns and understandings about the services they are receiving and the services they want and need. Such participation should be carried out with full access to information, including information on the level of services that the participants are afforded compared to the services provided to other groups.

47. As a prerequisite step for achieving their minimum core obligation to ensure equal distribution of services, States must identify and monitor grounds of discrimination and the underlying structural causes of discrimination using disaggregated data. The specific set of grounds of discrimination prohibited by international human rights law provides helpful guidance on the variables that should be used in data disaggregation in order to identify and address persisting inequalities.

V. Implementation of the obligation of progressive realization

48. The obligation of progressive realization reflects the need of States to move beyond the minimum levels of water and sanitation services and need to use the maximum of their available resources. That said, there is a notable absence of clarity regarding how these obligations are or can be translated into national realities in the water and sanitation sectors and how States' adherence to these obligations can be properly monitored. Without clarity as to what constitutes the minimum core obligation of the human rights to water and sanitation and the concrete steps to fulfil the obligation of progressive realization, little has been done to explore the way States should implement their obligations under the

³⁹ Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 37 (f).

⁴⁰ UNICEF, *Strengthening Enabling Environment for Water, Sanitation and Hygiene (WASH): Guidance Note* (May 2016).

⁴¹ A/73/162.

⁴² Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 37 (e).

International Covenant on Economic, Social and Cultural Rights. The Committee on Economic, Social and Cultural Rights provides a general guideline that steps taken by States must be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.⁴³ In addition to asking the specific questions above, the Special Rapporteur provides a non-exhaustive general guideline for States to follow when implementing the obligation of progressive realization.

A. Balancing vertical and horizontal realization

49. States' obligation to progressively realize the human rights to water and sanitation means that States should take steps to prioritize those in the most vulnerable situations (horizontal realization) and ensure that the realization of the human rights to water and sanitation reaches a higher level (vertical realization). As part of this balance, an issue is whether to first improve horizontally, ensuring universal coverage of a basic level of services, or to improve vertically, ensuring a higher level of services by putting in place, for instance, piped networks. This trade-off is more complex and nuanced when addressed in depth. Firstly, the option of prioritizing horizontal realization is not only related to extending services but also involves defining the level of services to be provided to all. Secondly, vertical realization involves not only defining the level of services to be achieved but also specifying which groups will benefit from service improvements – in other words, to which extent inequalities will be addressed.

50. While some States may consider themselves to be making progress in terms of increasing access to services, they may actually be generating greater inequality. For example, while having increased coverage of basic sanitation by 20 per cent between 2000 and 2017, Mozambique has seen a 30 per cent increase in the access gap between the richest and poorest.⁴⁴ These figures indicate that States may be promoting access to water and sanitation in a way that benefits the privileged parts of society, further leaving behind those in a situation of vulnerability. Therefore, they may not be directing their efforts fully in line with human rights principles. Given the sometimes competing requirements of reaching more people and achieving a level of service that fully meets human rights standards, the crucial question for States is how to set priorities.

Guideline: non-discrimination and equality

51. To reconcile this dilemma, the right to non-discrimination and equality can offer a basic lens and pathway to a solution. As the Special Rapporteur has emphasized throughout the terms of his mandate, equality and non-discrimination have important implications for priority-setting.⁴⁵ States should take a comprehensive approach when implementing water and sanitation projects and move towards increased quantitative and qualitative coverage while also eliminating inequality and discrimination. Therefore, a greater focus on human rights within plans and projects would help to rebalance provision, ensuring that increases in access do not have the effect of increasing inequalities between groups, prioritizing not leaving anyone behind. To this end, States must envision providing universal access to the highest level of services and plan the pathway towards this goal. States need to have a long-term vision and plan how extension and improvement of services will progress in time, ensuring that no discrimination takes place in the process and that the requirements of different individuals and groups are met, paying special attention to the needs of people in vulnerable situations.

B. Priorities within the minimum core obligations?

52. The fact that a State is experiencing an emergency or financial crisis does not alter the nature or content of its core obligations, which must still be met immediately. Given the imperative and immediate nature, however, States may decide to fulfil only the levels

⁴³ *Ibid.*, general comment No. 15, para. 17, and general comment No. 3, para. 2.

⁴⁴ WHO and UNICEF, *Progress on Household Drinking Water, Sanitation and Hygiene: 2000–2017* (New York, 2019), p. 35.

⁴⁵ A/70/203, para. 82.

required for the minimum core without progressing towards the full realization of the human rights to water and sanitation. For example, meeting the needs for both sufficient and safe water has shown to cause conflicts. In certain situations, water quantity is explicitly prioritized over water quality; in others, water availability is prioritized over other factors. For instance, during the COVID-19 pandemic, the availability of sufficient water has been emphasized due to the need for frequent handwashing to avoid contracting the virus.⁴⁶ On the other hand, water safety needs to be prioritized when the available water source is heavily contaminated. The question arises as to whether, in some exceptional situations, a certain element of normative content should be prioritized over others.

Guideline: prioritization of those in the most vulnerable situations

53. In reality, it is rarely possible for any State to reach the minimum levels of all the normative content of the human rights to water and sanitation and to maintain that standard throughout emergency situations and financial crises. By default, while aiming to reach the minimum core obligation across the normative content in full, States decide to prioritize which content of the human rights to water and sanitation to implement first and the subsequent priority of implementation. The human rights framework does not provide any definitive answers to questions of prioritization, as each question needs to be answered given the particular context in which it arises. It does, however, provide guidance on the basis of human rights concepts, in particular the obligation to target and prioritize the most disadvantaged in order to realize the right to equality.⁴⁷ In applying this guideline to the specific situation of the COVID-19 pandemic, responses should be focused on providing access to water and hygiene facilities to persons in homelessness, migrants and asylum seekers living in public spaces and to those living in informal settlements where access to water and sanitation is inadequate.

C. Fulfilling minimum core obligations as a prerequisite to progressive realization?

54. The minimum core obligations are the foundation for the progressive realization of rights, setting the baseline from which States should work towards fully meeting their human rights obligations. This means that even when a State has, in an ideal situation, met all of its minimum core obligations, it has to move beyond this to ensure the full realization of the human rights to sanitation and water. That obligation may present a dilemma for States: is fulfilling their minimum core obligations a prerequisite for taking additional steps for the progressive realization of the human rights to water and sanitation? A theoretical approach to the interplay between the two concepts answers in the positive but, in reality, the chronological order of fulfilling the minimum core obligations first and then taking further steps is rarely straightforward and involves a myriad processes. States have rural and urban populations, formal and informal settlements, indigenous groups, migrants, refugees, people who are homeless, hard-to-reach populations, among others. The way each element of the normative content and the human rights principles are implemented for the entire population over time can be extremely variable.

55. Elements of the normative content apply to both immediate and progressive obligations, which are not interdependent. For instance, affordability constitutes a minimum core obligation in that social protection floors must be established for the economically vulnerable population. The improvement of tariff schemes and assessments of their impact should, however, be continuous and progressive. A State does not need to wait until social protection floors are established before taking measures to improve the tariff scheme. Another example is related to water quality and safety. After reaching a certain level of water safety, a State can progress further in preventive measures. For instance, Finland amended its Water Service Act in 2014 to ensure the sustainability and reliability of water supply and sanitation services even in the event of incidents and climate change-related

⁴⁶ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25738&LangID=E.

⁴⁷ A/70/203, para. 81.

effects.⁴⁸ Therefore, reaching a specific standard of water quality is not a prerequisite for implementing preventive measures to mitigate climate change.

Guideline: contextual and comprehensive approach

56. The minimum core obligation and the obligation of progressive realization do not imply following a step-by-step process with a recipe or a set of rigid elements and instructions. Unlike the recipe for a specific dish, reconciling the duty to achieve both the minimum core obligations and the obligation of progressive realization is more like orchestrating an entire kitchen, looking over and keeping an eye on all aspects. Similarly, States, while ensuring that the whole population enjoys the minimum core of the human rights to water and sanitation, should concurrently plan how they will progressively realize the rights and start to implement them. States need to extend the minimum core obligation to all, but this should not stop them from simultaneously improving services to some. Without a preset order of implementation, States could, while implementing some of the minimum core obligations, make progress on other elements. This becomes clearer when we look at the widespread practice of decentralization of water and sanitation services: a local government can plan to implement the obligation of progressive realization without waiting for other parts of the country to fulfil their minimum core obligations.

D. Retrogression

57. Retrogression refers to direct or indirect measures that lead to backward steps in the enjoyment of human rights.⁴⁹ A clear example of direct retrogression and a violation of human rights to water and sanitation is the disconnection of water services because of the inability to pay. Another example is when unjustified or disproportional decisions taken by the State in public expenditures devoted to water and sanitation translate into retrogression in access to services. This can occur as a result of a deterioration of the infrastructure, a degradation of the water quality or a decrease in safety of sludge management. Other retrogressive measures range from steadily diminishing the budget for water and sanitation programmes, firing essential technical staff, giving authorization to a project that will negatively affect access to water for communities and placing restrictions on social security benefits, particularly by removing or decreasing subsidies for access to water.

58. Additionally, the prohibition of retrogression may equally place an obligation on States to reduce or mitigate factors that might increase the risk of retrogression in the future. This obligation is well illustrated when we look at the mitigation and adaptation measures that need to be taken in response to climate change, particularly measures aimed at ensuring water availability. If left unchecked, the effects of climate change will continue to have a devastating impact on the people, particularly those in vulnerable situations, to enjoy their rights to water and sanitation. Therefore, it is vital for States to take an active role both in establishing mitigation measures to prevent the effects of climate change and in ensuring that those effects are taken into account when planning how to progressively realize the human rights to water and sanitation.

Guidelines: prevention and sustainability

59. The principle of sustainability can guide States to avoid taking steps that would amount to retrogression and to reduce or mitigate factors that would lead to a risk of retrogression in the future. In the context of water and sanitation, sustainability is relevant in respect of various dimensions. For water availability, the overexploitation of water resources by agro-industry and in water-intensive megaprojects could lead to a failure to prioritize allocation of water for personal and domestic usage for both present and future generations.⁵⁰ As for affordability, the principle of sustainability recognizes that some form of tariffs may need to be charged to users in order to ensure adequate levels of investment to progressively realize the human rights to water and sanitation. At the same time, from a human rights perspective, States should be aware of the fact that tariffs and other service

⁴⁸ Submission from Finland.

⁴⁹ A/HRC/24/44, para. 14.

⁵⁰ A/74/197, paras. 19–22.

charges may have a retrogressive effect on the enjoyment of rights, particularly when the tariffs are high, leading people to avoid using services and putting a strain on public health.⁵¹ Another relevant area is the sustainability of services and facilities, in other words the continuity and improvement of services and facilities over time.⁵² The privatization of water and sanitation services raises concerns related to sustainability since often private companies refrain from investing in the expansion, improvement or maintenance of infrastructure, especially when their contracts are due to be terminated imminently.

E. Justification for non-compliance

60. In certain situations, there may be a justification for the action or inaction of States that amounts to retrogression or a failure to progressively realize rights. There is a strong presumption that retrogressive measures in relation to the human rights to water and sanitation are prohibited under the International Covenant on Economic, Social and Cultural Rights, except when States can show that retrogression was unavoidable despite having utilized all available resources.⁵³ When States refer to resource constraints as an explanation for the retrogressive steps taken, the Committee on Economic, Social and Cultural Rights considers such explanations on a country-by-country basis in light of certain objective criteria.⁵⁴ These justifications, however, should be understood with the caveat that States have made every effort to improve the way they execute their budget, spending all the allocated funding in a timely and effective manner.⁵⁵

61. It should also be understood, however, that the “maximum of available resources” does not constitute default grounds for all permissible justifications. Even when resources are very limited, States must still show that they have utilized those resources to give effect to rights to the extent possible. In particular, this principle does not alter the immediacy of the obligation and, therefore, even when States face a resource shortage, they must meet their minimum core obligations. In short, there is flexibility for States to determine the levels of resources they can make available to realize economic, social and cultural rights, and how to prioritize the allocation of those resources to different rights.

Guideline: transparency and accountability

62. To avoid misusing or exploiting the principle of the maximum of available resources as a justification for States’ failure to implement their obligations, safeguards must be put in place to ensure that States are indeed using the maximum of their available resources. Several dimensions of maximum of available resources, particularly, maximum allocation and spending, should be accompanied by measures to uphold transparency. In Colombia, for example, the national System of Investments in Drinking Water and Basic Sanitation monitors the spending of financial resources in the sector, especially those resources that are transferred to local governments and with a special component to monitor the particular conditions of rural areas.⁵⁶

VI. Monitoring

63. States have an obligation to monitor their compliance with and implementation of human rights and to devise national plans that set out such monitoring processes, which should be reviewed regularly to ensure that they meet the needs of the population.⁵⁷ Several methodologies have been adopted to assess and monitor compliance with the obligation to progressively realize human rights.

⁵¹ A/HRC/30/39, paras. 29–31.

⁵² A/70/203, para. 36.

⁵³ Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 19.

⁵⁴ E/C.12/2007/1, para. 10.

⁵⁵ Committee on Economic, Social and Cultural Right, general comment No. 3, para. 10, and general comment No. 15, para. 41.

⁵⁶ Submission from Colombia.

⁵⁷ Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 37 (f).

A. Methods of assessment and monitoring

1. Quantitative and qualitative monitoring

64. In general, the most widespread method of monitoring progressive realization is through the use of indicators and benchmarks. Particularly within the context of the Sustainable Development Goals, indicators and benchmarks have come to form the dominant method of monitoring States' progress in upgrading water and sanitation services. As custodians of monitoring progress in the implementation of targets 6.1 and 6.2 of the Goals, the WHO-UNICEF Joint Monitoring Programme for Water Supply, Sanitation and Hygiene provides information on the situation of access to water supply, sanitation and hygiene services worldwide and establishes the baseline for monitoring implementation of the Goals. Several other possibilities for monitoring exist, such as the "frontier analysis"⁵⁸ and "easy-to-assess indicators".⁵⁹ Structural, process and outcome indicators form a comprehensive framework specifically for monitoring the human rights to water and sanitation.⁶⁰

65. The use of indicators and benchmarks has strong acceptance at the international level but it has also been criticized as inadequate to accurately measure States' compliance with the obligation of progressive realization. Firstly, the question of legitimacy arises since monitoring using indicators and benchmarks requires access to detailed data about progress levels, which the State itself collects. Secondly, given the amount of data and the scope of coverage, data collection requires a lengthy collection period and the data collected are often published after a long lag. Furthermore, as data collection exercises focus on quantitative aspects and take place at the national level, they fail to address the context in which minimum core obligations are identified, i.e. at the subnational level.

66. There is a need to devise and implement qualitative monitoring of the progressive realization of the human rights to water and sanitation. Numbers only cannot give a full picture of the level of enjoyment of human rights, and the progress made cannot be measured merely by compiling numbers. The standard of reasonableness stipulated in article 8 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the assessment criteria developed by the Committee on Economic, Social and Cultural Rights provide a monitoring framework focused on the steps taken and the processes developed by States. This framework makes it possible to analyse, for example, how States decide to allocate resources and the time frame in which steps were taken, among other aspects.⁶¹ Additionally, reasonableness requires that decision-making in relation to the progressive realization of human rights is transparent and participatory. Despite such interpretation, the reasonableness standard is yet to clarify its interpretation in practice to avoid uncertainty in the monitoring of the progressive realization of human rights.

2. Static and dynamic monitoring

67. Monitoring can be static, in that they may analyse a situation on the basis of a snapshot taken at a specific point in time. In respect of resources, a static analysis examines the resources allocated for the achievement of the human rights to water and sanitation during a specific budget period compared to the allocations made to other areas of expenditure. This exercise indicates a State's priorities and helps to show whether its expenditure on achieving the human rights to water and sanitation is adequate in the context

⁵⁸ Benjamin Mason Meier and others, "Monitoring the progressive realization of the human rights to water and sanitation: frontier analysis as a basis to enhance human rights accountability", in *The Oxford Handbook of Water Politics and Policy*, Ken Conca and Erika Weinthal, eds. (Oxford, Oxford University Press, 2018).

⁵⁹ Ricard Giné-Garriga and others, "Monitoring sanitation and hygiene in the 2030 Agenda for Sustainable Development: a review through the lens of human rights", *Science of the Total Environment*, vol. 580 (February 2017).

⁶⁰ A/HRC/27/55/Add.4, annex.

⁶¹ E/C.12/2007/1, para. 8.

of their expenditure as a whole.⁶² The Special Rapporteur finds that carrying out a dynamic analysis, which involves comparing the evolution of the realization of human rights over time, would be more suitable. The data set of two or more points in time can be checked against indicators and benchmarks identifying whether States are making adequate progress towards achieving the human rights to water and sanitation.

68. A specific example of dynamic monitoring of the human rights to water and sanitation can be found in the Special Rapporteur's follow-up analysis project, which assesses the implementation of the recommendations he made in official country visit reports.⁶³ During a total of 9 official country visits, the Special Rapporteur assessed the human rights situation of the country at the time of the visit. On the other hand, through the follow-up analysis project, the Special Rapporteur dynamically assessed the human rights situation comparing the situation at the time of the visit to the time when the follow-up analysis was carried out. For the follow-up assessments, the interpretation of the progressive realization was introduced in five categories: good progress, progress ongoing, limited progress, progress not started and retrogression.

69. The category "limited progress" describes situations in which actions have been taken that are not targeted towards the realization of the human rights to water and sanitation; moreover, the actions are not deliberate or concrete. For instance, simply upgrading the national information and communications technology system does not necessarily lead to a better distribution of information related to accessing water and sanitation services. In "limited progress" situations, action is taken but progress is slow, as when a bill has been drafted but remains stuck at the same procedural stage for several years without making any progress. Furthermore, in "limited progress" situations the action taken addresses the short term and does not tackle structural and systemic issues. The category "progress ongoing" describes situations where action has been taken to implement recommendations but implementation remains partial, as when menstrual hygiene has been promoted in institutional facilities but not yet in schools. In "progress ongoing" situations, relevant action has been taken to address the recommendations but the outcome of the action is unclear, as when water quality standards and improvements are established. Finally, the category "good progress" refers to situations in which implementation has been successful or is imminent.

70. In monitoring the progressive realization of the human rights to water and sanitation it is necessary to adopt an integrated, comprehensive approach that includes several dimensions: firstly, the normative content should be assessed separately, to allow for an in-depth assessment that takes into account qualitative dimensions; secondly, that separate assessment should be complemented by an integrated assessment that cuts across the entire normative content and also the human rights principles; and, thirdly, the normative content needs to be assessed against the usage of the maximum available resources.

B. Monitoring mechanisms

71. At the international level, the human rights treaty bodies play a notable role in monitoring States' obligation to progressively realize rights. When the Committee on Economic, Social and Cultural Rights reviews States parties' compliance with Covenant obligations, it prepares a list of issues that often lacks specific requests for information on access to water and sanitation, often subsuming the monitoring of the human rights to water and sanitation under the dimension of the rights to an adequate standard of living and health. Therefore, the monitoring of binding obligations is left to peer review mechanisms such as the universal periodic review and to regional human rights mechanisms such as the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes. In addition, bodies such as the WHO-UNICEF Joint Monitoring Programme for Water Supply, Sanitation and Hygiene and other statistical bodies also play a monitoring role – not necessarily linked to the human rights framework –

⁶² Lillian Chenwi, "Unpacking 'progressive realisation', its relation to resources, minimum core and reasonableness, and some methodological considerations for assessing compliance", *De Jure Journal*, vol. 742 (2013), pp. 742–769.

⁶³ A/HRC/39/55, annex.

based on the data provided by national statistical offices. Moreover, the UN-Water Global Analysis and Assessment of Sanitation and Drinking Water initiative examines whether there is an enabling environment for the provision of water supply, sanitation and hygiene services, including through national policies and plans.

72. At the national level, national human rights institutions and ombudspersons are oversight mechanisms that protect and promote human rights. In many States, however, their mandates do not cover monitoring State compliance with the human rights to water and sanitation, a task most often left to regulatory bodies, which often fail to take a human rights-based approach as a whole to regulation.⁶⁴ At times, civil society organizations and communities also play monitoring roles at the national level.

VII. Final remarks

73. As the Special Rapporteur finishes his six-year term, he wishes to address a frequent comment expressed by many practitioners: that human rights are not clear and that they simply represent pie-in-the-sky ideals that are pleasant to contemplate but unrealistic and impractical. As illustrated in the present report, human rights are contextual and do not provide the clear-cut solutions that many are searching for; nonetheless, they do provide a framework for compliance with their standards. What is correct for one country may not be the best solution for another and, therefore, the role of a United Nations human rights expert is not to prescribe a standard solution but, rather, to provide guidelines for States, practitioners and civil society to implement the progressive realization of human rights to water and sanitation taking into account the specific national and local contexts.

74. A decade has passed since water and sanitation have been explicitly recognized as human rights,⁶⁵ yet the specifics of how to implement the obligation to progressively realize those rights still require further clarification and understanding. Through this report, and by addressing the broad scope of the obligation of progressive realization, the Special Rapporteur provides several guidelines and principles that States should consider when implementing the obligation to progressively realize the human rights to water and sanitation.

75. The full realization of the human rights to water and sanitation cannot be left to States alone. The larger human rights ecosystem is composed of other actors, particularly those that monitor State compliance, which ranges from treaty to statistical bodies, from national to international bodies and from governmental to non-governmental bodies. Private actors working in the water and sanitation sector must understand that they too are bound by human rights obligations, particularly when they provide services by delegation from States and when national legislation reflects a State's international human rights obligations. The Special Rapporteur recommends that monitoring bodies introduce and utilize the guiding questions contained in the present report in identifying and assessing the progressive realization of the human rights to water and sanitation.

⁶⁴ A/HRC/36/45.

⁶⁵ General Assembly resolution 64/292. See also the information on the campaign to celebrate the 10 years of the human rights to water and sanitation available from www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/10Anniversary.aspx.