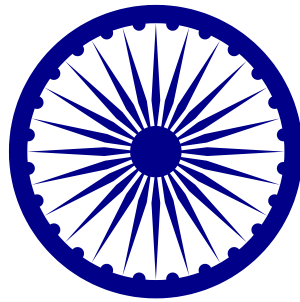


SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS TO
WATER AND SANITATION,
MR LÉO HELLER



FOLLOW-UP REPORT SUMMARY

OFFICIAL COUNTRY VISIT TO INDIA
27 OCTOBER TO 10 NOVEMBER 2017

A/HRC/45/10/ADD.2



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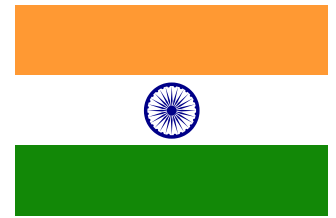


FOLLOW-UP REPORTS

The official visit to India was undertaken upon the invitation of the Government from 27 October to 10 November 2017. During the visit, the Special Rapporteur met with representatives of government at several levels and met with people whose enjoyment of the rights to water and sanitation has been affected. At the end of the visit, he held a press conference and issued a press release and preliminary statement on 10 November 2017. The report of the official visit (A/HRC/39/55/Add.1) was presented to the Human Rights Council in September 2018. The Government of India provided comments to the report (A/HRC/39/55/Add.3).

In preparing the current report, the Special Rapporteur, between October 2019 and May 2020, conducted desk research on the implementation of the recommendations provided to the Government in his visit report, in order to develop a picture of the Government's current actions, inactions and progress. To support the research, a questionnaire to the Government was sent, but no reply was received. Additionally, the Special Rapporteur invited non-State actors to respond to the questionnaire but no response was received.

In the current report, the main findings of the follow-up are presented, introducing the level of development of the recommendations and highlighting further recommendations derived from the current status. It is organized through relevant clusters of recommendations. The level of implementation of the recommendations are assessed in accordance with the following categories: 1) good progress, 2) progress on-going 3) progress limited, 4) progress not started, 5) unable to assess due to lack of information and 6) retrogression.



LEGAL, INSTITUTIONAL AND POLICY FRAMEWORKS

RECOMMENDATION 1: “Adopt a legislative framework that recognizes the human rights to water and sanitation at the national level and, in particular, ensure the harmonization and consistency of that legislative framework across states and the union territories of India;” (A/HRC/39/55/Add.1, para. 71 (a))

Since the visit took place in 2017, the draft national water framework bill had been circulated for comments but there has been no update on its status nor its content. Media reports suggest that the government of the State of Madhya Pradesh is in the process of drafting a right to water act, which would entitle residents a minimum quantity of safe drinking water, as well as prioritize water for domestic and personal uses over those of the industrial sector. The Special Rapporteur recommends that the Government establish a clear legislative framework that recognizes both the human rights to water and sanitation and that such legal recognition is harmonized and consistent throughout all states of India.

Progress
limited



RECOMMENDATION 2: “Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;” (A/HRC/39/55/Add.1, para. 71(b))

The Government of India ratified the ICESCR in 1979 and is yet to ratify the Optional Protocol to the ICESCR. According to the Government, consultations and legal examinations are underway with regard to the possibility of ratifying OP to ICESCR, however, no concrete information was provided related to such process.

Progress
not started



RECOMMENDATION 3: “Clarify, in a transparent manner, the roles and responsibilities of institutional actors in the water and sanitation sector from all dimensions: vertically, among central, state, local and rural governments; and horizontally, among entities within the different tiers of government;” (A/HRC/39/55/Add.1, para. 71(c))

The Special Rapporteur notes the recent restructuring within the Government, namely, the establishment of the Ministry of Jal Shakti, and highlights that the Government should take measures and safeguards so that the provision of water and sanitation and the human rights to water and sanitation is not overshadowed in the entire integrated water resources management and is promoted in the coordination across the institutions responsible for the elements of affordability, quality and safety, acceptability as well as privacy and dignity of the human rights to water and sanitation.

Progress
on-going





RECOMMENDATION 4: “Establish an independent regulatory mechanism with adequate financial and human resources to monitor the implementation of the human rights to water and sanitation, including all the normative content of those rights;” (A/HRC/39/55/Add.1, para. 71(d))

To date, no national independent mechanism or body exists to monitor the provision of water and sanitation services and their alignment with the human rights to water and sanitation. While an increasing number of states are establishing monitoring bodies, they are limited to regulation from an economic perspective rather than integrating the normative content of the human rights to water and sanitation and human rights principles. The Special Rapporteur reiterates that taking steps to establish independent regulatory mechanisms, mandated to monitor service provision in line with the human rights to water and sanitation, is part of State obligations regarding the human rights to water and sanitation.

Progress
limited



RECOMMENDATION 5: “Make human rights impact assessments a requirement for all megaprojects, including the construction of hydroelectric dams.” (A/HRC/39/55, Add.1, para. 71(t))

While ‘social impact assessments’ continue to exist under the Right to Fair Compensation and Transparency in Land Acquisition, no human rights impact assessment has been made mandatory for megaprojects in India.

The Special Rapporteur reiterates that megaprojects can have clear impacts not only the human rights to water and sanitation, but on many human rights of persons they affect (A/74/197, para. 86). Though they may cover the impact of projects on water resources, environmental impact assessments have a different scope on the impacts of projects the human rights to water and sanitation. Impact assessments must take into account all aspects of the normative content of the rights to water and sanitation, and must be undertaken in accordance with human rights principles.

Progress
not started





NATIONAL POLICIES ON WATER AND SANITATION

RECOMMENDATION 6: “Continuously monitor the implementation of national policies on water and sanitation from a human rights perspective and reassess those policies to strengthen the incorporation of the human rights framework as a whole;” (A/HRC/39/55, Add.1, para. 71(e)).

Monitoring for the Jal Jeevan Mission (JJM), aiming to provide water to all rural households, follows the structure of monitoring the Clean India Mission, under which Gram Panchayat officials (village officials) are required to record the number of latrines built per household, open defecation practices, and planning and informational activities, on a monthly basis. While the ambitious aim of the JJM is welcome, the Special Rapporteur raises three concerns.

First, exercise of monitoring the implementation of JJM should not be focused on a counting exercise. The monitoring procedures for both the Clean India Mission and JJM differ in terms of focus – taps as opposed to toilets – but follow the same aim: the compilation of community-level statistics about access to water and sanitation by counting the number of facilities. Second, the Special Rapporteur is concerned that the focus of monitoring under the JJM, namely on taps in households, fails to address access to water and sanitation in spheres beyond the household. Thirdly, while community participation should indeed be encouraged, he notes that community-led monitoring occurs as a condition for receiving funding and financial incentives for successful implementation

Progress
on-going



RECOMMENDATION 7: “Monitor compliance with the human rights to safe drinking water and sanitation at all levels of the government and by formal and informal service providers;” (A/HRC/39/55, Add.1, para. 71(f))

The Government’s approach to informal provision in the Clean India Mission - Phase II, announced in 2020, is focused on replacing informal waste management services with formal services. Under the Jal Jeevan Mission (JJM), informal water services particularly in slums or non-recognized settlements are not addressed.

Progress
limited





RECOMMENDATION 8: “Reconcile the efforts to achieve open-defecation-free status with the obligations to uphold the dignity of all persons and not to violate other fundamental rights;” (A/HRC/39/55, Add.1, para. 71(g))

Progress
not started



RECOMMENDATION 9: “Maintain a strong surveillance system to identify, monitor and prevent aggressive and abusive practices, such as coercion, shaming, violence or punishment, in the effort to eliminate open defecation in the country;” (A/HRC/39/55, Add.1, para. 71(m))

Progress
not started



After the visit, the Government’s efforts to reconcile the endeavour to achieve open-defecation free status and the obligation to uphold the privacy and dignity of individuals continue to face challenges. In one study, confidential interviews held between September and December 2018 with local officials responsible for implementing the Clean India Mission found that they are pressured by district officials to reach toilet-building and open defecation-eradicating targets rapidly, at risk of losing employment. The local officials are encouraged to film individuals practicing open defecation, infringing on their right to privacy and dignity, and to withhold pensions or food subsidies until such behavior is stopped. International media reported a case in 2019 in which two Dalit children (referred to as “scheduled castes”) in the State of Madhya Pradesh were allegedly killed after they had been found defecating in the open. While the Special Rapporteur reiterates his praise of the Government’s continued efforts to eliminate open defecation, he emphasizes that occurrence of abusive and coercive practices in the context of these efforts continues to demonstrate the urgent need for the Government to properly address this issue.

The Special Rapporteur is disappointed to learn that no steps have been reported to monitor and increase transparency in reporting abuses practices in the context of efforts to achieve open-defecation-free status. He reiterates the need for official guidelines and sanctions with regards to such practices and urges the Government to take concrete steps to prevent such practices in the context of the national programmes, strengthening monitoring and surveillance.

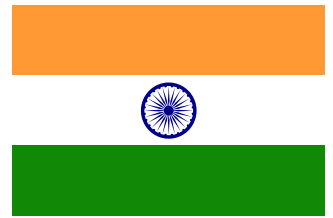
RECOMMENDATION 10: “Ensure balance in efforts and measures to monitor the construction of toilets with respect to monitoring those who do not have access to sanitation facilities;” (A/HRC/39/55/Add.1, para. 71(j))

Progress
on-going



The National Annual Rural Sanitation Survey 2018-19 examined the coverage of toilets in a village which has been granted open defecation free status. Respondents from the State of Bihar reported that the coverage of sanitation is low with 60.1 per cent, although, 90.5 per cent of respondents in the State of Bihar reported that they live in open defecation free certified villages. Additionally, interview with village officials conducted in 2018 in multiple states indicated that village officials are often pressured by higher-level officials to report ODF status even if only 80 per cent of households own latrines. The study also revealed that several villages had abandoned building toilets or monitoring their use after achieving open defecation free status.

However, a notable improvement is the effort to identify households and populations that have been left behind in the Clean Mission India. As part of the monitoring of Phase II, guidelines require households that have been left behind in the initial phase of the Mission to be identified (“No One Left Behind” programme).



RECOMMENDATION 11: “Disaggregate data by wealth level, migratory status, ethnic group, scheduled caste, scheduled tribe and other grounds of discrimination, identifying patterns of inequality, as such information may have an impact on the formulation of national policies;” (A/HRC/39/55/Add.1, para. 71 (r)).

Since the visit in 2017, the Government has taken steps towards collecting disaggregated data, albeit with limitations. The notable example is the National Annual Rural Sanitation Survey 2018-19, which prioritizes calculating toilet access per household, but also collects data about respondents. In describing the characteristics of respondents to the survey, data was presented about the caste, gender, and income of respondents, but the categories used to describe these factors lack sufficient detail. The Special Rapporteur reiterates that the Government has the responsibility to progressively realize the human rights to water and sanitation of all persons by identifying groups in vulnerable situations, as well as patterns of discrimination, and taking steps to redress them.

Progress
limited





THE HUMAN RIGHTS TO WATER AND SANITATION

RECOMMENDATION 12: “Establish a monitoring system to follow the process of emptying pit latrines under the national programs, in order to control possible trends of increases in manual scavenging practices, ensuring that this practice is not carried out in a caste-discriminatory manner;” (A/HRC/39/55/Add.1, para. 71(n)).

While the availability of faecal sludge disposal mechanisms were monitored, the monitoring did not extend to the management of those mechanisms, particularly emptying the pits. The Special Rapporteur is concerned by this insufficient regulation and surveillance of pit emptying. As reported by WaterAid, between January 2017 and September 2018, an estimated 123 persons died as result of manual scavenging. In addition, persons employed in manual scavenging suffer from discrimination, being seen as ‘impure’ for handling human waste. This stigma impacts the access to sanitation by persons who do not have access to formal pit-emptying services: as the castes who usually practice manual scavenging increasingly turn away from the practice, latrine owners have been shown to return to open defecation practices rather than to empty their own latrines. The Special Rapporteur reiterates the need to establish a monitoring system to address the process of emptying pit latrines, which has become more urgent following the increased amount of toilets due to the Clean India Mission.

Progress limited



RECOMMENDATION 13: “Strengthen initiatives for implementing faecal sludge management, safe transport and disposal of grey water, and wastewater treatment, to reduce health hazards arising from the contamination of water;” (A/HRC/39/55/Add.1, para. 71(k))

Despite a lack of evidence for the improvement of wastewater management since the visit, the Special Rapporteur notes increased attention to faecal sludge management in sanitation policy, particularly in the next phase of the rural component of Clean India Mission from 2020 to 2025. Phase II introduces the concept of “Open Defecation Free Plus” to be used to designate villages where open defecation free status is maintained, and solid and liquid waste management is implemented. Similarly for urban areas, in September 2018, the Ministry of Housing and Urban Affairs released the criteria for Urban Local Bodies (the smallest unit of governance in cities) to certify as “ODF+”, a status that requires that all toilets needed to be connected to either sewer networks or safe containment systems, and all septic tank or pit cleaning service providers needed to be registered and operating through contract.

Progress on-going





RECOMMENDATION 14: “Identify populations in vulnerable situations, including non-nationals and those without proper identity documentation, and identify patterns of discrimination, and their underlying structural causes, that heighten the likelihood of lower quality access to adequate drinking water and sanitation services;” (A/HRC/39/55/Add.1, para. 71(q))

The number of refugees and stateless persons that may face barriers in accessing water and sanitation in India is growing. Human Rights Watch pointed to a gap in the census following the passing of the new Citizenship (Amendment) Act (2019), which facilitates citizenship applications for all non-Muslim irregular immigrants. The census in the State of Assam excluded nearly two million people, most of them ethnic Bengalis, whom the authorities accuse of being illegal migrants.

Another challenge related to access to water and sanitation by undocumented population is posed by the new monitoring system under the Jal Jeevan Mission. The new “Aadhar number” – a number linked to citizenship documents – presents negative implications for populations without access to documents that provides their address to formal housing. The “Aadhar system” is linked to the household, and requires the logging of personal and biometric data. A report on the ‘State of Aadhar’, released by a social impact advisory group, Dalberg, in 2019, surveying 147,868 households in 28 states and union territories, found that 30 per cent of homeless residents did not have the Aadhar number. In addition to citizenship documents, the Aadhar system is linked to biometric data of individuals, which is identified as a barrier for certain marginalized groups. In 2019, 27 per cent of transgender persons chose not to have a number due to the need to reveal their gender identity and fear of repercussions should this information be shared during administrative practices.

The Special Rapporteur looks forward to concrete measures from the Government on reconciling the use of the Aadhar system with the realization of the human rights to water and sanitation of all persons in India. He also reiterates his recommendation that the Government identifies and addresses patterns of discrimination in the access to water and sanitation against non-nationals and undocumented populations.

Progress
not started



RECOMMENDATION 15: “Identify the persisting problems related to drinking water quality and assess the effectiveness of the measures implemented to monitor and respond to water contamination” (A/HRC/39/55/Add.1, para. 71(o))

In rural areas, the Special Rapporteur notes that the efforts to increase monitoring of drinking water quality by expanding testing capabilities through laboratories and field-testing kits, and planning for community-led testing will strengthen the water quality testing framework in India.

As for urban areas, the Bureau of Indian Standards – an autonomous body of the Ministry of Consumer Affairs, Food and Public Distribution that sets standard for water quality in urban areas – monitored water quality in 2019, testing water samples at point of consumption from state capital cities. The only city with no samples failing to meet national water quality standards was Mumbai. In 14 out of the 21 cities, all water samples failed to meet water quality standards. Efforts to address problems with water quality in piped connections must be increased.

The Special Rapporteur reiterates that the identification of persisting problems related to drinking water quality and assessment of measures effectiveness should be a continuous effort by the Government. Regarding the recent guidelines, he recommends that the Government monitor closely the efficacy of community-based testing and the accuracy of the self-reporting by water providers.

Progress
limited





RECOMMENDATION 16: “Strengthen access to information, including by making information related to drinking water quality available to the public in a user-friendly manner;” (A/HRC/39/55, Add.1, para. 71(p))

Both the Clean India Mission (rural component) and Jal Jeevan Mission (JJM) require local officials to upload their management plans and monitoring data to respective IMIS. The Special Rapporteur notes that those systems still target technical experts as opposed to the general public and the information available to the public on these platforms is complex to navigate, however, and often presented in large table formats.

The Government made further efforts to widen access to information about water and sanitation policy more generally. In 2018 the Department of Drinking Water and Sanitation created the Sujal Swachh Sangraha, a knowledge- management portal dedicated first to the Clean India Mission, and now to the JJM. The information available is limited, however, to providing pictures of policy progress according to the specifics standards of success of the JJM and Clean India Mission.

The Special Rapporteur welcomes that the Jal Jeevan Mission operational guidelines instruct that information on water quality gathered through monitoring be communicated with all members of the community. He recommends, as the next steps, that that information is made available using understandable language in various platforms. Regarding access to information more generally, it is important to make it more accessible and to ensure that not only positive information is shared.

RECOMMENDATION 17: “Ensure that sanitation facilities are acceptable for all individuals, taking into consideration the characteristics of particular groups, which may have different sanitation needs;” (A/HRC/39/55/Add.1, para. 71(l))

In 2019, the Strategy for Accessible Sanitation was released with a particular focus on sanitation for persons with disabilities. As part of the Strategy, 1,200,000 physically accessible individual household latrines have been constructed across India. However, a 2019 study by ActionAid India showed that 76 per cent of surveyed public toilets in Delhi did not have an accessibility ramp.

Another group with particular sanitation needs are women and girls. Following the visit, in a 2018 Advisory on Public and Community Toilets, the Ministry of Housing and Urban Affairs noted the need for gender-sensitive toilet facilities in public spaces, mentioning the need for privacy and safety. Notwithstanding this advisory, which the Special Rapporteur welcomes, sanitation facilities in India often remain unsatisfactory for women’s sanitation needs.

The Special Rapporteur notes the adoption of Transgender Persons (Protection of Rights) Act, 2019, which disallows the exclusion of transgender persons from any government scheme or benefit and calls for establishing National Council for Transgender persons, whose functions would include monitoring and reviewing all policies and government activities related to the rights of transgender persons.

The Special Rapporteur recommends that the Government closely monitor the acceptability dimension of the human right to sanitation. Efforts should be made to track and record instances of all persons being able to use facilities, and they should be adapted or retrofitted to redress the issue. Further, it is crucial that provisions regarding the availability and accessibility of water and sanitation for persons with disabilities, women and transgendered persons are translated into practice.

Progress
on-going



Progress
on-going





SPHERES OF LIFE BEYOND THE HOUSEHOLD

RECOMMENDATION 18: “Ensure that public sanitation facilities are available continuously and, in case of shutdown, ensure alternative options so that people are not forced to defecate in the open;” (A/HRC/39/55/Add.1, para. 71(h))

Progress
limited



RECOMMENDATION 19: “Guarantee access to sufficient and continuous water and sanitation facilities in public places for those on the move daily, including homeless persons, street vendors, rickshaw drivers and seasonal migrant workers;” (A/HRC/39/55/Add.1, para. 71(i))

Progress
on-going



Since the visit, the Government took several measures to address access to water and sanitation in public spaces, including building over 590,000 community toilets in urban areas by January 2020. Additionally, in 2018, the Ministry of Housing and Urban Affairs – in the form of Advisory on Public and Community Toilets - included a guideline for managing shared toilet facilities, which disallowed the use of toilet facilities for residential or storage purposes, emphasizing the need to provide continuous water and electricity supply, and to calculate peak usage times in order to limit the wait outside facilities. Furthermore, under the Clean India Mission - Phase II, communities in rural areas wishing to achieve “Open Defecation Free Plus” status must provide at least one community sanitation complex, with gender-segregated toilets, to provide for “floating populations”.

Official data on water and sanitation in India are collected at a household level, and no mention of access to water and sanitation in public spaces is made in the 2018 Ministry of Statistics and Program Implementation Report on Drinking Water, Sanitation, Hygiene and Housing Condition in India. Services must also remain affordable. While funding for the construction of these services is available from the national government, Clean India Mission – Phase II encourages local governments to emphasize private sector involvement in the operation and maintenance of the complexes, and to charge users for use wherever possible, however.

The Special Rapporteur recommends that Government policies regarding the provision and maintenance of toilets in public spaces be put into practice and that facilities are monitored for its compliance with human rights standards. He also recommends that the Government monitor closely the continuous availability of public sanitation facilities to ensure that alternatives to open defecation are available at all time, and that these facilities fully comply with the normative content of the human rights to water and sanitation.

RECOMMENDATION 20: “Provide equal access to water and sanitation services irrespective of the place and status of residence, including in informal settlements and resettlements and for persons who are homeless;” (A/HRC/39/55/Add.1, para. 71(s))

Progress
limited



The challenge of providing access to water and sanitation in informal settlements continued to exist after the visit. A 2018 study by WaterAid found that 74 per cent of residents had access to tapped water in informal settlements, as opposed to 69.9 per cent in non-slum urban areas. Residents of informal settlements rarely had individual connections, however, but instead used community stand-posts or unregulated wells with non-continuous access. The Special Rapporteur encourages the Government to take measures to ensure this provision is fully human rights compliant, and to redress situations where the human rights standards are not met.



CATEGORIES



Good progress

- Successful implementation of the recommendation and seeming likely to progress further.
- Recommendation not yet fully implemented, but implementation is imminent.



Progress On-going

- Some concrete and relevant actions have been taken towards implementing recommendation, but the recommendation is not fully implemented.
- Partial but relevant measures/actions taken are likely to lead to the achievement of the recommendation or of a significant content of the recommendation.
- Relevant actions have been taken which putatively address the recommendation, but the outcome of these actions is unclear.
- Signs of positive effort in good faith to progress consistently.
- A draft law is in the process of approval of the parliament or is being endorsed by the Parliament.



Limited Progress

- Actions have been taken that do not address the recommendation itself.
- Actions have been taken but these do not ensure compliance
- Actions have been taken towards improving access to water, but not sanitation, or vice versa, when the recommendation refers to both.
- Actions are being taken but progress is so slow it is doubtful whether the state is moving as 'expeditiously and effectively as possible'.
- Actions have been taken to address the recommendation in a short-term way, but do not address systemic issues targeted by the recommendation.
- A draft law has been in the works for a long period without making any progress.



Progress not Started

- No actions have been taken by the Government
- Some actions have been taken which do not address the recommendation itself



Retrogression

- Any measure that may go against or translate in a significant retrogression in the situation on which a recommendation has been issued



No assessment can be made due to lack of information

- Irrelevant information provided by the Government and no other information found in research
- Information provided that pertains to the recommendation, but is out of date or has methodological issues.
- More information is needed to understand the broader impacts of a policy.
- Vague information and non-verifiable information has been provided on measures adopted and the recommendation has not been implemented.