

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



**FOLLOW-UP REPORT  
SUMMARY**

OFFICIAL COUNTRY VISIT TO EL SALVADOR,  
11 TO 18 MAY 2016



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# FOLLOW-UP REPORTS

The Special Rapporteur undertook an official visit to El Salvador at the invitation of the Government from 11 to 18 May 2016. Following the conclusion of the visit, the Special Rapporteur shared his preliminary findings with the Government. Additionally, he issued a press release and the end of mission statement,[1] and held a press conference on 18 May 2016. The final report was presented to the Human Rights Council in September 2016 (A/HRC/33/49/Add.1).

In undertaking the present follow-up report regarding his visit to El Salvador, the Special Rapporteur has, between 1 January 2018 and 1 November 2018, conducted desk research on the implementation of the recommendations provided to the Government in his country mission report, in order to develop a picture of the Government's current actions, inactions and progress. To support the research, questionnaires to the Government and to other stakeholders were sent. Whilst no response from other stakeholders was received, the Government of El Salvador submitted a written response to the questionnaire on 15 November 2018, along with the "Final Report: Annual Measurement of Strategic Institutional Results".

The main findings of the follow-up are summarized in this report, 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) limited progress, 4) progress not started, 5) unable to assess due to lack of information and 6) retrogression.

Acronyms used in the current report:

- PLANAPS - The National Drinking Water and Sanitation Plan – Plan Nacional de Agua Potable y Saneamiento
- ANDA - National Water Mains and Sewers Administration - Administración Nacional de Acueductos y Alcantarillados
- CONAPS - National Drinking Water and Sanitation Council - Consejo Nacional de Agua Potable y Saneamiento
- ANA - National Water Authority – Autoridad Nacional del Agua
- MARN - Ministry of the Environment and Natural Resources – Ministerio del Medio Ambiente y Recursos Naturales
- FISDL - Social Investment Fund for Local Development – Fondo de Inversión Social para el Desarrollo Local



# LEGAL, INSTITUTIONAL AND POLICY FRAMEWORK

**RECOMMENDATION 1: “Ratify the reform of article 69 of the Constitution, to which end it is essential explicitly to include in the final text the expression “human rights to water and sanitation” which is absent from the proposal currently under consideration” (A/HRC/33/49/Add.1, para. 96 (b) (i)).**

The Special Rapporteur urges the legislative assembly of El Salvador to adopt the amendment to the Constitution recognising the human rights to water and sanitation according to international human rights standards.

Limited  
Progress



**RECOMMENDATION 2: “Guarantee that the general law on water resources currently under consideration assign priority to the human rights to water and sanitation as the cornerstone of any policy and that it clearly state that priority in the use of water should be given to human consumption” (A/HRC/33/49/Add.1, para. 96 (b) (ii)).**

The Special Rapporteur recognises the efforts of the Government and of the Parliament to discuss the draft law with various stakeholders and approve a general law on water resources that recognises and ensures the implementation of the right to water. In particular, he welcomes the fact that the Environment and Climate Change Committee of the legislative assembly approved article 7 recognising the human rights to water and sanitation and that the Committee is likely to prioritize water for human consumption. The Special Rapporteur notes, however, that a proposed general law on water resources has not yet been approved.

The Special Rapporteur urges the Government and the legislative assembly of El Salvador to move toward with the approval of a general law on water resources, assigning priority to the achievement of the human rights to water and sanitation and clearly stating that human consumption should be afforded priority with regards to the use of water.

Progress  
On-Going



**RECOMMENDATION 3: “Urgently adopt a framework law on the water and sanitation subsector, which focuses on the realization of human rights, provides guidance for the sector’s institutions and guarantees appropriate regulation of services” (A/HRC/33/49/Add.1, para. 96 (b) (iv)).**

The Special Rapporteur notes that the Government has not yet adopted legislation on the water and sanitation sub-sector which promotes the realisation of the human rights to safe water and sanitation, and which regulates services and provides guidance for institutions operating within the sector. He urges the Government to progress its efforts to introduce such a law with due expediency.

Progress  
not Started





**RECOMMENDATION 4: “Draw up the national plan for water and sanitation via a participatory process that involves other service providers, such as the rural water boards and representatives of civil society. The plan should set the normative substance of human rights at the core of all its assessments, proposals and recommendations and make provision for actual measures to ensure that the whole of the country’s population has access to services, in conformity with the Sustainable Development Goals, to which El Salvador has subscribed” (A/HRC/33/49/Add.1, para. 96 (c)).**

Good  
Progress



The Special Rapporteur commends the Government for completing PLANAPS and encourages it to pursue its efforts in adopting its objectives, calling on it to strengthen the human rights perspective within such actions in order to ensure that the normative substance of human rights is at the core of all its assessments, proposals and recommendations. He further encourages the Government to put special emphasis on SDG target 6.1, not reflected in PLANAPS, and to ensure a better alignment of the Plan with SDG target 6.2.

**RECOMMENDATION 5: “Strengthen the national strategy to cope with climate change, which should include the establishment of an effective mechanism to provide a timely response to future droughts and to their impact on the most vulnerable population, including the rural population” (A/HRC/33/49/Add.1, para. 96 (a)).**

Good  
Progress



The Special Rapporteur congratulates the Government on the adoption of the updated National Climate Change Plan and its efforts to address challenges and issues related to accessing water and sanitation in the context of climate change and droughts. He encourages the Government to continue developing contingency plans to address climate change and droughts more effectively.

**RECOMMENDATION 6: “Set up an agency to regulate the water resources policy introduced by this law [the general law on water resources]; the agency should be transparent and participatory, and the State should play a leading role in the management of water resources, with the participation of the sector’s main stakeholders, giving priority to that of civil society and of those groups most disadvantaged as regards access to water” (A/HRC/33/49/Add.1, para. 96 (b) (iii)).**

Progress  
On-Going



The Special Rapporteur welcomes the efforts and plans adopted by the Government to create a centralised authority to regulate water resources and to include the participation of stakeholders from the water and sanitation sector. He also welcomes initiatives to involve stakeholders in governing or consulting bodies regulating water resources, such as the Regulation and Social Control Council included within PLANAPS. However, he remains concerned that no concrete actions have yet been taken to create such a body.

The Special Rapporteur urges the Government and relevant authorities to adopt the necessary measures to create and implement ANA and other proposed initiatives such as the Regulation and Social Control Council, and to ensure transparency, participation, and that the operations of such organs are clearly aligned with the framework of the human rights to water and sanitation.



**RECOMMENDATION 7: “Set up an independent regulatory body to ensure that those who supply water comply with human rights. Such an agency should ensure genuine participation by the public in decision-making by disseminating appropriate information and guarantee that water and sanitation are affordable for all” (A/HRC/33/49/Add.1, para. 96 (d)).**

Progress  
On-Going

The Special Rapporteur urges the Government to take measures to create and implement the CONAPS and the Regulation and Social Control Council. He further recommends the Government establish a framework to ensure that both entities will comply with human rights, guarantee public participation in decision-making, provide appropriate information and provide that water and sanitation are affordable for all.





# THE HUMAN RIGHTS TO WATER AND SANITATION

**RECOMMENDATION 8: “Improve access to water, sanitation and hygiene in schools by adopting a policy that guarantees access in all educational establishments, in both rural and urban areas” (A/HRC/33/49/Add.1, para. 96 (f)).**

The Government confirmed in its reply to the follow-up questionnaire that there is no specific policy ensuring access to water and sanitation facilities in schools.

The Special Rapporteur reiterates his previous recommendation and calls on the Government of El Salvador to improve access to water, sanitation and hygiene in schools by adopting a policy that guarantees access in all educational establishments, in both rural and urban areas.

Progress  
not Started



**RECOMMENDATION 9: “Introduce policies to ensure water security and access to water on equal conditions, guaranteeing water supply 24 hours a day 7 days a week. The Government should also “reduce drastically the level of leakage so as to increase the availability of water” (A/HRC/33/49/Add.1, para. 96 (g)).**

The Special Rapporteur notes that PLANAPS foresees the promotion the execution of programs to address challenges and problems of water systems and provides for the development and implementation of operation and maintenance or water security plans. He finds that such measures are a good first step towards achieving an efficient water supply system, however, targeted measures need to be adopted to ensure that water leaks are reduced and that the most disadvantaged and unserved populations have access to adequate and quality drinking water and sanitation services.

The Special Rapporteur encourages the Government to effectively implement programmes to ensure a continuous water supply and to drastically reduce the level of water loss, so as to increase the availability of water.

Progress  
On-Going



**RECOMMENDATION 10: “Invest in achieving compliance with drinking water requirements throughout the whole country and set up an efficient mechanism effectively to monitor the quality of water for human consumption by means of a transparent process involving user participation” (A/HRC/33/49/Add.1, para. 96 (h)).**

The Special Rapporteur welcomes efforts made by the Government to set water quality requirements and water safety plans, taking into account rural water systems specifically and that PLANAPS outlines an investment matrix to monitor the quality of all water sources used for human consumption.

The Special Rapporteur encourages the Government to continue investing in the implementation of monitoring systems in order to ensure that these effectively guarantee that safe drinking water is provided to the whole population.

Good  
Progress





**RECOMMENDATION 11: “Conduct a critical assessment of the impact of environmental and agrochemical pollutants and of interruptions in water supply on the quality of water for human consumption and of the risks to health” (A/HRC/33/49/Add.1, para. 96 (i)).**

The Special Rapporteur notes that PLANAPS includes measures to ensure the reduction of environmental pollution by taking efforts such as analysing water quality, and the efforts from MARN to implement a water quality control system for surface water in order to define the most suitable type of treatment to purify surface water and to determine the possible uses of water as well as the recovery programme for urban rivers. He is, however, concerned that the Government did not critically and specifically target and address the pollution of water by pesticides and that such measures will not be able to overcome existing pollution from water sources and irregularities in water supplies which deeply affect drinking water quality and availability.

The Special Rapporteur reiterates his recommendation and calls on the Government to conduct a critical assessment of the impact of environmental and agrochemical pollutants, and of interruptions in water supply, on the quality of water for human consumption and of the risks to health.

Limited  
Progress



**RECOMMENDATION 12: “Adopt a transparent and participatory approach to reviews of water rates, and ensure that the National Water Mains and Sewers Administration carries out research to determine whether progressive block tariffs actually ensure cross-subsidization involving a financial transfer from more affluent persons to the less affluent” (A/HRC/33/49/Add.1, para. 96 (j)).**

The Special Rapporteur notes the strategy proposed by PLANAPS to overcome the current challenges and inequalities identified in the existing tariff and subsidy system. He is, however, disappointed that no specific information has been provided on the adoption of short-term measures contained in the strategy identified in PLANAPS. Furthermore, the Special Rapporteur is concerned that the financial system proposed and presented in PLANAPS does not incorporate the application of participatory approaches.

The Special Rapporteur reiterates that the Government adopt a transparent and participatory approach to reviewing water tariffs and assess whether the strategy proposed by PLANAPS is the best way to comply with the principle of affordability in the access to water and sanitation services, both for those supplied and not supplied by ANDA.

Limited  
Progress



**RECOMMENDATION 13: “Establish ad hoc programmes to mitigate the financial impact of expenditure on water supply and sanitation by persons without access to collective systems, by setting up social protection measures to ensure that water is affordable” (A/HRC/33/49/Add.1, para. 96 (k)).**

The Special Rapporteur is concerned that no concrete actions have been taken to reduce the financial impact of access to water and sanitation for persons without access to collective systems, and that no concrete social protection measures have been adopted.

The Special Rapporteur reiterates his recommendation to the Government to establish specific programmes to mitigate the financial impact of expenditure on water supply and sanitation by persons without access to collective systems by setting up social protection measures.

Progress  
not Started







**RECOMMENDATION 14: “Introduce clear national policies to rationalize agricultural use of water so as to increase its availability for human consumption, particularly in regions such as the Dry Corridor, where it is in short supply and which are more sensitive to climate change” (A/HRC/33/49/Add.1, para. 96 (I)).**

Limited  
Progress

According to the response provided by the Government to the follow-up questionnaire, the National Irrigation Policy, which seeks to promote the development of agricultural activity that demands water by ensuring the efficient and effective management of water resources, including during livestock rearing and aquaculture activities, was approved in July 2018. The Special Rapporteur is, however, concerned that no specific measure has been put forward to prioritise water for human consumption and to rationalise the use of water for agriculture.



The Special Rapporteur welcomes the approval of the National Irrigation Policy that promotes the efficient use of water and encourages the Government to rationalize and promote the efficient use of water for agriculture in order to increase its availability for human consumption.



# LEAVING NO ONE BEHIND

**RECOMMENDATION 15: “Where the rural population is concerned, the Special Rapporteur recommends that an assessment be made of the significant and successful efforts of the Social Investment Fund for Local Development, with the aim of replicating them, focusing on the adoption of appropriate and comprehensive solutions and sustainable management models that include both water supply and sanitation services” (A/HRC/33/49/Add.1, para. 96 (e) (i)).**

Progress  
On-Going



The Special Rapporteur welcomes the efforts that the Government has made on monitoring the results of projects carried out by the FIDSL in rural villages. He notes the benefits that such projects bring to rural populations in terms of quality and affordable drinking water and sanitation. However, he is concerned that the Government has not yet introduced any specific focus in its policies to address inequalities between rural and urban populations, and that projects carried out by the FIDSL remain restricted to the villages covered by the FIDSL.

The Special Rapporteur encourages the Government to pursue its efforts in implementing water and sanitation projects in rural communities improving or providing sustainable and adequate water and sanitation services. He also recommends the Government to introduce a specific focus in its policies to address inequalities between rural and urban populations.

**RECOMMENDATION 16: “The ban prohibiting the national services provider from making water and sanitation services available to illegal settlements should be re-examined, with a view to enabling the inhabitants of these settlements to exercise their rights to use those services” (A/HRC/33/49/Add.1, para. 96 (e) (ii)).**

Limited  
Progress



The Special Rapporteur notes efforts made by the Government to support the connection of illegal settlements to the water supply network but reiterates his recommendation to the Government to re-examine the ban prohibiting the national services provider from making water and sanitation services available to illegal settlement.

**RECOMMENDATION 17: “People living in the street should be guaranteed free facilities providing access to water and toilets.” (A/HRC/33/49/Add.1, para. 96 (e) (iii)).**

Progress  
not Started



The Special Rapporteur notes efforts from the Government to provide sanitation services in certain projects. He is, however, disappointed that no specific measure or policy has been adopted to guarantee access to free water and sanitation to people who are homeless.

The Special Rapporteur reiterates his recommendation and calls the Government to guarantee to people living in the street free facilities providing access to water and toilets.



**RECOMMENDATION 18: “Ensure an uninterrupted supply of good quality water and satisfactory conditions of sanitation for persons deprived of their liberty in the country’s prisons and “bartolinas” (police jails) so as to guarantee compliance with the country’s obligations in respect of the human rights to water and sanitation” (A/HRC/33/49/Add.1, para. 96 (m)).**

Progress  
On-Going



The Government of El Salvador, in its replies to the follow-up questionnaire, mentioned that the Justice and Public Safety Ministry is undertaking various efforts in order to improve conditions for persons deprived of their liberty in El Salvador. Such efforts include providing new prison infrastructure, uninterrupted drinking water services for 24 hours a day, allocating approximately 100 litres per day per person, coming from diverse sources, mainly rivers and deep drilled wells, and guaranteeing quantity, quality and safety of water likely to be suitable for human consumption. The Special Rapporteur is, however, concerned about the lack of policies guaranteeing the human rights to water and sanitation for inmates, the lack of concrete and targeted measures to provide or improve sanitation facilities in prisons and the small or restricted scale of projects implemented.

The Special Rapporteur encourages the Government to adopt policies and legislative measures ensuring that all inmates have access to sufficient safe drinking water and to adequate sanitation facilities, and to continue undertaking projects in other penitentiary facilities around the country in order to implement his recommendation in the entire penitentiary system of El Salvador.

**RECOMMENDATION 19: “Develop legislation under which the rights of indigenous peoples, including the rights to water and sanitation, may be better protected and implemented” (A/HRC/33/49/Add.1, para. 96 (n)).**

Progress  
not Started



The Special Rapporteur notes ANDA’s obligations to universalize access to safe drinking water and sanitation in urban and rural areas and the establishment of the Direction of Attention to Rural Systems and Communities that improved access to water and sanitation for rural communities directly, and indigenous communities indirectly. He also notes the plans of the Government to establish the National Action Plan for Indigenous Peoples and the Public Policy for Indigenous Peoples. He is, however, disappointed that the policy framework and measures to improve the rights for indigenous peoples, in particular their right to property, were not adopted.

The Special Rapporteur acknowledges the establishment of the Direction of Attention to Rural Systems and Communities and the Government’s plans to establish the National Action Plan for Indigenous Peoples and the Public Policy for Indigenous Peoples, but reiterates his recommendation to develop legislation under which the rights of indigenous peoples, including their rights to water and sanitation, may be legally guaranteed and implemented.



# 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.