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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe de la Relatora Especial sobre el derecho humano al agua potable y el saneamiento, Catarina de Albuquerque

Adición

Misión al Senegal (14 a 21 de noviembre de 2011)* **

Resumen

La Relatora Especial sobre el derecho humano al agua potable y el saneamiento visitó el Senegal, del 14 al 21 de noviembre de 2011, con el fin de evaluar el disfrute de los derechos al agua y el saneamiento en el país. En el presente informe, la Relatora Especial describe los marcos jurídico e institucional del suministro de agua y el saneamiento en el país y destaca los principales obstáculos al ejercicio efectivo de los derechos al agua y el saneamiento. Si bien reconoce los progresos recientes en materia de ampliación del acceso al agua potable en el Senegal y los compromisos de inversión en el saneamiento, la Relatora Especial expresa su preocupación por las disparidades entre las zonas urbanas y las zonas rurales, la escasa asequibilidad de los servicios de agua y saneamiento para las comunidades pobres y la mala calidad del agua en algunas regiones del Senegal. La Relatora Especial destaca asimismo la necesidad de que se siga invirtiendo en el saneamiento y en estrategias de fomento de la higiene. La Relatora Especial concluye su informe con recomendaciones.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó y en francés.

** Documento presentado con retraso.

Anexo*[francés e inglés solamente]***Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to Senegal (14 to 21 November 2011)****Contents**

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I. Introduction

1. The Special Rapporteur on the human right to safe drinking water and sanitation conducted an official mission to Senegal from 14 to 21 November 2011 in order to assess the manner in which the Government ensures the enjoyment of the rights to water and sanitation.

2. During her mission, the Special Rapporteur met with the Ministers for Decentralization and Local Communities, and for Family and Women's Organizations. She also met representatives of the Ministry of Urban Development, Housing, Construction and Water; the Ministry of Foreign Affairs; the Ministry of Health and Social Action; the Ministry of Sanitation and Public Hygiene; the National Office for Sanitation and the National Society for Water in Senegal; and the Senegalese Committee for Human Rights. The Special Rapporteur also met representatives of Sénégalaise des Eaux, of the United Nations system based in Senegal and of donor agencies supporting work in the sector of water and sanitation. She met with civil society organizations and visited the communities of Ngor, Baraka, Guédiawaye and Rufisque in the Dakar region, as well as rural communities in the Kaolack region. In all her visits to communities, she met local leaders and residents.

3. The Special Rapporteur is thankful to the Government of Senegal for its cooperation before and during her visit. She also expresses her gratitude for the support provided by the West Africa Regional Office of the Office of the United Nations High Commissioner for Human Rights, the West and Central Africa Regional office of the United Nations Children's Fund (UNICEF) and the national office of UNICEF in Senegal in the organization of her activities. Lastly, she thanks all those with whom she met in Senegal, especially those who openly shared information and their personal challenges regarding lack of access to water and sanitation.

4. Over the past two decades, Senegal has reformed its water and sanitation system and made important progress in the expansion of the water supply sector. As a result of these efforts, the rate of access to water reached 87.2 per cent in 2010, putting the country on track to reach the relevant target of the Millennium Development Goals. On the other hand, numerous challenges continue to seriously compromise the enjoyment of the right to water and sanitation in the country: disparities in access to water and sanitation between rural and urban areas remain significant; water and sanitation are still unaffordable for some of the poorest groups; water quality is not fully ensured in some regions of Senegal; a significant proportion of the population still does not have access to any form of sanitation as investments in the sector remain inadequate; and, lastly, more attention is required to educate communities regarding hygiene.

5. In the present report, the Special Rapporteur provides an overview of the legal and institutional framework for the provision of water and sanitation in Senegal. She then identifies some important obstacles to the realization of the rights to water and sanitation, making recommendations in this regard.

II. Legal and institutional framework

A. International human rights obligations

6. Senegal is party to seven of the nine core international human rights treaties,¹ all of which guarantee rights relevant to access to safe drinking water and sanitation.² Senegal has also ratified a number of regional human rights treaties, such as the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child.³ The country's international commitment to the human right to water and sanitation could be furthered by ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which it has already signed.

7. At the international level, safe drinking water and sanitation is a human right and derives from the right to an adequate standard of living, enshrined in, inter alia, article 11 of the International Covenant on Economic, Social and Cultural Rights. This was explicitly recognized by the General Assembly in its resolution 64/292, which enjoyed the support of Senegal, and by the Human Rights Council, in its resolution 15/9, which was adopted without a vote.

8. Furthermore, in its general comment No. 15, the Committee on Economic, Social and Cultural Rights defined the legal basis of the right to water as entitling everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. According to the Committee, an adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking and personal and domestic hygienic requirements.

9. In its statement on the right to sanitation, the Committee on Economic, Social and Cultural Rights also affirmed that, since sanitation is fundamental for human survival and for leading a life in dignity, the right to sanitation is an essential component of the right to an adequate standard of living, enshrined in article 11 of the International Covenant on Economic, Social and Cultural Rights. The Committee added that States must ensure that everyone, without discrimination, has physical and affordable access to sanitation in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.⁴

¹ The International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention of the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

² Explicit references to the rights to water and sanitation are made in the Convention on the Elimination of All Forms of Discrimination against Women, art. 14, para. 2; and the Convention on the Rights of the Child, art. 24, para. 2. The effective exercise of a number of other human rights is clearly related to the fulfilment of the right to water and sanitation, including the right to life, the prohibition of torture and other forms of cruel, inhuman or degrading treatment, the right to health, the right to education, the right to adequate housing and the right to food.

³ Explicit reference to the provision of water is made in article 14, para. 2 (c).

⁴ E/C.12/2010/1, para. 7.

B. National legal framework

10. The Constitution of Senegal of 22 January 2001 guarantees in the preamble thereto “equal access to public services for all citizens”. Title II, article 8, on civil liberties and the human person, and economic, social and collective rights, guarantees all citizens their individual fundamental freedoms, economic and social rights, as well as collective rights. Although it contains specific references to the right to health and the right to a healthy environment, the Constitution does not include specific provisions on the right to safe drinking water and sanitation.

11. The Constitution affirms in its preamble adherence to international human rights instruments adopted by the United Nations and the African Union. According to article 98 of the Constitution, ratified or approved treaties or agreements have, upon publication, an authority superior to that of laws, subject, for each treaty or agreement, to its application by the other party.

12. The Water Code (Code de l’eau, law No. 81-13 of 4 March 1981) establishes the main legal framework for the management and use of water resources in Senegal. The preamble to and article 2 of the Code state that water resources are public goods, and any exploitation of this resource must be authorized and subject to control and monitoring. Article 75 establishes that human consumption is the priority in the allocation of water resources.

13. The Law on the Public Service of Drinking Water and Sanitation (Loi sur le service public de l’eau potable et de l’assainissement, Law 2008-59 of 24 September 2008) regulates the services for drinking water supply and collective sanitation in urban and rural areas. Ultimate responsibility for both services remains under the authority of the central Government. However, the law lays down roles and responsibilities in situations of concession of these public services to a third party.

14. The Hygiene Code (Code de l’hygiène, Law 83-71 of 5 July 1983) establishes the sanitary rules for the public distribution of water and water installations, distribution work, tanks, wells and springs, and public and private cisterns. The Code does not lay down standards for water quality.

15. The Sanitation Code (Code de l’assainissement, Law 2009-24 of 8 July 2009) harmonizes the various regulations relating to sanitation. Furthermore, Decree 2011-245 of 17 February 2011 implements the Sanitation Code and regulates the discharge, flow, deposit, jet, burying and direct or indirect immersion of liquid waste. The Code also clarifies the legal framework for the management of pluvial waters.

16. A recent analysis found that the enforcement of the provisions of the Water Code was weak, while knowledge of the various legal instruments for water and sanitation among civil society and public officers is limited.⁵ The Special Rapporteur notes the need to ensure coherence between different legal instruments and to enhance awareness of existing norms. As detailed below, she also emphasizes the need to ensure that the legal and institutional frameworks guarantee an adequate regulation of water and sanitation services in accordance with human rights norms.

⁵ Comité de pilotage du livre bleu du Sénégal, “Livre bleu / Rapport pays: Sénégal”, October 2009, p. 22.

C. National human rights institution

17. Senegal has a national human rights institution, the Senegalese Committee for Human Rights (Comité sénégalais des droits de l'homme). According to Law 97-04 of 10 March 1997, the Committee is a non-jurisdictional organ defined as an independent institution mandated to consult, monitor, promote, dialogue and present recommendations on human rights-related matters.

18. Although mandated to report and make recommendations on cases of human rights violations, the Senegalese Committee for Human Rights has no explicit powers of investigation, and no specific mandate to receive or process individual complaints on human rights violations. According to an analysis of the justice sector in Senegal, the Committee is not consulted in the drafting of legislation on human rights issues, and its recommendations are often not implemented by the relevant authorities.⁶

19. Insufficient budgetary allocations and delayed disbursements further limit the capacity of the Senegalese Committee for Human Rights to ensure the necessary human and material resources for the performance of its core tasks. Consequently, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights recommended that the classification of the Committee should be downgraded from status "A" to "B" (where "B" denotes an institution not fully in compliance with the Paris Principles).⁷

20. The Special Rapporteur reiterates the call for urgently increasing financial support for the Senegalese Committee for Human Rights, given its role in monitoring the situation of human rights in the country. Reinforcing the monitoring and technical capacity of the Committee could promote accountability and raise awareness of economic and social rights, including the rights to water and sanitation. This would also give a voice to alleged victims of these human rights.

D. Institutional framework

21. At the time of the visit, the main institutions responsible for the provision of safe drinking water and sanitation were, respectively, the Ministry of Urban Development, Housing, Construction and Water (Ministère de l'urbanisme, de l'habitat, de la construction et de l'hydraulique) and the Ministry of Sanitation and Public Hygiene (Ministère de l'assainissement et de l'hygiène publique). The ministerial restructuring carried out at the inauguration of the new national Government on 4 April 2012 saw the transfer of the core responsibilities for the water and sanitation sectors to the newly established Ministry of Water and Sanitation (Ministère de l'hydraulique et de l'assainissement).

22. The fragmented distribution of responsibilities for water and sanitation issues among diverse governmental actors is often identified as one of the causes for inadequate planning and the slow progress witnessed in the promotion of the rights to water and sanitation. In this sense, the Special Rapporteur welcomes the unification of responsibilities for both sectors under a single ministry. Better coordination is vital for ensuring sustainable achievements.

⁶ Open Society Institute, "Sénégal : Le secteur de la justice et l'État de droit", 2008, p. 159. Available from www.afriMAP.org/english/images/report/AfriMAP-Senegal-Justice.pdf.

⁷ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, report and recommendations of the session of the Subcommittee on Accreditation, Geneva, May 2011.

23. In the Ministry of Water and Sanitation, the Urban Hydraulics Directorate (Direction de l'hydraulique urbaine) and the Rural Hydraulics Directorate (Direction de l'hydraulique rurale) are responsible for the design and implementation of the overall water policy in urban and rural contexts. The main responsibilities for the design and implementation of sanitation policies are concentrated in the Directorates of Urban Sanitation (Direction de l'assainissement urbain) and of Rural Sanitation (Direction de l'assainissement rural).

24. Since reform in the water sector started in 1995, the main responsibilities for urban water services have been delegated to the National Society for Water in Senegal (Société nationale des eaux du Sénégal), a State-owned company. It owns the water service assets and is responsible for investments under a 30-year concession contract with the State. It is also responsible for proposing water and sanitation tariffs to the Government, jointly with the National Office for Sanitation in Senegal (Office national de l'assainissement du Sénégal). Through the same sector reform, a private operator, Sénégalaise des Eaux, became responsible for operating the public water service in those urban areas. It is linked to the State of Senegal through a lease contract and to the National Society for Water through a performance contract. The concession agreement between the State of Senegal and Sénégalaise des Eaux is currently under assessment. The agreement, originally established for a period of 10 years, has been repeatedly extended since 2006 and will continue until the end of 2012.

25. The Exploitation and Maintenance Directorate (Direction de l'exploitation et de la maintenance) is responsible for the water distribution network in rural areas served by boreholes. After the adoption of the Law on the Public Service of Drinking Water and Sanitation in 2008, private operators represented by the borehole user associations (Associations d'usagers de forage) are entrusted with the management of these boreholes and given a fixed-term operating license by the Directorate.

26. Under the supervision of the Urban and Rural Sanitation Directorates, the National Office for Sanitation in Senegal is the main institution charged with investing in and operating both domestic and industrial wastewater and rainwater treatment facilities in urban centres on behalf of the State. Its activities are defined through a performance contract with the State.

27. The Ministry of Health is also involved in the promotion of better sanitary conditions through the Hygiene Directorate. The Directorate monitors the quality of drinking water and promotes activities to sensitize communities on hygiene standards.

E. Private sector involvement in the provision of water

28. The Government of Senegal is currently evaluating the conversion of the original 10-year lease agreement between Sénégalaise des Eaux and the State into a comprehensive concession of water services, possibly for a period of 30 years. Under the new comprehensive concession, the private sector would be responsible not only for managing and maintaining the urban infrastructure of water supply but also investing in its expansion.

29. The Senegalese experience of private sector participation in water supply was considered by the World Bank to be a successful example in the African context, given the increasing rates of water access and the reported improvements in efficiency.⁸ On the other

⁸ Vivien Foster and Cecilia Briceño-Garmendia (eds.), "Africa's Infrastructure: A Time for Transformation", International Bank for Reconstruction and Development / World Bank, 2010. p. 312. Available from http://siteresources.worldbank.org/INTAFRICA/Resources/aicd_overview_english_no-embargo.pdf.

hand, it is also recognized that the expansion of access to water was primarily ensured by investments made by the Government and international donors.

30. Civil society organizations commenting on the concession process⁹ further indicate that, despite progress achieved in urban access rates, some concerns remain unaddressed, such as the limited access to water in rural areas or the high cost of water in standpipes servicing poor communities. Moreover, these organizations expressed concerns at various stages of the process about the lack of transparency and public consultation in the current evaluation of the lease agreements. Given that investments in richer areas would offer better rates of return, the possible impact on future water tariffs and on the poorest communities of a full delegation of responsibility for investment in the water supply infrastructure to the private sector is a matter of significant concern.

31. With regard to a study on the participation of non-State providers in water and sanitation service delivery,¹⁰ the Special Rapporteur has stated that the international human rights framework does not prescribe either public or private management of these essential services. In her study, however, she underlined the fact that, regardless of the model chosen, States remain the primary duty-bearer for the realization of the human rights to water and sanitation. In this sense, she recommended that States should develop legal and policy instruments to ensure the progressive realization of the rights to water and sanitation, including, in particular, a focus on unserved and underserved areas. The Special Rapporteur also recommended that any decision to delegate service provision to third parties should be taken through a transparent and participatory process, and emphasized the importance of ensuring that a strong independent regulatory agency is in place to ensure that those managing water and sanitation services remain fully accountable to the public.

32. In this context, the Special Rapporteur considers that the current evaluation of the possible long-term concession of water supply services to the private sector must serve as an opportunity for Senegal to hold a broad public debate on the functioning of and gaps in water and sanitation services in the country. Moreover, regardless of the chosen modalities of concession to the private sector, further attention to the regulation of the water and sanitation sectors is crucial (see paragraphs 33 to 37 below), and Senegal must, at least, empower an independent monitoring body to ensure that both public and private providers deliver sanitation and water to all without discrimination, at affordable costs and with adequate quality.

F. Regulation of the water and sanitation sectors

33. Senegal does not have a single institution responsible for the regulation of the water and sanitation sectors. The Law on the Public Service of Drinking Water and Sanitation contains a provision for the institutionalization of an interministerial committee of monitoring and control charged with technical and financial contractual regulation in the delegated urban centres; however, such a body is not yet in place, because the provisions implementing the Law have not been enacted. Such a body might not, however, comply with human rights requirements of ensuring independent monitoring of the water and sanitation sectors.

34. Currently, the lease and performance contracts between the different institutions responsible for the water and sanitation sectors are the mainframe for their self-regulation.

⁹ Institut pour la citoyenneté et la consommation, “Le consommateur sénégalais face aux perspectives de modification du régime juridique du secteur de l’eau”, public conference, 2011.

¹⁰ A/HRC/15/31.

An analysis of the regulatory framework for the water and sanitation sectors in Senegal¹¹ indicated that regulation by contract contributed to ensuring that efficiency gains were achieved, tariffs increased to cost-recovery levels and investments made (albeit with some delays). The same report also pointed out, however, that “more powerful than the contracts themselves, the good relations between the parties enabled them to reach mutually acceptable solutions to unforeseen events, based on the spirit rather than the letter of the original contracts”; as conflicts emerged, they were resolved by negotiation and conciliation between Société nationale des eaux du Sénégal and Sénégalaise des Eaux, for example, rather than through a legal process. The author of the study also noted that none of these conciliation mechanisms functioned exactly as planned in the contracts. Under these circumstances, the perception was that decisions concerning the management of the water and sanitation sector were taken in relative isolation, and that the right of recourse for civil society was relatively limited, given that there were no interlocutors empowered to receive complaints and municipalities still did not play a strong role in the planning and regulation of water and sanitation services.

35. The Special Rapporteur considers that, even though the above-mentioned self-regulatory system has contributed to flexibility by providing informal solutions between public and private partners, the predominant informality may also have limited the transparency of the regulation process as well as the levels of accountability. Again, the Special Rapporteur underlines that transparency and accountability are core human rights principles that must guide the design and implementation of policies ensuring the fulfilment of the rights to water and sanitation, and may be enhanced through the establishment of a strong regulatory agency, independent of the public or private actors managing the water and sanitation sectors.

36. The current regulatory system also lacks an accessible channel for processing complaints regarding the many actors involved in the provision of water and sanitation. Although Sénégalaise des Eaux, for example, has consumer hotlines for consumers to register complaints, these channels only respond to the requests of its own consumers and exclude, for example, those not served by the company network. The lack of a focal point for the presentation of public complaints may lead to a permanent neglect of situations of unfair exclusion, in particular when those affected are families living in extreme poverty, without access to any other type of legal assistance.

37. Besides reforming the water and sanitation regulatory framework and establishing complaint channels, the promotion of accountability with regard to economic and social rights, including the right to water and sanitation, and the relevant training should require further sensitization of members of legal professions, including the judiciary, as most judges reportedly have very limited awareness of the relevant international human rights norms.

G. Water and sanitation policy strategies

38. Both strategic plans for poverty reduction (PRSP-I, 2003-2005 and PRSP-II, 2006-2010) include the promotion of access to drinking water and sanitation as core objectives of the strategy relating to the improvement of social services.

¹¹ Sophie Tremolet, “Case study on Senegal’s water and sanitation sector economic regulation”, 2006, p. 2. Available from www.tremolet.com/publications/case-study-senegals-water-and-sanitation-sector-economic-regulation.

39. Between 1996 and 2004, the *Projet sectoriel eau* was implemented in order to provide water to the Dakar region, aiming particularly at strengthening institutional capacities, as well as the management plan and regulation of the water sector. Since 2005, the main national policy strategy, which focuses exclusively on the development of the water and sanitation sectors, is outlined by the Millennium Safe Drinking Water and Sanitation Programme (*Programme d'eau potable et d'assainissement du millénaire*).

40. The Millennium Safe Drinking Water and Sanitation Programme provides a national programmatic approach to coordinate different actors involved in the water and sanitation sectors (including national and local Governments, international cooperation agencies and civil society) with the aim of meeting the Millennium Development Goal targets for water supply and sanitation by 2015. In the Programme, it was noted that, in 2005, 25 per cent of the population had no access to safe drinking water, while 65 per cent did not have access to adequate sanitation.¹² In this context, the Programme aims to increase access to safe drinking water to 82 per cent of the rural population and 98 per cent of the urban population; it also aims to ensure sanitation to 59 per cent of the rural population and 78 per cent of the urban population. Programme initiatives include investments in the improvement and expansion of infrastructure for water supply and sanitation, and the establishment of a framework for water and sanitation policies in rural areas, including through decentralization and enhanced monitoring and evaluation.

41. The Special Rapporteur acknowledges that the policy framework provided by the Millennium Safe Drinking Water and Sanitation Programme was instrumental in the alignment of water and sanitation initiatives. The Programme Coordination Unit, created in 2005, played an important role as a convener of the different Government agencies working on water and sanitation. However, as already mentioned above, coordination may and should be further enhanced with the recently announced unification of the water and sanitation portfolios under a single ministry.

III. Situation of safe drinking water and sanitation

42. The lack of access to safe drinking water and sanitation is a major concern for West and Central Africa. In 2008, it was estimated that approximately 39 per cent of the population had no access to safe drinking water in the region, and only 27 per cent had access to improved sanitation.¹³ Most West and Central African countries are not expected to achieve the Millennium Development Goals target of reducing the proportion of people without sustainable access to safe drinking water by half by 2015, and none is expected to reach the target on basic sanitation.

43. In comparison with its neighbours, however, Senegal has higher rates of access to water and is on track to achieve the related Millennium Development Goals target. Nonetheless, many Senegalese still have limited or no access to water and to improved sanitation. The State faces important technical and financial challenges if it is to ensure that this situation is remedied.

44. According to data from the Millennium Drinking Water and Sanitation Programme (calculated through an inventory of functioning water facilities and an estimated number of users), Senegal is on track to meet the national targets for drinking water, as the access rate

¹² See the Programme website at www.pepam.gouv.sn/ensemble/index.php?rubr=vue.

¹³ See www.unicef.org/wcaro/overview_2555.html.

stood at 85 per cent at the end of 2008;¹⁴ however, estimates by the Joint Monitoring Programme, calculated through a linear regression of household surveys, show that the country had an overall access rate of 69 per cent in 2008, and would probably miss the target of 81 per cent in 2015.

45. On the other hand, sanitation is still inaccessible to most Senegalese. The Joint Monitoring Programme for Water Supply and Sanitation estimated that at least 17 per cent of the population still practiced open defecation, and almost half the population had no acceptable sanitation solutions in 2010.¹⁵ The pace of progress in sanitation is insufficient to meet the country's needs, and estimates by both the Millennium Drinking Water and Sanitation Programme and the Joint Monitoring Programme indicate that Senegal is unlikely to reach its Millennium Development Goal target for sanitation.

46. While recognizing progress in the indicators of access to water, the Special Rapporteur still points out that such challenges as limited access to water and sanitation in rural areas, the high cost of water and sanitation for some of the poorest groups, limited water quality and insufficient investments in sanitation continue to undermine the enjoyment of the right to water and sanitation in Senegal.

A. Limited access to water in rural regions

47. Overall progress in access to water in Senegal is certainly the most important achievement of recent investments in this sector. It is important to recognize, however, that most progress made was concentrated in urban areas (mainly in Dakar), and some rural areas continue to be neglected. Those responsible for the poverty reduction strategy have already recognized the disparity in access between Dakar and the rest of the country, noting that, in 2004, there were significant differences in terms of private connections between the Dakar region (75.7 per cent) and other urban centres (57.1 per cent).¹⁶

48. Broad regional disparities in the rate of water access can be noted, ranging from 50 per cent for the Kolda region to 80 per cent for the Thiès region. Disparities may also be noted between rural communities within the same region. These disparities are related to an inequitable allocation of public and donated financial resources and to different hydro-geological and sociological constraints.¹⁷

49. Since the launch of the Millennium Safe Drinking Water and Sanitation Programme, greater financial investments have been made in rural areas. Nonetheless, further investments are required to meet the adopted targets. Interventions have often included the construction of small piped systems to reduce the widespread use of unprotected water sources. The transfer of responsibilities for the operation of rural boreholes to user associations, initiated with the adoption of the Law on the Public Service of Drinking Water and Sanitation, is credited with improvements in the condition of the infrastructure and the rate of water network expansion. On the other hand, it has also been noted that the extension of the water supply in rural areas has been marked by inconsistencies, owing to

¹⁴ "Water Supply and Sanitation in Senegal: Turning Finance into Services for 2015 and Beyond", African Ministers' Council on Water country report, 2011, p. 10. Available from www.wsp.org/wsp/sites/wsp.org/files/publications/CSO-senegal.pdf.

¹⁵ WHO / UNICEF Joint Monitoring Programme for Water Supply and Sanitation, Progress on Drinking Water and Sanitation, 2012 update (available from www.wssinfo.org/fileadmin/user_upload/resources/JMP-report-2012-en.pdf) p. 50.

¹⁶ Document de stratégie de réduction de la pauvreté II (DSRP 2) 2006-2010, para. 62. See www.dsrp-senegal.org/contenu.htm#telecharger.

¹⁷ Comité de Pilotage du Livre Bleu du Sénégal (see footnote 5), p. 28.

the involvement of different actors and the significant differences in the procedures used for designing and implementing local interventions.¹⁸

50. Plans for the future expansion of the rural water supply include promoting the participation of private actors in the management of all boreholes and redirecting State efforts to monitoring and regulatory activities, and providing back-up support. The Special Rapporteur notes that, even if the increased involvement of user associations may have improved efficiency in the management of boreholes, attention is required to ensure that greater private sector involvement does not result in an increase in tariffs or contribute to the already noted lack of coordination and consistency among the needed investments in the rural water supply across the country.

B. Affordability of water and sanitation

51. Affordability of water and sanitation is a core concern in Senegal, given that half the population is estimated to live beneath the poverty line¹⁹ and therefore has limited capacity to afford the potential costs of these essential services. In this context, one of the main objectives of the Millennium Safe Drinking Water and Sanitation Programme is the maintenance of affordable rates for the most disadvantaged populations while ensuring the sustainability and quality of services.

52. The Government has succeeded in avoiding any increase in water tariffs for domestic clients since 2003. In 2006, the authorities applied a price increase only to State-run ministries, departments and agencies (the largest clients of Sénégalaise des Eaux), sparing domestic users. In the context of the recent global financial crisis, however, costs for domestic water use might need to be revised in the light of public budget limitations.

53. The main initiative in place to ensure water affordability is a “social connections” programme. Implemented over the past 15 years with the support of international cooperation, the programme is credited with having greatly contributed to the increasing number of households connected to the national water network. According to estimates, some 70 per cent of all additional connections made between 1996 and 2008 were made possible by the initiative. The programme provides poor households with small-diameter private connections free of charge, and can supply up to 20m³ of water per household every two months at subsidized rates (also called social tariffs).²⁰

54. The beneficiaries of “social connections” are identified through a partnership comprising the ministries responsible for water and urbanism, Société nationale des eaux du Sénégal, Sénégalaise des Eaux and a non-governmental organization. Société nationale des eaux du Sénégal and the civil society partner are responsible for identifying potential geographical areas to be served and eliciting preferences from community leaders for improved water and sanitation. To be eligible for a connection, (a) applicants cannot be wealthy; (b) a house must exist on the lot that is to be served; (c) the house must be a residence (not a business); (d) the connection cannot cross private property; (e) the applicant must have a title to his or her house and land; (f) a pipe of the water network must be located within 20 metres of where the connection is made to serve a single house, or within 100 metres to serve the houses of at least four applicants; and (g) if approved for a

¹⁸ “Water Supply and Sanitation in Senegal” (see footnote 14), p. 19.

¹⁹ Mise en oeuvre des objectifs du millénaire pour le développement : progrès réalisés et perspectives pour 2015. Ministère de l'économie et des finances. Available from www.undp.org/sn/index.php?option=com_docman&task=doc_download&gid=229&Itemid=.

²⁰ See www.sde.sn/servbsocial.htm.

connection, the applicant must pay a security deposit of approximately \$19 against future water consumption charges (meter is, however, provided free of charge).

55. Despite the acknowledged role of the programme in the expansion of urban water connections, assessments have suggested that the programme does not always reach the poorest groups in Senegal because of its eligibility criteria,²¹ which require stable neighbourhoods, where residents have established themselves and secured land tenure. Most of those living in extreme poverty live in informal settlements that can never qualify for social connections. These groups frequently rely on *bornes fontaines*, standpipes intended to guarantee a water supply where piped networks do not yet exist, and pay more for the water they consume; the official tariff for water from standpipes is in fact substantially higher than that charged for those benefiting from social connections (315.09 CFAF per m³ as against 186.32 CFAF per m³). Moreover, poorer consumers also have to pay an overhead to the licensed vendor or reseller managing the standpipe. Overhead costs can easily double the original cost of water; furthermore, the authorities acknowledge that how such costs are imposed on communities is not monitored.

56. The Special Rapporteur visited the community of Baraka in Dakar, served by a standpipe, and talked to residents using these sources. During her visit, she confirmed the very high costs paid by residents, who had inhabited the area for more than 10 years but did not benefit from social connections owing to disputed land titles in the area. Besides having to carry the water from the standpipes to their residences, the community habitually spent up to four times more than wealthier residences that benefited from social connections.

57. Another concern regarding the cost of water is the fact that water tariffs are calculated on the basis of consumption, given that higher prices are charged to households with a social connection using more than 20m³ every two months. Poorer households often comprise numerous members of the same family, and the amount of water consumed daily by each resident needs to be drastically limited in order not to exceed the limit imposed to be entitled to social tariffs; for example, residents in a house hosting a family of 10 members had to consume no more than 33 m² of water per day, which is clearly below the minimum quantity recommended by the World Health Organization (WHO) in its guidelines.²² The Special Rapporteur visited various residences in Ngor, Guédiawaye and Rufisque, where the water connection tap was closed with a padlock in order to control consumption. Women and children complained about the lack of water for personal hygiene and housekeeping; in some cases, the key to the lock was held by the male head of the household.

58. Even though the Government of Senegal has already acknowledged the disproportionate water costs imposed on poorer residents living in informal settlements²³ and declared its intention to revise the strategies used to ensure water affordability, no revised measures have been adopted to date. The Special Rapporteur underlines the urgency of revising the targeting methods and the costing procedures in the case of social tariffs. At a minimum, it is urgent that the unfair costs imposed at standpipes known to serve the poorest groups be controlled.

²¹ See Clarissa Brocklehurst and Jan G. Janssens, "Innovative contracts, sound relationships: urban water sector reform in Senegal". Water supply and sanitation sector board discussion paper series, January 2004, the World Bank Group (available from www.partnershipsforwater.net/psp/tc/TC_Tools/040B_Contract%20Senegal.pdf), p. 35 and Sylvie Debomy et al, Pro-Poor Subsidies for Water Connections in West Africa, World Bank, 2005.

²² E/C.12/2002/11, para. 12 (a).

²³ Document de stratégie de réduction de la pauvreté II (see footnote 16), para. 62.

C. Water quality

59. Despite improvements in the capacity and efficiency of water supply systems serving urban areas, in some regions of Senegal the quality of water is still too low for human consumption owing to natural causes and pollution.

60. An analysis of the impact of water sector reform carried out by the Government noted that the quality of water and the efficiency of service delivery in urban sectors had improved in recent years. Assessments also indicate that the bacteriological quality and physiochemical water quality targets set in the performance contract with Sénégalaise des Eaux were mostly met.²⁴

61. Nonetheless, water quality remains a major issue in some suburbs of Dakar, and in particular in Bassin Arachidier, in the centre of the country, where salinity levels and the fluoride, chloride and iron content of the water frequently exceed WHO standards. Isolated areas in the south also present high levels of chemical pollution in the groundwater table.²⁵ The Government has acknowledged the inadequate quality of the water provided in some areas of the country, and estimates that 21 per cent of the population using motorized boreholes in rural areas consume water with a high fluoride content, and that 15 per cent consume water with high salinity levels.²⁶

62. Poor water quality has a significant effect on health standards. For example, a recent epidemiological study in rural communities where 70 per cent of the population had access to water with high levels of fluoride concluded that 83.6 per cent of those surveyed suffered from dental fluorosis, while 52.7 per cent had clinical symptoms indicating possible development of skeletal fluorosis.²⁷

63. A considerable proportion of the population, with no access to or unable to afford water provided by the main network often rely on polluted or untreated water sources, such as rivers, or water extracted by homemade pumps or through private standpipes.²⁸

64. Investments in water purification, such as the development of a defluoridation unit in Thiadiaye, are proceeding, but they do not fully meet the needs, as noted above. Moreover, the lack of regular monitoring efforts limits the possibility of making a more accurate assessment of the full impact of low-quality water and the outcome of efforts to address the issue. In this regard, the National Hygiene Service, in partnership with UNICEF, is investing in efforts to ensure more regular and accurate quality monitoring throughout the country.

65. The Special Rapporteur underlines the fact that, in order to meet human rights standards, water must be safe, namely, of such a quality that it does not pose a threat to human health. In this sense, it is crucial that further investments be made in purification, pollution control and quality monitoring. The Special Rapporteur also believes that the estimates of access to water in Senegal (when assessing progress towards the Millennium Development Goals targets) should be revised, given the limited quality of the water

²⁴ Brocklehurst and Janssens, "Innovative contracts, sound relationships" (see footnote 21).

²⁵ "Water Supply and Sanitation in Senegal" (see footnote 14), p. 23.

²⁶ Programme d'eau potable et d'assainissement du millénaire, Revue annuelle conjointe du secteur de l'eau potable et de l'assainissement, April 2011 (available from http://www.pepam.gouv.sn/docs/Doc_Prepa_PEPAM_RAC2011.pdf), p. 7.

²⁷ Caritas Sénégal, Enquête épidémiologique: impact du fluor ingéré via les eaux de boisson sur la santé des populations de 5 communautés rurales des départements de Fatick, Mbour. May 2009, p. 6. Available from www.pepam.gouv.sn/docs/EnqFluor_RAPPORT_VALIDATION_%20mai09.pdf.

²⁸ Institut pour la citoyenneté et la consommation, "Le consommateur sénégalais" (see footnote 9), p. 4.

available in some regions. As explained by the Special Rapporteur in her report on how human rights can contribute to the realization of the Millennium Development Goals,²⁹ the use of household survey data as an indicator of access to safe drinking water should be complemented by other approaches, such as periodic surveys of water quality sample surveys.

D. Access to sanitation and financial support for the sanitation sector

66. Statistics from the Joint Monitoring Programme indicate that, despite some progress, access to improved sanitation facilities continues to be limited across the country, particularly in rural areas. In accordance with the Millennium Safe Drinking Water and Sanitation Programme, in urban areas the rate of access rose from 56.7 per cent in 2004 to 63.1 per cent in 2010. In the same period, access in rural areas rose from 26.7 per cent in 2004 to 29.6 per cent in 2010.³⁰

67. Large disparities between urban and rural areas are clear in the rates of access to sanitation. Coordinated efforts have led to an increase in access to sanitation in Dakar (responding in part to the continuous population growth in the capital). On the other hand, progress in access to sanitation in rural areas has been hampered by the limited coordination of activities conducted by the actors involved in rural water and sanitation sectors and by the limited capacity of the Sanitation Directorate to exercise its potential leadership. The high cost of the facilities required, that difficulty of obtaining building materials in remote communities and the limited willingness of users to meet the potential costs for new sanitation facilities are also factors possibly contributing to the delay in expanding rural sanitation.

68. Despite some progress in the promotion sanitation in urban and rural areas, a history of insufficient investments in the sector is considered to be one of the main reasons for the limited degrees of access. After the sector reform of 1995, when sanitation services were placed under the responsibility of the National Office for Sanitation, these services were somewhat neglected and did not receive much funding, even if sanitation was still a policy priority.³¹ With limited funding available, the expansion of the sanitation system has been further delayed by the need to cover regular maintenance costs. Lastly, lack of public awareness of the benefits of sanitation interventions has been identified as a long-standing obstacle to progress in the sector, as political leaders and international donors may often see limited visibility when investing.

69. The Government of Senegal has repeatedly reiterated its commitment to increase financial support for sanitation: in 2008, it pledged to allocate 0.5 per cent of its investment budget to sanitation, while in 2010, it pledged to allocate more than \$24 million a year to the water and sanitation sectors between 2011 and 2015, giving sanitation an increasingly important priority in budget allocation. There are, however, concerns that the State will be unable to meet its commitments, as budget limitations brought on by the recent financial crisis have severely restricted its recent investment capacity; on 23 April 2010, at the high-level meeting of Sanitation and Water for All, in Washington, D.C., the Government stated that only 25 per cent of the original budget for rural sanitation had been disbursed between 2006 and 2009. In this context, ensuring complementary international financial aid is crucial for the improvement of water and sanitation in Senegal. In fact, international development aid funding is reportedly responsible for more than 85 per cent of investments

²⁹ A/65/254, para. 25.

³⁰ Revue annuelle conjointe (see footnote 26), p. 10.

³¹ Tremolet, "Case study" (see footnote 11).

in the water and sanitation sector. Two thirds of external funding, however, comes in the form of loans, and repayment is more difficult in the case of sanitation given its low profit return.

70. The Special Rapporteur underlines the need for both the State and the international community to honour their commitments to finance both the water and sanitation sectors in Senegal. She emphasizes the fact that States are obliged to use the maximum of available resources when working to realize progressively the rights to water and sanitation³² and cannot justify neglect of these obligations by asserting that they lack the necessary funds or human resources.³³ Rather, States are expected to mobilize resources from those living within their borders and, where necessary, the international community.³⁴ Countries in a position to assist through international cooperation have an obligation to provide support in a manner consistent with human rights principles.³⁵

E. Affordability of sanitation

71. As the Special Rapporteur has pointed out above, concerted efforts are required to ensure that water and sanitation are affordable for most of the population. Most initiatives promoting sanitation in both rural and urban areas are highly subsidized.

72. In urban areas, the Sanitation Programme for Peri-urban Areas of Dakar (Programme d'assainissement autonome des quartiers périurbains de Dakar), the first Government-led programme designed to provide support for on-site sanitation and semi-collective sanitation solutions in Senegal, is credited to have reached 25 per cent of the city's peri-urban population.³⁶ The initiative targeted areas with a high incidence of poverty in the peri-urban zone of the Dakar, where it was deemed too expensive or impractical to extend conventional sewerage networks. Financed with international aid, the programme involved the provision of sanitation services and included household sanitation, small-bore sewers, community sanitation (public toilets), school sanitation and sludge treatment facilities. The sanitation options offered included on-site excreta disposal and semi-collective sewerage systems. Households benefiting from the initiative are required to make a financial contribution, but most hardware and software costs are subsidized. Poor areas were geographically targeted. Within communities, community leaders assisted the National Office for Sanitation in Senegal and a non-governmental partner organization in the identification of households and the design and implementation of solutions.

73. An assessment of the programme conducted by the World Bank indicated that it had been successful in mobilizing communities, focusing attention on on-site sanitation and in offering different service options suited to the various needs of the communities assisted. At the same time, the assessment found that the subsidies provided needed to be increased, and that a shortage of funding had put the programme on hold, leaving interested

³² International Covenant on Economic, Social and Cultural Rights, art. 2.

³³ Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 10.

³⁴ Radhika Balakrishnan, Diane Elson and Raj Patel, "Rethinking Macro Economic Strategies from a Human Rights Perspective", February 2009), p. 8. Available from <http://www.cwgl.rutgers.edu/globalcenter/publications/whymes2.pdf>.

³⁵ Charter of the United Nations, Art. 56; International Covenant on Economic, Social and Cultural Rights, art. 11; Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 10.

³⁶ "Water Supply and Sanitation in Senegal" (see footnote 14), p. 29.

households unserved.³⁷ Another independent evaluation of the programme highlighted the fact that the coverage achieved was much more limited than claimed by the implementing agencies, as several systems were not fully operational owing to serious deficiencies in implementation at the local level. Households benefiting from the programme and sometimes connected to the newly installed networks were therefore not properly served and, in some cases, even faced serious health hazards owing to the pollution generated by malfunctioning systems.³⁸

74. The Special Rapporteur visited communities served by a semi-collective sanitation system in Ngor and Rufisque. Residents acknowledged the improvements made since the installation of a new sanitation system, and it was clear the project had focused the attention of communities on sanitation. Problems in the functioning of these systems, such as frequent blockages and inactive pumping stations, were however, visible at the time of the Special Rapporteur's visit. The pollution generated by unserved residents in the areas surrounding the beneficiaries of the new system also seemed to be undermining the improvements, particularly in areas frequently affected by flooding. In all visited areas, residents stated they had no clear idea about the future of the programme, and underlined the urgency of extending it to the surrounding areas. In one of the communities visited, even though a good number of residents had already made their direct financial contribution to the system, activities were paralysed and had never resumed owing to the end of project funding.

75. The Special Rapporteur acknowledges the Sanitation Programme for Peri-urban Areas of Dakar as an innovative solution for the serious obstacles facing the promotion of sanitation in urban areas affected by poverty with very limited infra-structure. She also recognizes the importance of actively engaging the community in the development and implementation of solutions; however, she urges the Government and its partners to further evaluate the effectiveness of the installed system, improve its maintenance and fully conclude all projects initiated. It is also essential that the residents of served and unserved communities be informed about future plans for the programme or when alternatives are being designed.

76. For those not connected to a collective or semi-collective sewage system, the septic tank is the most common alternative for sanitation, in both rural and urban areas of Senegal. The cost of emptying the tank is often high for those living in poverty. In some areas, particularly in rural zones, septic tanks may be emptied manually, though in deplorable hygiene and working conditions. The Special Rapporteur was informed about prisoners and former prisoners being recruited to provide these services as they constituted a cheap labour force. Moreover, residents in the communities visited in the region of Dakar informed the Special Rapporteur that the sanitation fee was included in their water tariffs even though their homes were not connected to the sanitation system. In such cases, the residents also had to pay for the costs of maintenance of their individual septic tanks. Expenses for water and sanitation in some very poor households could easily exceed 5 per cent of all household income, and in some it almost reached 20 per cent.

77. In the light of the above situation, the Special Rapporteur calls attention to the need to carefully monitor the services offered to maintain septic tanks, and the urgency of

³⁷ WSP Sanitation Global Practice Team, "Financing on-site sanitation for the poor: a six country comparative review and analysis", January 2010 (available from www.wsp.org/wsp/sites/wsp.org/files/publications/financing_analysis.pdf), pp. 122-125.

³⁸ Guy Norman, Pippa Scott, Steve Pedley, "The PAQPUD settled sewerage project (Dakar, Senegal): Problems arising, lessons learned", *Habitat International*, vol. 35, No. 2, April 2011, pp. 361-371.

identifying and rectifying all situations where residents are charged for sanitation services they have never received.

F. Awareness-raising

78. Besides investments in the development of collective and semi-collective and individual infrastructures, the promotion of the right to sanitation also often requires investment in the promotion of behavioural changes through awareness-raising efforts.

79. An important initiative in this regard is the Community-led Total Sanitation Programme (Programme d'assainissement total piloté par la communauté). Piloted with the support of UNICEF, the Programme promotes the active participation of communities in identifying problems in their sanitation conditions and in developing low-cost sanitation technologies to respond to them. To date, the Programme has covered more than 309 villages in the Tambacounda, Kolda, Sédhiou, Kaffrine, Fatick and Kaolack regions. More than half of the villages reportedly achieved the complete elimination of open-air defecation.³⁹ The initiative replicates a methodology developed by non-governmental organizations in Bangladesh. The Special Rapporteur had noted the positive impact of a similar initiative to eliminate open-air defecation in Bangladesh in a report on her mission to that country.⁴⁰

80. The approach of a community-led sanitation programme is particularly interesting, because it fully integrates efforts to develop sanitation improvements in remote communities with efforts to promote hygiene education and to stimulate the demand for sanitation. In Kaolack, the Special Rapporteur visited communities that participated in the programme and witnessed clear improvements in the sanitation conditions of participating households. Residents also reported the positive impact of improved sanitary conditions on the health of children.

IV. Conclusions and recommendations

81. Senegal has repeatedly reaffirmed its commitment to the realization of the rights to water and sanitation. Since the outset of reforms to the water and sanitation sector in 1995, the country has achieved progress, particularly in the expansion of sources for the provision of safe water. On the other hand, it is clear that the efforts made to date have not sufficiently addressed the vast challenges that continue to impede the full enjoyment of the rights to water and sanitation by most of the population. Despite important efforts to reform regulations and to incentivize private investment in the expansion of the water and sanitation sector, transparency and accountability must be improved, in particular as the country considers the long-term concession of water supply services to private partners. Despite having invested in subsidies and important targeted efforts to ensure access of poor groups to water and sanitation, assessments indicate that adjustments will be required to secure better results and to avoid the exclusion of the most vulnerable. Despite the commitments to enhance investment, particularly in sanitation, financing by external and domestic sources is still clearly unsatisfactory and sometimes erratic.

³⁹ UNICEF/Senegal, "Assainissement total piloté par la communauté; Célébration villages défécation à l'air libre (FDAL) : Eveil des consciences". Available from www.communityledtotalsanitation.org/sites/communityledtotalsanitation.org/files/WASH_FDAL_Success_Story_Fr.docx.

⁴⁰ A/HRC/15/55, paras. 54 and 73.

82. As a new Government is established, Senegal will have a good opportunity to discuss the efforts required to tackle all of the above concerns in accordance with its human rights obligations. In this regard, the Special Rapporteur recommends that the Government strengthen institutional and legal frameworks by:

(a) Revising the legal and institutional framework for the supply of water and sanitation in order to ensure better coordination of multiple efforts in both sectors; in particular, it should ensure that the regulatory framework for public and private sector participation in the provision of water and sanitation fully reflects human rights standards;

(b) Establishing an independent monitoring body responsible for ensuring that public or private services providing water and sanitation are available, safe, acceptable, accessible and affordable, and ensuring that it provides accessible channel for processing individual complaints regarding the provision of water and sanitation;

(c) Ensuring transparency and broad public participation in the ongoing revision of contracts regulating the concession of services of the water supply to the private sector;

(d) Ensuring the resources necessary for the adequate functioning of the Senegalese Committee for Human Rights;

(e) Ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

83. The Special Rapporteur also recommends that the Government of Senegal further expand access to safe drinking water and sanitation by:

(a) Ensuring the financial resources necessary to increase access to both water and sanitation through domestic and international sources; particular attention must be paid to the fulfilment of financial commitments with regard to the sanitation sector;

(b) Ensuring better coordination and coherence in the implementation of initiatives aimed at expanding access to water and sanitation in rural areas.

84. The international community must uphold and enhance its commitments to assist Senegal. Donors must ensure the predictability, coordination and long-term sustainability of initiatives supporting the expansion of water and sanitation sectors.

85. The Government should ensure that water quality meets the international standards required for safe human consumption by further investing in the purification of water sources, the control of all forms of environmental pollution and the regular monitoring of quality throughout the country.

86. The Government should furthermore ensure the affordability of water and sanitation by:

(a) Making sure that priority is given to communities living in extreme poverty when designing and implementing any initiative aimed at expanding access to water and sanitation in Senegal;

(b) Revising existing initiatives aimed at ensuring affordable water and sanitation in order to eliminate inadequate eligibility criteria, the unfair exclusion of beneficiaries and any distortions or mistakes in the application of water and sanitation tariffs;

(c) Improving the financial stability of all initiatives aimed at promoting affordable water and sanitation; in this regard, the Government should take measures

to ensure that information on planned and implemented initiatives is available and accessible to potential beneficiaries.

87. The Special Rapporteur also recommends that the Government invest in awareness-raising by incorporating the Community-led Total Sanitation Programme into its overall national strategy for the promotion of sanitation in rural areas, and replicating the initiative in other regions of the country.
