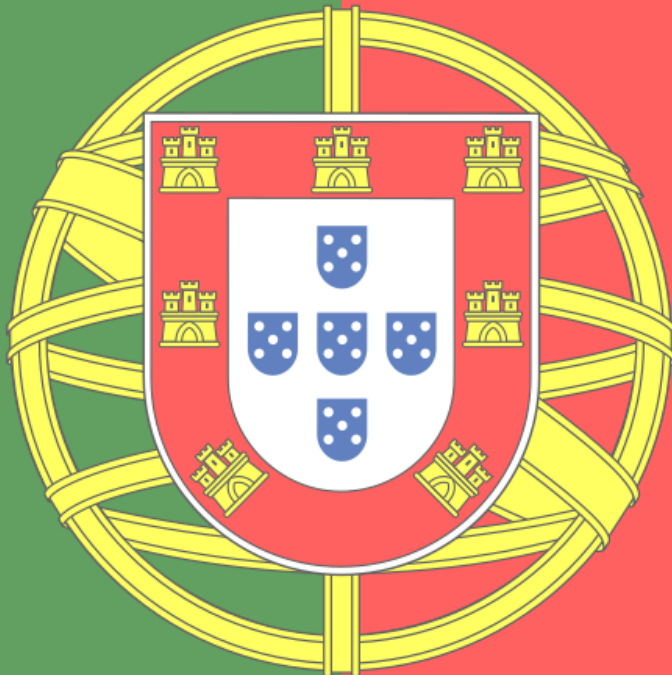


SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS TO  
WATER AND SANITATION,  
MR LÉO HELLER



**FOLLOW-UP REPORT  
SUMMARY**

OFFICIAL COUNTRY VISIT TO PORTUGAL,  
5 TO 13 DECEMBER 2016



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# FOLLOW-UP REPORTS

The Special Rapporteur undertook his official visit to Portugal at the invitation of the Government from 5 to 13 December 2016. The report on the visit (A/HRC/36/45/Add.1) was presented at the thirty-sixth session of the Human Rights Council in 2017. Following the conclusion of the mission, 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 13 December 2016. The report of the official visit (A/HRC/36/45/Add.1) was presented to the Human Rights Council in September 2017.

In undertaking the present follow-up report, 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 create a picture of the Government's current actions, inactions and progress. To support this research enterprise, questionnaires to the Government s were sent on 26 January 2018. Whilst no response from other stakeholders was received, the Government of Portugal submitted a written response to the questionnaire on 18 March 2018, along with the following documents:

- **Decree-Law n.º 147/2017**, de 5 de dezembro (5/12/2017), introduces a regime to automatically apply social tariffs
- **Resolução n. 224/2016**, recommending that the government improve citizens' access to social tariffs for public water supply, sanitation and waste collection services.
- **Resolução n. 225/2016**, recommending that the government establish a mechanism to automatically transmit information on social tariffs paid by users for energy bills to water and sanitation utilities.

The Special Rapporteur thanks the Government of Portugal for responding to his follow-up questionnaire and attaching documents that have been useful in developing this report.

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 ongoing 3) limited progress, 4) progress not started, 5) unable to assess due to lack of information and 6) retrogression.



# LEGAL, INSTITUTIONAL AND POLICY FRAMEWORK

**RECOMMENDATION 1: “Adopt legal provisions that recognize the human rights to water and sanitation at the national level and in particular, recommends that the parliament approve the bill providing for legal recognition of the human rights to water and sanitation at the national level.” (A/HRC/36/45/Add.1, para. 82(b))**

Progress  
not Started

Whilst the Special Rapporteur notes that the Portuguese legislative framework has in place certain provisions that address part of the human rights to water and sanitation and human rights principles, he reiterates that explicit recognition of the human rights to water and sanitation in national law is vital.



The Special Rapporteur urges Members of Parliament to adopt legislation on the legal recognition of the human rights to water and sanitation.

**RECOMMENDATION 2: “Improve coordination, dialogue and exchange of information between all levels of Government in relation to access to water and sanitation.” (A/HRC/36/45/Add.1, para 82(a))**

Limited  
Progress

The Special Rapporteur notes that the Portuguese Government has reflected on his recommendation and clearly understands the need for greater cooperation and coordination between the different government actors within the water and sanitation sector, namely through holding an event and a roundtable discussing SDG6, and attempting to form a Standing Committee. However, he regrets that the information received is incapable of showing the effects of the Government’s putative improvements and whether they have been, or are, capable of defragmenting responsibility and promoting better information exchange and dialogue, within the sector.



The Special Rapporteur reaffirms his recommendation to the Government to take concerted efforts to improve coordination, dialogue and exchange of information between all levels of Government in relation to the human rights to water and sanitation. As an example, monthly or quarter coordination meetings involving all stakeholders in the water and sanitation sector can be a start to improve coordination and exchange of information.

**RECOMMENDATION 3: “Stipulate explicit legal provisions that oblige local authorities and the autonomous governments of Azores and Madeira to respect, protect and fulfil the human rights to water and sanitation.” (A/HRC/36/45/Add.1, para 82(c))**

Progress  
not Started

The Special Rapporteur restates his recommendation that the central government should legally oblige local governments, and the autonomous governments of Azores and Madeira, to respect, protect and fulfil the rights to water and sanitation.





**RECOMMENDATION 4: “Develop and undertake a comprehensive assessment of the institutional arrangements in the water and sanitation sector from a human rights perspective and take measures to ensure that current tensions in the sector do not jeopardize the realization of the human rights to water and sanitation for any of the Portuguese population” (A/HRC/36/45/Add.1, para. 82(f))**

Limited  
Progress

Whilst the Government is seeking to reduce tensions in the area of water abstraction, in light of the lack of information regarding action taken in other areas of water and sanitation provision, the Special Rapporteur repeats his recommendation that the Government of Portugal should undertake a comprehensive assessment of all of the institutional arrangements for water and sanitation present within the State with a view to addressing harmful tensions and promoting cooperation and coordination therein.



**RECOMMENDATION 5: “Incorporate the principles of equality and non-discrimination in the enjoyment of the human rights to safe drinking water and sanitation, ensuring sustainability of the services in the institutional framework of the Portuguese water sector and possible future reforms.” (A/HRC/36/45/Add.1, para. 82(g))**

Progress  
On-Going

In responding to the Special Rapporteur’s recommendation, the Government noted that “there have been significant advancements in the area of equality and discrimination in Portugal since the adoption of the new anti-discrimination law. Law n. 93/2017 entered into force on the 1st September 2017 establishing the legal framework for the prevention, prohibition and combat of discrimination based on racial and ethnic origin, colour, nationality, descent and place of origin”.

The Special Rapporteur wishes to reaffirm the importance of the direct incorporation of the principles of equality and non-discrimination into the institutional framework of water and sanitation provision in order to better ensure that these principles are always taken into account during decision-making. He therefore restates his recommendation and looks forward to further progress being made to combat discrimination in access to water and sanitation services.



**RECOMMENDATION 6: “Include in the National Roma Communities Integration Strategy references to access to safe drinking water and sanitation and measures that need to be taken to ensure such access.”**

Progress  
not Started

The Government’s response regarding the current the National Roma Communities Integration Strategy (2013-2020) did not make mention of the water and sanitation needs of Roma communities in Portugal. The Strategy is due to end in 2020, however currently no information is available regarding whether a new strategy is to be drawn up and, if so, what this will contain.

The Special Rapporteur reiterates his recommendation to include reference to safe drinking water and sanitation in the National Roma Integration Strategy, and urges the Government to ensure that the rights to water and sanitation for all Roma people in Portugal are respected, protected and fulfilled.





**RECOMMENDATION 7: “Urge the Water and Waste Services Regulation Authority (“ERSAR”) and the Water and Waste Services Authority for Azores to ensure that their policies, procedures and activities comply with the international human rights obligations of Portugal.” (A/HRC/36/45/Add.1, para. 82(r))**

Progress  
not Started

The Special Rapporteur thanks the Government for outlining the processes of ERSAR and how these seek to take into account the elements of the normative content of the human rights to water and sanitation. He reminds the Government, however, that simply approaching these principles in an a-la-carte manner does not amount to a consideration of them in full alignment with the obligations placed on Portugal pursuant to its international human rights commitments.



The Special Rapporteur reiterates his acknowledgment already expressed that ERSAR is an international reference on the incorporation of some elements of the normative content of the rights to water and sanitation into its work. However, it is essential that this is done with full consideration of the obligations placed on Portugal under international human rights law, and not simply in an a-la-carte fashion. More must be done by Portugal to ensure regulatory activities are in full compliance with the human rights to water and sanitation, and all other human rights.

**RECOMMENDATION 8: “Recommend that Águas de Portugal, the Empresa Portuguesa das Águas Livres and other service providers adhere to the United Nations Guiding Principles on Business and Human Rights and perform human rights due diligence in providing water and sanitation services.” (A/HRC/36/45/Add.1 para. 82(u))**

Progress  
On-Going

Although the Special Rapporteur is pleased that Águas de Portugal undertakes to improve the well-being of the community and improve community development through its work, he is disappointed that Águas de Portugal, the Empresa Portuguesa das Águas Livres and other service providers are yet to commit themselves to the UN Guiding Principles on Business and Human Rights. However, he is glad to note that Portugal is enacting a national action plan on business and human rights which implements the Guiding Principles, and reiterates that doing so will accelerate the current progress made by relevant actors to integrate human rights principles.



**RECOMMENDATION 9: “Carefully monitor the processes by which concessions are granted for water and sanitation services in order to reduce the financial burden and risks for municipalities.” (A/HRC/36/45/Add.1, para. 82(h))**

Good  
Progress

In response to the Special Rapporteur’s follow-up question regarding the monitoring of concession contracts, the Government noted that ERSAR exercises a monitoring function over both new and renegotiated concession contracts, issuing an “opinion” regarding these which analyses them for key features such as affordability. According to the Government “Local authorities must follow these opinions, except if duly justified. If the involved parties do not follow ERSAR’s opinion, they have to justify the alternative options.” Furthermore, the Government has stated that ERSAR is currently working to propose changes to current legislation regarding the concession contract model. It did, however, not specify the exact parameters of these proposals.



The Special Rapporteur congratulates the Government for introducing legislation to minimise the negative effects caused by concession contracts and encourages the Government to continue its efforts in this area.



# THE HUMAN RIGHTS TO WATER AND SANITATION

**RECOMMENDATION 10: “Provide further support to local governments in relation to the construction and maintenance of individual solutions for sanitation, particularly for those who are in vulnerable situations, including people living in informal settlements and the homeless.” (A/HRC/36/45/Add.1, para. 82(n))**

Limited  
Progress

The Government noted in its response to the follow-up questionnaire that it has in place mechanisms to better guarantee that water rights are ensured to all, including those utilising individual solutions. The response further notes that additional funding has been provided to facilitate the aggregation of small water facilities.



The Special Rapporteur reaffirms his recommendation that the Government should equally assist municipalities to ensure the right to sanitation is enjoyed by all inhabitants by providing support and assistance to these municipalities for the construction and maintenance of individual sanitation solutions, as specified in the recommendation.

**RECOMMENDATION 11: “Ensure that individual solutions meet all the normative content of the human rights to water and sanitation, ensuring that individual water solutions are provided continuously and that the quality of water from wells or boreholes meets the official standards and that water from those sources is protected from different sources of contamination.” (A/HRC/36/45/Add.1, para. 82(l))**

Progress  
not Started

The information compiled suggests that the picture of the support provided for individual solutions by governmental bodies has not changed since the official visit of the Special Rapporteur. He urges the Government, without delay, to set in motion efforts to ensure that all individual water solutions meet human rights standards.



**RECOMMENDATION 12: “Develop a more proactive system to disseminate information on water quality, particularly by including it on water bills, and information on existing practices, policies and resources that promote economic access to water and sanitation.” (A/HRC/36/45/Add.1 para. 82(m))**

Good  
Progress

Following the visit of the Special Rapporteur, legislative steps have been taken to ensure users have greater rights to information regarding water quality. As per Decree-Law No. 152/2017, introduced on 7 December 2017, the existing regime regarding water quality monitoring has been modified in order to provide a requirement that the managing entities of bulk and retail providers publish the data from water quality monitoring programmes quarterly online. Furthermore, under the legislation ERSAR and health authorities must communicate cases of non-compliance of water quality to the consumer.



The Special Rapporteur looks forward to continuing to see positive progress made by Portugal with regards to ensuring that water and sanitation users have access to pertinent information about the quality of drinking water.





**RECOMMENDATION 13: “Adopt legislative measures to prohibit disconnection of water and sanitation services owing to an inability to pay.” (A/HRC/36/45/Add.1, para. 82(d))**

Progress  
not Started

The Government, in its response to the follow-up questionnaire, recognised that it was legal for water and sanitation providers to disconnect users from their services and stated that one of the main reasons for not introducing a prohibition on disconnecting users who are unable to pay is that this would disproportionately protect users, and expose service providers to greater risk. However, it contended that despite remaining lawful, disconnection was only possible where these providers followed proper procedures, stating that “the law protects water users by imposing a number of formalities on water operators and water cut-offs due to inability to pay are, therefore, seen as a last resort.”



The Special Rapporteur reminds the Government that disconnecting the water and sanitation of users who are unable to pay their bills represents a retrogressive measure and, accordingly, is contrary to its obligations under the human rights to water and sanitation. He therefore urges the Government, without delay, to begin implementing a legal prohibition on disconnection in these instances.

**RECOMMENDATION 14: “Conduct official studies and surveys on the reasons behind non-payment with a view to identifying those households that are financially unable to pay for their water and sanitation services.” (A/HRC/36/45/Add.1 para. 82(o))**

Progress  
On-Going

The Government responded to this recommendation stating that “the existing rules regarding data protection do not allow the collection of this type of information for particular households. Nevertheless, ERSAR is developing some studies in order to appraise global information about cut-offs, their motives and the existing practices of operators.” In its response to the recommendation on the issuing of guidelines regarding disconnection, the Government further elaborated on this, stating that “[c]urrently, ERSAR is developing several studies to analyse the existing practices and processes to ensure protection of vulnerable households and avoid their disconnection on the base (sic) of not being able to pay”.



The Special Rapporteur welcomes the intention to develop studies conducted by ERSAR on disconnection practices and the motives behind these, and on the protection of vulnerable users from disconnections. He looks forward to information on these studies being published so that they can be a model to be used by other States.

**RECOMMENDATION 15: “Develop and issue guidelines for water and sanitation service providers concerning disconnection of water and sanitation services with a view to protecting those who are economically unable to pay for those services, and establish protection mechanisms for those groups.” (A/HRC/36/45/Add.1 para. 82(i))**

Progress  
not Started

The Special Rapporteur reiterates his recommendation that the Government should develop guidelines for providers regarding disconnections with a view to protecting vulnerable users. Leaving it to municipalities to determine how to approach disconnections creates an approach which is geographically variable, and thereby is discriminatory and inconsistent with human rights. The Government must, immediately, begin issuing national guidelines regarding disconnections.







**RECOMMENDATION 16: “Adopt legislative measures on affordability of access to water and sanitation services, stipulating that all individuals are provided with an affordable and reliable service that is adequate for basic human needs in the context of the national, local and autonomous government levels, reflecting the challenges people face in practice and the contexts in which they live.” (A/HRC/36/45/Add.1 para. 82(e))**

Good  
Progress

Whilst not mentioned specifically by the Government, research conducted for this follow-up report has highlighted that some important legislation has been introduced, which seeks to promote affordability in the context of access to water and sanitation. For example, Law No. 42/2016, on the State budget, modified the Water Law No. 58/2005 to specify that services must be made both sustainable and affordable. Furthermore, in line with the Government’s nationwide policy, Decree-Law No. 147/2017 introduces a regime to allow municipalities to automatically apply social tariffs for water and sanitation services.



The Special Rapporteur congratulates the Government for introducing legislation which seeks to promote both affordability and sustainability within the water and sanitation sector. He looks forward to the Government continuing to make progress in this area and to ensure that affordability standards are continuously and accurately reviewed, and any changes to affordability are reflected within legislation.

**RECOMMENDATION 17: “Recommend that the water and sanitation providers set policies to reconcile affordability and financial sustainability as part of their financial management.” (A/HRC/36/45/Add.1 para. 82(p))**

Progress  
On-Going

The Special Rapporteur regards it as positive that ERSAR has begun issuing recommendations regarding affordability and sustainability and that Portuguese national law specifically guarantees the sustainability and affordability of services. He hopes that recommendations and national law will be implemented and translated into policies for service providers so as to better reconcile affordability and financial sustainability.



**RECOMMENDATION 18: “Recommend that social tariffs for water and sanitation services are made more flexible to adapt to unforeseen situations, such as financial crises, and that the definitions of large families that are eligible for the family tariff are made more appropriate.” (A/HRC/36/45/Add.1 para. 82(q))**

Progress  
On-Going

Research conducted for this follow-up report indicates that some measures have been taken to assist individuals and families to access social tariffs with greater ease and flexibility. As noted previously, Decree-Law No. 147/2017 enables municipalities to apply social tariffs automatically for people in receipt of social security payments, thereby reducing the length of time these people must wait before they receive a tariff discount. Further, a resolution approved on 14 October 2016 recommends that the Government improve citizens’ access to social tariffs for public water, sanitation and waste collection services.



The Special Rapporteur appreciates the efforts which have so far been made by the Government to increase flexibility in the social tariff system. He is, however, concerned that the continued scope given to local authorities to determine social tariff needs is excluding people who should be eligible for access. He therefore calls on the Government to increase efforts to ensure social tariffs can be applied flexibly and with clarity so as to better meet the needs of vulnerable people.



Progress  
On-Going

**RECOMMENDATION 19: “Urge the Water and Waste Services Regulation Authority (“ERSAR”), the Ministry of the Environment and other relevant institutions to implement and monitor the automatic application of social tariffs and to conduct further studies on the criteria for eligibility and the level of discounts to be provided by the social tariff with more careful evaluation.” (A/HRC/36/45/Add.1 para. 82(s))**

The Special Rapporteur is pleased to learn that ERSAR is currently reviewing the criteria that determines when and how social tariffs apply. He looks forward to learning the outcome of this study and urges the Government to implement its findings.



**RECOMMENDATION 20: “Conduct studies to assess whether Portugal is investing its maximum available resources to progressively realise the human rights to water and sanitation without discrimination.” (A/HRC/36/45/Add.1 para.82(t))**

The Special Rapporteur is pleased to note that ERSAR was provided with a slightly increased budget between 2017 and 2018, however he is disappointed that no pertinent information was provided regarding whether the maximum of available resources was being invested into the progressive realisation of the human rights to water and sanitation.

The Special Rapporteur reminds the Government that it is bound, as a matter of law, to utilise the maximum of its available resources to ensure the rights to water and sanitation are respected, protected and fulfilled.

Limited  
Progress





# LEAVING NO ONE BEHIND

**RECOMMENDATION 21: “Develop a comprehensive method for disaggregation of data on water and sanitation access by wealth level, migratory status, ethnic groups and other grounds of discrimination, in order to facilitate the development of focused policies for the proper protection of the populations most in need.” (A/HRC/36/45/Add.1, para. 82(j))**

Progress  
not Started

In its response to the Special Rapporteur’s follow-up questionnaire, the Government admitted that it was challenging to collect sufficient disaggregated data on water and sanitation usage, owing to constitutional constraints on personal data protection. It noted that following Article 35 of the Constitution, “Portugal can only compile statistical data on the racial and ethnic demographic composition of its population based on anonymous and voluntary self-identification of those concerned (formal permission)”.



The Special Rapporteur is disappointed that Portugal has not made progress in collecting disaggregated data regarding water and sanitation use which might otherwise be used to help improve access for vulnerable populations. He reiterates his recommendation and looks forward to progress being made.



# 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.