

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

**FOLLOW-UP REPORT
SUMMARY**

OFFICIAL COUNTRY VISIT TO BOTSWANA,
9 TO 17 NOVEMBER 2015



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FOLLOW-UP REPORTS

The Special Rapporteur on the human rights to water and sanitation, Léo Heller, undertook an official visit to Botswana upon the invitation of the Government from 9 to 17 November 2015. During his mission, he had the opportunity to meet with different interlocutors, including the Government, the Attorney-General, the Water Utilities Corporation, the Ombudsman, local authorities, civil society organizations and members of the international community. He talked to community leaders, human rights defenders, women, children and medical practitioners. 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, and held a press conference on 17 November 2015. The final report was presented to the Human Rights Council in September 2016 (A/HRC/33/49/Add.3). The comments by Botswana (A/HRC/33/49/Add.6) were also submitted to the Human Rights Council.

In undertaking the present follow-up report regarding his mission to Botswana, the Special Rapporteur has, between 1 January 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, a call for input was distributed to the Government and to other stakeholders. Whilst no response from other stakeholders was received, the Government of Botswana submitted a written response to the questionnaire on 12 July 2018.

GENERAL DEVELOPMENTS IN THE COUNTRY

At the time of the visit, it was identified, through data from the Joint Monitoring Programme (JMP) relating to the progress of States towards the achievement of the Millennium Development Goals, that, as of the end of 2015, 96 per cent of the national population had access to improved water, 63 per cent had access to improved sanitation, and 14 per cent of the national population, rising to 34 per cent in rural areas, practiced open defecation. However, more complete and updated information, from 2017 and the same source, but using the stricter definition of access to services adopted by the Sustainable Development Goals targets and indicators, highlights that 90 per cent of the population had access to "at least basic" services for drinking water. While there is no information on the access to "safely managed" services, data reveals that 79 per cent of the national population had water on their premises, with a significant gap between the urban population (93 per cent) and the rural population (47 per cent). Regarding sanitation services, while the 2017 data highlights that 72 per cent of the population has access to at least basic sanitation, when this is disaggregated it shows that 77 per cent have access to "latrines and others" as their source of improved sanitation, 5 per cent have access to septic tanks, and only 1 per cent to sewer connections.

The report further highlights that 11 per cent of the national population still practices open defecation, with this figure increasing to 33 per cent in rural areas, with those figures 22 and 42 per cent in 2000, respectively.

The data collected by the JMP does not include information on the number of people in Botswana who have access to 'safely managed' water services. The additional SDG 6.1 and 6.2 benchmarks of 'safely managed' water and sanitation services, introduced by the report, requires that "drinking water at home that is free from contamination and available when needed, and toilets from which excreta are treated and disposed of safely." Furthermore, no data is available on the population with access to basic hygiene services. The lack of data itself is a worrying sign of great challenges faced by Botswana in order to reach out those who are behind and to meet SDG 6.1 and 6.2. Given the observation during the mission, there is potentially a significant difference between the achieved coverage of improved water and sanitation and that of 'safely managed' water, sanitation and hygiene management in Botswana.



LEGAL, INSTITUTIONAL AND POLICY FRAMEWORK

RECOMMENDATION 1: “Sign and ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, guarantee the human rights to water and sanitation and prioritize water supply for personal and domestic uses in national legislation.” (A/HRC/33/49/Add.3, para. 72(g))

Progress
not Started

The Government informed the Special Rapporteur that it currently has no plans to ratify the International Covenant on Economic, Social, and Cultural Rights and its Optional Protocol. The Special Rapporteur strongly recommends that Botswana commit itself to the international legal obligations on economic, social and cultural rights by signing and ratifying the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol. This will provide clear guidance on the human rights to water and sanitation and on important human rights principles, which will assist the State in realising those rights, as well as other economic, social and cultural rights.



RECOMMENDATION 2: “Establish an independent regulatory mechanism with the mandate and adequate financial and human resources to monitor the implementation of the human rights to water and sanitation, including good quality water and affordable services.” (A/HRC/33/49/Add.3, para. 72(h))

Good
Progress

In its response to the Special Rapporteur’s follow-up questionnaire, the Government has stated that it has since taken a decision to create an independent regulatory body for water provision. Whilst this body is yet to be established, the Government has noted that it has directed the “promulgation of legislation of the establishment of an Independent Water Regulator” by way of Presidential Directive.

The Special Rapporteur looks forward to the regulator beginning its vital role of ensuring that water and sanitation provisions in Botswana meet human rights standards. He recommends that the Government ensures adequate resources are provided to enable the regulator to undertake its role, whilst protecting its vital independence.



RECOMMENDATION 3: “Adopt the draft national water policy in order to approach water and sanitation issues in a comprehensive manner guided by the principles and normative content of the human rights to water and sanitation. Such a policy should include a long-term strategy for sustainable water resources management, taking into account the foreseen increase in water stress.” (A/HRC/33/49/Add.3, para. 72(a))

Progress
On-Going

The Special Rapporteur recognises that the national water policy which notes water and sanitation as a basic human necessity has been adopted. In order to observe and assess the policy from a human rights perspective, more information and a copy of the policy should be widely publicized so as to enable the international community to determine the extent to which it complies with human rights standards.





THE HUMAN RIGHTS TO WATER AND SANITATION

RECOMMENDATION 4: “Increase the budget to the maximum available level to progressively realize the human rights to water and sanitation and target underdeveloped areas, such as rural areas and new settlements, to ensure equality.” (A/HRC/33/49/Add.3, para. 72(k))

Limited
Progress

The Special Rapporteur is encouraged that the Government has allocated a larger portion of budget to the development of water infrastructure. He further recalls the importance of the Government securing the budget necessary for the implementation of the National Development Plan, including through international cooperation. It is also of concern that no reference is made in the national budget to projects intended to improve sanitation in Botswana.



The Special Rapporteur calls on the Government to ensure that sanitation is properly budgeted for and that acceptable levels of resources are made available to ensure the enjoyment of the human right to sanitation. The Special Rapporteur further reiterates his recommendation that water and sanitation projects prioritize people living in remote areas and new settlements to ensure equality in access to water and sanitation.

RECOMMENDATION 5: “Adopt special measures to protect the poor and people living in vulnerable situations from the impacts of water rationing both in normal circumstances and during emergency situations.” (A/HRC/33/49/Add.3, para. 72(d))

Progress
On-Going

The Special Rapporteur calls on the Government to strengthen its efforts towards the achievement of water security in the country and reiterates that contingency plans should be in place to face situations where water rationing is required, prioritizing the protection of the poor and people living in vulnerable situations.



RECOMMENDATION 6: “Immediately adopt measures to improve water treatment, including disinfection of the entire water supply system and revisiting water rationing measures.” (A/HRC/33/49/Add.3, para. 72(b))

Progress
On-Going

The Special Rapporteur recommends, together with his recommendation on systematic water quality monitoring, that the Government continue its efforts to improve the quality of water in a systematic manner and reiterates the need to make information on water quality public so as to allow access to transparent information on the outcomes of the upgrading process.





RECOMMENDATION 7: “Set up a systematic water quality monitoring between the Water Utilities Corporation and the Ministry of Health and increase the frequency of the water quality monitoring programme carried out by the Department of Water Affairs, regardless of the creation of an independent regulatory body.” (A/HRC/33/49/Add.3, para. 72(c))

Limited
Progress

The Special Rapporteur continues to encourage the establishment of an improved systematic water quality monitoring system, integrating the roles and activities of the Water Utilities Corporation, the Ministry of Health and other stakeholders. He notes that the Government has informed him that it is establishing an improved water quality monitoring system, however more information is needed regarding how the revised processes operate in order to be able to fully assess whether they are capable of assisting Botswana to respect, protect and fulfil the human rights to water and sanitation.



RECOMMENDATION 8: “Review the tariff system, particularly the scheme of applying the same tariff to households and businesses, in order to balance the sustainability and affordability of water and sanitation services particularly for the poor.” (A/HRC/33/49/Add.3, para. 72(e))

Progress
On-Going

In addressing the Special Rapporteur’s recommendation regarding water and sewerage tariffs, the Government responded to the follow-up questionnaire stating that, as of April 2017, the tariff structure for water and sewerage provision had been reviewed and implemented.



The Special Rapporteur encourages the Government to maintain a system of water and sanitation tariffs which better meet the needs of people who are vulnerable and marginalised. He further notes the importance of regularly reviewing the tariff system to ensure that it is still able to meet these needs in a manner which complies with Botswana’s human rights obligations.

RECOMMENDATION 9: “Explore cross-subsidy and fiscal subsidy systems for emptying pit latrine services to ensure fair charges.” (A/HRC/33/49/Add.3, para. 72(m))

Limited
Progress

Regarding the Special Rapporteur’s recommendation on the subsidisation of pit latrine services, the Government noted in its response to the questionnaire that “[t]here are three different tariff structures namely, the government, commercial/industrial and domestic. The first two are higher and meant to subsidise the domestic tariff structure”. There is evidence of cost reduction and charge elimination.



While noting that the Government has taken measures to decrease the tariffs, the Special Rapporteur nonetheless points that no concrete measures have been taken to address cross-subsidy and fiscal systems for emptying pit latrine services to ensure fair charges. Therefore, he recommends that the Government devise mechanism to operate a subsidisation system for pit latrine services and to constantly review this mechanism to ensure it is able to adequately ensure affordability for those on low-incomes.



RECOMMENDATION 10: “Establish a safeguard system to protect access to essential water and sanitation for those living in poverty and those with special needs, including health conditions, through the provision of financial assistance, special tariffs, subsidies or other measures.” (A/HRC/33/49/Add.3, para. 72(f))

Limited
Progress



The Special Rapporteur welcomes the Government’s efforts to introduce and maintain programmes aimed at alleviating conditions of poverty for the poor, the elderly, orphans, people with disabilities and others who are in need, including by paying their water and sanitation bills or providing a cash allowance to cover water and sanitation costs. Programmes such as these are of vital importance to the realisation of the rights to water and sanitation in line with the obligation of non-discrimination.

The Special Rapporteur notes that the Government implemented several short-term measures to safeguard access to water and sanitation for the population in vulnerable situations. He recommends that the Government continue and improve its efforts to further strengthen these safeguards, particularly long-term measures with a broader coverage, such as special tariffs and subsidies, in order to protect the human rights to water and sanitation for these individuals and groups.

RECOMMENDATION 11: “Invest, including human resources, in the maintenance and operation of new and existing services in order to avoid deterioration in the services currently provided and provide financial and technical support to the districts” (A/HRC/33/49/Add.3, para. 72(n))

Progress
On-Going



The Special Rapporteur regards it as positive that funds have been allocated for the refurbishment, rehabilitation and development of the infrastructure of water and sanitation. However, plans of the maintenance and operation were not shared and he unfortunately did not receive any concrete information about human resources to be invested in maintenance and operation either.

The Special Rapporteur recommends that the Government continue to invest the maximum of its available resources into refurbishing, rehabilitating and developing water and sanitation infrastructure. He reaffirms that budgeting must include adequate human resource investment and invites the Government to make public information regarding the level of human resources investment it has made in these sectors to date.

RECOMMENDATION 12: “Improve access to water, sanitation and hygiene in schools, in particular install menstrual hygiene management systems in all schools, as well as in health centres.” (A/HRC/33/49/Add.3, para. 72(p))

Progress
On-Going



The Special Rapporteur urges the Government to continue with its efforts to increase water availability in schools, with the goal of ensuring every school in Botswana has access to a continuous supply of safe water. He further recommends that the Government ensure that all schools are provided with appropriate menstrual management facilities and that students and staff have access to adequate sanitation at all times. Additionally, he calls on the Government to publicly disclose data regarding its efforts to improve access to water, sanitation and menstrual hygiene facilities in healthcare facilities, recalling that provision of these therein is vital for the achievement of the rights to water and sanitation, as well as other human rights.



ACCESS TO INFORMATION, ACCOUNTABILITY AND JUSTICE

RECOMMENDATION 13: “Strengthen access to information, including by setting a standard rule on the communication of water and sanitation-related measures taken by the Government to enable people to make informed decisions regarding the human rights to water and sanitation.” (A/HRC/33/49/Add.3, para. 72(q))

Limited
Progress

The Special Rapporteur continues with the view that the Government needs to take concrete measures to improve access to information on issues related to the human rights to water and sanitation, in particular for people living in rural areas, in transition from nomadic life and in resettlements and those who are minorities. He recommends that the Government increases its efforts in this regard and clearly publish how it intends to ensure information is accessible regarding water and sanitation, so as to allow its plans to be properly assessed.



RECOMMENDATION 14: “Strengthen the rights to access to justice and accountability, including by accelerating the efforts of the Office of the President to amend the Ombudsman Act to include the role of a human rights institution.” (A/HRC/33/49/Add.3, para. 72(r))

Progress
On-Going

In relation to the Special Rapporteur’s recommendation on improving access to justice, during the National Development Plan 10 (2009-2016), the Government made a decision to expand the mandate of the Office of the Ombudsman to include human rights. However, according to the Government, the Ombudsman Act is still to be reviewed, and therefore no amendments that afford the Office of the Ombudsman with a broader mandate to consider human rights have yet been implemented.



The Special Rapporteur recommends that the Government continues to pursue legislative change regarding the expansion of the mandate of the Ombudsman to cover human rights, and the increasing of its powers to ensure human rights are properly respected, protected and fulfilled. He urges the Government to finalise this legislation as soon as is possible.



LEAVING NO ONE BEHIND

RECOMMENDATION 15: “Revisit the National Settlement Policy in view of providing equal access to water and sanitation for all, regardless of where they live.” (A/HRC/33/49/Add.3, para. 72(i))

The Special Rapporteur notes that the Government has not revisited the National Settlement Policy.

Progress
not Started



RECOMMENDATION 16: “Establish clear budget lines to provide assistance to the water and sanitation systems that are not connected to the central network, particularly in urban periphery, rural and remote areas.” (A/HRC/33/49/Add.3, para. 72(l))

The Special Rapporteur is encouraged by the actions and budget allocation taken by the Government and regards it as positive that the Government of Botswana has begun implementing dedicated strategies to address water need in rural areas. The progress that has been made under these plans suggests that the Government is, as far as the right to water is concerned, seeking to progressively realise this right for non-urban dwellers. However, he notes that little information has been made available regarding the impact that the strategy has had on access to sanitation for rural people. Furthermore, whilst the Special Rapporteur is pleased that Botswana has developed policies which consider the water and sanitation needs of those living in remote communities, he is concerned to learn that remote-area dweller settlements only become entitled to assistance, including being provided with water supplies, when the population is more than 250 persons, meaning that settlements with populations under this number may not have their water and sanitation needs met.

Limited
Progress



The Special Rapporteur is pleased that budgetary allocations have been made to improve access to water and sanitation in rural areas which are not connected to the central network. The results of this budgetary allocation on access to sanitation in rural areas are, however, unclear. Accordingly, the Special Rapporteur reminds the Government of its obligation to utilise the maximum of its available resources to improve water and sanitation access for people in rural areas, and advises it to publish data highlighting the impact of increased budgetary allocations on rural sanitation.



RECOMMENDATION 17: “Continue and strengthen dialogue with communities who are living a nomadic life or who are in transition from a nomadic to a sedentary life to find sustainable solutions for their access to water and sanitation.” (A/HRC/33/49/Add.3, para. 72(j))

Progress
On-Going

The Government responded to the Special Rapporteur’s recommendation by noting that it continues to engage in “dialogue with communities who are transitioning from a nomadic to sedentary life” in order to find “sustainable solutions to their access to water and sanitation.”. While the Special Rapporteur acknowledges the Government’s attempts to engage in dialogue with nomadic, semi-nomadic, and formerly nomadic groups, it is unclear how those efforts are concretely translating into finding sustainable solutions for the access to water and sanitation of the nomadic groups.



The Special Rapporteur strongly recommends that the Government continues to engage in dialogue with communities transitioning from nomadic to sedentary lives and translates that dialogue into appropriate policy and action that prioritizes access to water and sanitation for these people.

RECOMMENDATION 18: “Increase the participation of women in decision-making relating to water and sanitation and take special measures to reduce the disproportionate burden on women caused by the lack of access to water and sanitation.” (A/HRC/33/49/Add.3, para. 72(o))

Limited
Progress

The Special Rapporteur appreciates the efforts by the Government to appoint a gender focal point personnel for gender mainstreaming in the water and sanitation sector, and its implementation of other projects to increase the participation of women in decision-making. However, whilst it might have been premature to see the impacts of these efforts on women, the Special Rapporteur would have liked to have received information on concrete positive impacts on women and girl’s role in collecting water, particularly, any measures to reduce the disproportionate burden imposed on women and girls to collect water, as well as their human rights.



The Special Rapporteur recommends that the Government continue to positively promote women’s involvement in water and sanitation decision-making. He further calls on the Government to properly assess the increased participation of women and the improvement of women and girls’ access to water and sanitation with a view to reducing the disproportionate burden on women and girls caused by the inadequate access to water and sanitation.



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



Retgression

- 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.