

Dear friends and colleagues,

This 4<sup>th</sup> newsletter of 2018 on the mandate of the UN Special Rapporteur on the human rights to safe drinking water and sanitation brings news of my recent and upcoming activities:

1. Presentation at the 39<sup>th</sup> session of the Human Rights Council in September 2018
2. Activities parallel to the HRC39
3. Consultations on impact of mega-projects on the human rights to water and sanitation
4. Presentation at the 73<sup>rd</sup> session of the General Assembly
5. Official visits to Malaysia (14-27 November 2018) and Lesotho (4 – 15 February 2019)
6. Communications and press releases

## 1. Presentation at the 39<sup>th</sup> session of the Human Rights Council in September 2018

The 39th session of the United Nations Human Rights Council was held from 10 to 28 September 2018. On 10 September, I presented the following reports to the Council:

- Thematic report on forcibly displaced persons ([A/HRC/39/55](#))
- Introduction of my follow-up analysis of official country visits found in the Annex of [A/HRC/39/55](#) (see also the [webpage on follow-up analysis](#))
- Country visit report to India ([A/HRC/39/55/Add.1](#) and an unofficial translation in [Hindi](#)) The Government of India submitted its comments to my report ([A/HRC/39/55/Add.3](#)) and the civil society has also [responded](#).
- Country visit report to Mongolia ([A/HRC/39/55/Add.2](#) and an unofficial translation in [Mongolian](#)) See also [compilation](#) of social media interactions during the visit.

My full statement to the Human Rights Council can be consulted [here](#) and the live recording of the statement can be viewed through the provided links (parts [1](#) & [2](#)).

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 **UN Special Procedures** @UN\_SPExperts · Sep 10

#HRC39: Forcibly displaced persons (internally displaced persons, refugees, asylum seekers and migrants in vulnerable situations) are as entitled to adequate drinking water and sanitation services as nationals — @SRWatSan.

Full report: [ow.ly/Xm6Q30IKL5N](https://ow.ly/Xm6Q30IKL5N)



 **UN Human Rights Asia** @OHCHRAsia · Sep 10

TODAY: States should ensure immediate access to essential level of water & sanitation on a nondiscriminatory basis during situations of emergency—said @UN expert on water and sanitation in his new report submitted to @UN\_HRC. Read his report here [buff.ly/2wZ0U7k](https://buff.ly/2wZ0U7k) #HRC39



## 2. Activities parallel to the HRC39

During the 39<sup>th</sup> session of the Human Rights Council, I organized and participated in several activities:

### Side event on youth and human rights to water and sanitation

On 11 September 2018, I organized a side event (see [invitation](#)) to present the winning submission of the Youth Challenge (Asniya Mohamad from the Philippines, her video [submission](#)) together with a selection of other submissions to discuss the role of youth in promoting and raising awareness about the human rights to safe drinking water and sanitation ([video recording of event](#)). This side-event was co-sponsored by the Permanent Mission of Spain and the Permanent Mission of Germany the Office of the High Commissioner for Human Rights and Franciscans International.



### Side event on menstruation to access to WASH for people on the move

On 14 September 2018, I participated as keynote speaker in the side-event “Realizing the Human Rights to Water and Sanitation – Tackling stigma and discrimination: From menstruation to access to WASH for people on the move”, organized by the Water Supply and Sanitation Collaborative Council (WSSCC), the Permanent Mission of Germany, the Permanent Mission of Spain, the Office of the High Commissioner for Human Rights, and Columbia University, Institute for the Study of Human Rights (ISHR) ([programme](#)).



### Side event on civil participation

On 14 September 2018, together with the Special Rapporteur on the right to development, Mr. Saad Alfaragi, I participated as speaker in the side-event “Local solutions to global challenges: The role of civic participation in advancing human rights and development”, organized by the Permanent Mission of Mongolia and the Office of the United Nations High Commissioner for Human Rights ([video recording of event, programme](#)).



## Consultations with States

In the context of the project to follow-up on official country visits that I have initiated, I also met with several States during my stay in Geneva to have discussions in this regard. I wish to thank those States for their cooperation in helping to advance this project. Updated information on the country visit follow-up project—currently focusing on Botswana, El Salvador, Mexico, Tajikistan and Portugal—can be consulted [here](#).

## Brainstorming Roundtables on 2019 thematic reports

I convened two brainstorming roundtables to have a preliminary discussion on the possible scope and content of my thematic reports for 2019:

- 11 September 2019 - On the impact of **mega-projects** on the human rights to water and sanitation (concept note: [English](#) | [Spanish](#))
- 12 September 2019 - On the human rights to water and sanitation in **spheres of life beyond the household** ([concept note](#))

I extend my sincere thanks to those who took part in the brainstorming roundtables for providing their expertise and perspectives to the development of this thematic report.

## 3. Consultations on impact of mega-projects on the human rights to water and sanitation

As part of the preparation of my upcoming report, from 17 to 21 September, I held online bilateral consultations for those who could not attend the brainstorming consultation in Geneva on 11 September. I also wish to extend my thanks to those who have participated in consultations on this theme via Skype.

Further, I plan to convene three regional consultations: in the Asia-Pacific Region (12 November 2018, Malaysia), Latin America and the Caribbean Region (January 2019, Mexico) and the African Region (February 2019, South Africa).

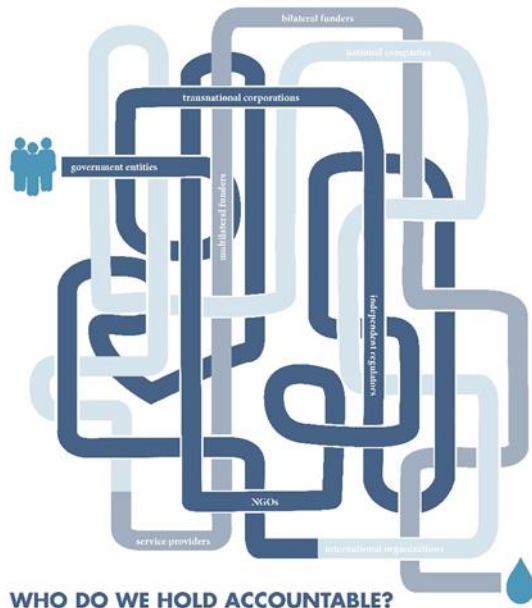


## 4. Presentation at the 73<sup>rd</sup> session of the General Assembly

I presented my report on the the principle of accountability in the context of the realization of the human rights to safe drinking water and sanitation ([A/HRC/73/162](#)) at the 73<sup>rd</sup> session of the General Assembly on 19 October 2018. You can consult my full statement to the General Assembly [here](#) and watch the live recording of the statement [here](#).

As a way of explaining the principle of accountability and its complexity in relation to the human rights to water and sanitation, in my statement to the General Assembly, I referred to the [parable](#) of the blind men and the elephant. In particular, I used a three-dimensional framework to describe and explain the concept of accountability in the water and sanitation sector aligned with human rights: (i) roles, responsibility and performance standards; (ii) providing explanations and justification; (iii) and enforcement mechanisms for compliance.

Additionally, key takeaways from the report have been summarized in a short series of [infographics](#).



### WHO DO WE HOLD ACCOUNTABLE?

There are many actors involved in protecting the right to water and sanitation, including government entities, international organizations, corporations and NGOs. The roles and responsibilities related to the human rights of water and sanitation are often divided and unclear. This decentralization of service provision, fragmented responsibilities, and unclear roles make it difficult for people to navigate to know whom to turn to for assistance and whom to hold accountable for realizing their human rights to water and sanitation.

## ALL ABOUT ACCOUNTABILITY

Accountability is "the means by which individuals and communities take ownership of their rights and ensure that states as primary duty-bearers, respect, protect and fulfill their international and national obligations." The principal of accountability aligns with the right of access to an effective remedy and with mechanisms that provide redress to victims of human rights violations.

### WHO'S INVOLVED?

government entities

international organizations

transnational & national corporations

individuals

NGOs

service providers & regulators

### KEY FUNCTIONS

*Corrective Function:* addressing individual or collective grievances and sanctions for wrongdoing.

*Preventative Function:* clarifying aspects of policy or service delivery as good practices.

### WHY IS ALL THIS NECESSARY?

Accountability is all about balancing power in order to protect the most marginalized and those living in the most vulnerable situations. It also serves to mediate the relationship between people as rights holders and those that wield power and affect the enjoyment of the former's rights.

Accountability also supports and empowers rights holders to request information or actions taken through:

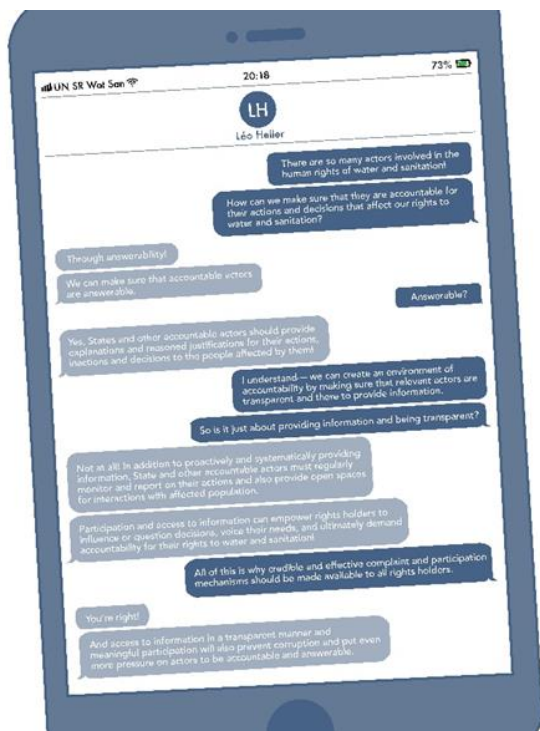
- Participation
- Transparency
- Access to information
- Monitoring
- Assessment
- Enforcement mechanisms
- Oversight of progress or possible setbacks

### CHALLENGES

1. No clear accountability framework based on human rights to provide guidance and standards.
2. Widespread presence of informal service providers that are not regulated and operate without a license.
3. Imbalance of power that has at times affected the exercise of human rights to water and sanitation

### READ MORE:

Report by the UN Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation on the principle of accountability:  
<http://undocs.org/A/73/162>



## COMPLIANCE THROUGH ENFORCEABILITY

Enforcement is the ability to oversee actors and apply sanctions when they give unsatisfactory answers. Enforceability of accountability encompasses two perspectives. The first being of the process whereby *feeder and mechanisms* oversee actors' compliance with standards that are in line with the human rights principles. The second is from the perspective of *individuals*, whereby enforceability provides a venue to claim the rights to water and sanitation by enforcing actors' compliance and to exercise the right to an effective remedy.

### OVERSIGHT: A PREREQUISITE TO ENFORCEABILITY

The oversight of actors' conduct to assess whether performance standards are met is a prerequisite to enforceability. Oversight mechanisms exist through the state, independent institutions (i.e. regulators, human rights commissions and institutions, anti-corruption agencies, and State auditing institutions), and civil society organizations. Media also plays a crucial role in oversight, despite not having power to enforce any outcome, they serve as a watchdog function.

### ENABLING ENVIRONMENT AND CHALLENGES

Marginalized people and people in vulnerable situations often lack the capacity and opportunities to hold actors accountable. *Enforceability mechanisms* are mostly used by individuals who are already aware of such mechanisms and who can afford the costs and the time spent using them. As such, we must build a bridge so that accountability and enforcement mechanisms are accessible to all.

Judicial and quasi-judicial bodies must allow relevant cases to be brought before them by individuals or their representatives, it is often easier for rights holders to voice their concerns and hold actors accountable collectively.

## ENFORCEABILITY MECHANISMS

### NATIONAL JUDICIAL MECHANISMS:

National judicial mechanisms are set up within States — among the executive, the legislative and the judiciary — through the principle of separation of powers, whereby each institution holds the others to account on behalf of the people. They are often not the preferred way for rights holders, but it is a crucial option for seeking redress when other mechanisms are exhausted. National judicial mechanism can provide remedies to victims of violations and serve the preventative function of accountability and prompt larger discussions.

- also allow rights holders to hold actors other than States accountable
- give courts supervisory jurisdiction over the enforcement of their rulings and recommendations



### QUASI-JUDICIAL MECHANISMS:

Quasi-judicial mechanisms are another forum for enforceability. Quasi-judicial mechanisms refer to an arbitrator or public administrative agency with the power to determine facts objectively and draw conclusions that will provide the basis for official action. They include:

- national human rights institutions that can receive complaints, investigate and recommend changes
- independent regulatory bodies with complaint mechanisms for the resolution of disputes between service providers and users, they can create incentives, warnings, penalties for non-compliance (i.e. fines), denial of permits, issuing injunctions, increased inspections and the possibility of revoking contracts

## **5. Official visits to Malaysia (14-27 November 2018) and Lesotho (4 – 15 February 2019)**

From 14 to 27 November 2018, at the invitation of the Government, I will undertake an official visit to **Malaysia**. I will focus on gathering information to examine the legal, policy and institutional framework that provide an enabling environment for all population in Malaysia to have sufficient, hygienic and safe, acceptable, physically accessible and affordable water for personal and domestic uses and sanitation, without discrimination. In September 2019, I will present my findings and recommendations on my visit to Malaysia in a report to the UN Human Rights Council.

My next country visit will be to **Lesotho** from 4 to 15 February 2019. I encourage all interested stakeholders to submit general inputs and specific proposals with regard to:

- Issues of concern related to the human rights to safe drinking water and sanitation, including but not limited to availability, accessibility, quality and safety, affordability and acceptability of water for drinking and domestic usage and sanitation
- Potential areas to visit such as towns or communities during the visit to Lesotho.
- Relevant organisations and individuals to meet during the visit to Lesotho.

Please submit the responses to [srwatsan@ohchr.org](mailto:srwatsan@ohchr.org)

## **6. Communications and press release**

The following communications and press releases were made public in recent months:

[Mexico \(4 July 2018\)](#) – Regarding the sentencing of six human rights defenders, who worked actively in defense of the right to water of the indigenous community of San Pedro Tlanixco (State of Mexico), for the alleged homicide of a Spanish businessman in 2003. This case was allegedly carried out without due process guarantees, and the 50-year prison sentence for the crimes committed was allegedly adopted to criminalize persons involved in defending the human right to water.

Please see a [video](#) on this case prepared by OHCHR Mexico Office.

[Bahrain \(31 July 2018\)](#) – Regarding reports of alleged disconnection of water supply in Jau Prison and Dry Dock Detention Center.

In addition, I joined several UN experts in the press release: [“UN experts urge prompt ratification of landmark Latin America and Caribbean environment treaty”](#) (13 September 2018).

**Kindest regards,**

**Léo Heller**

**UN Special Rapporteur on the human rights to safe drinking water and sanitation**

Follow the mandate!



The [website of the Office of the High Commissioner for Human Rights](#) remains the number one place to discover the mandate's past and upcoming activities.