

## QUESTIONNAIRE

For the Special Rapporteur's thematic report to the 45th session of the Human Rights Council

### Questions

**Question 1.** How is the concept of the minimum core obligations of the human rights to water and sanitation translated and applied in the water and sanitation sector in the country?

**Answer:** The concept of minimum core obligations of the Human Rights to Water & Sanitation (HRWS) is translated and applied in Malaysia through various policies, laws and regulations, which are governed, by specific governmental bodies and institutions related to providing water and sewerage services. Currently, Malaysia stands at 96% access to safe water and sanitation.

**Question 2.** What policies and programmes are in place to ensure that those obligations are always met? In case the minimum core obligations are not met, please provide information on the extenuating circumstances.

**Answer:** The Human Rights to Water & Sanitation (HRWS) is expressed both explicitly and implicitly in Malaysia through the various laws, rules & regulations, policies and institutional set up at the Federal and State level on the stewardship of water for its many uses by the population and environment. The Government of Malaysia bears all obligations related to the water and sanitation through the existing administrative structure, policy regime and legal framework, which includes the National Water Resources Policy, Water Services Industry Act 2006 (Act 655), respective State Water Enactments, and National Standard for Drinking Water Quality and Environmental Quality Act, 1974.

The provision of Act 655 although not specifically HRWS oriented, has however already outlined duties and obligations applicable to the service providers to ensure accessibility of water supply and good service level. This is aimed to increase the efficiency of the water services industry as well as protecting the consumers concerning the HRWS.

Existing legal framework including enforcement provisions/mechanisms for offences in water supply and sanitation services specifically support the concept of HRWS. The circumstances of not being able to meet the set requirements within the laws can lead to serious actions such as license of water operator being cancelled / hefty compounds payments or even jail terms.

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**Question 3.** Please describe efforts made by the Government in the last few years that allowed the progressive realization of the human rights to water and sanitation.

**Answer:** The provision of water services is rooted within the Ministry of Environment and Water (MEWA) for potable and non-potable water supplies. From the perspective of the HRWS, water services industry (public water supply and sanitation services) is regulated to safeguard the HRWS. The Water Services Industry Act outlines the duties and obligations of licensees in the water supply and sewerage industry that is regulated by the National Water Services Commission (SPAN).

SPAN regulatory regime based on the act continuously reviews and proposes improvisation in terms of coverage, quality, pricing as well as a resolution of disputes mechanisms.

Progressive realization of HWRS can be described through the supply coverage. In 2017, national water supply coverage was at 95.5%. Coverage is lowest in the state of Kelantan at 74.4% followed by Sabah and Sarawak at 89 % and 89.6% respectively. Nevertheless, there are other water supply entities besides public water operators. These water supply entities are mostly endorsed projects by Ministry of Health (MOH), Ministry of Rural and Regional Development (KKLW), Federal Land Development Authority (FELDA), Department of Orang Asli Affairs, Malaysia (JAKOA), Mineral and Geoscience Department as well as the private system that is required to comply National Standard for Drinking Water Standard. Each stakeholder is playing their roles to ensure water supply and appropriate sanitation to all including communities located in remote areas beyond the reach of main utility providers.

Efforts are also maximized in terms of emergency preparedness during shutdown due to pollution of raw water resources or during dry seasons/flooding. This ensures HRWS is realized at all times.

Termed as one of Asia's developing countries, thus far, 96% of Malaysia's urban and rural population have access to improved sanitation. 68% of the population equivalent is now connected and served by more than 10,400 sewage treatment plants. The rest of the population is served by on-site systems such as septic tanks and traditional systems. Moving towards 2020, the Government has aimed to provide 80% of the population with connected services especially in the major cities.

As for access to sanitation in the rural areas, MOH has been providing minimum sanitation facilities like flush toilets and pit latrines for poor especially since 1968. This initiative is implemented under the Rural Environmental Sanitation Program (RESP), where more than 1.4 million of such facilities have been provided to the rural community. MOH established Engineering Unit in 1968 to implement and monitor the RESP programme. In 1976, the RESP programme was expanded to the Water Supply and Environmental Sanitation (BAKAS) under the Third Malaysia Plan.

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**Question 4.** Please describe how planning in the water and sanitation sector is guided by the principle of progressive realization of the human rights to water and sanitation, and how it reconciles the two priorities - increasing levels of access to services on one hand and reducing inequalities between different groups on the other.

**Answer:** Various efforts were made by MEWA, SPAN and state water authorities within the past few years in ensuring adequate and safe water and sanitation services. This includes building new water treatment plants in areas with increased users, finding alternative sources such as groundwater and alternative for storage during the dry season through Hybrid Off river Storage Systems (HORAS), Off River Storage (ORS).

In terms of reduction of inequality between agencies, a National Water Balance System (NAWABS) has been developed by the Department of Drainage and Irrigation. This system develops the water balance within a water catchment taking into consideration the different users and priorities.

For sanitation, SPAN has come up with Sewerage Catchment Plan (Phase 1), where policies and strategies are outlined. This document emphasizes on providing a conducive environment and sustainable living for all areas.

SPAN also provide funding to sewerage providers to refurbishment, rehabilitation and upgrading of the sewage treatment plant to meet the environmental regulations and develop a framework of desludging rules, which aims to reduce risk of individual septic tanks.

**Question 5.** Please describe methods of budgeting and budgetary planning which aims to ensure that the maximum available resources are utilised for the realization of the human rights to water and sanitation for all. Please include the process of allocating budget as well as the output achieved by the utilisation of the budget.

**Answer:** Budget for water and sanitation projects has been allocated under the 5-year Malaysia Plan. For instance, under the Eleventh Malaysia Plan (2016-2020), six strategic thrusts were defined to help Malaysia stay ahead of global and domestic challenges and opportunities. They are:

- a. Enhancing inclusiveness towards an equitable society;
- b. Improving wellbeing for all;
- c. Accelerating human capital development for an advanced nation;
- d. Pursuing green growth for sustainability and resilience;
- e. Strengthening infrastructure to support economic expansion; and
- f. Re-engineering economic growth for greater prosperity.

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Under these strategic thrusts, focus areas, strategies, targets and outcomes were developed of which among others committed and ensure that the maximum available resources are utilised for the realization of the human rights to water and sanitation for all. For example, within 2016-2020, key targets include 99% population served by clean and treated water, 80% sewerage connected services coverage, especially in main cities and reduction non-revenue water to 35%.

In addition to the Malaysia Plans, Malaysia through its national policy for the water supply services industry had implemented a policy for diversification of financial means for infrastructure development for water assets and reduce dependency on government financial assistance.

Through this policy, Pengurusan Aset Air Berhad (PAAB), a government wholly-owned company was established to fund and build water assets. PAAB forms part of the Government's efforts to restructure the water services industry in the country to achieve better efficiency and quality, as well as to ensure the sustainability of the industry with the responsibility to develop the nation's water infrastructure in Peninsular Malaysia and the Federal Territory of Labuan, using competitive financing sourced and obtained from the private financial market. Federal Government will no longer provide soft loans to State Governments except to Sabah and Sarawak, for the development of water services infrastructure. The responsibility to finance and develop new water infrastructure will be transferred to PAAB. As a Government-owned company, PAAB is eligible for more favourable financing rates which will translate to better tariff rates for the consumers. The water infrastructures will be leased to the water operators for operation and maintenance

**Question 6.** Please describe how non-financial resources have been utilized to progressively realize the human rights to water and sanitation including the process of utilization and the output.

**Answer:** Continuous community engagement programmes have been conducted by various agencies. A Water Forum was established under Section 69 and 70 of Act 655 to champion the need for consumers having access to clean, safe and continuous supply of treated water and adequate sanitation through a supply and service system which is managed in an accountable and transparent manner from catchment to consumers under the provision of Act 655. A Consumer Standards is also prescribed in Act 655 under section 68 with the main of consumer protection and other mechanism includes dispute resolution and public inquiry if the need arises.

**Question 7.** In the case where trade-offs with resources usage on other national agenda and implementation of other rights were required, please provide the circumstances and the decision taken as well as the reasoning behind the decision.

**Answer:** Water resources in Malaysia has been subjected to increasing pressures from multiple causes such as population growth, a growing economy, and an ever-increasing intensity of competition for water from various users. The existing setup of Federal and State institutions and the powers rendered to each is applied in exclusion of one-another or at times overlapping each other as they pursue the localized

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objectives of their respective organizations. The focus of water resource governance and water services industry regulatory frameworks related to HRWS remained one of the challenges that need to be addressed to ensure secure and sustainable water in terms of quantity and quality for all.

Water resource remains exclusively under the State's jurisdiction. Several State Governments through their respective Water Regulatory Body has their legislation and management on conservation, protection and ensuring that water catchment areas are gazetted. This includes pollution control and providing rights of water abstraction, which have a direct implication to the water supply sector and may also impact the HWRS.