

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



FOLLOW-UP REPORT SUMMARY

OFFICIAL COUNTRY VISIT TO MONGOLIA
9 TO 20 APRIL 2018

A/HRC/45/10/ADD.3



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FOLLOW-UP REPORTS

The official visit to Mongolia was undertaken upon the invitation of the Government from 9 to 20 April 2018. During his visit, the Special Rapporteur had the opportunity to meet with different interlocutors, including the Government, representatives of international organizations, multilateral funders and civil society, and several residents. At the end of the visit, he shared his preliminary findings with the Government and then held a press conference and issued a press release and preliminary statement on 20 April 2018. The report of the official visit (A/HRC/39/55/Add.2) was presented to the Human Rights Council in September 2018.

In undertaking the present follow-up report, the Special Rapporteur, between October 2019 and April 2020, conducted desk research on the implementation of the recommendations provided to the Government in his country visit report, in order to develop a picture of the Government's current actions, inactions and progress. To support the research, questionnaire to the Government was sent and the Government of Mongolia submitted a written response to the questionnaire on 3 April 2020. Furthermore, the Government of Mongolia provided oral updates and written submissions on their implementation of the Special Rapporteur's recommendation during the interactive dialogue of the 39th and 42nd sessions of the Human Rights Council. The Special Rapporteur furthermore engaged the Mongolian population through social media outlet asking about their observation and perception on the improvement of access to water and sanitation and the human rights to water and sanitation since the visit, receiving limited contribution.

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



LEGAL, POLICY AND INSTITUTIONAL FRAMEWORK

RECOMMENDATION 1: Adopt legal provisions that recognize the human rights to water and sanitation at the national level (A/HRC/39/55/Add.2, para. 82(a)).

Since the visit took place, a notable legal development has been made on the amendments to the Constitution passed on 14 November 2019, among which include the amendment to Article 6(2): “land, except for the property owned by the citizens of Mongolia, subsoil, its wealth, forests, water resources, and wildlife shall be state public property.” The amended article further states that “the law shall establish the legal basis for the development of strategically important mineral deposits in accordance with the principle that natural resources are in the hands of the people, and the majority of its benefits shall go to the people”. While welcoming the amendments, which constitutes a step towards implementing the Government’s obligation to ensure adequate and equal access to drinking water, the Special Rapporteur reminds the Government that such amendments do not explicitly recognize drinking water and sanitation as human rights.

Progress
on-going



RECOMMENDATION 2: Incorporate the normative content and principles of the human rights to water and sanitation for policies and programmes on water, sanitation and hygiene (A/HRC/39/55/Add.2, para. 82(b)).

The final evaluation of the National Water Programme is scheduled to be presented to the National Security Council, a state consultative body to the Office of the President, in June 2021. From the perspective of the human rights to water and sanitation, evaluation criteria listed in the Programme are limited in that they only address the elements of availability and quality of the normative content, and exclude affordability, accessibility, acceptability, privacy and dignity.

Progress
not started



RECOMMENDATION 3: Align the Sustainable Development Vision 2030 of Mongolia on water and sanitation, in its aspirations and its language, with Sustainable Development Goals 6.1 and 6.2 and implement the Sustainable Development Vision 2030 through a human rights lens (A/HRC/39/55/Add.2, para. 82(d)).

In its Voluntary National Review in 2019, the Government indicated that the National Development Agency had conducted a coherence assessment between the SDV and the SDGs, finding that approximately 50 – 60 per cent of the SDGs were reflected in the SDV. The Government explained that a systematic review of all effective medium and short-term policies was being undertaken in order to assess their alignments to the SDGs.

Progress
on-going



Moving beyond the SDV, the Government has initiated discussions on its long-term development plan, “Vision-2050”, which commenced with the first discussion of the resolution accepting Vision-2050 by the the parliament of Mongolia, on 5 May 2020. The Special Rapporteur notes that the draft long-term development policy of Mongolia, Vision-2050, still refers to “adequate services” of water and sanitation, a level of service different from “safely managed”, which is the indicator of the SDGs. In addition, Vision-2050 changes from the SDV by adding a goal for water quality. The Special Rapporteur wishes to remind that such an approach does not address ensuring affordability of access to water and sanitation by providing subsidies or even enabling people to access water for free in critical circumstances. It also does not include the provision of services for persons with specific needs, such as persons with disabilities.



INSTITUTIONAL FRAMEWORK

RECOMMENDATION 4: Conduct a comprehensive assessment of the institutional arrangements in the water and sanitation sector, with a view to establishing a unified national policy and a governmental body tasked to coordinate the water and sanitation policy of the central Government, together with focal points in each ministry. That coordination should be approached through the human rights framework and should ensure that the responsible bodies are held accountable (A/HRC/39/55/Add.2, para. 82 (c)(i)).

Progress
on-going



RECOMMENDATION 5: Improve dialogue and exchange of information between all levels of government in relation to access to water and sanitation, in accordance with a clearly established human rights framework (A/HRC/39/55/Add.2, para. 82(c)(ii)).

Progress
on-going



RECOMMENDATION 6: Establish clearly defined roles and responsibilities of governmental institutions related to water and sanitation in order to address the scattered responsibilities that prevent individuals from effectively holding the Government accountable for its human rights obligations (A/HRC/39/55/Add.2, para. 82(c)(iii)).

Progress
limited



In January 2020, the Law on Water was amended to provide the legal basis for the establishment of a State Water Agency. The responsibilities of the State Water Agency touch upon some normative content of the human rights to water and sanitation, namely, affordability and quality; however, it is unclear whether the execution of the State Water Agency's responsibility is exclusively associated to water resources management or to water and sanitation services, leaving a gap, particularly to which extent it will be guided by the human rights framework. The Special Rapporteur cautions that in addition to creating the State Water Agency, the Government must ensure that enough resources are allocated to support the State Water Agency's new coordinating role.

In addition to the State Water Agency, the National Water Council is also to be established under the amended Law on Water, as a branch to be under the National Security Council, which reports to the President. According to the Law on Water, it is to be responsible for providing policy recommendations and exchanging information aimed at ensuring water security (article 91.1.1). The specific functions of the National Water Council, how they differ from the State Water Agency and what mechanisms are in place to coordinate the roles of the two bodies are not yet clarified.

Despite those changes, responsibility for water and sanitation provision appears to be still divided. As an example, the Ministry of Construction and Urban Development is responsible for the "Government policy on housing and public utilities", approved by the Government in resolution 94 of 2020, which sets the target of piped connections for 90 per cent of the population by 2030.



RECOMMENDATION 7: Establish a designated governmental agency with a clear mandate to plan and implement interventions in the area of sanitation, with a particular focus on the ger areas (A/HRC/39/55/Add.2, para. 82(c)(iv)).

Progress
not started

The Special Rapporteur notes that the responsibilities of the new State Water Agency as identified in the Law on Water do not include specific reference to sanitation, nor to the ger areas. The Special Rapporteur notes that the establishment of the State Water Agency is an opportune moment for the Government to specifically integrate sanitation provision for the ger areas into its functions.



RECOMMENDATION 8: Establish accountability mechanisms to monitor the compliance of the relevant governmental institutions and informal service providers with established standards and impose sanctions, and ensure that corrective and remedial action is taken.” (A/HRC/39/55/Add.2, para. 82(c)(v)).

Progress
limited

The new State Water Agency provides an opportunity for the Government to clearly define administrative responsibilities and standards for water provision in Mongolia. According to the amended Law on Water, the State Water Agency will be responsible for creating and organizing the implementation of a water resources management plan.



The functions of the State Water Agency should be organized and conducted in accordance with the human rights principles of transparency, access to information, and participation. Information on its operations should be accessible to the public in clear and understandable language and the ability to answer requests and clarifications should be improved.

While the Special Rapporteur notes the Amendments to the Constitution (2019), in particular Article 6.2 (see recommendation 1, above), he raises doubts as to whether the Constitutional Court of Mongolia will consider this as a basis to adjudicate issues related to violations and abuse of the human rights to water and sanitation.

RECOMMENDATION 9: Establish a regulatory framework to regulate the provision of services, including those under the responsibility of local governments and of private informal service providers. (A/HRC/39/55/Add.2, para. 82(j)).

Progress
limited

The Special Rapporteur notes that Article 16(1) of the amended Law on Water provides that the State Water Agency shall develop and monitor water use in the country, and establish a water use database. He notes that from the information available on the State Water Agency, its responsibility to monitor water use does not equate to a regulatory framework to regulate the provision of water and sanitation services. There is a need for the regulation of the provision of both water and sanitation and including both formal and informal services, in addition to a focus on water resources. Together with the limited scope of the State Water Agency's monitoring functions, another issue to raise is the independence of the State Water Agency, which will function under the Ministry of Tourism and Environment.





HUMAN RIGHTS TO WATER AND SANITATION

RECOMMENDATION 10: “Address disparities between schools, so that all Mongolian students enjoy the same conditions and in particular, address water and sanitation conditions in dormitories in schools. Measures should aim to ensure continuous service of sanitation facilities in education facilities, by addressing the financial support needed to maintain sanitation facilities in schools. High priority should be given to programmes for menstrual hygiene management in schools and dormitories, with a focus on access to adequate facilities, sanitation, infrastructure and supplies to enable girls to change and dispose of menstrual materials”. (A/HRC/39/55/Add.2, para. 82(e)).

Progress
not started



According to the WHO/UNICEF JMP, 63 per cent of schools in Mongolia had access to basic sanitation services in 2016.[1] This shows an increase from the numbers reported by the Government in 2015, which stated that around half of the schools in Mongolia had indoor toilets. Not all schools have equal access to sanitation services, however. 70.2 per cent of schools in urban areas have access to basic service, as opposed to 57.7 per cent in rural areas. This pattern is also true for access to water, 74.4 per cent of schools had access to basic services in 2016, with 84.8 per cent of urban schools and 72.9 per cent of schools in rural areas.

RECOMMENDATION 11: Address and bridge the gap between the ger and apartment areas in terms of the level of water and sanitation services, continuity of services and water tariffs. In doing so, devise short- and long-term measures to provide a gradual improvement in access to water and sanitation, with the aim of ensuring continuous services and connection to piped networks:

- 1. During the initial phases, envisage and plan to increase the number of water kiosks and improve the quality of pit latrines (A/HRC/39/55/Add.2, para. 82(f)(i)),**
- 2. During the subsequent phases, with the expansion of piped networks to the ger areas, establish a specific programme or subsidy mechanism to support those who are economically vulnerable in improving the facilities in their homes that are needed to access a piped network and to pay fees for connecting to piped networks (A/HRC/39/55/Add.2, para. 82(f)(ii)).**

Progress
on-going



The Special Rapporteur notes that the initial phase of bridging the gap in access to water and sanitation between the ger and apartment areas are in progress, finding information about projects aiming to improve water and sanitation within current service systems. Despite these projects, the Special Rapporteur maintains that there is an urgent need for a unified and monitored Government policy on water and sanitation services, to ensure continued and effective progress.

Addressing the need for a long-term programme beyond improving local services, the government has taken steps to connect the ger areas to piped connections. As part of the “Government policy on housing and public utilities”, the Government has set a target to increase the number of households in the ger areas living in apartments connected to public supply from 5,189 in 2018 to 140,000 in 2030.[1] The Special Rapporteur looks forward to positive outcomes from this policy. He cautions that the expansion of piped connections to the ger areas should remain affordable to the newly accessed populations, not only in terms of tariffs for use, but also when it comes to connection charges.



RECOMMENDATION 12: Address urban-rural inequalities in access to water and sanitation services and give due priority to rural areas, with technical assistance and financial support to improve those services (A/HRC/39/55/Add.2, para. 82(g)).

The 2019 WHO/UNICEF JMP reports – a report released after the visit - notes that between 2000 and 2017, the proportion of the population with access to at least basic sanitation services increased from 26 to 42 per cent in rural areas, and from 64 to 66 per cent in urban areas, suggesting that the gap between rural and urban areas reduced during that time.[1] For water, rural coverage increased from 29 to 56 per cent, and urban coverage increased from 87 to 96 per cent. While the trajectory suggests that the gap is also reducing, this is less true for water services than for sanitation.

The need for addressing disparity and the gap between urban-rural areas have been noted by the Government. The “State Policy on housing and public utilities”, approved by the Government on 18 March 2020, states that the Government acknowledges the disparity between rural and urban access to sanitation, and aims to provide water and sanitation to 90 per cent of the total population of Mongolia by 2030. It does not set targets for rural populations. The Special Rapporteur highlights that specific targets and plans should be in place to improve access to water and sanitation in rural areas.

Progress
on-going



RECOMMENDATION 13: Apply a human rights framework to water resources management, particularly by giving priority to water for personal and domestic use over other uses related to economic activities (A/HRC/39/55/Add.2, para. 82(h)).

In its submission to the Special Rapporteur, the Government explained that between 2018 and 2019 hydrogeological mapping had been conducted in three Gobi region basins that covered a total 75.000 km² area, as well as in five soums of Gobi-Altai and Bayankhongor aimag, and five soums in Sukhbaatar and Dornogobi. This increased the area of the country covered by mapping by 4.8 per cent, to a total of 14.6 per cent in 2019. While the mapping of water resources is a positive step towards creating plans to ensure the availability of drinking water, it is important to ensure that access to water for personal and domestic purposes is prioritized.

The prioritization of water for domestic purposes is especially important in the context of widespread activity of mining and extractive industries in Mongolia. In his report on megaprojects, the Special Rapporteur outlines how conducting human rights impact assessments, in particular on water and sanitation, should take into account how effluents released by megaprojects impact on water quality and the existence of preventive measures to avoid contamination of water resources in the first place.

The Special Rapporteur congratulates the Government on its efforts to map water resources in the country, but strongly urges the Government to supplement this activity with strong safeguards for the prioritized use of water for domestic purposes. He recommends that the Government not only ensure the availability of water, but also take steps to ensure that other elements of the normative content of the human rights to water and sanitation, namely, quality, accessibility affordability and acceptability are not impacted by economic activities.

Progress
limited



RECOMMENDATION 14: On drinking water quality: Increase the number of annual samples in order to have a more comprehensive overview of drinking water quality and meet the international guidance on water quality control (A/HRC/39/55/Add.2, para. 82(i)(i)).

The Special Rapporteur received no information regarding the number of annual samples taking to monitor water quality.

No
assessment
can be made





RECOMMENDATION 15: On drinking water quality: [...] Continue to take measures to improve drinking water quality and to identify alternative safe water sources for soums with drinking water services that do not meet the drinking water standard (A/HRC/39/55/Add.2, para. 82(i)(ii)).

Progress limited



The amended Law on Water outlines that the State Water Agency will be responsible for compiling water statistics, including water quality monitoring, and organizing water exploration and research. The Special Rapporteur looks forward to the Government's continued efforts to find additional water sources, but cautions that such efforts must be matched by a strengthened and coordinated water quality monitoring process and those efforts should be prioritized in areas where existing water sources are of unacceptable quality.

RECOMMENDATION 16: On drinking water quality: [...] Take advantage of the current revision of national standards and adopt standards compatible with the most updated international guidelines and scientific knowledge in the field (A/HRC/39/55/Add.2, para. 82(i)(iii)).

Good progress



The new "Drinking water, Health necessity, quality, and safety evaluation MNS 0900:2018" was adopted in 2018 and updates its earlier version so that the standard is aligned with the fourth edition of the World Health Organization's (WHO) Guidelines for drinking-water quality. Not all indicators are aligned, however, with Mongolian national standards allowing higher concentrations of Zinc and Aluminium than international standards. In 2019, the Central Water Monitoring Laboratory at the "Mongol-Water" State Department (conducting microbiological, chemical and heavy metal content analysis in water, and sewage water) updated and improved its operating policies and systems in accordance with the standard requirements of the "MNS ISO 17025: 2018 for Testing Capacity and Calibration Laboratory Capacity." The Special Rapporteur commends the Government on updating its laboratory protocol for testing water quality, and looks forward to continuous improvement of the water quality testing process.

RECOMMENDATION 17: On drinking water quality: [...] Establish a systematic procedure to provide individuals with information on the quality of the water they consume, using clear and accessible language (A/HRC/39/55/Add.2, para. 82(i)(iv)).

No assessment can be made



The Government did not provide any information regarding efforts to communicate water quality to the public in its submission. It is crucial that the Government communicate with all the population, in a clear and accessible format, including those without access to technology or the internet. Efforts must also be made to reach the nomadic population.

RECOMMENDATION 18: Incorporate human rights standards and principles in the current reform initiative of the water tariff system (A/HRC/39/55/Add.2, para. 82(l)).

No assessment can be made



The United Nations Mongolia report of activities between 2017 and 2018 mentions working in close collaboration with the National Water Service Regulatory Commission, on introducing new methodology for setting water tariffs, which resulted in reducing water tariffs for ger area residents, thus improving their access to drinking water at a more affordable price. The Water Services Regulation Council announced that a change in calculation for water tariffs had been made in January 2019, but did not outline the impact on affordability.



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



Retgressionion

- 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.