



General Assembly

Distr.: General
29 August 2019

English only

Human Rights Council

Forty-second session

9–27 September 2019

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the human rights to safe drinking water and sanitation on his visit to Malaysia

Comments by the State*

* The present document is being issued without formal editing.



Legal, Policy and Institutional Framework

1. Paragraph 4

1. The autonomy of the states of Sabah and Sarawak and the differing levels of economic development between Peninsular Malaysia and East Malaysia also influenced the reform of Malaysia's water and sanitation sector, which commenced in **2006** ~~2004 and finalised in 2016~~. The reform resulted in amendments to domestic legislation and the reorganisation of the institutional framework of water and sanitation sector at the federal level. The two states in East Malaysia did not take part in the reform and the reform only covered states in Peninsular Malaysia and federal territories.

Comment from the Government of Malaysia:

- **The Malaysian Parliament passed two acts in 2006, which marked the commencement of reform in the water and sanitation sectors in Malaysia. Reform initiatives are still on going.**

National Law

2. Paragraph 11

2. In the state of Sarawak, three pieces of legislation governs the water and sanitation sector. The Water Ordinance 1994 regulates the conservation, protection, development, and management of water resources of the state and the supply and distribution of water. The Water Supply Regulation 1995 outlines technical and administrative standards related to the provision of water supply services, including tariffs related to abstracting groundwater and consumer tariffs. Finally, the ~~Sewerage System and Services Ordinance, 2005~~ **Sewerage Systems and Services Ordinance, 2005** regulates the sewerage systems and services in urban areas.

Comment from the Government of Malaysia:

- **The accurate terminology is Sewerage Systems and Services Ordinance, 2005.**

Institutional Framework

3. Paragraph 14

3. As the result of the reform, the federal government is mandated to regulate the water supply and sanitation services with the power over water-based projects and the states retain their power to declare and regulate water catchment areas, water sources, and river basins. Institutional actors at the federal level have been consolidated to ensure provision, regulation, and funding for both water and sanitation. Notably, in 2006, the Ministry of Energy, Water and Communication ~~Water, Land and Natural Resources~~ was established and is responsible for developing integrated water management, from water catchment to water access at households. Several other institutional bodies in the water and sanitation sector of Malaysia were established, which includes: ~~Indah Water Konsortium (IWK)~~ the federal mechanism for the provision of sanitation; National Water Services Commission (SPAN), the national regulator; and the Water Asset Management Company (PAAB), the custodian of water assets. The states of Sabah and Sarawak decided not to be part of the new institutional architecture and retained their own institutional framework and autonomy over water and sanitation service provisions.

Comments from the Government of Malaysia:

- **The Ministry of Water, Land and Natural Resources was established in 2018 after the 14th General Elections.**

- **The Indah Water Konsortium (IWK) was established before the reform initiatives.**

4. Paragraph 15

4. In Peninsular Malaysia, the responsibility related to water resource matters lies with the state governments, which manage existing water basins, canals, rivers, and water catchment areas. Many states provide water directly except for certain parts of the state of Johor, where water services are privatised. As for sanitation, **Indah Water Konsortium (IWK)** provides sewerage services to states in Peninsular Malaysia except for the state of Kelantan and the two districts in the state of Johor, **Sabah and Sarawak**. The Special Rapporteur notes that it is essential that the federal government assess whether the absence of federal bodies in those States has impacted the quality of services. This assessment should be the fundamental guideline for stronger support to sewerage service and individual sanitation solutions in East Malaysia and states of Kelantan and Johor.

Comment from the Government of Malaysia:

- **The accurate terminology is Indah Water Konsortium (IWK).**

Service Providers

5. Paragraph 17

5. In the state of Sarawak, several water providers that are public companies owned by the state of Sarawak – such as Kuching Water Board, Sibu Water Board and Laku Management - cover water supplies in urban areas. Further, the Sarawak Sewerage Department of the Local Ministry of Housing provides central sewerage services to urban areas. For rural areas, the water supply is the responsibility of the Rural Water Supply Department under the Ministry of Utility Sarawak.

Comments from the Government of Malaysia:

Malaysia would like to propose reformulation of this paragraph as follows:

- **In Sarawak, the provision of water supply services is under the purview of the Ministry of Utilities Sarawak. The water supply agencies under the Ministry are Kuching water Board, Sibu Water Board, Laku Management Sdn Bhd and Rural Water Supply Department. Both Kuching Water Board and Sibu Water Board are statutory bodies providing water supply to Kuching and Sibu respectively and their surrounding areas. Laku Management Sdn Bhd is a wholly owned company of Sarawak Government and provides water supply to Miri, Bintulu and Limbang.**
- **The Rural Water Supply Department provides water supply to the remaining areas of Sarawak including the other towns and rural areas. Sewerage Services Department Sarawak of Ministry of Local Government and Housing provides centralised sewerage services to parts of Kuching City while Bintulu Development Authority provides centralised sewerage services in Bintulu town. Other areas are relying on individual treatment system and are served by their respective local and municipal authorities**

Financial Sustainability of Service Providers

6. Paragraph 18

6. In order to address financial sustainability of service providers, the reform resulted in the creation of PAAB, a Government owned entity responsible for **water** asset management. PAAB works on the concept of ‘build and lease’ and after funding the construction of water infrastructure, PAAB leases the infrastructure to water service

providers. This model of PAAB is operational in Peninsular Malaysia and the federal government supports the two states in East Malaysia for urban water and sewerage interventions through loans, often in the form of soft loans. From interactions with interlocutors in the two states, the Special Rapporteur observed that the budget allocation from the federal government is not sufficient, particularly considering the high cost involved to provide water and sanitation services to the population sparsely located in remote rural areas, which cover the majority of the territory in those states.

Comment from the Government of Malaysia:

- **To add the term water before asset management.**

Regulation

7. Paragraph 20

7. Another outcome of the reform was the establishment of the water and sanitation regulator. All water and sewerage service provisions in the Peninsular Malaysia are licensed and regulated by the National Water Services Commission (SPAN) under the **Water Services Industry Act 2006** ~~National Water Services Commission Act 2006~~. The Special Rapporteur finds the regulatory strategy currently in place at the federal level adequate. SPAN requests the providers to develop a three-year planning and provides institutional support attached to the achievement of an agreed performance. He recommends SPAN to carry out its regulatory functions in a manner immune to pressure from any illegitimate interest and that the main objectives of regulation are aligned with the framework of the human rights to water and sanitation (A/HRC/36/45).

Comment from the Government of Malaysia:

- **The National Water Services Commission Act 2006 governs issues related to the role of SPAN while regulation and licensing falls under WSIA 2006.**

8. Paragraph 21

8. SPAN does not have a role in East Malaysia and therefore the national regulatory strategy does not apply in those states. **In Sarawak, the State Water Authority plays the regulatory role. It has general control and supervision of all water supply authorities and the management of all water resources and water catchment areas in Sarawak.** The state of Sabah does not have an independent regulator and the water department in Sandakan performs the role of a regulator. The Special Rapporteur encourages the Government, in a dialogue with state governments, to harmonise water and sanitation service regulation in the country, through bodies that are independent of service providers.

Comment from the Government of Malaysia:

- **Malaysia proposes to include new formulation to reflect the role of State Water Authority in Sarawak as follows:**

In Sarawak, the State Water Authority plays the regulatory role. It has general control and supervision of all water supply authorities and the management of all water resources and water catchment areas in Sarawak.

Orang Asli Indigenous Peoples

9. Paragraph 26

9. Peninsular Malaysia is home to 215,000 Orang Asli indigenous peoples, where they are the minority. The Special Rapporteur visited seven villages in the Gua Musang district of the state of Kelantan where Temiar-Orang Asli peoples live. He was able to see how

Orang Asli villages have been resettled and regrouped after being displaced by flooding and due to mega-projects, including logging, palm oil and rubber plantation, and dam construction, which implies the loss of their traditional lands, the majority of which are not officially protected. It was explained to the Special Rapporteur that, for Orang Asli, losing their lands means destruction of their way of life, including the possibility to transmit rituals, beliefs, knowledge, and practices. During the short yet valuable time with the indigenous peoples, the Special Rapporteur could learn and see that the rivers next to each community are used for several purposes: as the water source for washing and as a place in lieu of toilets.

Comments from the Government of Malaysia:

- **The population of Orang Asli is 178,197 based on the 2010 Population and Housing Census of Malaysia.**
- **Due to distant location and the landforms, high infrastructure investment by State Government will be required to build and supply reticulated water to these villages. Currently, state water supply company, Air Kelantan Sdn. Bhd (AKSB) is responsible in water management services in the State. With the absence of such facility due to high cost, Government has developed alternative water systems to ensure all residents continue to receive the water supply. The systems were built by the Ministry of Rural Development (KPLB) and Ministry of Health Malaysia (MOH) for 121 villages, while one village uses reticulation system from AKSB.**
- **The villages visited by the Special Rapporteur (Kg. Langsat, Kuala Betis, Kg. Merlong, Kg. Kelaik, Kg. Podek and Kg. Angklek) are installed with alternative water supply system, built by KPLB and MOH. However, maintenance of the systems has been deferred as the Department is refining the specifications and the scope of the new maintenance contract to ensure better service quality in the future.**
- **To ensure sustainable water supply to the Orang Asli community, the Department of Orang Asli Development (JAKOA) is working with Mineral and Geoscience Department of Malaysia (JMG) to undertake various programme. In 2019, JMG will commence water well rehabilitation work in Kg. Langsat. This effort may be expanded to other villages in the future subject to funding availability.**
- **In order to address the issue of technology gap between the water facilities and the users at the settlement, JAKOA and MOH will be upgrading the Water Supply and Environmental Sanitation (BAKAS) system with simpler and easier to handle system which is currently being used by MOH.**

10. Paragraph 29

10. As the water systems are not functional, villagers often rely on gravity fed water supply from water streams in the mountains and water from the river and the residents were left to find water sources on their own. In the village of ~~Peralong~~ **Perlong**, 40 inhabitants who live in traditional ~~houses~~ **longhouses** rely on one water point that the population themselves have constructed using pipes that have been left by the logging companies nearby. These alternative water systems, constructed by the indigenous peoples and not within the purview of Government regulation, are not guaranteed with adequate level of water quality. In Kelaik village, there are about 200 people, including children, composed of 50 families, JAKOA water treatment plant was provided in 2010 but since its installation, it has not been working. The community relied on a small stream for drinking water and the river flowing next to the village for washing and cooking. One indigenous people explained that “when it rains, we compare the water from the small stream and the river. Whichever is cleaner, we drink it”.

Population in Rural Areas

11. Paragraph 34

11. The population living in rural areas require particular attention from the Government, in order to improve their access to water and sanitation services and to ensure sustainability. In rural areas of Malaysia, the main sources of water include rainwater and gravity-fed water from the mountains, **and ground water** where the source of water is not directly impacted by development projects. In the rural parts of states in East Malaysia, most of the gravity-fed water systems were installed **since in the** 1980s as a result of a joint effort by the Ministry of Health and the communities. **At present, alternative water supply systems, such as gravity-fed systems, tube wells and rainwater harvesting are still being installed by the Ministry of Health with the participation of rural communities throughout the country. The number of systems installed is largely dependent on the availability of funds. The main aim of installing these systems is to prevent or control the outbreak of waterborne diseases in rural areas. Priority is given to poor rural communities and disease high risk areas. Further to that, basic sanitation facilities such as pour flush latrines with soak pits are also installed by the Ministry of Health to prevent faecal-related diseases.** While the water supply was available in rural areas, in some rural villages that the Special Rapporteur visited, the maintenance of those systems had been left to the community without any financial support from the Government. He highlights that for the population to enjoy their rights to water and sanitation, it is essential that the solutions to provide water are sustainable and relevant maintenance and improvements to the solution are provided. **The alternative water supply systems and sanitary latrines installed by the Ministry of Health are handed over to rural communities for self-maintenance. Major upgrades, repairs or replacements will be undertaken by the Ministry of Health which is again largely dependent on the availability of funds.**

Comments from the Government of Malaysia:

- **Malaysia proposes to add additional information to highlight the various and alternative water supply systems in rural areas as follows:**

At present, alternative water supply systems, such as gravity-fed systems, tube wells and rainwater harvesting are still being installed by the Ministry of Health with the participation of rural communities throughout the country. The number of systems installed is largely dependent on the availability of funds. The main aim of installing these systems is to prevent or control the outbreak of waterborne diseases in rural areas. Priority is given to poor rural communities and disease high risk areas. Further to that, basic sanitation facilities such as pour flush latrines with soak pits are also installed by the Ministry of Health to prevent faecal-related diseases.

The alternative water supply systems and sanitary latrines installed by the Ministry of Health are handed over to rural communities for self-maintenance. Major upgrades, repairs or replacements will be undertaken by the Ministry of Health which is again largely dependent on the availability of funds.

12. Paragraph 37

12. Another observation relates to the inequality across regions, particularly in rural areas. As of 2016, approximately 88 per cent of the Sabahans and Sarawakians had connection to central piped water services. This is a different picture compared to Peninsular Malaysia, where in most states, except Kelantan, the rural population enjoys near-universal access to water supply. These figures include only the Malaysian national population, suggesting that the disparities are even higher when considering the significant presence of undocumented population in the states of Sabah and Sarawak. In Sandakan in the state of Sabah, the official statistics of households connected to water piped network and has meters amounts to approximately 43,000 out of 47,000 registered premises. However, there are others who are not within this statistics such as those who work in

factories and plantations with its own water supply for employees and neighbours, or those who live in remote villages that rely on rainwater as their main source of water.

Comment from the Government of Malaysia:

- **The percentage is 80.5 % in 2016 and not 88%.**

Prisoners and Detainees

13. Paragraph 54

13. The Special Rapporteur spoke to three refugee men who were detained and also was put in prison. Their stories indicate poor and almost inhumane conditions of access to water and toilets in those settings. The Special Rapporteur visited several blocks in Kajang Prison and observed varying levels of privacy for toilet usage. In most blocks, particularly those used for rehabilitation, the toilet inside each cell was located next to a low wall separating other parts of the cell. However, there were also blocks where that wall did not exist and prisoners were left without any privacy when urinating or defecating.

Comments from the Government of Malaysia:

- **All blocks in Kajang Prison are provided with toilets in each cell with low walls. The structures of these toilets are such to ensure the safety and security of the inmates. A fully enclosed toilet can cause untoward incidents. Nevertheless, inmates are allowed to use screens while they are using the toilet. Only the Quarantine Block has no walls demarcating the toilet. However, these blocks are not used to hold prisoners permanently, inmates stay there the most from 3 to 7 days. The inmates are allowed to use screens while they are using the toilet.**
- **The Malaysian Prison Department ensures the dignity and privacy of the inmates at all time without compromising on the safety and security of inmates and the prison as a whole.**

14. Paragraph 55

14. The Special Rapporteur highlights that prisoners and detainees must be provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners (CESCR General Comment no. 15, para 16(g)). The Standard Minimum Rules for the Treatment of Prisoners also known as Mandela Rules stipulates that drinking water shall be available and that prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

Comments from the Government of Malaysia:

- **Water is provided to the inmates in the prison, with tap water installed in every cell. Water supply in prison is from the same source as provided to the public. No water rationing is practiced. Interruption of supply happens if there is an interruption from the source. However to overcome this issue, prison has storage tanks in all the blocks. Although tap water is safe for consumption, the Prison Department provides boiled water from the kitchen and water boilers in some of the blocks.**
- **The Prison Department works closely with independent bodies such as SUHAKAM (Human Rights Commission), ICRC (International Committee of Red Cross), Visiting Justice and other government agencies such as Ministry of Health, Public Utility Board among others, to improve service quality and to provide a better and humane environment for the inmates.**

Water and Sanitation Tariff-Setting

15. Paragraph 66

15. Additionally, in order to guarantee that those financially more vulnerable are not denied access to water and sanitation services, the Special Rapporteur recommends the Government to implement mechanisms of social tariffs and different types of cross-subsidization, including from non-residential consumers to residential users (A/HRC/30/39). The current procedure of providing 20 cubic meters **water** for free that is implemented in some states is a way to address affordability, but may not be fair when universally applied. The application does not consider the number of persons living in the house and the household income and therefore, ironically, it is the rich households with fewer number of persons living in a house that consumes low volumes of water that will ultimately benefit from **this policy the procedure**, sadly at the cost of large, poor families. The target of these mechanisms should be the bottom 40 per cent (B40) group of the income classification that has median household income of RM3,000 and other marginalised groups. To identify those groups in need of subsidy, the Special Rapporteur reiterates that data should be collected and disaggregated.

Water Quality

16. Paragraph 70

16. The Ministry of Health performs the role of regulator of drinking water quality, **as suggested by the World Health Organization (WHO)**, for both Peninsular and East Malaysia. Through its Engineering Services Division, the Ministry collects and analyses 189,000 samples per year across the country. **This Drinking Water Quality Surveillance (DWQS) Program covers most of the piped water connections, be it in the urban and rural areas. The water quality of alternative water supplies in rural areas which include remote and isolated areas, such as plantations or resorts is also monitored under the DWQS program although not as extensive as those in urban areas. However, this role is limited to the piped connections mostly in urban areas, resulting in a gap in rural areas including the so-called alternative supplies as well as water supply in the most remote areas.** During the interactions with the actors in this field, the Special Rapporteur noted that coordination of drinking water surveillance, undertaken by the Ministry of Health, and drinking water control, by water providers, should be strengthened. The Ministry needs to have a more active role in auditing and interpreting the results of the monitoring by providers so that a larger number of parameters can be tested and to ensure that violations of the standards are properly fixed. Moreover, considering impacts on water quality of the sources, especially by development projects, a targeted monitoring, e.g. of pesticides, is urgent.

Comments from the Government of Malaysia:

- To include ‘as suggested by World Health Organisation’.
- To include information regarding Water Quality Surveillance (DWQS) Program.

17. Paragraph 71

17. According to information received, the National Guidelines for Drinking Water Quality is based on the second edition of the WHO guidelines. **However, revision to the Guidelines is being carried out based on the fourth edition of the WHO Guidelines and expected to be adopted later this year. There is an urgent need to update the current standard on the basis of the fourth edition of those international guidelines, in**

~~order to properly adjust parameters and limits for water quality monitoring, as well as the frequency of this monitoring.~~

Comments from the Government of Malaysia:

- **The Government of Malaysia is undertaking steps to revise National Guideline based on the fourth edition of WHO Guideline.**

18. Footnote 1

18. Ministry of Foreign Affairs, Ministry of Water, Land and Natural Resources, Ministry of Housing and Local Government, Ministry of Education, Ministry of Home Affairs, Ministry of Health, National Water Services Commission, Malaysian Water Association, Ministry of Rural Development, Ministry of Housing and Local Government, Department of Environment, Department of Orang Asli Development, Sabah State Water Department, rural water supply department and **Sewerage Services Department Sarawak sewerage department of the District of Miri** and water utility company (LAKU, Kuching Water Board and Sibul Water Board), Air Selangor and Indah Water Konsortium, Human Rights Commission of Malaysia in Kuala Lumpur and in Kota Kinabalu.
