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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Follow-up on the visit of the Special Rapporteur to Tajikistan****Report of the Special Rapporteur on the human rights to safe drinking
water and sanitation****Summary*

The Special Rapporteur seeks to enhance the effectiveness of his official country visits by undertaking a follow-up analysis of the recommendations included in the country visit report. The report of the official visit to Tajikistan (A/HRC/33/49/Add.2) was presented to the Human Rights Council in September 2016. The main findings of the follow-up are presented in this report, introducing the level of development of the recommendations and highlighting further recommendations derived from the current status.

* The present document is being issued without formal editing.



I. Background

1. Pursuant to resolution 33/10 of the Human Rights Council, the Special Rapporteur on the human rights to safe drinking water and sanitation undertakes official country visits to promote the progressive realization of the human right to safe drinking water and sanitation.
2. The Human Rights Council encourages all Governments to continue to respond to requests by the Special Rapporteur, to follow up effectively on the recommendations of the mandate holder and to make available information on measures taken in this regard (Resolution 33/10, para 15). Furthermore, the Manual of Operations of the Special Procedures of the Human Rights Council stipulates that Special Procedures mandate-holders can seek to enhance the effectiveness of their country visits in various ways, including by formulating their recommendations in ways that facilitate implementation and monitoring and undertaking follow-up initiatives through communications and further visits (paras. 97 to 105). In this connection, the Special Rapporteur seeks to enhance the effectiveness of his official country visits by undertaking a follow-up analysis of those visits focusing on the implementation of recommendations presented in his country visit reports.¹
3. The official visit to Tajikistan was undertaken upon the invitation of the Government from 4 to 12 August 2015. During his visit, the Special Rapporteur had the opportunity to meet with different interlocutors, including the Government, local authorities, the Human Rights Ombudsman, the Housing and Communal Service (Khojagii Manizliyu Kommunalii), Dushanbe Vodokanal, civil society organizations and international donors and agencies. He talked to community leaders, human rights defenders, women, children and medical practitioners. 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 12 August 2015.² The report of the official visit (A/HRC/33/49/Add.2) was presented to the Human Rights Council in September 2016. The Government of Tajikistan submitted its comments to the report (A/HRC/33/49/Add.5).
4. In undertaking the present follow-up report, the Special Rapporteur, between 1 January and 14 November 2018, 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, questionnaires to the Government and to other stakeholders were sent. Whilst no response from other stakeholders was received, the Government of Tajikistan submitted a written response to the questionnaire on 11 June 2018.
5. 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) limited progress, 4) progress not started, 5) unable to assess due to lack of information and 6) retrogression.
6. Prior to final submission, the current report was shared with the Government of Tajikistan on 22 July 2019 to which the Government did not provide any comments.

II. General developments in the country

7. After the period of the visit, the Government of Tajikistan has reiterated its leading role in promoting water management at the global level by initiating the 'International

¹ For more information on the follow-up analysis project see: <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/FollowUpAnalysisOfficialCountryVisits.aspx>.

² See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16313&LangID=E>.

Decade for Action, “Water for Sustainable Development”, 2018–2028’, which was adopted by the General Assembly on 21 December 2016 (A/RES/71/222). To facilitate its implementation, the State held the International High-Level Conference on the Water Action Decade, from 20 to 22 June 2018, in Dushanbe. The leadership of Tajikistan on global water issues was recognized in the press statement made by the Special Rapporteur at the conclusion of his visit to the country. At the end of the visit, the Special Rapporteur noted that “Tajikistan is known as a champion of water at the global level. The Government should translate the commitment made at the global level into the national legislation, policies and budget and their implementation, particularly to eliminate disparities and address the needs of the most vulnerable groups.”³

8. At the time of the visit, it was identified, through data from the Joint Monitoring Programme (WHO/UNICEF), that 74 per cent of the population had access to improved water and 95 per cent access to improved sanitation as of the end of 2015. About 40 per cent relied on non-centralized water supply sources and 15 per cent had sewer connections (A/HRC/33/49/Add.2, para.5). 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, in actuality, only 48 per cent of the national population has access to safely managed water services (60 per cent accessible on premises, 48 per cent available when needed and 73 per cent free from contamination), whilst only 73 per cent of the national population has access to basic hygiene services (87 per cent in urban areas and 67 per cent in rural areas). Additionally, the updated information shows that 79 per cent of schools in Tajikistan have basic water services (93 per cent in urban areas and 73 per cent in rural areas), 44 per cent have basic sanitation services (58 per cent in urban and 38 per cent in rural areas) and 26 per cent have basic hygiene services (41 per cent and 20 per cent in urban and rural areas, respectively). There is a lack of data on safely managed sanitation services.

9. The difference found between the national coverage of “safely managed” water services (48 per cent) and the figure mentioned in the report on improved water services (74 per cent) suggests that there still remains the challenge of addressing those who are left behind in Tajikistan. This is confirmed by data disaggregation that shows a gap of 24 percentage points on the access to basic water services between the richest (96 per cent) and the poorest (72 per cent) wealth quintiles. It is important to highlight that this gap was of 48 percentage points in 2000, showing important progress has been made in reducing inequalities over a period of 17 years.

10. As for sanitation, the reported 97 per cent of access to improved solutions is disaggregated into 85 per cent use of “latrines and others” and 15 per cent sewer connection. For a latrine to be considered safely managed, it is required that the excreta is removed, treated and disposed in situ or off-site and the wastewater collected by sewerage is treated off-site. Wealth inequality is not an issue which affects sanitation in the country, seeing that the level of access to basic services is essentially similar between the two extreme wealth quintiles. The same cannot be said for access to basic hygiene services, wherein a gap of 41 percentage points is found between the richest (87 per cent) and the poorest (46 per cent) wealth quintiles.

III. Legal, institutional and policy framework

11. International human rights law demands that States work towards achieving universal access to water and sanitation, being guided by human rights principles and the standards of the human rights to water and sanitation. The legal, institutional and policy framework is a precondition to an enabling environment for the progressive realization of the human rights to water and sanitation. The framework must be in place in order to ensure to all people within a given country can enjoy those rights in a non-discriminatory manner.

³ See: <https://www.ohchr.org/CH/NewsEvents/Pages/DisplayNews.aspx?NewsID=16313&LangID=E>.

A. Recommendations on international treaties

RECOMMENDATION 1: “Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and guarantee the human rights to water and sanitation as justifiable rights in national legislation.” (A/HRC/33/49/Add.2, para 59 (o))

RECOMMENDATION 2: “Accelerate its preparation for signing and ratifying the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes.” (A/HRC/33/49/Add.2, para 59 (p))

12. During his official visit to Tajikistan, the Special Rapporteur identified that more must be done by the Government to improve protections for the rights to water and sanitation under international law. Whilst Tajikistan has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), it is yet to ratify the Covenant’s Optional Protocol, which would ensure the justiciability of the human rights to water and sanitation in its national law. Furthermore, despite its strong participation in activities related to the UNECE-WHO/Europe Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (“the Protocol on Water and Health”), Tajikistan is yet to ratify this instrument (A/HRC/33/49/Add.2, paras. 7 and 42).

13. In addressing the Special Rapporteur’s recommendation regarding the ratification of the Optional Protocol to the ICESCR, the Government explained in its response to the follow-up questionnaire that it intends to properly consider whether it should now sign and ratify the Optional Protocol. As noted by the Government, the National Action Plan for the Implementation of the Recommendations of the Member States of the United Nations Human Rights Council under the Universal Periodic Review (Second Period) Procedure for 2017-2020, approved by the Presidential Decree of 7 June 2017, No. RP-901 for 2017-2020 envisages the study of the question of accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which will result in concrete proposals on that issue. The consideration by the Government of the ratification of the Optional Protocol is encouraging and the Special Rapporteur urges the State to look at this with due expediency. He reiterates that ratification would represent a positive step towards assisting in the realisation of the rights to water and sanitation, as well as all other rights contained within the ICESCR, by enabling those whose rights have not been adequately respected, protected or fulfilled to have their complaints heard by an independent body.

14. Whilst the Government is, seemingly, taking concerted efforts towards determining whether Tajikistan should ratify the Optional Protocol to the ICESCR, it has not disclosed whether it intends to act similarly in relation to the Protocol on Water and Health. Despite this, the Government has actively participated in meetings of United Nations Economic Commission for Europe related to the Convention, and, as noted, is a participant in many activities related to the Protocol. In its response to the questionnaire, the Government highlighted its intention to continue and bolster participation with the Protocol on Water and Health, noting that that, in accordance with the instruction of the Government of the Republic of Tajikistan dated May 2, 2018, No. 21417 (29-4), the Working Group on reviewing national targets under the Protocol on Water and Health for Tajikistan was established. Coordination of the activity of the relevant ministries and departments in the field of attracting investment is being utilised to achieve these goals. The Special Rapporteur welcomes the Government’s commitment to the objectives of the Protocol on Water and Health, and stresses the importance of continuing compliance with these in order to maximise the enjoyment of the rights to water and sanitation in Tajikistan.

15. In addition, Tajikistan has, on 22 March 2018, taken the positive step of signing the Convention on the Rights of Persons with Disabilities, which includes an obligation to ensure equal access to clean water services by persons with disabilities (Article 28, 2(a)).

16. The Special Rapporteur commends the efforts made by the Government to consider the ratification of the Optional Protocol to the ICESCR, and to continue and increase its

activities in pursuance of the objectives of the Protocol on Water and Health. He continues to encourage Tajikistan to sign and ratify the two Protocols. He further regards as a positive step the Government's decision to sign the Convention of the Rights of Persons with Disabilities. He urges the Government to also ratify this Convention so as to ensure its legally binding status, however he reminds the Government that by signing the Convention it is under a duty to refrain from acts which would defeat its object or purpose, pending a decision on ratification.⁴

RECOMMENDATION 1 – PROGRESS ON-GOING: The Special Rapporteur looks forward to Tajikistan making further progress in its efforts to ratify the Optional Protocol to the ICESCR and urges it to complete ratification as soon as is possible.

RECOMMENDATION 2 – PROGRESS ON-GOING: The Special Rapporteur acknowledges that the Government has engaged in several activities related to the Protocol on Water and Health but reiterates that only by ratifying the Protocol can the protections it affords be fully realisable as a matter of law. He therefore restates his recommendation that the Government should accelerate its preparations to sign and ratify the Protocol.

B. Recommendation on legal framework

RECOMMENDATION 3: “Revise the Water Code and place the principles and normative content of the human rights to water and sanitation at the centre of the law. The Water Code should have an explicit provision on the prioritization of water for personal and domestic use.” (A/HRC/33/49/Add.2, para. 59(a))

17. At the time of his visit, the Special Rapporteur noted with concern that the Water Code of 2000, which represents one of the central pieces of national legislation regarding access to water and sanitation, did not provide sufficiently for personal and domestic use and did not seek to incorporate the human rights to water and sanitation into its provisions. The Government of Tajikistan was, at that time, conducting a review of the Water Code, which represented an opportunity to address this criticism and bring the Water Code into line with the State's human rights obligations (A/HRC/33/49/Add.2, para. 9).

18. In relation to the inadequacy of the Water Code to account for the importance of water for personal and domestic uses, and its lack of reference to human rights, the Government refuted in its response to the questionnaire that this is the case, stating that Article 64(1) of the current version of the Water Code provides that every citizen of the Republic of Tajikistan has the right to access to safe and clean drinking water as an integral component of the realization of all human rights.

19. However, in response to the questionnaire sent by the Special Rapporteur, the Government of Tajikistan noted that a Working Group had been established for the analysis of the Water Code and the development of a new edition of the Code, within the framework of “Program for the reform of the water sector in Tajikistan for the period 2016 – 2025.” After a first round of comments from relevant ministries and departments, an updated version of the document is now under consideration by those bodies. The Government also informed the Special Rapporteur that a bill on drinking water supply had been developed for the new edition of the Water Code, and this is in the process of being reviewed and receiving a second round of comments from relevant ministries, departments and development partners. The Government clarified that this document specifically reflects the human rights to water use and sanitation.

20. The Special Rapporteur is pleased that the Government of Tajikistan is making concerted efforts to seek to revise the Water Code with the intention of ensuring a greater reflection of the human rights to water and sanitation therein. Based on these developments, he reiterates the previous recommendations for the Government to ensure that the revised Water Code and Drinking Water Supply Law is in line with the human rights to water and

⁴ Vienna Convention on the Law of Treaties, Article 18(a).

sanitation, and that an explicit provision on the prioritization of water for personal and domestic use is included.

PROGRESS ON-GOING: The Special Rapporteur is pleased to learn that the Water Code is in the process of being revised and that the revised Code will reflect the human rights to water and sanitation within its content. He looks forward to continued progress being made and the revised Code becoming law.

C. Recommendation on institutional framework

RECOMMENDATION 4: “Clearly define the division of power and responsibilities between the Ministry of Energy and Water Resources, the Housing and Communal Service, Vodokanal and local authorities under the water sector reform.” (A/HRC/33/49/Add.2, para. 59(b))

21. In his country visit report, the Special Rapporteur identified the problematic fragmentation of responsibility that was prevalent within the structure of water and sanitation provision in Tajikistan, where different departments and authorities have control over various elements of water and sanitation supply. His interactions with people highlighted how this represented a challenge when issues needed to be reported, as it was unclear who was in charge (A/HRC/33/49/Add.2, para. 13).

22. According to research, as of 14 November 2018, the Government adopted the Water Sector Reform Programme 2016-2025 on 30 December 2015. One of the aims of the Programme was, by 2020, to create a framework “for the transition to Water Resource Management according to the basin principle and to clarify the competencies of different national institutions.”⁵ The Water Sector Reform Programme incorporates plans to establish “six regional water utility companies to be owned by the Housing and Communal Service (SUE KMK).” These regional utilities are envisaged to provide independent operations at the regional level and support the local water companies of cities and secondary towns, whilst also supporting affiliated utilities by “providing technical back-up, engineering support, and enhanced financial management.”⁶ By 2017, the Housing and Communal Service and the European Bank for Reconstruction and Development had set up two of these water utilities in the regions of Sughd and the Districts of Republican Subordination (DRS).⁷

23. Whilst it is clear that the Government is attempting to initiate policies aimed at harmonising responsibility for water provision, concerns have been raised as to the efficacy of the current plans, the way in which they are being implemented, and whether they do, indeed, reduce the complexities of the current system. In this regard, according to an assessment carried out by the World Bank in 2017, “the [water] sector reform process is moving slowly and is complicated by budgetary restrictions and the current overlapping authority structures in place [...]. While it is too soon to assess the effectiveness of the program, at the outset the process runs the risk of establishing duplicative structures to the existing formal institutional arrangements. Implementation of reforms has proven to be challenging due to political economy considerations. Moreover, the sanitation sector is almost entirely missing from the reform discussions.”⁸

24. The Government, in response to the follow-up questionnaire, has clarified that the new version of the draft “Water Code of the Republic of Tajikistan” reflects the powers of the authorized state body, in the field of water resources (Article 13) and drinking water supply (Article 15), as well as the mandate of local executive bodies (Article 19).

⁵ United Nations Economic Commission for Europe (UNECE), “Tajikistan” [Internet], n/d, consulted 22 October 2018 <http://www.unece.org/env/water/npd/countrydialogues/tj.html>.

⁶ World Bank, Glass Half Full: Poverty Diagnostic of Water Supply, Sanitation, and Hygiene Conditions in Tajikistan, August 2017. <https://openknowledge.worldbank.org/handle/10986/27830>.

⁷ Ibid.

⁸ Ibid.

25. The Special Rapporteur notes that some relevant progress has been made in relation to the fulfilment of this recommendation. He particularly observes that a component of the water sector reform currently on-going is the clarification of the competencies of different national institutions. The Special Rapporteur nevertheless reiterates his recommendation and calls upon the Government to ensure that the definitive form of the Water Code, and other outcomes of the on-going water reform process, must ensure an institutional environment where the division of power and responsibilities in the water and sanitation sector are clearly defined. In this regard, he refers to his thematic report on accountability of actors (A/73/162). The Water Code should include the roles of the national entities, Vodokanal and local authorities, in order to build an effective and accountable institutional scheme for the progressive realization of the human rights to water and sanitation.

PROGRESS ON-GOING: The Special Rapporteur welcomes the on-going progress made by the Government on sectoral reform. However, he finds it unclear how such reform will clearly define the roles and responsibilities of actors in the water and sanitation sector and contribute towards the realization of the human rights to water and sanitation. Accordingly, the Special Rapporteur urges the Government to review the reform process to ensure that it is effective in streamlining water and sanitation provision in Tajikistan and that it clearly defines the roles and responsibilities of the various actors within the sector.

D. Recommendation on the policy framework

RECOMMENDATION 5: “Revise the national policy and strategy and prioritize rural water and sanitation.” (A/HRC/33/49/Add.2, para. 59(c))

26. As noted above, there exists a significant disparity between the adequacy of water and sanitation services in urban and rural areas in Tajikistan. Rural areas were more likely to have non-fully operational centralized water systems than urban areas (A/HRC/33/49/Add.2, para. 44).

27. In response to the questionnaire sent by the Special Rapporteur, the Government explained that the National Development Strategy of Tajikistan for 2016-2030, the country’s main strategy for the implementation of the Sustainable Development Goals, contributes to the achievement of the Sustainable Development Goals, including targets 6.1 and 6.2 on universal access to water and sanitation. This includes recognition of significant differences in the quality of water used by urban and rural populations for economic and drinking purposes, including lesser access to centralized supply systems and sewerage networks in rural areas, including in rural hospitals and schools.⁹ The Government explained that the main problems in rural areas of the country are shortages of drinking water supply systems and the deterioration of some existing systems. The Government further explained that the implementation of the “Program for providing clean drinking water to the population of the Republic of Tajikistan for 2008-2020”, approved by the Government in 2016, is one of the means to achieve the goals of the National Development Strategy.

28. In identifying the concrete measures it has taken to revise its national strategy for water and sanitation, the Government responded that under its plans to reform the water sector, it has implemented the “Water Supply Program for the Population of the Republic of Tajikistan” which is set to continue until 2030. This programme involves partnerships between the public sector, civil society and private entities in order to increase awareness amongst the public regarding water supply and sanitation. Furthermore, it looks to increase the input of public finance, as well as investment from foreign entities. In addition, there have been some projects aiming to improve access to safe drinking water and sanitation in rural areas and increase the sustainability of the water and sanitation sector, including the project “Tajikistan Water Supply and Sanitation (Phase II)” supported by United Nations

⁹ Republic of Tajikistan, National Development Strategy (NDS-2030), 2016 http://nafaka.tj/images/zakoni/new/strategiya_2030_en.pdf.

Development Programme and the Swiss Agency for Development Cooperation, in partnership with Oxfam Great Britain. This project includes plans on tariff policy development (tariff calculation methodology, justified tariff setting, full cost recovery, transparency & accountability); tax policy development (review and development of recommendations to introduce an affordable and fair tax for rural drinking water supply systems).¹⁰

29. While the Special Rapporteur shares the view that Sustainable Development Goal targets 6.1 and 6.2 cannot be achieved without the participation of multiple actors, it is not clear from the response received what concrete plans and measures have been taken by the Government to prioritize rural water and sanitation. Without evidence of concrete and targeted plans for increasing the enjoyment of the rights to water and sanitation in rural areas, it is difficult to assess whether the Government's course of action in this sphere will, in fact, help to create equity between rural and urban dwellers. However, he regards it as vital to convey to the Government that simply applying the same measures and standards to rural areas as are currently applied in urban areas is not sufficient to achieve targets 6.1 and 6.2 because the gap between urban and rural will continue not to be closed.

LIMITED PROGRESS: Whilst the Special Rapporteur appreciates the fact that the Government has developed a national strategy and programmes in which it addresses the quality of water and access to water and sanitation services by urban and rural populations, according to the information received, the national strategy and programme does not explicitly prioritize rural water and sanitation, as recommended. Accordingly, he reiterates his recommendation that the Government gives special priority to rural water and sanitation.

E. Recommendation on independent regulator

RECOMMENDATION 6: “Start a discussion without delay on the establishment of an independent regulator with competence to monitor the compliance of water and sanitation service providers with the normative content of the human rights to water and sanitation.” (A/HRC/33/49/Add.2, para. 59(j))

30. There is no independent regulator for water and sanitation in Tajikistan, and during his official visit the Special Rapporteur was told that there were no plans to establish one. Whilst the Government has engaged in some regulatory work, setting standards and monitoring the quality of water, the Special Rapporteur observed that these efforts are insufficient as they fail to include consideration of most sanitation services, and do not judge compliance in the context of the normative content of the rights to water and sanitation (A/HRC/33/49/Add.2, para. 14).

31. The Special Rapporteur has not received a clear response from the Government regarding the progress it has made towards achieving this recommendation. According to research conducted for this follow-up report, the Water Sector Reform Programme for 2016-2025 does include discussion of some regulatory reform processes, however an assessment carried out by the World Bank in 2017, found that this reform is hindered by a number of obstacles such as “the presence of a large amount of debt within the sector; resistance from the SUE KMK (Housing and Communal Service) to partial decentralization of selected policy, regulatory, and operation functions; and lack of clarity as to whether or not the to-be-created regional structures will fit within the existing regulatory structures at the regional level.”¹¹

32. Additionally, there was a project called “Support to effective regulatory framework and private sector involvement for drinking water supply and sanitation sector in Tajikistan”, with funding of US \$250,000 provided by the United Nations Development

¹⁰ United Nations Development Programme, “Tajikistan Water Supply and Sanitation (Phase II)”.

¹¹ World Bank, Glass Half Full: Poverty Diagnostic of Water Supply, Sanitation, and Hygiene Conditions in Tajikistan, August 2017. <https://openknowledge.worldbank.org/handle/10986/27830>.

Programme and the Stockholm International Water Institute, executed under the Energy and Environment Programme (EEP) of the United Nations Development Programme from 2013 to 2016 in collaboration with a network of stakeholders.¹² However, whilst the project has led to the development of a number of draft guidelines and reports concerning water and sanitation in Tajikistan, including regulation of such, no concerted efforts to implement an effective, independent regulatory system are yet discernible.

33. In light of the lack of clear information regarding regulatory reform that has been received by the Special Rapporteur from the Government, or which is otherwise evident from other sources, he wishes to reiterate the importance of the establishment of an independent regulator which has competence to monitor the compliance of water and sanitation service providers with the normative content of the human rights to water and sanitation. The Special Rapporteur notes that the reform process must ensure that the regulatory frameworks implemented are able to monitor providers from all sectors, including the private sector.

LIMITED PROGRESS: The Special Rapporteur makes clear that independent regulation is crucial to ensuring the rights to water and sanitation are respected, protected and fulfilled in accordance with Tajikistan's human rights obligations. Accordingly, he restates his recommendation.

IV. The human rights to water and sanitation

34. Water and sanitation services must be accessible to everyone, on the premises of households, health and educational institutions, public institutions and places, and workplaces. The human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, and that the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living.

A. Recommendation on latrine construction and sludge management

RECOMMENDATION 7: "Develop guidance and review financial support regarding latrine construction and sludge management to ensure that toilets are hygienic to use and to maintain and that waste matter is safely contained, transported, treated and disposed of or recycled." (A/HRC/33/49/Add.2, para. 59(d))

35. A key concern identified by the Special Rapporteur during his visit was the worrying absence of existing or functioning waste management processes present, particularly in rural areas, where people discharged their own waste into water bodies, or into the soil. Even in the capital, Dushanbe, however, a lack of investment in waste management facilities has reduced the effectiveness of these facilities. Furthermore, he observed a lack of support for communities in constructing the pit latrines used by 90 per cent of the rural population, meaning these were sometimes of poor quality and unhygienic. This reality poses a great potential impact to the enjoyment of the rights to water and sanitation, as well as other closely related rights, such as the right to health (A/HRC/33/49/Add.2, para. 24).

¹² Parliament of the Republic of Tajikistan, State Unitary Enterprise 'Housing and Communal Services', Ministries of Energy and Water Resources; Finance; Economic Development and Trade; and Health (Sanitary and Epidemiological Services), Agencies for Antimonopoly; Construction and Architecture; Standardization, Metrology and Certification; and Geology, Committees for Environment Protection; Emergency Situation and Civil Defense, Private sector representatives, Concerned Oblast and district level Hukumats, and Jamoats; see, http://www.tj.undp.org/content/tajikistan/en/home/operations/projects/environment_and_energy/support-to-effective-regulatory-framework-and-private-sector-inv.html.

36. According to an assessment coordinated through the UNECE in 2017, “Tajikistan does not have a national waste management strategy and action plan for waste management ... Also, the country lacks waste management plans for regions, municipalities and individual waste generators.”¹³ Whilst the report does note that a national waste management strategy is being prepared, it is unclear how far along this process is, by when it will be implemented, or what it contains.

37. The Government responded to the Special Rapporteur’s follow-up questionnaire stating that it is taking concrete measures to improve the situation of industrial and agricultural waste storage facilities that can impact on the quality of water. However, the recommendation addresses the situation where sludge and excreta are removed from latrines by users, who often dispose of them in a very unsafe way, particularly in small towns and rural areas. Accordingly, such measures as those outlined by the Government will likely have little to no impact on fulfilling this recommendation, and improving the enjoyment of the rights to water and sanitation for those who continue to be left without access to vital services for waste management.

PROGRESS NOT STARTED: The Special Rapporteur strongly recommends that the Government urgently develop guidance and review financial support to individual households on this matter. Safely managed sanitation services is one of the indicators of the Sustainable Development Goals 6.2, and, accordingly, the Government must act on this recommendation without delay if it is to fulfil its obligations to achieve Sustainable Development Goals 6.2 by the year 2030.

B. Recommendation water quality monitoring and surveillance

RECOMMENDATION 8: “Urgently strengthen the capacity of water quality monitoring and surveillance to ensure safe water.” (A/HRC/33/49/Add.2, para. 59(e))

38. In Tajikistan, the infrastructure for water and sanitation provision is aging and has not been properly maintained. Accordingly, significant difficulties have arisen in the adequate treatment of drinking water to ensure its quality. Indeed, official data has confirmed that drinking water often does not comply with quality standards. Furthermore, water suppliers in the State sometimes self-monitor water quality, however they are not obliged to submit these reports to the Government. This lack of treatment and process to confirm water quality has very dangerous implications, with high levels of infant and under-5 mortality present in the country, and requires urgent action (A/HRC/33/49/Add.2, para. 14).

39. The Government responded to this recommendation by referring to the two draft laws - the draft Water Code and the draft Law on Drinking Water and Water Supply – and stated that, in particular, Article 32 of the draft Water Code stipulates the State monitoring of water facilities through a system of observations, assessments and forecasts of changes in the state of water bodies, and is carried out by authorized state actors in the field of regulation of use and protection of water resources, at the expense of the State and utilising a uniform methodology.

40. According to an assessment of the Government’s water supply sector by the UNDP, the UNEP and Poverty-Environment Initiative Phase II, “[l]ess attention is naturally paid to [the quality of water] as overall access to water is more important in mind of the policy makers.” In addition, according to the study, there is a “growing urban-rural water supply divide in both access and quality of [water supply and sanitation] services.”¹⁴ Furthermore,

¹³ United Nations Economic Commission for Europe (UNECE), “Tajikistan: Environmental Performance Review (Third Review)”, 2017.

https://www.unclearn.org/sites/default/files/inventory/ece.cep_180.engt_.pdf.

¹⁴ United Nations Development Programme (UNDP), United Nations Environmental Programme (UNEP) & Poverty-Environment Initiative Phase II (PEI), “Tajikistan Water Public Environmental Expenditure Review”, n/d, consulted 2 May 2018

https://www.unpei.org/sites/default/files/e_library_documents/WPEER_Final draft %281%29.doc.

an assessment carried out by the World Bank has also revealed that chlorine concentrations in drinking water are dangerously low and do not comply with national or global health guidelines for households and schools. In 2016, 81.44 per cent of households surveyed boiled water as a method of treatment.¹⁵

41. Whilst the Government notes that water quality in Tajikistan is monitored pursuant to legislative provision, the Special Rapporteur is concerned that the water quality remains poor. In the context of the lack of progress that has been made towards the improvement of water quality, and the monitoring thereof, and in light of the serious health implications this can and does have on the population of Tajikistan, the Special Rapporteur wishes to reiterate this recommendation that the Government should urgently strengthen the capacity of water quality monitoring and surveillance to ensure safe water. Quality is a central facet of the normative content of the human right to water and as such must be ensured to all using all means available.

PROGRESS NOT STARTED: The Special Rapporteur recommends that the Government urgently strengthen the capacity of water quality monitoring and surveillance.

C. Recommendations on the tariff system and on safeguard mechanisms

RECOMMENDATION 9: “Review the tariff system comprehensively and increase the rate for those sectors which are capable of paying more, taking into consideration the sustainability of water and sanitation services and affordability for all.” (A/HRC/33/49/Add.2, para. 59(f))

RECOMMENDATION 10: “Adopt safeguard mechanisms to protect access to essential water and sanitation for those who live in poverty and those who have special needs, including health conditions.” (A/HRC/33/49/Add.2, para. 59(g))

42. During his visit, the Special Rapporteur identified that the system of water and sanitation tariffs present in Tajikistan was unbalanced as it operates as a flat tariff, and therefore fails to take into account the needs of the poorest people in Tajikistan, whilst subsidising the costs of those who are able to pay, such as businesses. Additionally, sludge collection services have experienced as much as a 100 per cent inflation in price thereby greatly reducing their affordability for people who require these services. Furthermore, the very low tariffs imposed on those who can afford to pay more, as well as a substandard collection process meaning many entities simply do not pay for their water and sanitation services, is reducing the potential for investment into essential infrastructure, thereby inhibiting maintenance and expansion activities which could benefit the enjoyment of the rights to water and sanitation (A/HRC/33/49/Add.2, paras. 27-35).

43. In response to the recommendation of the Special Rapporteur to review the tariff system, the Government notes that as part of the implementation of paragraph 16 of the Action Plan for the implementation of the “Program for the reform of the water sector in Tajikistan for the period 2016 – 2025,” it planned to develop a new methodology for determining the tariffs for drinking water supply services that will allow full coverage of costs. To develop a new methodology for the development of tariffs for drinking water, OXFAM UK, with funding from the Finnish Water Consortium Program, began work in this direction.

44. In relation to the Special Rapporteur’s call for the Government to adopt safeguard mechanisms for water and sanitation charges, it was noted that the Government has included, within its draft law on “Drinking Water and Drinking Water Supply”, provisions to allow for preferential taxes and credit for those producers who support the provision of water and sanitation. However, no information has been provided regarding how the

¹⁵ World Bank, Glass Half Full: Poverty Diagnostic of Water Supply, Sanitation, and Hygiene Conditions in Tajikistan, August 2017. <https://openknowledge.worldbank.org/handle/10986/27830>.

Government will ensure that those who cannot afford water and sanitation tariffs pay less, or those who have special needs will have their access to water and sanitation protected.

45. The Special Rapporteur views the Government's plan to develop a new methodology for the tariff system to achieve full-cost recovery as one of the necessary steps for ensuring the sustainability of water and sanitation services. However, the other important side of the coin is to ensure the affordability of these services for everyone. The Special Rapporteur urges the Government to develop a new tariff system that balances economic sustainability and affordability of water and sanitation services. He also reiterates the need to adopt safeguard mechanisms. To start with, he encourages the Government to carry out a household survey on ability to pay tariffs, so as to generate the necessary data that can form the basis of a balanced and fair tariff system.

RECOMMENDATION 9 – LIMITED PROGRESS: Whilst the Special Rapporteur acknowledges the Government's plans to develop a new tariff methodology, he observes that little evidence can be seen regarding how this will assist in balancing affordability between those on lower-incomes and those on higher-incomes, and in ensuring sustainability in this context. Accordingly, the Special Rapporteur restates his recommendation and encourages the Government to make better progress on the recommendation.

RECOMMENDATION 10 – PROGRESS NOT STARTED: The Special Rapporteur is disheartened to not see any efforts made by the Government to protect access to water and sanitation for people on low-incomes and with special needs. He reminds the Government that under international human rights law they are obliged to give special consideration to groups in vulnerable situations – a sentiment shared by the SDGs. The Special Rapporteur calls on the Government of Tajikistan to devise and initiate policies aimed specifically at groups in vulnerable situations in order to better respect, protect and fulfil their water and sanitation rights.

D. Recommendation on rehabilitating and maintaining services

RECOMMENDATION 11: "Invest in rehabilitation and reconstruction of old infrastructure, as well as in the maintenance and operation of new and existing services, in order to avoid deterioration in the services currently provided. The Government should seek international assistance with clear plans." (A/HRC/33/49/Add.2, para. 59(h))

46. Tajikistan's water and sanitation infrastructure has significantly deteriorated due to a lack of investment. This has led to existing services failing or falling out of use, which, clearly, has a detrimental impact on the enjoyment of the human rights to water and sanitation for those who rely upon this infrastructure to satisfy their needs (A/HRC/33/49/Add.2, paras. 4 and 22). According to a review by the UNECE, in 2017, "[s]ince 2010, no major sewerage systems or [wastewater treatment plants] have been constructed, planned or rehabilitated."¹⁶ This is even despite the fact that Tajikistan's development partners make contributions of around US\$300 million in support of water sector reform in the State, including the implementation and rehabilitation/renovating of drinking water infrastructure.¹⁷

47. In response to this recommendation, the Government stated that in the period between 2008 and 2017, more than 1.4 billion somoni was allocated for the construction, rehabilitation and reconstruction of drinking water and sanitation systems, and more than 1

¹⁶ United Nations Economic Commission for Europe (UNECE), "Tajikistan: Environmental Performance Review (Third Review)", 2017
https://www.unclearn.org/sites/default/files/inventory/ece.cep_180.engt_.pdf.

¹⁷ Development Coordination Council, "Joint DCC Initiative: Rural Water Supply", 30 June 2017, consulted 2 February 2018
http://www.untj.org/dcc/files/files/1_Final_Rural_Water_Supply_and_Sanitation_initiative_v_30_06_17.doc.

million people were provided with drinking water through the “Program for providing the population of the Republic of Tajikistan with clean drinking water for 2008-2020”. In addition, it explained that as part of the implementation of paragraphs 28-29 of the Action Plan for the implementation of the “Water Sector Reform Program in Tajikistan for the period 2016-2025”, it planned to restore water supply and sanitation infrastructure, replace worn-out facilities and protect infrastructure with modern machinery and equipment. 438.5 million somoni was allocated from all sources of financing to achieve this objective.

48. The Special Rapporteur welcomes the Government’s efforts to construct, rehabilitate and reconstruct drinking water and sanitation systems with international assistance, according to the Action Plan. He encourages the Government and international community to continue their efforts, including in the maintenance of new and existing services.

GOOD PROGRESS: The Special Rapporteur congratulates Tajikistan for the progress made in relation to this recommendation and looks forward to the Government continuing to utilise the maximum of its available resources in constructing, rehabilitating and reconstructing drinking water and sanitation systems.

E. Recommendation on public institutions

RECOMMENDATION 12: “Improve access to water, sanitation and hygiene in public institutions, in particular schools and health facilities, as a matter of priority, and install menstrual hygiene management systems in all public institutions.” (A/HRC/33/49/Add.2, para. 59(i))

49. The visit of the Special Rapporteur highlighted the difficulties faced by those utilising public institutions, such as schools and hospitals, in accessing their water and sanitation rights. As of 2008, only 38 per cent of healthcare facilities had access to water, and only 43 per cent had access to sanitation services. Within schools these figures were 55 per cent and 17 per cent respectively. Poor access to water and sanitation in institutions such as schools and healthcare facilities can have a highly detrimental effect on the outcomes of users, with this being a possible cause of the high level (24 per cent) of girls who dropped out of school in 2009 (A/HRC/33/49/Add.2, paras 36-37).

50. According to an assessment carried out by the World Bank in 2017, most schools have piped water within their facilities or in their compound or yard, but many, particularly in rural areas, still rely on open drinking water sources that may pose health risks. Coverage for piped water in urban areas was 74 per cent and in rural areas was 50 per cent. On average, students had access to 9.8 toilets per school. Most schools had improved facilities, 59 per cent of which were pit latrines with slab. But in rural areas, unimproved latrines were most common. In 95 per cent of schools surveyed, no funds were allocated to meet drinking water and sanitation needs in schools, and “costs must be met by the community or parents.”¹⁸ Most schools had separate sanitation facilities for girls and boys, but only 3 per cent had special facilities for disabled students (11 per cent in urban areas, 2 per cent in rural areas). Only 1 per cent of schools had covered bins for the disposal of menstrual hygiene waste and only 2 per cent had water available in girls’ cubicles for menstrual hygiene management. Except in Dushanbe, availability of soap was limited; in urban areas, 45 per cent of schools did not have soap whilst in rural areas, 31 per cent did not have soap.¹⁹

51. The Government explained that negotiations are under way to identify current water supply situations in educational and health facilities in cooperation with development

¹⁸ World Bank, Glass Half Full: Poverty Diagnostic of Water Supply, Sanitation, and Hygiene Conditions in Tajikistan, August 2017. 60. Online: <https://openknowledge.worldbank.org/handle/10986/27830>

¹⁹ See, World Bank, Glass Half Full: Poverty Diagnostic of Water Supply, Sanitation, and Hygiene Conditions in Tajikistan, August 2017. Online: <https://openknowledge.worldbank.org/handle/10986/27830>

partners and relevant ministries and agencies, including UNICEF in Tajikistan. Additionally, the Government established an interdepartmental working group called Water and Gender in the Committee on Women and Family Affairs in order to raise awareness regarding water use by women and girls. The Working Group organizes seminars, conferences and promotes the role of women and girls in the management, use and protection of water resources. Furthermore, it noted that, in the period 2016 – 2018, the Committee on Women and Family Affairs, the Ministry of Energy and Water Resources, the International Water Secretariat, the non-governmental organization Oxfam, Great Britain, and the Aga Khan Foundation held several seminars, conferences, round tables and training programs in Dushanbe and in various regions of the country, where special attention was paid to the role of women and girls in solving problems in the drinking water sector.

52. The efforts made by the Government to promote greater provision of water and sanitation services in institutional facilities are promising and highlight that the Government recognizes the urgent need of improving access in these places. The Special Rapporteur also welcomes its efforts on raising awareness of menstrual hygiene management. The progress in improving access in schools and health institutions, however, seems slow, particularly in light of the necessity of achieving this to satisfy Sustainable Development Goals 6.1 and 6.2 by the year 2030. The Special Rapporteur urges the Government to develop more concrete plans to improve access in schools and health facilities and implement them as a matter of priority.

PROGRESS ON-GOING: Whilst excellent progress has been made regarding the promotion of water and sanitation in institutional facilities, and with regards to menstrual hygiene, the Special Rapporteur looks forward to seeing similar progress in relation to access in schools and health facilities. He recommends the Government increase its efforts in this regard so as to ensure it achieves its vital SDG commitments by 2030.

V. Access to information, accountability and justice

53. Access to information, accountability and access to justice are central for the progressive realization of the human rights to water and sanitation and all the other rights, and are mutually reinforcing. The right to information includes the right to receive information to make informed decisions regarding the human rights to water and sanitation. Independent civil society plays a critical role in all these principles and in the protection of human rights.

A. Recommendation on the right to information and accountability

RECOMMENDATION 13: “Protect the right to information and strengthen the accountability mechanism, including through strengthening the power of the Ombudsman, as well as respecting the activities of civil society.” (A/HRC/33/49/Add.2, para. 59(k))

54. The country visit report of the Special Rapporteur identified the difficulties faced by people in Tajikistan in obtaining information about water and sanitation services, particularly regarding tariffs. The absence of adequate information sharing creates a lack of transparency which hinders the ability of people to obtain accountability for breaches of their rights. This reality is exacerbated by the lack of a satisfactory framework for accountability in Tajikistan, including the absence of an independent regulator tasked with overseeing the operations of water and sanitation providers, and the inadequacy of the role played by the Human Rights Ombudsman. Furthermore, whilst in many states civil society can play a vital role in ensuring access to information and accountability, through fear of reprisals by the Government against them, many civil society organisations self-censure, whilst legislative amendments threaten to further weaken the efficacy of their operations (A/HRC/33/49/Add.2, paras. 38-42).

55. The Government responded that it has taken legislative measures to boost the right to access information regarding the human rights to water and sanitation. As per the response, it was noted that the draft Law of the Republic of Tajikistan On Drinking Water and Drinking Water Supply reflects the procedure for issuing and obtaining information on drinking water and drinking water supply as well as providing information about quality and safety of drinking water to consumers.

56. The Special Rapporteur welcomes the provision of the right to information related to their human rights to water and sanitation included in the draft Law, which will assist people in Tajikistan to understand their water and sanitation provision and to claim their rights. He was unfortunately not provided with information on strengthening the accountability mechanism, including through strengthening the Ombudsman or civil society. The Special Rapporteur wishes to remind the Government that the right to information and the human rights to water and sanitation can be protected only with strong accountability mechanisms.

LIMITED PROGRESS: The Special Rapporteur looks forward to the draft Law stipulating the right to information being adopted in due course. Protecting the right to information in law is a positive step forward, however the Special Rapporteur is disappointed not to receive information about the strengthening of accountability mechanisms. As such, he repeats his recommendation and looks forward to seeing progress made in relation to this.

B. Recommendation on laws and policies that could weaken civil society

RECOMMENDATION 14: “Review laws and policies that could potentially weaken civil society organizations, including newly adopted amendments to the Law on Public Associations, and provide a wider space for civil society to openly discuss policies and people’s needs relating to access to water, sanitation and hygiene, with capacity for actual influence in decision-making processes.” (A/HRC/33/49/Add.2, para. 59(1))

57. The active and unhindered voice of civil society is crucial to ensuring human rights are respected, protected and fulfilled in all societies. As such, in addition to the element of the recommendation immediately above, calling on the Government to respect the activities of civil society, it is essential that authorities be active in assisting civil society organisations to freely provide impartial oversight on Government policy and practice regarding water and sanitation provision, by removing obstacles to their participation (A/HRC/33/49/Add.2, para. 41).

58. Following the conclusion of his official visit to Tajikistan, the Special Rapporteur has been informed that the situation of civil society organisations has become even more fraught. According to the information the Special Rapporteur received on 12 August 2015, changes to the Law on Public Associations came into force after official publication. The changes were signed by the Tajik President on 8 August 2015 and introduced a new inspection procedure for many civil society organizations, without spelling out the nature or frequency of such inspections. The amendments also require all foreign funding received by such organizations to be notified to the Ministry of Justice as registering authority. On 27 April 2016, the Government adopted the Procedure for Maintaining the Registry of Humanitarian Aid for Public Associations to implement the 2015 amendments to the Law on Public Associations.

59. Furthermore, on 2 January 2018, the President signed amendments to the Law on Public Associations, which were developed in line with Financial Action Task Force on Money Laundering requirements to ensure a stringent approach to preventing money laundering and financing of terrorism through civil society organizations. The amended Law requires all civil society organizations to annually publish financial reports about their incomes and expenditures on their own websites or the site of the state body that registers public associations, the Ministry of Justice.

60. Civil society organisations undertake a vital role in the protection of human rights and their unhindered participation in discussions regarding water and sanitation policy is

essential to properly ensuring that the rights to water and sanitation are respected protected and fulfilled. Tajikistan is currently creating a severely hostile environment towards these organisations, preventing them from undertaking their rights protecting role. This must end and civil society must be allowed to effectively contribute to discussions surrounding water and sanitation policy and practice.

RETROGRESSION: The Special Rapporteur is deeply concerned that the potential control over civil society organizations has been further strengthened in law since his visit and reiterates his recommendation to provide a wider and more open space for civil society.

VI. Leaving no one behind

61. States have a special obligation to provide those who do not have sufficient means with the necessary water and sanitation services and to prevent any discrimination on internationally prohibited grounds in the provision of those services.²⁰ The individuals and groups that States must target to address discrimination are usually the most marginalised, excluded, vulnerable, stigmatised and disadvantaged in their access to water and sanitation, but also in society at large.

A. Recommendation on reparation for displaced persons

RECOMMENDATION 15: “Provide adequate reparation to the displaced population whose human rights, including the rights to water and sanitation, have been violated, and carry out human rights impact assessments for any development projects in order to guarantee non-repetition.” (A/HRC/33/49/Add.2, para. 59(m)).

62. During his official visit to Tajikistan, the Special Rapporteur learned of the difficulties faced by those who had been relocated as a result of mega-projects. He discovered that a large number of displaced families lacked regular access to water for drinking and farming purposes, and had to buy water that failed to meet the normative content of the right to water. Additionally, displaced persons were forced to use toilets they constructed themselves (A/HRC/33/49/Add.2, paras. 49-52).

63. The Government responded to these concerns referring to the draft Law of the Republic of Tajikistan on Drinking Water and Drinking Water Supply which stipulates that consumers of drinking water may demand compensation for damages caused by drinking water which does not meet regulatory requirements. No further details were provided as to the efforts that had or will be taken to alleviate the impact that displacement has caused to the rights of these people.

64. The Special Rapporteur is concerned that he did not receive specific information about reparation to the displaced population. He reiterates the importance of adequate reparation to the displaced persons affected by development projects and to prevent reoccurrence of such human rights violations by conducting human rights impact assessments. In this connection, he refers to his thematic report on the impact of mega-projects on the realization of the human rights to water and sanitation in which he provides a list of guiding questions for all accountable actors to use when implementing their human rights obligations and responsibilities (A/74/197).

No assessment is possible due to lack of information: The Special Rapporteur calls on the Government to make public information regarding reparations provided to displaced persons whose rights have been breached. He reminds the Government that displacing populations without ensuring their human rights are met in full is a retrogressive step and a violation of international human rights law.

²⁰ See General Comment 15 of the Committee on Economic, Social and Cultural Rights, para. 15.

B. Recommendation on refugees, asylum seekers and stateless persons

RECOMMENDATION 18: “Revisit the policies on refugees and asylum seekers, as well as on nationality and statelessness, with a view to providing equal access to essential services, including water and sanitation, for everyone in the country without discrimination.” (A/HRC/33/49/Add.2, para. 59(n))

65. Tajikistan is home to between 2,000 and 4,000 refugees and asylum seekers. The Special Rapporteur expressed concerns regarding these peoples’ access to water and sanitation as a result of the Government’s policy of excluding them from large cities. Furthermore, around 10,000 people in Tajikistan are stateless, or are at risk of being made stateless, and those who are undocumented are not entitled to receive essential services (A/HRC/33/49/Add.2, paras. 53-55).

66. The Government explained that in the current water legislation concerning the provision of drinking water for refugees or asylum seekers, as well as for civil or stateless persons, there is no difference between the norms that apply to these people, and norms that apply to residents, as for all consumers a uniform norm of drinking water supply has been adopted. However, by excluding refugees and asylum seekers from large cities as a matter of policy, these people are de facto prevented from accessing the centralised water supply and sanitation services that are only available therein.

67. The Special Rapporteur regrettably did not receive information on positive actions to revise policies on refugees, asylum seekers and stateless people. He reiterates that providing a uniform norm of water and sanitation services is sometimes not sufficient to provide equal access to certain populations. He encourages the Government to take measures for refugees, asylum seekers and stateless persons. In this connection, he refers to his thematic report focusing on the human rights to water and sanitation of forcibly displaced persons, in particular internally displaced persons, refugees, asylum seekers and migrants in vulnerable situations, while en route, at borders, and at their destination (A/HRC/39/55).

No assessment is possible due to lack of information: The Special Rapporteur calls on the Government to publish information on its plans to revise policies relating to refugees, asylum seekers and stateless persons so that these can be scrutinised. He reminds the Government that its human rights obligations regarding water and sanitation extend to all people, including non-citizens and those who are currently stateless.