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

## **Follow-up report on the visit of the Special Rapporteur to India**

### **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 India (A/HRC/39/55/Add.1) was presented to the Human Rights Council in September 2018. 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. According to the 6 levels of development, the 20 recommendations are classified as: 7 “progress on-going”, 5 “progress not started”, and 8 “progress limited”.

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\* The present document is being issued without formal editing.



## I. Introduction

1. Pursuant to resolution 42/5 of the Human Rights Council, the Special Rapporteur on the human rights to safe drinking water and sanitation undertakes official 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.<sup>1</sup>
3. The official visit to India was undertaken upon the invitation of the Government from 27 October to 10 November 2017. During the visit, the Special Rapporteur met with representatives of government at several levels and met with people whose enjoyment of the rights to water and sanitation has been affected. At the end of the visit, he held a press conference and issued a press release and preliminary statement on 10 November 2017.<sup>2</sup> The report of the official visit (A/HRC/39/55/Add.1) was presented to the Human Rights Council in September 2018. The Government of India provided comments to the report (A/HRC/39/55/Add.3).
4. In preparing the current report, the Special Rapporteur, between October 2019 and May 2020, conducted desk research on the implementation of the recommendations provided to the Government in his visit report, in order to develop a picture of the Government's current actions, inactions and progress. To support the research, a questionnaire to the Government was sent, but no reply was received. Additionally, the Special Rapporteur invited non-State actors to respond to the questionnaire but no response was received.
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) progress limited, 4) progress not started, 5) unable to assess due to lack of information and 6) retrogression.

## II. Legal, institutional and policy frameworks

### A. Recommendation on legislative frameworks

#### 1. Recommendation on harmonization of legislative framework

**RECOMMENDATION 1:** “Adopt a legislative framework that recognizes the human rights to water and sanitation at the national level and, in particular, ensure the harmonization and consistency of that legislative framework across states and the union territories of India;” (A/HRC/39/55/Add.1, para. 71 (a))

6. At the time of the Special Rapporteur's visit, there was no national law recognizing water and sanitation as human rights (A/HRC/39/55/Add.1, para. 6). Instead of a national

<sup>1</sup> <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/FollowUpAnalysisOfficialCountryVisits.aspx>.

<sup>2</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22375&LangID=E>.

law, model bills and framework legislation have been used as guidance for states in India to adopt and enact their own legislation.

7. Since the visit took place in 2017, the draft national water framework bill had been circulated for comments but there has been no update on its status nor its content.<sup>3</sup> Media reports suggest that the government of the State of Madhya Pradesh is in the process of drafting a right to water act, which would entitle residents a minimum quantity of safe drinking water, as well as prioritize water for domestic and personal uses over those of the industrial sector.<sup>4</sup>

8. While the efforts made at the level of the local government to enact legislation on the human right to water are laudable, the Special Rapporteur wishes to point out two observations. First, the human rights to water and sanitation are intrinsically interlinked and must be addressed together in legislation. Therefore, a legislation – at the moment a draft bill – focusing only on the human right to water would address only one side of the coin. Second, a discussion of a draft bill at the subnational level cannot amount to harmonization of the legal basis of the human rights to water and sanitation across all India. The Special Rapporteur reminds the Government that in accordance with article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), States parties are required to utilize all appropriate means, including particularly the adoption of legislative measures, in the implementation of their Covenant obligations.

**PROGRESS LIMITED:** The Special Rapporteur recommends that the Government establish a clear legislative framework that recognizes both the human rights to water and sanitation and that such legal recognition is harmonized and consistent throughout all states of India.

## 2. Recommendation on Optional Protocol to the ICESCR

**RECOMMENDATION 2:** “Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;” (A/HRC/39/55/Add.1, para. 71(b))

9. The Government of India ratified the ICESCR in 1979 and is yet to ratify the Optional Protocol to the ICESCR. According to the Government, consultations and legal examinations are underway with regard to the possibility of ratifying OP to ICESCR, however, no concrete information was provided related to such process.

10. The Special Rapporteur reaffirms the need for enforcing the justiciability of the human rights to water and sanitation, and in particular, ensuring that individuals and groups who are alleged victims of violations of those rights are able to file a complaint before a judicial body, to request legal remedies and to have those remedies enforced. Ratifying the Optional Protocol to the ICESCR would provide the Government with tools to ensure the justiciability of the rights.

**PROGRESS NOT STARTED:** The Special Rapporteur reiterates his recommendation that the Government takes concrete steps towards ensuring the justiciability of the human rights to water and sanitation by ratifying the Optional Protocol to the ICESCR.

<sup>3</sup> Government of India, Press Release “Draft National Water Policy” (19 March 2020).

<sup>4</sup> Hindustan Times, “MP drafts right to water law, promises 55/day to each” (25 February 2020).

## B. Recommendation on institutional framework

**RECOMMENDATION 3:** “Clarify, in a transparent manner, the roles and responsibilities of institutional actors in the water and sanitation sector from all dimensions: vertically, among central, state, local and rural governments; and horizontally, among entities within the different tiers of government;” (A/HRC/39/55/Add.1, para. 71(c))

11. The implementation and monitoring of water and sanitation policies and national budget allocation in India is complex with responsibility being shared among central and local governments and with different entities involved in rural and urban areas (A/HRC/39/55/Add.1, para. 10). The Special Rapporteur noted concerns over a lack of coordination and transparency regarding the responsibilities of different national, and local actors, as well as a lack of organized accountability for violations and abuses of the human rights to water and sanitation (HRC/39/55/Add.1, paras. 15 and 16).

12. At the time of the visit, in 2017, the Ministry of Drinking Water and Sanitation was responsible for the rural component of India’s national policy on sanitation - Clean India Mission (also known as Swachh Bharat Mission), as well as the National Rural Water Drinking Programme. The Ministry of Housing and Urban Affairs was responsible for the urban component of the Clean India Mission, and for water provision in urban areas (A/HRC/39/55/Add.1, paras. 10 and 14). In May 2019, the Government integrated the Ministry of Water Resources, River Development and Ganga Rejuvenation and the Ministry of Drinking Water and Sanitation into the newly established Ministry of Jal Shakti, as separate departments.

13. Furthermore, despite the establishment of a new ministry, there still remains a need for the responsibility for water and sanitation provision to be further clarified from vertical and horizontal dimensions. Horizontally, it should be clarified that the institutions involved in the provision of water and sanitation are not limited to the Ministry of Jal Shakti and Ministry of Housing and Urban Affairs. Rather, there are other ministries responsible for the implementation of the human rights to water and sanitation including but not limited to those dealing with budget allocation. Vertically, there have been no changes on the way to clearly coordinate, communicate and define responsibilities of institutions from central, state, local and rural governments available to all rights-holders.

14. The Special Rapporteur reiterates that the Government should further clarify the roles and responsibilities of all actors involved in implementing the obligation to progressively realize the human rights to water and sanitation, and to make those information available and accessible to all. The Special Rapporteur expects that high priority will be given to the human rights to water and sanitation within the work of the Ministry of Jal Shakti, and that those rights play an important role as a cross-cutting issue under this new Ministry.

**PROGRESS ON-GOING:** The Special Rapporteur notes the recent restructuring within the Government, namely, the establishment of the Ministry of Jal Shakti, and highlights that the Government should take measures and safeguards so that the provision of water and sanitation and the human rights to water and sanitation is not overshadowed in the entire integrated water resources management and is promoted in the coordination across the institutions responsible for the elements of affordability, quality and safety, acceptability as well as privacy and dignity of the human rights to water and sanitation.

## C. Recommendation on independent regulatory mechanism

**RECOMMENDATION 4:** “Establish an independent regulatory mechanism with adequate financial and human resources to monitor the implementation of the human rights to water and sanitation, including all the normative content of those rights;” (A/HRC/39/55/Add.1, para. 71(d))

15. At the time of the visit in 2017, no independent regulatory mechanism to monitor the implementation of the human rights to water and sanitation existed in India. To date, no national independent mechanism or body exists to monitor the provision of water and sanitation services and their alignment with the human rights to water and sanitation. While an increasing number of states are establishing monitoring bodies, they are limited to regulation from an economic perspective rather than integrating the normative content of the human rights to water and sanitation and human rights principles. For instance, the operational guidelines for monitoring Jal Jeevan Mission (JJM) – a national policy on water established in 2019 - indicate that states may create an independent regulatory body for the water supply sector, with a view to monitoring tariffs and resolving disputes. The Special Rapporteur notes that the guidelines suggest that this body would be responsible for regulating only water services and only in rural areas, thus leaving sanitation in urban and urban areas and water in urban areas without a proper regulation.

16. While the non-binding guidelines calling for an independent regulatory body are welcome, the Special Rapporteur reiterates that an independent regulatory body with a limited focus on tariff and resolving disputes are not sufficient to address the human rights to water and sanitation entirely. Also, lack of coordination and harmonization by the national government of these diverse governmental bodies can result in fragmentation and in an unequal approach to this crucial issue, jeopardizing the realization of the human rights in certain states.

17. The Special Rapporteur reiterates that taking steps to establish independent regulatory mechanisms, mandated to monitor service provision in line with the human rights to water and sanitation, is part of State obligations regarding the human rights to water and sanitation (A/HRC/36/45, para. 3).

**PROGRESS LIMITED:** The Special Rapporteur strongly recommends that the Government establish independent regulatory mechanism to monitor the implementation of the human rights to water and sanitation. In a federal and decentralized system such as India, where states are in charge of such independent regulation, he emphasizes the role that the central government should play to harmonize those regulations in each state across India.

#### D. Recommendation on human rights impact assessments

**RECOMMENDATION 5:** “Make human rights impact assessments a requirement for all megaprojects, including the construction of hydroelectric dams.” (A/HRC/39/55, Add.1, para. 71(t))

18. During the visit, the Special Rapporteur was informed of how large infrastructures in India (dams, railways, roads and industrial projects) had negatively affected water sources of rural villages (A/HRC/39/55/Add.1, para. 69). Following the visit to India, the Special Rapporteur addressed related concerns through allegation letters: (1) on the impact of the Northeastern Frontier Railway on the water supply of several villages in the state of Manipur (AL IND 12/2019, 27 May 2019) to which the Government did not respond; and (2) about the dumping of copper slag in a river nearby to Sterlite Cooper Smelting Plant in Tuticorin, Tamil Nadu (UA IND 12/2018, 29 May 2018). A response from the Government on 30 December 2019 indicated that the National Human Rights Commission is examining the issue.

19. While ‘social impact assessments’ continue to exist under the Right to Fair Compensation and Transparency in Land Acquisition, no human rights impact assessment has been made mandatory for megaprojects in India. Guidelines for social impact assessments created by the Centre for Science and Environment include recording the

potential impact on access to drinking water, however, it does not further detail or reference any of the normative content of the human rights to water and sanitation.<sup>5</sup>

20. The Special Rapporteur reiterates that megaprojects can have clear impacts not only the human rights to water and sanitation, but on many human rights of persons they affect (A/74/197, para. 86). Though they may cover the impact of projects on water resources, environmental impact assessments have a different scope on the impacts of projects the human rights to water and sanitation (A/74/197, para. 57). Impact assessments must take into account all aspects of the normative content of the rights to water and sanitation, and must be undertaken in accordance with human rights principles (A/74/197, para. 13).

**PROGRESS NOT STARTED:** The Special Rapporteur reiterates the need for the Government to make human rights impact assessments a requirement for all megaprojects.

### III. National policies on water and sanitation

21. Among several policies and programmes aimed at improving access to drinking water and sanitation, the Clean India Mission was the most frequently discussed topic of the Special Rapporteur's visit in 2017 (A/HRC/39/55/Add.1, para. 13). Launched in 2014, the Clean India Mission aimed to eradicate open defecation through the mass installation of toilets across the country by 2019. The programme was divided into two components: the Ministry of Drinking Water and Sanitation was responsible for the rural component and the urban component was under the purview of the Ministry of Housing and Urban Affairs (A/HRC/39/55/Add.1, para. 15).

22. The Special Rapporteur praised the unprecedented effort undertaken by the Government, particularly he was impressed by the nationwide momentum, from the central Government to the most basic unit of administration and the general public, to eliminate open defecation, to accelerate the efforts to achieve universal sanitation coverage and to focus on sanitation (A/HRC/39/55/Add.1, para. 13). In his end-of-mission press statement, the Special Rapporteur referred to the programme as a unique effort of a country to face its challenges related to sanitation in an extremely short time span, and as a large step towards the progressive realization of the Indian population's human right to sanitation.<sup>6</sup>

23. At the time of the visit in November 2017, 53 million toilets had been built, with an additional 4.9 million being built as at May 2018 (A/HRC/39/55/Add.1, para. 14). Despite the increase in numbers of toilets, the Special Rapporteur raised several concerns from a human rights perspective (A/HRC/39/55/Add.1, paras. 16 and 21).

#### A. Recommendations on monitoring national policies on water and sanitation

**RECOMMENDATION 6:** "Continuously monitor the implementation of national policies on water and sanitation from a human rights perspective and reassess those policies to strengthen the incorporation of the human rights framework as a whole;" (A/HRC/39/55, Add.1, para. 71(e)).

24. At the end of the visit in 2017, the Special Rapporteur noted that monitoring of the Clean India Mission was focused on counting numbers of toilets built and administrative division that had achieved open defecation free status, at the expense of contextual information and considering the characteristics of particular groups that may have different sanitation needs (A/HRC/39/55/Add.1, para. 21).

<sup>5</sup> Centre for Science and Environment, *Social Impact Assessment and Social Impact Management Plan, an indicative structure* (2017).

<sup>6</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22375](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22375).

25. Two years after the visit, the Prime Minister of India declared that the country was open defecation free in October 2019.<sup>7</sup> While monitoring the numbers and distribution of cities and villages that declare themselves open defecation free is a key part of tracking the success of the Clean India Mission, independent verification is crucial. An impact assessment of the Clean India Mission conducted by UNICEF in 2020 found that 98 per cent of cities declared themselves to be open defecation free (ODF), but of the 4,311 self-declared ODF cities, only 3,876 were certified to be ODF by an independent verification agency.<sup>8</sup> Furthermore, media reports continue to raise questions whether several people across India still defecate in the open due to lack of access to toilets.

26. Subsequent to the Clean India Mission, under the purview of the Department of the Drinking Water and Sanitation of the Ministry of Jal Shakti, the Jal Jeevan Mission (JJM) was launched in 2019 to provide 100 per cent of households in the rural areas in India. Monitoring for the JJM follows the structure of monitoring the Clean India Mission, under which Gram Panchayat officials (village officials) are required to record the number of latrines built per household, open defecation practices, and planning and informational activities, on a monthly basis. This data is to be uploaded to the IMIS, a country-wide online database, for progress reports to be collated at a district and state level.<sup>9</sup> Similarly, the JJM Operational Guidelines request Gram Panchayat to monitor the progress of the water scheme by using indicators such as households with taps, the number of available water quality testing kits, . This data is to be uploaded to the JJM IMIS, a separate database to the Clean India Mission IMIS.

27. While the ambitious aim of the JJM is welcome, the Special Rapporteur raises three concerns. First, exercise of monitoring the implementation of JJM should not be focused on a counting exercise. The monitoring procedures for both the Clean India Mission and JJM differ in terms of focus – taps as opposed to toilets – but follow the same aim: the compilation of community-level statistics about access to water and sanitation by counting the number of facilities. This provides an incomplete picture as it does not provide contextual information regarding the use of these facilities in practice, nor does it monitor access to facilities by persons with specific needs. More specific criteria are needed to ensure that the normative content of the human rights to water and sanitation – especially those of acceptability and accessibility - are fully taken into account in the JJM.

28. Second, the Special Rapporteur is concerned that the focus of monitoring under the JJM, namely on taps in households, fails to address access to water and sanitation in spheres beyond the household (see section V). The Special Rapporteur encourages the Government to include monitoring of provision in public spaces as part of the JJM so that the invisible population not counted under the criteria of formal housing can be included.

29. Thirdly, while community participation should indeed be encouraged, he notes that community-led monitoring occurs as a condition for receiving funding and financial incentives for successful implementation.<sup>10</sup> Such practice presents risks for possible abusive practices (see recommendations 8 and 9 below).

**PROGRESS ON-GOING:** The Special Rapporteur welcomes the Government's commitment and efforts to achieve universal access to water and sanitation through its national policy on water and sanitation (Clean Mission India and the newly launched Jal Jeevan Mission). However, he reiterates that the human rights to water and sanitation should not be reduced to a mere counting exercise and that national monitoring be complemented with an assessment from a human rights perspective.

<sup>7</sup> Government of India, Press Release (3 October 2019).

<sup>8</sup> UNICEF, National Economic Impact Evaluation of Swachh Bharat Mission (2020), 8.

<sup>9</sup> *Guidelines for Swachh Bharat Mission (Gramin)*, 41.

<sup>10</sup> *Jal Jeevan Mission Operational Guidelines*, (2019), 64.

## B. Recommendation on monitoring informal service providers

**RECOMMENDATION 7:** “Monitor compliance with the human rights to safe drinking water and sanitation at all levels of the government and by formal and informal service providers;” (A/HRC/39/55, Add.1, para. 71(f))

30. At the time of the visit, the Special Rapporteur noted that place of residence constitutes a crucial indicator for predicting where or why people have lower quality access to adequate water and sanitation services. In the context of India, discrimination based on place of residence has critical relevance due to the large proportion of slums and the homeless population (A/HRC/39/55, paras. 62 – 69). He witnessed several situations where individual users were forced to rely on informal providers who sold water at a price that was much higher than that of formal provision.

31. The Government’s approach to informal provision in the Clean India Mission - Phase II, announced in 2020, is focused on replacing informal waste management services with formal services.<sup>11</sup> The Special Rapporteur cautions the Government that formalization and regulation of informal service provision, while is a welcomed measure, must pay due attention to the impact of this process on levels of access, affordability and quality of service provision. Where States seek to replace informal service provision with formal providers, they must ensure that people can actually afford these alternatives and do not experience retrogression in the realization of their human rights (A/HRC/30/39, para. 79).

32. Under the Jal Jeevan Mission (JJM), informal water services particularly in slums or non-recognized settlements are not addressed. The JJM is focused on a large-scale widening of the coverage of formal networked provision, either through piped connections formal delivery.<sup>12</sup> Given the large proportion of slums and the homeless population in India, the Special Rapporteur raises concern that the JJM would fail to address those population who are “off the grid”.

**PROGRESS LIMITED:** The Special Rapporteur strongly recommends that the Government formulate clear and official plans to supplement the efforts made under the Clean India Mission and Jal Jeevan Mission to formalize water and sanitation provisions. He reminds that efforts should be made to monitor existing informal provisions, with a view to protecting the human rights to water and sanitation of users who remain outside of formal networked provisions.

## C. Recommendation on reconciling access to water and sanitation facilities with the obligations to respect and protect human rights

**RECOMMENDATION 8:** “Reconcile the efforts to achieve open-defecation-free status with the obligations to uphold the dignity of all persons and not to violate other fundamental rights;” (A/HRC/39/55, Add.1, para. 71(g))

**RECOMMENDATION 9:** “Maintain a strong surveillance system to identify, monitor and prevent aggressive and abusive practices, such as coercion, shaming, violence or punishment, in the effort to eliminate open defecation in the country;” (A/HRC/39/55, Add.1, para. 71(m))

33. Despite the progress made under the Clean India Mission, the Special Rapporteur expressed particular concern about possible gaps between the formulation of the programme and the way it has been implemented (A/HRC/39/55/Add.1, para. 16). During the visit, the Special Rapporteur heard from several testimonies that, in the interest of achieving the targets and obtaining the corresponding rewards, people were coerced to, on the one hand, construct

<sup>11</sup> Operational Guidelines of SBM-G Phase II (2020), 26.

<sup>12</sup> *Jal Jeevan Mission Operational Guidelines* (2019), 12.



toilets quickly and, on the other, stop practicing open defecation. For instance, when individuals are identified as practitioners of open defecation, they could have their ration card revoked, affecting their exercise of the right to food (A/HRC/39/55/Add.1, para. 16).

34. After the visit, the Government's efforts to reconcile the endeavour to achieve open-defecation free status and the obligation to uphold the privacy and dignity of individuals continue to face challenges. In one study, confidential interviews held between September and December 2018 with local officials responsible for implementing the Clean India Mission found that they are pressured by district officials to reach toilet-building and open defecation-eradicating targets rapidly, at risk of losing employment.<sup>13</sup> The local officials are encouraged to film individuals practicing open defecation, infringing on their right to privacy and dignity, and to withhold pensions or food subsidies until such behavior is stopped. International media reported a case in 2019 in which two Dalit children (referred to as "scheduled castes") in the State of Madhya Pradesh were allegedly killed after they had been found defecating in the open.<sup>14</sup>

35. No information has been gathered on active steps taken by the Government to monitor those practices. At the time of the visit, a grievance process was provided through a grievance portal on the Ministry of Drinking Water and Sanitation (now Ministry of Jal Shakti) website.<sup>15</sup> The latest report by the Department of Administrative Reforms and Public Grievances of the grievances dates back to 2017 and does not include complaints regarding abusive practices under the Clean India Mission.<sup>16</sup> Such a portal facilitates the recording and addressing of technical grievances, however, it may not represent a realistic record of abuse or coercion due to fear of reprisal or lack of belief that such complaints would be addressed.

**RECOMMENDATION 8 - PROGRESS NOT STARTED:** While the Special Rapporteur reiterates his praise of the Government's continued efforts to eliminate open defecation, he emphasizes that occurrence of abusive and coercive practices in the context of these efforts continues to demonstrate the urgent need for the Government to properly address this issue.

**RECOMMENDATION 9 - PROGRESS NOT STARTED:** The Special Rapporteur is disappointed to learn that no steps have been reported to monitor and increase transparency in reporting abuses practices in the context of efforts to achieve open-defecation-free status. He reiterates the need for official guidelines and sanctions with regards to such practices and urges the Government to take concrete steps to prevent such practices in the context of the national programmes, strengthening monitoring and surveillance.

#### D. Recommendations on monitoring those without access to sanitation facilities

**RECOMMENDATION 10:** "Ensure balance in efforts and measures to monitor the construction of toilets with respect to monitoring those who do not have access to sanitation facilities;" (A/HRC/39/55/Add.1, para. 71(j))

36. While efforts by the Government to build toilets and eradicate open defecation are laudable, the Special Rapporteur learned during the visit that not all areas certified as open defecation free were often not *de facto* open defecation free (A/HRC/39/55/Add.1, para. 22).

<sup>13</sup> Gupta, A, N Khalid, P Hathi, N Srivastav, S Vyas and D Coffey, 'Coercion, Construction, and 'ODF paper pe': Swachh Bharat, according to local government officials', *The India Forum* (2019).

<sup>14</sup> CNN, "Two Indian children allegedly beaten to death for 'defecating on a public street'", (26 September 2019); BBC, "India: two held for killing children for 'defecating in the open' (26 September 2019).

<sup>15</sup> <https://ejalshakti.gov.in/ISC/frmGrievanceEntry.aspx>.

<sup>16</sup> *Grievance Analysis and Systemic Reforms Recommendations, Ministry of Drinking Water and Sanitation* (2017), 3.

Equally, efforts focused on rigorous measures to count the number of toilets and the number of administrative units that are open defecation free needed to be combined with efforts to monitor populations that do not have access to sanitation facilities (A/HRC/39/55/Add.1, para. 21).

37. Narrowing the gap and disparity between open defecation free status and the reality of access to toilets still faces challenges. The National Annual Rural Sanitation Survey 2018-19 examined the coverage of toilets in a village which has been granted open defecation free status. Respondents from the State of Bihar reported that the coverage of sanitation is low with 60.1 per cent, although, 90.5 per cent of respondents in the State of Bihar reported that they live in open defecation free certified villages.<sup>17</sup> Additionally, interview with village officials conducted in 2018 in multiple states indicated that village officials are often pressured by higher-level officials to report ODF status even if only 80 per cent of households own latrines. The study also revealed that several villages had abandoned building toilets or monitoring their use after achieving open defecation free status.<sup>18</sup>

38. However, a notable improvement is the effort to identify households and populations that have been left behind in the Clean Mission India. As part of the monitoring of Phase II, guidelines require households that have been left behind in the initial phase of the Mission to be identified (“No One Left Behind” programme).<sup>19</sup>

**PROGRESS ON-GOING:** The Special Rapporteur welcomes the efforts made by the Government to monitor populations that do not have access to sanitation facilities; however, further emphasizes should be placed in identifying vulnerabilities faced by those groups and their need to public support to be able to provide public financial support to allow them to enjoy their human right to sanitation.

## E. Recommendation on disaggregation of data

**RECOMMENDATION 11:** “Disaggregate data by wealth level, migratory status, ethnic group, scheduled caste, scheduled tribe and other grounds of discrimination, identifying patterns of inequality, as such information may have an impact on the formulation of national policies;” (A/HRC/39/55/Add.1, para. 71 (r)).

39. The Special Rapporteur’s findings from the visit revealed that several determinants have a heightened likelihood of predicting where or why people have lower quality access to adequate water and sanitation services: disability, gender, caste, tribe, poverty, place of residence (urban or rural) and land tenure (especially in urban areas, e.g. residence in formal vs. informal settlements), among others (A/HRC/39/55/Add.1, para. 57). In order to address inequalities in access, the Special Rapporteur highlighted the importance of collecting and analyzing data disaggregated by wealth level, migratory status, ethnic group and other grounds of discrimination, as such information may have an impact on the formulation of national policies and prioritization of those in vulnerable situations (A/HRC/39/55/Add.1, para. 58).

40. Since the visit in 2017, the Government has taken steps towards collecting disaggregated data, albeit with limitations. The notable example is the National Annual Rural Sanitation Survey 2018-19, which prioritizes calculating toilet access per household, but also collects data about respondents. In describing the characteristics of respondents to the survey, data was presented about the caste, gender, and income of respondents, but the categories used to describe these factors lack sufficient detail. For example, for the element of income, the categories were “above poverty line”, “below poverty line”, and “don’t know”.<sup>20</sup> Most importantly, analysis of how these factors impacted access to toilets was not presented.

<sup>17</sup> *National Annual Rural Sanitation Survey 2018-19*, 63.

<sup>18</sup> Gupta, A. et al., *Changes in open defecation in rural north India: 2014 - 2018* (2019), 15.

<sup>19</sup> Swachh Bharat Mission – Phase II Guidelines (2020), 18.

<sup>20</sup> *National Annual Rural Sanitation Survey 2018-19*, 64.

41. The Special Rapporteur reiterates that the Government has the responsibility to progressively realize the human rights to water and sanitation of all persons by identifying groups in vulnerable situations, as well as patterns of discrimination, and taking steps to redress them (A/HRC/45/10). The Special Rapporteur therefore emphasizes his recommendation that overall targets for increasing access to water and sanitation be complemented by targets to reduce inequalities (A/HRC/55/Add.1, para. 58).

**PROGRESS LIMITED:** The Special Rapporteur urges the Government to focus monitoring of access to water and sanitation services based on data disaggregation by prohibited grounds of discrimination and to use those monitoring to inform policies.

## IV. The human rights to water and sanitation

### A. Recommendation on safety of sanitation

#### 1. Recommendation on manual scavenging practices

**RECOMMENDATION 12:** “Establish a monitoring system to follow the process of emptying pit latrines under the national programs, in order to control possible trends of increases in manual scavenging practices, ensuring that this practice is not carried out in a caste-discriminatory manner;” (A/HRC/39/55/Add.1, para. 71(n)).

42. During the visit, the Special Rapporteur met several people who indicated that they themselves, their relatives or their neighbors continued to be employed in manual scavenging, often for lack of alternative employment options (A/HRC/39/55/Add.1, para. 26). In relation to the twin-pit latrine, the standard technology for excreta disposal in the Clean India Mission, the Special Rapporteur questioned whether it will be properly used to reduce manual scavenging practices by scheduled castes (A/HRC/39/55/Add.1, para. 28).

43. While the availability of faecal sludge disposal mechanisms were monitored, the monitoring did not extend to the management of those mechanisms, particularly emptying the pits. For instance, the National Annual Rural Sanitation Survey 2018-2019 found that a “septic tank with soak pit, single leach pit, double leach pit, closed drain with sewer system and closed pit” existed in 99.6 per cent of the households.<sup>21</sup> This did not account for how, or whether, pits are emptied, however. A 2019 WaterAid India report describes pit emptying services in rural areas as being managed by an informal and varied group of private service providers, with a lack of regulations and non-adherence to safety standards. The situation is similar in urban areas: in a 2019 report on public toilets in Delhi, ActionAid India found that 38 per cent of septic tanks were being manually cleaned.<sup>22</sup>

44. The Special Rapporteur is concerned by this insufficient regulation and surveillance of pit emptying. As reported by WaterAid, between January 2017 and September 2018, an estimated 123 persons died as result of manual scavenging.<sup>23</sup> In addition, persons employed in manual scavenging suffer from discrimination, being seen as ‘impure’ for handling human waste. Results from the 2018 Social Attitude Research India survey showed that 23 per cent of Dalits in Delhi and 20 per cent of Dalits in the State of Uttar Pradesh reported believing that caste discrimination is worsening.<sup>24</sup> This stigma impacts the access to sanitation by persons who do not have access to formal pit-emptying services: as the castes who usually practice manual scavenging increasingly turn away from the practice, latrine owners have been shown to return to open defecation practices rather than to empty their own latrines.<sup>25</sup>

<sup>21</sup> National Annual Rural Sanitation Survey 2018-19, 68.

<sup>22</sup> ActionAid India, *Public Toilets for Young Urban Women: A report on Gender Responsive Public Services in Six Cities of India* (2019), 3.

<sup>23</sup> WaterAid, *The hidden world of sanitation workers* (2018), 2.

<sup>24</sup> Hathi, P. and Coffey, D., *Open defecation: manual scavenging’s legacy in rural India* (2018).

<sup>25</sup> *Ibid.*

45. Monitoring of manual scavenging practices falls under the responsibility of the Ministry of Social Justice and Empowerment. Under the Manual Scavenging Act 2013, local authorities are required to carry out survey of manual scavengers in areas under their jurisdiction and upload these numbers to the Ministry website. Further, the Ministry of Social Justice and Empowerment, in 2018-2019, has also carried out a National Survey of Manual Scavengers in 170 districts of 18 States.<sup>26</sup> A large disparity between numbers reported by local officials (4,505 identified manual scavengers by March 2019) and numbers reported by the National Survey (49,354 manual scavengers by March 2019) exists.<sup>27</sup> The Special Rapporteur is concerned that this disparity could reveal a lack of political will or of resources for addressing manual scavenging on the ground and in practice.

**PROGRESS LIMITED:** The Special Rapporteur reiterates the need to establish a monitoring system to address the process of emptying pit latrines, which has become more urgent following the increased amount of toilets due to the Clean India Mission.

## 2. Recommendation on faecal sludge management

**RECOMMENDATION 13:**“ Strengthen initiatives for implementing faecal sludge management, safe transport and disposal of grey water, and wastewater treatment, to reduce health hazards arising from the contamination of water;” (A/HRC/39/55/Add.1, para. 71(k))

46. Sanitation not only concerns one’s own right to use a latrine or toilet, but also the human rights of others who can be negatively affected when wastes are not appropriately treated or disposed. To meet this standard, the Special Rapporteur clarified that India would also need to implement an effective faecal sludge management system for excreta stored in latrines and achieve a massive increase in wastewater treatment for the population served by sewerage systems, mostly in cities (A/HRC/39/55/Add.1, para. 33).

47. Limited information is available which indicate that implementation of faecal sludge management has been in place. The UNICEF/WHO Joint Monitoring Programme reported that wastewater treatment covered only 9 per cent of the urban population in India in 2015 and in 2017, this was reported to have extended only to 10.5 per cent. In 2018, WaterAid India Report found that only a third of urban houses in India are connected to the sewer system; that only a fraction of the wastewater generated and discharged into sewers actually reaches wastewater treatment facilities; and that often sewers are silted up because of poor maintenance and pumping stations face unreliable power supply.<sup>28</sup>

48. Despite a lack of evidence for the improvement of wastewater management since the visit, the Special Rapporteur notes increased attention to faecal sludge management in sanitation policy, particularly in the next phase of the rural component of Clean India Mission from 2020 to 2025. Phase II introduces the concept of “Open Defecation Free Plus” to be used to designate villages where open defecation free status is maintained, and solid and liquid waste management is implemented. Similarly for urban areas, in September 2018, the Ministry of Housing and Urban Affairs released the criteria for Urban Local Bodies (the smallest unit of governance in cities) to certify as “ODF+”, a status that requires that all toilets needed to be connected to either sewer networks or safe containment systems, and all septic tank or pit cleaning service providers needed to be registered and operating through contract.<sup>29</sup>

49. Furthermore, for villages more than 10 km away from wastewater treatment plants, Phase II guidelines include descriptions on how to choose and implement faecal sludge management systems based on the local context, such as the depth of water table and the

<sup>26</sup> Ministry of Social Justice Annual Report 2018-19 (2019), 13.

<sup>27</sup> Ibid., 14.

<sup>28</sup> WaterAid India, *State of Urban Water Supply in India* (2018), 26.

<sup>29</sup> Government of India, *Declaring your City/Town SBM ODF+ and SBM ODF++ Toolkit for Urban Local Bodies* (2018).

volume of faecal sludge produced daily.<sup>30</sup> The Special Rapporteur welcomes this contextual approach and emphasizes that it is important that this planning translates into actual efforts to realize concrete waste management strategies that are contextually appropriate, safely managed, and able to be sustained over time.

**PROGRESS ON-GOING:** The Special Rapporteur notes the steps taken by the Government on faecal sludge management at the level of national policy on rural sanitation. He emphasizes that the next steps is for the Government to take action so that such policy is implemented in practice. He also stresses the need to extend these efforts to urban areas.

## B. Recommendation on accessibility of water and sanitation

**RECOMMENDATION 14:** “Identify populations in vulnerable situations, including non-nationals and those without proper identity documentation, and identify patterns of discrimination, and their underlying structural causes, that heighten the likelihood of lower quality access to adequate drinking water and sanitation services;” (A/HRC/39/55/Add.1, para. 71(q))

50. During the visit, the Special Rapporteur noted that certain groups fell outside the purview of government protection regarding the human rights to water and sanitation. He met the undocumented population living in former Bangladeshi enclaves situated in India and former Indian enclaves located in Bangladesh who often not possess a toilet within their houses and are forced to defecate in the open (A/HRC/39/55/Add.1, para. 70).

51. The number of refugees and stateless persons that may face barriers in accessing water and sanitation in India is growing. According to UNHCR, the number of refugees in India in 2017 was 207,070,<sup>31</sup> and had grown to 240,000 in 2019.<sup>32</sup> However, the actual number of refugees living in India as of December 2019 can be considered higher than the official figures, as it is estimated that over 40 per cent of all refugees in India live outside of camps.<sup>33</sup> These groups in transit or at destinations should be guaranteed access to water and sanitation on the same conditions as granted to local state nationals, regardless of their legal status and documentation (A/HRC/39/55, para. 11).

52. Further, in relation to stateless population, Human Rights Watch pointed to a gap in the census following the passing of the new Citizenship (Amendment) Act (2019), which facilitates citizenship applications for all non-Muslim irregular immigrants. The census in the State of Assam excluded nearly two million people, most of them ethnic Bengalis, whom the authorities accuse of being illegal migrants.<sup>34</sup> The Special Rapporteur reiterates that the Government has an obligation to provide water and sanitation not only to nationals, but to foreigners who reside in the territory as well as to those people who do not have proper identity documentation (A/HRC/39/55, para. 11).

53. Another challenge related to access to water and sanitation by undocumented population is posed by the new monitoring system under the Jal Jeevan Mission. The new “Aadhar number”<sup>35</sup> – a number linked to citizenship documents – presents negative implications for populations without access to documents that provides their address to formal housing. The “Aadhar system” is linked to the household, and requires the logging of personal and biometric data. By law, persons without an Aadhar number cannot be excluded from receiving government benefits.<sup>36</sup> However, persons who are homeless have been denied

<sup>30</sup> Operational Guidelines of SBMG Phase II (2020), 117.

<sup>31</sup> UNCHR, India 2017 End-of-year report (2017).

<sup>32</sup> UNHCR, *India Factsheet 31 December 2019*.

<sup>33</sup> *Ibid.*

<sup>34</sup> Human Rights Watch, “Discrimination Against Muslims Under India’s New Citizenship Policy” (9 April 2020).

<sup>35</sup> *Security in the UIDAI system*, (2018).

<sup>36</sup> *Ibid.*

access to shelter as they did not have an Aadhar number.<sup>37</sup> A report on the ‘State of Aadhar’, released by a social impact advisory group, Dalberg, in 2019, surveying 147,868 households in 28 states and union territories, found that 30 per cent of homeless residents did not have the Aadhar number.<sup>38</sup>

54. In addition to citizenship documents, the Aadhar system is linked to biometric data of individuals, which is identified as a barrier for certain marginalized groups. In 2019, 27 per cent of transgender persons chose not to have a number due to the need to reveal their gender identity and fear of repercussions should this information be shared during administrative practices.<sup>39</sup> Their exclusion from the Aadhar system risks facing an additional barrier for transgender persons to access water and sanitation.

55. The increased number of undocumented populations and the Aadhar system result in exacerbated vulnerabilities. To take a concrete and recent example, the Special Rapporteur learned that, in April 2020, the Government produced an advisory for the state governments: “Advisory for ensuring safe drinking water during lockdown and effective management of pandemic caused by Corona Virus”, which requires that safe potable water be made available to all “citizens”. The language used in the advisory could lead to discrimination against non-nationals and stateless persons during the coronavirus crisis, putting them at greater risk of illness.<sup>40</sup> The COVID-19 pandemic impacts both nationals and non-nationals irrespective of their legal status and, therefore, even if citizens have safe and adequate access to water to handwashing to prevent contamination, they are still at risk of contagious if non-nationals living in the same space do not have the same level of protection.

**PROGRESS NOT STARTED:** The Special Rapporteur looks forward to concrete measures from the Government on reconciling the use of the Aadhar system with the realization of the human rights to water and sanitation of all persons in India. He also reiterates his recommendation that the Government identifies and addresses patterns of discrimination in the access to water and sanitation against non-nationals and undocumented populations.

## C. Recommendation on water quality

### 1. Recommendation on water quality monitoring

**RECOMMENDATION 15:** “Identify the persisting problems related to drinking water quality and assess the effectiveness of the measures implemented to monitor and respond to water contamination” (A/HRC/39/55/Add.1, para. 71(o))

56. Regular monitoring of groundwater in India is undertaken by the Central Ground Water Board of the ministry responsible for water resources and by the Water Quality Assessment Authority. Despite advances in testing under the National Rural Drinking Water Programme, the Special Rapporteur noted that the quality of drinking water remained a matter of concern (A/HRC/39/55/Add.1, paras. 40 and 41).

57. In relation to identifying problems related to drinking water quality and monitoring, the audit undertaken by the Comptroller and Auditor General of India in 2018 introduced several relevant aspects. The audit found that data in the IMIS of the Clean India Mission lacked consistency and accuracy due to insufficient authentication and validation controls, and that there was a need for a functioning expert monitoring of this data.<sup>41</sup> Furthermore, drinking water quality was assessed by the Central Ground Water Board in 2019, finding that

<sup>37</sup> Smyth, S., *Biometrics, Surveillance and the Law: Societies of restricted access, discipline and control*, (Routledge, 2019), 121.

<sup>38</sup> Dalberg, *State of Aadhar: A People’s Perspective* (2019), v.

<sup>39</sup> *Ibid.*

<sup>40</sup> Submission from the International Commission of Jurists.

<sup>41</sup> Comptroller and Auditor General of India, *Report No.15 of 2018 - Performance Audit on National Rural Drinking Water Programme in Ministry of Drinking Water and Sanitation* (2018), 6.

fluoride problem existed in 276 districts in 2019, with the States of Rajasthan and Telangana demonstrating especially high levels.<sup>42</sup>

58. The Special Rapporteur notes that the efforts to increase monitoring of drinking water quality by expanding testing capabilities through laboratories and field-testing kits, and planning for community-led testing will strengthen the water quality testing framework in India.<sup>43</sup> Particularly for rural areas, the Jal Jeevan Mission (JJM) operational guidelines state that communities affected by arsenic or fluoride contamination are suggested to implement Community Water Purification Plant schemes as a short-term solution, until the establishment of household tap connections under the JJM.<sup>44</sup> Under the JJM, water quality monitoring is carried out by tests in laboratory and by field testing by the water supplier, the results of which are uploaded on the IMIS, to be supplemented by community-led testing.<sup>45</sup>

59. As for urban areas, the Bureau of Indian Standards – an autonomous body of the Ministry of Consumer Affairs, Food and Public Distribution that sets standard for water quality in urban areas – monitored water quality in 2019, testing water samples at point of consumption from state capital cities. The only city with no samples failing to meet national water quality standards was Mumbai. In 14 out of the 21 cities, all water samples failed to meet water quality standards.<sup>46</sup> Efforts to address problems with water quality in piped connections must be increased. In addition, the Special Rapporteur looks forward to clarification on how the water quality monitoring under the Jal Jeevan MissionJJM – which focuses on water provision in rural areas – will be integrated with water quality in urban areas.

**PROGRESS LIMITED:** The Special Rapporteur reiterates that the identification of persisting problems related to drinking water quality and assessment of measures effectiveness should be a continuous effort by the Government. Regarding the recent guidelines, he recommends that the Government monitor closely the efficacy of community-based testing and the accuracy of the self-reporting by water providers.

## 2. Recommendation on access to information about drinking water quality

**RECOMMENDATION 16:** “Strengthen access to information, including by making information related to drinking water quality available to the public in a user-friendly manner;” (A/HRC/39/55, Add.1, para. 71(p))

60. During the visit, the Special Rapporteur learned of India’s robust information management system and dashboards that, among others, provide information on drinking water status in rural areas. Noting that those platforms were often targeted at technical experts, he emphasized the importance that members of the public have access to up-to-date information, presented in an accessible and understandable manner (A/HRC/39/55/Add.1, para. 44).

61. The monitoring information for water and sanitation policies across the country - remains the main source of information for the general public. Both the Clean India Mission (rural component) and Jal Jeevan Mission (JJM) require local officials to upload their management plans and monitoring data to respective IMIS. The Special Rapporteur notes that those systems still target technical experts as opposed to the general public and the information available to the public on these platforms is complex to navigate, however, and often presented in large table formats.<sup>47</sup>

<sup>42</sup> Government of India, “Central Ground Water Board Contaminated Areas” (2019).

<sup>43</sup> *Ibid.*

<sup>44</sup> *Jal Jeevan Mission Operational Guidelines* (2020), 24.

<sup>45</sup> *Jal Jeevan Mission Operational Guidelines* (2019), 5 and 61.

<sup>46</sup> Bureau of Indian Standards, Report of Testing of Piped Drinking Water Samples from 20 Capital Cities and Delhi, November 2019.

<sup>47</sup> Government of India, “IMIS - Water Quality”.

62. In addition to IMIS, the results of water quality testing are shared “to all the major stakeholders in community” in accordance with the operational guidelines for the JJM.<sup>48</sup> The JJM guidelines also suggest that schools and health centers conduct awareness and education programs on water quality and its importance.<sup>49</sup> While these initiatives may increase the literacy of members of the public regarding water quality, they cannot replace efforts to make technical information accessible and clear to everyone.

63. The Government made further efforts to widen access to information about water and sanitation policy more generally. In 2018 the Department of Drinking Water and Sanitation created the Sujal Swachh Sangraha, a knowledge- management portal dedicated first to the Clean India Mission, and now to the JJM. Registered users, who are officials from the Department of Drinking Water and Sanitation, and from state and district government, can upload resources including good practice stories, training materials and notices regarding local programs with the public.

64. The Special Rapporteur notes the efforts to provide access to information regarding water and sanitation policies across India and commends the Government’s efforts to use ICT to provide access to the public. The information available is limited, however, to providing pictures of policy progress according to the specific standards of success of the JJM and Clean India Mission. The Special Rapporteur further notes that those with access to technology can more easily than others access this information, which creates inequalities in access to information.

**PROGRESS ON-GOING:** The Special Rapporteur welcomes that the Jal Jeevan Mission operational guidelines instruct that information on water quality gathered through monitoring be communicated with all members of the community. He recommends, as the next steps, that that information is made available using understandable language in various platforms. Regarding access to information more generally, it is important to make it more accessible and to ensure that not only positive information is shared.

#### D. Recommendation on acceptability

**RECOMMENDATION 17:** “Ensure that sanitation facilities are acceptable for all individuals, taking into consideration the characteristics of particular groups, which may have different sanitation needs;” (A/HRC/39/55/Add.1, para. 71(1))

65. In order to fulfill the human rights to sanitation, sanitation facilities must be acceptable for all. The Special Rapporteur found that public toilets are usually not accessible for persons with disabilities, are inadequate for transgender persons, and lack adequate facilities for handwashing and for menstrual hygiene management (A/HRC/39/55/Add.1, para. 23) and heard testimonies that transgender persons often were subject to harassment and humiliation (A/HRC/39/55/Add.1, para. 48).

66. In 2019, the Strategy for Accessible Sanitation was released with a particular focus on sanitation for persons with disabilities.<sup>50</sup> As part of the Strategy, 1,200,000 physically accessible individual household latrines have been constructed across India. In the same year, the Department of Empowerment of Persons with Disabilities, NITI Aayog and other actors jointly organized ‘SAN-Sadhan Hackathon’ to promote and showcase innovative and affordable solutions to designing sanitation facilities for persons with disabilities.<sup>51</sup> Despite those commendable efforts, some sources suggest that improvement can be further made for persons with disabilities to have adequate access to water and sanitation. For instance, a media report from 2018 suggests that many toilets built under the Clean India Mission are not accessible, and persons with disabilities remain unable to access toilets in public spaces

<sup>48</sup> *Jal Jeevan Mission Operational Guidelines* (2019), 61.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Strategy for Accessible Sanitation* (2019), 3.

<sup>51</sup> *SAN-Sadhan Hackathon 2019 video* (2019).



across the country.<sup>52</sup> In addition, a 2019 study by ActionAid India showed that 76 per cent of surveyed public toilets in Delhi did not have an accessibility ramp.<sup>53</sup>

67. Another group with particular sanitation needs are women and girls. Following the visit, in a 2018 Advisory on Public and Community Toilets, the Ministry of Housing and Urban Affairs noted the need for gender-sensitive toilet facilities in public spaces, mentioning the need for privacy and safety. Notwithstanding this advisory, which the Special Rapporteur welcomes, sanitation facilities in India often remain unsatisfactory for women's sanitation needs. A 2019 study on urban public toilets for women in six cities of India showed that 35 per cent of surveyed public toilets in Delhi did not have a separate section for women; 53 per cent of women's toilets did not have running water; 45 per cent of toilets did not have a mechanism to lock the door from inside; and 58 per cent of participants mentioned they prefer changing sanitary napkins only at home and not when they are in work, school or public places.<sup>54</sup>

68. With regard to transgender persons, media continued to report on the experiences of transgender persons who have suffered from discrimination in accessing sanitation facilities.<sup>55</sup> Regarding this, the Special Rapporteur notes the adoption of Transgender Persons (Protection of Rights) Act, 2019, which disallows the exclusion of transgender persons from any government scheme or benefit and calls for establishing National Council for Transgender persons, whose functions would include monitoring and reviewing all policies and government activities related to the rights of transgender persons. Considering the persisting disparity in access to toilets for transgender persons, the Special Rapporteur urges the Council to include addressing the issue of the human rights to water and sanitation of transgender persons as a core part of their functions.

**PROGRESS ON-GOING:** The Special Rapporteur recommends that the Government closely monitor the acceptability dimension of the human right to sanitation. Efforts should be made to track and record instances of all persons being able to use facilities, and they should be adapted or retrofitted to redress the issue. Further, it is crucial that provisions regarding the availability and accessibility of water and sanitation for persons with disabilities, women and transgendered persons are translated into practice.

## V. Spheres of life beyond the household

69. Targets 6.1 and 6.2 of the Sustainable Development Goals aim for universal access to water and sanitation by 2030, which can only be achieved when access to water and sanitation is addressed both within the household and in the spheres beyond the household. During the visit to India, the Special Rapporteur received several reports and often observed that public places, including transport hubs and police stations lacked sufficient and adequate facilities for water and toilets (A/HRC/39/55/Add.1, para. 23) Following the visit, he highlighted the concern that the disproportional impact that lack of provision of water and sanitation in public spaces has on populations in vulnerable situations, including persons living with disabilities, LGBTI persons, and women and girls (A/HRC/42/47, para. 43), as well as the populations who spend significant portions of time in public spaces, such as street workers and homeless persons (A/HRC/42/47, para. 3).

<sup>52</sup> The Hindu Business Line, "Working towards a disabled-friendly India" (25 September 2018).

<sup>53</sup> ActionAid India, *Public Toilets for Young Urban Women: A report on Gender Responsive Public Services in Six Cities of India* (2019), 31.

<sup>54</sup> ActionAid India, *Public Toilets for Young Urban Women: A report on Gender Responsive Public Services in Six Cities of India* (2019), 6.

<sup>55</sup> Deccan Herald, "Toilets: He, She and Them?" (26 November 2019), and First Post, "Transgender individuals demand safer, gender-neutral bathrooms in India post-Section 377 verdict" (21 November 2018).

## A. Recommendations on water and sanitation in public spaces

**RECOMMENDATION 18:** “Ensure that public sanitation facilities are available continuously and, in case of shutdown, ensure alternative options so that people are not forced to defecate in the open;” (A/HRC/39/55/Add.1, para. 71(h))

**RECOMMENDATION 19:** “Guarantee access to sufficient and continuous water and sanitation facilities in public places for those on the move daily, including homeless persons, street vendors, rickshaw drivers and seasonal migrant workers;” (A/HRC/39/55/Add.1, para. 71(i))

70. During the visit, the Special Rapporteur received several reports and observed that public places and institutions, including schools, transport hubs and police stations (where people living or commuting in public places often rely on for water and sanitation) lacked sufficient and adequate facilities for water and toilets (A/HRC/39/55/Add.1, para. 23). To fulfil the human rights standards of availability, there must be a sufficient number of facilities to avoid overcrowding and waiting times, and the continuous availability of toilets needs to be ensured (A/HRC/39/55/Add.1, para. 17).

71. Since the visit, the Government took several measures to address access to water and sanitation in public spaces, including building over 590,000 community toilets in urban areas by January 2020.<sup>56</sup> Additionally, in 2018, the Ministry of Housing and Urban Affairs – in the form of Advisory on Public and Community Toilets - included a guideline for managing shared toilet facilities, which disallowed the use of toilet facilities for residential or storage purposes, emphasizing the need to provide continuous water and electricity supply, and to calculate peak usage times in order to limit the wait outside facilities.<sup>57</sup> Furthermore, under the Clean India Mission - Phase II, communities in rural areas wishing to achieve “Open Defecation Free Plus”<sup>58</sup> status must provide at least one community sanitation complex, with gender-segregated toilets, to provide for “floating populations”.<sup>59</sup>

72. Recognizing that significant steps have been taken to address access to water and sanitation in public spaces, additional steps can be taken. A 2019 survey by ActionAid India found 43 per cent of respondents did not have 24 hour access to community toilets, and 21 per cent of respondents travelled over 500 meters to access a functioning community toilet.<sup>60</sup> In addition, over 50 per cent of participants of the study mentioned that poor cleaning and maintenance of the facilities led to them avoiding using public toilets.<sup>61</sup> This gap between well-intended policy and the actual situation can be related to insufficient monitoring. Official data on water and sanitation in India are collected at a household level, and no mention of access to water and sanitation in public spaces is made in the 2018 Ministry of Statistics and Program Implementation Report on Drinking Water, Sanitation, Hygiene and Housing Condition in India. As outlined by the Special Rapporteur, a failure to monitor and regulate access to water and sanitation in public spaces renders those who rely on such services invisible (A/HRC/42/47, para. 4). Furthermore, monitoring should include the maintenance of public and community facilities.

73. Services must also remain affordable. While funding for the construction of these services is available from the national government, Clean India Mission – Phase II encourages local governments to emphasize private sector involvement in the operation and maintenance of the complexes, and to charge users for use wherever possible.<sup>62</sup> The Special Rapporteur reminds the Government of the importance of ensuring that public sanitation services remain affordable and, when needed, free of charge. Many of the population who

<sup>56</sup> Statewise Status of implementation of Various Components under SBM by January 2020 (2020).

<sup>57</sup> *Advisory on Public and Community Toilets* (2018), 21.

<sup>58</sup> Clean India Mission (urban) refers to 'ODF +' and Clean India Mission (rural) refers to 'ODF Plus'.

<sup>59</sup> Operational Guidelines of SBM-G Phase II (2020), 22.

<sup>60</sup> ActionAid India, *Public Toilets for Young Urban Women: A report on Gender Responsive Public Services in Six Cities of India* (2019), 20.

<sup>61</sup> *Ibid.*, xiv.

<sup>62</sup> Operational Guidelines of SBM-G Phase II (2020), 22.

rely on such services, such as persons who are homeless or migrants, are economically vulnerable, and should not see their right to sanitation threatened by an inability to pay.

**RECOMMENDATION 18 – PROGRESS LIMITED:** The Special Rapporteur recommends that Government policies regarding the provision and maintenance of toilets in public spaces be put into practice and that facilities are monitored for its compliance with human rights standards.

**RECOMMENDATION 19 – PROGRESS ON-GOING:** The Special Rapporteur recommends that the Government monitor closely the continuous availability of public sanitation facilities to ensure that alternatives to open defecation are available at all time, and that these facilities fully comply with the normative content of the human rights to water and sanitation.

## B. Recommendation on informal settlement, resettlement and homeless

**RECOMMENDATION 20:** “Provide equal access to water and sanitation services irrespective of the place and status of residence, including in informal settlements and resettlements and for persons who are homeless;” (A/HRC/39/55/Add.1, para. 71(s))

74. Access to drinking water and sanitation in informal settlements was a concern in the various slums that the Special Rapporteur visited. In Mumbai, the country’s most populous city, slums were home to more than half of the city’s 18 million inhabitants but without adequate access to water and toilets (A/HRC/39/55/Add.1, para. 64). Where solutions did exist, it was not certain whether they were constructed by official authorities or whether their quality was being monitored.

75. The challenge of providing access to water and sanitation in informal settlements continued to exist after the visit. A 2018 study by WaterAid found that 74 per cent of residents had access to tapped water in informal settlements, as opposed to 69.9 per cent in non-slum urban areas.<sup>63</sup> Residents of informal settlements rarely had individual connections, however, but instead used community stand-posts or unregulated wells with non-continuous access.<sup>64</sup> The Special Rapporteur encourages the Government to take measures to ensure this provision is fully human rights compliant, and to redress situations where the human rights standards are not met.

76. The lack of adequate water and sanitation services in informal settlements as an on-going challenge has been highlighted in the onset of the COVID-19 pandemic. According to media sources, states with a high number of informal settlement residents have seen a faster increase in coronavirus infections than other densely populated states.<sup>65</sup> Even if only a subsection of the population has reduced access to hygiene through lack of water and sanitation services, the contagious nature of the virus threatens all persons. The inability to monitor informal provision, and thus to identify and address gaps in provision during such a crisis, limits the capacity of the Government to respond to the pandemic.

**PROGRESS LIMITED:** The Special Rapporteur recommends that the Government clearly includes in the national programmes for water and sanitation specific provisions to addresses the needs of persons who are homeless, and persons living in informal settlements and resettlements, regardless of their ability to provide formal proof of residence.

<sup>63</sup> WaterAid India, The State of Urban Water Supply (2018), 15.

<sup>64</sup> Ibid.

<sup>65</sup> Down To Earth, “Covid-19: How do India’s Urban Informal Settlements Fight the Pandemic?” (22 May 2020).