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Joint submission to the United Nations Special Rapporteur on the human rights to safe drinking water and sanitation

Call for input to 2022 reports: Indigenous peoples and people living in rural areas

20 January 2022

Background

In his “planning and vision report” to the 48th session of the Human Rights Council (A/HRC/48/50, para. 9), the Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Pedro Arrojo Agudo, identified his objectives for the first three years of the mandate. He aims to clarify the steps that need to be taken to promote democratic water governance, taking a sustainable and human rights-based approach in different contexts including, but not limited to, urban and rural areas and areas inhabited by indigenous peoples or indigenous peoples’ lands and territories.

In addition, in clarifying one of the structural flaws or the root causes of the global water crisis, namely “inequality, discrimination and poverty”, the Special Rapporteur highlighted the situation of people living in impoverished rural areas and indigenous peoples, whose patterns of life are more closely linked to nature, territory and community values, and most of the necessities for a dignified life are not bought, but provided by nature or the community (A/HRC/48/55, para. 36).

In line with such aim, the Special Rapporteur will focus his two thematic reports in 2022 on:

- The human rights to safe drinking water and sanitation of indigenous peoples: state of affairs and lessons from ancestral cultures to the 51st session of the Human Rights Council in September 2022; and
- The human rights to safe drinking water and sanitation of people living in impoverished rural areas to the 77th session of the United Nations General Assembly in October 2022.

To prepare for the two reports, the Special Rapporteur welcomes response from State to the below questions by 31 December 2021.

Introduction

This submission combines inputs from the [Survivors of Lesotho Dams \(SOLD\)](#) and the [Freshwater Action Network Mexico \(FANMex\)](#).

The submission was compiled and edited by [End Water Poverty](#) (EWP) and the [Centre for Applied Legal Studies](#) (CALs).¹ It is endorsed by the [African Forum and Network on Debt and Development](#) (AFRODAD) and [Oxfam South Africa](#).

End Water Poverty applied to the UNSR's office and received an extension until 20 January 2022 and clarified that bilingual or multi-lingual submissions would be acceptable. SOLD's inputs are drafted in English, and FANMex's inputs are drafted in Spanish in the full report attached separately in Annex 1.

Summary

In the **Kingdom of Lesotho**, rural and indigenous people live in remote rural areas where the climate is harsh with both flooding and droughts. They typically self-access water and sanitation as there is little to no formal infrastructure. Many people defecate in the open. Where toilets exist, they are self-dug pit latrines. People, primarily women and children, walk up to 5 km to collect water from rivers, dams, lakes and other unprotected sources. This can have severe repercussions for women and girls, making them more vulnerable to gender-based violence.

In **Mexico**, rural and indigenous people have historically been relegated to high mountainous areas, which are more vulnerable to hydro-meteorological hazards. Communities self-access water from nearby springs. Indigenous populations are responsible for 23.3% of the country's water catchment thanks to their conservation of forests and soils. However, marginalisation, poverty, organised crime and the presence of national and international mining companies have led to illegal logging, water grabbing, the disappearance of springs and increased pressure on water sources.

Although municipalities are obliged to bring water and sanitation services to all communities in their jurisdiction, they invest in centralised systems and neglect communities that are far from municipal capitals.

¹ The Centre for Applied Legal Studies (CALs) is a public interest law organisation based at the Wits University School of Law. Founded in 1978 by Professor John Dugard, CALs is one of the oldest organisations of its kind in South Africa. We continue to use a combination of research, advocacy and litigation to advance human rights and social justice in South Africa across a range of programme areas. Read more about our work at <https://www.wits.ac.za/cals/> or follow @CALs_ZA.

Key issues

Lack of legal recognition

Mexico: In general, both rural and indigenous peoples are organised into community water committees. Although these committees have provided services to communities for decades, Mexican law does not recognise these committees and so they cannot receive funds to improve infrastructure from the State or from international partners, which leads to contamination and disease as both indigenous and rural committees lack information regarding the importance of water purification, wastewater management and the normative criteria of the human rights.

Funding

Mexico: In the last 6 years the budget allocated to the National Commission of Water has been cut by 60%, with a severe reduction in international cooperation in Latin America.

Information and monitoring

The belief among international development actors that Latin America's water and sanitation problems have been solved stems from inaccurate information. What the Mexican government report to the WHO/UNICEF Joint Monitoring Programme (JMP) - a source relied upon by donors to make funding decisions - is not adequately monitored, disaggregated nor up-to-date, nor does it align with international human rights standards. It is therefore difficult to accurately identify which rural and indigent communities lack services.

Lack of transparency in the use of resources at municipal and national level is a key problem. Decisions about where and how resources are used are opaque. For example, information relating to the number of households that receive water services or are connected to a wastewater reclamation system is not easily accessible. Governments and the private sector do not always share information with communities in decision-making consultations. When information is shared, it is often not translated into the communities' languages or contains technical data that is inadequately explained.

Despite the profoundly negative impacts of the construction of dams and large development projects on rural and indigenous communities, there is little to no information, transparency or accountability to those affected.

Participation and decision-making

In Mexico, the government does not respect communities' decision-making processes, nor the infrastructure they implement, operate and maintain. Unlike governments and the private sector, communities do not receive salaries or compensation for attending consultations, contributing to an inequity of participation. The current administration has discredited civil society who promote the human rights and criticise public policies. The risk is that hard-won spaces for dialogue and participation will close and civil society

will be so weakened that they can no longer generate the public pressure necessary to uphold a functioning democracy.

In Lesotho, public participation is not a right. People are barely consulted on policies and projects affecting their rights to water and sanitation. This particularly impacts indigenous women and women in impoverished rural areas, who often do not know that public participation is their right in the first place. As a result, women's voices are generally silenced at both local and national levels.

In both countries, women are not considered decision-makers and are often afraid of confronting men.

Effective accountability mechanisms

Much of the sector budget in Mexico is invested in mega-infrastructure that responds more to industrial needs than the needs of rural or indigenous people. Accountability is fragile and where information is published by government offices, it usually concerns the use of the budget and whether or not infrastructure was installed, while information about the rationale for project or budget decisions is not available.

Once financial support is requested, municipalities seek to appropriate communities' springs and assets, which makes communities reluctant to deal with municipal governments.

There are currently no mechanisms in Lesotho for community complaints regarding access to safe drinking water and sanitation, nor any mechanism through which to obtain information on how such complaints are handled and addressed.

Policy and legal frameworks

Lesotho has good water and sanitation policies and laws, for example the Water and Sanitation Policy of 2007; the Water Act of 2008 and the Water and Sanitation Strategy of 2016. However these laws are neither implemented nor translated into regulatory standards.

In 2012 the right to water was included in Mexico's Constitution with the Congress of the Union instructed to approve a General Water Law that would give effect to the constitutional right within a year. In 2013 FANMex and other partners launched national consultations to draft the General Water Law. The Congress is yet to approve the law.

While the law recognises indigenous peoples, their right to water is not enforced or is bypassed through consultations that have little impact on decision-making. The Mexican Constitution [includes the right to water and sanitation](#) but there is a lack of understanding on the part of federal authorities and services providers about what sanitation as a human right means in practice, and this right is not considered by the public nor by community services providers. It is still often confused with drainage or sewerage, and not with a system of collection, transfer, treatment and safe disposal of wastewater (or biowaste).

COVID-19

SOLD notes with disappointment a complete lack of COVID-19 emergency water provision in Lesotho.

In Mexico, the state provided temporary water programmes in rural health centres. The lack of adequate permanent infrastructure in both health centres and homes in rural and indigenous communities remains cause for concern, as does the lack of water and sanitation systems in rural public schools, which have delayed schools from reopening and increased the burden on parents to finance handwashing stations at school entrances.

Human rights defenders and activists

While SOLD has not so far encountered threats, the [Lesotho | Southern Africa Human Rights Defenders Network \(southernafricadefenders.africa\)](#) notes that: “Human rights violations and impunity continued unabated. Allegations of torture and other ill-treatment continued. The right to freedom of expression remained severely restricted. There were unlawful killings. Lesotho was ranked 164 among Low Human Development countries by the 2019 UNDP report, with women comprising the highest number of people who live in poverty. In July (2019), political parties agreed to constitutional, governance, security and media reforms to ease tensions that continued to mount”.

In Mexico, FANMex reports threats, persecution and assassination of human rights defenders and activists. In the first two years of government under the presidency of Andrés Manuel Lopez Obrador, 45 human rights defenders were reported assassinated. In the 6 years of the previous government 161 murders were reported. A lack of government response fosters impunity.

As noted by the [UN Special Rapporteur in his February 2019 report on Lesotho to the UN General Assembly](#): “There are human rights concerns related to water and sanitation at various stages of mega-projects such as large-scale dams, from the planning stage, through to approval and construction, as well as both the short and long-term operation of these projects. I urge the Government of Lesotho to carry out a human rights impact assessment at each stage paying particular attention to the meaningful participation of those affected, facilitating a two-way conversation and providing easy access to information”.

He also pointed to the need to establish a National Human Rights Commission in Lesotho with a mandate to oversee issues of economic, social and cultural rights, and undertake its watchdog function with independence and autonomy to enforce the realisation of those rights.

Recommendations

Mexico:

The legal framework must be enforced and implemented. Decisions to allow water concessions must be based on up-to-date water availability data so that communities’

human rights are prioritised above the needs of the mining, textile, steel, brewing, bottling and textile industries. The quality of wastewater discharge must be meaningfully measured and monitored against existing regulatory standards. Additionally, decisions relating to infrastructure and budget allocation must be transparent and supported by evidence to reduce inequalities in access to water and sanitation.

A lack of legal enforcement perpetuates a culture of impunity in which industries hoard and pollute rural and indigenous communities' water. Private actors who do not respect the law nor human rights standards should have their water rights cancelled. A regulatory entity should be established through the General Water Law to improve the quality, efficiency and sustainability of water and sanitation of services, as well as transparency, public participation and access to information.

International development projects need to target and prioritise access to water and sanitation for indigenous peoples and people living in impoverished rural areas. To do this effectively, they will need to be able to enter into agreements directly with community organisations, which in turn need to have legal status.

It is crucial that better quality, adequate, updated and disaggregated information is made available and accessible to order to ensure that investments reach those who need them most. International cooperation must foster transparency, accountability to communities and meaningful engagement in decision making. It is essential to change the indicators by which coverage is measured to stipulate a minimum daily volume, a healthy quality, and access to water 24 hours a day.

There is an urgent need to invest in generating more and better disaggregated information so that both local governments and international actors can identify communities whose rights are denied to better target their investments.

Lesotho:

Water and sanitation must be made constitutional rights and associated public participation and procedural fairness procedures including complaints mechanisms put in place to give effect that those rights.

The '30 litres' of free basic water as stipulated by the [Lesotho Water and Sanitation Policy 2007 – Ministry of Water](#) must be implemented.

Information about the environmental and financial impacts, costs and plans for dams and other infrastructure projects and mining activities and permissions must be made fully publicly accessible.

International conventions related to Water, Wetlands, Desertification, Biodiversity and Climate Change must be domesticated in local law.

Affected communities and vulnerable groups in particular must be meaningfully engaged and participate in decisions that affect them, including in the governance of Lesotho's natural resources.

In particular, where Lesotho's water resources are being redirected for the benefit of neighbouring countries (such as is the case with the Lesotho Highlands Water Project), we recommend that:

- This should only be the case where all Lesotho's residents have been guaranteed access to sufficient and safe water for drinking, sanitation, basic household needs and subsistence farming;
- Infrastructure built for such purposes should not traverse communal lands nor otherwise necessitate the removal of rural and/or indigenous communities from their land;
- Where rural and/or indigenous communities are impacted by the infrastructure built for such purposes, they should be adequately and appropriately compensated in line with their wishes and needs, as democratically represented;
- Funding towards such infrastructure should be transparently allocated and properly accounted for; and
- Infrastructure development projects for such purposes should directly benefit the surrounding and impacted rural and/or indigenous communities, including through job opportunities and communal infrastructure development.

Please see Annex 1 for detailed responses to the [questionnaire](#) for non-state actors.