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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 on the visit of the Special Rapporteur to Portugal**

#### **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 Portugal (A/HRC/36/45/Add.1) was presented to the Human Rights Council in September 2017. The Special Rapporteur seeks to enhance the effectiveness of his official country visits by undertaking a follow-up analysis of his visit focusing on the implementation of recommendations presented in his country visit reports. 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.

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\* 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).

3. 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>

4. The Special Rapporteur undertook his official visit to Portugal at the invitation of the Government from 5 to 13 December 2016. He issued a press release and the preliminary statement<sup>2</sup> at a press conference on 13 December 2016. The report of the official visit (A/HRC/36/45/Add.1) was presented to the Human Rights Council in September 2017.

5. In undertaking the present report, the Special Rapporteur has, between 1 January 2018 and 1 November 2018, conducted desk research on the implementation of the recommendations provided to the Government in his country visit report, to create a picture of the Government's current actions, inactions and progress. To support this research, questionnaires to the Government were sent on 26 January 2018. Whilst no response from other stakeholders was received, the Government of Portugal submitted a written response to the questionnaire on 18 March 2018, along with below documents. The Special Rapporteur thanks the Government for the response.

- Decree-Law n.147/2017, introduces a regime to automatically apply social tariffs
- Resolução n.224/2016, recommending that the government improve citizens' access to social tariffs for public water supply, sanitation and waste collection services.
- Resolução n.225/2016, recommending that the government establish a mechanism to automatically transmit information on social tariffs paid by users for energy bills to water and sanitation utilities.

6. The main findings of the follow-up are presented, introducing the level of development of the 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.

7. Prior to final submission, the current report was shared with the Government of Portugal on 22 July 2019 to which the Government did not provide any comments.

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

<sup>2</sup> See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21014&LangID=E>.

## II. Legal, institutional and policy frameworks

### A. Recommendation on national legislation

**RECOMMENDATION 1:** “Adopt legal provisions that recognize the human rights to water and sanitation at the national level and in particular, recommends that the parliament approve the bill providing for legal recognition of the human rights to water and sanitation at the national level.” (A/HRC/36/45/Add.1, para. 82(b))

8. Despite the Government’s positive history of accepting the human rights to water and sanitation as a matter of international law, there is a lack of direct recognition of these rights in national law. At the time of his visit a draft bill had been tabled which proposed recognition of the fundamental rights to water and sanitation, however this had yet to come into force (A/HRC/36/45/Add.1, para. 16). In January 2017, a draft bill proposing recognition be given to the human rights to water and sanitation in domestic law had been rejected by the Parliament.

9. The Government stated that the rights to water and sanitation are recognised indirectly by the Portuguese Constitution and other pieces of domestic legislation. As noted by the Government, “Article 16 [of the Constitution] ensures that the constitutional catalogue of fundamental rights is without prejudice to all fundamental right[s] set out in applicable international law and legal rules.” Additionally, Article 8 of the Constitution holds that the provisions of international agreements should be implemented within domestic law. Furthermore, as per the Government’s response, the right to water is understood as fundamental to the realisation of the right to the environment (Article 66 of the Constitution) and is vital for the achievement of the right to human dignity (Article 1 of the Constitution). The Government has also noted that some of the normative content of the rights is reflected within domestic legislation regarding the provision of water and sanitation services. For instance, Portugal has laws in place which ensure the availability of water and sanitation services (Decree-Law 194/2009 of 20 August, Articles 59, 63 and 72), and require that water resources are protected and maintained in a way that “safeguard[s] the Human Rights, declared by the United Nations, to safe drinking water and sanitation...” (Law 19/2014, 14<sup>th</sup> April, article 10(b)).

10. Whilst the Special Rapporteur notes that the Portuguese legislative framework has in place certain provisions that address part of the human rights to water and sanitation and human rights principles, he reiterates that explicit recognition of the human rights to water and sanitation in national law is vital. As emphasized in the report, such recognition of the human rights to water and sanitation will allow for comprehensive legal protection of those rights (A/HRC/36/45/Add.1, para. 16). The Special Rapporteur is disappointed to learn that the Bill that was intended to give direct recognition to these rights in national legislation was rejected by Parliament. The Special Rapporteur expresses his concern that the Portuguese Parliament did not share the Special Rapporteur’s view of the vital importance of his recommendation. He urges Members to resubmit a revised Bill for consideration and that the Parliament adopt such bill as soon as possible.

**PROGRESS NOT STARTED: The Special Rapporteur urges Members of Parliament to adopt legislation on the legal recognition of the human rights to water and sanitation.**

### B. Recommendation on government coordination

**RECOMMENDATION 2:** “Improve coordination, dialogue and exchange of information between all levels of Government in relation to access to water and sanitation.” (A/HRC/36/45/Add.1, para 82(a))

11. The framework for the provision of water and sanitation in Portugal is highly complex and involves numerous different State and non-state actors operating at two different levels: bulk provision and retail provision. At both the bulk and retail levels,

tensions are evident between the Government and local authorities, particularly surrounding the degree of centralisation and decentralisation of water and sanitation provision, and what each is responsible for undertaking. Such a lack of coordination between national and local governments can confuse the process of provision, which in turn makes achieving human rights more challenging (A/HRC/36/45/Add.1, para. 35).

12. The Government noted that “[t]here have been significant improvements regarding dialogue and exchange of information among all levels of government in relation to access to water and sanitation.” In particular, it highlighted the efforts made to create a Standing Committee to “establish guidelines of a political nature in the context of the adverse climatic phenomenon of drought”, as improving dialogue in this area had been determined to be essential in order to increase the awareness of ministries to the effects of these conditions on water and sanitation access on people in Portugal. Additionally, the Government noted that in 2017 a month-long event involving an exhibition reflecting on Portugal’s commitment to SDG 6, and a round table discussion between various secretaries of state was initiated in order to “improve the dialogue across ministries and vertical levels of government....”

13. The Special Rapporteur notes that the Government has reflected on his recommendation and clearly understands the need for greater cooperation and coordination between the different government actors within the water and sanitation sector. However, he regrets that the information received is incapable of showing the effects of the Government’s putative improvements and whether they have been, or are, capable of defragmenting responsibility and promoting better information exchange and dialogue within the sector. As such, more must be done to find solutions to the complexity of the current system, and to address the difficulties observed by the Special Rapporteur with regards to dialogue, coordination and the exchange of information between government bodies.

**LIMITED PROGRESS:** The Special Rapporteur reaffirms his recommendation to the Government to take concerted efforts to improve coordination, dialogue and exchange of information between all levels of Government in relation to the human rights to water and sanitation. As an example, monthly or quarter coordination meetings involving all stakeholders in the water and sanitation sector can be a start to improve coordination and exchange of information.

### C. Recommendation on legal provisions regarding Azores and Madeira

**RECOMMENDATION 3:** “Stipulate explicit legal provisions that oblige local authorities and the autonomous governments of Azores and Madeira to respect, protect and fulfil the human rights to water and sanitation.” (A/HRC/36/45/Add.1, para 82(c))

14. Whilst the autonomous regions of Azores and Madeira are themselves in charge of water and sanitation provision and monitoring within their respective jurisdictions, they remain bound by the overall legislative framework of Portugal, and by the international human rights commitments of the Government. Despite this, it was noted by the Special Rapporteur that the Government has not implemented any legal provisions that require the respective autonomous governments of Azores and Madeira to progressively realise the human rights to water and sanitation (A/HRC/36/45/Add.1, para. 35).

15. Regrettably, the Government did not respond to the question in the follow-up questionnaire regarding this recommendation, and no additional information has been obtainable regarding any legislative initiatives taken to ensure the commitment of the governments of Azores and Madeira to the human rights to water and sanitation. Accordingly, for the purposes of this report, the Special Rapporteur considers that no progress has been achieved in this regard.

**PROGRESS NOT STARTED:** The Special Rapporteur restates his recommendation that the Government should legally oblige local governments, and the autonomous governments of Azores and Madeira, to respect, protect and fulfil the human rights to

water and sanitation.

#### D. Recommendation on assessment of institutional arrangements

**RECOMMENDATION 4:** “Develop and undertake a comprehensive assessment of the institutional arrangements in the water and sanitation sector from a human rights perspective and take measures to ensure that current tensions in the sector do not jeopardize the realization of the human rights to water and sanitation for any of the Portuguese population” (A/HRC/36/45/Add.1, para. 82(f))

16. Whilst visiting Portugal, the Special Rapporteur identified that the multifarious actors taking part in the provision of water and sanitation have segmented responsibilities and tensions have emerged within the sector. In particular, concerns had arisen regarding the access of different types of providers to European Union funds, the limited role of municipalities in decision-making processes, the difficulties in cooperation between local authorities and the Government, and the gap between decisions from the Water and Waste Services Regulation Authority (ERSAR) and governmental policies. It was further noted that the affordability of water and sanitation services for those in vulnerable situations is likely to be impacted by this segmentation (A/HRC/36/45/Add.1, paras. 32-37).

17. In responding to this recommendation, the Government focused on the measures in place to ensure the smooth operation of water extraction in Portugal. It noted that Portugal’s Water Law, which is based on the European Union’s Water Framework Directive, acts to regulate the use of water resources and “aims to promote cooperation between the State and users of water resources for the maintenance, conservation and management of common hydraulic infrastructures for various purposes, sharing the burden among all users, in particular with a view to promoting efficient use and sustainable water resources associated with these enterprises, the protection of water and ecosystems.”

18. The Special Rapporteur is pleased that, under the Water Law, cooperation is promoted in the area of water abstraction. However, whilst efforts to ensure the effective management of water supply resources, such as reservoirs, are vital to ensuring that the rights to water and sanitation are properly met, he is disappointed that no information has been provided regarding increasing cooperation and coordination, and in decreasing fragmentation, in other crucial areas of water and sanitation provision. Only by tackling the tensions observed across the water and sanitation sector can Portugal make effective progress towards reducing tensions, improving compliance with the human rights to water and sanitation, and ensuring that these rights are enjoyed by all.

**LIMITED PROGRESS:** Whilst it is a positive development that the Government is seeking to reduce tensions in the area of water abstraction, in light of the lack of information regarding action taken in other areas of water and sanitation provision, the Special Rapporteur repeats his recommendation that the Government of Portugal should undertake a comprehensive assessment of all of the institutional arrangements for water and sanitation present within the State with a view to addressing harmful tensions and promoting cooperation and coordination therein.

#### E. Recommendation on equality and non-discrimination

**RECOMMENDATION 5:** “Incorporate the principles of equality and non-discrimination in the enjoyment of the human rights to safe drinking water and sanitation, ensuring sustainability of the services in the institutional framework of the Portuguese water sector and possible future reforms.” (A/HRC/36/45/Add.1, para. 82(g))

19. During his visit, the Special Rapporteur observed that, due to the way in which the water and sanitation pricing system operates, as well as the tensions which have arisen between actors in the sector, some people experience unequal outcomes regarding their enjoyment of the rights to water and sanitation, and, resultantly, the system can operate in a

discriminatory way. In particular, it was highlighted that the current pricing system meant that people living in smaller towns and villages pay more than people in larger towns and cities due to inflated retail tariffs (A/HRC/36/45/Add.1, para. 36).

20. The Government noted that the principles of equality and non-discrimination were incorporated into the water and sanitation sector in a number of ways, which helped ensure their enjoyment in the context of the human rights to water and sanitation. From a legislative perspective, the Constitution refers to both the principle of equality and the principle of non-discrimination and, given that all legal provisions and Governmental acts must abide by the Constitution, these principles are, therefore, taken into account in the provision of water and sanitation. Furthermore, the Government noted that “there have been significant advancements in the area of equality and discrimination in Portugal since the adoption of the new anti-discrimination law. Law n. 93/2017 entered into force on the 1<sup>st</sup> September 2017 establishing the legal framework for the prevention, prohibition and combat of discrimination based on racial and ethnic origin, colour, nationality, descent and place of origin.” It stated that the anti-discrimination law streamlines the process of combatting discrimination and enables the Commission for Equality and Against Racial Discrimination (CICDR) to take charge of “all phases of the administrative procedure, reception and analysis of complaints, instruction and decision, as well as for the coordination of actions regarding prevention, inspection and combat of discriminatory practices. The scope of the CICDR’s intervention has increased with the mandate to manage administrative offences processes, determining the fines and the additional sanctions to be applied.”

21. In addition to the legislative framework, the Government further noted that there are several other mechanisms in place which help to promote equality and non-discrimination in the water and sanitation sector. For example, ERSAR monitors the provision of water and sanitation services “including aspects such as physical access and affordability.” Equally, it stated that municipalities play a role in identifying situations where the principles have not been adhered to. Furthermore, it was suggested that when services are contracted out to the private sector, contracts between the private entity and the Government contain obligations that must be followed.

22. The Special Rapporteur congratulates Portugal on passing new legislation which seeks to combat discrimination and which provides mechanisms to hear complaints, launch investigations, and apply sanctions in cases where discrimination has been found to exist. It is not clear from the Government’s response, however, whether these mechanisms have been utilised, effectively or otherwise, in cases involving water and sanitation, or, indeed, how useful they have been at reducing discrimination and promoting equality in relation to tariff disparities between small and large towns.

**PROGRESS ON-GOING:** The Special Rapporteur wishes to reaffirm the importance of the direct incorporation of the principles of equality and non-discrimination into the institutional framework of water and sanitation provision in order to better ensure that these principles are always taken into account during decision-making. He therefore restates his recommendation and looks forward to further progress being made to combat discrimination in access to water and sanitation services.

## F. Recommendation on the National Roma Communities Integration Strategy

**RECOMMENDATION 6:** “Include in the National Roma Communities Integration Strategy references to access to safe drinking water and sanitation and measures that need to be taken to ensure such access.”

23. The Special Rapporteur was particularly concerned by the difficulties faced by members of the Roma population in Portugal, with regards to their access to water and sanitation. Yet, the Government’s current policy on Roma integration, the National Roma Communities Integration Strategy (2013-2020) does not mention access to water and sanitation (A/HRC/36/45/Add.1, paras. 74-77).

24. The Government's response regarding the current Strategy did not make mention of the water and sanitation needs of Roma communities in Portugal, instead highlighting that the Strategy was designed and drafted in line with the European Union's framework for Roma integration policies, which calls on governments to focus on "housing, healthcare, education and employment", as well as promoting mediation, "valuing Roma history and culture", and the "combatting of discrimination and gender equality". It further stated that outcomes under the Strategy are monitored and used to adjust the process where necessary.

25. The National Roma Communities Integration Strategy is due to end in 2020, however currently no information is available regarding whether a new strategy is to be drawn up and, if so, what this will contain, although the Government's response alludes to the fact that the results of the current Strategy will lead to recommendations, which will, in turn, be used to inform the Roma Integration Strategy in the future.

26. The Special Rapporteur urges the Government to acknowledge the suffering faced by Roma populations in Portugal with regards to water and sanitation and to ensure that this reality is comprehensively considered in its strategies for water and sanitation provision. If, as it clearly must be, the Integration Strategy is extended beyond 2020, he calls upon the Government to include within it dedicated analysis and recommendations regarding water and sanitation. Without doing so, and without acting upon such recommendations, the Government will continue to be in breach of its obligations under the human rights to water and sanitation in respect of Roma communities.

**PROGRESS NOT STARTED:** The Special Rapporteur reiterates his recommendation to include reference to safe drinking water and sanitation in the National Roma Integration Strategy and urges the Government to ensure that the rights to water and sanitation for all Roma people in Portugal are respected, protected and fulfilled.

## G. Recommendation on regulatory actors

**RECOMMENDATION 7:** "Urge the Water and Waste Services Regulation Authority ("ERSAR") and the Water and Waste Services Authority for Azores to ensure that their policies, procedures and activities comply with the international human rights obligations of Portugal." (A/HRC/36/45/Add.1, para. 82(r))

27. Whilst noting that the regulatory framework for water and sanitation in Portugal represents a positive approach that can be utilised as a reference for regulatory activities in other States, Special Rapporteur highlighted the need for the Government to ensure that the operations, policies and procedures of ERSAR comply with Portugal's international human rights obligations. In particular, he noted the need for a greater recognition of the normative content of affordability within ERSAR's work, as the current indicator used to determine affordability looks at the average family expenditure related to the family income in each municipality.

28. The Government noted that "ERSAR has been one of the first regulators to accept the official recognition of water and sanitation as human rights and it has been working with International Organisations ... [to produce] several documents on the implementation of these rights." Furthermore, the Government has stated that ERSAR "has implemented several mechanisms in order to realize the human rights to water and sanitation ... . Since 2005, ERSAR regularly assesses the quality of service provided by each operator through a set of indicators, which include access, affordability, and quality, among other (sic). ERSAR analyses and issues an opinion on every written complain made by users of these services. ERSAR issues each year an opinion on the retail tariffs of municipal services that comprises a review of topics such as affordability, cost recovery, sustainability, among other (sic)."

29. The Special Rapporteur thanks the Government for outlining the processes of ERSAR and how these seek to take into account the elements of the normative content of the human rights to water and sanitation. He reminds the Government, however, that simply approaching these principles in an a-la-carte manner does not amount to a consideration of

them in full alignment with the obligations placed on Portugal pursuant to its international human rights commitments. As clarified in the Special Rapporteur's report on regulation, States have the obligation to ensure that regulation provides a multifaceted and differentiated interpretation of affordability, capturing the specific needs of those living in vulnerable situations. More concretely, States should prohibit disconnections due to inability to pay in law and in regulatory frameworks, as it is a retrogressive measure and violates the human rights to water and sanitation (see, A/HRC/36/45). Regulatory actors must take positive measures to ensure the progressive realization of the human rights to water and sanitation in a non-discriminatory manner. Such measures should target specific challenges including: the prioritisation of service coverage to poorer neighbourhoods, informal settlements and rural areas; the denial of the rights to water and sanitation on the basis of housing or land status; and the lack of affordability of services for the poorest.

**PROGRESS NOT STARTED:** The Special Rapporteur reiterates his acknowledgment already expressed that ERSAR is an international reference on the incorporation of some elements of the normative content of the rights to water and sanitation into its work. However, it is essential that this is done with full consideration of the obligations placed on Portugal under international human rights law, and not simply in an a-la-carte fashion. More must be done by Portugal to ensure regulatory activities are in full compliance with the human rights to water and sanitation, and all other human rights.

## H. Recommendation on the human rights responsibilities of water service providers

**RECOMMENDATION 8:** “Recommend that Águas de Portugal, the Empresa Portuguesa das Águas Livres and other service providers adhere to the United Nations Guiding Principles on Business and Human Rights and perform human rights due diligence in providing water and sanitation services.” (A/HRC/36/45/Add.1 para. 82(u))

30. Águas de Portugal (AdP) was set up in 1993 in order to overcome the problems facing the water and sanitation sector and through its subsidiary companies, AdP designs, builds, operates and manages water supply and sanitation systems in liaison with partner municipalities (A/HRC/36/45/Add.1, para. 25). The Empresa Portuguesa das Águas Livres (EPA), a State-owned service provider, operates at the bulk level in the greater Lisbon area and both at the bulk and retail levels in the city of Lisbon (A/HRC/36/45/Add.1, para. 27).

31. The Government accepted that AdP “has not yet subscribed to the Guiding Principles on Business and Human Rights...” however it notes that the company “incorporates in its activity the principles of improving the well-being of the community and contributes [to] local development,” with a number of initiatives being established by AdP in order to achieve this goal. These initiatives include the full integration of the company into the communities in which it operates, its participation in the UN Global Compact and the Portuguese Global Compact Network, as well as its membership of the administration board of the Alliance for SDGs.

32. Whilst the efforts of AdP to operate in a way which seeks to take into account its role within the community is to be lauded, the Special Rapporteur is disappointed that no movement has been made towards subscribing to the Guiding Principles on Business and Human Rights as recommended, and that it seems no other private entities operating in the Portuguese water and sanitation sector have taken this initiative either. The Guiding Principles represent a comprehensive road map for private businesses to enable them to ensure their operations are in line with human rights principles, and thus to minimise the risks posed by their practices to the enjoyment of human rights, including the human rights to water and sanitation. The Special Rapporteur is aware that the Government is currently in the process of producing a national action plan on business and human rights.<sup>3</sup> Accordingly, the Special Rapporteur recommends that the Government should enact such a

<sup>3</sup> See: <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.



national action plan so that service providers adhere to the Guiding Principles and ensure human rights due diligence when delivering water and sanitation services.

**PROGRESS ON-GOING:** Although the Special Rapporteur is pleased that Águas de Portugal undertakes to improve the well-being of the community and advance community development through its work, he is disappointed that Águas de Portugal, the Empresa Portuguesa das Águas Livres and other service providers are yet to commit themselves to the UN Guiding Principles on Business and Human Rights. However, he is glad to note that Portugal is enacting a national action plan on business and human rights which implements the Guiding Principles and reiterates that doing so will accelerate the current progress made by relevant actors to integrate human rights principles into all of their operations.

## I. Recommendation on monitoring concessions

**RECOMMENDATION 9:** “Carefully monitor the processes by which concessions are granted for water and sanitation services in order to reduce the financial burden and risks for municipalities.” (A/HRC/36/45/Add.1, para. 82(h))

33. Businesses in Portugal are able to provide water and sanitation services on concession contracts concluded with public bodies. In 2013 an audit of concession contracts by the Portuguese Court of Auditors identified that water and sanitation contracts handed significant benefits to private entities to the detriment of municipalities and consumers. In particular, many of these contracts failed to place the risks of non-profitability on the private entity, instead leaving these risks to be taken on by the contracting public body. (A/HRC/36/45/Add.1, para. 40).

34. Regarding the monitoring of concession contracts, the Government noted that ERSAR exercises a monitoring function over both new and renegotiated concession contracts, issuing an “opinion” regarding these which analyses them for key features such as affordability. According to the Government, “[l]ocal authorities must follow these opinions, except if duly justified. If the involved parties do not follow ERSAR’s opinion, they have to justify the alternative options.” Furthermore, the Government has stated that ERSAR is currently working to propose changes to current legislation regarding the concession contract model. It did, however, not specify the exact parameters of these proposals.

35. The Special Rapporteur regards the oversight provided by ERSAR in assessing the affordability of concession contracts to local authorities as positive. By requiring that multi-municipal water and sanitation systems are operated by public bodies, the risks that can be posed in these instances are, obviously, negated. The Special Rapporteur would appreciate more information regarding the proposals of ERSAR to determine whether these would, in fact, assist in protecting municipalities and consumers therein.

**GOOD PROGRESS:** The Special Rapporteur congratulates the Government for introducing legislation to minimise the negative effects caused by concession contracts and encourages the Government to continue its efforts in this area.

## III. The human rights to water and sanitation

### A. Recommendation on individual solutions for sanitation

**RECOMMENDATION 10:** “Provide further support to local governments in relation to the construction and maintenance of individual solutions for sanitation, particularly for those who are in vulnerable situations, including people living in informal settlements and the homeless.” (A/HRC/36/45/Add.1, para. 82(n))

36. Despite a significant and impressive progress water and sanitation services in Portugal, the Special Rapporteur noted that there remains a significant number of people

who fall outside of the public water and sanitation system and who must, therefore, have their rights fulfilled via individual solutions such as septic tanks and latrines. Whilst individual solutions are a potentially acceptable means by which the human rights to water and sanitation can be ensured, this is only so where these solutions are properly constructed and maintained (A/HRC/36/45/Add.1, paras. 44-45). For instance, in Porto he learned that people living in *ilhas*, these being very small homes, unique to Porto, which house some of the poorest families, often only had access to “ad hoc sanitation facilities that are sometimes outside their homes or without doors for privacy or a place to wash.” (A/HRC/36/42/Add.1, para. 46)

37. Some positive steps have, since the Special Rapporteur’s visit, been taken in order to improve the living conditions of people living in *ilhas* in Porto. On 12 July 2017, a Draft Resolution (No. 982/XIII/2) on the “Rehabilitation of Ilhas in Porto” was put forward. The Draft Resolution proposed to urgently survey and requalify (sic) *ilhas* in order to guarantee the right to adequate housing, making reference to the common lack of running water and the prevalence of common sanitation facilities in this housing. On 26 January 2018, Resolution 116/XIII/2 was adopted, recommending that the Government rehabilitate the *ilhas* in Porto. Reference is made in the Resolution to the urgent need to ensure necessary conditions of habitability and cleanliness, to guarantee the right to adequate housing of the families living therein, and to promote the consultation and participation of the inhabitants throughout the process

38. The Government noted that it has in place mechanisms to better guarantee that water rights are ensured to all, including those utilising individual solutions. To this end, it noted that the Ministry of Environment seeks to combine “small and medium-sized municipal systems” in order to increase “economic efficiency as well as [improve] service quality and technical capacity for service provision.” According to the Government, “the rationale behind this strategy is to have more robust utilities and increase the overall quality of water service, including the implementation of tailor-made solutions to address the situations where full compliance with [the human rights to water and sanitation] is not met.” The response further notes that additional funding has been provided to facilitate the aggregation of small water facilities.

39. The Special Rapporteur congratulates Portugal for passing a Resolution that will assist in improving the living conditions of those in *ilhas* and ensuring for them a greater enjoyment of their human rights. He reminds the Government that despite the removal of specific references to the rights to water and sanitation in the final Resolution, ensuring these rights must remain central to the project of upgrading the housing of inhabitants if Portugal is to comply with its human rights obligations. Additionally, he is pleased that the Government has taken steps to ensure that municipalities are assisted to provide better quality water services to their populations through initiatives to pool their utility resources. However, for the Government to fully implement this, it must ascertain how the initiatives assist municipalities in supporting individual sanitation solutions and how those solutions reach people in vulnerable situations, such as those living in informal settlements.

**LIMITED PROGRESS:** The Special Rapporteur notes that progress has been made, particularly on improving the living conditions of those in *ilhas* and on providing better quality water services. However, the Special Rapporteur reaffirms his recommendation that the Government should equally assist municipalities to ensure the right to sanitation is enjoyed by all inhabitants by providing support and assistance to these municipalities for the construction and maintenance of individual sanitation solutions, as specified in the recommendation.

## B. Recommendation on individual solutions for water

**RECOMMENDATION 11:** “Ensure that individual solutions meet all the normative content of the human rights to water and sanitation, ensuring that individual water solutions are provided continuously and that the quality of water from wells or boreholes meets the official standards and that water from those sources is protected from different sources of contamination.” (A/HRC/36/45/Add.1, para. 82(l))

40. In addition to ensuring that individual water solutions are available, it is equally incumbent on the Government to guarantee these solutions comply with the normative content of the right to water, including being of sufficient quality. It was evident during the Special Rapporteur's visit that the Government was not consistently ensuring individual water solutions met human rights standards (A/HRC/36/45/Add.1, paras. 42-43).

41. The Government noted that it seeks to ensure the quality of individual water solutions, whenever these are required, through provisions governing their construction. As noted by the Government, "there are technical rules and norms regarding the construction of individual solutions. If there is no public drainage system, individual solutions have to be in place to ensure the proper management of wastewater. This is a condition for public authorities when issuing the mandatory habitability permit for a given households (sic)." Such conditions may be helpful in ensuring that individuals who are not able to access central water networks are able to have their water needs met. However, for the Special Rapporteur, it remains unclear as to whether these relate only to how to construct individual solutions, whether these specifications encompass the normative content of the human right to water, and whether clear responsibilities are placed on local governments or providers to give guidance and implement maintenance procedures on individual solutions for both water and sanitation. It is also unclear how these procedures guarantee that the quality of water from wells or boreholes meets the official standards.

42. The Special Rapporteur regards it as positive that the Government has in place rules and norms regarding the provision of individual solutions where no standard access to water exists, however he regrets that no additional information was provided regarding whether these instruments have actually ensured that construction and performance of individual solutions are compliant with the State's obligations under the human right to water.

**PROGRESS NOT STARTED:** The information compiled suggests that the picture of the support provided for individual solutions by governmental bodies has not changed since the official visit of the Special Rapporteur. He urges the Government, without delay, to set in motion efforts to ensure that all individual water solutions meet human rights standards.

### C. Recommendation on water quality information

**RECOMMENDATION 12:** "Develop a more proactive system to disseminate information on water quality, particularly by including it on water bills, and information on existing practices, policies and resources that promote economic access to water and sanitation." (A/HRC/36/45/Add.1 para. 82(m))

43. During the visit, the Special Rapporteur noted that, whilst some information was available over the Internet, there exists a general absence of any adequate system for ensuring users of water services are able to access information regarding the quality of the water that is being provided to them (A/HRC/36/45/Add.1, para. 56).

44. The Government noted that there is already in place "existing legislation [which] establishes rules for the minimum information that must be available in the water invoices. In this regard, ERSAR has issued recommendations on existing practices, policies and resources that promote economic access to water and sanitation." Furthermore, it stated that recent positive steps had been taken to improve the information provided to consumers regarding water quality, as "a recent Parliamentary Resolution (no. 234/2017) has recommended that the Government work with ERSAR towards the definition of a clear and simple document template with all relevant information concerning drinking water quality. This document should be sent to consumers annually, preferably in January, together with the water invoice of that month. Following this approval, ERSAR has issued an opinion to the Government proposing to make additional information about drinking water quality and quality of service available to consumers through invoices."

45. In addition to these steps, legislative steps have been taken to ensure users have greater rights to information regarding water quality. As per Decree-Law No. 152/2017,

introduced on 7 December 2017, the existing regime regarding water quality monitoring has been modified in order to provide a requirement that the managing entities of bulk and retail providers publish the data from water quality monitoring programmes quarterly online.

46. The Special Rapporteur congratulates the Government for the steps taken to increase the level of information provided to users regarding existing practices, policies and resources that promote economic access to water and sanitation, and on the quality of their water. He calls upon the Government, taking into account that ensuring access to information is an element of the normative content of the right to water, to follow the recommendations of ERSAR and make greater levels of water-quality information available to users within their water bills.

**GOOD PROGRESS:** The Special Rapporteur looks forward to continuing to see positive progress made by Portugal with regards to ensuring that water and sanitation users have access to pertinent information about the quality of drinking water.

#### D. Recommendations on disconnection due to incapacity to pay

**RECOMMENDATION 13:** “Adopt legislative measures to prohibit disconnection of water and sanitation services owing to an inability to pay.” (A/HRC/36/45/Add.1, para. 82(d))

**RECOMMENDATION 14:** “Conduct official studies and surveys on the reasons behind non-payment with a view to identifying those households that are financially unable to pay for their water and sanitation services.” (A/HRC/36/45/Add.1 para. 82(o))

**RECOMMENDATION 15:** “Develop and issue guidelines for water and sanitation service providers concerning disconnection of water and sanitation services with a view to protecting those who are economically unable to pay for those services, and establish protection mechanisms for those groups.” (A/HRC/36/45/Add.1 para. 82(i))

47. During his visit the Special Rapporteur identified that it remained lawful in Portugal for water providers to disconnect the services of users. The problem of service disconnection was acknowledged by the Special Rapporteur to be compounded by the lack of adequate data regarding the reasons for non-payment of bills. (A/HRC/36/45/Add.1, para. 67-70).

48. The Government stated that one of the main reasons for not introducing a prohibition on disconnecting users who are unable to pay is that this would disproportionately protect users, and expose service providers to greater risk. However, it contended that despite remaining lawful, disconnection was only possible where these providers followed proper procedures, stating that “the law protects water users by imposing a number of formalities on water operators and water cut-offs due to inability to pay are, therefore, seen as a last resort.”

49. The Government further stated that those at risk of being cut-off from their water or sanitation services typically receive assistance from the municipality to help them to avoid being disconnected, with water disconnections in these instances being determined on a case-by-case basis. Additionally, it noted that ERSAR provides regulatory oversight regarding disconnections, studying how many each operator undertakes, and whether these followed the proper procedures “in order to be able to intervene more effectively to ensure that disconnections are not jeopardizing human rights principles.” Furthermore, ERSAR “has also a clear policy regarding tariffs for the poorest households, recommending the implementation of social tariffs, which result in a substantial reduction in the monthly water bill.”

50. Regarding the recommendation on the necessity of conducting studies on the reasons behind the incapacity to pay water and sanitation bills, the Government responded to this recommendation stating that “the existing rules regarding data protection do not allow the collection of this type of information for particular households. Nevertheless, ERSAR is

developing some studies in order to appraise global information about cut-offs, their motives and the existing practices of operators.” In its response to the recommendation on the issuing of guidelines regarding disconnection, the Government further elaborated on this, stating that “[c]urrently, ERSAR is developing several studies to analyse the existing practices and processes to ensure protection of vulnerable households and avoid their disconnection on the base (sic) of not being able to pay.”

51. In response to the recommendation regarding developing and issuing guidance on service disconnections, the Government responded that it was not in a position to issue such guidance because, “[d]ue to municipal autonomy, which allows a case-by-case analysis, there are heterogeneous practices on (sic) this regard.”

52. Whilst the Special Rapporteur accepts that Portugal has in place a set of procedural safeguards which prevent arbitrary disconnections, and which may help to assist those whose water and sanitation services are at risk of disconnection due to an inability to pay, he remains concerned by the lack of action on the part of the Government to enact a legal prohibition of disconnections in situations where users lack the means to pay their bills. Although procedural safeguards for disconnections, and mechanisms such as debt assistance and social tariffs, are vital for ensuring due process and can assist in promoting affordability, such cannot replace a prohibition on disconnections for those who are unable to pay. Indeed, particularly for those in vulnerable situations, even substantial reductions in their tariffs may not make these services affordable. The lack of actions taken to introduce a prohibition on disconnections implies that the financial protection of providers and their interests prevail over the human rights of users, particularly those who are in vulnerable situations. Whilst, clearly, the potential for such a prohibition on water and sanitation cut-offs to be abused by those who are able, but unwilling, to pay for their water and sanitation services must be borne in mind, failing to introduce such a prohibition is a disproportionate response to the risks posed, as alternative strategies can be utilised to protect against abuse.

53. The Special Rapporteur notes that ERSAR is conducting studies regarding disconnections, with the putative purpose of protecting people in Portugal from having their water and sanitation services disconnected. Unfortunately, however, no specific information was provided regarding the precise parameters of these studies, or how they will assist to avoid the disconnection of vulnerable households when data protection laws prevent the identification of those households. Whilst acknowledging the importance of the protection of the data of water and sanitation consumers, the Special Rapporteur urges the Government to strike a balance between the importance of protecting data and the need to ensure sufficient information is available to understand why families and individuals are unable to pay for their water and sanitation. Given the need for this information in developing strategies for combating disconnections, only by conducting such studies and surveys will the Government be able to properly protect those in vulnerable situations from disconnection, and thus ensure their continued enjoyment of the human rights to water and sanitation.

54. Finally, the Special Rapporteur is disappointed that the Government has not sought to implement any national guidance regarding disconnections of water and sanitation services when users are unable to pay, instead leaving this to municipalities to determine on an ad hoc basis. Guidelines issued at the national level are essential to promote equality, by ensuring uniformity of treatment for all people living in Portugal. Such guidelines should reflect the normative content of the rights to water and sanitation and call on all municipalities and service providers to avoid disconnections in all instances where the user is unable to pay their bills.

**RECOMMENDATION 13 - PROGRESS NOT STARTED:** The Special Rapporteur reminds the Government that disconnecting the water and sanitation of users who are unable to pay their bills represents a retrogressive measure and, accordingly, is contrary to its obligations under the human rights to water and sanitation. He therefore urges the Government, without delay, to begin implementing a legal prohibition on disconnection in these instances.

**RECOMMENDATION 14 - PROGRESS ON-GOING:** The Special Rapporteur welcomes the intention to develop studies conducted by ERSAR on disconnection practices and the motives behind these, and on the protection of users in vulnerable situations from disconnections. He looks forward to information on these studies being published so that they can be a model to be used by other States.

**RECOMMENDATION 15 – PROGRESS NOT STARTED:** The Special Rapporteur reiterates his recommendation that the Government should develop guidelines for providers regarding disconnections with a view to protecting users in vulnerable situations. Leaving it to municipalities to determine how to approach disconnections creates an approach which is geographically variable, and thereby is discriminatory and inconsistent with human rights. The Government must, immediately, begin issuing national guidelines regarding disconnections.

## E. Recommendation on legislation and policy to ensure affordability

**RECOMMENDATION 16:** “Adopt legislative measures on affordability of access to water and sanitation services, stipulating that all individuals are provided with an affordable and reliable service that is adequate for basic human needs in the context of the national, local and autonomous government levels, reflecting the challenges people face in practice and the contexts in which they live.” (A/HRC/36/45/Add.1 para. 82(e))

**RECOMMENDATION 17:** “Recommend that the water and sanitation providers set policies to reconcile affordability and financial sustainability as part of their financial management.” (A/HRC/36/45/Add.1 para. 82(p))

55. The Special Rapporteur identified the need for legislation that ensures affordability. The approach taken by ERSAR – looking at the cost of water and sanitation services as a percentage of the average income in each municipality - fails to take account of the particular burden faced by the poorest members of society whose disposable income is significantly lower than the average. (A/HRC/36/45/Add.1 para. 57-49).

56. The Government did not address the issue of legislative introduction, but noted that ERSAR has been working to introduce recommendations for retail providers “aimed at harmonising tariff structures and creating a set of principles to ensure affordability for consumers and sustainable cost recovery levels.” It noted that whilst not currently binding, “these recommendations are important so that the operators gradually adapt their tariffs and because the principles underlying these recommendations are the ground for ERSAR issuing opinions on retail tariffs.” This was confirmed in the Government’s response regarding the measures Portugal has taken to encourage providers to reconcile affordability and sustainability in their financial management policies, wherein it was stated that “[t]he tariff recommendations issued by ERSAR consider both affordability issues and financial sustainability of the operators.”

57. In particular, in its response to these recommendations the Government highlighted the introduction of social tariffs as a key means of promoting and ensuring affordability whilst maintaining sustainability. In relation to recommendation 17, it was noted that ERSAR recommendations established social tariffs to allow for discounted tariffs to be applied for the most economically vulnerable. It stated that ERSAR is considering including these within a new binding regulation on water tariffs, which, if introduced, will replace the non-binding recommendations. The Government also highlighted that it has implemented “a specific nationwide policy ... which allows municipalities to have an automatic eligibility mechanism to social tariffs for those households below (sic) an

established threshold.” In its response to the recommendation on setting policies to reconcile affordability and sustainability, the Government noted that “[t]he existence of specific support to households who may face affordability issues, such as social tariffs or social security support to pay for essential services is the most effective way to ensure the reconciliation of these two areas.”

58. Further, some important legislation has been introduced, which seeks to promote affordability in the context of access to water and sanitation. For example, Law No. 42/2016, on the State budget,<sup>4</sup> modified the Water Law No. 58/2005 to specify that services must be made both sustainable and affordable.<sup>5</sup> Furthermore, in line with the Government’s nationwide policy, Decree-Law No. 147/2017 introduces a regime to allow municipalities to automatically apply social tariffs for water and sanitation services.<sup>6</sup>

59. The Special Rapporteur welcomes the efforts of Portugal to create legislation aimed at promoting affordability, particularly by creating conditions to allow municipalities to automatically apply social tariffs. Such measures, if properly and comprehensively implemented by municipalities, can go some way towards enhancing the affordability of water and sanitation services for the poorest people. More information is, however, needed regarding the levels of implementation of automatic social tariffs by municipalities, and whether these tariffs are applied in a timely fashion and in sufficient quantity with regard to every household’s ability to pay. He is also pleased that tariff recommendations issued by ERSAR seek to ensure providers balance affordability and sustainability, however, he is discouraged to learn that these recommendations are currently non-binding, with no information being provided as to if and when the proposed binding recommendations are due to come into force. It also remains unclear whether providers have implemented the non-binding recommendations into their financial management plans, and, accordingly, the efficacy of this enterprise to the promotion of affordability and sustainability has not been able to be determined.

**RECOMMENDATION 16 – GOOD PROGRESS:** The Special Rapporteur congratulates the Government for introducing legislation which seeks to promote both affordability and sustainability within the water and sanitation sector. He looks forward to the Government continuing to make progress in this area and to ensure that affordability standards are continuously and accurately reviewed, and any changes to affordability are reflected within legislation.

**RECOMMENDATION 17 – PROGRESS ON-GOING:** The Special Rapporteur regards it as positive that ERSAR has begun issuing recommendations regarding affordability and sustainability and that Portuguese national law specifically guarantees the sustainability and affordability of services. He hopes that recommendations and national law will be implemented and translated into policies for service providers so as to better reconcile affordability and financial sustainability.

## F. Recommendations on social tariffs

**RECOMMENDATION 18:** “Recommend that social tariffs for water and sanitation services are made more flexible to adapt to unforeseen situations, such as financial crises, and that the definitions of large families that are eligible for the family tariff are made more appropriate.” (A/HRC/36/45/Add.1 para. 82(q))

**RECOMMENDATION 19:** “Urge the Water and Waste Services Regulation Authority (“ERSAR”), the Ministry of the Environment and other relevant institutions to implement and monitor the automatic application of social tariffs and to conduct further studies on the criteria for eligibility and the level of discounts to be provided by the social tariff with more careful evaluation.” (A/HRC/36/45/Add.1 para. 82(s))

<sup>4</sup> Lei n.º 42/2016, de 28 de dezembro, Diário da República n.º 248/2016, Série I de 2016-12-28

<sup>5</sup> Ibid. article 79(1e).

<sup>6</sup> Decreto-Lei n.º 147/2017, de 5 de dezembro. Diário da República n.º 233/2017, Série I de 2017-12-05.

60. In Portugal, special tariffs have been established to assist those with low incomes, and, equally, those with larger families. However, during his visit the Special Rapporteur noted that eligibility determinations for access to social tariffs can be inappropriate and can lead to those with significant need falling outside the selection criteria. In particular, the Special Rapporteur was informed about a section of the population known as the “new poor”, who are comprised of people who have recently experienced negative changes in their household income (A/HRC/36/45/Add.1, para. 6). Equally, in relation to large families, it was seen that the criteria for inclusion within family tariff schemes differs from provider to provider, and may require families to contain a specific number of children to be present within a home, meaning that a household with, for example, five adults might not be eligible, but a household with two adults and three children would be (A/HRC/36/45/Add.1, para. 66).

61. Some measures have been taken to assist individuals and families to access social tariffs with greater ease and flexibility. As noted previously, Decree-Law No. 147/2017 enables municipalities to apply social tariffs automatically for people in receipt of social security payments, thereby reducing the length of time these people must wait before they receive a tariff discount.<sup>7</sup> Further, a resolution approved on 14 October 2016 recommends that the Government improve citizens’ access to social tariffs for public water, sanitation and waste collection services. At the same time, the resolution calls on the Government to improve the transmission of information between the fiscal and social security services and the water and sanitation utilities to ensure that utility providers are more informed as to which of their customers might be eligible for receipt of social tariffs, therefore potentially enabling them to apply such tariffs with greater responsiveness and ensure users are not left for considerable periods of time with unaffordable services.<sup>8</sup> This resolution was supported by another, approved directly after, which recommends that the Government establishes a mechanism to automatically transmit information on social tariffs paid by users for energy bills to water and sanitation utilities.<sup>9</sup>

62. Related to recommendation 18 on the flexibility of social tariffs, the Government highlighted the pre-existing structures, which assist in increasing the flexibility of social tariffs. It noted that “the fact that [water and sanitation] services are usually provided at local level is an advantage in this context, since social tariffs are decided at the local level, where there is more knowledge of specific households who may face affordability issues. Social services’ involvement is also quite active at the local level with more than 250 social security services nationwide, who know closely those households facing financial difficulties and can act more flexibly in adapting social support practices.”

63. The automatic application of social tariffs, and a close connection between the utility providers and the social security arms of Government, are arguably important to ensuring that social tariffs are able to reach those in need, without them having to wait extended periods of time in order to abide by strict rules and processes for proving their eligibility. Accordingly, where this system works correctly, it has the potential to promote flexibility, which, in turn, better ensures that water and sanitation services are affordable for those who lack the means to pay market tariffs. However, concerns have also recently been raised regarding the operation of the social tariff system, which speak directly to issues of flexibility. On 19 September 2018 the Portuguese Association of Consumer Defence published an open letter which contained concerns regarding the application of social tariffs for water and sanitation services. The letter noted that the rules relating to these tariffs were unclear and found that municipalities were not applying social tariffs in a uniform manner. In particular, the Association noted that there lacked a standardized average monthly

<sup>7</sup> Decreto-Lei n.º 147/2017, de 5 de dezembro. Diário da República n.º 233/2017, Série I de 2017-12-05.

<sup>8</sup> Resolução da Assembleia da República n.º 224/2016, Diário da República n.º 219/2016, Série I de 2016-11-15.

<sup>9</sup> Ibid.



household consumption that covers a family's needs, with some municipalities setting the limit to which social tariffs are applied to as little as 5m<sup>3</sup> per month.<sup>10</sup>

64. In response to the recommendation 19 on monitoring of automatic tariffs, the Government noted that social tariffs are being monitored by ERSAR, which “issues an opinion to the revision of tariffs for each municipal service [and] [b]y doing so, it collects data about the implementation of social tariffs by these operators.” Furthermore, the Government clarified that because social tariffs impact municipalities differently, depending upon the number of those within their jurisdiction who might qualify for them, in order to ensure financial sustainability it is not possible to implement a uniform compulsory automatic application system. However, it noted that ERSAR is currently preparing a review of the existing Recommendation (no.1/2009) which sets out the criteria which should be followed by municipalities when seeking to apply social tariffs, with a view to clarifying those criteria.

65. Issues, such as those of the Portuguese Association of Consumer Defence, highlight limitations on the flexibility of social tariffs and demonstrates that Portugal has still to do more to achieve the recommendation of the Special Rapporteur. Whilst it is positive that the Government has sought to improve the ability of those in need to access social tariffs, as well as to advance information flow between agencies and providers to allow social tariffs to be applied with more flexibility and responsiveness, it remains problematic that rules regarding these tariffs remain unclear, and that municipalities are placing inflexible limitations on access to these tariffs. Furthermore, the Special Rapporteur understands the need to balance sustainability and affordability in access to water and sanitation, however he is concerned that there has still been little progress made in defining criteria which would lead to the automatic and uniform application of social tariffs. He does though regard it as positive that ERSAR is currently seeking to create more clarity around when and how social tariffs should apply, and it is hoped that this will lead to positive change with regards to social tariff application in the near future. Accordingly, the Special Rapporteur reiterates his recommendation and urges the Government to seek ways to encourage providers to apply social tariffs with greater flexibility so as to ensure that water and sanitation services are affordable for all and urges the Government to continue to seek ways to ensure that social tariffs are automatically applied to families who meet certain pre-determined criteria.

**RECOMMENDATION 18 – PROGRESS ON-GOING:** The Special Rapporteur appreciates the efforts which have so far been made by the Government to increase flexibility in the social tariff system. He is, however, concerned that the continued scope given to local authorities to determine social tariff needs is excluding people who should be eligible for access. He therefore calls on the Government to increase efforts to ensure social tariffs can be applied flexibly and with clarity so as to better meet the needs of people in vulnerable situations.

**RECOMMENDATION 19 – PROGRESS ON-GOING:** The Special Rapporteur is pleased to learn that ERSAR is currently reviewing the criteria that determines when and how social tariffs apply. He looks forward to learning the outcome of this study and urges the Government to implement its findings.

## G. Recommendation on maximum of available resources

**RECOMMENDATION 20:** “Conduct studies to assess whether Portugal is investing its maximum available resources to progressively realise the human rights to water and sanitation without discrimination.” (A/HRC/36/45/Add.1 para.82(t))

66. In order to comply with its human rights obligations, the Government must invest the maximum of its available resources into the enterprise of progressively achieving the human rights to water and sanitation. In order to do so, the Government needs to specifically allocate resources to water and sanitation and, in particular, given the

<sup>10</sup> Associação Portuguesa para a Defesa do Consumidor (DECO), “Tarifa social da água: municípios sem regras uniformes”, 19 September 2018.

decentralised nature of the water and sanitation sector in Portugal, the Government needs to ensure that municipalities are provided with sufficient funding to allow them to provide services, maintain infrastructure, and subsidise access to water and sanitation for those who require financial assistance. In this regard, it is vital that the Government continuously assess its capacity to increase funding based on the financial outlook of the country (A/HRC/36/45/Add.1, paras. 71-73).

67. Unfortunately, the Government did not provide any pertinent information in its response to the Special Rapporteur's follow-up questionnaire which highlighted efforts that had been made to ensure the funding provided for water and sanitation was the maximum possible. Information obtained in the course of researching this follow-up report shows that some water and sanitation agencies received increased funding from 2017 to 2018. In this regard, it was found that ERSAR received a €500,000 increase in its budget, from €9.2m to €9.7m. No information has been obtained or made available regarding funding level changes for municipalities.

68. The Special Rapporteur is pleased to note that ERSAR was provided with a slightly increased budget between 2017 and 2018, however he is disappointed that no pertinent information was provided regarding whether the maximum of available resources was being invested into the progressive realisation of the human rights to water and sanitation. He consequently urges the Government to properly assess whether it is investing the maximum of its available resources into the progressive realisation of the human rights to water and sanitation, without discrimination, and to publish publically the results of such an assessment.

**LIMITED PROGRESS:** The Special Rapporteur reminds the Government that it is bound, as a matter of law, to utilise the maximum of its available resources to ensure the rights to water and sanitation are respected, protected and fulfilled.

## IV. Leaving no one behind

### A. Recommendation on disaggregating data on water and sanitation access

**RECOMMENDATION 21:** "Develop a comprehensive method for disaggregation of data on water and sanitation access by wealth level, migratory status, ethnic groups and other grounds of discrimination, in order to facilitate the development of focused policies for the proper protection of the populations most in need." (A/HRC/36/45/Add.1, para. 82(j))

69. Portugal operates a decentralised water and sanitation system, and therefore it is municipalities who are in charge of ensuring services are provided to the population, however information on usage of these services is gathered at the national level and lacks disaggregation regarding the various socioeconomic and other statuses of users. This lack of information can consequently make it more difficult to understand and analyse usage patterns amongst different groups, which might have otherwise informed water and sanitation policy to ensure it is more responsive to the needs of these people, and to enable decision makers to understand how direct and indirect discrimination impacts on the enjoyment of the human rights to water and sanitation, so as to rectify this (A/HRC/36/45/Add.1, para. 77).

70. The Government noted that it was challenging to collect sufficient disaggregated data on water and sanitation usage, owing to constitutional constraints on personal data protection. It noted that following Article 35 of the Constitution, "Portugal can only compile statistical data on the racial and ethnic demographic composition of its population based on anonymous and voluntary self-identification of those concerned (formal permission)." Owing to this, it noted that response rates are unpredictable and, consequently, this method of collecting data is unreliable. The Government did, however, note, as it had done in response to a previous question, that the ERSAR "is developing some studies in order to appraise global information about cut-offs, their motives and the existing practices of operators."

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71. Whilst acknowledging that constraints regarding data protection may prove challenging to the collection of disaggregated data regarding water and sanitation usage, the Special Rapporteur restates the vital nature of this enterprise. Only by collecting such data can the Government properly understand how socioeconomic and other characteristics affect the enjoyment of the human rights to water and sanitation by those in vulnerable situations, particularly in relation to how discrimination on the basis of these characteristics impacts this. Whilst current methods may be unreliable means of collecting data, due to unpredictable response rates, it is incumbent upon the Government to continue to collect this data and, where necessary, to invest greater resources to help maximise response rates, utilising, where appropriate, technology to assist this. The Special Rapporteur makes clear it is not necessary for the Government to collect information that identifies specific individuals, but rather to identify how access to water and sanitation differs depending on a personal characteristics, including, but not limited to, ethnicity, gender, age, wealth, migration status, religion, level of education, and whether they live in rural or urban areas.

**PROGRESS NOT STARTED: The Special Rapporteur is disappointed that progress has not started in collecting disaggregated data regarding water and sanitation. He reiterates his recommendation and looks forward to progress being made.**

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