

Distr.: General  
4 July 2011  
Arabic  
Original: English



## مجلس حقوق الإنسان

الدورة الثامنة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير المقررة الخاصة المعنية بحق الإنسان في الحصول على مياه الشرب المأمونة وخدمات الصرف الصحي، كاتارينا دي بوكيركي\*

إضافة

#### البعثة إلى اليابان\*\*

موجز

اضطلعت الخبيرة المستقلة المعنية بمسألة التزامات حقوق الإنسان المتعلقة بالحصول على مياه الشرب المأمونة وخدمات الصرف الصحي ببعثة إلى اليابان في الفترة من ٢٠ إلى ٢٨ تموز/يوليه ٢٠١٠ من أجل تقييم الطريقة التي تضمن فيها الحكومة التمتع بالحق في المياه والحق في خدمات الصرف الصحي. وتلاحظ المكلفة بالولاية أن الغالبية العظمى من سكان اليابان يتمتعون بفرصة جيدة للحصول على المياه وخدمات الصرف الصحي، وأن اليابان تملك نظاماً متطوراً لتأمين ذلك. وتعرب عن شيء من القلق إزاء المسائل والفئات التالية: الفقر، وظاهرة التشرد، والأشخاص ذوو الإعاقة، ووضع الأشخاص المنحدرين من أصل كوري الذين لا يحصلون على خدمات كافية، والسجناء. وترد في نهاية التقرير مجموعة من الاستنتاجات والتوصيات.

\* يُشار في مختلف أجزاء هذا التقرير إلى الخبيرة المستقلة المعنية بمسألة التزامات حقوق الإنسان المتعلقة بالحصول على مياه الشرب المأمونة وخدمات الصرف الصحي الذي كان مسمى الولاية في وقت الاضطلاع بالبعثة. ووفقاً لقرار مجلس حقوق الإنسان ٢/١٦، تغير اسم الولاية لاحقاً إلى المقرر الخاص المعني بحق الإنسان في الحصول على مياه الشرب المأمونة وخدمات الصرف الصحي.

\*\* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعمم باللغة التي قدم بها فقط.

## Annex

### **Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to Japan (20-28 July 2010)**

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## I. Introduction

1. From 20 to 28 July 2010, the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation conducted an official mission to Japan in order to assess the manner in which the Government was ensuring the enjoyment of the rights to water and to sanitation. She had meetings with representatives of Government ministries responsible for topics falling within her mandate, including the Ministries of Foreign Affairs; Health, Labour and Welfare; Land, Infrastructure, Transport and Tourism; Agriculture, Forestry and Fisheries; the Environment; and Justice. She was honoured to meet with the Parliamentary Vice-Minister for Foreign Affairs. The independent expert also met with representatives of the Japan International Cooperation Agency (JICA), as well as prefectural and city authorities in Osaka. Visits were made to the Misono Water Purification Plant and the Ochiai Water Reclamation Center in Tokyo. She held numerous meetings with civil society groups in Tokyo, Kyoto and Osaka, and visited homeless communities in Osaka and Tokyo, as well as the Utoro community outside Kyoto. The special procedures mandate holder expresses her appreciation to the Government for organizing and facilitating the visit. She is also particularly grateful to the civil society organizations and individuals who helped to prepare the mission and who assisted during it. Through all of the meetings, she gained a more complete picture of the status of access to water and sanitation in Japan, and of the role Japan plays in ensuring access to water and sanitation in other countries through its international development aid.

2. Overall, the independent expert was impressed at the levels of access to water and sanitation. She was pleased to observe that the large majority of people in Japan enjoy the rights to water and to sanitation. However, the mandate holder expresses concern about the lack of access for certain groups, as well as in certain spheres of life. Furthermore, she examines the extent to which Japan, the largest bilateral donor in the sectors of water and sanitation, has integrated the human rights to water and to sanitation into its development cooperation policy. As further detailed in this report, she considers that a more explicit focus on the human rights to water and to sanitation would require special attention to excluded groups in Japan, and a shift in policy regarding official development cooperation.

## II. Human rights legal framework and institutional structure

3. Japan has ratified most of the core international human rights treaties, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities. Japan has not recognized the competence of the treaty bodies to receive individual complaints of human rights violations.

4. Concerning the direct application of the International Covenant on Economic, Social and Cultural Rights, two recent decisions from the Osaka District Court and Osaka High Court respectively found that article 2 of the Covenant, concerning non-discrimination, is directly applicable in a case concerning the exclusion of Korean residents in Japan from the National Pension Law.<sup>1</sup> The direct applicability of the Covenant in national law is a positive development which could be further promoted. However, courts have also questioned the justiciability of economic, social and cultural rights.<sup>2</sup> For instance, a

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<sup>1</sup> Hae Bong Shin, "International law in domestic systems: national report on Japan", paper presented at the 18th International Congress on Comparative Law, Washington D.C., 2010, p. 13 (citing Hanrei Jiho, vol. 1898, p. 75).

<sup>2</sup> Ibid., pp. 11-12.

decision of the Tokyo District Court in 1996 found that going to the courts to claim one's right to social security "is an unexpected course of action, or even an option excluded from the outset by the Covenant itself".<sup>3</sup> The rights enshrined in the International Covenant on Economic, Social and Cultural Rights can be guaranteed through direct application of the Covenant or by adopting legislation and policies that result in the same levels of protection. In either case, ensuring full respect for economic, social and cultural rights must include effective accountability mechanisms that, while not exclusively restricted to the judicial system, should not exclude the possibility of seeking redress in court.<sup>4</sup>

5. The Government of Japan continued to express its commitment to setting up an independent national human rights institution, including in meetings with the independent expert. The special procedures mandate holder encourages the Government to move forward with those plans without further delay. In this regard, it will be fundamental that economic, social and cultural rights, including the rights to water and to sanitation, are fully and explicitly part of the mandate of the future national human rights institution.

6. Japan does not explicitly recognize the rights to water and to sanitation in its domestic law, but considers that they are protected through other rights, such as the protection of fundamental human rights (art. 11 of the Constitution), equality before the law (art. 14), and the "right to maintain minimum standards of wholesome and cultured living" (art. 25). Article 25 of the Constitution goes on to provide for the State responsibility to "use its endeavors for the promotion and extension of social welfare and security, and of public health".

### III. Water and sanitation in Japan

7. The central piece of legislation governing water and sanitation in Japan is the Waterworks Act of 1957, which provides for licensing of water utilities and sets standards for water quality and water-treatment facilities. The Act was amended in 2001 to allow for the delegation of water utility management to third actors. Importantly, the Waterworks Act explicitly references article 25 of the Constitution of Japan concerning the State obligation to promote and extend "social welfare and security, and public health in all spheres of life". With regard to sanitation, the Sewerage Act of 1970 provides the relevant framework, delegating responsibility for the management of sewerage systems to the municipal governments. The Water Pollution Control Act of 1970, the Act concerning Special Measures for Water Quality Conservation at Water Resources Areas in order to Prevent the Specified Difficulties in Water Utilization of 1994, and the Waste Management and Public Cleansing Act of 1970 also provide important standards related to water and sanitation services. Some interlocutors raised concern that without a comprehensive act on water and sanitation some aspects of the rights to water and to sanitation might not be adequately protected, with each municipality taking the primary responsibility for assuring access to safe water and sanitation.

8. Japan is guided by the Waterworks Vision, which was first developed in 2004 and revised in 2008. The Vision identifies several priority areas for action in the sector, including safety, stability, sustainability, environmental conservation, and globalization. It provides important guidance on ensuring that everyone has access to safe drinking water at all times, including during emergency situations, on renewing and updating systems that are reaching the end of their lifecycle, and on the importance of transparency in setting prices

<sup>3</sup> Ibid., citing the Tokyo District Court decision of 29 May 1996.

<sup>4</sup> See generally, Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998) on the domestic application of the Covenant.

for water. While these elements are also central to understanding water as a human right, the Vision could include explicit attention to human rights. For instance, specific measures could be envisioned to reach excluded groups, to ensure meaningful participation not only in order to achieve agreement of customers but because it is the inherent right of all people, and accountability mechanisms could be more clearly defined. Furthermore, specific measures could be outlined to take account of people living in poverty and their potential inability to afford water services. Timelines could be identified for achieving particular objectives, which could be defined according to the human rights framework. Such a vision paper could set the course for Japan to outline the steps it intends to take towards the progressive realization of the rights to water and to sanitation for all.

9. Responsibility for implementing these laws and the Waterworks Vision involves different entities, including the Ministry of Health, Labour and Welfare, the Ministry of Environment, the Ministry of Land, Infrastructure, Transport and Tourism, the Ministry of Agriculture, Forestry and Fisheries, and municipal authorities. The current situation of responsibilities being divided among ministries and municipal authorities means that access to water and sanitation varies considerably between municipalities. The central Government is however responsible for ensuring that all people in Japan enjoy their rights to water and to sanitation. In this regard, the special procedures mandate holder considers that the Government could play a more active role in regulation, setting minimum standards (for instance, regarding affordability), requiring the availability of redress mechanisms in instances where there are allegations of violations of the rights, and monitoring the extent to which people enjoy the rights to water and to sanitation in different municipalities.

## A. Water

10. Japan uses approximately 83.5 billion cubic metres of water annually out of about 420 billion cubic metres that are available for human use.<sup>5</sup> Average water consumption per capita per day is roughly 314 litres and access to water for personal and domestic uses is nearly universal in Japan. Domestic use of water accounts for about 19 per cent of all water use (16.2 billion cubic metres). While some urban areas, such as Tokyo, are experiencing increased demand for water - as a result of population growth but also due to the presence of industries - other areas are experiencing a decreasing population and thus less demand for water and sanitation. With the fourth highest population density in the world and roughly 50 per cent of that population living on or near the country's seven principal river systems, the strain on existing water resources may nevertheless increase despite the shrinking population.<sup>6</sup> Some studies indicate that, while domestic consumption of water is high compared to most of the developed world, it is on a downward trend.<sup>7</sup> Interestingly, despite the fact that only about 12 per cent of land in Japan is arable and only 4 per cent of the workforce is engaged in farming, 66 per cent of total water usage (55.2 billion cubic metres) is devoted to agriculture. This is due primarily to the fact that paddy field agriculture and rice production, which are quite water-intensive, comprise the vast majority of Japanese agriculture. The remaining 15 per cent (12.1 billion cubic metres) of water goes to industrial use.

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<sup>5</sup> Japan, Ministry of Land, Infrastructure, Transport and Tourism, *Water Resources in Japan* (2007), p. 2.

<sup>6</sup> Japan, Ministry of Land, Infrastructure, Transport and Tourism, "Achieving water security in Japan and worldwide and in Japan", p. 10.

<sup>7</sup> Naoko Nakagawa, Akira Kawamura and Hideo Amaguchi, "Analysis of decreasing tendency of domestic water use per capita in Tokyo", paper presented at the BALWOIS 2010 Conference, 25-29 May 2010, p. 1.

11. Water availability in Japan is very seasonal. The rivers in Japan are not very long and they have steep inclines, making it difficult to depend on these sources in their natural state. For this reason, Japan has built numerous facilities for storing water. About 46.1 per cent of water supply in Japan comes from dams, while 25.7 per cent comes from rivers. Only 25 per cent comes from groundwater.<sup>8</sup> Important steps have been taken in Japan to combat over-extraction of groundwater, which had caused problems of land subsidence in the past. The Government also monitors groundwater levels and whether the ground itself is sinking.<sup>9</sup> Even with these necessary measures though, the problem of land subsidence, which is very difficult to reverse, is still an acknowledged concern in Japan.

## B. Quality

12. There is a thorough system of water-quality testing in Japan and waterborne diseases are no longer a major concern. Some water-quality problems reportedly persist because of poor quality pipes delivering the water to homes. People in Japan are increasingly drinking bottled water, or installing water purifiers. In a survey conducted by the National Land Agency in 1998, reasons offered for why people do not drink tap water include “tap water cannot be drunk with peace of mind”, “tap water does not taste good” and “tap water has some smell”.<sup>10</sup> In its *Human Development Report 2010*, the United Nations Development Programme indicates that nearly 20 per cent of the population in Japan is not satisfied with the water quality.<sup>11</sup> The authorities in Japan have recognized this lack of satisfaction and are taking measures to address the perception of unsafe water and to support continual improvements to water quality.

## C. Financing and affordability

13. In terms of financing the water and wastewater systems, the independent expert learned that while water utilities in populous areas are able to rely almost exclusively on user fees, in areas with less people, there is more reliance on tax money and subsidies from the Government. There is an upper limit of 50 per cent allowed for Government subsidies to any operator, and overall subsidies account for about 7 per cent of investment. With respect to user fees, human rights require that water and sanitation be affordable to all people. This means they must be able to access water and sanitation at prices that do not force them to compromise on their enjoyment of other basic human rights (such as food, health or education). The Ministry of Health, Labour and Welfare reported that the water tariff comprises less than 1 per cent of household spending on average, which is very low. Nevertheless, as will be discussed below, special initiatives to assist those living in extremely difficult situations are still important.

## D. Sanitation

14. In Japan, 73.7 per cent of the population has access to sewerage, and the country is focused on extending access to the about 20 million people who still do not have access.

<sup>8</sup> Japan, Water Resources (note 5 above), p. 6.

<sup>9</sup> Japan, Ministry of the Environment, *Water and Soil Environmental Management in Japan*, pp. 25-26.

<sup>10</sup> Japan, Water Resources (note 5 above), p. 13.

<sup>11</sup> United Nations Development Programme, *Human Development Report 2010: The Real Wealth of Nations – Pathways to Human Development* (New York 2010), p. 180. Available from [http://hdr.undp.org/en/media/HDR\\_2010\\_EN\\_Complete\\_reprint.pdf](http://hdr.undp.org/en/media/HDR_2010_EN_Complete_reprint.pdf).

Counting those with access to a decentralized system of domestic wastewater treatment tank projects (*johkasou*) in the calculations, 84.8 per cent of the population has access to sanitation. Japan implements three main types of sewerage systems based on plans drawn up by local governments: public sewerage systems, rural sewerage projects and *johkasou*. Public sewerage systems are managed by local governments and exist mainly in urban areas. In essence, public sewerage systems collect domestic wastewater through sewer pipes and convey it either to local or regional treatment plants. Wastewater from factories and other industrial sites is collected and treated in a similar fashion, but is generally carried and treated in separate, independent systems. Often, municipal public sewerage systems are linked to larger regional systems that serve multiple urban areas and are governed by the prefecture. Rural sewerage systems operate in a similar manner, but on a smaller, more localized scale.

15. *Johkasous*, which provide advanced on-site treatment of wastewater, are now mandatory in areas without access to a sewage system, such as mountainous regions. The *Johkasou Act*, adopted in 1985 and revised in 2001 and 2005, provides that municipalities are responsible for the licensing and inspection of *johkasous*; they also advise on installation and maintenance. The Act sets out regulations on the construction, installation, operation and maintenance, desludging and monitoring of *johkasou* systems. Measuring and maintaining water quality standards (set by the Ministry of the Environment) in each system is also the responsibility of either the municipal or prefectural government.

16. Those without access to sewerage and without a *johkasou* system (roughly 15 per cent of the population) have *tandoku-shori* *johkasous*, or night-soil storage tank systems, which allow grey water to pass directly into the environment without treatment. These were banned in 2001 and thus, all new construction using *johkasou* technology is obliged to treat both night soil and grey water. The aim of the authorities is to move more populous areas onto sewerage systems, and less densely populated areas onto the *johkasou* system. The high cost of ensuring safe sanitation, including the proper disposal and treatment of faeces, was emphasized to the independent expert in her meetings with authorities.

17. It was reported to the independent expert that 100 per cent of black water coming from toilets is treated. However, some other water from domestic uses (grey water) may not be treated in certain cases, as mentioned above. She also learned about extensive recycling and re-use programmes in Japan for sludge and treated wastewater. The independent expert was impressed by the achievements of Japan in the area of sanitation and encourages the Government to continue to devote priority attention to ensuring safe and sustainable sanitation solutions for everyone.

## **E. Infrastructure**

18. The ageing and decreasing population in Japan has implications for the upkeep and sustainability of water and wastewater systems and infrastructure in many parts of the country. The percentage of the population over the age of 65 was 22.7 per cent in 2009, representing an increase of nearly 18 per cent since 1950. The population growth rate hit negative levels in 2005, and stood at -0.6 per cent in 2009.<sup>12</sup>

19. In rural areas, where the dip in population is expected to be most pronounced, a lower overall demand for water resources will impact the amount of user fees collected, in combination with lower amounts of money collected through taxes, which means that less

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<sup>12</sup> Japan, Ministry of Internal Affairs and Communications, *Statistical Handbook of Japan 2010*, p. 13. Available from [www.stat.go.jp/english/data/handbook/c02cont.htm](http://www.stat.go.jp/english/data/handbook/c02cont.htm).

money will be available for the maintenance of water and wastewater systems. Combined with this reality is the fact that the water and sanitation systems in Japan were mostly built 40 to 50 years ago and are in need of considerable repair. Without adequate funds to engage in this important maintenance and repair work, these areas risk facing deteriorating levels of water and sanitation service.

20. The independent expert learned of interesting technological systems in Japan that assist water utilities in predicting demand, forecasting the need for renovations to the system, and planning to obtain the funds necessary for such changes. However, the software is reportedly based on a presumption of growing demand, and a more complicated analysis is needed in cases where the system needs to be downsized. The special procedures mandate holder would encourage urgent research into how this system can be used to address the parallel realities in Japan of increasing demand in some urban areas and shrinking demand in many rural areas. She also highlights the need to continue research into small-scale systems and green technologies, which may be more appropriate and sustainable in areas facing population decline.

#### IV. Discrimination and exclusion

21. Although the vast majority of the population in Japan enjoys continuous access to safe drinking water and sanitation, there are pockets of exclusion which must be addressed. Those who do not have regular access, who face obstacles in access in certain spheres of their life, or who are otherwise deprived of the same level of access as the general population, also face discrimination in society more broadly. These groups include those living in poverty, homeless people, people with disabilities, persons of Korean descent and prisoners.

22. Although article 14 of the Constitution of Japan prohibits discrimination, at present, Japan continues to lack national implementing legislation which prohibits discrimination. The special procedures mandate holder supports the recommendation of the Working Group on the Universal Periodic Review calling on Japan to adopt national legislation prohibiting all types of discrimination (A/HRC/8/44, para. 60, recommendation 6).

23. Article 2 of the Public Assistance Act insists that public assistance programmes must be implemented in a non-discriminatory manner. However, this does little to address the distribution of resources among different welfare programmes. Groups such as the homeless can generally expect considerably less support than those enrolled in traditional pension or disability programmes.<sup>13</sup>

24. There has long been reluctance on the part of many in Japan, including the government, to recognize the country's diversity in terms of wealth disparities, minority groups and other types of heterogeneity.<sup>14</sup> While minority groups, such as new immigrants, Koreans, the Burakumin, and Ainu and Okinawan indigenous communities, receive greater recognition than in the past, they continue to face economic disadvantage and social exclusion.

25. Likewise, the stigmatization of the homeless and other impoverished individuals in Japan has deep roots. Since the country's post-war economic recovery, many Japanese have

<sup>13</sup> National Institute of Population and Social Security Research, "The cost of social security in Japan", IPSS Statistical Report No. 21 (2009), p. 6. Available from [www.ipss.go.jp/ss-cost/e/cost08/data/cost2008.pdf](http://www.ipss.go.jp/ss-cost/e/cost08/data/cost2008.pdf).

<sup>14</sup> Mari Osawa, "Introduction: income inequality, social exclusion and redistribution", *Social Science Japan Journal*, vol. 13, No. 1 (May 2010).



long held the notion that Japan had become a largely egalitarian society, where poverty was a thing of the past.<sup>15</sup> This lack of basic acknowledgement may have been a contributing factor in preventing poor families and individuals from getting the assistance they need.

26. There is, however, some evidence that attitudes towards poverty in Japan are gradually beginning to change. As the effects of increasing poverty rates over the past decade begin to touch more people, public debate on how to confront the problem is on the rise.<sup>16</sup> Furthermore, the emergence of new words in the Japanese language, such as *waakingu pua* (working poor) and *neeto* (not in education, employment or training) reflect an increased recognition of the hardship situations of some people in Japan.

## A. Poverty

27. The Government of Japan generally defines poverty in terms of the “relative poverty” standards promulgated by the Organization for Economic Cooperation and Development (OECD). That is, households whose annual disposable income is below 50 per cent of the median income are recognized as living in poverty. In 2007, the Government announced that poverty in Japan is about 15.7 per cent,<sup>17</sup> amounting to about 20 million people. Reportedly, Japan has the fourth highest poverty rate among OECD States, after Mexico, Turkey and the United States of America.<sup>18</sup> Of course, defining poverty exclusively in terms of relative income does not paint the whole picture. A recent study measuring poverty in terms of income, but also in terms of access to basic necessities, found that 7 per cent of respondents could not afford access to “lifeline utilities” such as gas, electricity and water.<sup>19</sup> Moreover, the study concludes that, in the same way that income poverty does not always reflect an individual’s level of material deprivation, many Japanese who are vulnerable to social exclusion in terms of access to a number of material needs (including drinking water and sanitation) may not be vulnerable in terms of income poverty.<sup>20</sup>

28. Like most industrialized nations, Japan has implemented a variety of social programmes to support groups in need of assistance, such as the elderly and people with disabilities. However, the vast majority of Japanese social assistance focuses on pension and health-care systems, while poverty relief gets short shrift.<sup>21</sup> Public assistance continues to be viewed as supplemental and as a “last resort safety net”.<sup>22</sup> Most public assistance in Japan is reserved for the sick, disabled or the elderly.<sup>23</sup> Older males who do not fit into

<sup>15</sup> Aya K. Abe, “Social exclusion and earlier disadvantages: an empirical study of poverty and social exclusion in Japan”, *Social Science Japan Journal*, vol. 13, No. 1 (May 2010), p. 5; Fumihiko Abe and Kazuo Otsu, “Ranks of ‘invisible poor’ growing: conventional antipoverty measures no longer working properly”, *The Daily Yomiuri*, 10 November 2007, p. 4.

<sup>16</sup> John Murphy, “Joblessness spurs shift in Japan’s views on poverty”, *The Wall Street Journal*, 2 May 2009, p. A5.

<sup>17</sup> “Poverty in Japan”, *The Japan Times*. Available from <http://search.japantimes.co.jp/cgi-bin/ed20100125a2.html>.

<sup>18</sup> OECD, “Income distribution – Poverty”, StatExtracts database. Available from <http://stats.oecd.org/Index.aspx?QueryId=9909&QueryType=View>.

<sup>19</sup> Abe, “Social exclusion” (note 15 above), p. 16.

<sup>20</sup> *Ibid.*, p. 28. (For instance, although the elderly are technically one of the poorest subsets of the population, they generally are not lacking in material needs.)

<sup>21</sup> Ulrike Schaede and Kuniaki Nemoto, “Poverty and politics: evaluating public assistance in Japan”, paper prepared for the 2006 Annual Meeting of the International Studies Association, San Diego, p. 3.

<sup>22</sup> Schaede and Nemoto, “Poverty and politics” (note 21 above), p. 8.

<sup>23</sup> National Institute of Population and Social Security Research, “The cost of social security” (note 13 above), p. 6. See also Patricia Kennet and Masami Iwata, “Precariousness in everyday life:

those categories, and are thus considered fit to work, frequently languish in limbo; too old to find steady employment, but too young to draw a pension.<sup>24</sup>

29. Unfortunately, the number of people on social assistance is only a fraction of those living in poverty, with estimates varying between 20 and 40 per cent of people in need of social assistance actually receiving it.<sup>25</sup> Of the 15.7 per cent of Japanese who meet the relative poverty definition used by the Government, only about 1.2 per cent reportedly receive public assistance specifically directed at poverty alleviation.<sup>26</sup>

30. In her discussions with different stakeholders, the independent expert was informed that it was difficult to obtain social assistance and that it was viewed as a last-resort option. Culturally, people are expected to seek assistance first from their family and community before requesting help from the Government. In fact, the role of the family in social protection is enshrined in the Civil Code, which specifies that the family is under a duty to support its members (art. 877). In this context, there is a certain stigma attached to seeking assistance from the Government. Although the help may be available, many people reportedly do not request this assistance even if they may be entitled. The shame attached to receiving Government aid is so strong, that many would prefer to forgo the help and instead maintain their pride.

31. Furthermore, the requirements for receiving assistance are reportedly very stringent, making it difficult for people who seek social assistance to actually obtain such assistance.<sup>27</sup> Article 4 of the Public Assistance Act provides that “public assistance shall be provided based on a requirement that a person who is living in poverty shall utilize his/her assets, abilities and every other thing available to him/her for maintaining a minimum standard of living”. The independent expert was informed that determining whether someone has effectively used his or her “assets, abilities and every other thing available” can be a stringent requirement, which may limit people’s access to social assistance. This requirement has also been understood as “inability to work”. It has been noted that the ability to work considers only physical ability, as certified by a doctor. Social factors, such as whether one has the opportunity to use this ability and whether this ability is demanded in the job market of the day are rarely taken into account.<sup>28</sup> This corresponds with the information which was shared with the independent expert in her meetings with people living in poverty.

32. In Japan, municipalities are responsible for setting tariffs for water and sanitation services, and, as mentioned above, the central Government estimates that the average price of water is about 1 per cent of household expenditure. In Tokyo, the price of water is approximately 3,300 yen (about US\$ 40) per month for a family of four. There are no

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homelessness in Japan”, *International Journal of Urban and Regional Research*, vol. 27, No. 1 (March 2003).

<sup>24</sup> Phred Dvorak, “The Homeless in Japan find a place in cities’ public parks: long economic slump, tolerance allow shantytowns to take root”, *Wall Street Journal*, 18 June 2003. Women generally have access to additional social support mechanisms, such as those for widows or to prevent prostitution.

<sup>25</sup> Masami Iwata, “Does the hi hogo class represent poor people in general?”, in *Poverty and Social Welfare in Japan*, Masami Iwata and Akihiko Nishizawa, eds. (Trans Pacific Press, 2008), p. 161.

<sup>26</sup> Japan, response to the questionnaire sent by the independent expert on the question of human rights and extreme poverty (December 2008). Available from [www2.ohchr.org/english/issues/poverty/expert/docs/responses/Japan.pdf](http://www2.ohchr.org/english/issues/poverty/expert/docs/responses/Japan.pdf).

<sup>27</sup> Toshiaki Tachibanaki, *Confronting Income Inequality in Japan: A Comparative Analysis of Causes, Consequences, and Reform* (Cambridge, Massachusetts Institute of Technology, 2005), p. 211.

<sup>28</sup> Yukihiro Kitagawa, “Poverty and the social exclusion of single men: perspectives on homeless men and their relationship with the welfare administration”, in *Poverty and Social Welfare in Japan*, Masami Iwata and Akihiko Nishizawa, eds. (Trans Pacific Press, 2008), pp. 211-212.

national regulations setting maximum tariffs or requiring structures to assist the most vulnerable or disadvantaged. Nevertheless, in Tokyo and Osaka, such structures exist. In Osaka, reduced rates are made available to single-parent families and households including someone with a severe physical or mental disability and elderly households, as well as to social-welfare facilities. However, given that many people living in poverty may be single, middle-aged men with no known disability, and given the challenges that these people may face in obtaining formal social assistance, the special procedures mandate holder is concerned that they may face challenges with regard to access to water and sanitation because of affordability constraints.

## B. Homelessness

33. Homeless people face different challenges in accessing water and sanitation since they do not have stable housing, the environment in which most people satisfy their water and sanitation needs. In January 2010, the homeless population in Japan was estimated at 13,124 persons, although the number is generally believed to be much higher because of the challenges in counting homeless people.

34. Day-labourer communities, where many of the country's homeless live, have been described as "self-contained ghettos".<sup>29</sup> A dearth of shelters means that others must live in public parks. The independent expert visited homeless people living in Nagai Park and Kamagaseki in Osaka, and people living in Shinjuku Park in Tokyo. Some homeless people also live in 24-hour Internet cafes in a slightly less precarious situation. Many of the homeless persons with whom the independent expert met worked to some degree or another. However, none of them could afford a stable apartment or other housing and very few received social welfare support. Many were able to construct a cardboard shelter or plastic tent in the park, with materials either collected over time or purchased with the money they could earn.

35. The special procedures mandate holder acknowledges that the Government has devoted considerable resources towards addressing the problem of homelessness in recent years. However, she observes that existing Government efforts to address the problem of homelessness are largely uncoordinated. Depending on where homeless people are living, the municipal parks and construction departments are variously responsible for managing the homeless population.<sup>30</sup> However, neither department has access to funds for providing aid; that money is controlled by the Ministry of Health, Labour and Welfare.<sup>31</sup>

36. In terms of practical access to safe drinking water and sanitation, homeless people living in parks rely commonly on the public toilet facilities for their access to water and sanitation. Access to showers is generally more challenging than access to toilets and water. By and large, public facilities in Japan surpass the standards of cleanliness and hygiene in many other developed countries. The importance of good hygiene in Japanese culture leads homeless people to place a high priority on access to water and sanitation. However, their continued access depends largely on the municipal authorities and park wardens. In some parks where the independent expert visited homeless communities, she was informed that the municipal authorities had stopped maintaining the public toilet facilities when the homeless community began living there. The independent expert received information that sometimes the authorities would disconnect the water supply to the area where the

<sup>29</sup> Augusto De Venanzi, "Institutional dynamics of homelessness: the United States of America and Japan compared", *International Journal of Sociology and Social Policy*, vol. 28, No. 3-4 (2008), p. 134.

<sup>30</sup> Dvorak, "The Homeless" (note 24 above).

<sup>31</sup> *Ibid.*

homeless people lived. The toilets also reportedly get blocked frequently and the authorities do not repair them. The independent expert was encouraged to receive information from the municipality of Osaka that it took full responsibility for the maintenance of public restrooms in the parks where homeless people lived. Nevertheless, she remains concerned about reports she received from homeless communities in Osaka that the public restrooms were not maintained. She urges all municipalities to be vigorous in ensuring that public restrooms do not fall into disrepair, and that they are regularly cleaned and replenished with soap and toilet paper.

37. Despite the refusal of the municipality to maintain the facility in some cases, some communities reportedly cleaned and maintained the facilities to the best of their ability within their available resources.

38. An act to assist homeless people become self-reliant was adopted in 2002. Numerous people with whom the independent expert met discussed how the act was implemented. To benefit from this governmental assistance, the first step a homeless person must take is to present himself or herself to the local welfare office, which will admit him or her to an emergency temporary protection centre after a brief interview. To enter the centre, homeless people must leave their tent or shanty, and cut ties with fellow homeless people. Several people with whom the independent expert met indicated that this was a problem for them; they perceived a risk that if they applied for this assistance and it did not succeed in pulling them out of their homeless state, they would lose their place in the park and in their community. Thus, they would be worse off.

39. For those who stay in the centre, an assessment is conducted to determine where the resident should be placed. For instance, residents may be sent to the welfare system, they may be placed in correctional facilities, or they may be sent to the Centre to Assist Self-Reliance. Single men who are not yet elderly will often be sent to the Centre to Assist Self-Reliance. There, they have two months to find a job; the stay can, in certain circumstances, be extended to four months if they find a job, allowing them to save money to afford stable housing. Only about 50 per cent of the people entering the Centre to Assist Self-Reliance manage to leave having found employment and housing. With no guarantees of stable work, the risk of people returning to the streets remains high.<sup>32</sup> Those who do not find a job during this period are categorized as “difficult to help to become self-reliant” and asked to leave the Centre. When they leave the Centre, there is no guarantee of receiving welfare benefits since that determination is made at the ward level. Thus, those people may end up back on the streets, where they continue to face challenges with regard to access to water and sanitation for their health and hygiene, and where their situation may be even worse than it was previously, given that they had to cut ties with their community and, in some cases, might have lost their “place” in the park.

40. Lack of regular access to water and sanitation to maintain hygiene and health is only one aspect of a much larger problem. While homeless people in Japan have demonstrated an ability to find innovative solutions, the Government obligation to find sustainable solutions to assist this population remains. In seeking a more comprehensive response to the phenomenon of homelessness in Japan, protecting the human rights of these individuals, including their rights to water and to sanitation, should be a paramount concern. In this regard, consultation with concerned communities, and ensuring their right to information, is critical to devising sustainable solutions that respect their human rights.

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<sup>32</sup> For a detailed analysis of the system to assist homeless people, see Kitagawa, “Poverty” (note 28 above), pp. 210-241.

### C. Persons with disabilities

41. Japan signed the Convention on the Rights of Persons with Disabilities in 2007, but has not ratified it yet, and it has not signed the Optional Protocol to the Convention. Article 28 of the Convention specifically provides that States must take measures “to ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs”. Discrimination based on disability is prohibited under article 14 of the Constitution (pertaining to equality under the law). The Basic Act for Persons with Disabilities (2004) was amended to include a call for the elimination of discrimination based on disability. In June 2010, the Cabinet adopted a decision aimed at promoting the rights of persons with disabilities, including a commitment to adopt legislation to comply with the Convention on the Rights of Persons with Disabilities. The Government has also reported important measures to ensure employment of people with disabilities.<sup>33</sup> The municipal authorities are responsible for ensuring that public facilities for water and sanitation are accessible to the population, and the independent expert was pleased to learn that those facilities have been designed to be accessible for persons with disabilities.

42. The independent expert received information indicating that persons with disabilities faced discrimination in obtaining housing, which had an impact on their access to water and sanitation. The housing that is available is frequently not accessible for persons with disabilities, particularly in terms of sanitation needs. Furthermore, the independent expert was concerned about reports that children with disabilities would be able to attend school only if one of their parents stayed with them during the day in order to take care of their children’s toilet needs. While these instances may be exceptional, such problems should be fully investigated with a view to ensuring the right to education for all children, as well as the right to work for parents.

### D. Underserved persons of Korean descent

43. Estimated in 2002 to number around 625,422, the majority of Koreans living in Japan are former colonial subjects brought to Japan for forced labour during the Second World War and their descendents. Koreans in Japan can generally be further classified as belonging to one of two groups. The first, often referred to locally as the *Zainichi*, are those who have elected to retain their Korean citizenship and live in the country as foreign residents. The second group consists of those who have acquired Japanese citizenship. The *Zainichi* regularly encounter discrimination in access to housing, education, government pensions and other benefits.<sup>34</sup> Younger generations who attend Korean-language secondary schools face a number of administrative obstacles when registering for university entrance examinations.<sup>35</sup>

44. While discrimination against Koreans and people of Korean descent persists in all facets of Japanese society, it is most pronounced in communities established by the Government of Japan to house imported labour during the Second World War. The housing was originally intended as temporary shelters; however, following the end of the war many

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<sup>33</sup> Third periodic report of Japan submitted to the Committee on Economic, Social and Cultural Rights (E/C.12/JPN/3), paras. 88-92.

<sup>34</sup> Initial and second periodic reports of Japan submitted to the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.114), para. 16.

<sup>35</sup> Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2006/16/Add.2), para. 57.

of the Koreans stayed. Unfortunately, such communities have since been largely ignored by the Government of Japan and have gradually sunk into a state of decrepitude.

45. One such community is Utoro, near Kyoto, which the independent expert visited during her mission. Established in 1943, Utoro was initially a collection of bunkhouses that housed Korean workers during the Second World War. After the end of the war, the Koreans who stayed gradually tried to improve the accommodations, for instance by building new houses and bringing in electricity. This community is considered to be illegally occupying the land, which has a serious impact on community members' access to basic services such as water and sanitation. Although requests for water pipes to the community were made at least as far back as 1979, the legal battle over the land delayed installation, and the water main was connected to the community only in 1988. Many residents continued to use well water, because they could not afford the cost of connecting to the network, or because they still needed permission from the landowner, since they were considered illegal occupants, in order to lay the pipes to their houses.

46. The rates of access to water and sanitation in Utoro are strikingly low when compared to nearby Uji City. In Uji City, 99 per cent of the population is connected to the water utility, and 78 per cent has access to a sewerage system. In Utoro, these rates are 47 per cent and zero per cent, respectively. The independent expert met with several residents in Utoro, some of whom receive only well water. One woman explained that she had to take the water once a month to a laboratory to get it tested, and although it did not meet water quality standards, she drank it because she could not be connected to the water network. She explained that the landowner did not allow the installation of the pipe to her house. Furthermore, to connect to the water network costs about 200,000 to 300,000 yen (about US\$ 2,500 to \$3,700). The "illegal" status of this community means that no household in the community is connected to the sewage network, and the independent expert witnessed the open sewers with untreated wastewater running through the town, posing a serious public health problem. The independent expert was informed by one resident that her latrine needed to be emptied every two months at a cost of 1500 Yen (about US\$ 20). Another resident reported that when there is heavy rainfall, the latrines overflow, resulting in raw sewage in the streets.

47. Utoro's residents are fiercely committed to the land where they live and are currently locked in a bitter and protracted legal battle with landowners, who want to evict the residents from the area. In 1998, the Osaka High Court considered the case of Utoro and determined that the fact that the Korean community had illegally occupied the land gave the landowners the right to demolish their buildings and force them to leave. This decision was upheld by the Supreme Court in 1999. Importantly, the High Court reportedly referenced the Committee on Economic, Social and Cultural Rights general comment No. 7 (1997) on forced evictions, and concluded that evictions carried out in accordance with judicial decisions were in conformity with international human rights obligations. The special procedure mandate holder notes that judicial decisions alone are not sufficient to justify any forced eviction, but that a host of other procedural guarantees must be considered, including whether there has been genuine consultation with the community concerned and whether evictions could result in homelessness. She notes that some steps have been taken in this regard, as detailed below.

48. The official position of the Government of Japan is that issues related to the future status of the community are a civil dispute between residents and real-estate developers and that the Government thus limits its involvement to monitoring negotiations between the groups (E/C.12/JPN/3, para. 24). Additionally, the Ministry of Land, Infrastructure, Transport and Tourism, the Kinki Regional Development Bureau, the Kyoto Prefecture, and the City of Uji established a committee to investigate ways of improving the living environment in the community. In 2008, the living conditions of residents of Utoro were

surveyed, and based on these surveys, a plan is being developed to offer residents public housing. The progress made in addressing the situation in Utoro is important, but the urgency to improve the living conditions remains. The special procedures mandate holder notes that the “illegal” status of this community and the possibility of eventual access to public housing are not acceptable reasons to deny them access to water and sanitation. She strongly recommends that the Government of Japan take swift action to ensure that all residents of Utoro, and similar communities across the country, have access to safe water and sanitation.

## **E. Prisoners**

49. The independent expert received information about the enjoyment of the right to water and sanitation in prison facilities. She emphasizes at the outset that all people are entitled to enjoy the rights to water and sanitation regardless of whether they are deprived of their liberty or not. The Standard Minimum Rules for the Treatment of Prisoners are, as is evident in their name, the absolute minimum and a country with significant resources, such as Japan, has the obligation to go beyond these most basic rules.

50. According to article 79 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, prisoners may be placed in protection cells in cases where they are likely to hurt themselves, when they make a loud noise or speak loudly against a prison officer’s instruction to cease, when they are likely to cause injury to others, or when they are likely to damage the property of the prison. While an order of the warden is necessary to put a prisoner in a protection cell, if there is not enough time to wait for such an order, officers may confine prisoners in the cell without the order. In the protection cell, reportedly prisoners are not able to flush the toilet by themselves, but instead are required to ask the guard to do so. Although the independent expert sought information on why this would be required, she did not receive a response to justify the practice. She is concerned that this practice is degrading to the prisoner.

51. The independent expert was further informed about the continued use of hand restraints in the protection cells, which inhibits the prisoners’ ability to access water and sanitation, especially when the hands are fastened behind the back.

52. More generally, the independent expert was informed that prisoners were permitted to bathe two to three times a week. Prisoners are permitted to bathe and wash their hair only during specified hours. The independent expert was informed that in some cases breach of these rules could result in being placed in solitary confinement. Although the prison rules do not specifically detail this punishment, the independent expert was informed that deciding which punishment to impose was left largely to the discretion of prison authorities. The special procedures mandate holder encourages the Government to take into consideration that more frequent or more flexible bathing arrangements may be necessary given the high standards of hygiene respected within Japanese society. She is also concerned that placing a prisoner in a protection cell because of his or her use of water for personal hygiene beyond the strict limits imposed by prison rules may be disproportionate punishment.

## **V. International cooperation**

53. International cooperation is a fundamental principle of human rights law. In its general comment No. 3 (1990) on the nature of States parties’ obligations, the Committee on Economic, Social, and Cultural Rights affirmed that “international cooperation for development and thus for the realization of economic, social and cultural rights is an

obligation of all States” (para. 14). When States elect to provide official development assistance (ODA), they must ensure that it is consistent with human rights standards and principles.<sup>36</sup>

54. Both the development and the implementation of development cooperation policy should incorporate principles of non-discrimination, participation and accountability. This is reflected in, inter alia, paragraph 13 (c) of the Accra Agenda for Action, which states that “developing countries and donors will ensure that their respective development practices and programmes are designed and implemented in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability”.<sup>37</sup>

55. First and foremost, donors must not negatively affect the human rights situation in their partner countries.<sup>38</sup> Moreover, they should ensure that their assistance facilitates each developing country’s ability to comply with its own human rights obligations.<sup>39</sup> They should take positive action to work with partner Governments in order to identify how development assistance can best support that Government’s own efforts to realize human rights.<sup>40</sup> Finally, donor States have an obligation to ensure that third parties involved in the delivery and implementation of their development assistance (e.g. private contractors and technical advisers) do not interfere with the enjoyment and realization of human rights in partner countries.<sup>41</sup>

#### **A. Institutional set-up and policies for development cooperation**

56. JICA is the fifth largest bilateral donor of ODA in the world.<sup>42</sup> In addition to 17 domestic offices, it maintains 96 overseas bureaus and has managed projects in around 150 countries.<sup>43</sup> While Japanese aid has historically primarily targeted other Asian countries, in recent years JICA has expanded its operations to parts of Africa and Latin America.

57. Human security is a defining feature of development assistance from Japan. As explained to the independent expert, this comprises three elements: (a) cooperation that comprehensively targets freedom from fear and want; (b) cooperation that involves thorough consideration for the socially vulnerable; and (c) cooperation that establishes mechanisms to protect and empower people. In discussions the independent expert had with JICA, representatives indicated that the human security approach encompassed human rights obligations. The special procedures mandate holder interprets the goals of the human security approach as being not only consistent with human rights obligations, but also promoting human rights. However, and in the light of the upcoming review of the human

<sup>36</sup> See, inter alia, Charter of the United Nations, Arts. 1, para. 3, and 56; International Covenant on Economic, Social and Cultural Rights, arts. 2, para. 1, and 11, para. 1; Committee on Economic, Social and Cultural Rights, general comments No. 3, paras. 13-14, and No. 15 (2002) on the right to water, para. 34; Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1987/17, annex), para. 33.

<sup>37</sup> See also OECD Development Assistance Committee, “Action-oriented policy paper on human rights and development” (2007), principles 5 and 8.

<sup>38</sup> *Ibid.*, principle 8.

<sup>39</sup> Statement of the Committee on Economic, Social and Cultural Rights (E/C.12/2001/10), paras. 16-17.

<sup>40</sup> OECD, Development Assistance Committee, “Action-oriented policy paper”, principle 2.

<sup>41</sup> General comment No. 15, para. 33.

<sup>42</sup> OECD, “Development aid reaches an historic high in 2010”. Available from [www.oecd.org/document/61/0,3746,en\\_2649\\_34447\\_47515235\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/61/0,3746,en_2649_34447_47515235_1_1_1_1,00.html).

<sup>43</sup> JICA, “Facts and figures”. Available from [www.jica.go.jp/english/news/field/2008/pdf/081003.pdf](http://www.jica.go.jp/english/news/field/2008/pdf/081003.pdf).



security approach within JICA, she considers that human rights could feature more prominently in the official development assistance policy of Japan.

58. The JICA environmental and social guidelines are also relevant in understanding how human rights are factored into the Agency's activities. Under these guidelines, all JICA projects are categorized according to the degree of impact on environmental and social considerations. An advisory committee monitors the proposal and implementation of any green-lit project determined to have significant adverse impacts. The advice of the advisory committee is not binding, but its guidance is fully available on the JICA website. JICA representatives further reported to the independent expert that the Agency had withdrawn proposals for which the projected impacts were too severe. The guidelines provide an important framework for ensuring that JICA projects do not contribute to human rights violations. However, an explicit focus on human rights would require, inter alia, moving beyond avoiding adverse impacts to actively empowering people to claim their rights and specifically targeting the most vulnerable and disadvantaged parts of the population.

59. The ODA policy of Japan makes explicit reference to the importance of working with countries that respect, protect and fulfil human rights.<sup>44</sup> However, the Government should also expressly commit itself to incorporating human rights into its own policies and practices. A human rights approach to development assistance requires donor countries not only to examine whether a partner country is committed to protecting human rights, but also to place human rights at the centre of its own policies. This, in turn, should then be reflected in the structures, processes and instruments of key agencies, such as JICA. This would have an impact at the assessment, implementation and evaluation stage of programmes. It would require, at a minimum: (a) broad-based and meaningful participation of all relevant stakeholders at all stages; (b) special attention to addressing the situation of those who experience discrimination or are otherwise marginalized, as well as efforts to address the root causes of structural inequalities in the country in question; and (c) capacity-building for monitoring and establishment of accountability mechanisms to ensure that human rights obligations are fully respected.

## **B. Development cooperation in the field of water and sanitation**

60. With specific regard to water and sanitation, Japan has demonstrated a strong commitment to providing international assistance in these sectors. Of the members of the OECD Development Assistance Committee, it is currently the largest donor in the water and sanitation sectors, contributing 33 per cent of all such bilateral aid from members over the past few years.<sup>45</sup> In 2006 it established the Water and Sanitation Broad Partnership Initiative (WASABI), which is aimed at supporting increased coordination among Japan, international organizations, other donor countries, NGOs and local partners. WASABI emphasizes the provision of safe drinking water and sanitation, among several related goals.<sup>46</sup>

<sup>44</sup> Japan, Ministry of Foreign Affairs, *Official Development Charter* (2003), p. 2. Available from [www.mofa.go.jp/policy/oda/reform/charter.html](http://www.mofa.go.jp/policy/oda/reform/charter.html).

<sup>45</sup> OECD, *Donor Profiles on Aid to Water Supply and Sanitation* (November 2008), forty-third page.

<sup>46</sup> Japan, Ministry of Foreign Affairs, "Announcement of Water and Sanitation Broad Partnership Initiative (WASABI)", 16 March 2006. Available from [www.mofa.go.jp/announce/announce/2006/3/0316.html](http://www.mofa.go.jp/announce/announce/2006/3/0316.html).

### C. Targeting of aid

61. Despite its substantial financial commitment and increasing international presence, there is some concern that JICA assistance does not reach the most vulnerable and disadvantaged groups. In 2009, less than 20 per cent of development aid from Japan for water and sanitation (roughly US\$ 207.4 million) targeted least developed countries and other low-income countries, whereas over 50 per cent (or roughly US\$ 785.8 million) went to lower-middle-income countries.<sup>47</sup> Additionally, Japan spends nearly 20 times more on large systems for water supply and sanitation than it does on basic systems.<sup>48</sup>

62. The current allocation of development assistance within the water and sanitation sectors should be more closely aligned with human rights standards and principles. A specific focus on the most marginalized and disadvantaged would warrant greater attention to those living in least developed countries. Furthermore, large-scale investments in infrastructure and large systems (whether in middle- or low-income countries) are often criticized for focusing too much on overall economic growth, while doing little to address conditions in slums and rural areas, where even basic water and sanitation are nonexistent, and where the most vulnerable and disadvantaged populations often live.

63. Taking a human rights approach to assistance in the water and sanitation sectors would involve a greater emphasis on developing basic water systems in order to reduce inequality and ensure that persons living in rural areas or slums get access. In the case of large systems, it would require more focus on expanding such systems, rather than simply upgrading them. Large infrastructure projects are not contrary to the rights to water and sanitation per se, but the crucial question is whether such projects improve access for those who already enjoy some degree of access, or whether they take the challenging step of extending access to those who continue to be excluded from even basic access. Accordingly, it would be useful to analyse the official development assistance of Japan from the perspective of beneficiaries, rather than only in terms of money spent. This would assist Japan to have a better understanding of whether it is reaching those most in need.

### D. Participation and inclusion

64. In seeking information on participation and inclusion, the independent expert was informed about consultations with communities concerning water and sanitation projects. A Japanese project in Senegal was highlighted as a good practice. The Project on Safe Water and Support of Community Activities, coordinated with the Ministry responsible for hydraulics in Senegal, was implemented between 2003 and 2010 with the objective of establishing a sustainable structure of water use within the project site. It was emphasized that the project employed a multisectoral approach, which included community participation and a special focus on women's participation.

<sup>47</sup> Calculation based on data from stats.oecd.org. See also UN-Water and World Health Organization (WHO), *UN-Water Global Annual Assessment of Sanitation and Drinking-Water (GLAAS 2010)* (Geneva, World Health Organization, 2010), p. 26.

<sup>48</sup> Basic systems include: handpumps, spring catchment, gravity-fed systems, rainwater collection, storage tanks, small distribution systems; latrines, small-bore sewers, on-site disposal (septic tanks). Large systems include: water desalination plants; intakes, storage, treatment, pumping stations, conveyance and distribution systems; sewerage; domestic and industrial wastewater treatment plants. OECD figures indicate that in 2009, Japan spent about US\$ 1.09 billion on large systems, and US\$ 57.4 million on basic systems. stats.oecd.org.

65. It appears that Japan has improved its work with communities since 2004. Japan emphasizes the need to undertake capacity assessments in order to develop the capacity of countries to handle issues at multiple levels. Capacity development can have different meanings in the context of development projects. The human rights framework would require the following elements in terms of capacity development: (a) fostering a sense of responsibility on the part of duty bearers for realizing human rights; (b) ensuring that people can take action to claim their rights, including by bringing national laws and policies in line with human rights standards; and (c) ensuring that people have the resources, including economic and organizational resources, to take action.<sup>49</sup>

## E. Affordability of service provision

66. Water-supply projects presented to the independent expert also placed a heavy emphasis on user fees. Such fees are essential for the sustainability of water and sanitation systems, and people who can afford to should pay for these services. Domestic water utilities in Japan have a remarkable record of cost recovery. However, while fully acknowledging the importance of user fees, the special procedures mandate holder notes that simultaneous efforts must also be made to ensure that those living in extreme poverty are not excluded from access simply because they cannot pay. Financial mechanisms such as cross subsidies and free lifeline access can be put in place to assist those most in need. The mandate holder sees scope for improving attention to issues of affordability in JICA projects.

## F. Untying aid

67. JICA has been criticized for continuing to define empowerment largely in terms of generating commerce and building market linkages with Japan. Indeed, contrary to the Accra Agenda for Action (para. 18), much of ODA from Japan continues to be tied to the procurement of Japanese products and services. For example, the Special Terms for Economic Partnership loans programme, which requires receiving countries to procure Japanese goods and services, has been cited as conflicting with the general principles of development aid outlined by the OECD Development Assistance Committee in the Accra Agenda for Action.

68. Untied aid creates a more amenable climate for the realization of economic, social and cultural rights. At a broad level, it helps to promote efficiency, mutual accountability, transparency, sustainability, affordability and national ownership of projects.<sup>50</sup>

## VI. Conclusion and recommendations

**69. The special procedures mandate holder commends Japan for its progress in ensuring access to safe water and sanitation for the vast majority of the population. Looking forward, special attention is needed for those groups who have been marginalized or otherwise disadvantaged. Placing the rights to water and sanitation at**

<sup>49</sup> Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation* (HR/PUB/06/8), pp. 29-30. Available from [www.ohchr.org/Documents/Publications/FAQen.pdf](http://www.ohchr.org/Documents/Publications/FAQen.pdf).

<sup>50</sup> Doha Declaration on Financing for Development: outcome document of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus (2008), para. 46.

the centre of policy formulation for both domestic and international aid policies is crucial to ensure that all people in Japan, as well as those benefiting from its development assistance, have access to sufficient, affordable, accessible, acceptable and safe water and sanitation, in order to ensure human health and human dignity. In this regard, the mandate holder recommends that the State:

(a) Fully guarantee economic, social and cultural rights in domestic law, including by ensuring that these rights are justiciable in national courts. At the international level, Japan should consider ratifying the Option Protocol to the International Covenant on Economic, Social and Cultural Rights;

(b) Adopt a comprehensive law on non-discrimination, including specific provisions on economic, social and cultural rights;

(c) Establish an independent national human rights institution with competencies to monitor the enjoyment of all human rights in Japan, including economic, social and cultural rights, and to receive individual complaints;

(d) Adopt a comprehensive law on water and sanitation guaranteeing the right of all people in Japan to safe water and sanitation and clearly delineating the responsibilities of different actors at the national and municipal levels. Such a law could incorporate mandatory water-quality standards, set maximum tariff limits, and establish an independent regulatory mechanism for the sectors, including complaint mechanisms for users who have concerns about their access to water and sanitation;

(e) Continue to devote priority attention to improving ageing infrastructure in order to ensure access to water and sanitation, especially for people living in remote areas;

(f) Engage in awareness-raising campaigns about water quality to assure people of the safety of drinking tap water;

(g) Evaluate the extent to which people living in poverty face challenges in paying for water and sanitation services, and consider nationwide policies, such as those in Tokyo and Osaka, to assist those people;

(h) Ensure that all municipalities provide homeless people with access to safe drinking water and sanitation, including through regular maintenance and upkeep of public restrooms;

(i) Engage in dialogue with homeless communities to assist these individuals to find more secure housing solutions, providing more stable access to water and sanitation;

(j) Eliminate discrimination against persons with disabilities, whether public or private, including in the areas of housing and education. The special procedures mandate holder especially calls on the Ministry of Education to equip schools with the necessary facilities for the inclusive education of children, including by ensuring their autonomous access to water and sanitation, so as to eliminate requests for parents of children with disabilities to take care of their children's sanitation needs while at school. Furthermore, the Government must do more to ensure that all persons with disabilities have access to housing that is adapted to their needs, in particular with regard to sanitation and bathing;

(k) Take immediate measures to ensure that people living in Utoro, and similar communities in Japan, have access to safe water and sanitation that meet standards equivalent to the neighbouring communities at a price they can afford;

(l) Ensure enjoyment of the rights to water and to sanitation in all spheres of life, including in prisons;

(m) Fully integrate human rights into development aid policy. The State should also consider devoting a larger proportion of aid to ensuring basic water and sanitation supply to those who do not yet have access. It should further ensure that project beneficiaries, or those otherwise impacted by projects, have opportunities to participate in the formulation, implementation and evaluation of projects, as well as access to information about project proposals. The state should also consider untying aid in order to assure policy space for Governments to respond to democratic processes that should inform the development of policy, including in the areas of water and sanitation.

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