

Mandate of the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
OL NGA 2/2017

24 February 2017

Dear Mr. Emuze,

I have the honour to address you in my capacity as Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolution 33/10.

In this connection, I would like to bring to the attention of your Government information I have received concerning the draft bill titled “A Bill for a Law to Consolidate all Laws relating to the Environment for the Management, Protection and Sustainable Development of the Environment in Lagos State and for Connected Purposes”.

The situation of water and sanitation in Lagos has previously been the subject of joint allegation letter sent to your Government on 4 July 2016 ([NGA 3/2016](#)). I note that no response from your Government to this communication has been received.

According to the information received:

On 20 February 2017, the Lagos State House of Assembly passed “A Bill for a Law to Consolidate all Laws relating to the Environment for the Management, Protection and Sustainable Development of the Environment in Lagos State and for Connected Purposes”. Currently, the draft Bill is sent to the State Governor for his signature. With the signature, the draft Bill will become a law. It is alleged that the draft Bill was passed with minimum public consultation and without public notice regarding the hearing held on 9 February 2017.

Article 141(1) of the draft Bill, entitled “Maintenance of water bodies”, requires approval from State authorities to extract water from natural resources and criminalizes such action, as follows:

“141 (1) No person or group of persons shall:

(a) Abstract water from any lake river, stream or other natural resources forming part of state water except with the approval of department of water resources of the Office Drainage Services

[...]

(c) make, sell, distribute or causes to be made, sold or distributed water by container, tanker or any other method whatsoever without a valid licence being issued by the Department of Water Resources of the Office Drainage Services [...]

(2) Any person or group of persons who fail to comply with the provisions of subsection (1) of this section shall be guilty of an offence under this law and shall be liable on conviction in the case of an individual to N100,000 fine or to six weeks imprisonment or community services or to both such fine and imprisonment and in the case of firm or body corporate, to a fine of N500,000 in addition, equipments and facilities of such firm or body corporate shall be confiscated by authorized officers of the Department of Water Resources of the Office Drainage Services.”

Furthermore, article 137 of the draft Bill on “Sinking of Borehole Hydraulic and other Structures” requires a licence for the sinking of boreholes:

“137 (1) No person or group of persons shall:

(a) Sink or causes to be sunk boreholes, hydraulic and other structures connected with the supply of surface ground water or treated water without obtaining the necessary permit from the Office of Drainage Services.”

It is estimated that only 10 per cent of the population has access to piped water supplied by the state utility, Lagos State Water Corporation. The remaining 90 per cent of the users who do not receive service from the utility mostly obtain water from boreholes or small-scale, private water vendors. Many of these vendors have, until late, been tolerated but are not effectively regulated by the State. Due to such vendors’ often exorbitant prices for water, many users reportedly recur to practices such as walking long distances to procure water from less expensive vendors or collecting water from burst pipes, unmonitored boreholes, and other unsafe sources such as unprotected dug wells.

Grave concern is expressed regarding the above-mentioned provisions of the draft Bill which would intensify the difficulty in accessing safe drinking water for the population living in Lagos. Where only 10 per cent of the population are connected to the piped network and the rest of the population access drinking water by purchasing it from private, often unregulated vendors or retrieving it from a variety of unmonitored sources, a blanket prohibition on accessing water sources without alternatives undermines individuals’ right to access water.

Further concerns are expressed on the disproportionate amount of the corresponding fine that would be imposed on individuals in breach of article 141 of this draft Bill when it becomes a law. The fine of N100,000 (approximately USD 310) to

ordinary individuals is exceedingly disproportionate when considering that the monthly minimum wage of Nigeria is N18,000 (approximately USD 60).

Furthermore, serious concern is expressed that meaningful public participation on the draft Bill was not conducted in the context of the hearing and the adoption of the draft Bill by the Lagos State House of Assembly.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. What measures have the central and local governments taken to safeguard human rights to water and sanitation and human rights standards in the draft Bill?
2. Please provide background information on the draft Bill, in particular, its articles 141 and 137.
3. In case the draft Bill is signed, what measures will be in place to disseminate information regarding the imposed requirement of prior approval (article 141) and to expedite the approval process by the department of water resources of the Office Drainage Services?
4. What measures are in place to ensure that the passing of the draft Bill will not constitute a retrogressive measure for the human rights of water and sanitation?
5. Please provide specific information on how the public consultation was carried out in relation to the draft Bill.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

I intend to publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release

will indicate that I have been in contact with your Government's to clarify the issue/s in question.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Emuze, the assurances of my highest consideration.

Léo Heller
Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer your Government to the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Nigeria in 1993; in particular article 25 of the UDHR, and article 11 of the ICESCR, which provide that everyone has the right to an adequate standard of living.

The human rights to water and sanitation are essential human rights set forth in the ICESCR, the Convention on the Rights of the Child, ratified by Nigeria in 1991, the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Nigeria in 1985 and the Convention on the Rights of Persons with Disabilities, ratified by Nigeria in 2010. Article 11 of the ICESCR consecrates the right to an adequate standard of living and article 12 of the ICESCR provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights, in its General Comments 14 and 15, establishes water as an underlying determinant of health and as a human right, derived from the right to an adequate standard of living. UN Human Rights Council in its resolution 15/9 of 2010 and UN General Assembly in its resolution 64/292 of 2010 explicitly recognized the human right to safe drinking water and sanitation.

Furthermore, the UN General Assembly in its resolution 70/169 of 2015 recognized that “the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use”, and that “the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living”.