

Mandates of Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the human rights to safe drinking water and sanitation

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/19, 34/9 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the escalation of the Lagos State Government's renewed plans to privatize important parts of the water system in Lagos, despite widespread public opposition, and the potential negative impact of such privatization on the human rights of lower income Lagosians in the absence of essential safeguards.**

There is a clear risk of water privatization shifting the focus of water management from service provision for all residents to ensuring more reliable services for the well-off while generating handsome profits for the private suppliers. In a country, where well over half of the population lives in poverty¹, the negative impacts especially in Lagos State of higher water tariffs and even more unequal infrastructure investment would be immense for people living in poverty, unless respect for adequate minimum standards is ensured.

According to the information received:

Context

Nigeria faces major problems of multidimensional poverty as illustrated by the fact that it ranks 158th on the United Nations Development Programmes Human Development Index for 2019. This is despite Nigeria being Africa's largest economy by gross domestic product, its biggest oil exporter, and having the largest natural gas reserves on the continent.

The World Bank has recently warned that the water, sanitation and hygiene sector is "in critical condition and requires immediate attention." It points out that

¹ <https://mepb.lagosstate.gov.ng/wp-content/uploads/sites/29/2017/01/Poverty-Profile-for-LASG-2014.pdf>, pg. 23-24

although rates of access to improved water services grew from 1990 to 2015, the country has in fact gone backwards in terms of access to piped water services. Such access on premises in urban areas dropped from 32 per cent in 1990, to 7 per cent in 2015. This has also been accompanied by immense inequality of access between the wealthy and the rest. The World Bank estimates that the richest 20 percent of households account for more than 90 percent of overall access to improved water and sanitation. In contrast, less than 30 percent of households in the poorest quintile have access to improved sanitation.²

According to commentators, the lack of access to safe and affordable water is due to a multiplicity of factors, including corruption, political instability, decades of poor policies, deteriorating infrastructure, inadequate budgetary allocations, bad management, inadequate government attention to the water sector, and poorly implemented water laws. Acute water shortages in Lagos State have affected all aspects of daily life, particularly for low-income people, severely limiting access to water and sanitation and jeopardizing public health, leading to increased child mortality and water-related diseases.

With an estimated population of 21 million people, Lagos is the most populous city in Africa.³ The city's daily water demand is far beyond the amount produced by the Lagos State Water Corporation (LWC), the principal water supplier serving Nigeria's economic capital. The utility delivers less than half of the needed amount of 570 million gallons water per day, leaving Lagos with a shortfall of over 300 million gallons.⁴ The poor operational efficiency of water treatment facilities, low cost-recovery, growing population, and poor governance are some of the challenges faced by LWC.

As Lagos continues to grow, residents' access to water and sanitation is worsening. Current estimates suggest that only 10% of the population has access to water supplied by LWC.⁵ It is alleged that, rather than seek to implement a combination of improved policies that would ensure adequate access to water for all, the State Government has focused only on the possibilities flowing from privatization, through public-private partnerships (PPPs). Despite the urging of many civil society groups, the Government has failed to ensure their right to participate in the relevant decision-making processes concerning water supply.

² World Bank, Nigeria Biannual Economic Update, April 2019, p.49. Available at: <http://documents.worldbank.org/curated/en/747151554485134566/pdf/Nigeria-Biannual-Economic-Update-Water-Supply-Sanitation-and-Hygiene-A-Wake-up-Call.pdf>

³ Karuga, J. (2018). "15 Biggest Cities In Africa. WorldAtlas". Available at: <https://www.worldatlas.com/articles/15-biggest-cities-in-africa.html>

⁴ Press release from Governor of Lagos State, "Water Corporation not privatized", 17 August 2018. Available at: <https://lagosstate.gov.ng/blog/2018/08/17/water-corporation-not-privatised-lasg/>

⁵ Press Release, UN Special Rapporteur on water and sanitation. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21056&LangID=E>

On 22 December 2016, the Special Rapporteur on the human rights to safe drinking water and sanitation expressed concern about the level of vulnerability to which many millions of people are exposed in Lagos due to the water crisis. He stressed that the city's water and sanitation sector had deteriorated to that point because of the way it had been managed for many years and he urged the authorities to ensure that the 2017 budget would increase funding for water and sanitation access for the estimated 21 million residents.⁶

In January 2019, during the international summit in Abuja on the human right to water, 150 civil society participants urged the municipal government to reject the public-private partnership (PPP) model which has left the city with dry taps, and instead to adopt an alternative roadmap for Lagos' water sector, based on a public water system that delivers clean, safe water to all residents.⁷

On 23 September 2019, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context issued a statement at the end of her official visit to Nigeria, where she highlighted the urgent housing crisis in Lagos, with a housing deficit of 2.5 million units, and the lack of access to water and sanitation services for large parts of the population, in particular those living in informal settlements.⁸

On 8 October 2019, a coalition of non-governmental organizations held a Stakeholder Dialogue in Lagos to discuss the problems of the water sector. The goal was to bring together community members, civil society organizations, enterprises, and Lagos State Government (LASG) officials to discuss a people-centered way forward to address the Lagos water crisis. It was also a chance for the new Governor of Lagos State, Mr. Babajide Sanwo-Olu, to engage in discussions on the water sector with key stakeholders.

Unfortunately, despite initial confirmation of his attendance, Governor Sanwo-Olu failed to participate and instead was represented by two government officials. They made broad commitments to public participation, including the creation of a Water Council to bring community voices into the process for developing water sector policy in Lagos.

On 7 November 2019, President Muhammadu Buhari declared a state of emergency in the water supply, sanitation, and hygiene sector due to the high prevalence of water-related diseases, which have caused preventable deaths in all parts of the country. The President unveiled a national action plan for the

⁶ Press Release, UN Special Rapporteur on water and sanitation. Available at:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21056&LangID=E>

⁷ "Our Water, Our Right" coalition, "Lagos Water Crisis: Alternative roadmap for water sector", 25 November 2016. Available at: https://www.tni.org/files/publication-downloads/lagos_water_book_web_publishing_version_0.pdf

⁸ End of mission statement, UN Special Rapporteur on the right to housing. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25033&LangID=E>

revitalization of water supply, sanitation, and the hygiene sector. The national action plan, called WASH, contains disturbing statistics on open defecation, access to piped water services and sanitation in the country. The plan aims, among other goals, to end open defecation by 2025 and improve access to piped water and sanitation.

Privatization of water services and its impact on people living in poverty

On 17 October 2019, only some days after the Stakeholder Dialogue, an article in the *Global Water Intelligence* magazine, a well-informed source of information for the private water industry, published updated details about the Lagos Water Corporation's Strategic Business Plan 2019-2024, which is about to be officially released. The business plan is based on a two-pronged approach: improved performance through privatization on one hand, such as improved billing and revenue collection, greater capacity utilisation and lower non-revenue water (NRW) levels. On the other hand, it plans a significant increase in construction activity, with increased production capacity and service coverage. The Lagos Water Corporation aims to become profitable.⁹

The business plan seems to indicate that the Government has decided to move forward with a water privatization agenda formulated without public input and without regard to strong opposition from community members, workers, and civil society. Concerns have been raised by those actors that privatization will lead to higher tariffs and more unequal infrastructure investment and that this would have highly negative consequences for those Lagosians who are not well off.

As stated by the Special Rapporteur on extreme poverty and human rights in his thematic report on privatization and human rights, "infrastructure projects will be most attractive to private providers where significant user fees can be changed and construction costs are relatively low. But the poor are badly placed to pay, cannot afford to use many services, and often live in distant or otherwise underserved areas. Water, sanitation [and other services] are far less likely to be provided adequately or at good quality levels to the poor. Instead, such persons either go without those services or pay even higher prices for substitute services".¹⁰ The privatization model being considered for Lagos thus potentially threatens the human right to water for millions of Lagosians, particularly the lowest-income people, unless appropriate safeguards are included in the agreement.

⁹ GWI, Lagos plans to turn its water finances around, 17 October 2019. Available at: <https://www.globalwaterintel.com/global-water-intelligence-magazine/20/10/general/lagos-plans-to-turn-its-water-finances-around>

¹⁰ UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, Report on privatization and human rights (United Nations General Assembly, September 26, 2018). Available at: <http://undocs.org/A/73/396>

The four privatization contracts (Adiyan II, Igbonla, Yewa I and Adiyan III)¹¹ planned through 2023 will result in corporate control of major parts of the system for two to three decades. Some concessions will be granted for 20, 25, 30 or 35 years. After 2024, there are other privatization projects already planned. However, the privatization of the Adiyan II and Igbonla waterworks is especially imminent, with financial negotiations with corporations scheduled to reach the final stages at any time now. If these two privatization contracts are finalized as they currently stand they will put the control of one-third of Lagos's water supply in private corporate hands.

In addition to the privatization projects, the Government's water sector plans threaten to disproportionately affect low-income people in other ways. According to information received, LWC is planning to crackdown on "non-revenue" water in a major way over the next four years, which could imply a crackdown on low-income people who are informally connected to the system out of necessity to meet their daily needs.

Moreover, LWC plans to increase the number of meters in the state from 18,000 in 2017 to 687,554 by 2023.¹² The water utility plans to install pre-paid meters, which the Special Rapporteur on water and sanitation has found "may lead to 'silent disconnections' due to lack of ability to pay, and can be a violation of the human rights to water and sanitation."¹³ Moreover, the Government has threatened harsh prosecution and service disconnections for those accused of tampering with the meters, even circulating a poster depicting a hand-cuffed person behind bars. Disconnection of services due to an inability to pay for the service is a retrogressive measure and constitutes a violation of the human rights to water and sanitation.

Some of the individual projects could affect millions of Lagosians as water privatization may shift the focus of water management from service provision for all residents to maximization of profits for private entities. Furthermore, if all of the projects were to move forward through a privatization approach, it would mean corporate control of nearly sixty percent of Lagos' target water supply capacity (original calculations based on the Government's goal of 745 million gallons per day capacity by 2020).

Lack of transparency and public participation

On 17 August 2018, Lagos State Government issued a press release declaring that it had neither privatized the water supply nor awarded water privatization contracts to any corporation. The Managing Director of the Lagos Water

¹¹ Global Water Intelligence, Adiyan II, Igbonla, Yewa I and Adiyan III

¹² GWI, Lagos plans to turn its water finances around, 17 October 2019. Available at: <https://www.globalwaterintel.com/global-water-intelligence-magazine/20/10/general/lagos-plans-to-turn-its-water-finances-around>

¹³ A/HRC730/39, p. 35. Available at: <https://undocs.org/A/HRC/30/39>

Corporation stated that the Public Private Partnership model was still at a bidding stage.¹⁴ Since this public announcement, neither the Lagos State Government nor LWC has provided any further information on the privatization projects or enabled public inputs by citizens to shape the future of the water sector in Lagos.

Civil society organizations have called on the Government on multiple occasions to ensure transparency and a participatory process, in particular enabling the participation of women, in developing plans to achieve universal access to clean water and to increase budgetary allocations to the water sector. Such efforts include a September 2017 letter signed by 185 organizations requesting the then Lagos State Governor, Mr. Ambode, to abandon the privatization push and ensure a robust and accountable democratic process; and a December 2017 report objecting to the privatization of the Adiyari II waterworks and calling for opportunities to inform democratic decision-making in Lagos' water sector.

It is alleged that the Government has ignored all of these requests and has failed to include representatives of civil society in decision-making processes in relation to the water sector. On 1 November 2019, civil society, labour and grassroots groups urged the Governor of Lagos to halt alleged plans to privatize the Adiyari II and Igbonla waterworks.¹⁵

Based on the information made available to us, we are deeply concerned about the impact that the planned forms of privatization will have on the enjoyment by all of the human right to water, especially for lower-income communities. The lack of public participation and the lack of transparency in the way these plans have been pushed are additional reasons for concern.

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.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations;
2. What measures has your Excellency's Government taken to ensure that the principles of meaningful participation, transparency and access to

¹⁴ Government of Lagos State, Press Release, "Water Corporation not privatized". Available at: <https://lagosstate.gov.ng/blog/2018/08/17/water-corporation-not-privatised-lasg/>

¹⁵ The Guardian Nigeria, "Civil society groups urge Sanwo-Olu not to privatize Adiyari and Igbonla waterworks", 1 November 2019. Available at: <https://www.pressreader.com/nigeria/the-guardian-nigeria/20191101/282063393766892>

information are respected in terms of planning for the provision of water to all residents in Lagos?

3. Has your Excellency's Government undertaken a human rights impact assessment of the LWC's Strategic Business Plan 2019-2024? If yes, please provide details including of the impact on the principles of equality and non-discrimination and the human rights to water and sanitation;
4. Please provide an overview of proposed privatization and PPP projects planned for the water sector in Lagos;
5. What other measures are planned in order to ensure the proposed PPPs are only one part of a comprehensive plan to ensure adequate access to water for all Lagosians?
6. What safeguards have been and will be included in any PPP contracts to ensure the accountability of private contractors?
7. What structures, systems or mechanisms has your Excellency's Government's put in place to monitor compliance of non-State service providers in relation to human rights standards?
8. Please provide information on the progressed achieved in the establishment of a Water Council, announced in October 2019, as a platform to bring community voices into the development of water sector policy in Lagos.
9. Please provide specific information about the measures undertaken by the Government in terms of the water sector in Lagos to ensure that low-income communities are not adversely impacted by the policies and programmes put in place.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we 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(s) responsible for the alleged violations.

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

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

Please accept, Excellency, the assurances of our highest consideration.

Philip Alston

Special Rapporteur on extreme poverty and human rights

Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

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Annex

Reference to international human rights law

We would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, which entail general and procedural human rights obligations related to access to safe drinking water and sanitation.

We recall the explicit recognition of the human rights to safe drinking water by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of ICESCR, acceded to by Nigeria on 29 July 1993. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

In its general comment No. 4 on the right to adequate housing, Art. 11 (1) of the ICESCR, the Committee on Economic, Social and Cultural Rights stated that the right to adequate housing includes "facilities essential for health, security, comfort and nutrition", such as "safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services" (paragraph 8.b).

We would further like to note that, as State party to ICESCR, Nigeria is legally bound to dedicate the maximum amount of resources available to progressively achieve the full realization of all economic, social and cultural rights including the right to water and sanitation. While often economic, social and cultural rights are subject to the principle of 'progressive realization' depending on the availability of resources in each State, this principle also prescribes particular modes of conduct that are compulsory for all States regardless of their level of development. These obligations considerably limit the discretion of States with regard to the implementation of economic, social and cultural rights, and require immediate action.

The duty of the State to prioritize the rights of the poorest and most vulnerable people does not imply that the State may adopt a very narrow approach. States continue to have responsibilities to move as expeditiously and effectively as possible towards the widest possible enjoyment of rights by all, which means maintaining services beyond a basic level (CESCR General Comment 3, para.11).

In its general comment No. 15 (2002) on the right to water, the Committee on Economic, Social and Cultural Rights emphasizes that "States parties must prevent [third parties] from compromising equal, affordable, and physical access to sufficient, safe and acceptable water". Involving non-State actors requires, inter alia, clearly defining the

scope of functions delegated to them, overseeing their activities through setting regulatory standards and monitoring compliance.

This was reiterated by the Human Rights Council in its Resolution 15/9 where States were reminded of their obligation to ensure that non-State service providers fulfill their human rights responsibilities throughout their work processes; integrate human rights into impact assessments as appropriate; develop effective organizational-level grievance mechanisms for users and refrain from obstructing access to State-based accountability mechanisms.

In its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, the Committee on Economic, Social and Cultural Rights adopted a general comment in which it addressed the following elements of privatization: (a) “privatization is not per se prohibited by the International Covenant on Economic, Social and Cultural Rights”; (b) “in areas such as the provision of water or electricity, education or health care where the role of the public sector has traditionally been strong ... private providers should ... be subject to strict regulations that impose on them so-called ‘public service obligations’”; (c) private sector provision might lead to less affordable and lower quality goods and services; (d) privatization should not result in the enjoyment of rights set out in the Covenant being “made conditional on the ability to pay”; and (e) since privatization “may result in a lack of accountability, measures should be adopted to ensure the right of individuals to participate in assessing the adequacy of the provision of such goods and services”.

In addition to this, and most importantly, all actions that have an impact on people’s access to water and sanitation services such as the decision to involve private sector participation must provide meaningful opportunities for engagement. The participation of all concerned must be active, free and meaningful. To enable genuine participation, this requires disclosure of adequate and sufficient information and actual access to information, referring in particular to the instruments that delegate service provision.

The decision for, or against, delegating service provision to non-State actors should always be taken in light of the local circumstances and it should be preceded by an ex ante assessment that carefully considers the potential impact on the realization of human rights, including the rights to water and sanitation.

Once that fundamental decision has been taken, the subsequent process of tendering, bidding and contract negotiation must also be transparent. The terms of reference and the final contract should be made available for public scrutiny and commenting. Any instrument delegating service provision, including contracts, must meet human rights standards and ensure that the right to water is realized in an economically, environmentally and socially sustainable way. While ensuring this is the primary obligation of the State, non-State service providers are expected to exercise due diligence to prevent adverse human rights impacts.

Throughout the operation of services and where private sector participation is involved, the obligation remains with the State to ensure that this involvement does not result in violations of the right to water. Regulation is of paramount importance in this respect. Any regulatory framework or contract must set specific standards for providers to comply with while ensuring that those standards mirror the normative content of the human right to water and sanitation.

In addition, accountability and access to effective remedies are essential for closing this circle, as service providers and the State can be held accountable for deteriorating services, unmet performance standards, unjustified tariff increases, inadequate social policies or other breaches. To ensure accountability, roles and responsibilities have to be clearly designated and made transparent.

Accountability can be achieved through judicial, quasi-judicial, administrative, political and social mechanisms at the national and international levels. Irrespective of the obligation of the State to establish accountability mechanisms and ensure access to these, service providers have a responsibility to put into place grievance mechanisms that allow individuals to bring alleged human rights abuses to their attention.