

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

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(Please use this reference in your reply)

1 April 2022

Excellency,

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 42/5.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **legislative and policy framework on the prohibition of water disconnections for those who are incapable of paying, in particular, in the context of COVID-19**.

Legal framework

Disconnection of water services because of failure to pay due to lack of means constitutes a violation of the human rights to safe drinking water and sanitation and in order to prohibit such disconnections, it is imperative that the human rights to safe drinking water and sanitation are explicitly recognized in the legal framework. In relation to the legal framework, I note the following information:

- The Constitution of Botswana 1966 (as amended to 2016) and the Water Act (Cap 34:01) of 1967 do not explicitly recognize the human rights to water and sanitation.
- The Waterworks Act (Cap 34:03) of 1962 with its amendment of 1983 stipulates that the water authority which is responsible for managing and supplying water services to every waterworks area has the discretion to diminish, turn off or divert the supply of water to any premises or place whenever any water charges have remained unpaid for 14 days after service (section 16). The role of the water authority is carried out by the Water Utilities Corporation, which is a parastatal organization, established by the Water Utilities Corporation Act (Cap 74:02) of 1970 with its amendment of 2011.
- Based on the information reviewed, there are no legal measures prohibiting water cuts for those who are unable to pay. Moreover, the legal framework does not include any provision to guarantee a minimum essential level of water supply.

It is of great concern that Botswana does not explicitly recognize the human rights to water and sanitation at the national level in its legal framework. The human rights to safe drinking water and sanitation - both the human right to water and the human right to sanitation - as components of the right to an adequate standard of living are essential for the full enjoyment of the right to life and all human rights as stipulated in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Botswana has yet not signed nor ratified. In this regard, I wish to reiterate Mr. Leo Heller's, my predecessor, recommendation that

Botswana commits itself to the international legal obligations on economic, social and cultural rights by signing and ratifying the ICESCR and its Optional Protocol (country visit report, A/HRC/33/49/Add.6, para. 26(g) and follow-up report, A/HRC/42/47/Add.5, paras. 10 to 13). Also, I note that in the first cycle of the Universal Periodic Review in 2008, Botswana indicated that “it would accede to the ICESCR when it is in a position to implement its provisions” (A/HRC/10/69, para. 17). The ratification of ICESCR and its Optional Protocol will provide a clear guidance on the normative content of the human rights to water and sanitation and related human rights principles which will assist Botswana in realizing those rights as well as other economic, social and cultural rights.

In addition, as your Excellency may recall, in 2015, the human rights to safe drinking water and sanitation were explicitly recognized by the UN General Assembly in its resolution 70/169, which “[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”.

Furthermore, I wish to reiterate that disconnection of water and sanitation 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 (Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15 (2002) (E/C.12/2002/11), para. 44a). Such retrogressive measure is incompatible with the international human rights obligations pertaining to the human rights to water and sanitation. Also, the African Commission on Human and Peoples’ Rights (Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, para. 92.k) recommends that States ensure that procedures take into account the individual's ability to pay and therefore disconnections for non-payment should not result in a person being denied access to a minimum amount of safe drinking water where that person proves that he or she is unable to pay for these basic services.

Policy implemented during the pandemic

The affordability of water and sanitation services and disconnections are inextricably linked, as in many instances the failure to pay for services leads to disconnection, which has been highlighted during times of COVID-19. In this regard, I note the following information relating to the policy implemented during the COVID-19 pandemic:

- On 16 March 2020, the acting Permanent Secretary to the President of Botswana published the first Public Notice (OPC 5/57/6 II (293)) to implement measures to prevent the transmission and spread of COVID-19. Subsequently, on 19 March 2020, in a press conference, the President stated that “the government and the Water Utilities Corporation will stop the disconnections of water as a response to the COVID-19”.

- On 25 March 2020, the Water Utilities Corporation implemented measures to improve water availability and minimize disruptions to water services including suspending all water disconnections and reconnecting all customers with existing water accounts.
- On 2 April 2020, the President declared a national state of emergency under section 17 of the Constitution of Botswana and stated that “the Government will ensure the continued availability of strategic supplies to Botswana. These will include [...] sufficient provision of water bowsers, trucks, water tanks [...]”. On the same day, the President published the Emergency Powers (COVID-19) Regulations, 2020 (Statutory Instrument No. 61 of 2020) under the Emergency Powers Act (Cap. 22:04). The Regulations stipulated that water services and sanitation and refuse removals services are “essential services” and water supplies, including chemicals and equipment required by the water sector are “essential supplies” (section 2). The national state of emergency has been extended several times since 2 April 2020 and ended on 1 October 2021.
- On 2 August 2020, the Water Utilities Corporation stated that it will not disconnect water services for customers due to non-payment during the lockdown of the Greater Gaborone Zone.

I welcome the above-mentioned initiative by the President to ensure continuous water services as essential services during the COVID-19 pandemic. I particularly welcome the initiative by the Water Utilities Corporation to minimize disruptions on water services by suspending water disconnections and providing reconnections of existing customers. Similarly, I welcome the announcement by the Water Utilities Corporation not to disconnect water services due to the non-payment during the lockdown in the Greater Gaborone Zone in August 2020. However, I express my deepest concerns about the lack of policies relating to water cuts for non-payment after 1 October 2021 when the national state of emergency ended, given that no further measures have been announced thereafter. I would like to highlight the importance of sustainable and continuous measures to provide water and sanitation services in the long-term, in particular, with the prolonged COVID-19 situation. In this regard, I would like to emphasize that the human rights to water and sanitation requires States to provide drinking water supply for each person which is sufficient and continuously available for personal and domestic uses (CESCR, General Comment No. 15 (2002) (E/C.12/2002/11), para. 12(a)).

Furthermore, I am particularly concerned about the absence of a policy to guarantee the provision of a minimum essential level of water supply during the ongoing COVID-19 pandemic. The adoption of such a policy is particularly important as access to safe and potable water and adequate sanitation are the underlying determinants of health, especially during the current efforts to curb the spread of the COVID-19 pandemic (CESCR, General Comment No. 14 (2000) (E/C.12/2000/4), para. 11). In the context of the COVID-19 pandemic, guaranteeing access to water and sanitation is the basis of prevention and can thus save the lives of many people, especially those in vulnerable situations.

Finally, I would like to stress that the above-mentioned concerns are heightened by the ongoing COVID-19 pandemic and the need for people, particularly those in vulnerable situations, to have access to water and sanitation in order to comply with the recommendation to wash their hands as a preventive measure against

COVID-19. Further, it should be noted that, both during the time that the COVID-19 pandemic persists and when it is overcome, disconnection of water services due to incapacity to pay constitute human rights violations that all States must avoid at all costs in accordance with their international human rights obligations.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the matters mentioned above.
2. In relation to section 2 of the Emergency Powers (COVID-19) Regulations, 2020, please provide information on measures taken to ensure water and sanitation services as essential services and supplies during the national state of emergency (from 2 April 2020 to 1 October 2021), and after 1 October 2021 when the national state of emergency ended.
3. In relation to the measures announced by the Water Utilities Corporation:
 - a. Please provide information of households that benefited from the measures to suspend water disconnections and reconnect water supply since the announcement of 25 March 2020.
 - b. Please provide information of households that benefited from the suspension of water disconnections for non-payment customers during the lockdown of the Greater Gaborone Zone from 12 June 2020 to 13 August 2020, and after the lockdown was lifted.
 - c. Please provide the above information, to the extent possible, disaggregated by race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.
4. Please provide information on legal remedies available to people whose water supply is cut off due to their inability to pay.
5. Please provide information on legal and policy measures taken to ensure the affordability of water services for those who are unable to pay their bills for reasons beyond their control, including unemployment and poverty, during and after the COVID-19 pandemic.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Pedro Arrojo Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation