

**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)

30 March 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 cannot pay, 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 Eritrea 1997 does not explicitly recognize the human rights to water and sanitation.
- The Eritrean Water Proclamation No. 162/2010 issued on 23 August 2010 stipulates that “the State shall exert all effort to ensure that every citizen exercises the right of access to basic supply of clean and safe water (article 20(1))” and “schemes shall be developed to subsidize the costs associated with the provision of basic water services for the disadvantaged segments of the society (article 20(2))”. In addition, the Eritrean Water Proclamation stipulates that “the use of water for domestic purposes shall have priority over any other water use rights (article 5(2))”.
- Based on the information reviewed, there are no legal measures prohibiting water disconnections 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.

While article 20(1) of the Eritrean Water Proclamation No. 162/2010 could be understood to recognize the right to water, it would be desirable to explicitly recognize this right as a human right: such recognition will provide clear guidance on the normative content of the human right to water and related human rights principles, which will assist Eritrea in realizing those rights. In addition, it is of great concern that the legal framework in Eritrea does not recognize the human right to sanitation. I wish to reiterate that the human right to water and the human right to sanitation are closely interlinked, but they are two distinct rights. 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 was ratified by your Excellency's Government in 2001.

In addition, as your Excellency will note, 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 was supported by Eritrea (A/70/489/Add.2, para. 142). Through that resolution, your Excellency's Government 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".

I would also like to point out that the lack of explicit recognition of the human rights to water and sanitation constitutes a major obstacle to their implementation and compromises their justiciability at the national level. Any individual or group whose rights to water or/and sanitation that have been violated should have access to effective judicial and other remedies in order to receive adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition (Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15 (2002) (E/C.12/2002/11), paras. 55 and 56). In this regard, explicit recognition of the human rights to water and sanitation should be reflected not only through adequate legislation but also through autonomous regulatory bodies ensuring that water and sanitation services are provided within the legal framework of human rights. Furthermore, the government of Eritrea should monitor and promote policy changes consistent with the legal framework of human rights.

I welcome the reference to the prioritization of water for domestic purposes as set out in article 5(2) of the Eritrean Water Proclamation. In this regard, I emphasize that water is required for a range of different purposes, besides personal and domestic uses, to realize many of the rights stipulated in the ICESCR. These purposes include water necessary to produce food (right to adequate food), to ensure environmental hygiene (linked to the right to sanitation and the right to health), to secure livelihoods (right to gain a living by work) and to enjoy certain cultural practices (right to take part in cultural life). In addition, there are other usages of and demands for water in for-profit industries such as the agribusiness sector. Nevertheless, as stipulated by the CESCR in its General Comment No. 15 (2002) (E/C.12/2002/11), priority in the allocation of water must be given to the right to water for personal and domestic uses (para. 6). Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the rights stipulated in the ICESCR (ibid).

In addition, I welcome the reference to the subsidies of the costs associated with the provision of basic water services for the disadvantaged segments of the society (article 20(2) of the Eritrean Water Proclamation). The human rights to water and sanitation require that the direct and indirect costs and charges associated with securing water must be affordable (CESCR, General Comment No. 15 (2002) (E/C.12/2002/11), para. 12). To ensure that water is affordable for all, States must develop appropriate pricing, tariff and subsidy structures. As one of the measures,

subsidies could apply to low-income households, to areas populated predominantly by low-income communities, or to small-scale services likely to be used by those living in poverty or on a low-income (A/HRC/30/39, paras. 56-60).

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 (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 COVID-19:

- On 30 March 2020, the Ministry of Health issued the Public Announcement (No.6) postponing the payment for electricity, water and telephone services.
- On 1 April 2020, the Government established a High-Level Task Force on COVID-19 to implement guidelines and measures in response to the COVID-19 pandemic. However, no specific guidelines related to water and sanitation services were announced. On the same day, a national lockdown was imposed for 21 days from 2 April to 22 April 2020. No further lockdown was announced thereafter.
- Based on the information reviewed, no specific measures have been taken by the Government to protect the population from water disconnections due to inability to pay or to guarantee access to minimum essential level of water supply during the COVID-19 pandemic.

I would like to express my deepest concern regarding the lack of policies to prohibit water disconnections for those who are unable to pay and to guarantee access to water services during the period of the COVID-19 pandemic, especially for people in vulnerable situations. Further, COVID-19 adds another layer of challenge for those people to access water and sanitation, which is essential to ensure sanitary recommendations to prevent contamination from COVID-19. In this regard, I would like to emphasize that the human rights to water and sanitation require States to provide a 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(1)).

Moreover, 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 water and 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 the subsidies of the costs associated with the provision of basic water services for the disadvantaged segments of the society, stipulated in article 20(2) of the Eritrean Water Proclamation:
  - a. Please provide information on measures implemented in practice to consider the disadvantaged segments of the society when providing basic water services during the COVID-19 pandemic.
  - b. Please indicate how the disadvantaged segments of the society are identified.
3. In relation to the policy to postpone the payment of water bills announced by the Ministry of Health on 30 March 2020, please provide disaggregated information by race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status from these households that benefited from the measures since 30 March 2020.
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.

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