

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

Ref.: OL SWZ 1/2022  
(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 the Kingdom of Eswatini 2005 and the Water Act 2003 (No. 7 of 2003) do not explicitly recognize the human rights to water and sanitation.
- The Water Services Corporation Act, 1992 (No.12 of 1992) establishes the Eswatini Water Services Corporation (EWSC) which is a State-owned entity and the sole provider of water services including water supply, sewage treatment and disposal, and raw water abstraction from boreholes in the urban areas. The EWSC charges tariffs to a consumer for its services (section 32) and may discontinue its services if the consumer fails to pay within fourteen days of its due (section 18).
- The EWSC's Customer Service Charter (2014) publishes billing details and the procedure of disconnection and reconnection. The EWSC will carry out disconnection of water services if the customer fails to pay any sums due after fourteen days from the statement due date in accordance with section 18 of the Water Services Corporation Act, 1992.
- 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 an essential level of water supply.

It is of great concern that the Kingdom of Eswatini does not explicitly recognize the human rights to water and sanitation in its legal framework. The human right to water and the human right to sanitation are two distinct rights 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 2004.

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".

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 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 States should monitor and promote policy changes consistent with the legal framework of human rights.

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 the COVID-19 pandemic:

- On 24 March 2020, the Prime Minister announced the partial lockdown from 27 March 2020 for 20 days and further extended the partial lockdown to 7 May 2020. Subsequently, on 27 March 2020, the Prime Minister announced

that water services are included as essential services, which should continue to operate during the partial lockdown.

- On 29 May 2020, the Government and the EWSC deferred the water tariff increase (which was initially scheduled to increase by 13.7 per cent on 1 April 2020) for a period of two billing months – April and May 2020. As of June 2020, the 13.7 per cent increase of water tariff was implemented.
- Following water supply measures were implemented by the Government during the COVID-19 pandemic:
  - o On 1 April 2020, the Prime Minister stated that the Government distributed forty water tanks with a capacity of 5,000 litres to various communities in the country and the priority was given to rural areas experiencing water shortages.
  - o On 15 April 2020, the National Emergency Task Team delivered 506 water tanks for handwashing to public spaces and communities.
  - o On 6 July 2020, high schools and tertiary institutions reopened with water tanks provided by the Government. The Government also rehabilitated 50 boreholes in communities without access to clean water.
  - o On 3 August 2020, the Government rehabilitated an additional 26 boreholes and arranged water supply schemes to provide clean water to more than 14,000 people.

I welcome the above-mentioned initiative by the Government to ensure continuous water supply by providing water tanks and rehabilitating boreholes for water supply across the country from April to August 2020. However, given that no additional measures have been announced after August 2020, I am concerned that a one-time exercise of delivering water services does not provide a sustainable measure for the population to have access to water and sanitation 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 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)).

Furthermore, I welcome the measures taken to defer increasing the water tariff for two billing months, April and May 2020, by the Government and the EWSC. However, in light of the economic challenges brought by the COVID-19 pandemic, the increase of 13.7 percent of water tariff from June 2020 could have resulted in people being unable to pay their bills for reasons beyond their control, including unemployment and poverty, during the COVID-19 pandemic.

Moreover, I am particularly concerned about the absence of a policy to guarantee the provision of an essential level of water supply during the COVID-19 pandemic. The adoption of such a policy is particularly important as water and sanitation are key 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 minimum 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 notwithstanding the persistence of the COVID-19 pandemic, 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 reference to the Prime Minister's announcement for the partial lockdown measures from 27 March 2020 to 7 May 2020, please provide information on measures implemented in practice to ensure the continuous operation of water services as essential services.
3. In reference to the list of water supply measures implemented by the Government from April to August 2020, please provide information:
  - a. Related to the distribution of forty water tanks on 1 April 2020, including the number of households benefited by the provision of water tanks and information of rural areas with water shortages which the priority of water service was given.
  - b. Related to the delivery of 506 water tanks on 15 April 2020, including the specific location and areas where 506 water tanks were delivered and the number of households benefited by the provision of water service.
  - c. Related to the rehabilitation of boreholes on 6 July 2020 and 3 August 2020 including the specific location and the current status of the water supply from the boreholes.
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