

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)

19 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 Federal Democratic Republic of Ethiopia 1994 does not explicitly recognize the human rights to water and sanitation.
- The Ethiopian Water Resources Management Proclamation No. 197/2000 enacted on 9 March 2000 stipulates that the use of water for domestic purposes has priority over and above any other water uses (article 7(1)).
- 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.

It is of great concern that Ethiopia does not explicitly recognize the human rights to water and sanitation 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 was ratified by your Excellency's Government in 1993.

In addition, 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 Ethiopia (A/70/489/Add.2, para. 144). 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 Ethiopia 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 7(1) of the Ethiopian Water Resources Management 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 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).

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 8 April 2020, the Council of Ministers approved “State of Emergency Proclamation Enacted to Counter and Control the Spread of COVID-19 and Mitigate Its Impact No.3/2020”. Following the approval and declaration of the state of emergency, on 11 April 2020, the Council of Ministers approved “State of Emergency Proclamation No. 3/2020 Implementation Regulation No.466/2020” which stipulates the prohibition of resigning from or delaying the work or function of institutions that provide basic services, including water and sanitary services (article 25 of the Regulation).
- Based on the information reviewed, no specific measures have been taken by the Government to protect the population from water disconnections due to incapacity to pay or to guarantee access to a minimum essential level of water supply during the COVID-19 pandemic.

I would like to express my deepest concerns regarding the lack of policies or measures to prohibit water disconnections for those who are unable to pay. The adoption of such policies 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 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)). It should be noted that notwithstanding the persistence of 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.

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 water and sanitation are key determinants of health, especially during the current efforts to curb the spread of the 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.

Moreover, I am particularly concerned about the absence of the aforementioned policies, given that access to water and sanitation is not universal in Ethiopia, with only 50 per cent of the population having access to basic drinking water services in 2020, according to the WHO/UNICEF Joint Monitoring Programme (JMP) for Water Supply, Sanitation and Hygiene. The JMP also reported that in 2020 only 13 per cent and 9 per cent of the population in Ethiopia had access to safely managed water supply and sanitation facilities, respectively. In view of the above, I am concerned that guaranteeing universal access to water and sanitation remains a challenge for Ethiopia to achieve the Sustainable Development Goals, specifically “Goal 6: Ensure availability and sustainable management of water and sanitation for all”.

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. Please provide information on how the prioritization of water for domestic purposes as stipulated in article 7(1) of the Ethiopian Water Resources Management Proclamation is implemented in practice.
3. Please provide any information relating to the measures taken and policies adopted to protect populations from disconnection of water services due to inability to pay during the COVID-19 pandemic.
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