

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)

12 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 the COVID-19 pandemic**.

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 Republic of the Gambia 1997 does not explicitly recognize the human rights to water and sanitation.
- The Gambia Public Utilities Regulatory Authority Act, 2001 established the Gambia Public Utilities Regulatory Authority (PURA) which regulates the public water and sanitation provider in the Gambia. The PURA published the Common Guidelines on Minimum Quality of Service Standards for Water and Sanitation (hereinafter referred to as "the Guidelines") in November 2008, which sets out service standards governing all stages of water and sanitation services. According to section 28.2(j) of the Guidelines, the water or sanitation provider in the Gambia, known as the National Water and Electricity Company (NAWEC) - a State-owned entity that provides electricity and water - may disconnect services for non-payment of a customer who has remained unpaid for a period of more than 35 days from the date of a bill delivered, provided that the NAWEC has notified the customer of the delinquency and has made a diligent effort to have the customer pay the bill. The notice of disconnection should be given to the customer at least seven days before the proposed disconnection date (section 28.4 of the Guidelines).
- However, according to section 28.3 of the Guidelines, the NAWEC is required not to disconnect services until the provider first offers the customer an opportunity to agree to a reasonable repayment (section 28.3(a)). The Guidelines also prohibits disconnection to the home of customers who are seriously ill or in a life-threatening situation as certified by a registered physician (section 28.3(b)). Disconnection should not happen on any local or national holiday, a day before any holiday, or at any time during which the business offices of the water or sanitation provider are not open to the public

(section 28.3(m)).

It is of great concern that the Gambia does not explicitly recognize the human rights to water and sanitation in its legal framework. The human rights to safe drinking water and 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 1978. 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 Gambia should monitor and promote policy changes consistent with human rights.

I wish to welcome the specific guidelines for prohibiting disconnections of water services to customers who are seriously ill or in a life-threatening situation as set out in section 28 of the Common Guidelines on Minimum Quality of Service Standards for Water and Sanitation. However, I note that the legal framework of Gambia does not stipulate the prohibition of water cuts due to an inability to pay. In this regard, 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 27 March 2020, the President of Gambia declared a state of emergency due to the COVID-19 pandemic and implemented the measures including the closure of all non-essential shops, public places, and worship places, the restriction of the maximum number of gatherings, among others. The state of emergency was further extended to 17 September 2020 and no additional extension of a state of emergency 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 incapacity to pay or to guarantee access to a minimum quantity of water during the COVID-19 pandemic.

I would like to express my deepest concern regarding the absence of policies to prohibit water disconnections for non-payment and to guarantee access to water services during the COVID-19 pandemic, especially for people in vulnerable situations in the Gambia. The adoption of policies relating to the provision of continuous water supply for those who are incapable of paying is essential to comply with the recommendation to wash hands as a preventive measure against COVID-19. 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)). Further, it should be noted that notwithstanding the persistence of the COVID-19 pandemic, the 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 an 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 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.

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 measures taken to implement prohibiting the disconnection of water services to the customer who is ill or in a life-threatening situation during the COVID-19 pandemic, as stated in section 28.3(b) of the “Common Guidelines on Minimum Quality of Service Standards for Water and Sanitation” published by the Gambia Public Utilities Regulatory Authority (PURA).
3. Please provide information on legal remedies available to people whose water supply is cut off due to their inability to pay.
4. 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