

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)

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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 Republic of Ghana 1992 with Amendments through 1996" does not explicitly recognize the human rights to water and sanitation.
- The Water Resources Commission Act, enacted on 30 December 1996, establishes a Water Resources Commission (WRC), which is responsible for regulating and managing Ghana's water resources as well as coordinating government water policies. The Water Use Regulations, 2001 which implements the Water Resources Commission Act stipulate that the priority of granting the water permit should be given to the prevailing water policy and domestic water use (section 7).
- As for urban water supply, the Public Utilities Regulatory Commission Act, 1997 established the Public Utilities Regulatory Commission (PURC) to regulate the Ghana Water Company Limited (GWCL), a State-owned entity to supply water services. To implement the Public Utilities Regulatory Commission Act, the Public Utilities Termination of Service Regulations (L.I. 1651) (hereinafter referred to as "the Regulations") was published on 29 January 1999. The Regulations stipulates that the water service provider, GWCL, may terminate the services (regulation 1). However, the water services provider is prohibited from terminating the service if the consumer lodged a complaint in respect of a disputed bill and the consumer continues to pay a reasonable amount of the bill (regulation 2). The written notice of disconnection should be given at least fourteen days before the disconnection of the service (regulation 3).
- The Regulations furthermore stipulates the specific conditions when the service provider is permitted to disconnect water services. For instance, the

water services provider may terminate the services only between 8:00 a.m. to 5:00 p.m. from Monday to Thursday. However, no termination is permitted on (i) a public holiday, (ii) at a time when the water services provider is aware of a safety issue to people or (iii) during emergency situations on or related to the premises of the consumer (regulation 4). Furthermore, the Regulations requires special protection for certain residential consumers. Specifically, if consumers are (i) of the age of sixty-five years or above, (ii) blind or disabled, or (iii) in the situation of a medical emergency, the public utility should contact those consumers and endeavour to agree on payment while the water services provider continues to provide the service for thirty days from the date of any scheduled disconnection (regulation 5).

- As for rural water supply, the Community Water and Sanitation Agency Act, 1998 enacted on 30 December 1998 establishes the Community Water and Sanitation Agency which is tasked to facilitate the provision of safe water and related sanitation services. To implement the Community Water and Sanitation Agency Act, the Community Water and Sanitation Agency Regulations, 2011 (L.I. 2007) was published on 14 December 2011 under section 18 of the Community Water and Sanitation Agency Act, 1998. According to section 7, a water facility for a community should be designed to supply water not less than twenty liters of water per day and located within a walking distance of not more than five hundred meters from the farthest house in the community. When drilling a borehole, the water supply from the borehole is required to have a minimum yield of ten liters per minute (section 8). The method of tariff collection is the pay-as-you-fetch at standpipes and monthly billing for individual customers (section 20).
- 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 intended to guarantee an essential level of water supply.

It is of great concern that Ghana 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 2000. 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 was supported by Ghana (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, Ghana should monitor and promote policy changes consistent with human rights.

I welcome the reference to prioritization of water for domestic purposes as set out in section 7.1(b) of the Water Use Regulations, 2001. 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 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).

Furthermore, I wish to welcome the Public Utilities Termination of Service Regulations (L.I. 1651) which specifically prohibits disconnection of water services on specific period and time. I also welcome the special protection for residential consumers who are older persons, persons with disabilities or in situation of the medical emergency, by allowing extra thirty days from the date of any scheduled disconnection. However, I note that the legal framework of Ghana 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 COVID-19:

- On 23 March 2020, the Imposition of Restrictions (Coronavirus Disease (COVID-19) Pandemic) Instrument, 2020 was published to implement the Imposition of Restrictions Act, 2020 (Act 1012), which imposes restrictions on the people in Ghana in order to ensure public safety, and health. According to section 4 of the Imposition of Restrictions Instrument, the essential services, including water supply services and waste management services, were allowed to continue operation.
- On 30 March 2020, the second Imposition of Restrictions (Coronavirus Disease (COVID-19) Pandemic) Instrument, 2020 was published to impose a 14-day lockdown in the major urban centers of Great Accra and Kumasi Metropolitan areas. The lockdown was further extended by the Imposition of Restrictions (Coronavirus Disease (COVID-19) Pandemic) (No.4) Instrument, 2020 and the lockdown was lifted on 20 April 2020. After April 2020, no further lockdown was imposed.
- On 5 April 2020, the President directed the Ghana Water Company Limited (GWCL) not to disconnect the water supply. In addition, the President announced that the Government is providing free water services by absorbing the water bills for all people in Ghana for the months of April, May, and June 2020. Furthermore, water tankers, both publicly and privately-owned, were mobilized to ensure the supply of water to all communities in vulnerable situations. The Government further extended free water services for all households across the country until the end of December 2020.
- On 3 January 2021, the President announced new measures that the customers of the GWCL whose consumption is not more than five cubic meters per month were not required to pay any bills for the months of January, February, and March 2021. After March 2021, no further measures were announced by the Government regarding free water services.

I welcome the above-mentioned announcement by the President directing GWCL not to disconnect the water supply and provide free water services from April to December 2020 to ensure a stable water supply to all people in Ghana during the COVID-19 pandemic. I also welcome the exemption of water bills for customers whose consumption of water is less than five cubic meters per month from January to March 2021. However, I express my concerns that such an exemption focused on the amount of consumption fails to take into account households with a large number of members in a family who could consume more than five cubic meters per month who would in turn be not eligible for the waiver of payment. The five cubic meters per month are equivalent to 5,000 litres per month, allowing households to consume 167 litres per day. Considering that the average household size in Ghana in 2017 was 3.8 persons based on the Ghana Living Standards Survey and the average water consumption is a range of 80 – 140 litres per capita per day according to estimation from the GWCL, the allowance of free water -167 litres per day - is not sufficient for those the size of households is larger than three. Consequently, this measure based on the water consumption fails to benefit the households with more than 3 members and therefore, does not address households in the socio-economically disadvantaged

group. In this regard, I would like to reiterate that 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 am particularly concerned about the absence of a policy to guarantee the provision of an essential level of water supply for those who are unable to pay during the ongoing COVID-19 pandemic, specifically after March 2021. 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.

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 relation to the free water services from April 2020 to March 2021:
 - a. To the extent possible, please provide disaggregated information related to sex, age, race, income, geographical location and other criteria of people who benefited from the free water services.
 - b. Please indicate whether there have been any water disconnections due to incapacity to pay after March 2021, when the free water services by the Government ended.
 - c. Please provide information on the measures taken to protect populations from disconnection of water services due to incapacity to pay after March 2021, when the free water services by the Government ended.

3. In relation to the delivery of water tankers to all communities in vulnerable situations as announced by the President on 5 April 2020:
 - a. To the extent possible, please provide disaggregated information related to sex, age, race, income, geographical location and other criteria of people who benefited from the mobilization of water tankers.
 - b. Please provide information on the specific location and areas of communities benefited by the mobilization of water tankers.
 - c. Please indicate how those communities were identified.
4. In relation to the waiver of payment for households whose consumption is less than five cubic meters per month, as announced on 3 January 2021 by the President, please provide information on those households that benefited from the waiver of payment for January, February, and March 2021. To the extent possible, please provide disaggregated information related to sex, age, race, income, and other criteria of people who were benefited from the waiver of payment.
5. Please provide information on legal remedies available to people whose water supply is cut off due to their inability to pay.
6. 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