

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

Ref.: OL LSO 1/2022  
(Please use this reference in your reply)

13 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 Lesotho 1993 (amended in 2018) does not explicitly recognize the human rights to water and sanitation.
- The Water Act, 2008 enacted on 30 December 2008 stipulates that domestic water use is given first preference over other water uses in case of conflicting water uses or insufficient quantity of water (section 5.2). According to section 6, the Minister of Water may restrict the use of water if there is a serious shortage of water for domestic purposes or in cases of emergency such as a disaster or hazard caused by climatic, hydrologic, tectonic, accidental, natural, or man-made events which may have an adverse effect or affect a large population.
- The Lesotho Electricity and Water Authority Act, 2011 establishes the Lesotho Electricity and Water Authority (LEWA), which has sole and exclusive power to regulate fees and tariffs (section 5.2 of the Lesotho Electricity and Water Authority Act). LEWA regulates Water and Sewerage Company (Proprietary) Limited (WASCO), a State-owned entity responsible for the provision of water and sewerage services to urban and peri-urban areas and operating and maintaining water and sanitation systems in those areas. According to one of the regulatory tools published by LEWA, the Urban Water Quality of Service and Supply Standards (QOSSS), WASCO can disconnect water and sewerage services to a customer for non-payment of accounts, tampering and or illegal connections (section 4.2 of QOSSS). Any disconnection in respect of non-payment of water accounts should be done at least ten working days after the due payment date, and WASCO should give customers two days of the written notice prior to disconnection of supply. Disconnections are required to be carried out in the morning business hours

between 7:30 a.m. and 1:00 p.m. to allow for payment for reconnections to be made in the afternoon business hours from 2:00 p.m. to 3:30 p.m. However, disconnections are not permitted on Saturdays, Sundays, and public holidays.

- 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 concern that Lesotho 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 1992. 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 Lesotho (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 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 Lesotho should monitor and promote policy changes consistent with the legal framework of human rights. In addition, I wish to reiterate my predecessor, the former Special Rapporteur, Mr. Leo Heller's recommendation from his visit to Lesotho from 4 to 15 February 2019, namely, recommending the Government of Lesotho to enact national legislation explicitly recognizing the human rights to water and sanitation and fully incorporating the normative content of the human rights to water and sanitation (A/HRC/42/47/Add.1, para. 82(a)). The former Special Rapporteur further emphasized that having a national law explicitly recognizing the human rights to water and sanitation is key to realizing those rights, in particular ensuring their justiciability (A/HRC/42/47/Add.1, para. 15).

Furthermore, I welcome the reference to the prioritization of water for domestic purposes as set out in section 5.2 of the Water Act, 2008. 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).

I note the Urban Water Quality of Service and Supply Standards published by LEWA, which states that WASCO is not permitted to disconnect water services specifically on Saturdays, Sundays, and any public holidays (section 4.2). However, I also note that the legal framework of Lesotho 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. Furthermore, I wish to highlight that the former Special Rapporteur recommended that the Government of Lesotho should establish a clearer procedure on disconnection of water services (A/HRC/42/47/Add.1, para. 82(g)(iii)), review the current disconnection practice and adopt a different procedure for those unable to pay water and sanitation tariffs for reasons beyond their control (A/HRC/42/47/Add.1, para. 63).

#### *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 27 March 2020, the Declaration of COVID-19 State of Emergency Notice 2020 (Legal Notice No.26 of 2020) was published to implement movement restrictions measures. The Notice defined essential services and required that those services continue to operate during the state of emergency (section 3). However, water and sanitation services were not explicitly listed as the essential services in the Notice.

- On 28 March 2020, the Prime Minister imposed the national lockdown from 29 March 2020 to 21 April 2020. The lockdown measure was extended until 3 February 2021. On 3 April 2020, the Prime Minister published the Public Health (COVID-19) Regulations, 2020 (Legal Notice No.30 of 2020). The Regulations stipulates that all business and other entities should cease operations during the lockdown period except for those involved in the provision of essential goods and services, including water and water supplies (section 3.6 and schedule 1).
- 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 concerns regarding the lack of policy or measures to prohibit water disconnections for those who are unable to pay. The adoption of policies relating to the provision of continuous water services for those who are incapable of paying during the pandemic 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)). Further, 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 the policies to prohibit water disconnections for those who are unable to pay as well as guarantee a minimum essential level of water supply, given that access to water and sanitation is not universal in Lesotho, with only 29 per cent and 48 per cent of the population in Lesotho having access to safely managed water supply and sanitation facilities, respectively in 2020, according to the WHO/UNICEF Joint Monitoring Programme (JMP) for Water Supply, Sanitation and Hygiene. In view of the above, I am concerned that guaranteeing universal access to water and sanitation remains a challenge for Lesotho to achieve the Sustainable Development Goals, specifically “Goal 6: Ensure availability and sustainable management of water and sanitation for all”. This is in line with the observation of the former Special Rapporteur during his visit that Lesotho faced significant gaps related to the safe access of the population to water and sanitation services at the household level (A/HRC/42/47/Add.1, para. 79). I wish to reiterate the former Special Rapporteur who emphasized that water, sanitation and hygiene must be placed on the national development agenda of Lesotho as a top priority (A/HRC/42/47/Add.1, paras. 19 and 79). The adoption of a policy to guarantee a minimum essential level of water supply 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, water and sanitation facilities and services must be affordable to individuals for all personal and domestic uses. To ensure that access to water and

sanitation is affordable for all, States must develop appropriate pricing, tariff and subsidy structures. My predecessor, the former Special Rapporteur, Mr. Leo Heller, addressed one of such measures to ensure the affordability of access to water and sanitation in his country visit to Lesotho. The former Special Rapporteur recommended that the Government of Lesotho undertake an in-depth analysis of the current tariff scheme in order to ensure that access to water and sanitation services is affordable for those in a vulnerable situation and those with limited economic capacity (A/HRC/42/47/Add.1, para. 82(g)(i)).

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 section 5.2 of the Water Act, 2008, is implemented in practice.
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 pandemic.
5. Please provide information on any measures taken by the Government to implement the former Special Rapporteur's recommendation from his official visit to Lesotho from 4 to 15 February 2019 regarding the establishment of a clearer procedure on disconnection of water services (A/HRC/42/47/Add.1, para. 82(g)(iii)).
6. Please provide information on any measures taken by the Government to implement the former Special Rapporteur's recommendation from his official visit to Lesotho from 4 to 15 February 2019 regarding the review of the tariff scheme in order to ensure that access to water and sanitation services is affordable for those in a vulnerable situation and those with limited economic capacity (A/HRC/42/47/Add.1, para. 82(g)(i)).

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