

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 May 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 Republic of Namibia 1990 (as amended to 2014) does not explicitly recognize the human rights to water and sanitation.
- The Water Resources Management Act stipulates that “equitable access for all people to safe drinking water is an essential basic human right to support a healthy productive life” and “access by all people to a sufficient quantity of safe water within a reasonable distance from their place of abode to maintain life and productive activities” (section 3). In addition, the Act establishes the Water Regulator which determines the tariffs of fees and charges that may be levied by a water services provider (sections 11, 12 and 13).
- The Local Authorities Act, 1992 (as amended to 2018) stipulates that the local authority council has the power to supply water to the residents in its area for household, business, or industrial purposes (article 30). More specifically, the local authority council may establish and carry on any waterworks and stop or limit the supply of water if necessary (section 34.1). For instance, according to section 36, the Local Authorities Act stipulates that if the health or lives of the residents in its area are threatened on account of a water shortage due to a condition of drought or a disruption of the water supply, the local authority council may prohibit, restrict, regulate, or control the supply

or use of water.

- The Model Water Supply Regulations (hereinafter referred to as “the Regulations”) 1996 - published in accordance with section 94 of the Local Authority Act, 1992 - regulates water supply, prevention of undue water consumption and water pollution. According to section 20 of the Regulations, the official in charge of controlling the supply of water may disconnect and remove a water connection at any premises if the contract has been terminated and no subsequent application has been made in the period of 90 days following such termination, or the building on such premises is demolished. The Regulations stipulate that if a customer fails to pay for the supply of water before the expiry of the last day for such payment specified in the account, the water service provider may suspend the supply of water until the amount due is paid, together with the charges for the restoration of supply (section 21).
- 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.

I would like to congratulate your Excellency’s government for explicitly recognizing the human right to water in section 3 of the Water Resources Management Act, 2013. However, it is of great concern that the Republic of Namibia does not explicitly recognize the human right to sanitation in its legal framework. I wish to reiterate that the human right to water and the human right to sanitation are closely interlinked but they are two distinct rights. 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 1994. In addition, I welcome the undertaking of Namibia at the third cycle of the Universal Periodic Review by supporting the recommendation to “Strengthen its efforts towards enhancing access to safe drinking water in rural and isolated areas and towards the realization of the right to sanitation”.

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 Namibia (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 human rights to safe drinking water and sanitation are closely related, but have features that warrant distinct treatment in order to address specific challenges in their implementation. The absence of human right to sanitation leads to a gap in the legislative framework. I am deeply concerned as inexistent or inadequate sanitation facilities as well as serious deficiencies in water management and wastewater treatment can negatively affect water provision and sustainable access to safe drinking water. In this regard, I wish to note that the resolution 70/169 which was adopted by consensus that “in progressively realising the human rights to safe drinking water and sanitation as well as other human rights, States should increasingly pursue integrated approaches and strengthen their water resource management, including by improving their wastewater treatment and by preventing and reducing surface and groundwater pollution”.

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 (Committee on Economic, Social and Cultural Rights (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 25 March 2020, the City of Windhoek directed water supplies that had been disconnected for non-payment to be reconnected for the following 30 days.

- On 28 March 2020, the “State of Emergency - COVID-19 Regulations: Namibian Constitution” Proclamation 9/2020 (as amended to Proclamation 13/2020) imposed the nationwide lockdown from 28 March 2020 to 4 May 2020. The Proclamation 9/2020 stipulated that the water supply, purification, desalination, sewerage, waste management and remediation activities are the “critical services” according to the section 10 and Annexure B. The Proclamation 9/2020 has been amended several times and no further lockdown was imposed after 4 May 2020.

- On 21 April 2020, the Minister of Urban and Rural Development published the “Directive Relating to Regional Council and Local Authority Councils: State of Emergency- COVID-19 Regulations” (Proclamation 104/2020), in accordance with sections 14(1) and (3) of “the State of Emergency - COVID-19 Regulations: Namibian Constitution” (Proclamation 9/2020). Section 2 of the Proclamation 104/2020 stipulated that the local authority councils must ensure that residents within its respective local authority areas with arrears and suspended water services have their water supply reconnected and those with no access to water supply are provided with access to potable water. Subsequently, on 25 March 2021, the City of Windhoek issued a public notice reminding clients whose accounts are in arrear to make payment arrangements to avoid the disconnection of water supply by 6 April 2021.

I would like to express my deepest concern regarding the lack of policies to prohibit water disconnections for those who are unable to pay, especially for people in vulnerable situations during the period of COVID-19 pandemic. COVID-19 adds another layer of challenge for those people to access water and sanitation, which is essential to ensure sanitary recommendations to prevent contamination from the 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.

Moreover, I am particularly concerned about the absence of a policy to guarantee the provision of a minimum essential level of water supply during the COVID-19 pandemic. The adoption of such a policy is particularly important as access to safe and potable water and adequate 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 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 how section 2 of “Directive Relating to Regional Council and Local Authority Councils: State of Emergency-COVID-19 Regulations” (Proclamation 104/2020) is implemented in practice. In particular, please provide disaggregated information by race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status of these households that benefited from the reconnection of water supply and provisions of potable water services since 21 April 2020.
3. Please provide information on how the announcement by the City of Windhoek dated 25 March 2020 to reconnect water supplies that had been disconnected for non-payment.
4. Please provide information relating to the measures taken and policies adopted to protect populations from disconnection of water services due to non-payment during the COVID-19 pandemic.
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