

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)

10 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 Federal Republic of Nigeria 1999 (as amended to 2011) does not explicitly recognize the human rights to water and sanitation.
- At the federal level, the Water Resources Act Cap. W2, Laws of the Federation of Nigeria, 2004 (as amended to 2016) promotes the optimum planning, development and use of Nigeria's water resources. According to section 2(a)(i), the Act stipulates the rights to take and use of water: "Any person may take water without charge for his domestic purpose or for watering his livestock from any water course to which the public has free access". Further, the Act states that "any person who has a statutory or customary right of occupancy to any land may take and use water without charge for domestic purposes, watering livestock and personal irrigation from the underground water source or any watercourse abutting on the bank of any watercourse" (section 2(a)(iii)). According to sections 14 and 15, the Federal Minister of Water Resources has power to impose fees, rates and charges in connection with the provision of any water service and can fix the maximum rates which may be levied in connection with the abstraction and use of water.
- At the state level, a total of 37 water agencies, namely, the State Water Agencies (SWAs) or the State Water Boards (SWBs) are responsible for urban, semi-urban, and rural water supply. One of the SWB, the Federal Capital Territory Water Board (referred to as "the Board") has powers to fix rates and charges payable by customers for water supplied, and diminish, withhold, or suspend, stop, turn off or divert the supply of water through or by means of any service or public fountain (article 9 of the Federal Capital Territory Water Board (Establishment) Act 2017). According to section 28 of the Federal Capital Territory Water Board (Establishment) Act 2017, the

Board can suspend or discontinue any supply where the payment of rates, dues, or changes in arrears. The same regulations that the SWA can suspend or discontinue water supply are stipulated in state laws, for instance, section 27 of the Enugu State Rural Water Supply and Sanitation Agency Law for Enugu State and section 42 of the Water Sector Law for Lagos State.

- At the local level, the 774 local government authorities and local government councils are responsible for providing potable water to rural communities. Based on the information reviewed, there are no legal measures prohibiting or regulating the disconnection of water supply at the local level.

It is of great concern that the Federal Republic of Nigeria 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, 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 "[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 Federal Republic of Nigeria should monitor and promote policy changes consistent with human rights.

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 1 April 2020, the Presidential Task Force on COVID-19 imposed the lockdown in Federal Capital Territory, Lagos, and Ogun States from 30 March 2020 for two weeks, by publishing the guidance for lockdown enforcement. The Guidance sets out that the Government Agencies involved in essential duties, including the Federal Ministry of Water Resources and Water Boards, should continue to operate their services during the lockdown. The lockdown was further extended by 4 May 2020, since then the national wide overnight curfew was imposed until 10 May 2021.
- 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 policy and measures to prohibit water disconnections for those who are unable to pay during the period of the COVID-19 pandemic, especially for people in vulnerable situations in Nigeria. The adoption of policies relating to the provision of continuous water services 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)). 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 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 (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.

Finally, I am particularly concerned about the absence of the aforementioned policies, given that access to water and sanitation is not universal in Nigeria, with 78 per cent having access to at least basic drinking water services and 43 per cent of the population having access to at least basic sanitation services, in 2020, according to the WHO/UNICEF Joint Monitoring Programme (JMP) for Water Supply, Sanitation and Hygiene. The JMP also provided detailed data on the extent of inequalities between rural and urban areas in terms of access to basic drinking water services. In 2020, the proportion of the urban population with access to basic water services was about 92 per cent against only 62 per cent in rural areas. This situation reflects the need to put in place a policy that is part of the fight against the COVID-19 pandemic and ensures access to drinking water for all without discrimination. In view of the above, I am concerned that guaranteeing universal access to water and sanitation remains a challenge for Nigeria 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 any information relating to the measures taken and policies adopted to protect populations from disconnection of water services due to non-payment.
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.

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