

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)

4 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 Provisional Constitution of the Federal Republic of Somalia, 2012, stipulates that "every person has the right to clean potable water" (article 27). However, the Provisional Constitution does not explicitly recognize the human right to sanitation.

The National Water Act, 2011, enacted on 28 March 2011, stipulates that the Ministry of Minerals and Water is responsible for setting general guidelines for water tariffs for customers (article 64). The Act furthermore stipulates that the protection of the rights of the poor to achieve social justice should be considered when setting water tariff (article 65.1). Moreover, the Government should provide the appropriate subsidy to facilitate the provision of water services to groups that are unable to pay the full cost of the service (article 65.4).

The Water Resources Act, 2018, enacted on 1 September 2018, defines the duties of the Puntland State Authority of Water, Energy and Natural Resources (PSAWEN), which is the Government agency to develop and manage water resources in Puntland (article 6). PSAWEN or a delegated agency is responsible for setting general guidelines for water fees (article 78.1) and is subject to the principles and procedure for defining specific water fees and payment (article 79). Article 79.1 stipulates that the rights of individuals with low-income in the community should be protected when defining water fees and payment methods, including the discounted rate for the poor and the provision of water free of charge in exceptional cases. The Government can

also impose any kind of appropriate amendment in order to give opportunities to poor consumer groups who cannot afford to pay the full fee for the service water that to be paid (article 79.4).

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.

While article 27 of the Provisional Constitution of the Federal Republic of Somalia recognizes the right to water, it would be desirable to explicitly recognize this right as a human right: such recognition will provide clear guidance on the normative content of the human right to water and related human rights principles, which will assist the Federal Republic of Somalia in realizing the human right to water. In addition, it is of great concern that the Federal Republic of Somalia 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 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 1990.

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 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”.

In addition, I welcome the reference to protecting the rights of individuals with low-income to when setting water tariffs as well as the discounted rate of water fees for the poor as stipulated in article 65 of the National Water Act and article 79 of the Water Resources Act, 2018, respectively. However, I regret that there is no explicit prohibition of water disconnection for incapacity to pay. 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 2 April 2020, the Prime Minister of the Federal Republic of Somalia addressed the COVID-19, its impact, and preventative measures including school closures and travel ban and instructed the Ministry of Finance to reduce taxes of basic food and medicines.

On 24 August 2020, the President launched a nationwide social safety net program, “Baxnaano”, to provide cash transfers to targeted poor and households in vulnerable situation. The Baxnaano program is funded with pre-arrears clearance grant from the International Development Association (IDA) of the World Bank as an integral part of the National Social Protection Policy, which is being carried out under the leadership of the Ministry of Labour and Social Affairs. According to a press release issued on Baxnaano official’s website on 17 June 2021, 200,000 chronically poor households with children under five years old will continue receiving cash transfers of US \$20 a month to help them access food, healthcare, and education. An additional 150,000 households in vulnerable situations impacted by the locust infestation will receive an emergency cash transfer of US \$60 dollars a month for six months

to help sustain their livelihoods. The support was intended to cushion households from the negative impacts of the COVID-19 pandemic.

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 Somalia. 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.

Furthermore, 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 Somalia, with 56 per cent having access to at least basic drinking water services and 39 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 79 per cent against only 37 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 Somalia 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 information on how the discounted rate of water fees for the poor and free water in exceptional cases to protect the rights of low-income individuals in the community when defining water fees and payment methods, as stipulated in article 79 of the Water Resources Act, 2018, are implemented in practice.
3. Please provide any 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.
4. Please provide information on legal remedies available to people whose water supply is cut off due to their inability to pay.
5. 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