

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)

6 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 the United Republic of Tanzania (1977) does not explicitly recognize the human rights to water and sanitation.
- The Water Resources Management Act, 2009 explicitly recognizes the human right to water. According to section 4.1(b) of the Water Resources Management Act, 2009, the Act stipulates that “promoting equitable access to water and the principle that water is essential for life and that safe drinking water is a basic human right”.
- The Water Supply and Sanitation Act, 2019 states that the objective of this Act is “[t]o promote and ensure the right of every person in Tanzania to have access to efficient, effective and sustainable water supply and sanitation services for all purposes” (section 4.1). The same Act establishes water authorities, known as the Water Supply and Sanitation Authorities (WSSAs), which are responsible for the provisions of water supply and sanitation services to urban areas (section 9.1(a)). Furthermore, according to section 23 of the Act, the WSSAs are required to take into account the existence and needs of the economically disadvantaged persons when WSSAs supply water and sanitation services to those persons and when setting tariffs and other charges for water supply and sanitation services (section 23.1). The economically disadvantaged persons are identified by the WSSAs in collaboration with the local government (section 23.2).
- The Water Supply Regulations, 2019, published on 8 November 2019 according to section 73 of the Water Supply and Sanitation Act, 2019, sets out rules for water supply and related services by the WSSAs. The

Water Supply Regulations stipulates that the WSSAs may cut off or withdraw the supply of water to any premises if any rates or charges in connection with the supply are not fully paid within thirty days after notification (section 54.1).

- The Water Supply and Sanitation Services (Licensing and Quality of Service) Rules (hereinafter referred to as “the Rules”), 2020, published on 9 October 2020 in accordance with section 29 of the Water Supply and Sanitation Act, 2019, governs the regulatory and granting of licensing related to the provision of water supply and sanitation services (section 2). In particular, section 51 lays out procedures related to the disconnection of water supply and sanitation services. In situations where a customer fails to pay bills after thirty days after receipt of the said bill (section 51.1), a licensee (a service provider) may disconnect the water supply service from the premises of a customer (section 51.3). The Rules furthermore stipulates the procedure for water disconnection and reconnection. According to section 57 of the Rules, in the case where the customer has failed to pay in full the bill, a service provider shall ensure that the measures that it takes are proportionate and not discriminatory and preceded by a written notice informing the customer of the intention to disconnect the service (section 57.2). The customer shall not be disconnected from the water service unless a notice of thirty days has been issued (section 57.4). Furthermore, the service provider shall not carry out any disconnection on Fridays after mid-day, Saturdays, and Sundays or during public holidays (section 57.3).
- 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 an essential minimum water supply.

I would like to congratulate Tanzania for explicitly recognizing the human right to water in the Water Resources Management Act and recognizing the human right to water and sanitation as one right in the Water Supply and Sanitation Act. 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 1976.

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 “[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 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 the 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 resolution 70/169 which was adopted by consensus that “in progressively realizing 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 welcome the Water Supply and Sanitation Services (Licensing and Quality of Service) Rules, 2020 which specifically prohibits disconnection of water services on Fridays after mid-day, Saturdays, and Sundays or during public holidays (section 57.3). However, I note that the legal framework of Tanzania 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 (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 8 June 2020, the former President declared the country “coronavirus-free” and since then, the Government stopped the release of COVID-19 data, such as case numbers and deaths and guidelines or restrictions except the quarantine requirement for people who tested positive when entering the country. In September 2021, the Government restarted reporting limited aggregated weekly numbers to the World Health Organization (WHO) on COVID-19 and issued guidelines to promote mitigation measures such as handwashing, masks wearing and social distancing.

- 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 essential level of water supply during the COVID-19 pandemic.

I would like to express my deepest concern regarding the absence of policies to address the COVID-19 pandemic in general and, in particular, policies to prohibit water cuts for those who are unable to pay during the period of the COVID-19 pandemic, especially for people in vulnerable situations in Tanzania. The adoption of policies relating to the provision of continuous and a minimum quantity of basic water supply for those who are incapable of paying during the COVID-19 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 a 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(1)).

Furthermore, I am particularly concerned about the absence of the above-mentioned policies, given that access to water and sanitation is not universal in the United Republic of Tanzania. According to the WHO/UNICEF Joint Monitoring Programme (JMP) for Water Supply, Sanitation and Hygiene, around 61 per cent of the population had access to basic drinking water services and 32 per cent had access to basic sanitation services in 2020. The JMP also provided detailed data on the extent of inequalities between rural and urban areas in terms of access to water. In 2020, the proportion of the urban population with access to basic water services was about 89 per cent against only 45 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 the United Republic of Tanzania to achieve the Sustainable Development Goals, specifically “Goal 6: Ensure availability and sustainable management of water and sanitation for all”.

Moreover, I am particularly concerned about the absence of a policy to guarantee the provision of a minimum essential level of water supply for those who are unable to pay during the ongoing COVID-19 pandemic. 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, both during the time that the COVID-19 pandemic persists and when it is overcome, 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. Please provide any information relating to the measures taken and/or policies adopted to protect populations from disconnection of water services due to non-payment during the COVID-19 pandemic.
3. In relation to the legal framework in Tanzania:
 - a. Please provide information on how the right of access to basic water supply and sanitation services, stipulated in the Water Resources Management Act, 2009 and the Water Supply and Sanitation Act, 2019 are implemented in practice and what measures exist to guarantee the enjoyment of the human rights to water and sanitation of marginalized groups and those in most vulnerable situations.
 - b. In relation to section 23 of the Water Supply and Sanitation Act, 2019:
 1. Please provide information on measures implemented in practice to consider the existence and needs of the economically disadvantaged persons when supplying water and sanitation services.
 2. Please provide information on how the economically disadvantaged persons have been identified during the COVID-19 pandemic.
 3. Please provide information on how the WSSAs or the local government monitored the access to water of economically disadvantaged persons during the COVID-19 pandemic.
 - c. In relation to section 57 of the Water Supply and Sanitation Services (Licensing and Quality of Service) Rules 2020, please provide information on how the WSSAs or the local government ensures that the measures taken are proportionate and not discriminatory in situations where the customer who has failed to pay in full the bill.
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 pandemic.

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