

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)

23 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 Zambia as amended in 2016 does not explicitly recognize the human rights to water and sanitation.
- The Water Resources Management Act, 2011, enacted on 18 April 2011 establishes the Water Resources Management Authority which has policy, advisory, monitoring, and supervisory functions as defined in section 8. Section 6 of the Water Resources Management Act stipulates that “water is a basic human need, and as such domestic and non-commercial needs shall enjoy priority of allocation use.”
- The Water Supply and Sanitation Act, 1997, enacted on 14 November 1997, establishes the National Water Supply and Sanitation Council (NWASCO), which is responsible for regulation of water supply and sanitation services providers. NWASCO published the “Guidelines on Required Minimum Services Level” in December 2000, in accordance with section 4 of the Water Supply and Sanitation Act. According to section 4 of the Guidelines, customers are required to pay bills within two weeks of the delivery of the bill. The bill serves as a disconnection notice, and water and sanitation services providers may disconnect any customer who fails to pay within two weeks of a bill being delivered. Illegally connected customers will also be disconnected and penalized.
- 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 welcome the reference to the prioritization of water for domestic and non-commercial needs as set out in section 6 of the Water Resources Management Act. 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 Committee on Economic, Social and Cultural Rights (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*).

However, it is of great concern that Zambia has not domesticated the international human rights treaties to which it is State party, including the ICESCR and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and as such, it does not explicitly recognize the human rights to water and sanitation in its legal framework. In this regard, I am aware that the 2016 Constitutional Reform process aimed to include economic, social and cultural rights in the Bill of Rights, however, the referendum to approve this measure did not pass. As Zambia continues to pursue Constitutional Reform, it is critical that the Bill of Rights be expanded to protect these rights. In this regard, I would like to reiterate that 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 1984. 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). 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, Zambia 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. Further, 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 13 March 2020, the Minister of Health declared “COVID-19” a “notifiable infectious disease” by issuing the Public Health (Notifiable Infectious Disease) (Declaration) Notice, 2020.
- On 19 March 2020, the Minister of Water Development Sanitation and Environmental Protection directed 11 water services providers for urban areas (collectively known as “Commercial Utilities”) in the country not to disconnect water services for customers who have not settled their bills to ensure people continue to access water during the COVID-19 pandemic. On 28 June 2020, the Minister of Water Development, Sanitation and Environmental Protection stated that the non-payment of bills affected operations of Commercial Utilities after the announcement of the prohibition of water disconnections for non-payment measures on 19 March 2020. The Minister stated: “when we said that commercial utility companies will not disconnect people for failure to pay service bills, we did not say you should not pay bills”.
- On 1 May 2020, the Permanent Secretary of the Ministry of Water Development, Sanitation and Environmental Protection announced that more than 10,000 customers who had their houses disconnected from the water supply before the outbreak of the COVID-19, have been reconnected.
- On 18 January 2021, the National Water Supply and Sanitation Council (NWASCO) called on all Commercial Utilities to ensure that acceptable service delivery should be maintained amidst the COVID-19 pandemic. The acting director of NWASCO stated that “the Utilities should ensure that water supply is consistently made available to all the places with minimal water supply interruptions and that supplied water is meeting the national drinking water standards to avert any waterborne disease outbreaks in

vulnerable areas during the Covid-19 pandemic”.

I welcome the above-mentioned initiative by the Minister of Water Development Sanitation and Environmental Protection directing the Commercial Utilities not to disconnect water services for non-payment during the COVID-19 pandemic. I also welcome the reconnection of water supply for more than 10,000 customers across the country as announced by the Permanent Secretary of the Ministry of Water Development, Sanitation and Environmental Protection on 1 May 2020. While I note the prohibition of water disconnections for non-payment and reconnection of water supply measures, I would like to express my concern regarding the lack of policies to prohibit water disconnections for those who are unable to pay, especially for people in vulnerable situations in Zambia. I would like to highlight the importance of sustainable and continuous measures to provide water and sanitation services in the long-term, in particular, with the prolonged the COVID-19 pandemic. 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 Zambia, with 65 per cent having access to at least basic drinking water services and 32 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 87 per cent against only 48 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 Zambia 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 prioritization of water for domestic and non-commercial needs, stipulated in section 6 of the Water Resources Management Act, 2011, is implemented in practice.
3. In relation to the announcement on 19 March 2020 by the Minister of Water Development Sanitation and Environmental Protection to prohibit water disconnections for non-payment:
 - a. Please provide information on how the prohibition of water disconnections for non-payment was implemented in practice.
 - b. Please provide disaggregated information by race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status from people who benefited from the prohibition of water disconnection for non-payment since 19 March 2020.
4. Please provide disaggregated information by race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status from people who were benefited from the reconnection of water supply as announced by the Permanent Secretary of the Ministry of Water Development, Sanitation and Environmental Protection on 1 May 2020.
5. 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.
6. Please provide information on legal remedies available to people whose water supply is cut off due to their inability to pay.
7. 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