

## Mandate of the Special Rapporteur on the human right to safe drinking water and sanitation

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the human right to safe drinking water and sanitation, pursuant to Human Rights Council resolution 24/18.

In this connection, I would like to bring to your attention information I have received concerning the situation of the human rights to water and sanitation in Lagos related to: **longstanding retrogression in drinking water services; unregulated and unaffordable water charges; related risks to health and environmental impacts; unaccountable governance and development measures; and a lack of transparency and meaningful participation in the governance of the water sector.**

According to the information received:

### *Longstanding retrogression in drinking water services*

The water supply and sanitation services have reportedly worsened since the first two decades of Nigeria's independence in 1960. In 1985, when demographic growth began sharply increasing in Lagos (the population has grown from 5.8 million in 1985 to 21 million in 2016), an appraisal performed in order to enter into an agreement with the World Bank reportedly assessed the total coverage of the Lagos metropolis at 47% for water services; this includes both household connections and some community standpipes. In 2001, in a Project Information Document prepared by the World Bank for the Nigeria-Lagos Water Sector Restructuring Project, it was reported that the Lagos State Water Corporation (LWSC) directly supplied water to 30% of end users. In 2013, the State of Lagos reported in its Lagos State Water Sector Policy that network coverage reached about 44%, but this in fact referred to areas covered by the existing LWSC network, and not of the entire State of Lagos. Taking this and various other debilitating factors into account, including aged infrastructure and tremendous water losses (estimated at 80%), the State of Lagos estimated that actual access to water supplied by the LWSC was available to less than 10% of the population (i.e. 2.1 million people) as of 2013.

Moreover, data from the International Benchmarking Network for Water and Sanitation Utilities (IBNET) shows that water production in Lagos between 2011 and 2013 dropped from 49.76 to 42.14 litres per capita per day (lcpd), a 15% drop.

Erratic power supply is one of many well-known causes of irregular service provision, and non-revenue water is responsible for enormous water losses in a

system characterized by increasingly aging and inoperative infrastructure and widespread clandestine use. With an estimated total demand of 540mgpd, the LWSC estimates that its current deficit stands at 330 mgpd<sup>1</sup>.

Furthermore, it is reported that LWSC's service provision has worsened due to accumulating infrastructure-related problems (for example, more than half of suction pumps at the Akute water production facility are out of order, the facility's control panel has been declared dangerous, and mechanical devices at the Akute dam are on the verge of total collapse). Also, as a recent World Bank progress report in 2016 on a major water-related grant in Lagos reveals, service provision also suffers due to a reduced number of staff without replacement (for instance, only 8 staff are reported to be working at the Akute facility although it was designed to have 40).

It has also been reported that for at least a seven-month period spanning 2015 and 2016, the Iju and Adiyin waterworks had halted operations due to a lack of essential chemicals required for water treatment. Although it has been suggested that these chemicals were not available due to the non-disbursement of budgeted funds, a statement has allegedly not been made to the public despite requests from the civil society for the LWSC to provide explanations. Moreover, the University of Lagos allegedly closed its doors on April 8 2016 due, at least in part, to the interruption of water supply within the University grounds. While reports suggest that this interruption was due to an interruption in the electricity services used to power the water supply system, an explanation has also not allegedly been provided to the public on this subject.

#### *Risks to health and environmental impacts*

In response to the lack of available water supply, unskilled borehole drilling by individuals and unregulated companies has become very common in Lagos over the past several decades for users' personal requirements or for market exploitation. It is reported that a ban on borehole drilling was recently instated. The widespread practice of sinking boreholes has led to serious health and environmental concerns. Saline water intrusion in groundwater is a growing problem due in part to the ever-increasing extraction of water via boreholes. Moreover, the drilling of boreholes close to soakaways has apparently been detected on a large scale, which is known to increase the risks of users drinking unsafe water.

In addition, unregulated access to water supply networks is also apparently a very common practice for Lagosians. Unregulated access to networks can imply unskilled intervention in water supply infrastructure that exposes the user and the general public to risks due to the possible contamination of the network's water

#### *Unregulated and unaffordable water charges*

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<sup>1</sup> "LASG committed to community driven development", 20/05/2016, <http://lagoswater.org/lwcweb-launch.php?p=1021>

Among the households receiving service from the LWSC, over 80% are billed for their water consumption on a flat rate and more than 50% of users are reportedly not formally registered in the LWSC's databases. The users who do not receive service from the utility (effectively estimated to be more than 90% of the population) mostly obtain water from boreholes or small-scale, private water vendors. Many of these vendors are tolerated but are not effectively regulated by the State. According to the Lagos State Development Plan (2012-2025), private water vendors can allegedly charge rates up to 500 times what is charged by the Lagos Water Corporation.

It is reported that the private water vendors have significantly raised the price of water to account for their increased costs in paying for the fuel that drives their water pumps. Many people are said to pay NGN 50 per gallon of water (approx. 0.18 USD), a two-fold increase from previously normal prices of NGN 20-30/gallon. At this rate, to have access to only 20 litres of water per day one would have to pay approximately NGN 250, amounting to a monthly expense of NGN 7,500 per person. Considering the average household size in Lagos of between four and six members, it could cost NGN 37,500 per month to provide 20 litres of water to all members of a household made up of five members, a cost virtually twice the amount of the minimum monthly wage of NGN 18,000/month. In reality, there is a significant portion of the population that suffers from poverty and unemployment in Lagos State and does not earn nearly as much. In order to have access to water at a more affordable price, many such people reportedly recur to practices such as walking long distances to procure water from less expensive vendors or collecting water from burst pipes, unmonitored boreholes, and other unsafe sources such as unprotected dug wells.

On multiple occasions, the State of Lagos and the LWSC have reportedly been informed by a variety of stakeholders that the flat rate that has been charged for water supply services over the past 15 years (NGN 45/m<sup>3</sup>) is too low to allow for adequate cost viability. Various reports have also recommended applying a more nuanced tariff scheme (often, a metered system) aiming at improving water services to all, including the unserved and underserved. The current Lagos State Water Master Plan (2010-2020) is an example of a programme that embodies some of these objectives. However, the Master Plan allegedly follows historical trends for such programmes by placing more emphasis on increasing water production than on measures to ensure access within a short time frame to safe and affordable drinking water for millions of unserved users. The public authorities that have long insisted upon the application of full cost recovery, including the recently created Lagos State Water Regulatory Commission, have also allegedly not outlined special conditions to account for and protect low-income individuals and families that may be compromised by excessive financial burden in a future scenario wherein they receive piped water from the LWSC.

*Unaccountable governance and policy implementation*

Since the turn of the century, several new policies and institutions have been created at various governmental levels with a view to tackling specific aspects of these sectors. Some cases of advancement have been reported, such as the proliferation of multi compartment ventilated improved pit latrines in various public places. However, as a whole, it is reported that the array of uncoordinated efforts, including the creation of new government offices, development plans, and policies, has reflected an inefficient and unaccountable use of public funds. For example, access to public sanitation facilities has perhaps increased but improvements in waste management, such as those programmed in the Lagos State Sustainable Sewage and Sanitation Strategy (2010-2015), have yet to follow suit. Similarly, while considerable investments in the water sector have focused on increasing and maintaining water production, there has reportedly not been a considerable increase in the number of households connected to water networks. Therefore, the mostly unregulated small-scale private suppliers continue to provide the majority of the public with expensive and environmentally harmful water and sanitation services; the State continues to burden the taxpayer by subsidizing the public service provider and accruing foreign debt to make poorly directed and managed investments in these sectors; while users' access to these services has not improved—or has even worsened—over the past several decades.

The Summary of Action Memoranda, submitted by the Federal Ministry of Water Resources to Nigeria's 22<sup>nd</sup> National Council on Water Resources in November 2013, provides a few concrete examples of assessments from Nigerian authorities regarding the unaccountable use of public funds in these sectors:

- There exists at least 25 incomplete or abandoned water supply projects with sponsorship from the Federal Government of Nigeria aiming to increase access to potable water and reduce water borne diseases;
- Many boreholes drilled with sponsorship from public authorities were not properly constructed and were not handed over properly to end users;
- Impact assessments of these borehole projects showed non-viability regarding the value for money spent by the government;
- Many borehole projects are not designed to sanitary standards due to lack of proper supervision, hence, many borehole projects do not have incorporated treatment measures for hygiene concerns;
- Of all boreholes built privately or with public funds, most of those that are abandoned are government-owned projects.

*Lack of transparency and meaningful participation in governance of the water sector*

The categorical fashion in which the political agenda for the water and sanitation sector has, for decades, encouraged public sector partnerships with private enterprises has reportedly evoked preoccupations in significant portions of Nigeria's civil society. In the Lagos State Water Sector Policy (2013), Article 3.3 on the role of government in the sanitation sector specifies that it should “[e]ncourage Public-Private Partnerships in wastewater management”. Further,

Article 5.4 on Water Supply General Guiding Principles and Philosophies states that “The private sector should be encouraged to participate in service provision and delivery at urban and rural levels through various [Private Sector Participation] PSP options like management contracts, service contracts, supply contracts, while the assets of the water facilities should remain publicly owned.” Moreover, the passage of the Lagos Water Sector Law in 2004 also included provisions aimed at favouring private sector participation in the water sector; article 6 states that the Functions of the [Lagos State Water] Corporation shall be to “c) identify and implement projects for the provision of water services which may be undertaken with private sector participation”... and “d) ensure the supply of potable water in the State, either pursuant to project agreements with private participants, or by raising necessary funds through the capital market.” This law was reportedly passed hurriedly and in secrecy, despite opposition to it by several civil society groups.

It is alleged that negotiations with many international donors and private entities have occurred to this effect in secrecy from the public, without the participation of interested stakeholders from civil society. Also, it is reported that outside advisory services have been contracted, for example from the World Bank’s International Finance Corporation, without the consultation of civil society members. Moreover, as observed in the LWSC’s Stakeholder/CSO Interaction Policy, the Corporation has reportedly not sought to include the civil society’s possibly diverging opinions in important decision-making processes affecting their water and sanitation services, but has instead merely recognized the importance of having civil society’s compliance with the objective of adopting specifically predetermined measures, such as the development of Public Private Partnerships (PPPs). This is illustrated notably through the institutionalization of these objectives into legal spheres, such as the Lagos State Public-Private Partnership Office and the Lagos State Public-Private Partnership Law. It is reported that civil society stakeholders have long expressed their concern to public authorities regarding the possible negative effects of creating PPPs or private concessions for water supply services, including typically austere management measures, increasingly expensive bills, and the attendant impacts on low-income individuals and families who may be denied service if unable to pay their water and/or sanitation bills.

While we do not wish to prejudge the accuracy of these allegations, we wish to express concern that, according to the information received, for several decades water and sanitation services have been governed in a non-transparent and unaccountable fashion by the public authorities of Lagos, unnecessarily obstructing the progressive realization of the human rights to water and sanitation for millions of people in a megacity of rapidly growing proportions.

On the one hand, the relevant authorities have for many years maintained an inadequate, low, flat rate billing scheme for piped water services, which has been non-conducive to recovering sufficient funds for systems operation and maintenance, and has

effectively produced discriminate outcomes by providing disproportionate subsidies to a small portion of the Lagos population. On the other hand, numerous avoidable costs have long existed in the state's public water supply services, including the considerable rate of water losses in the LWSC's piped network system and the accumulated costs related to essential infrastructure that has been poorly maintained or abandoned in the past. These practices may be contrary to human rights principles of sustainability and equality and non-discrimination.

Serious concern is raised that the current course of action in this context, on the one hand, continues to drain public resources and, on the other, prolongs a situation of precarious access to water in which people must rely on increasingly expensive alternatives to obtain essential quantities of water, of which the quality is commonly poor and unmonitored. This raises a question of affordability and quality of services, which are essential elements of the human rights to water and sanitation. Moreover, concern is also expressed at longstanding policy intentions such as water meter implantation coupled with full cost recovery intentions, and other mechanisms such as prepaid meters. When unaccompanied by clear policy measures to protect low-income individuals and families, such measures risk passing on excessive financial burden and therefore unaffordable services to already disadvantaged individuals.

Furthermore, serious concern is expressed concerning the environment of non-participation, non-transparency and secrecy within which public policy development regarding the water and sanitation sectors has been carried out.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention. I would therefore be grateful for your observations on the following matters:

1. What measures have the central and local governments taken to prevent retrogression of water services in Lagos?
2. What measures are in place to monitor the water quality for the millions of people that drink water from boreholes?
3. Please provide information on the ways in which the public authorities have facilitated the meaningful participation of civil society in the development of the water and sanitation sectors.
4. How have the public authorities ensured that the longstanding policy focus on the development of public-private partnerships and private concessions in these sectors continues to reflect an agenda that is compatible with the desires of a plurality of stakeholders, including civil society?
5. Please provide information on all specific protections that exist in the legal and policy frameworks regarding access to water and sanitation services by low-income individuals and families.

6. Please provide information on safeguards to respect, protect and fulfil the human rights of all persons, particularly of low-income individuals and families, in the event of any changes in the management of water and sanitation services, notably based on public-private partnerships or private concessions.

7. Please provide information on the tariff scheme that has been maintained for more than 15 years by the Lagos State Water Corporation and—if applicable—the existing intentions to reform this scheme. Please include information on how tariffs will be determined for low-income populations in possible future plans for the water and sanitation sectors.

I would appreciate receiving a response within 60 days.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Léo Heller

Special Rapporteur on the human right to safe drinking water and sanitation

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, I would like to refer your Government to the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Nigeria in 1993; in particular article 25 of the UDHR, and article 11 of the ICESCR, which provide that everyone has the right to an adequate standard of living.

The human rights to water and sanitation are essential human rights set forth in the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. Article 11 of the ICESCR consecrates the right to an adequate standard of living and article 12 of the ICESCR provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights, in its General Comments 14 and 15, establishes water as an underlying determinant of health and as a human right, derived from the right to an adequate standard of living. UN Human Rights Council in its resolution 15/9 of 2010 and UN General Assembly in its resolution 64/292 of 2010 explicitly recognized the human right to safe drinking water and sanitation.

Furthermore, the UN General Assembly in its resolution 70/169 of 2015 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”.