



# Disconnected:

*How household water shutoffs in the United States during the COVID pandemic violate the human right to water*

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## **About the Authors:**

This report is the product of the Program on Human Rights and the Global Economy, with input from the interdisciplinary research team for the “Public Health and the Right to Affordable Water” project.

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## I. Water Access During a Pandemic

Like many Americans during the coronavirus (COVID-19) global pandemic, Joshua Haynes was forced to choose between risking his family's health and protecting their economic security.<sup>i</sup> In April 2020, staying home under the Tennessee governor's orders and not qualified for unemployment benefits as a contract employee, Haynes – a father of three -- was left with no income.<sup>ii</sup> Haynes managed to get the money to pay the family's overdue water bill, but when he called the utility, they informed him of an additional \$70 reconnection fee, which he could not afford.<sup>iii</sup> The utility shut off his water.<sup>iv</sup> After a week without any running water for himself, his wife and their children, Haynes went back to his construction job despite the state's lockdown order.<sup>v</sup> His story is not unique. Even during the height of the pandemic, national data analyzed by Food and Water Watch showed that about forty-percent of the country relied on water utilities that continued the practice of shutting off water for non-payment.<sup>vi</sup>

Like Haynes, many have felt the pressure to put their health at risk by returning to in-person work to pay their bills – if they are lucky enough to find employment. For others, going back to work has simply not been an option. Of the 22 million jobs lost between February and April of 2020, only half were recovered by September.<sup>vii</sup> The unemployment rate in the United States dropped from 14.7 percent in April to 7.9 percent in September, but many workers who were called back to work are still experiencing reduced hours or reduced demands for services.<sup>viii</sup> Underemployment caused widespread decreases in household income, with one in four adults reporting difficulty paying bills during the pandemic.<sup>ix</sup> With no government guarantee of uninterrupted water service, the inability to make a payment in some jurisdictions can result in the termination of their water and sewer services.<sup>x</sup>

The national guidelines issued by the federal Centers for Disease Control and Prevention (CDC) during the COVID-19 pandemic maintain that access to clean water and safe sanitation is imperative to prevent further spread of the virus.<sup>xi</sup> The CDC recommends that everyone wash their hands with soap and water often— an impossibility for those without access to basic household water.<sup>xii</sup> Though it is a critical form of preventative health care, clean water is unavailable in some households because water providers are shutting off water delivery during the pandemic to residential customers who cannot pay their water bills.<sup>xiii</sup> Furthermore, very few utilities have taken steps to reconnect thousands of households where water service was suspended for nonpayment prior to the pandemic.<sup>xiv</sup>

Communities with high disconnection rates are also most vulnerable to high rates of COVID-19 infections.<sup>xv</sup> Low-income communities with high poverty rates tend to experience the most disconnections.<sup>xvi</sup> Data also suggests that these same communities have larger shares of frontline workers, access to only lower-quality health care, and more crowded homes—all factors increasing vulnerability to the COVID-19 virus.<sup>xvii</sup>

Water is a human right under international human rights law, and must be available even to those who cannot afford to pay, yet the United States allows utilities to deny this basic service. The COVID-19 pandemic underscores the importance of ready access to water, but the United States government's response to the pandemic has fallen short. Congress failed to enact a national moratorium on residential water disconnections, meaning that decision making authority for shutoffs and moratoriums remained at the state and local level.<sup>xviii</sup> Only sixteen governors ordered statewide moratoria, and even fewer required water reconnections for households whose service had been previously suspended.<sup>xix</sup> Not only does the federal government permit the dangerous practice of water shutoffs during a pandemic, but there are also no federal programs to assist low-income residents with the payment of water and sewer bills.<sup>xx</sup>

A few state governors have taken firm action by protecting statewide water access for all households during COVID-19. For example, Michigan Governor Gretchen Whitmer signed an Executive Order barring utility shutoffs and requiring the reconnection of all previously disconnected homes, granting \$2 million to cover the fees and costs incurred.<sup>xxi</sup> The governor of California and the New York state legislature took more modest steps by mandating reconnections only for accounts that had been suspended during the COVID-19 state of emergency.<sup>xxii</sup> States that did not mandate the reconnection of suspended accounts during the pandemic put millions of households at risk of being without access to water.<sup>xxiii</sup>

Even when governors acted, their orders were often of limited reach. For example, in Massachusetts, the governor's executive order regulated the actions only of private utility companies, estimated to serve only three percent of the state's population.<sup>xxiv</sup> In states where governors failed to take action, some cities took the matter into their own hands. For example, the Boston Water and Sewer Commission voluntarily suspended residential shutoffs through August 2020, and expressed a commitment to developing manageable payment plans with customers to prevent interruptions in service.<sup>xxv</sup> In New Orleans, the City Council voluntarily committed to suspending all shutoffs and reconnecting homes.<sup>xxvi</sup> As of March 12, at the beginning of the emergency, over 9,000 homes in New Orleans needed to be reconnected.<sup>xxvii</sup>

Municipal government efforts to reconnect households to water during the pandemic should be lauded. Their actions highlighted the importance of protecting access to clean water as disease prevention in a pandemic. At the same time, these new policies implored us to ask why there were so many homes to reconnect in the first place. Before COVID-19, very few cities in the United States banned water disconnections due to non-payment of bills, among them New York City, Flint, and Baltimore.<sup>xxviii</sup> More cities banned shut-offs as a result of the pandemic. For example, the city of Buffalo, New York committed to reconnecting all

households during the COVID-19 pandemic.<sup>xxxix</sup> This decision came after advocacy groups determined that from 2015 through March 2019 more than 17,000 Buffalo households were disconnected from water services.<sup>xxx</sup> In addition to halting shutoffs, in June 2020, the city of Buffalo announced its Water Amnesty Program, waiving all penalties and interest for homeowners when they sign up for a payment plan.<sup>xxxi</sup> Buffalo is hardly unique in its high number of shutoffs. Local reporters from other cities, including New Orleans, Oklahoma City and Detroit, found that thousands of households in those municipalities were disconnected from water service in recent years.<sup>xxxii</sup>

Other countries enacted more protective measures to ensure water access during the COVID-19 pandemic. For example, Colombia reconnected water services to more than one million residents who had previously been disconnected due to non-payment, and acted to ensure six cubic meters of water to every resident daily.<sup>xxxiii</sup> France announced an ordinance declaring that non-payment of bills could not result in termination of contracts to supply electricity, gas, or water.<sup>xxxiv</sup> On their website, Water UK of the United Kingdom wrote, “please remember- we will never cut off your water supply if you can’t pay your bill.”<sup>xxxv</sup>

In contrast, without a national moratorium on water disconnections, the fragmented state and local responses in the United States have left many households without access to clean water during a pandemic. Many local and state moratorium orders in the United States have already expired and shut-offs started anew, despite the continuing pandemic and the persistence of economic hardship.<sup>xxxvi</sup> In jurisdictions where a moratorium remains in place, advocates are concerned about what will happen once its ends, and large accumulated bills come due.<sup>xxxvii</sup> Municipal governments and private utility companies determine who will have water -- a decision that can quite literally be a matter of life or death.

## **II. Trends Towards Water Unaffordability Prior to the Pandemic**

Nationally, water has become less affordable over the past decade. The average monthly household water bill has increased by almost 50 percent since 2010, far outpacing average increases in household income.<sup>xxxviii</sup> In 2018, the Wall Street Journal reported that water rates were rising at a rate three times the rate of inflation.<sup>xxxix</sup> The affordability framework issued by the UN suggests that that households should not have to spend more than 3 percent of their income on water.<sup>xl</sup> Domestically, the Environmental Protection Agency (EPA) measures the financial capability of certain geographic areas by examining combined water and sewer bills, deeming them unaffordable if they constitute more than 4.5 percent of the municipality’s median household income (MHI).<sup>xli</sup> Utilities’ adherence to these guidelines is voluntary, however. In many cities, particularly for low-income customers, water and sewer bills exceed any reasonable definition of affordability.<sup>xlii</sup> This is a significant problem in communities with substantial numbers of low-income households.

Shutoff practices are intertwined with affordability, as safeguarding water affordability is a first step towards preventing harmful water shutoffs. The current EPA

guidelines are inadequate in at least two respects. First, they are not mandatory. The federal government has enacted mandatory minimum standards to ensure water quality, but it has not taken the step of similarly safeguarding affordability.<sup>xliii</sup> Second, the EPA's method of measuring community-wide affordability is flawed because it does not ensure affordable water for low-income households.<sup>xliv</sup> Using the municipal MHI to measure affordability effectively ignores affordability for households earning less than the MHI.<sup>xlv</sup> Mandatory national affordability standards could help states and local governments more successfully mediate the rising cost of water and better protect access to affordable water for low-income households.

A substantial reduction in federal funding, coupled with increasing infrastructure demands and high improvement costs, has put utilities in a challenging economic bind. A major cause of rising water prices for consumers is the decrease in federal funding for water infrastructure in the United States. Between 1977 and 2017, federal support decreased by 74 percent when adjusted for inflation.<sup>xlvi</sup> On a per capita basis, in 1977 the federal government spent \$76.27 per person (in 2014 dollars) on our water services, but by 2014 that support had fallen to only \$13.68 per person.<sup>xlvii</sup>

The country's existing water system of pipes, aqueducts, dams and treatment plants are generally inadequate. Investments in water infrastructure are expected to rise for two reasons. First, outdated equipment must be replaced. Most of the country's pipes will need to be repaired or replaced by 2040 due to aging and degrading materials, at significant cost.<sup>xlviii</sup> The current water infrastructure was primarily built in the post-World War II era, with additional grants following the passage of the 1972 Clean Water Act.<sup>xlix</sup> The lifespan of those construction materials can be anywhere from 15 to 100 years.<sup>l</sup> The lifespans may be shortened, however, by severe weather events such as flooding and extreme storms. The increased frequency of such storms over the past decade has severely threatened utilities' assets.<sup>li</sup> Water consumers are already seeing the effects of this aging infrastructure. From 2012 to 2018, there was a 27 percent increase in United States water main breaks.<sup>lii</sup>

The second reason investments in water infrastructure are expected to rise involves the need to invest in new infrastructure to keep pace with water quality improvements. The cost driving factor arises from the need to comply with consent decrees. These decrees are agreements with the government to address water contamination issues. Consent decrees with the EPA are currently costing local communities more than \$32 billion.<sup>liii</sup>

Federal and state assistance will be necessary to enable local communities to repair and replace aging infrastructure to prevent water contamination and protect the health and well-being of residents. The EPA estimates nearly \$743 billion will be needed for infrastructure investment over the next 20 years,<sup>liv</sup> while American Water Works Association estimates that over the next 25 years, the cost will be over \$1 trillion.<sup>lv</sup> There are serious consequences when repairs to the failing infrastructure are delayed, including increased risks of water main breaks, contaminated water, and consequent threats to health.<sup>lvi</sup>



The reduction in government funding has led most water utilities to finance system infrastructure upgrades through charges to ratepayers. To cover the costs of providing water, utilities typically have to finance two core functions: (1) operations, and (2) maintenance or capital improvement.<sup>lvii</sup> Two major factors affecting these costs are the size of the jurisdiction and whether the utility is publicly or privately owned. Publicly-owned utilities serve around 87 percent of people with piped water in the United States.<sup>lviii</sup> Publicly-owned utilities are run by public officials, who, at least in concept, are held accountable for providing essential services to their constituents through local oversight and elections.<sup>lix</sup> Privately-owned utilities, on the other hand, tend to serve smaller communities, and can earn profits from their water services.<sup>lx</sup> One study found that private for-profit utilities charge an average of 59 percent more than publicly owned utilities.<sup>lxi</sup> Even though privately-owned utilities tend to be regulated by state utility commissions, these utilities are accountable first and foremost to their owners or investors, who prioritize profitability and have no duty to protect the public welfare.<sup>lxii</sup> Residents can pressure their public officials to provide more affordable water rates, but with private systems, customers do not have that sort of leverage.<sup>lxiii</sup>

Though utilities' revenue comes primarily from ratepayers, raising the water rates does not always result in increased revenues for utilities. Raising the rates too high or too quickly for consumers can result in more non-payments and defaults due to unaffordability. For example, in Baltimore the average water and sewer bills doubled from 2010 to 2017 due to consistent rate increases.<sup>lxiv</sup> At the same time, the amount of consumer debt increased by 154 percent for water service billings, and by 1400 percent for wastewater service billings.<sup>lxv</sup> Water affordability expert Roger Colton explained the phenomena in his report on Baltimore:

One of the problems facing the City of Baltimore is that sending bills that exceed the capacity of the community to pay does not result in the revenue that is required to meet one's financial obligations. As a result, a downward spiral is created. Future rate increases have to be higher, in order to take into account the fact that much of the increase in billed revenue, in fact, will not be collected. In the meantime, arrearages grow, as do the expenditures that the utility devotes to its increasingly unsuccessful efforts to collect its revenue. What occurs, in other words, is that the City works harder and harder to collect less and less.<sup>lxvi</sup>

Thus, increasing the rates or penalties for non-payment is not the most effective way to ensure bill collection. High interest rates, late payment fees, and reconnection fees (after service has been terminated) go unpaid simply because they are unaffordable. Increasing rates to cover for such losses in utility revenue forces poor households further into debt, and increases the burden on households that are already struggling to make ends meet.

Some utilities must also compensate for lost revenue due to a shrinking customer base, as experienced in urban areas, like Detroit, with population losses; the utility companies' fixed costs are spread over fewer households, resulting in higher rates.<sup>lxvii</sup> There is a similar effect when utility companies encourage household water conservation efforts to combat unaffordable bills.<sup>lxviii</sup> In some instances, conservation efforts reduce revenue for utilities,

and because many of the utility's costs are fixed regardless of water quantity used, household rates may rise in subsequent years.<sup>lxi</sup>

### III. Effects of Unaffordable Water

Low-income households encountered the greatest difficulties keeping up with the rising cost of water over the past decade.<sup>lxx</sup> In many jurisdictions, the penalty for unpaid water and sewer bills is the disconnection of one's water supply. A national study by Food and Water Watch found that 15 million residents of the United States, an alarming 1 in 20 households, had their water shut off for nonpayment at some point in 2016.<sup>lxxi</sup> More recently, in California alone, more than 350,000 people experienced their water being shut off at least once in 2019.<sup>lxxii</sup> The direct and indirect consequences for those households include potential health risks, threats of removing children from their home, threats of eviction, and the diminished human dignity that comes with lack of sanitation and basic hygiene.

The health risks created when water service is terminated extend beyond specific households to the community at large. Without access to clean water at home, people are more prone to infectious, waterborne diseases from unsanitary conditions, which then spread to schools, churches, work, and other places where people interact.<sup>lxxiii</sup> The pandemic has reminded us that access to water saves lives by preventing the spread of infectious diseases. For those with fixed incomes, spending more money on water bills thwarts their ability to spend money on other life essentials like medications, healthy foods, or mental health treatment, with ripple effects (and costs) for the wider community.<sup>lxxiv</sup> In certain cities, utility shutoffs have resulted in housing abandonment, affecting entire neighborhoods by harming communities' adherence and reputations.<sup>lxxv</sup> One study reported that heightened stress and humiliation is often associated with unaffordable water costs, producing negative effects on mental health.<sup>lxxvi</sup>

Water shutoffs for non-payment can also threaten parental rights and housing rights. In twenty-one states, children can be taken away from homes for lack of running water.<sup>lxxvii</sup> No wonder that for many families, paying the water bill takes priority over maintaining their own health.<sup>lxxviii</sup> Some parents facing the threat of disconnection send their children to live with relatives during the period they are without water.<sup>lxxix</sup> Even when water services are uninterrupted, inability to pay water bills can lead to families losing their homes. Communities that ban shutoffs will often place tax liens on properties as an alternative mechanism for collecting unpaid bills. The water bills are combined with property tax charges, and if the taxpayer is unable to pay off the lien, foreclosure may ensue.<sup>lxxx</sup> In some instances, if a water bill goes unpaid, the mortgage holder will pay the unpaid balance and add that amount to the total mortgage debt.<sup>lxxxi</sup> This practice increases annual housing costs, heightening the threat of displacement.<sup>lxxxii</sup>

Growing research suggests that unaffordability and water shutoff practices have disproportionately negatively impacts on communities of color. In 2014, Mass Global Action



reported that even when controlling for income, Boston wards with large minority populations received a statistically significant higher number of shutoffs notices.<sup>lxxxiii</sup> For every two percent increase in people of color, they found a three percent increase in shutoff notices.<sup>lxxxiv</sup> An investigation of the six largest cities on the Great Lakes in 2019 found that water disconnections were mostly concentrated in communities of color.<sup>lxxxv</sup> Where white households experience more generous, lenient policies for non-payments, civil rights laws may be implicated.<sup>lxxxvi</sup> In December 2019, the NAACP Legal Defense and Educational Fund (LDF) filed a civil rights class action suit against the City of Cleveland in response to the City’s water shutoff practices.<sup>lxxxvii</sup> Extensive research by the LDF confirms that Black access to water systems is affected by racial residential segregation.<sup>lxxxviii</sup>

Not only are low-income households and people of color the most susceptible to having their water disconnected, but they are also the least equipped to manage the effects of lacking access to clean water.<sup>lxxxix</sup> Rising water costs force many households to go to extraordinary lengths to access water, like washing clothes at work, or expending valuable time traveling to the homes of family or friends just to drink or wash.<sup>xc</sup> As Joshua Haynes found, families with children face an even greater challenge, as cooking for a family and maintaining the proper hygiene for multiple people with bottled or borrowed water is no easy task.<sup>xc1</sup> The COVID-19 pandemic has compounded the difficulty of accessing water at neighbors’ homes, as public health recommendations encourage physical distancing. Depriving people of access to water because of inability to pay can have severe consequences—consequences that are greatly intensified by the current pandemic.

#### **IV. The International Human Right to Water**

Lack of water access violates human dignity, health, and well-being. At the core of all human rights is the recognition and promotion of human dignity. Denying people access to clean water because of their inability to pay undermines this fundamental right. Further, not having access to clean water and sanitation endangers the realization of other human rights such as the rights to health, education, food, and housing.<sup>xcii</sup>

In 2010, the UN General Assembly formally voted to recognize a human right to water and sanitation.<sup>xciii</sup> The UN Committee on Economic, Social, and Cultural Rights further defined the human right to water in their General Comment 15 as entitling everyone to “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”<sup>xciv</sup> The right to an adequate standard of living protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been interpreted to include the human right to water.<sup>xcv</sup> The International Covenant on Civil and Political Rights (ICCPR), which was ratified by the United States, includes an inherent right to life in article 6(a); because water is necessary to sustain life, this encompasses an implicit right to water.<sup>xcvi</sup> In addition, in 2018 the UN Human Rights Committee, applying the ICCPR, specified that States have a duty to protect the right to life by providing adequate conditions to ensure access to essential goods, including water.<sup>xcvii</sup>

Shutting off someone's water because of their inability to pay constitutes a human rights violation. The UN Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation published a report following a country visit to the United States in 2011, urging the nation to recognize water as a human right.<sup>xcviii</sup> On the issue of disconnections, the Special Rapporteur's report placed a strong emphasis on the need for due process, reiterating that water disconnections cannot be arbitrary and unjustified: only if someone has the means to pay, but does not, could a shutoff for non-payment be consistent with human rights law.<sup>xcix</sup> The Rapporteur expressed particular concern regarding the discriminatory impact water policies in the United States have on the elderly and low-income children.<sup>c</sup>

Following the massive spate of water shutoffs in Detroit in 2014, three UN Special Rapporteurs released a press statement condemning the city's widespread practice as a violation of human rights.<sup>ci</sup> Despite these statements, the practice continues in full force: in 2019, 23,000 homes were disconnected in Detroit, and as of February 2020, over 9,500 homes remained without water service. Most recently, in July 2020 a coalition of civil rights organizations filed a class action lawsuit against the City of Detroit to end water shutoffs for Detroit residents, a practice which disproportionately impacts communities of color.<sup>cii</sup> These organizations are also critical of the governor's COVID-19 order as there is no plan for addressing affordability concerns once the moratorium expires.<sup>ciii</sup> Many low-income households have exhausted their emergency savings, and will be unable to pay the accumulated bills on top of ongoing payments.<sup>civ</sup>

## V. Emerging Approaches to Protect Water Access

Unlike the United States, several other countries acted long before the pandemic to protect uninterrupted access to household water.<sup>cv</sup> In 1997, South Africa passed legislation prohibiting utilities from disconnecting water for non-payment if the customer does not have the financial resources to pay.<sup>cv</sup> More recently, in 2013 France enacted a law entitling people experiencing financial difficulties to community assistance to help pay for water, energy, and telephone bills.<sup>cvii</sup>

In addition to such laws, the constitutions of several countries explicitly recognize the human right to water.<sup>cviii</sup> For example, the Constitution of South Africa contains a guarantee of sufficient water access for all, interpreted as a minimum of 25 liters of clean, potable water each day.<sup>cix</sup> Implied constitutional rights can be equally as effective. The Mumbai High Court in India has interpreted Article 21 of the Indian constitution, which closely mirrors the United States due process clause, as implicitly including rights to water and sanitation.<sup>cx</sup> Several other countries' high courts have interpreted constitutional clauses protecting the rights to life, health, a clean environment, or barring inhumane and degrading treatment as implying rights to water and sanitation.<sup>cx</sup>

Some legal scholars argue the United States Constitution's due process clause encompasses an implied fundamental right to water.<sup>cxii</sup> Denial of water service because of

one's to inability to pay implicates substantive due process, as such a denial infringes other well established rights.<sup>cxiii</sup> The United States Supreme Court has advised that a fundamental right is one that is "rooted in the traditions and conscience of our people" and "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed."<sup>cxiv</sup> Due process jurisprudence suggests that water is a strong candidate for recognition as a fundamental right, as governmental deprivation of water is tantamount to a deprivation of life.<sup>cxv</sup>

Even before the economic difficulties arising from the pandemic, the United States was failing to make clean, accessible water affordable to all. Several members of Congress have proposed creating a federal Low Income Sewer and Drinking Water Assistance Program to assist with costs of water and sanitation, parallel to the existing Low Income Home Energy Assistance Program (LIHEAP).<sup>cxvi</sup> Funding for such assistance programs, however, will need to be drastically expanded, because each year LIHEAP only serves about twenty percent of eligible households.<sup>cxvii</sup> The need for water assistance received increased attention when the pandemic began, and on March 11, 2020, eighty members of Congress signed a letter to Congressional leaders arguing that clean drinking water is a basic human right.<sup>cxviii</sup> Nonetheless, Congress failed to enact any additional assistance to help alleviate the costs of water, leaving the matter to be addressed by states and municipalities..

As governments attempt to respond to the water affordability crisis, a common theme is the dearth of data, making it difficult to track shutoffs and liens.<sup>cxix</sup> In 2016, California enacted its Open and Transparent Water Data Act to establish an "integrated water data platform."<sup>cxx</sup> This law directs the California Department of Water Resources to streamline water data from various organizations in order to promote open-source platforms.<sup>cxxi</sup> This data will assist the state with decisionmaking and development of more effective affordability programs protecting the most vulnerable.<sup>cxxii</sup>

At a local level, many municipalities and private utility companies offer reduced rates or discount programs, usually based on narrow-eligibility criteria.<sup>cxxiii</sup> Very few offer strictly income-based assistance, but one city that does so is Philadelphia. In 2017 the city launched its novel customer assistance program, known as the Tiered Assistance Program (TAP). The TAP offers water rates based on a percentage of the household's income, payment plans for households that earn less than 150 percent of the poverty line, and balance debt forgiveness after multiple years of punctual payments.<sup>cxxiv</sup> A few other cities have developed their own initiatives based on income, including Baltimore.<sup>cxxv</sup> New York City has established a Water Debt Assistance Program to assist property owners at risk of foreclosure in managing their water and sewer debt.<sup>cxxvi</sup> Assistance programs such as New York's, however, are temporary solutions to the ongoing problem of unaffordability. Nonetheless, they can be effective as a short-term measure to protect uninterrupted access to water.

## VI. Recommendations and Conclusion

With the ongoing threat of the coronavirus pandemic and the resulting economic hardship far from over, there remains a heightened need for national legislation to protect against water shutoffs for households without the financial means to pay, as well as innovations at the state and local levels. Because water policy is shared across federal, state, and local jurisdictions, we offer recommendations that policymakers and activists can pursue at each level of government.

### **Federal Policies:**

Beyond the COVID-19 era, the United States Congress needs to enact sustainable protections and programs that would prevent unreasonable, unethical, and unjustified disconnections. This can be done by:

- Appropriating more funds for infrastructure grants to decrease the costs incurred by utilities that are passed onto American households.
- Enacting a federal ban on shutoffs for those who cannot afford to pay, as implemented in South Africa and France.
- Implementing a national customer assistance program such as the proposed Low Income Sewer and Water Assistance Program, to help those living with incomes less than 150 percent of the federal poverty level pay their water bills.
- Setting mandatory national affordability standards in order to prevent human rights violations.<sup>cxxvii</sup>
- Mandating a shutoff moratorium during the pandemic, and requiring the reconnection of all household that are currently without water, plus a moratorium for 180 days post-state of emergency.<sup>cxxviii</sup> In addition, the federal government should offer a forgiveness program for eligible low-income households unable to make such substantial payments.
- Providing emergency funding to utilities to maintain operations during the moratorium.

### **State Policies:**

At the state level, actions can be taken to protect affordable clean water access in the United States. States can take immediate action by:

- Using some of the funds they received as part of the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) – or similar funds appropriated in the future – to pay off utility arrears and prevent further disconnections for those without the ability to pay.<sup>cxxix</sup>
- Requiring utility commissions to track demographic data on shutoffs to ensure public transparency and accountability, like California.<sup>cxxx</sup>
- Taking legislative action recognizing the human right to water, as California has done, ensuring legal protection of water access.<sup>cxxxi</sup>

### **Local Policies:**

Municipal governments play a large role in ensuring water access for their residents, as water systems in the United States are largely decentralized. Local municipalities can make water more affordable by:

- Implementing more effective customer assistance programs, like the city of Philadelphia’s Tiered Assistance Program, to decrease the financial burden on low-income households. Eligibility criteria for such programs should be based on financial need.
- Instituting tracking systems to better capture data on which residents are struggling to pay water bills, how many of them apply for assistance programs, and the demographic characteristics of those who apply and those who are granted assistance, to determine the impact of these programs on equity.
- Prohibiting local water disconnections in favor of other payment collection alternatives.

It is past time for the United States to recognize water as a fundamental human right that must be clean, safe, accessible, and affordable to all. The global COVID-19 pandemic underscores just how essential water is for a healthy life. The pandemic also exacerbates health and economic inequalities, furthering the risk of water deprivation for low-income households. As the richest country in the world, the fact that the United States still regularly terminates people’s access to safe water because of non-payment is shameful. Recognizing a human right to water would not mean that everyone is entitled to unlimited free water. Instead, it would foster the development of a system acknowledging the reality that water is necessary for life, and that not everyone has the ability to meet the rising costs of clean water. Every human deserves access to safe, clean water, regardless of their ability to pay.



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<sup>i</sup> Nina Lakhani, *'It Feels Like Nobody Cares,' The Americans Living Without Running Water Amid Covid-19*, THE GUARDIAN (May 1, 2020, 5:00 AM), <https://www.theguardian.com/environment/2020/may/01/water-shutoffs-us-coronavirus-utilities-economy> [hereinafter Lakhani, *COVID-19*].

<sup>ii</sup> *Id.*

<sup>iii</sup> *Id.*

<sup>iv</sup> *Id.*

<sup>v</sup> *Id.*

<sup>vi</sup> Nina Lakhani, *Millions in U.S. at Risk of 'Water Shutoffs' Amid Layoffs Triggered by Pandemic*, THE GUARDIAN (Apr. 6, 2020, 7:00 AM), <https://www.theguardian.com/environment/2020/apr/06/millions-us-at-risk-losing-running-water-amid-layoffs-triggered-coronavirus-pandemic>. [hereinafter Lakhani, *Layoffs*].

<sup>vii</sup> See Jeanna Smialek, et al., *Workers Face Permanent Job Losses as the Virus Persists*, N.Y. TIMES (Oct. 3, 2020), <https://www.nytimes.com/2020/10/03/business/economy/coronavirus-permanent-job-losses.html>.

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- <sup>cx</sup> A.B. 1755, 2015-2016 Leg., Reg. Sess., 2016 Cal. Stat. 3764.
- <sup>cx</sup> See Zachary Sugg, *Assembly Bill 1755 and the Politics of California Water Data*, Stanford Water in the West, <https://waterinthewest.stanford.edu/news-events/news-insights/assembly-bill-1755-and-politics-california-water-data> (warning of the California bill's lack of guidance on implementation and governance).
- <sup>cx</sup> AMERICA'S SECRET WATER CRISIS, *supra* n. xvi, at 6.
- <sup>cx</sup> Sarango, *supra* n. lxxviii, at 79.
- <sup>cx</sup> See Elizabeth Mack, et al., *An Experiment in Making Water Affordable: Philadelphia's Tiered Assistance Program (TAP)*, 56 J. AM. WATER RES. ASS'N 3 (2020).



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<sup>cxxv</sup> See Emily Poor, *Water Accountability and Equity Act - A Summary*, Maryland Pro Bono Resource Center, <https://probonomd.org/water-accountability-and-equity-act-a-summary/> (last visited Nov. 4, 2020); see also Yvonne Wenger, *Baltimore public works officials ask for more time to roll out city's sweeping water equity law*, BALTIMORE SUN (May 1, 2020 at 4:56pm), <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-water-bill-affordability-delay-20200430-ljta3bbw2nepnegt4x7ykdtf7u-story.html> (noting the implementation of program has since been delayed).

<sup>cxxvi</sup> *Water Debt Assistance Program for Multi-Family Homeowners*, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, Customer Assistance Programs, <https://www1.nyc.gov/site/dep/pay-my-bills/water-debt-assistance-program.page> [<https://web.archive.org/web/20201104214439/https://www1.nyc.gov/site/dep/pay-my-bills/water-debt-assistance-program.page>] (last visited Nov. 4, 2020).

<sup>cxxvii</sup> JONES, *supra* n. lxxvii, at 6.

<sup>cxxviii</sup> See Levine, *Congress*, *supra* n. xx.

<sup>cxxix</sup> See *Id.*

<sup>cxxx</sup> See AB 1755, 2015-2016 Leg., Reg. Sess., 2016 Cal. Stat. 3764.

<sup>cxxxi</sup> See AB 685, 2011-2012 Leg., Reg. Sess., 2012 Cal. Stat. 4779.