



Human Rights in the US: A Handbook for Legal Aid Attorneys

The Human Right to Water



The Program on
Human Rights and
the Global Economy
NORTHEASTERN UNIVERSITY
SCHOOL OF LAW

Northeastern University
School of Law



MARYLAND
LEGAL AID

Advancing
Human Rights *and*
Justice for All

Human Rights in the U.S.: A Handbook for Legal Aid Attorneys

The Human Right to Water

This publication is intended as a supplement to **Human Rights in the U.S.: A Handbook for Legal Aid Attorneys**, available at

<https://www.wcl.american.edu/index.cfm?LinkServID=B1E62E62-A5A0-D585-2D87C971D50AAE18>. The publication is the product of a collaboration between the Program

on Human Rights and the Global Economy (PHRGE) and Maryland Legal Aid. Roshni Patel, Northeastern University School of Law (NUSL), is the lead author. Additional research contributions, comments, and feedback were provided by Martha F. Davis, University Distinguished Professor, NUSL; Frank Vitale, Senior Attorney for Human Rights, Maryland Legal Aid; and Mariel Shutinya, Staff Attorney, Maryland Legal Aid. The authors thank Jennifer True for her assistance with the design and production.

NUSL's Program on Human Rights and the Global Economy (PHRGE) engages in study, promotion, implementation and constructive critique of rights-based approaches to economic development and social transformation. PHRGE supports cutting edge human rights scholarship and movement-building, with particular focus on economic, social and cultural rights, and works with students to ensure that human rights perspectives continue to be vital to future generations of scholars and advocates. Other publications in this series on the human right to water are: (1) *The Human Right to Water: A Research Guide and Annotated Bibliography*; (2) *The Human Right to Water: Using Freedom of Information Laws to Understand Rising Water Rates*; and (3) *The Human Right to Water: A Primer for Lawyers and Community Leaders*; and (5) *A Drop in the Bucket: Water Affordability Policies in Twelve Massachusetts Communities*. These publications are available at <https://www.northeastern.edu/law/academics/institutes/phrge/publications/index.html>.

Maryland Legal Aid is a private, non-profit law firm that provides free, civil legal services to people who are in Baltimore City and Maryland's 23 counties from 12 offices. The firm handles cases involving a wide range of issues, including family, housing, government benefits, healthcare, education, employment, and consumer law. Maryland Legal Aid also represents children in CINA (Child in Need of Assistance) proceedings in 14 jurisdictions. Other vulnerable populations, such as homeowners facing foreclosure, migrant and seasonal farm workers, people with developmental and mental health disabilities, nursing home and assisted living residents, and veterans seeking benefits and assistance with related legal issues also receive representation through special projects. Maryland Legal Aid's Community Lawyering Initiative, which includes its Lawyer in the Library program, assists with expunging criminal records to remove barriers to obtaining housing, employment, and child custody through clinics held in public libraries, community centers, non-profit organizations, places of worship, schools, and other gathering places. For more information, visit www.mdlab.org and follow Maryland Legal Aid on [Facebook](#) and [Twitter](#).

I. Introduction: Human Right to Water

At the international level, the human right to water derives from the right to an adequate standard of living, which is protected under Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights. This right has been recognized by the UN General Assembly and reaffirmed by the UN Human Rights Council. The state's obligation concerning the right to safe drinking water requires that water be available, accessible, affordable, acceptable, and of good quality for everyone without discrimination.¹ The state must ensure the right to water for future generations by managing key resources of sustainability.² The right to sanitation is frequently connected to the right to water because sanitation can impact water quality. However, sanitation is not always water-based and raises unique concerns about public health and personal responsibility. This chapter will focus solely on the right to water and will not address the unique concerns raised by the right to sanitation.

The United States has not ratified many of the relevant treaties from which the right to water is derived internationally, but we have signed these instruments and therefore are obligated to refrain from acts that would defeat the object and purpose of these treaties.³ Existing federal laws generally focus on maintaining water quality rather than ensuring access for all citizens. The constitutional and statutory provisions that pertain to non-discrimination and equal protection of the law is what creates a framework that allows citizens to enforce the right to water, indirectly of course.

There is a widespread assumption that safe and affordable water services are available to all residents of the U.S. However, many low-income communities, communities of color, and indigenous communities in the country in fact lack access to water for the most basic human needs. While it is very difficult to prove discrimination in water service delivery, there is strong circumstantial evidence that some water authorities deny or limit services to certain social groups on a discriminatory basis. Local water authorities generally hold the power to withdraw individuals' access to water for nonpayment of water bills. In this context, water "rights" are essentially a special form of property rights, accruing to property holders, municipalities or other entities.

The following aspects of the Human Right to Water should be considered when assessing whether the right has been violated: (1) inaccurate billing, (2) shutoffs, (3) tax liens, (4) quality issues, and (5) discrimination in services.

¹ See International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); See International Covenant on Economic, Social, and Cultural Rights, opened for signature Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976); UNITED NATIONS, Resolution Adopted by the General Assembly (Dec. 17, 2015), *available at* https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/169.

² Catarina de Albuquerque (Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation), *Mission to the United States of America*, U.N. Doc. A/HRC/18/33/ADD.4 (Aug. 2, 2011), *available at* https://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf.

³ *Id.*

II. Relevant Human Rights Law: Human Right to Water

The language from the treaties and other human rights instruments listed below is only a sampling. This is not an exhaustive list of instruments that may apply to the case at hand.⁴

A. Ratified Human Rights Instruments: Human Right to Water

<p>International Covenant on Civil and Political Rights (ICCPR)</p>	<p>Article 6(1) states: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” International Covenant on Civil and Political Rights, art. 6(1), Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), ratified by the U.S. Sept. 8, 1992.</p> <p><u>Comments:</u> Although the ICCPR does not explicitly refer to a right to water the U.N. Human Rights Committee’s 1982 interpretation of the ICCPR in General Comment No. 6 notes that States must adopt positive measures to protect the right to life and ensure access to the means of survival.⁵ As water is necessary to sustain life, the right to life in the ICCPR arguably includes the right to water.⁶</p>
<p>International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)</p>	<p>Article 5 states: “[S]tates Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:... (e)(iii) the right to housing;... (e)(iv) the right to public health[.]”</p> <p><u>Comments:</u> ICERD requires that economic, social, and cultural rights be fulfilled in a non-discriminatory manner and, because the U.S. ratified that treaty, it is bound by that principle.⁷ ICERD specifically recognizes the right</p>

⁴ See UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH *available at* <https://www.ohchr.org/EN/Issues/ESCR/Pages/InstrumentsWater.aspx> COMMISSIONER (As of May 2020 the instruments included in this chapter are the applicable treaties to the human right to water in the United States. To keep track of any changes or updates this website should be consulted regularly.)

⁵ Human Rights Comm., *General Comment No. 6*, art. 6 (16th Sess., 1982); Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1, at 6 (1994).

⁶ Adele J. Kirschner, *The Human Right to Water and Sanitation*, 15 Max Planck Y.B. U.N. L. 445, 460-61 (2011).

⁷ See International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, ratified by the U.S. Nov. 20, 1994.

	to housing and public health, but the treaty does not provide an all-inclusive list of protected rights. ⁸ However, in 2014 the CERD Committee recognized the right to water as a component of both the right to housing and the right to health. ⁹
U.N. General Assembly (Resolution)	<u>Comments:</u> The U.N. General Assembly adopted a resolution in 2010, recognizing the right to safe and clean drinking water and sanitation as a human right, and acknowledging the necessity of this right to ensure the full enjoyment of life and all human rights. In 2015 the U.N. General Assembly reaffirmed its resolution recognizing the right to safe and clean drinking water. ¹⁰ However, the U.S. abstained from the General Assembly resolution proclaiming a human right to water. ¹¹

B. Signed but not Ratified Human Rights Instruments: Human Right to Water

⁸ Comm. on the Elimination of Racial Discrimination, *General Recommendation 20, The guarantee of human rights free from racial discrimination*, ¶ 1, 48th Sess., 1996, U.N. Doc. A/51/18, annex VIII at 124 (Mar. 8, 1996).

⁹ Safe Water Alliance et. al., *United States’ Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, A Report Submitted to the Committee on the Elimination of Racial Discrimination in its 85th Session*, 4 (August 2014).

¹⁰ UNITED NATIONS, Resolution Adopted by the General Assembly (Dec. 17, 2015), available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/169.

¹¹ UNITED NATIONS, *General Assembly Adopts Resolution Recognizing Access to Clean Water, Sanitation as Human Right, by Recorded Vote of 122 in Favour, None against, 41 Abstentions* (July 28, 2010), available at https://www.un.org/press/en/2010/ga10967.doc.htm_

<p>International Covenant on Economic, Social, and Cultural Rights (ICESCR)</p>	<p>Article 11(1) of ICESCR: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.” International Covenant on Economic, Social, and Cultural Rights, art. 11(1), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976.</p> <p>Article 12(1) of ICESCR: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” International Covenant on Economic, Social, and Cultural Rights, art. 12(1), Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, entered into force Jan. 3, 1976.</p> <p><u>Comments:</u> General Comment No. 15 of the ICESCR explains that the right to water is included in Articles 11 and 12. The general comment recognizes water as “indispensable for leading a life in human dignity.”¹² The list articulated in Article 11 was not intended to be exhaustive and General Comment No. 15 identifies water as “one of the most fundamental conditions for survival” and essential to an adequate standard of living.¹³ General Comment No. 15 explains the meaning of the right to water that is adequate for human dignity, life, and health. Adequate water includes access to sufficient water for personal use. The water must be safe for personal and domestic use, free of contaminants, and must have an acceptable odor and taste. Physical access to water should be provided without discrimination and an individual's safety cannot be compromised to access water. Specifically, General Comment 15 states that disconnection from water supply for arrears can only occur after the person's ability to pay has been taken into account and that [u]nder no circumstances shall an individual be deprived of the minimum essential level of water. Water should also be economically accessible, such that "direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights" such as housing, food, education, and health.¹⁴</p> <p>Additionally, General Comments Nos. 13 and 14 explain that the right to education and the right to health also imply a right to water. The right to</p>
---	---

¹² U.N. ESCOR, Comm. On Econ., Social & Cultural Rights, *General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the Covenant)* ¶¶ 1,3, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

¹³ *Id.* at ¶ 3.

¹⁴ *Id.* at ¶ 12.

	<p>education specifies that for education to be available, school facilities should have safe drinking water for students.¹⁵ The right to health includes the right to “underlying determinants” of health, including access to safe and potable water.¹⁶ Health care facilities should have safe water.¹⁷ Access to safe water is also necessary for environmental and industrial hygiene.¹⁸ States must refrain from unlawfully polluting water supplies and to ensure equal access to an adequate supply of safe and potable drinking water.</p>
<p>Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)</p>	<p>Article 14(2)(h) of CEDAW: “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:...(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications[.]” Convention on the Elimination of Discrimination Against Women, art. 14, Sept. 3, 1981, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.</p> <p><u>Comments:</u> CEDAW was the first primary human rights instrument to explicitly reference the right to water. General Comment No. 34 on the rights of rural women does not interpret this right to require equal access to water but does recognize a right to clean water.¹⁹</p>

¹⁵ Comm. on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Art.13)*, U.N. Doc. E/C.12/1999/10 (1999), at 6(a).

¹⁶ Comm. on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12)*, U.N. Doc. E/C.12/2000/4 (2000), at ¶¶ 4,11.

¹⁷ *Id.* at ¶ 12.

¹⁸ *Id.* at ¶ 15.

¹⁹ Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 34 on the rights of rural women*, U.N. Doc. CEDAW/C/GC/34, (Mar. 4, 2016), at ¶ 12.

<p>Convention on the Rights of the Child (CRC)</p>	<p>Article 24(1) of CRC: “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.” Convention on the Rights of the Child, art. 24(1), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</p> <p>Article 24(2)(c) of CRC: “States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures...To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution[;]” Convention on the Rights of the Child, art. 24(2)(c), Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990.</p> <p><u>Comments:</u> The CRC expressly links safe drinking water to health and includes the right to water under the right to health.</p>
--	--

C. Federal Law Framework: Human Right to Water

NOTE: The U.S. federal government does not recognize the human right to water, but some provisions of federal laws promote particular aspects of the right. The U.S. also recognizes a handful of anti-discrimination laws to address inequalities that disproportionately impact marginalized communities and their ability to access safe and affordable drinking water.

<p>Clean Water Act (1972)</p>	<p><u>Comments:</u> The 1972 Clean Water Act bans the discharge of pollutants into navigable waters and sets water quality standards for contaminants in all surface waters.²⁰ The Water Quality Standards Regulation authorizes the Environmental Protection Agency (EPA) to establish water quality standards. Unfortunately, the ACT does not recognize a right to safe drinking water for all citizens.²¹</p>
<p>Safe Drinking Water Act (1974)</p>	<p><u>Comments:</u> The 1974 Safe Drinking Water Act sets maximum levels for contaminants in drinking water and requires water systems to test regularly for contaminants.²² Unfortunately, the Act does not recognize a right to safe</p>

²⁰ Clean Water Act, 33 U.S.C. § 1251 (2012).
²¹ Clean Water Act, 33 U.S.C. § 1251 (2012).
²² See Safe Drinking Water Act, 42 U.S.C. § 300f (2012).

	drinking water for all citizens. ²³ The reauthorization of the Safe Drinking Water Act in 1996 requires affordability studies for populations that rely on non-public water systems for residential needs but does not require remedial action. ²⁴
Environmental Protection Agency (EPA) Regulations	The EPA established minimum standards for regulating water quality. ²⁵ The states are responsible for monitoring and enforcing water quality standards at local sources, managing wastewater treatment, and developing appropriate infrastructure. States may adopt their regulations, which must meet or surpass the minimum federal standards. The EPA has regulatory responsibilities to monitor and investigate discrimination by any agency or organization receiving federal funding from the agency. ²⁶
42 U.S.C. § 1983	Section 1983 protects individuals from constitutional deprivations made under the color of state law. ²⁷ The statute could support a claim challenging discrimination by a municipal water service based on equal protection and due process violations. ²⁸
42 U.S.C. § 1981	Section 1981 prohibits discrimination based on race in the making, performing, modification, and termination of contracts. The Ninth Circuit Court of Appeals has held that it may be applied to public contracts. ²⁹
Title VI of the Civil Rights Act of 1964	Title VI bars race discrimination by recipients of federal funds. ³⁰ The anti-discrimination provisions apply to a fund recipient's entire operation, not solely to the funded program or activity. Thus, water service providers that receive federal funds, even if those funds are used for non-water related activities, may be held accountable for race discrimination under Title VI. Individuals can bring a private cause of action in federal court for intentional discrimination under Title VI.

²³ Safe Drinking Water Act, 42 U.S.C. § 300f (2012).

²⁴ Pub.L. 104-182 § 101(2) (Aug. 6, 1996), available at <https://www.gpo.gov/fdsys/pkg/PLAW-104publ182/pdf/PLAW-104publ182.pdf>.

²⁵ 42 U.S.C. § 300f et seq. (1974).

²⁶ 40 C.F.R. § 7.30 (2015).

²⁷ 42 U.S.C. §1983 (1996).

²⁸ Martin A. Schwartz & Kathryn R. Urbonya, Section 1983 Litigation 24 (2d ed. 2008).

²⁹ *Fed'n of African Am. Contractors v. City of Oakland*, 96 F.3d 1204 (9th Cir. 1996).

³⁰ 42 U.S.C. § 2000d (2012).

<p>Fair Housing Act (FHA)</p>	<p>The Fair Housing Act (FHA) is broader than Title VI as it prohibits a wider range of discrimination than Title VI and is not limited to recipients of federal funding but applies to both public and private housing.³¹ Section 3604(b) has been interpreted to apply to municipal services such as water provision.³²</p> <p>Furthermore, the FHA permits a private cause of action for both intentional discrimination and disparate impact claims. However, the Supreme Court found "that a plaintiff must plead more than a mere 'statistical disparity'" and developers and government actors must be allowed to show that their policy is necessary to achieve a valid interest.³³</p> <p>In sum, even when intentional discrimination cannot be shown, if particular households are targeted for termination of water services, those who are affected may still bring an FHA claim if they can show a causal relationship between the water provider's termination policies and a disparate racial impact.</p>
<p>Section 504 of the Rehabilitation Act of 1973 and Title II of the American with Disabilities Act</p>	<p>Recipients of water services who are disabled are also protected by civil rights laws designed to accommodate individuals with disabilities. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability under any program or activity receiving federal financial assistance.³⁴ Title II of the Americans with Disabilities Act (ADA) extends those provisions to all activities of state and local governments, regardless of whether they receive federal funding.³⁵</p> <p>Under these acts, plaintiffs must show discriminatory intent, which may be established indirectly by providing evidence that government officials failed to adequately respond to disability discrimination complaints. The plaintiffs may also bring disparate impact claims under the Rehabilitation Act or the ADA. However, while these acts require that covered entities make reasonable accommodations that enable meaningful access to provided services, the acts do not require those services to be adequate.</p>

D. State and Local Laws: Human Right to Water

³¹ 42 U.S.C. § 3604 (2012).

³² *Ventura Vill., Inc. v. City of Minneapolis*, 419 F.3d 725, 727-28 (8th Cir. 2005) (citing numerous cases in support of the proposition that "[v]arious types of municipal actions have been challenged under the FHA").

³³ *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project*, 135 S. Ct. 2507, 2518 (2015); *See, e.g.*, H.R. REP. No. 100-711, at 25 (1988) (citing *Alexander v. Choate*, 469 U.S. 287 (1985)), as reprinted in 1988 U.S.C.C.A.N. 2173, 2186.

³⁴ 29 U.S.C. § 794(a) (2012).

³⁵ 42 U.S.C. §§ 12 101, 12131-32 (2012).

<p>California: Human Right to Water Bill (2012)</p>	<p>In 2012 California became the first U.S. state to adopt a law explicitly recognizing the human right to water. California now has a law guaranteeing the right to safe, affordable water without discrimination, prioritizing water for personal and domestic functions.³⁶</p> <p>However, the law does not create an obligation to provide water and it lacks enforcement and financing provisions.³⁷ The law requires state agencies to consider the new state policy that every human being has the right to clean, safe, affordable, and accessible water that is adequate for drinking, cooking, and sanitary purposes in all policy, programming, and budgetary activities affecting those uses of water.³⁸</p>
<p>Philadelphia, Pennsylvania</p>	<p>The city of Philadelphia files tax liens for overdue utility bills and sells off unredeemed liens, leading to an increase in tax lien foreclosures. To increase bill collections and prevent low-income residents from losing their homes to foreclosures because of unpaid water bills, the Philadelphia City Council passed legislation in November 2015, which went into effect in July 2017.³⁹ The Water Affordability Ordinance increases protection for low-income residents by creating affordable income-based payment plans and providing referrals to connect homeowners to housing counselors.⁴⁰ Although the final ordinance does not explicitly use the human rights framework in the process of creating Philadelphia's new water affordability law, they did consult international standards in determining an appropriate percent of income range for the program.⁴¹</p>
<p>Pennsylvania</p>	<p>The Pennsylvania Constitution recognizes a right to water.⁴²</p>

³⁶ See generally Int'l Human Rights Law Clinic, Univ. of Cal. Berkeley Sch. of Law, *The Human Right to Water Bill in California: An Implementation Framework for State Agencies* (2013), available at [https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL\(1\).pdf](https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL(1).pdf) (last visited April 10, 2020).

³⁷ CAL. WATER CODE § 106.3 (West 2009); See generally Int'l Human Rights Law Clinic, Univ. of Cal. Berkeley Sch. of Law, *The Human Right to Water Bill in California: An Implementation Framework for State Agencies* (2013), available at https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL.pdf (last visited April 10, 2020).

³⁸ *Id.*

³⁹ PHILADELPHIA PA., CODE §19-1605 (1979); Philadelphia Water, Sewer & Stormwater Rate Board, Report of the Board on PWD Proposed Rate Changes, FY17, FY18, 30 (June 7, 2016), available at <http://www.phila.gov/water/PDF/BoardReportFY17FY18-Records-20170607.pdf>.

⁴⁰ Press Release, María Quiñones-Sánchez, Quinones-Sanchez Legislation to Improve Water Bill Collections, Protect Low-Income Water Customers Passes City Council, We The People of Detroit (June 22, 2015), available at <https://wethepeopleofdetroit.com/2015/06/22/philadelphia-passes-in-come-based-water-affordability-plan/>.

⁴¹ PHILADELPHIA PA., CODE §19-1605(a)(3)(a) (1979); Robert W. Ballenger and Thu B. Tran, *Unchartered Waters: The Emergence of Low-Income Water Affordability in Philadelphia*, Sargent Shriver Nat'l Ctr. on Poverty Law Clearinghouse Cmty. (Feb. 2016), available at <http://povertylaw.org/clearinghouse/stories/ballenger>.

⁴² CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA, art. 1, sect. 27.

Massachusetts	The Massachusetts Constitution recognizes a right to water. ⁴³
---------------	---

III. U.S. Domestic Court Cases: Human Right to Water

1. *Kennedy v. City of Zanesville*, No. 2:03-cv-1047 (S.D. Ohio)

On July 10, 2008, a federal court jury returned verdicts totaling nearly \$11 million against the City of Zanesville, Ohio for illegally denying water services to a predominately African-American community based on race.⁴⁴ The plaintiffs live within one mile of public water lines but were denied public water service for nearly fifty years.⁴⁵ The legal strategy used by the Plaintiffs was to bring 6 federal and state civil rights causes of action under, among others, the Fair Housing Act, rather than making human rights arguments.⁴⁶ While the plaintiffs were successful, a high standard must be met to successfully win a civil rights non-discrimination claim.

2. *Pilchen v. City Of Auburn, N.Y* (2010)⁴⁷

A tenant brought a federal action arising from the termination of her water services. Among other judgments, the court held that requiring a tenant to assume her delinquent landlord’s obligations violated the tenant’s substantive due process rights, as defined by the New York State Constitution. While the court refused to address whether there was a constitutionally protected right to water supply, it did state that the right to water service could be subsumed under rights to property interests under state law.

3. Detroit, Michigan - Water Shutoffs

⁴³ CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS, art. XCVII.

⁴⁴ Relman, Dane & Colfax PLLC, *Case Description, Kennedy v. City of Zanesville* (2008), available at <http://www.relmanlaw.com/civil-rights-litigation/cases/zanesville.php> (lasted visited April 11, 2020).

⁴⁵ *Id.*

⁴⁶ *Kennedy v. Zanesville*, No. 2:03-cv-1047 (S.D. Ohio Sept. 7, 2007), Order on Summary Judgment at 25-26, (Plaintiffs alleged six federal and state civil rights causes of action: (1) Unlawful Discrimination under the Fair Housing Act, 42 U.S.C. § 3601; (2) Unlawful Discrimination Under 42 U.S.C. § 1981; (3) Unlawful Discrimination Under 42 U.S.C. § 1982; (4) Unlawful Discrimination Under 42 U.S.C. § 1983; (5) Unlawful Discrimination Under Title VI of the Civil Rights Act, 42 U.S.C. § 2000d; and (6) Unlawful Discrimination Under Ohio Revised Code § 4112.02(H)), available at <http://www.relmanlaw.com/docs/zanesville-order.pdf>.

⁴⁷ *Pilchen v. City of Auburn, N.Y.*, 728 F. Supp. 2d 192, 197 (N.D.N.Y. 2010).

In 2014, the Detroit Water and Sewage Department commenced the largest residential water shutoff campaign in the nation and terminated water service to over 20,000 Detroit residents for lack of payment, without regard to residents' health needs or ability to pay.⁴⁸ The City government placed liens on properties with overdue water bills, resulting in large numbers of homeowners losing their homes.

In August of 2014, a group of Detroit citizens filed *Lyda vs. City of Detroit*, a due-process class-action lawsuit seeking injunctive relief to stop the water shutoffs and restore services to customers who fell behind on their bills.⁴⁹ The plaintiffs also pursued City acceptance of an income-based water payment plan that would provide adequate revenue for the water department while ensuring that "all Detroit residents are guaranteed their fundamental human right to water."⁵⁰

In October 2014, the U.N. Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation and the U.N. Special Rapporteur on Adequate Housing were invited to Detroit to conduct investigations into civil and human rights violations.⁵¹ Criticizing the shutoffs, they stated that "[i]t is contrary to human rights to disconnect water from people who simply do not have the means to pay their bills."⁵² The U.N. Special Rapporteurs highlighted Detroit's tragedy which ignited intense domestic and international attention.

At the invitation of the plaintiffs' counsel, the International Network for Economic, Social and Cultural Rights submitted an amicus brief urging the Court to consider relevant international human rights law in its application of domestic law and to ensure that the human rights obligations of the U.S., which extend to Detroit, were not outweighed by financial concerns.⁵³

The amicus brief asserted that the court should consider international law as relevant and persuasive in the present case because (1) City of Detroit is bound by international law; (2) applicable federal state and municipal law must be interpreted consistently with international law, (3) international law that is binding on the U.S. indicates that disconnection of water supply in these circumstances constitutes a breach of international human rights law; (4) comparative law indicates an international consensus that rights at issue in this case, are justiciable and should be subject to effective remedies before domestic courts; and (5) application of international human rights to domestic law indicates that the City of

⁴⁸ "Water is a Human Right: Detroit Residents Seek U.N. Intervention as City Shuts Off Taps to Thousands," Democracy Now (June 24, 2014), available at https://www.democracynow.org/2014/6/24/water_is_a_human_right_detroit.

⁴⁹ *Lyda v. City of Detroit*, 2 (Bankr. E.D. Mich. 2014), Brief in Support of Plaintiff's Motion for Temporary Restraining Order, available at <https://www.naacpldf.org/wp-content/uploads/LYDA-et-al.-v.-Detroit-Brief-in-Support-of-Plaintiffs-Motion-for-Temporary-Restraining-Order.pdf>.

⁵⁰ *Id.*

⁵¹ "Civil Rights Groups Call On Un Rapporteurs To Refer Human Rights Abuses In Detroit Water Shut-Offs To US Government," AMERICAN CIVIL LIBERTIES UNION (Oct. 16, 2014), available at <https://www.aclumich.org/en/publications/civil-rights-groups-call-un-rapporteurs-refer-human-rights-abuses-detroit-water-shut>

⁵² *UN officials criticize Detroit water shutoffs*, BRITISH BROADCASTING CORPORATION (Oct. 20, 2014), available at <https://www.bbc.com/news/world-us-canada-29697767>.

⁵³ *In re City of Detroit, Mich.*, Amicus Brief, 1 (U.S. D. E.D. of Mich. S. Div., Feb. 3, 2015), available at <https://www.escr-net.org/sites/default/files/Detroit%20water%20case%20amicus%20-%20FINAL%20as%20filed%20%283%20Feb%202015%29.pdf>.

Detroit has the authority to require adverse measures impacting access to water be subject to judicial review.⁵⁴

The judge dismissed the *Lyda* claim and did not refer to the human rights argument.⁵⁵ Lawyers for the Lyda plaintiffs appealed the dismissal of the case and, in November 2016, the U.S. Court of Appeals for the Sixth Circuit upheld the lower court's decision to dismiss.⁵⁶

4. *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*⁵⁷ – Dakota Pipeline

The Standing Rock Sioux Tribe used both domestic and international legal systems to defend their right to water, citing violations of federal statutes, international treaties, human rights and Rights of Indigenous Peoples.⁵⁸ Employing federal statutory law, the Standing Rock Sioux Tribe sued the U.S. Army Corp of Engineers in federal court in July 2016, alleging the Corps violated the National Historic Preservation Act, the Clean Water Act and the National Environmental Policy Act (NEPA) by failing to conduct a full EIS and adequately consult tribal members before approving the pipeline.⁵⁹ The court denied the Tribe's request.⁶⁰

Engaging with U.N. mechanisms, the Standing Rock Sioux Tribe and International Indian Treaty Council (IITC) asked four U.N. Special Rapporteurs to urge the U.S. to cease its treaty and human rights violations against the Standing Rock Sioux Tribe in August 2016.⁶¹ The Special Rapporteur on the Rights of Indigenous People visited Standing Rock in September and subsequently called on the U.S. government to halt construction of the pipeline due to the significant risk it posed to the Standing Rock Sioux Tribe's drinking water, sacred sites and burial grounds.⁶² Two other U.N. experts also visited Standing Rock in January 2017 to conduct a hearing with a representative of the IITC and ACLU Human Rights Program. The Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, and Yankton Sioux Tribe also filed a

⁵⁴ *Id.*

⁵⁵ *Lyda v. City of Detroit (In re City of Detroit)*, No. 15-CV-10038, 2015 WL 5461463, at 5 (E.D. Mich. Sept. 16, 2015).

⁵⁶ *Lyda v. City of Detroit (In re City of Detroit)*, 841 F.3d 684 (6th Cir. 2016), available at <https://www.opn.ca6.uscourts.gov/opinions.pdf/16a0270p-06.pdf>.

⁵⁷ *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 301 F. Supp. 3d 50 (D.D.C. 2018) (and Consolidated Case Nos. 16–1769 and 16–267).

⁵⁸ *Id.*

⁵⁹ *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, Compl. for Declaratory and Injunctive Relief, 2 (U.S. Dist. Ct. D.C., July 27, 2016), available at <https://earthjustice.org/sites/default/files/files/3154%201%20Complaint.pdf>.

⁶⁰ *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, Memorandum Opinion, 1-2 (U.S. Dist. Ct. D.C., Sept. 9, 2016), available at <https://earthjustice.org/sites/default/files/files/order-denying-PI.pdf>.

⁶¹ "End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz of her visit to the United States of America," U.N. Special Rapporteur on the Rights of Indigenous Peoples (Mar. 3, 2017), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21274&LangID=E>.

⁶² Victoria Tauli-Corpuz, "North Dakota: 'Indigenous peoples must be consulted prior to oil pipeline construction' – UN expert," U.N. Special Rapporteur on the Rights of Indigenous Peoples (Sept. 23, 2016), available at <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/162-north-dakota-pipeline>.

petition with the Inter-American Commission on Human Rights (IACHR) in December 2016.⁶³ At the hearing, U.S. representatives denied the Commission's power to enforce the U.N. Declaration.⁶⁴ On March 25, 2020, the federal court granted a request by the petitioners to strike down the federal permits and found the U.S. Army Corps of Engineers in violation of the EPA when it affirmed federal permits for the pipeline in 2016.⁶⁵ The court ordered the Corps to prepare a full environmental impact statement on the pipeline.⁶⁶

5. Flint, Michigan – Drinking Water

Dozens of lawsuits were filed on behalf of Flint residents in both state and federal courts. Class action suits alleged violations of the Federal Torts Claims Act and the Safe Water Drinking Act by the EPA and city and state officials.⁶⁷ Roughly 60 cases were dismissed and others remanded to state court.⁶⁸ In March 2017, a federal judge approved \$97 million settlement of the class-action lawsuit, in which the state of Michigan agreed to replace lead pipes for residents, continue door-to-door filter installation, and extensively monitor Flint's tap water for lead.⁶⁹ The U.S. Supreme Court cleared the way for water crisis victims to sue state and local government officials in Flint.⁷⁰

Litigation surrounding the Flint water crisis has not employed the human rights framework. However, U.N. experts have called on the federal and state governments to take action to address the serious human rights concerns surrounding Flint's water contamination and the devastating consequences for its residents.⁷¹

6. *Picket v. City of Cleveland* (2019) – Class Action Complaint⁷²

⁶³ *Request for Precautionary Measures Under Article 25 of the IACHR Rules of Procedure Concerning Serious and Urgent Risks of Irreparable Harm Arising Out of Construction of the Dakota Access Pipeline* (Dec. 2, 2016), available at <https://www.indianz.com/News/2016/12/08/iachrpressrelease120216.pdf>.

⁶⁴ Comisión Interamericana de Derechos Humanos, "EEUU: Indígenas e industrias extractivas," YOUTUBE (Dec. 9, 2016), available at https://www.youtube.com/watch?v=L_5UHH1YBhI.

⁶⁵ *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, No. CV 16-1534 (JEB), 2020 WL 1441923 (D.D.C. Mar. 25, 2020).

⁶⁶ *Id.*

⁶⁷ See *Burgess v. United States*, Complaint (Jan. 30, 2017), available at <https://rewire.news/wp-content/uploads/2017/02/Burgess-FILED-EPA-Complaint-Final-1-30-17.pdf>.

⁶⁸ Jennifer Chambers, *Judge dismisses more Flint water crisis lawsuits*, THE DETROIT NEWS, Feb. 7, 2017, available at <http://www.detroitnews.com/story/news/michigan/flint-water-crisis/2017/02/07/flint-water-lawsuits/97595944/>.

⁶⁹ Press Release, NATURAL RESOURCES DEFENSE COUNSEL, *Flint's Lead Pipes Will Be Replaced Under Settlement in Federal Safe Drinking Water Case* (Mar. 28, 2017), available at <https://www.nrdc.org/media/2017/170511-2>.

⁷⁰ Vanessa Romo, "Supreme Court Allows Flint Water Lawsuits to Move Forward, Officials Not Immune," NATIONAL PUBLIC RADIO (Jan. 21, 2020), available at <https://www.npr.org/2020/01/21/798331185/supreme-court-allows-flint-water-lawsuits-to-move-forward-officials-not-immune>.

⁷¹ "Flint: 'Not just about water, but human rights' – UN experts remind ahead of President Obama's visit," UNITED NATIONAL HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (May 3, 2016), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19917&LangID=E>.

⁷² *Pickett v. City of Cleveland*, No. 1:19-cv-02911-SO (N.D. Ohio Dec. 18, 2019), Class Action Complaint, available at <https://www.courtlistener.com/recap/gov.uscourts.ohnd.261500/gov.uscourts.ohnd.261500.1.0.pdf>.

In December 2019 Plaintiffs brought a class action complaint against the City of Cleveland. The lawsuit claimed rampant water shutoffs, widespread overbilling, and subsequent placing of liens on homes with overdue bills leading to neighborhood destruction. The lawsuit claims the City of Cleveland through its water department has violated the Fair Housing Act, due process under the 14th Amendment, the Ohio Civil Rights Act. The NAACP LDEF said these unfair practices disproportionately impacted black residents. The defendants filed a motion to dismiss on February 13, 2020.⁷³

IV. Tax Liens: Human Right to Water

This section will explore the issue of water affordability and access – particularly the tax lien sale policies in the U.S. that arguably infringe on the right to water. The local tax lien system adds delinquent water bills to real estate taxes in ways that compound the amounts owed and further challenge a person’s capacity to pay off debts.

The issue can be summarized as follows: in some local U.S. jurisdictions, an unpaid water bill can trigger a tax lien sale and foreclosure process. This happens when the state or local jurisdiction sells debt consisting of unpaid property taxes and water bills on real property to investors, the purpose being to retrieve funds to “provide essential government services.”⁷⁴ Tax lien property foreclosure issues have become particularly acute due to rising water costs and the COVID-19 pandemic, which puts water payments increasingly out of reach for low-income households.⁷⁵ Addressing the tax lien sale system thus falls within the scope of human rights law, and is directly connected to the fundamental rights to water and housing.

Here, are two examples to provide context as to how tax liens and water rights have been intertwined:

Baltimore, Maryland: One city that exemplifies the challenges and impacts of imposing tax liens on water bills is Baltimore, Maryland. In July 2017, the costs of water in Baltimore increased by 9.4 percent as part of a three-stage increase scheduled through 2018.⁷⁶ This increase is estimated to add between \$7 and \$84 to a household’s monthly water bill.⁷⁷ Although the purpose of these increases is to help

⁷³ *Pickett v. City of Cleveland*, No. 1:19-cv-02911-SO (N.D. Ohio Feb. 13, 2020), available at <https://www.courtlistener.com/docket/16600834/pickett-v-city-of-cleveland/> (full docket).

⁷⁴ *The Other Foreclosure Crisis: Property Tax Lien Sales*, NAT’L CONSUMER L. CTR., 1, 4, 12 (Jul. 2012), available at http://www.nclc.org/images/pdf/foreclosure_mortgage/tax_issues/tax-lien-sales-report.pdf.

⁷⁵ See Elizabeth A. Mack & Sarah Wrase, *A Burgeoning Crisis? A Nationwide Assessment of the Geography of Water Affordability in the United States*, PLOS ONE, 1 (Jan. 11, 2017), available at <http://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0169488&type=printable> (The study highlights “high-risk and at-risk households for water poverty or unaffordable water services.”).

⁷⁶ *Discounts, Grants for City Water/Sewer Bills to Rise on July 1*, BALTIMORE CITY DEP’T OF PUB. WORKS (June 29, 2017), available at <https://publicworks.baltimorecity.gov/news/press-releases/2017-06-29-discounts-grants-city-watersewer-bills-rise-july-1>.

⁷⁷ Yvonne Wenger & Ian Duncan, *Latest Water Rate Increase Comes Amid Fresh Debate on Affordability for the Poor*, THE BALTIMORE SUN (June 30, 2017), available at <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-rate-discounts-20170701-story.html>.

offset the costs of repairing water infrastructure,⁷⁸ such radical increases in water bills are expected to, and have already, adversely affected vulnerable populations including the poor and the elderly.⁷⁹ In 2017, Baltimore executed tax lien sales on 1000 owner-occupied properties.⁸⁰ How many of the 1,000 properties were on sale because of tax liens on water bills is unclear, but statistics from previous years suggest that a considerable percentage are likely to have had water-related tax liens. Not all affected property owners go on to lose their homes due to a tax lien foreclosure. Maryland law permits Baltimore property owners to redeem their properties after the sale. However, the redemption process includes repayment of the lien certificates with 12 percent interest for owner-occupied properties and 18 percent interest for non-owner occupied properties, legal fees, postage, updated property taxes, and other associated costs.⁸¹ The initial unaffordability of water combined with the costs of the tax sale process, including redemption, thus creates a snowball effect that places insurmountable financial burdens on low-income homeowners. However, on January 2020 the Baltimore Mayor Jack Young signed the Water Accountability and Equity Act (WAEA) which completely overhauls the outdated water billing system.⁸² Water bills will now be based on percentage-of-income which will help ensure residents can afford the price of their water. Additionally, in Baltimore City, a collector is currently required to withhold from sale a residential property if the taxes accrued only from unpaid water and sewer charges.⁸³ (The complete language of the Bill is included in the Appendix as a reference).

Detroit, Michigan: While water shutoffs have been the predominant water rights issue in Detroit, the city also has a long-term, recurring issue in the form of a law that permits unpaid water bills to be added to a property owner's real property tax. This increases the property tax owed each year, and if such taxes go unpaid, the city has the right to then execute a tax lien sale and foreclose the property to the owner. A citizen-led study mapped those properties to which the city had shut off water and those that were at risk of being or already foreclosed. The study found that "11,979 of homes that went to auction had water debt included with property taxes" in 2014.⁸⁴ Although this study focused on only those properties that had water shutoffs due to delinquent bills, the connection between tax liens and unpaid water bills is apparent.

At present, the prospect of losing one's home for unpaid water bills remains a real threat for vulnerable segments of the American population. Detroit and Baltimore offer just two illustrations of the negative impacts imposing tax liens on water bills can have on consumers. However, they are not the only cities to have such laws. Others such as Cleveland, Ohio have generally unfavorable tax lien sale policies.⁸⁵ At

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Losing your Home over a Water Bill*, THE BALTIMORE SUN (June 4, 2017), available at <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-tax-sales-20170604-story.html>.

⁸¹ Joan Jacobson, *The Steep Price of Paying to Stay: Baltimore City's Tax Sale, the Risks to Vulnerable Homeowners, and Strategies to Improve the Process*, ABELL FOUND., 3 (Oct. 2014), available at <http://www.abell.org/sites/default/files/publications/ec-taxsale1014.pdf>.

⁸² FOOD & WATER WATCH, *Historic Baltimore Water Justice Bill Becomes Law* (Jan. 13, 2020), available at <https://www.foodandwaterwatch.org/news/historic-baltimore-water-justice-bill-becomes-law>.

⁸³ Md. Code Ann., Tax-Prop. § 14-849.1.

⁸⁴ Sarah Cwiek, *Citizen Research Links Detroit Water Shutoffs, Tax Foreclosures*, MICHIGAN RADIO (Aug. 12, 2016), available at <http://michiganradio.org/post/citizen-research-links-detroit-water-shutoffs-tax-foreclosures>.

⁸⁵ Ron Regan, *Thousands of Cleveland Water Customers at Risk of Losing Home due to Water Department Tactics*, NEWS 5 CLEVELAND (Dec. 14, 2016), available at <https://www.news5cleveland.com/mobile-showcase/thousands-of-cle-water-customers-at-risk-of-losing-home-due-to-water-department-tactics> (noting that "the Cleveland Division

the same time, some jurisdictions including Washington D.C. and New York City have been lauded for their more lenient laws that take into account the high costs of water.⁸⁶ The tax lien issue is another element in the argument that access to water is often lacking in the United States. With rising water costs, the issue of people's inability to pay for water and its associated risks, particularly that of losing the property altogether, becomes even more serious. Paying attention to this issue and mitigating its impacts is thus critical. Reframing the connection between tax liens and water bills as implicating a person's basic human rights might be an effective way to mitigate these harsh effects.

V. COVID-19 Pandemic: Human Right to Water

Affordable access to water has been an issue that affects every household in the U.S., but with the COVID-19 pandemic, this issue is even more critical. In the U.S. the common practice implemented by water authorities is to conduct water shutoffs as an incentive to make overdue water payments. But according to the World Health Organization, good hygiene, specifically frequent hand washing is crucial to prevent COVID-19 from spreading.⁸⁷ According to a study done by Food & Water Watch ("FWW") in 2016, one in every twenty households were disconnected by the public water department, leaving an estimated 15 million Americans without running water.⁸⁸ In response to the COVID-19 pandemic, several cities and states across the U.S. have enacted moratoriums on water shutoffs for nonpayment of bills.⁸⁹ The FWW has been continuously updating a database that tracks moratoriums on water shutoffs due to non-payment and water service restoration in each state.⁹⁰ The moratorium tracking data from FWW

of Water has been so aggressive [in utilizing tax lien laws to collect unpaid bills], nearly four times as many homeowners are facing tax liens since 2013").

⁸⁶ Joan Jacobson, *The Steep Price of Paying to Stay: Baltimore City's Tax Sale, the Risks to Vulnerable Homeowners, and Strategies to Improve the Process*, ABELL FOUND., 4–5 (Oct. 2014), available at <http://www.abell.org/sites/default/files/publications/ec-taxsale1014.pdf> ("Other cities faced with similar challenges of balancing collection of past due bills with reasonable protections, including New York City, Philadelphia and Washington, D.C. have enacted consumer-friendly laws to prevent the poorest homeowners from losing their houses.").

⁸⁷ WORLD HEALTH ORGANIZATION, *Water, Sanitation, Hygiene and Waste Management for the COVID-19 Virus* (Mar. 3, 2020), available at https://apps.who.int/iris/bitstream/handle/10665/331305/WHO-2019-NcOV-IPC_WASH-2020.1-eng.pdf?sequence=1&isAllowed=y.

⁸⁸ FOOD & WATER WATCH, *America's Secret Water Crisis: National Shutoff Survey Reveals Water Affordability Emergency Affecting Millions* (last visited May 6, 2020), https://www.foodandwaterwatch.org/sites/default/files/rpt_1810_watershutoffs-web2.pdf.

⁸⁹ See Nina Lakhani, "90 US cities and states suspend water shutoffs to tackle coronavirus pandemic," THE GUARDIAN (Mar. 16, 2020), available at <https://www.theguardian.com/world/2020/mar/16/90-us-cities-and-states-suspend-water-shutoffs-to-tackle-coronavirus-pandemic>.

⁹⁰ See FOOD & WATER ACTION, *Water Shutoff Moratoria Amidst Coronavirus SpreadSheet*, available at <https://docs.google.com/spreadsheets/d/e/2PACX1vSU9gYc6bZ73BJFK1IpxTSSq5IRA0FmUqLWRvVbOw2kVXUzGrZiA5roEDVAjAP510Uk56EmhnpEc5T/pubhtml#>.

reveals that at the state and local level moratoriums are widespread, but the restoration of water service is much less common.⁹¹

On March 23, 2020, the U.N. Special Rapporteurs issued a public statement calling on the world governments to immediately prohibit water cuts for those who cannot afford their water bills and to provide water for the duration of the crisis to vulnerable populations.⁹² On April 17, 2020 the Emergency Water is a Human Right Act was introduced in Congress, which would nationally prohibit water shutoffs and ensure water affordability protections for low-income households during the COVID-19 pandemic.⁹³ The bill would also require providers to reconnect water services for the millions of Americans that have had their water lines disconnected.⁹⁴

Here, is a list of select states to provide context as to how the moratoriums and restoration orders went into effect:

Baltimore, Maryland: Forty-three groups joined together and delivered a letter to the Mayor and City Council urging them to take additional actions to ensure the city's most vulnerable water customers continue to have access to affordable water service.⁹⁵

Buffalo, New York: With the push from advocacy group Action Network, issued an order requiring restoration of service.⁹⁶ The group submitted a petition to the Mayor of Buffalo and the chairman of the water department which included signatures from several local advocacy and legal organization.⁹⁷

Massachusetts: On March 24, 2020, fourteen days after a state of emergency was declared, the Chairman of the Department of Public Utilities issued a set of Orders requiring a moratorium on shutoffs of investor-owned (i.e., privatized) gas, electric, and water service until the state of emergency is lifted.⁹⁸ But the Orders declaring a moratorium on shutoffs for customers that were delinquent on their bills did not include an order regarding reinstatement of service,⁹⁹ and there has been no statewide moratorium

⁹¹ *Id.*; See FOOD & WATER WATCH, *Stopping Water Shutoffs Locally Not Enough: We Need A National Ban And Service Restoration Plan* (Mar. 16, 2020), available at <https://www.foodandwaterwatch.org/news/stopping-water-shutoffs-locally-not-enough-we-need-national-ban-and-service-restoration-plan>.

⁹² UNITED NATIONAL HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *COVID-19 will not be stopped without providing safe water to people living in vulnerability – UN Experts* (Mar. 23, 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25738&LangID=E>.

⁹³ Emergency Water is a Human Right Act, H.R.6552, 116th Cong. (2nd Sess. 2020)

⁹⁴ *Id.*

⁹⁵ FOOD & WATER WATCH, *43 Groups Urge Additional Water Affordability Measures In Baltimore Amidst COVID-19* (April 1, 2020), available at <https://www.foodandwaterwatch.org/news/baltimore-groups-urge-more-water-action-amidst-covid-19>.

⁹⁶ Michael Mroziak, *City, Water Board urged to restore shut off water service during the pandemic*, NATIONAL PUBLIC RADIO (April 2, 2020), available at <https://news.wbfo.org/post/city-water-board-urged-restore-shut-water-service-during-pandemic>.

⁹⁷ THE ACTION NETWORK, *Petition to Restore Water to Combat COVID-19 in Buffalo* (last visited May 6, 2020), available at <https://actionnetwork.org/petitions/restore-water-to-combat-covid-19-in-buffalo>.

⁹⁸ MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES, *Chairman's First Set of Orders Under G.L. c. 25, § 4B* (Mar. 24, 2020), available at <https://www.mass.gov/doc/chairs-1st-set-of-orders-under-c-25-s-4b-re-covid-19/download>.

⁹⁹ *Id.*

order. Under Mass. Gen. Laws. C. 25 § 4B the law explicitly provides for the chairman to require restoration of service.¹⁰⁰

Michigan: The Governor announced the “Coronavirus Water Restart Plan” to restore water service to all Detroit residents through an assistance program and payment.¹⁰¹ The Governor also started a \$2 million grant program to help communities to comply with the order.¹⁰² The National Resources Defense Council along with local partners filed a request for a declaratory ruling with the Michigan Department of Health and Human Services.¹⁰³

Ohio: With the push from advocacy group Food and Water Action, the governor issued a statewide order requiring a moratorium on shutoffs and restoration.¹⁰⁴

The method utilized by each state and local level differed by the tactic implemented whether that was through issuing emergency orders by the governor, bills in the legislature, or actions by the commissioner of the water department. Regardless, what COVID-19 makes abundantly clear is that this pandemic should make advocacy groups and communities rethink how they handle the question of access when it comes to affordable water for all.

VI. International Framework Utilized in the U.S.: Human Right to Water

Boston, Massachusetts	The U.N. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation found that Boston’s “water shut-off policies disproportionately impact marginalized persons along race, class and
-----------------------	--

¹⁰⁰ MASS. GEN. LAWS. ANN CH. 25, § 4B.

¹⁰¹ FOOD & WATER WATCH, *We Need a Country-Wide Moratorium on Water Shutoffs Amid Coronavirus* (Mar. 9, 2020), available at <https://www.foodandwaterwatch.org/news/we-need-country-wide-moratorium-water-shutoffs-amid-coronavirus>.

¹⁰² Jordan Davidson, *Millions of Americans Face Water Shutoffs During Pandemic*, ECOWATCH (April 6, 2020), available at <https://www.ecowatch.com/water-utility-shutoffs-us-coronavirus-2645648163.html?rebelltitem=5#rebelltitem5>.

¹⁰³ GREAT LAKES ENVIRONMENTAL LAW CENTER, *Michigan Department Of Health And Human Services Request For Declaratory Ruling* (Mar. 17, 2020), available at <https://www.nrdc.org/sites/default/files/michigan-covid-19-request-declaratory-ruling-03172020.pdf>; Jeremy Orr, *Michigan Must Restore Water to All Homes During COVID-19 Crisis*, NATURAL RESOURCES DEFENSE COUNCIL (Mar. 20, 2020), available at <https://www.nrdc.org/experts/jeremy-orr/michigan-must-restore-water-all-homes-during-covid-19-crisis>.

¹⁰⁴ Sam Allard, *DeWine Orders State Water Utilities to Halt Shutoffs, Restore Service During COVID-19 Crisis*, CLEVELAND SCENE (Mar. 31, 2020), available at <https://www.clevescene.com/scene-and-heard/archives/2020/03/31/dewine-orders-state-water-utilities-to-halt-shutoffs-restore-service-during-covid-19-crisis>; FOOD & WATER WATCH, *Ohio Governor Must Sign COVID-19 Law to Bar Water Shutoffs and Order Immediate EPA Action* (Mar. 26, 2020), available at <https://www.foodandwaterwatch.org/news/ohio-governor-must-sign-covid-19-law-barr-water-shutoffs-and-order-immediate-action-epa>.

	gender.” ¹⁰⁵ The Special Rapporteur cited to a study analyzing the demographics of water shutoffs that “found that for every one per cent increase in the city ward’s percentage of people of colour, the number of threatened cut-offs increases by four per cent.” ¹⁰⁶
Inter-American Commission of Human Rights (IACHR) Hearings (2015-16)	In October 2015, the National Coalition on the Human Rights to Water and Sanitation, supported by the US Human Rights Network, successfully requested a hearing at the IACHR on alleged violations of the right to water in the U.S. ¹⁰⁷ The Commission was sufficiently convinced by the testimony regarding the direct effects of water violations in the U.S., that the Commission granted a subsequent hearing in April 2016. ¹⁰⁸ At this hearing, U.S. government representatives were present to respond to the petitioner’s complaints. ¹⁰⁹ The 2016 hearing was significant because it was the first time the U.S. has appeared before the IACHR on the issue of access to water. The Head of the Commission criticized the U.S. for its inaction and allowing for water violations to happen within its borders. ¹¹⁰

VII. Prominent International Cases: Human Right to Water

*Delhi Water Supply v. State of Haryana (1996)*¹¹¹

In this case, it was determined that in the case of the joint use of a river in Delhi, India, consumption and domestic use outweigh commercial water use. In its discussion, the court went to great lengths to note the sanctity of the right to water

¹⁰⁵ Catarina de Albuquerque (Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation), *Mission to the United States of America*, ¶ 50, U.N. Doc. A/HRC/18/33/ADD.4 (Aug. 2, 2011), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/18>.

¹⁰⁶ *Id.*; Suren Moodliar and Kimberly Foltz, MASSACHUSETTS GLOBAL ACTION, “*Human Right to Water in the United States*, - letter to the independent expert,” (Sept. 22, 2009).

¹⁰⁷ US HUMAN RIGHTS NETWORK, *Hearing Request* (Jan. 20, 2016), <https://swuraniumimpacts.org/wp-content/uploads/2016/01/Hearing-Request-Towards-Best-Practices-for-Fulfilling-the-Human-Rights-to-Water-and-Sanitation-in-the-United-States.pdf>.

¹⁰⁸ US HUMAN RIGHTS NETWORK, *IACHR Regional Hearing on Rights to Water and Sanitation* (Oct. 23, 2015), <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-agua-EN.pdf>.

¹⁰⁹ Video: IACHR Hearing on Access to Water (US HUMAN RIGHTS NETWORK April 4, 2016), <https://ushrnetwork.org/2016/04/Video-of-the-IACHR-Hearing-on-Access-to-Water-April-4-2016>.

¹¹⁰ US HUMAN RIGHTS NETWORK, *Hearing Request* (Jan. 20, 2016), <https://swuraniumimpacts.org/wp-content/uploads/2016/01/Hearing-Request-Towards-Best-Practices-for-Fulfilling-the-Human-Rights-to-Water-and-Sanitation-in-the-United-States.pdf>.

¹¹¹ *Delhi Water Supply & Sewage Disposal Undertaking & Anr. v. State of Haryana & Ors*, (1996) SCC (2) 572 (India).

*Jorge Hernán Gómez Ángel v. Alcalde Municipal de Versalles – Valle del Cauca y el Gerente de la Empresa de Servicios Públicos de Versalles (2003)*¹¹²

In another Colombian water case, a community complained that the municipality was not providing water fit for human consumption. The court upheld this claim and proclaimed that the Constitution implied a right to safe and sufficient water under its recognition of the rights to life, human dignity, health, and a healthy environment.

*Perumatty Grama Panchayat v. State of Kerala (2004)*¹¹³

The excessive use of groundwater resources by a Coca-Cola subsidiary in India violated the constitutional right to life when it caused a region-wide water shortage.

*The Indigenous Community of Yakye Axa v. Paraguay (2005)*¹¹⁴

In this case, the court defined the minimum necessary amount of water needed for true fulfillment of the right to a decent existence: while the state was providing the community 2.17 liters of water per person per day, the court determined that most people require 7.5 liters per person a day. The court also ruled that the state had failed in its obligation to provide the community access to potable water. While both this case and the one above ultimately derive their power from the special obligation of the state to ensure non-discriminatory treatment of indigenous peoples, both still invoke the right of these peoples to clean water, and the duty of the state to provide it, whether through access or direct provision.

*Flor Enid Jimenez de Correa v. Empresas Públicas de Medellín (2007)*¹¹⁵

This case considered whether the disconnecting of a vulnerable person's water due to failure to pay constituted a violation of the right to water. The court applied the Colombian Constitution as well as the ICESR. Importantly, Comment 5 to the ICESR (not normally binding) was used as a legal basis for the prevention of discrimination in the delivery of water services.

¹¹² *Jorge Hernán Gómez Ángel v. Alcalde Municipal de Versalles – Valle del Cauca y el Gerente de la Empresa de Servicios Públicos de Versalles (2003)* C.C. T-410/03 (Colom.).

¹¹³ *Perumatty Grama Panchayat v. State of Kerala [2003]* High Court (2004) (1) KLT 731(India).

¹¹⁴ *The Indigenous Community of Yakye Axa v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 125, (June 17, 2005).

¹¹⁵ *Flor Enid Jimenez de Correa v. Empresas Públicas de Medellín (2007)* C.C. T-270/07 (Colom.).

*Riad and Idiab v Belgium (2008)*¹¹⁶

This case considers whether detaining asylum seekers without adequate water for consumption and hygiene is in violation of the European Convention on Human Rights on inhumane treatment.

*Tadevosyan v Armenia (2008)*¹¹⁷

This case ruled that failing to provide a detainee adequate access to water and sanitation violates article 3 of the European Convention on Human Rights on inhumane treatment and punishment.

*Ángela Poma Poma v. Peru (2009)*¹¹⁸

The case concerned the diversion of water away from an indigenous community. The court held that the diversion of water away from the Aymara people effectively ruined their ecosystem and infringed upon their rights to cultural enjoyment under article 27 of the ICCPR.

*Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v Sudan (2009)*¹¹⁹

In this case, which was among a series of allegations arising from the conflict in the Darfur region, the court held that the poisoning of wells and denial of access to water was a violation of the right to health as given by the African Charter on Human and People's Rights as well as CDESCR General Comment 14.

*Liliana Assenova Naidenova et al. v. Bulgaria (2012)*¹²⁰

In this case, the Committee considered the right to water under the right to life, the right to housing, and the prohibition against discrimination. The Human Rights Commission ("HRC") found that by disconnecting water supply to a community, the Republic of Bulgaria had committed a forcible eviction and violated the right to life of the petitioner. The HRC reasoned that while Ms. Liliana Naidenova et al. had not been forcibly evicted, cutting off the water supply to the Dobri Jeliaskov community could be considered an indirect means of achieving eviction.

¹¹⁶ *Riad and Idiab v Belgium*, 29810/03 Eur. Ct. H.R. (2008).

¹¹⁷ *Tadevosyan v. Armenia*, 41698/04 Eur. Ct. H.R. (2008).

¹¹⁸ *Ángela Poma Poma v. Peru*, Communication No. 1457/2006, Human Rights Committee, (Mar. 27, 2009).

¹¹⁹ *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v. Sudan*, 279/03 & 296/05, African Commission on Human and Peoples' Rights [Afr. Cmm'n H.P.R.] (May 27, 2009).

¹²⁰ *Liliana Assenova Naidenova et al. v. Bulgaria*, Communication No. 2073/2011, Human Rights Committee (Nov. 14, 2012).

City of Cape Town v Strümpher (2012)¹²¹

This South African case arose from a dispute regarding the city of Cape Town shutting off a resident's water when he failed to make payments. The court held that there was a constitutional right to water, as well as a duty to comply with the Water Act. Any limitation or termination of water services must meet the minimum threshold of "fair and equitable" action on the part of the city government.

APPENDIX

¹²¹ *City of Cape Town v. Strümpher* (2012) ZASCA 54 (S. Afr.).

Chapter 320

(Senate Bill 96)

AN ACT concerning

Baltimore City – Tax Sales of Real Property – Water Liens (Water Taxpayer Protection Act of 2019)

FOR the purpose of requiring the collector in Baltimore City to withhold from tax sale certain places of worship if the taxes on the property consist only of a lien for unpaid charges for water and sewer service; repealing the authority of the Mayor and City Council of Baltimore City to sell certain properties to enforce a lien for unpaid charges for water and sewer service if the properties are also being sold to enforce another lien; repealing the authority of the Mayor and City Council of Baltimore City to sell certain ~~places of worship~~ real property owned by religious groups or organizations to enforce a lien for unpaid charges for water and sewer service; repealing the authority of Baltimore City to enforce a water and sewer service lien on residential property if the property is being sold to enforce another lien; providing that this Act does not affect other rights or remedies of Baltimore City to collect unpaid charges for water and sewer service, ~~subject to a certain exception~~; ~~prohibiting Baltimore City from acquiring residential property and places of worship by means of execution of a judgment under certain circumstances~~; repealing a certain termination provision relating to the authority of Baltimore City to sell real property to enforce a water and sewer service lien; providing for the application of certain provisions of this Act; and generally relating to tax sales of real property in Baltimore City.

BY repealing and reenacting, with amendments, Article
– Tax – Property
Section 14-811(b) and 14-849.1
Annotated Code of Maryland
(2012 Replacement Volume and 2018 Supplement)

BY repealing and reenacting, with amendments,
Chapter 714 of the Acts of the General Assembly of 2018
Section 3

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Tax – Property

14-811.

(b) (1) The collector may withhold from sale any residential property, when the total taxes on the property, including interest and penalties, amount to less than \$750.

(2) In Baltimore City, the collector shall withhold from sale owner-occupied residential property, when the total taxes on the property, including interest and penalties, amount to less than \$750.

(3) In Baltimore City, the collector shall withhold from sale residential property OR PROPERTY THAT IS EXEMPT FROM TAXATION UNDER § 7-204(1) OR (2) OF THIS ARTICLE, if the taxes on the property consist only of a lien for unpaid charges for water and sewer service.

14-849.1.

(a) In Baltimore City, the Mayor and City Council may not sell a property [solely] to enforce a lien for unpaid charges for water and sewer service unless:

(1) the lien is for at least \$350;

(2) the property is not:

(I) a residential property; OR

(II) REAL PROPERTY USED EXCLUSIVELY AS A PLACE OF WORSHIP THAT IS EXEMPT FROM TAXATION UNDER § 7-204(1) OR (2) OF THIS ARTICLE; and

(3) the unpaid charges for water and sewer service are at least 3 quarters in arrears.

(b) [(1)] Notwithstanding subsection (a) of this section, the Mayor and City Council may enforce a lien on a property other than residential property OR REAL PROPERTY USED EXCLUSIVELY AS A PLACE OF WORSHIP THAT IS EXEMPT FROM TAXATION UNDER § 7-204(1) OR (2) OF THIS ARTICLE for unpaid water and sewer service that is less than \$350 if the property is being sold to enforce another lien.

[(2) Notwithstanding subsection (a) of this section, the Mayor and City Council may enforce a lien on residential property for unpaid water and sewer service if the property is being sold to enforce another lien.]

(c) ~~(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS SECTION DOES NOT AFFECT ANY OTHER RIGHT OR REMEDY OF BALTIMORE CITY FOR THE COLLECTION OF A WATER AND SEWER SERVICE CHARGE.~~

~~(2) BALTIMORE CITY MAY NOT ACQUIRE RESIDENTIAL PROPERTY OR REAL PROPERTY USED EXCLUSIVELY AS A PLACE OF WORSHIP BY MEANS OF~~

~~EXECUTION OF A JUDGMENT FOR FAILURE BY THE OWNER, ON WHOM THE WATER AND SEWER SERVICE CHARGE WAS ORIGINALLY MADE, TO PAY THE WATER AND SEWER SERVICE CHARGE.~~

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Chapter 714 of the Acts of 2018

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018. [It shall remain effective for a period of 1 year and 3 months and, at the end of December 31, 2019, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.]

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any liens attached to real property before the effective date of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2019.

Approved by the Governor, April 30, 2019.