



October 16, 2014

Ms. Catarina de Albuquerque  
United Nations  
Office of the High Commissioner for Human Rights  
Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation

Ms. Leilani Farha  
United Nations  
Office of the High Commissioner for Human Rights  
Special Rapporteur on Adequate Housing

Dear Special Rapporteurs de Albuquerque and Farha:

The ACLU of Michigan and the NAACP Legal Defense and Educational Fund, Inc. (LDF) are civil rights law organizations dedicated to eliminating racial discrimination and securing civil liberties for all Americans. We are currently serving as legal consultants in legal proceedings to compel Detroit to restore water service to its residents. We write to provide the United Nations' Office of the High Commissioner for Human Rights with additional background on Detroit Water and Sewerage Department's (DWSD) massive water shut-off campaign and its impact on African Americans and low-income Detroiters. These facts support our conclusion that the water shut-off campaign violates both civil and human rights laws and norms. These claims were presented to the bankruptcy court managing Detroit's insolvency. We also provide in this letter a summary of the ongoing litigation against Detroit and DWSD. We hope that this information will aid you in your fact-finding investigation in Detroit.

At issue are four core violations of human and civil rights:

- More than 27,000 Detroit residents have had their water service disconnected this year, imperiling their health, family relationships, and dignity.
- Residents have been denied a legal remedy because the only court with authority to hear claims against DWSD during the pendency of Detroit's bankruptcy has refused to accept jurisdiction over the residents' claims.
- Many residents have been denied due process, including notice of impending shut-off and the opportunity to contest their bills or avoid shut-off in the case of medical necessity.
- The shut-offs disproportionately affect Detroit's African-American residents.

We hope to place these issues in the broader context of a regional and national epidemic related to water affordability.

The City of Detroit, and all cities in the United States, must ensure that all citizens have access to clean water on an affordable basis.<sup>1</sup> DWSD must cease its policy of mass water shut-offs and restore service to occupied homes without water immediately. The City and DWSD must also work together to implement a water affordability plan that guarantees that no household is required to pay more than 2.5% of its income towards its water bill, as recommended by the U.S. Environmental Protection Agency and advocated by the People's Water Board Coalition and other Michigan advocates for over a decade. The State of Michigan and the Federal government should provide assistance in the furtherance of these goals.

Representatives from the ACLU of Michigan and LDF will be available at the October 18, 2014, meeting at the offices of Michigan Welfare Rights Organization, and would welcome the opportunity to meet with you at that time. In the meantime, we hope this letter will supplement the information provided to you by the People's Water Board Coalition and aid in your investigation and report.

## **Background**

On July 18, 2013, the City of Detroit filed the largest municipal bankruptcy in American history, with immense ramifications that have disproportionately burdened the City's elderly and impoverished residents. Over the past few months, DWSD has dealt the City's most vulnerable residents another heavy blow. Since approximately March of this year, residential customers have been the target of an aggressive campaign by DWSD to terminate the water service of thousands of individuals, often without the requisite notice established by DWSD's own policies and without regard to the residents' ability to pay or their serious health needs.

The situation in Detroit is further complicated by a variety of factors, not the least of which has been a curtailment of democracy. In March 2013, the State of Michigan appointed Kevyn Orr as Emergency Manager of Detroit and granted him unprecedented control over all City operations and finances. With the appointment of an Emergency Manager, the residents of Detroit no longer had a voice in city governance, as their democratically elected city council and mayor became virtually powerless. It was Orr's decision, with the approval of the governor, to take Detroit into bankruptcy. Furthermore, Orr was a staunch supporter of DWSD's aggressive shut-off campaign against residential customers.<sup>2</sup>

The human rights implications of this campaign have garnered significant national and international attention, including the attention of the United Nations' Office of the High Commissioner for Human Rights.<sup>3</sup> Fearing that DWSD's actions would further embarrass the

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<sup>1</sup> See United Nations International Covenant on Economic, Social and Cultural Rights (CESCR), art. 11(1), Dec. 16, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>; United Nations Office of the High Commissioner for Human Rights, *What Are the Human Rights to Water & Sanitation?*, SPECIAL RAPPORTEUR ON THE HUMAN RIGHT TO SAFE DRINKING WATER AND SANITATION, [http://sr-watersanitation.ohchr.org/en/rightstowater\\_1.html](http://sr-watersanitation.ohchr.org/en/rightstowater_1.html) (last visited Oct. 15, 2014) (The right to safe and affordable drinking water "is derived from the right to an adequate standard of living as consecrated in article 11 of the International Covenant on Economic, Social and Cultural Rights, as well as in other human rights treaties.").

<sup>2</sup> *Forget left and right on water shut-offs. Let's figure out how to fix the non-payment problem*, MICHIGANRADIO.ORG, July 21, 2014, <http://michiganradio.org/post/forget-left-and-right-water-shut-offs-lets-figure-out-how-fix-non-payment-problem>.

<sup>3</sup> Detroit: Disconnecting water from people who cannot pay - an affront to human rights, June 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>.

City and harm the bankruptcy proceedings, Bankruptcy Judge Steven W. Rhodes, who is presiding over the bankruptcy, called DWSD officials into court on July 21, 2014, to address concerns raised by the water shut-offs. At that time, DWSD Deputy Director Daryl Latimer announced that DWSD would institute a 10-day “pause” on shut-offs to allow those who were at risk of losing water service to make payment arrangements. This moratorium on shut-offs was later extended until August 24, 2014, and the City developed a “10-point plan” with the goal of improving customer service and simplifying payment assistance for customers.

Since the moratorium on water shut-offs ended in late August, however, a private contractor has resumed cutting off water to Detroit’s residential customers at a rate of about 1,100 homes per week, according to the latest statistics provided by DWSD to the ACLU of Michigan. In September alone, water was shut off to 5,114 homes. About 2,200 of those homes have had their water service restored, leaving more than 2,800 homes that lost service during September still without water.

In total, since January of this year, DWSD reports that it has shut off water to over 27,000 customers. According to DWSD Deputy Director Daryl Latimer, 16,000 customers have entered into payment plans but Mr. Latimer was unsure how many homes currently remain without water.<sup>4</sup> Recent reports put that number around 12,000. Neither DWSD nor the city have done an assessment of whether customers in occupied homes without water service have the ability to pay.

Some of these are certainly vacant and abandoned properties, but DWSD acknowledges that it does not know how many homes without water are vacant and how many are occupied.<sup>5</sup> And even now, despite the City’s 10-point plan, thousands of residents are continuing to lose access to water, a vital resource they cannot live without.

Among these residents is Avellah J., a 41-year-old woman whose family had their water shut off on October 9, 2014. This family of five people occupies both residences in a duplex that receives just one water bill, and they currently owe \$800 for water services. Avellah says that, after her sister’s disability payments were recently cancelled, she is currently the only person in the two combined households with any income, which is less than \$700 a month. With other utility bills costing her as much as \$300 a month (due to a payment plan to catch up on past electric bills), her monthly car payment, and other household expenses, there just is not enough money to pay all of her outstanding bills.

“Our ends aren’t meeting,” Avellah said, when describing the situation.

Her plan is to seek assistance from other family members in the hopes of raising enough funds to make a down payment on the past-due amount on her water bill and get the water turned back on.

How long she can keep the water on is another question.

“We’re already behind,” she said. “There’s not more money coming in, so how are we going to catch up?”

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<sup>4</sup> See Evid. Hr’g re: Mot. for Temporary Restraining Order, Tr. 102, 126, Sept. 23, 2014.

<sup>5</sup> See Evid. Hr’g re: Mot. for Temporary Restraining Order, Tr. 75-77, Sept. 22, 2014.

Avellah J.'s story, sadly, is not unique. In a City where nearly 40% of residents live below the federal poverty line<sup>6</sup> – which is \$23,850 for a family of 4<sup>7</sup> – thousands of residents are at risk of losing water service because they simply cannot afford to pay the bills.

### **The Lawsuit Against DWSD**

In an effort to address the needs of Detroit residents who have been affected by the recent mass shut-offs, and who have long-term affordability issues, on July 21, 2014, a team of Michigan attorneys filed a lawsuit, styled *Lyda v. City of Detroit*, on behalf of community groups and Detroit residents who have had their water shut off or are at risk of having it shut off.<sup>8</sup> The lawsuit claims that DWSD's mass residential shut-off campaign constituted a breach of executory contract under bankruptcy law; violated the Due Process Clause and Equal Protection Clause of the U.S. Constitution; and created a public health crisis, among other allegations.<sup>9</sup>

The ACLU of Michigan and LDF are serving as expert consultants to this critical human rights lawsuit that seeks an injunction ordering DWSD to restore water service, halt future shut-offs, and implement a water affordability plan.<sup>10</sup>

One effect of the pending bankruptcy is that any lawsuit filed against the City and its departments in federal district court, which has unquestionable authority over Plaintiffs' claims, is placed on hold until the bankruptcy concludes. However, the federal bankruptcy court is authorized to hear lawsuits against the City that concern the bankruptcy. Furthermore, because the City is always prohibited from committing acts that violate the United States Constitution, the bankruptcy court also has jurisdiction to resolve claims of unconstitutional conduct by the City. Due to the potentially severe human rights and public health consequences of DWSD's acts, the litigation team could not afford to wait until the bankruptcy ended to take action. Because the lawsuit filed against DWSD includes claims that involve the bankruptcy as well as constitutional claims, we strongly believe that the bankruptcy court has the jurisdiction to order the requested relief.

Over the course of a two-day hearing on the issues presented by this case, Plaintiffs offered testimony from low-income Detroit residents whose water service had been terminated without notice, including some who did not have enough money to enter into a payment plan to get it restored.<sup>11</sup> Plaintiffs also presented experts on the issue of water affordability, and health care

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<sup>6</sup> U.S. Census Bureau, 2012 American Community Survey, Selected Economic Characteristics for Detroit, Michigan, [http://factfinder2.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml).

<sup>7</sup> U.S. Dept. of Health and Human Services, 2014 Poverty Guidelines, <http://aspe.hhs.gov/poverty/14poverty.cfm>.

<sup>8</sup> Around the same time the lawsuit was filed, the ACLU of Michigan and LDF wrote to the Mayor of Detroit, the Emergency Manager of Detroit, and the head of the Detroit Water and Sewerage Department (DWSD) to express our concern over the aggressive policy of mass water shut-offs instituted by DWSD earlier this year. *See* Exhibit 1. In particular, our organizations were and are concerned about the due process and equal protection violations that DWSD has committed, and continues to commit, against its customers. We also remain concerned that the water shut-offs disproportionately affect Detroit's majority African-American population.

<sup>9</sup> Amend. Compl., *Lyda v. City of Detroit*, Dkt. No. 5, Case No. 14-4732 (Bankr. E.D. Mich. Jul. 30, 2014).

<sup>10</sup> In response to our July letter, DWSD expressed interest in meeting with the ACLU of Michigan and LDF, which we did, jointly with the litigation team, in our capacity as consultants. However, those meetings were not fruitful, as the parties were not able to agree on a resolution to the litigation, and could not develop either an immediate or long-term strategy to assist Detroit's most vulnerable citizens at risk of losing their water service in the future.

<sup>11</sup> *See, e.g.*, H'rg re: Mot. For Temporary Restraining Order, Tr. 23, 30, Sept. 22, 2014 (Testimony of T. Peasant).

and public health professionals to discuss the dangers associated with the lack of access to clean and potable water. The Defendants offered testimony from several DWSD officials, who acknowledged that they did not know how many of the residences without water service were occupied or whether those residences were home to children, the elderly, or people with chronic health issues or disabilities.<sup>12</sup> These officials also acknowledged that DWSD no longer adheres to certain aspects of its own rules and procedures governing water shut-offs, although those rules and procedures are still posted on DWSD's website,<sup>13</sup> giving customers the impression that they are still in effect.

Unfortunately, despite this evidence, Judge Rhodes found that the relief sought by Plaintiffs was beyond the scope of his limited authority and that Plaintiffs' constitutional claims were deficient as a matter of law. This decision has left Detroiters with no legal forum to seek relief during the pendency of the bankruptcy. Plaintiffs' litigation team has requested reconsideration of this decision.

### **Ongoing Human Rights Violations**

Although Judge Rhodes found that he did not have authority to order the relief sought by Plaintiffs, he made several very significant findings that highlight the continuing human rights and public health crisis created by DWSD's insistence on pursuing its aggressive water shut-off program.

First, Judge Rhodes found that it was unclear "that the City's ten-point plan will be of any long-term assistance to customers . . . with insufficient income to pay their bills." As Special Rapporteur de Albuquerque previously noted: "Disconnections [of water service] due to non-payment are only permissible if it can be shown that the resident is able to pay but is not paying. In other words, when there is genuine inability to pay, human rights simply forbids disconnections."<sup>14</sup> Indeed, the International Covenant on Economic, Social and Cultural Rights, to which the United States is a party, declares "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."<sup>15</sup> An adequate standard of living, including adequate housing, must include consistent access to clean, potable water.

Second, Judge Rhodes found that a resident who is without water, "especially if the service is lost for more than a few days," suffers "the risk of serious and even life-threatening medical conditions as well as adverse consequences in employment, in family and personal relations, and for children in their education."<sup>16</sup> Placing customers at risk of these harms is inconsistent with the norms set out in the Universal Declaration of Human Rights, which states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food,

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<sup>12</sup> See *id.* at 77-78, Sept. 22, 2014 (Testimony of S. McCormick); *Id.* at 102-103, Sept. 23, 2014 (Testimony of D. Latimer).

<sup>13</sup> *Id.* at 99-100, Sept. 23, 2014 (Testimony of D. Latimer).

<sup>14</sup> Detroit: Disconnecting water from people who cannot pay - an affront to human rights, June 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>.

<sup>15</sup> CESCR, art. 11(1).

<sup>16</sup> Hr'g re: Mot. for Temporary Restraining Order, Tr. 20, Sept. 29, 2014.

clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>17</sup>

Third, Judge Rhodes found that although DWSD's policies provide that a water shut-off may be delayed for customers with special needs or medical conditions, DWSD has not made customers aware of this relief or how to pursue it. Thus, people with chronic health issues have had their water service terminated when it should have been, at a minimum, delayed.<sup>18</sup> The termination of water service to those with special needs and medical conditions who cannot afford to pay similarly contravenes the intent of the international human rights treaties to which the United States is a party.

Finally, Judge Rhodes rejected the notion that, because public health officials have not recorded any health consequences resulting from water shut-offs to date, such consequences do not exist. He noted that the records kept by those officials have not been created for the express purpose of measuring the effects of mass water shut-offs, and he was unwilling to believe that "these records establish that there have not been and will not be any significant health consequences resulting from the water terminations."<sup>19</sup> DWSD's policies, which have left thousands of homes without access to water and risk creating a public health crisis, violate human rights standards that require "[t]he improvement of all aspects of environmental and industrial hygiene" and "[t]he prevention, treatment and control of epidemic, endemic, occupational and other disease."<sup>20</sup>

### **Racially Discriminatory Effect of Shut-Offs**

In addition to the violations of international health, housing, and economic security standards, as civil and human rights organizations, we remain gravely concerned about the racial impact of the DWSD water shut-offs. Without question, the disparate impact on African Americans of DWSD's massive shut-off campaign is in conflict with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which the United States is a party. Specifically, CERD article one (1), prohibits practices that have a racially discriminatory effect, regardless of intent.<sup>21</sup>

The Committee on the Elimination of Racial Discrimination recently expressed concern over the "high degree of racial segregation and concentrated poverty in neighborhoods characterized by substandard conditions and services, including poor housing conditions" in the U.S.<sup>22</sup> The

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<sup>17</sup> Universal Declaration of Human Rights, art. 25, Dec. 10, 1948, <http://www.un.org/en/documents/udhr/>; *see also* United Nations International Convention on the Elimination of All Forms of Racial Discrimination (CERD), art. 5(e)(iv), Dec. 21, 1965, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> ("States Parties undertake to . . . guarantee the right of everyone . . . [t]he right to public health, medical care, social security, and social services."); CESC, art. 12(1) ("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.") .

<sup>18</sup> *See* Hr'g re: Mot. for Temporary Restraining Order, Tr. 17-18, Sept. 29, 2014.

<sup>19</sup> *Id.* at 22.

<sup>20</sup> CERD, art. 12(1)(b) & (c).

<sup>21</sup> *See* CERD, art. 1(1).

<sup>22</sup> United Nations, Office of the UN High Commissioner for Human Rights, Committee on the Elimination of Racial Discrimination, Concluding observations of on the combined seventh to ninth periodic reports of United States of

demographic and socioeconomic realities of Detroit, a city whose population is over 82% African American with a high degree of poverty,<sup>23</sup> make the racial implications of DWSD's shut-off campaign especially stark. Peter Hammer, a law professor at Wayne State University and Director of the Damon J. Keith Center for Civil Rights, recently noted that the City has failed to address segregation and discriminatory housing practices in Detroit, and instead has focused only on "blight removal" and demolition of vacant properties.<sup>24</sup> "Blight removal" programs have long been used to displace African Americans from their homes,<sup>25</sup> and many believe the City's aggressive water shut-off policy, which renders homes uninhabitable, will have the effect – if not the stated intent – of driving African-American residents from the City.

Additionally, the systematic denial of due process to DWSD's residential customers, the majority of whom are African American, prior to service termination is inconsistent with CERD's guarantee of equality before the law, including the right to fair proceedings and the right to public health.<sup>26</sup> As previously noted, homes without access to water are not considered adequate. Service terminations are grounds for the removal of children by child welfare agencies, leading to another consequence that could disproportionately affect African-American children and families. This concern was previously raised by Special Rapporteur Farha.<sup>27</sup>

### **The Creation of the Regional Water Authority**

Our concern that DWSD is unable to meet the needs of the most vulnerable Detroiters has been heightened by the recent agreement by the Governor of Michigan, the Mayor of Detroit, and the Chief Executives of nearby Wayne, Oakland, and Macomb counties to create a new entity called the Great Lakes Water Authority (GLWA). The GLWA will lease DWSD's system-wide infrastructure for the next 40 years and provide water on a wholesale basis to about 4 million customers in southeast Michigan, including all current DWSD customers. This new authority as described is ill-equipped to address the needs across the region for financial assistance.

The Memorandum of Understanding requires the GLWA to set aside \$4.5 million the first year, and subsequently one-half percent (0.5%) of its budget annually, to help poor people across three major metropolitan counties, including Detroit, pay their water bills. We believe this program is woefully underfunded. No one can say for certain what the actual need is because, reportedly, no study has been conducted to determine what the actual need for assistance really is.<sup>28</sup>

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American, CERD/C/USA/CO/7-9, Paragraph 13, August 29, 2014, [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD\\_C\\_USA\\_CO\\_7-9\\_18102\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf).

<sup>23</sup> U.S. Census Bureau, Profile of General Population and Housing Characteristics: 2010, [http://factfinder2.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml#none](http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none).

<sup>24</sup> Rose Hackman, *Detroit Demolishes its Ruins; 'The Capitalists Will Take Care of the Rest,'* THEGUARDIAN.COM, Sept. 28, 2014, <http://www.theguardian.com/money/2014/sep/28/detroit-demolish-ruins-capitalists-abandoned-buildings-plan>.

<sup>25</sup> Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 Yale L. & Pol'y Rev. 1, 6 (2003) ("While [the term] purportedly assessed the state of urban infrastructure, blight was often used to describe the negative impact of certain residents on city neighborhoods" and "justify" their removal.).

<sup>26</sup> CERD, art. 5(a) & (e)(iv).

<sup>27</sup> Detroit: Disconnecting water from people who cannot pay - an affront to human rights, June 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>.

<sup>28</sup> See Curt Guyette, *UN to Hear Residents' Testimony*, MICHIGANCITIZEN.COM, Oct. 15, 2014, <http://michigancitizen.com/detroit-water-leaks-boost-costs/>.

Basic math, however, suggests that the \$4.5 million will be inadequate to make water affordable to all southeast-Michigan residents living below or near the poverty line. In Detroit alone, there are about 170,000 residential customers in a city where about 40 percent of the residents live below the federal poverty line. That means nearly 70,000 homes, roughly speaking, are likely to require assistance in paying water and sewerage bills that have increased by nearly 120 percent in the last decade. The average monthly water bill in Detroit is \$75 for a family of four – nearly twice the United States average.<sup>29</sup> The \$4.5 million proposed in the Memorandum of Understanding works out to about \$65 in assistance per year for each of those 70,000 impoverished Detroit households, and leaves nothing for families in need throughout all of southeast Michigan who may also require assistance.

### **Water Affordability as a National Issue**

Indeed, the problem of water affordability is not limited to Detroit. It is also a serious concern in a variety of ways across southeast Michigan and the nation.

In Detroit, residents have endured rate increases of nearly 120 percent over the past decade. This is due, in part, to the decline in the City’s population from nearly 2 million in the 1950s to fewer than 690,000 today, which has increased the burden on the remaining citizens to maintain an aging water and sewage infrastructure. Those who remain are often the poorest and least mobile citizens. As rates increased, so did the number of people who could not afford water and sewer services. As a result, the DWSD shut off water service to more than 27,000 customers in the first nine months of 2014. Of that number, it is estimated that approximately 8,000 customers have failed to have service restored.

Similarly, in Flint, Michigan, another urban area that has seen substantial population loss and high rates of poverty among the remaining residents, water bills now average \$140 per month.<sup>30</sup> There is anecdotal evidence that the high cost of water service is pushing some people to leave Flint. As the customer base declines, the cost of water rises even more dramatically for those who remain. Flint recently left the Detroit water system and began drawing its drinking water from the Flint River. However, contamination led to the issuance of at least three “boil water” advisories in August and September this year.<sup>31</sup>

In Highland Park, an enclave of about 10,400 people surrounded by Detroit, the City-owned water treatment plant has been shuttered. Water for Highland Park, which is located in Wayne County, is now purchased from DWSD, but will soon be provided by the GLWA. In November 2013, Detroit filed a lawsuit claiming that Highland Park owed nearly \$18 million in delinquent payments. If Detroit prevails, it would likely place an additional burden on the residents of

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<sup>29</sup> Anna Clark, Op-Ed, *Going Without Water in Detroit*, [WWW.NYTIMES.COM](http://www.nytimes.com/2014/07/04/opinion/going-without-water-in-detroit.html?_r=0), Jul. 3, 2014, [http://www.nytimes.com/2014/07/04/opinion/going-without-water-in-detroit.html?\\_r=0](http://www.nytimes.com/2014/07/04/opinion/going-without-water-in-detroit.html?_r=0).

<sup>30</sup> Dominic Adams, *Flint Monthly Water and Sewer Bills Highest in Genesee County by \$35*, [WWW.MLIVE.COM](http://www.mlive.com/news/flint/index.ssf/2014/06/post_386.html), June 1, 2014, [http://www.mlive.com/news/flint/index.ssf/2014/06/post\\_386.html](http://www.mlive.com/news/flint/index.ssf/2014/06/post_386.html).

<sup>31</sup> *Boil Water Advisory Lifted in Flint*, [WWW.ABC12.COM](http://www.abc12.com/story/26294997/boil-water-advisory-lifted-in-flint), Aug. 15, 2014, <http://www.abc12.com/story/26294997/boil-water-advisory-lifted-in-flint>; Ron Fonger, *Flint Lifts Boil Water Advisories for West Side of City, Says Investigation of Contamination Will Continue*, [WWW.MLIVE.COM](http://www.mlive.com/news/flint/index.ssf/2014/09/flint_lifts_boil_water_advisor.html), Sept. 9, 2014, [http://www.mlive.com/news/flint/index.ssf/2014/09/flint\\_lifts\\_boil\\_water\\_advisor.html](http://www.mlive.com/news/flint/index.ssf/2014/09/flint_lifts_boil_water_advisor.html) (discussing two advisories in September).



Highland Park – where 46 percent of the population lives below the poverty line – as the city scrambles to find the money to pay the judgment. Furthermore, as described above, the \$4.5 million assistance fund that will be established as part of the GLWA is unlikely to have sufficient funds to assist low-income residents in both Detroit and the surrounding counties.

Beyond Detroit and southeast Michigan, water affordability is an issue across the United States. In June, Special Rapporteur de Albuquerque stated: “When I conducted an official country mission to the US in 2011, I encouraged the US Government to adopt a federal minimum standard on affordability for water and sanitation and a standard to provide protection against disconnections for vulnerable groups and people living in poverty. I also urged the Government to ensure due process guarantees in relation to water disconnection.”<sup>32</sup> Yet, as highlighted in an April 2013 report produced by the Georgetown Law Human Rights Institute, standards have not been implemented on a national level – nor on a local level in many cities, like Detroit.

According to the report:

Rising water costs—and the increasing proportion of those costs borne by ratepayers—starkly highlight the lack of a national program to ensure low-income individuals’ access to water. Although the federal government has stepped in to help struggling households with other utility bills through programs such as the Low-Income Home Energy Assistance Program (LIHEAP), this has not been expanded to help keep water flowing to those same economically constrained households. Meanwhile, the National Drinking Water Advisory Council—a federal advisory committee created by the Safe Drinking Water Act—has proposed a nationwide Low-Income Water Assistance Program (LIWAP) to the Environmental Protection Agency. Over the past decade, non-governmental consumer advocacy organizations such as the National Consumer Law Center and the Utility Reform Network have increasingly drawn attention to impending infrastructure and regulatory costs in proceedings before various state public utility commissions.

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As infrastructure costs rise, changes in water and wastewater infrastructure financing have contributed to the problem of unaffordable rate increases. Historically, federal and state governments would cover some long-term costs in the form of infrastructure grants. Since the 1980s, however, these grants have given way to infrastructure loans, pushing water systems to charge their customers full-cost, or near full-cost, rates. As James Fausone, Chairman of the Board of Water Commissioners at the

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<sup>32</sup> Detroit: Disconnecting water from people who cannot pay - an affront to human rights, June 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>.

Detroit Water and Sewerage Department, explained, “There’s an absolute lack of national and state planning on water infrastructure except on the backs of individual users.”<sup>33</sup>

The petitioners and other groups will present additional information about water affordability issues in Michigan and elsewhere, including proposed solutions, during your visit.

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Thank you for responding to the petition and accepting the invitation of the Detroit People’s Water Board, the Blue Planet Project, Food & Water Watch, and the Michigan Welfare Rights Organization to conduct this fact-finding investigation in Detroit. We hope this background information is helpful as you conduct your investigation. We believe the influence of the United Nations can be an important factor in the continuing efforts to encourage the federal, state, and local governments to implement the necessary reforms to ensure that all citizens have access to clean, affordable drinking water.

We ask that you make the following recommendations to the United States and local government:

- US Department of Justice, Civil Rights Division, and the state equivalent(s), should:
  - open an investigation into the disparate impact of DWSD practices including constitutional due process and equal protection violations; and
  - monitor the implementation of the GLWA specifically with respect to its impact on racial segregation and concentrations of poverty.
- U.S. Department of Housing and Urban Development and the state equivalent(s) should:
  - investigate whether DWSD’s shut-off program has operated to make housing unavailable to low-income and African-American residents, in violation of the Fair Housing Act of 1964 and CERD; and
  - advise Detroit and other similarly situated cities how they can use available funds to assist residents with water bills, make infrastructure improvements to water system, and provide conservation assistance to low-income resident to improve their plumbing and limit water loss. This is particularly important for residents using housing subsidies to rent apartments with poor plumbing, which can lead to unaffordable water bills.
- U.S. Department of Health and Human Services and its state equivalent(s) should:
  - investigate the public health implications of mass water shut-offs; and
  - establish “best practice” guidelines for evaluating and managing the risks to families associated with mass water shut-offs.
- U.S. Environmental Protection Agency and the state equivalent should:

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<sup>33</sup> JASON AMIRHADJI ET AL., GEORGETOWN LAW HUMAN RIGHTS INSTITUTE FACT-FINDING PRACTICUM, TAPPED OUT: THREATS TO THE HUMAN RIGHT TO WATER IN THE URBAN UNITED STATES 19-20 (2013), <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

- investigate, research, and establish "best practice" guidelines for overall management of safe drinking water act and clean water act, and affordability guidelines.

Additionally, we ask that you make the following specific recommendations, supported by the petitioners, to the City of Detroit and the State of Michigan:

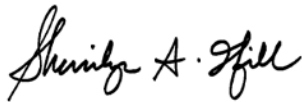
- Immediately end DWSD's campaign of residential water shut-offs;
- Restore water service to the thousands of Detroiters whose water service has been terminated; and
- Execute a water affordability plan that ensures that no household is required to pay more than 2.5% of its income towards its water bill.

We hope to have the opportunity to meet with you on October 18 to discuss these issues further. Thank you for your consideration.

Very truly yours,



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