

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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all other similarly situated, and]
MICHIGAN WELFARE RIGHTS]
ORGANIZATION, PEOPLE’S WATER]
BOARD, NATIONAL ACTION]
NETWORK – MICHIGAN CHAPTER,]
and MORATORIUM NOW!

Case No. 2:15-cv-10038-BAF-RSW
Hon. Bernard A. Friedman
Magistrate Judge R. Steven Whalen

Ad. Proc. No. 14-04732

Bankruptcy Case Number 13-53846
Honorable Steven W. Rhodes
Chapter 9

Plaintiffs-Appellants,

CITY OF DETROIT, a Municipal
Corporation, through the Detroit Water and
Sewerage Department, its Agent,

Defendant-Appellee

AMICUS BRIEF IN SUPPORT OF THE PLAINTIFFS-APPELLANTS

ORAL ARGUMENT REQUESTED

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<i>Institute for Human Rights and Development in Africa v Angola</i> Afr. Comm'n on Human and Peoples' Rights (2008)	6, 9
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Committee against Torture, <i>Conclusions and Recommendations of the Committee against Torture: Tajikistan</i> , U.N. Doc. CAT/C/TJK/CO/1 (2006)	6
Committee on Economic, Social, and Cultural Rights <i>General Comment No. 9: The domestic application of the Covenant</i> , U.N. Doc. E/C.12/1998/24 (1998)	2, 3
Committee on Economic, Social, and Cultural Rights, <i>General Comment 15: The right to water</i> , U.N. Doc. E/C.12/2005/4 (2005)	7, 9
Committee on Economic, Social and Cultural Rights, <i>General Comment No. 20: Non-discrimination in economic, social and cultural rights</i> , U.N. Doc. E/C.12/GC/20 (2009)	6
Committee on the Elimination of Racial Discrimination, <i>Concluding Observations of the Committee on the Elimination of Racial Discrimination United States of America</i> , U.N. Doc. CERD/C/USA/CO/6 (2008)	6
Committee on the Rights of the Child, <i>Concluding Observations of the CRC: Bulgaria</i> , U.N. Doc. CRC/C/BGR/CO/2 (2008)	7
Human Rights Committee, <i>Concluding Observations on Israel</i> , U.N. Doc. CCPR/C/ISR/CO/3 (2014)	5
Human Rights Committee, <i>General Comment No. 6, Article 6 (The right to life)</i> , U.N. Doc. HRI/GEN/1/Rev.1 (1994)	5
Human Rights Committee, <i>General Comment No. 20: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, Article 7</i> , U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994)	5
Human Rights Committee, <i>General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant</i> , U.N. Doc CCPR/C/21/Re.1/Add.13 (2004)	2, 11
OTHER U.N. DOCUMENTS	
Joint Press Statement by Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and to right to non-discrimination in this context, and Special Rapporteur on the human right to safe drinking water and sanitation Visit to City of	

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Office of the High Commissioner for Human Rights, <i>Report on Austerity Measures and Economic and Social Rights</i> , submitted pursuant to U.N.G.A. Res. 48/141 (2012)	8
U.N. General Assembly Res. 60/147, U.N. Doc. A/RES/60/147, (Mar. 21, 2005)	3
U.N. General Assembly Res. 64/292, U.N. Doc. A/RES/64/292 (July 28, 2010)	5, 9
U.N. Human Rights Council, <i>Report of the Independent Expert on the Issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation Catarina de Albuquerque</i> , U.N. Doc. A/HRC/12/24 (2009)	5
U.N. Human Rights Council, <i>Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha</i> (22 December 2014), U.N. Doc. A/HRC/28/62	2
U.N. Human Rights Counsel, <i>Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments</i> , U.N. Doc. A/HRC/6/3 (2007)	9

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Communication from the Commission on the European Citizens' Initiative "Water and sanitation are a human right! Water is a public good, not a commodity!" Communication 177 (2014)	10
International Law Commission, <i>Draft Articles on the Responsibility of States for Internationally Wrongful Acts</i> , Annex to GA-Res. 56/83, (2001)	4
Views of the United States of America on Human Rights and Access to Water, submitted to the Office of the United Nations High Commissioner for Human Rights (June 2007)	5
WASH United, Freshwater Action Network and WaterLex, <i>The human right to safe drinking water and sanitation in law and policy – a sourcebook Laws and policies guaranteeing the human right to drinking water and sanitation at the national, regional and international levels</i> (2012)	9, 10

INTEREST OF THE *AMICUS CURIAE*

Amicus curiae, the International Network for Economic, Social and Cultural Rights (ESCR-Net), is the largest global network of organizations, academics and advocates devoted to the realization of human rights, with a particular focus on economic and social rights. ESCR-Net consists of over 270 organizational and individual members in 70 countries, working collectively to engage with UN treaty

monitoring bodies as well as regional human rights mechanisms and processes, for the purpose of encouraging communities conducive to the enjoyment of economic, social and cultural rights. ESCR-Net has submitted amicus briefs, and supported Members to submit amicus briefs, in a number of national jurisdictions over the past few years. Since 2006, ESCR-Net has held consultative status with the United Nations Economic and Social Council.¹

The Members of ESCR-Net which led in the drafting of the *amicus* brief were: Dejusticia, the Global Initiative on Economic, Social and Cultural Rights (GI-ESCR), the Social Rights Advocacy Centre (SRAC), the Social Rights Institute of South Africa (SERI). Each organization has considerable expertise and experience in the field of human rights and a shared interest in the adjudication of economic, social and cultural rights. They have experience in litigating such rights before domestic and international fora, and have provided assistance to many domestic courts and international human rights bodies in interpreting and applying social and economic rights, including in relation to the right to water and associated human rights.

Amicus curiae seek to bring relevant matter to the attention of the Court that has not already been brought to its attention by the parties. Specifically, we seek to assist the Court in the case with the application of relevant international and comparative law, including as a means of interpreting the national law relevant to this case and relied upon by the Plaintiffs-Appellants. It is submitted that it would assist the Court to have an overview of relevant international law relating to denials of access to water, so as to be in a position to interpret national law consistently with the human rights obligations accepted by the United States and extending to all parts of subnational government, including the City of Detroit.

This *amicus curiae* brief is filed pursuant to leave granted by the Court on [to be confirmed]

FEDERAL RULES OF APPELLATE PROCEDURE RULE 29 STATEMENT

¹ ESCR-Net received ECOSOC accreditation through and with the support of our fiscal sponsor, The Tides Center (a US-based organization that provides fiscal sponsorship to over 200 US-based organizations).

Amicus curiae confirms that: (1) counsel did not author the brief in whole or in part; (2) neither of the parties, nor counsel, contributed money that was intended to fund preparing or submitting the brief; (3) no other person contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision of the City of Detroit to disconnect thousands of low income households from their supply of drinking water and water for toilets and basic sanitation has shocked the international community and has prompted, among other reactions, the visit of two United Nations Special Procedures human rights experts to assess the situation.²

This *amicus* brief is submitted by a group of concerned international human rights organizations, as well as the largest global network of groups and individuals working on economic, social and cultural rights, to urge the Court to give full consideration to relevant international human rights law in its consideration of the scope and application of relevant domestic law, and ensure that the human rights obligations of the United States, which extend to the City of Detroit, are not outweighed by financial or commercial concerns.

The trial court considered that international law regarding access to water is not relevant to this case. However, this brief asserts that international law is both relevant and persuasive in the present case because: (1) the City of Detroit is bound by international law that binds the U.S.; (2) applicable federal, state and municipal law at issue in this case should be interpreted consistently with international human rights law signed or ratified by the U.S.; (3) international law that is binding on the U.S. (including treaty provisions, jurisprudence and other authority) clearly indicates that the disconnection of the Plaintiffs-Appellants' water supply in these circumstances constitutes a breach of international human rights law; (4) comparative law from other jurisdictions 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) the application of international human rights to domestic law in the present case indicates that the city of Detroit has the authority, and indeed the obligation, to require that any measures adversely impacting

² Joint Press Statement by Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and to right to non-discrimination in this context, and Special Rapporteur on the human right to safe drinking water and sanitation Visit to city of Detroit (United States of America) 18-20 October 2014 (20 October 2014), available at <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188&LangID=E>>.

access to water and sanitation be subject to judicial review for compliance with the Declaration of Rights contained in the Charter of the City of Detroit, among other applicable domestic law.

ARGUMENT

I. THE CITY OF DETROIT IS BOUND BY ALL INTERNATIONAL HUMAN RIGHTS LAW THAT BINDS THE UNITED STATES

According to principles of international law, a State's international human rights obligations extend to all levels of government and to any exercise of governmental authority.³ The conduct of an organ of a territorial governmental entity within a State, such as the City of Detroit and its officials, is considered to be an act of the State, and, as such, must comply with the State's international legal and human rights obligations.⁴ A recent United Nations report emphasized the importance of recognizing this reality, noting that "...local governments are at a critical point of intersection between rights holders and complex systems of multi-level governance."⁵

Of particular relevance to the present case are the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), each of which the United States has ratified; and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD), each of which the U.S. has signed but not

³ U.N. Human Rights Committee, *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 4 (2004), U.N. Doc. CCPR/C/21/Re.1/Add.13; International Covenant on Civil and Political Rights (ICCPR) art. 50, Dec. 16, 1966; International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 28, Dec. 16, 1966.

⁴ International Law Commission, *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*, art. 4, Annex to GA-Res. 56/83, (2001); See U.N. Committee on Economic, Social, and Cultural Rights, *General Comment No. 9: The domestic application of the Covenant*, ¶ 9 (1998), U.N. Doc. E/C.12/1998/24 ("all administrative authorities must take account of the requirements of the Covenant in their decision-making.")

⁵ Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha*, ¶ 72 (22 December 2014), UN Doc. A/HRC/28/62.

ratified. The provisions of these treaties “extend to all parts of federal States without any limitations or exceptions.”⁶ Any noncompliance by Detroit or its officials with the ICCPR, CAT or CERD would place the U.S. in breach of its international human rights obligations, guaranteed with respect to all individuals within its territory and subject to its jurisdiction. In addition, since the U.S. has signed the ICESCR, CRC, CEDAW and CRPD, any action that would “defeat the object or purpose” of one of those treaties would also be contrary to obligations under international human rights law.⁷

All of these human rights treaties provide protection of human rights relevant to denials of access to water.

II. DOMESTIC LAW MUST BE INTERPRETED CONSISTENTLY WITH INTERNATIONAL LAW

International law requires that States shall ensure that their domestic law is consistent with their international legal obligations.⁸ Domestic courts play an important role in this respect, in that they should take account of relevant Covenant rights where this is necessary to ensure that the State's conduct is consistent with its obligations under the Covenant. “Neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations.”⁹

Correspondingly, it is also a long established principle of U.S. law that, wherever possible, courts should interpret domestic law so as to be in accordance with international law, unless the relevant decision maker expresses a clear intention to contravene international law.¹⁰ This has led circuit courts to adopt alternative interpretations of U.S. law than the explicit wording of the statute, so as to ensure that U.S. law is consistent with international law, including in circumstances where the treaty invoked to

⁶ ICCPR, art. 50, *supra* note 3.

⁷ International Law Commission, *supra* note 4.

⁸ *See*, U.N.G.A. Res. 60/147, U.N. Doc. A/RES/60/147, (Mar. 21, 2005); *see also*, CESCR, *General Comment No. 9*, ¶ 5, *supra* note 4.

⁹ CESCR, *General Comment No. 9*, ¶¶ 14, 54, *supra* note 4.

¹⁰ *Murray v. Schooner Charming Betsy*, U.S. (2 Cranch) 64, 118 (1804); *Third Restatement of Foreign Relations Law*, § 114 (1987).

support such an interpretation was not self-executing.¹¹ According to the U.S. Constitution, courts may consider cases that arise under "...the Laws of the United States, and Treaties made..."¹² The U.S. Constitution also considers treaties to which the U.S. has acceded to be the supreme law of the land.¹³

Additionally, the U.S. Supreme Court has indicated that courts should look to international law and comparative law when considering the evolution of rights protection under domestic law.¹⁴ International law, even when such law is based on treaties that the U.S. has not ratified, constitutes "evolving standards of decency that mark the progress of a maturing society" and ought to be considered.¹⁵ International and comparative law demonstrate an "international consensus" that may inform the evolution of U.S. law.¹⁶ In the present case, both the requirement of compliance with obligations under ratified and signed international human rights treaties as well as the international consensus and evolving standards regarding access to water are relevant to the consideration of the claims advanced by the Plaintiffs-Appellants.

III. THE DISCONNECTION OF THE PLAINTIFFS-APPELLANTS' WATER SUPPLY IN THESE CIRCUMSTANCES CONSTITUTES A BREACH OF INTERNATIONAL HUMAN RIGHTS LAW

A. Denying access to water violates rights under treaties ratified by the U.S.

The U.S. is a State Party to the ICCPR and, as such, has accepted obligations to respect and to ensure the rights set out in that treaty, as interpreted by the monitoring body of the ICCPR, the U.N. Human Rights Committee (HRC). The HRC has recognized that depriving disadvantaged households of access to safe drinking water and sanitation is incompatible with obligations under the ICCPR, in particular with the right to life (art. 6), the right to be free from cruel and inhuman treatment (art. 7) and

¹¹ *Khan v. Holder*, 584 F. 3d 773 (9th Cir. 2009)

¹² U.S. Const. art. III, § 2.

¹³ *Id.* art. VI.

¹⁴ *See, Roper v. Simmons* 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002); *Thompson v. Oklahoma*, 487 U.S. 815, 831 n.34 (1988)

¹⁵ *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

¹⁶ *Roper v. Simmons*, *supra* note 14, at 576.

the right to non-discrimination (art. 26).¹⁷ The HRC has stated that the right to life is not merely a prohibition on State action that infringes upon the right to life but also “requires that States adopt positive measures,” such as measures to reduce infant mortality and to increase life expectancy.¹⁸ As water is one of the most essential requirements for human life, restricting access to water infringes upon the right to life, which the HRC has recognized in its jurisprudence emerging from the consideration of individual complaints.¹⁹ The U.N. General Assembly has recognized that clean drinking water and sanitation is essential for the fulfillment of the right to life and other human rights.²⁰ Similarly, the U.N. Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation has recognized that States cannot guarantee the right to life without providing access to water and sanitation.²¹ While the U.S. has at times contested the recognition by the U.N. of the right to water as a self-standing right under international human rights law, it has not disputed that water is essential for life, and that accessible water “...further[s] the realization of certain human rights, such as the right to a standard of living adequate for the health and well-being of all individuals.”²²

Depriving households or individuals of access to water has also been found by the HRC to be a form of cruel, inhuman or degrading treatment or punishment, contrary to art. 7 of the ICCPR.²³ The HRC has explained that art. 7 “protect[s] both the dignity and the physical and mental integrity of the

¹⁷ See, Human Rights Committee, *Concluding Observations on Israel*, ¶¶ 9, 12 CCPR/C/ISR/CO/3 (2014)

¹⁸ Human Rights Committee, *General Comment No. 6, Article 6 (The right to life)*, U.N. Doc. HRI/GEN/1/Rev.1, ¶¶ 1, 5 (1994).

¹⁹ See, *Liliana Assenova Naidenova et al. v. Bulgaria*, Comm’n No. 2073/2011 (2011) (The 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).

²⁰ U.N.G.A. Res. 64/292, U.N. Doc. A/RES/64/292 (July 28, 2010).

²¹ U.N. H.R.C. *Report of the Independent Expert on the Issue of Human Rights Obligations related to Access to Safe Drinking Water and Sanitation Catarina de Albuquerque*, U.N. Doc. A/HRC/12/24 (2009).

²² Views of the United States of America on Human Rights and Access to Water, submitted to the Office of the United Nations High Commissioner for Human Rights (June 2007), ¶ 15, available at <<http://www2.ohchr.org/english/issues/water/contributions/UnitedStatesofAmerica.pdf>>.

²³ Human Rights Committee, *General Comment No. 20: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, Article 7*, U.N. Doc. HRI/GEN/1/Rev.1 at 30, ¶ 2 (1994).

individual.”²⁴ Access to water and sanitation is clearly a component of such protection and the HRC as well as regional human rights bodies have found a violation of this right in cases where access to toilets or sanitation has been denied.²⁵

Other treaties ratified by the U.S. are also directly relevant to the present case, including CERD and CAT. CERD guarantees the equal enjoyment of the right to housing, which includes access to water and sanitation, without distinction as to race, colour, or national or ethnic origin.²⁶ The Committee on the Elimination of Racial Discrimination has expressed concern about sub-standard housing conditions and services in impoverished African-American communities in the U.S.²⁷ CAT prohibits cruel, inhuman and degrading treatment, which has also been applied in instances of denials of access to water and sanitation by the Committee Against Torture.²⁸

It is important to note that, in respect to each of the international human rights treaties signed or ratified by the U.S., the U.S. has undertaken to respect and ensure Covenant rights without distinction of any kind, including “national or social origin, property, birth or other status.” Treaty bodies have included within the term “other status”, *inter alia*, disability, health status, place of residence, and economic and social situation.²⁹ Under international human rights law, the right to equality and non-discrimination includes obligations to take positive measures to address systemic disadvantage and exclusion.

²⁴ *Id.*

²⁵ See, for example, *M. Robinson v. Jamaica* Comm’n No. 731/1996, ¶¶ 10.1-10.2 U.N. doc. GAOR, A/55/40 (vol. II) (Views adopted on 29 Mar. 2000); Comm’n Nos. 241 and 242/1987, *F. Birindwa ci Birhashwirwa and E. Tshisekedi wa Malumba v. Zaire*, U.N. doc. GAOR (Views adopted on 2 Nov. 1989); *Institute for Human Rights and Development in Africa v Angola* Afr. Comm’n on Human and Peoples’ Rights (2008); *Tadevosyan v Armenia* Eur. Ct. H.R., (2008); *Eugen Gabriel Radu v Romania* Eur. Ct. H.R. 13 (2009); *Fedotov v Russia*, Eur. Ct. H.R. 25 (2005); *Paul Lallion v Grenada*, Inter-Am. Comm’n H.R., ¶ 551 Case 11.765, Report No. 55/02, H.R. (2002).

²⁶ International Convention on the Elimination of All Forms of Racial Discrimination (CERD), art. 5(e)(iii), Dec. 21, 1965.

²⁷ Committee For the Elimination of all Forms of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of Racial Discrimination United States of America*, ¶ 16 U.N. Doc. CERD/C/USA/CO/6 (May 8, 2008).

²⁸ Committee Against Torture, *Conclusions and Recommendations of the Committee against Torture: Nepal*, ¶ 31 U.N. Doc. CAT/C/NPL/CO/2 (2005).

²⁸ Committee against Torture, *Conclusions and Recommendations of the Committee against Torture: Tajikistan*. ¶ 20 U.N. Doc. CAT/C/TJK/CO/1 (2006).

²⁹ CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, U.N. Doc. E/C.12/GC/20 (2009).

International human rights law therefore requires Detroit to accommodate households with occupants with disabilities, households living in poverty and other disadvantaged households by setting rates in a manner that ensures that disadvantaged households are not charged more than they can afford, and by addressing arrears in a manner that does not deprive disadvantaged households of access to essential levels of water and sanitation.³⁰

B. Denying access to water defeats the object and purpose of treaties signed by the U.S.

The ICESCR, which the U.S. has signed, recognizes the right “to an adequate standard of living, including adequate food, clothing and housing.” The UN Committee on Economic, Social and Cultural Rights (CESCR) has recognized that the right to water “...is one of the most fundamental conditions for survival” linked to many of the rights contained in the International Bill of Rights, such as the right to health, to adequate housing, to life and to human dignity.³¹ Specifically, CESCR has stated that disconnections 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.”³²

With regard to the protection of the human rights of vulnerable persons in practice, the CRPD, also signed by the U.S., obliges States to ensure measures of social protection and to ensure “equal access by persons with disabilities to clean water services.”³³ Similarly, the CRC has been applied to ensure children’s access to water and sanitation, requiring “all necessary measures” to ensure access to adequate housing, sanitation and infrastructure” for low income families.³⁴

C. Detroit’s fiscal crisis does not negate its human rights obligations

These binding obligations on Detroit are not negated by Detroit’s fiscal crisis. As guidance for States, the UN Office of the High Commissioner for Human Rights (OHCHR) has detailed criteria that

³⁰ *Id.* at ¶ 39.

³¹ Committee on Economic, Social, and Cultural Rights, *General Comment No. 15: The right to water*, ¶ 3 U.N. Doc. E/C.12/2005/4 (2005).

³² *Id.* at ¶ 56 (emphasis added).

³³ Convention on the Rights of Persons with Disabilities (CRPD), art. 28(2)(a), Dec. 6, 2006.

³⁴ Committee on the Rights of the Child, *Concluding Observations of the CRC: Bulgaria*, U.N. Doc. CRC/C/BGR/CO/2, ¶ 54(b) (2008).

must be taken into consideration to prevent human rights violations in the implementation of austerity measures: (1) austerity measures must only be considered to address the existence of a compelling State interest; (2) the necessity, reasonableness, temporariness and proportionality of austerity measures must be considered; (3) there must be no other feasible alternative or less restrictive measure that could respond to the compelling State interest; (4) the measures must be non-discriminatory; (5) the protection of a minimum core content of each right must be a component of the measures; and (6) there must be genuine participation of affected groups and individuals in determining the measures and considering these criteria.³⁵

IV. INSTANCES OF DENIAL OF ACCESS TO WATER ARE JUSTICIABLE AND SHOULD BE SUBJECT TO EFFECTIVE REMEDIES BEFORE DOMESTIC COURTS

International and comparative law demonstrate a consensus regarding the right to access to water. Namely, that in modern society, water is a fundamental right upon which others, including the right to life, depend. As a right protected under national and municipal law, residents denied access to water must have access to effective remedies before courts, in accordance with principles of constitutional due process, as well as international law regarding access to an effective remedy for rights violations.

A. There is an international consensus regarding the right to access to water.

International and regional human rights law has widely recognized a human right to access to water as fundamental to the enjoyment of many human rights.³⁶ UN Human Rights Council Resolutions,³⁷ UN General Assembly Resolutions³⁸ and jurisprudence from the European Court of Human Rights,³⁹ the

³⁵ See, Office of the High Commissioner for Human Rights, *Report on Austerity Measures and Economic and Social Rights*, submitted pursuant to U.N.G.A. Res. 48/141 (2012).

³⁶ See, e.g., Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), art. 14(2), Dec. 18, 1979; CESCR, *General Comment No. 15*, *supra* note 31, ¶ 3; Council of Europe, European Charter on Water Resources, art. 5 (2001); African Charter on the Rights and Welfare of the Child, art. 14 (1990); African Charter on Human and Peoples' Rights, art. 24, OAU Doc. CAB/LEG/67/3 rev. 5, (1982); Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights, art. 11.

³⁷ U.N.G.A. Res. 64/292 A/RES/64/292, *supra* note 20.

³⁸ *Id.* See also U.N. High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments*, U.N. Doc. A/HRC/6/3 (2007).

Inter-American Court of Human Rights,⁴⁰ and the African Commission on Human and Peoples Rights⁴¹ recognizes States' obligation to ensure access to water.

Globally, a large number of States recognize a fundamental human right to water, demonstrating that such a right forms part of the evolving standards of decency of modern life. More than 30 of the most recently adopted constitutions specifically recognize the right to water, while nearly double that have adopted legislation to guarantee access to water.⁴² Within the U.S., California, Pennsylvania and Massachusetts guarantee a right to water.⁴³ Similarly, nearly 40 countries state that water must be economically accessible to vulnerable populations,⁴⁴ a position that has been adopted by the European Union⁴⁵ and California,⁴⁶ among others.

B. Comparative law regarding access to water and disconnections

Comparative constitutional and legislative provisions, as well as court decisions in other jurisdictions regarding access to water, have recognized that water should not be disconnected for non-payment without full consideration of ability to pay and provision of necessary water. Among other issues, courts have considered whether disconnection satisfied standards of equity and fairness, whether the situation of vulnerable persons has been considered, and whether exceptions were made for those who

³⁹ See, e.g., *Tadevosyan v Armenia*, Eur. Ct. H.R. (App no 41698/04) (2008); *Riad and Idiab v Belgium*, Eur. Ct. H.R. (App nos 29787/03 and 29810/03) (2008); *Eugen Gabriel Radu v Romania*, Eur. Ct. H.R. (App no 3036/04) (2009); *Marian Stoicescu v Romania*, Eur. Ct. H.R. (App no 12934/02) (2009); *Butan and Dragomir v Romania*, Eur. Ct. H.R. (App no 40067/2006) (2008); *Fedotov v Russia*, Eur. Ct. H.R. (App no 5140/02) (2005); *Zander v Sweden*, Eur. Ct. H.R. (App no 14282/88) (1993); *Dubetska and Others v Ukraine*, Eur. Ct. H.R. (App no 30499/03) (2011); *Melnik v Ukraine*, Eur. Ct. H.R. (App no 72286/2001) (2006).

⁴⁰ See, e.g., *Velez Loo v Panama* Inter-Am. Ct. H.R. Series C no 218 (2010); *Xakmok Kasek Indigenous Community v Paraguay* Inter-Am. Ct. H.R. Series C no 21 (2010); *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Inter. Am. Ct. H.R. Series C no 146, (2006); *Yakye Axa Indigenous Community v Paraguay* Inter-Am. Ct. H.R. Series Cno 125 (2005).

⁴¹ See, *Institute for Human Rights and Development in Africa v Angola* [2008] African Commission on Human and Peoples' Rights 292/04; *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v Sudan* [2009] African Commission on Human and Peoples' Rights 279/03 and 296/05;

⁴² See, WASH United, Freshwater Action Network and WaterLex, *The human right to safe drinking water and sanitation in law and policy – a sourcebook Laws and policies guaranteeing the human right to drinking water and sanitation at the national, regional and international levels* (2012)

⁴³ Constitution of the Commonwealth of Massachusetts, art. XCVII; and Constitution of the Commonwealth of Pennsylvania, art. 1, sect. 27.

⁴⁴ WASH United, *supra* note 42.

⁴⁵ See, Communication 177 (2014) 177 final Communication from the Commission on the European Citizens' Initiative "Water and sanitation are a human right! Water is a public good, not a commodity!"

⁴⁶ See California Assembly Bill 685 (2014)

have no capacity to pay for water. The South African Supreme Court of Appeal, for example, has held that the 'right to the supply of water' cannot be construed as only resulting from contractual obligations without giving any consideration to the principles of fairness and equity which apply in case of disconnection of water supply under South African law.⁴⁷ Similarly, based in part on international law, the Colombian Constitutional Court prohibits suspending water supply for failure to pay in homes where children and those with special health needs reside.⁴⁸ The Supreme Court of India has indicated that the "[r]ight to live guaranteed in any civilised society" implies the right to water, among other rights.⁴⁹ The Court stated that "[t]hese are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights."⁵⁰

C. The U.S. must ensure the right to remedy

Pursuant to domestic and international law, including the US Bill of Rights and the International Bill of Rights,⁵¹ individuals have the right to due process of law and an effective remedy for state acts that violate rights protected by international, domestic, or municipal law. Specifically, the ICCPR General Comment 31 underpins the rights set out in art. 2(3) of the ICCPR (right to an effective remedy), stating that:

[...] States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of persons. [Rights] can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, **application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law.**⁵²

⁴⁷ *City of Cape Town v Strümpher* 2012 SA (A) (S.Afr.)

⁴⁸ *Carolina Murcia Otálora c/ Empresas Públicas de Neiva ESP*, Corte Constitucional [C.C.] [Constitutional Court], marzo 17, 2009, Sentencia T-546/09 (Colom.); *Flor Enid Jiménez de Correa c/ Empresas Públicas de Medellín*, Corte Constitucional [C.C.] [Constitutional Court], 17 abril, 2007, Sentencia T-270/07 (Colom.).

⁴⁹ *Chameli Singh & Ors. v. State of U.P. & Anr.*, (1996) 2 S.C.C. 549 (India).

⁵⁰ *Id.*

⁵¹ Universal Declaration of Human Rights art. 8, Dec. 10, 1948 ("Everyone has the right to effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by the law).

⁵² HRC, *General Comment No. 31*, *supra* note 2, ¶ 15 (emphasis added).

Interpreting the applicable provisions of domestic law in the present case so as to provide no effective remedies to violation of rights guaranteed under binding international human right would violate due process of law of the residents of Detroit denied access to water, and would also place the U.S. in violation of its obligation under the ICCPR, and under international human rights, generally to ensure access to effective domestic remedies.

V. The application of international human rights to domestic law in the present case: the Detroit Charter and Municipal Code, interpreted consistently with international law, protect Detroit's residents' access to water

In the present case, binding international human rights law supports the Plaintiffs-Appellants' due process and equal protection claims as reasonable interpretations and applications of domestic law that would ensure consistency with international human rights and with the provision of effective remedies. In addition, international human rights lends strong support to interpretations and applications of relevant municipal law that give effect to Detroit's obligations under international human rights law, in particular, the Declaration of Rights contained in the Charter of the City of Detroit (Declaration of Rights).

The Declaration of Rights states that “[t]he City shall provide for the public peace, health and safety of persons and property within its jurisdictional limits” and that “[t]he people have a right to expect city government to provide for its residents...decent housing...safe drinking water and a sanitary, environmentally sound city.”⁵³ Additionally, the City Charter provides that water rates must be equitable.⁵⁴

Further direction regarding access to water is set out in the Detroit Municipal Code (Code), which requires residences and businesses to be maintained in “habitable, sanitary and safe condition[s]”⁵⁵ and that plumbing systems in homes “be properly connected to the public water system [and] be supplied with [...] running water.”⁵⁶ The Code makes it illegal “to maintain a plumbing or drainage system that

⁵³ Charter of the City of Detroit, art. 1 of the Declaration of Rights (2012).

⁵⁴ Detroit Municipal Code, ¶. 7-1202 (1984) (The Board shall periodically establish equitable rates to be paid).

⁵⁵ *Id.* ¶ 9-1-12.

⁵⁶ *Id.* ¶ 9-1-441(a); *see also*, Sec. 9-1-441(c) Detroit Municipal Code (1984).

constitutes a hazard to the health, safety, or welfare of the occupants.” These provisions are only enforceable on the basis that Detroit ensures an adequate supply of water. It is impossible, as the Bankruptcy Court recognizes,⁵⁷ for residences to be maintained in habitable, sanitary and safe conditions without access to running water. Additionally, none of the plumbing fixtures the Code mentions are capable of meeting the standards the Code requires in the absence of a water supply. Both the Declaration of Rights and the Code ought to be interpreted consistently with Detroit’s obligations under international human rights. The common understanding of the word "equitably" indicates that water rates should be fair to both consumers and providers. This interpretation is bolstered in light of the obligation under international human rights law to consider ability to pay and to ensure access to water for impoverished households. Art. 1 of the Declaration of Rights, the Charter's requirement that water prices be equitable, and the sections of the Code regarding sanitation and the habitability of residences, indicate that city lawmakers did not intend for city residents to be denied access to water due to dire economic circumstances, merely in order to bolster the financial situation of the DWSD.

The Charter indicates that the rights enunciated in the Declaration of Rights as well as the Code are enforceable.⁵⁸ The justiciability of the relevant provisions of the Charter, and the obligation to ensure access to justice and effective remedies in this case, is supported by international and comparative law. Detroit has the authority, and indeed the obligation, to require that any measures it takes that impact access to water and sanitation be subject to judicial review for compliance with the rights in the Declaration of Rights, interpreted consistently with the U.S.’s, and therefore Detroit’s, obligations under international human rights law.

Read in light of the international and comparative law regarding access to water, particularly for low income people discussed above, these provisions protect the right of Detroit

⁵⁷ See, Case No. 13-53846 United States Bankruptcy Court Eastern District of Michigan Southern Division, Plaintiffs’ Motion for a Temporary Restraining Order and Supplemental Opinion Clarifying the Court’s Bench Opinion Granting Defendant’s Motion to Dismiss; Opinion Denying Plaintiffs’ (1) Motions for Reconsideration; and (2) Motion to File a Second Amended Complaint, at 21 (2014)

⁵⁸ Charter of the City of Detroit, art. 8 of the Declaration of Rights (2012), (“The City may enforce this declaration of rights and other rights retained by the people”).

residents to access to affordable water, and indicate that such a right may be protected through judicial action.

CONCLUSION

This *amicus curiae* submission has demonstrated the relevance of international human rights law to the present case. Further, it has shown that Detroit is obliged to comply with international law that binds the U.S., as established through both domestic and international law principles and practice. It establishes that domestic law must be interpreted consistently with international law, and that international and comparative law should inform the Court's consideration of the rights at stake in this case. It furthermore demonstrates that according to the international and comparative legal consensus, restrictions on access to water in certain contexts constitutes a violation of human rights. Finally, in light of the domestic and international law established above, the submission demonstrates that the obligation of Detroit to provide its residents with affordable water consecrated in the Detroit City Charter and Municipal Code must be enforceable through the courts when the city fails to meet that obligation.

Respectfully submitted,

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Dated: February 3, 2015

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, to each of the attorneys of record herein at their respective addresses disclosed on the pleadings via efilng on February 3, 2015.