

Mandates 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; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the human right to safe drinking water and sanitation

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USA 11/2015:

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Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on extreme poverty and human rights; and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to Human Rights Council resolutions 25/17, 26/3, and 24/18.

Earlier, we raised our concern with regard to large-scale water disconnections in the City of Detroit in Michigan in our joint urgent appeals dated 24 June 2014 and 6 January 2015. We thank your Excellency's Government for the replies to these appeals, dated 17 October 2014 and 8 April 2015 respectively, in which your Excellency's Government stated that various United States laws protect individuals from discrimination in the provision of services, and that there is a "widespread societal expectation in the United States that all ought to have access to safe drinking water and sanitation". We also note the assurance of your Excellency's Government that "public authorities throughout the United States take significant measures to provide access to safe drinking water and sanitation", including "state and local programs designed to help eligible low-income residents with the cost of their utilities".

However, we remain concerned with your Excellency's Government responses to our earlier communications in a number of respects. While it is positive that there is a 'widespread expectation' in the United States that all ought to have access to safe drinking water and sanitation, we are concerned about the significance the Government seeks to attach to the fact that there is no justiciable right to water provided in the United States Constitution or under federal law.

The United States joined consensus on a number of Human Rights Council resolutions reaffirming the human right to safe drinking water and sanitation, most recently Human Rights Council resolution 27/7 of 24 September 2014. In a statement delivered on 25 September 2014 (and earlier statements), the United States explained that its joining consensus was not intended to imply that States must implement obligations

under human rights instruments to which they are not a party (referring to the ICESCR). The United States also explicitly dissociated itself from consensus on preambular paragraph 21 (defining the right to safe drinking water and sanitation). However, we believe that the various statements made by your Excellency's Government over the years¹ show acceptance of at least the following tenets:

- The human right to safe drinking water and sanitation is essential for the full enjoyment of life and to all human rights, and is derived from the right to an adequate standard of living and is inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity;
- Governments should strive to progressively realize universal access to safe drinking water and sanitation, and should seek to expand access, especially for underserved populations. Governments should develop and implement national policies and strategies, where needed, and commit sufficient budgetary resources so that they will be able to advance this goal as quickly as possible.
- Governments have an obligation to ensure that access to safe drinking water and sanitation services is provided on a nondiscriminatory basis.
- Governments should work towards greater transparency and accountability in water and sanitation service provision and include the public in government decision making.

In light of the foregoing, the fact that the United States has, on numerous occasions, joined consensus on Human Rights Council resolutions on the right to safe drinking water and sanitation indicates, notwithstanding its statements explaining its votes, that it accepts the existence of this right and a range of related obligations. Thus, the suggestion that issues relating to the right to water are rendered moot because there is no justiciable right to water provided in the United States Constitution or in federal law seems unconvincing to us.

We refer, moreover, to your Excellency's Government's expressed intention to move beyond its long-held reluctance to fully accept economic, social and cultural rights. In 2011, the then Assistant Secretary of State for Democracy, Human Rights and Labor announced that when negotiating language on United Nations resolutions and explaining its positions the United States would be guided by the following five considerations:

- First, economic, social and cultural rights addressed in U.N. resolutions should be expressly set forth, or reasonably derived from, the Universal

¹ Statements made by the United States at the Human Rights Council on 15 September 2011, 27 September 2012, 27 September 2013 and 25 September 2014 as well as the statement made by the United States at the General Assembly on 27 July 2011.

Declaration and the International Covenant on Economic, Social and Cultural Rights. While the United States is not a party to the Covenant, as a signatory, it is committed to not defeating the object and purpose of the treaty.

- Second, the United States will only endorse language that reaffirms the “progressive realization” of these rights and prohibits discrimination.
- Third, language about enforcement must be compatible with our domestic and constitutional framework.
- Fourth, the United States will highlight its policy of providing food, housing, medicine and other basic requirements to people in need.
- And fifth, the United States will emphasize the interdependence of all rights and recognize the need for accountability and transparency in their implementation, through the democratic participation of the people.

While the United States has signed but not yet ratified the ICESCR, it has ratified international human rights treaties that recognize the right to life and human dignity, to which the right to safe drinking water and sanitation is inextricably related. The United States has also ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which obliges the United States to guarantee the right of everyone to equality before the law in the enjoyment of economic, social and cultural rights “without distinction as to race, colour, or national or ethnic origin”.

In addition, as a signatory to the ICESCR, CRC, CEDAW and CRPD, the United States is required not to defeat the object or purpose of these treaties. This international obligation deserves serious consideration in a situation at hand where the right to safe drinking water and sanitation of those who previously had access to water, seems, *prima facie*, denied by disconnecting these individuals on allegedly arbitrary and discriminatory grounds.

In light of the foregoing, we are concerned by information which indicates that allegedly arbitrary and discriminatory, large-scale water disconnections on the basis of non-payment of bills continues to be carried out by public authorities in the United States. In this regard, we wish to bring to the attention of your Excellency’s Government information we have received regarding **large-scale water disconnections in the City of Baltimore, Maryland**, which raises concerns similar to those in the case of the City of Detroit.

According to information we have received:

At the end of March 2015, the Department of Public Works of the City of Baltimore announced that it would send out water shutoff notices to about 25,000 households who owed more than 250 USD and who were more than six months

late on their water bills. Households were given only a 10-day notice before their water was disconnected.

By 7 April 2015, the city reported that it had shut off service to about 300 households and planned to disconnect about 150 households per day.

Reportedly, the city was due 40 million USD, more than one third of which is owed by 369 commercial customers. However, the city has not disconnected any business enterprises from water services so far.

Since 2000, water and sewer rates have tripled in Baltimore, and the average household currently pays 804 USD per year for water and sewer service. This is expected to increase to 892 USD in July this year. The 11 percent increase in July follows an 11 percent increase in July 2014 and a 15 percent increase in July 2013. Rates will have increased by 42% since 2013.

The water and sewer bill is increasingly unaffordable to many households in the city where nearly a quarter of the population (23.8%) lives in poverty. Over 51,000 households in the City earn less than 15,000 USD per year. This means that over 21 percent of the households have to spend more than 5.4 percent of their income for average household water consumption.

Those who are most seriously impacted by this policy are clearly African-American and Black households. These households are disproportionately affected by poverty in Baltimore, representing 74% of those living in poverty. According to the U.S. Census, the median household income of white households in Baltimore in 2013 was USD 60,550 compared to only USD 33,610 for African-American or Black households. The same Census indicates that African-American or Black households are twice as likely to live in poverty compared to white households. High water and sewer costs are more likely to be unaffordable to African-American and Black households and water disconnections for non-payment may disproportionately affect African-American and Black households.

The state of Maryland has the highest average income of any state in the United States, yet no measures have been taken to adjust water and sewerage rates for low income households as has been done in other states. The city offers an annual credit of 161 USD to certain low-income households to help pay their past-due bills. However, an average annual household water bill is still 643 USD after receiving this assistance, which may still be unaffordable for many low-income households. In addition, cumbersome procedural and documentation requirements are reportedly barriers to applying for the grant.

While we do not wish to prejudge the accuracy of these allegations, we express our concern at the decision of the Baltimore authorities to disconnect water from people who cannot afford to pay their bills, which appears contrary to the right to water, recognized by international human rights law. From the information we have received,

access to water in Baltimore does not seem to be provided on a nondiscriminatory basis, since African-Americans seem to be significantly more likely than individuals from other racial backgrounds to be affected by the described disconnections.

The costs associated with housing services must not compromise the ability to maintain one's residence and meet other basic requirements, such as adequate food and health services. The US Environment Protection Agency has recommended that water and sewerage costs not exceed 2.5 percent of household income. We express deep concern at the impact of water disconnections in the overall living conditions of households, including persons of all ages, in particular in their right to adequate housing in relation to habitability of their homes and the high risk of forcing people to leave their dwellings as a consequence of lack of water,² potentially to find themselves homeless.

Furthermore, we are concerned that the disconnection of water in the City of Baltimore has disproportionate effects on the right of African-American and Black people and persons living in poverty to an adequate standard of living.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the percentage of African-American or Black households among the households who are in arrears and subject to disconnection.
3. Please explain whether children, persons with disabilities, the elderly and other vulnerable groups are affected by water shutoffs and describe any special measures of protection that are in place for these groups. Please explain if the affected households have been informed of such measures.
4. What measures are being taken to ensure alternative sources of water for those who have been disconnected from water service? Please explain if the affected households have been informed of such measures prior to the shut-off.
5. Please indicate whether the Baltimore authorities took into account the households' capacity to pay their bills before deciding to disconnect the service and

² The Human Rights Committee has held that cutting off water supply may amount to an indirect means of achieving eviction. Communication No. 2073/2011 of 27 November 2012, para. 10. CCPR/C/106/D/2073/2011.

whether they were provided with legal counselling or assistance for obtaining legal remedies for the shut-off.

6. Please provide information on the number of low-income households who benefited from the annual credit program since July 2013. Please provide information on the criteria for eligibility, procedural requirements to apply for the credit, and any measures taken by the City of Baltimore to facilitate applications for the credit, such as counseling and technical assistance provided to low-income households.

7. What plan is in place to ensure that people affected by the water shut-offs can remain in their homes and are not at risk of becoming homeless?

8. Please describe legislative or other measures to protect individuals from discrimination in the provision of public services including access to water and sanitation.

9. Please describe legislative or other measures that have been put in place in other states to protect access to water and to ensure water affordability and explain whether similar legislation could be adopted in Maryland.

10. What legislative or other measures have been undertaken by the Government to follow up to the recommendation made by the then Independent Expert on Human Rights Obligations related to Access to Safe Drinking Water and Sanitation upon her mission to the United States in 2011³, requiring the Government to adopt a national water and sanitation affordability standard?

We would appreciate receiving a response within 60 days.

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

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

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

Leilani Farha

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

³ Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to the United States of America (A/HRC/18/33/Add.4), para. 92 (b) and (h)

Philip Alston
Special Rapporteur on extreme poverty and human rights

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, with the above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The human right to safe drinking water and sanitation derives from the right to an adequate standard of living which is protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the United States Government signed on 5 October 1977. While it has not ratified the Covenant, upon signing the ICESCR, the United States Government agreed to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the international instrument, pending a decision on ratification. Moreover, on 28 July 2010 the United Nations General Assembly recognized water and sanitation as a human right. This decision was subsequently endorsed by the United Nations Human Rights Council in September 2010. The United States Government publicly declared that it was "proud to take the significant step of joining consensus" on the latter resolution, thereby expressing clear support for recognition of this fundamental human right.

The ICESCR recognizes the right "to an adequate standard of living, including adequate food, clothing and housing." In its General Comment No 15, the Committee on Economic, Social and Cultural Rights (CESCR) has recognized that the right to water is linked to many other rights such as the right to health, to adequate housing, to life and to human dignity. Specifically, the Committee 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." (para 56).

In relation to the right to adequate housing, guaranteed in article 11 of the ICESCR, in its General Comment No. 4 (1991), CESCR has stressed that it should be seen as the right to live somewhere in security, peace and dignity, including guarantees of habitability and availability of services, materials, facilities and infrastructure, including "sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services". (paras. 8.b and d)

The Convention on the Rights of Persons with Disabilities, article 28 (2)(a) which has also been signed but not yet ratified 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."

Moreover, as a State Party to 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), the U.S, has an obligation to ensure access to safe drinking water and sanitation without discrimination. Depriving individuals or groups of access to safe drinking water and sanitation is incompatible with the right to life (art. 6), the right to be free from cruel and inhuman treatment (art. 7) and the right to non-discrimination (art. 26) in the ICCPR. Sub-standard housing conditions and services in impoverished African-American communities in the U.S. have been raised as a concern with respect to compliance with the Convention on the Elimination of all forms of Racial Discrimination in concluding observations (CERD/C/USA/CO/6 May 8 2008)

We would also like to draw the attention of your Government to the principles of equality and non-discrimination, which are core elements of the international human rights normative framework and enshrined, *inter alia*, in article 2 of the Universal Declaration of Human Rights and articles 2 of the International Covenant on Economic, Social and Cultural Rights, and of the International Covenant on Civil and Political Rights (ICCPR) and other human rights treaties that the United States has ratified. Rights to adequate housing, water and sanitation must be enjoyed without distinction of any kind, including “national or social origin, property, birth or other status.” The term “other status” includes, *inter alia*, disability, health status, place of residence, and economic and social situation, as further developed in CESCR General Comment No. 20 Under international human rights law, the right to equality and non-discrimination also requires states to take positive measures to address systemic disadvantage and unequal enjoyment of rights to housing, water and sanitation.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.