

UPR DETROIT SUBMISSION ON THE HUMAN RIGHT TO WATER IN DETROIT

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The Michigan Welfare Rights Organization (MWRO) is a union of public assistance recipients and low-income workers in the state of Michigan, with its headquarters in the city of Detroit. MWRO was an original member organization of the National Welfare Rights Organization, which was founded in 1966. MWRO serves a population of primarily low-income, African American women and has chapters across Michigan. MWRO works to organize recipients and low-income workers to fight for basic rights and to eliminate poverty in this country. Welfare recipients, low-income workers and homeless people rarely know what benefits they are entitled to under existing social service rules and regulations that undergo daily sometimes hourly changes. The focus of MWRO is to intervene and advocate on behalf of the victims of poverty when disputes surface between this population and service delivery agencies. MWRO sponsors training sessions for the victims of poverty that cover eligibility for Food Stamps, Medicaid, cash assistance, disputes with landlords, utility companies and how to file a hearing when these rights are being violated.

REPORT of the Michigan Welfare Rights Organization to the United Nations on the United States (UPR Review – 2nd Round)

1. Summary

1. As a union of public assistance recipients, Michigan Welfare Rights Organization (MWRO) is comprised of members who have personally experienced water shutoffs and MWRO takes daily calls from low-income residents who cannot afford to pay for their water service and who have faced shutoffs. MWRO has held multiple forums, Truth Commissions, over multiple years for residents to speak out about their experiences related to water shutoffs. MWRO advocates for change through organizing public protests in front of the Water Department where residents join and speak with MWRO members about their experiences.
2. MWRO has been working with low-income residents in the city of Detroit on the issue of water shutoffs since the early 2000s when it was discovered that water shutoffs are a pervasive problem in the city. Detroit water rates have increased 119% over the past ten years.¹ MWRO has advocated regularly for assistance with energy bills but at this time became aware of requests for assistance with water bills as well. In 2005 it was reported by the Detroit Water and Sewer Department (DWSD) that between 40,000 to 45,000 households, nearly 15 percent of the city's residences, were facing a water shutoff annually. Since then DWSD has provided no further public data about the number of shutoffs, let alone their distribution, around the city of Detroit.
3. MWRO worked to develop a water affordability plan to meet the needs of tens of thousands of Detroit residents. This plan was adopted by resolution of the Detroit City Council in 2005, and more than \$5 million was allocated. DWSD rejected the Council affordability plan, developed its own plan, and served only dozens of residents. This DWSD plan consistently runs out of money and treats residents like potential criminals rather than low-income, struggling families. DWSD has failed to work with community organizations to establish a long-term, sustainable affordability plan that will meet basic water and wastewater needs of all residents in Detroit.
4. Residents of the city of Detroit face persistent discrimination and marginalization. More than three-quarters of the population of Detroit is African American, forty percent is in poverty, and two-thirds is designated as asset limited, income constrained, employed (ALICE).^{2,3} The majority of the city's residents struggle on a

¹ <http://leftlaborreporter.wordpress.com/tag/water-privatization/>

² <http://www.enevspf.com/latest-news/health-and-fitness/54788-following-prolonged-water-shut-offs-food-water-watch-and-allies-urge-obama-administration-to-declare-public-health-emergency-in-detroit.html>

daily basis to meet their basic housing, energy, food, water and sanitation needs. In total, one and a half million Michigan residents cannot afford to meet their basic needs.⁴

5. Data on differential impacts of water shutoffs by geography and demographic group have been exceptionally difficult to obtain from the Detroit Water and Sewer Department (DWSD), leaving residents and organizations without the necessary resources to establish evidence-based protocols for health and resource interventions. Such a lack of data allows this population to be made invisible and discounted thereby making way for anti-democratic processes exemplary through multiple emergency managers in the city. DWSD and the City have not provided sufficient information on the public health crisis created by the mass water shut off program, nor the serious individual health impact on vulnerable populations.⁵
6. The mass water shut off program is a development that has arisen since the last round of UPR review of the United States, and is novel in the country in scope and significance. DWSD services 4 million consumers, 40% of the population of the state of Michigan including Detroit, and is the 3rd largest drinking water and sanitation service provider in the United States.⁶ The mass water shut off program by DWSD violates the human right to water of the residents of Detroit, U.S. national and Michigan state law, and the Charter of the City of Detroit. The mass water shut off program is the subject of a petition to special procedures of the United Nations through the UN Special Rapporteur on the human right to safe drinking water and sanitation,⁷ and a class action suit in Federal court.⁸

2. United States international obligations for the human right to water

7. Every person enjoys a human right to safe drinking water and sanitation. The human right to water is defined under international law and is taken from binding human rights treaties, resolutions, and declarations. The UN Charter requires states

³ http://www.huffingtonpost.com/2014/09/04/detroit-poverty-alice-report_n_5760602.html?ncid=fbklnkushpimg00000047&ir=Black+Voices

⁴ http://www.huffingtonpost.com/2014/09/04/detroit-poverty-alice-report_n_5760602.html?ncid=fbklnkushpimg00000047&ir=Black+Voices

⁵ DWSD and the City of Detroit provided incomplete information upon “freedom of information requests” by the Law Committee litigating the case in federal court. See

http://www.naacpldf.org/files/case_issue/2014.8.29%20Exs.%20to%20Pls%20Reply%20to%20Defs%20Objection%20to%20TRO.pdf.

⁶ DWSD Fact Sheet, http://www.dwsd.org/downloads_n/about_dwsd/fact_sheet/dwsd_fact_sheet.pdf.

⁷ MWRO, et al, Petition to the United Nations, June, 2014, at <http://www.blueplanetproject.net/wordpress/wp-content/uploads/Detroit-HRTW-submission-June-18-2014.pdf>.

⁸ In re City of Detroit, Case 13-53846, Eastern District of Michigan, Federal Bankruptcy Court, at <http://www.mieb.uscourts.gov/apps/detroit/DetroitBK.cfm>.

that have ratified its provisions to respect and assist in the realization of human rights, including the United States.⁹ The United States has ratified but not fully implemented relevant treaties, and has signed but not ratified treaties¹⁰ that contain provisions to ensure that the human right to water is enforceable by U.S. courts.¹¹

8. On July 28, 2010 the UN General Assembly adopted a resolution on the human right to water.¹² The UN Human Rights Council adopted a resolution recognizing the human right to water on September 30, 2010.¹³ The UN HRC resolution was passed by consensus with the support of the United States, and calls on governments to pay particular attention to vulnerable and marginalized groups, adopt effective regulatory frameworks for all service providers, and ensure effective remedies for violations.¹⁴ In March 2011 the Special Rapporteur on the human right to safe drinking water and sanitation came on mission to the United States and reported to the UN Human Rights Council and the U.S. government her concerns about the discriminatory impact of water shut offs.¹⁵

9. Discrimination in the provision of water services is prohibited under domestic and international human rights law. Equality and non-discrimination of persons regardless of race, religion, gender, age, ability or economic circumstance is a fundamental principle of human rights, and of U.S. constitutional and civil rights law. U.S. courts have found against utilities that discriminate in the provision of water services based on race and income. *Jerry R. Kennedy v. City of Zanesville, 2007* (“Blue lining” service areas of public and private utilities to exclude low income and

⁹ U.N.T.C., Status of Treaties, Chapter I, Charter of the United Nations and Status of the International Criminal Court of Justice.

¹⁰ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948). International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967), *ratified by the U.S.* Sept. 8, 1992; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212, *ratified by the U.S.* Nov. 20, 1994. International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978); S. Treaty Doc. No. 95-19, 6 I.L.M. 360, *entered into force* Jan. 3, 1976. The U.S. has only signed the ICESCR treaty. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), *entered into force* Sept. 2, 1990. The U.S. has only signed the CRD treaty.

¹¹ The Supreme Court has held that certain treaties require implementation legislation to be enforced in U.S. Court, known as “non self executing treaties.” *Medellin v. Texas*, 128 S.Ct. 1346, 1356 (2008). Human Rights treaties are subject to reservations, understandings, and declarations requiring implementing legislation, as long as these do not undermine the purpose of the treaty. President Bill Clinton issued an executive order ordering U.S. implementation of international human rights treaties to which it is a party, including the International Covenant on Civil and Political Rights, and the Convention on the Elimination of Racial Discrimination. Exec. Order No. 13107, 63 Fed. Reg. 68991 (Dec. 15, 1998).

¹² G.A. Res. 64/92, ¶1, U.N. Doc. A/RES/64/92 (August 3, 2010).

¹³ Res.15/, ¶3, U.N. Doc. A/HRC/15/L.15 (Sept. 24, 2010).

¹⁴ *Id.*

¹⁵ A/HRC/18/33/Add.4, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, of the Mission to the United States of America, August 2011.

ethnic communities prohibited).¹⁶ *Mossville Environmental Action Now v. United States*, admitted to the Inter-American Commission of Human Rights, 2010 (Permitting pollution into drinking water resources affecting low income and ethnic communities);¹⁷

10. A wide scale disconnection of service is allowable in a public health emergency under Michigan state law. The law does not identify financial emergency as a public health emergency.¹⁸ The UN Special Rapporteur on the human rights to safe drinking water and sanitation has found that governmental financial difficulty is not a justifiable reason for retrogression in existing services, particularly for the most vulnerable populations.¹⁹ The Michigan legislature passed the Local Financial Stability and Choice Act, Act 436 of 2012; Governor Snyder appointed an Emergency Manager to Detroit in 2013. The Emergency Manager has the duty to assure that the local government “provide or cause to be provided governmental services essential to the public health, safety, and welfare.” An emergency manager may take actions concerning the utility, as long as it does not endanger the health, safety, or welfare of residents of the local government. The mass water shut off program by DWSD, carried out under the authority of the Emergency Manager and officials in Detroit violates state law and has created a public health emergency.²⁰ DWSD implemented a 15 day moratorium on the mass water shut off program in August, 2014.²¹ DWSD renewed the mass water shut off program. The Mayor of Detroit 10 Point Action Plan for the water shut off emergency did not prohibit mass water shut off program, and contains significant barriers for low income residents to be eligible for assistance.²² The reorganization of DWSD into a regional authority announced in September, 2014, has not changed the DWSD mass water shut off program in Detroit nor cured the violations of law.

¹⁶ Jerry R. Kennedy, et al v. City of Zanesville, Ohio, et al, Case No. No. 2:03-cv-01047, (S.D. Ohio, Eastern Div., September 7, 2007), at <http://www.relmanlaw.com/docs/zanesville-order.pdf>. See also video record of case history at <http://www.relmanlaw.com/civil-rights-litigation/cases/zanesville.php>.

¹⁷ *Mossville Environmental Action Now v. United States*, Inter-Am. C.H.R., Report No. 43/10, petition on admissibility, March, 2010, at <http://www.relmanlaw.com/civil-rights-litigation/cases/zanesville.php>.

¹⁸ “If a public water supply poses an imminent hazard to the public health, the department may issue an emergency order immediately, without notice or hearing, requiring such action as the department determines is necessary to protect the public health.” Safe Drinking Water Act, Act 399 of 1976, MCL. 325.1015.

¹⁹ A/HRC/24/44, Sustainability and non-retrogression in the realisation of the rights to water and sanitation, 11 July 2013.

²⁰ Local Financial Stability and Choice Act, Act 436 of 2012, MCL 141 et seq. duty to assure that the local government provide services for the public health, safety, and welfare.” MCL 141.1549, Sec. 9. Authority to take action in managing services utility MCL 141.1552 Sec. 12 (r).

²¹ DWSD Press Release, at http://www.dwsd.org/downloads_n/announcements/press_releases/pr2014-08-04-2014_dwsd_toreleasefullplan_shutoffs.pdf

²² 10 Point Plan, July 2014, DWSD, at http://www.dwsd.org/downloads_n/announcements/general_announcements/DWSD_PlanFlyer.pdf.

11. MWRO and plaintiffs have brought a federal class action suit challenging the constitutionality of the mass water shut off program. The case is pending in federal court as of September 15, 2014. The U.S. government has the right to intervene to protect the citizens of Detroit and has elected not to intervene to date. There is no national human rights body, nor local human rights body, which has exercised its authority to review actions by DWSD, including the mass water shut off program. There are significant barriers to remedies for affected residents, including potential governmental immunities. The discriminatory impact of the mass water shut off program violates state and federal law, and international obligations of the United States.

3. Water and Human Rights in Detroit

12. In the summer of 2014 DWSD announced an aggressive collection plan aimed at collecting on unpaid residential water bills that amount to \$43 million.²³ This plan has called for shutting off water service to more than 100,000 residences, with more than 3,000 shutoffs occurring per week. Since March more than 20,000 shutoffs have occurred. Shutoff notices are issued if residents owe more than \$150 or are 60 days or more overdue.²⁴ DWSD has been criticized for significant administrative error and has not complied with existing legal framework for water shut offs for non payment.

13. Failure to pay water bills is not a result of laziness or a sense of entitlement as is often leveled against Detroit residents. Non-payment is the result of multiple issues: 1) water rates in Detroit are higher than the national average for a population that is largely in poverty; 2) low-income residents live crisis to crisis and must make choices between feeding their children and themselves, paying the rent, water and other utilities; 3) the lack of a sustainable affordability program that rewards residents for partial payments has made it so residents get no benefit for making partial payments on their water bills when they cannot afford the entire bill; and 4) failing infrastructure and poor billing practices have resulted in absurdly high water and sewer rates being assessed to accounts all at once with threat of shutoff if not paid within 60 days.

14. On August 11, 2014 the Detroit area was inundated with more than 4 inches of rain leaving three dead and thousands of homes flooded. The magnitude of the impact of the rain was not brought on by the actual volume of rain itself but by system-wide infrastructure failures, including failed pumping stations. A consultant with DWSD

²³ <http://www.detroitnews.com/article/20140912/METRO01/309120033#ixzz3D6KBdwBj>

²⁴ http://www.deadlinedetroit.com/articles/10208/national_geo_water_shutoffs_show_detroit_s_inepitude_generosity_and_innovation#.VBXz4cjdWAh

reported that the city only needs to receive one half of one inch of rain in order to trigger basement flooding and Combined Sewerage Overflows. Some 2,000 water main breaks occur each year in Detroit leading to flooded basements, wasted water, and roadway sinkholes.

15. Billing errors present more than an inconvenience to residents and threaten to destroy homes. Billing errors have led to unbilled sewage fees amounting to \$115 million over six years.²⁵ One resident received a \$700 water bill as soon as they moved into a new property as the previous tenant had unpaid water bills.²⁶ One family received bills amounting up to \$10,000 when DWSD mistakenly had their address confused with a nearby dry cleaner. A barber had his water shut off when a neighboring business that shares the same water line was late on water payments.²⁷ A church was billed for \$60,000 in water and sewer fees that have not been billed since 1992.²⁸ Meanwhile, water is not turned off to many abandoned homes. In the winter the pipes burst leading to water running onto the ground and into basements non-stop for months and even years.²⁹
16. The consequences for families who face water shutoffs are dire and under-examined. Because DWSD has restricted access to its data on water shutoffs, it is nearly impossible to know how these impacts are experienced across the population. In the case of lead pipes, this denial of data by DWSD has the potential to result in significant harm to children. As much of the housing in Detroit was constructed more than thirty years ago, a significant number of houses in Detroit have lead pipes in them. When water service is shut off to a home for more than six hours lead begins to flake off and will be present in the water from the pipes when service is restored.³⁰ Families with water service turned off risk having their children taken away by Child Protective Services, and as a result many are afraid to ask for help. Living without water in the home reduces a family's ability to cook, clean, bathe, and properly hydrate. Acute and chronic dehydration are associated with prolonged labor, renal toxicity, urinary tract infections, dental disease, stroke, hypertension, complications from diabetes, and coronary heart disease.^{31, 32} Improper hygiene can lead to dermatological infections, scarring, and opportunistic infections that complicate immune compromising diseases.

²⁵ <http://www.freep.com/article/20140911/NEWS01/309110234/Detroit-Water-NAACP>

²⁶ <http://www.economist.com/news/united-states/21615614-what-shutting-running-water-detroiters-reveals-about-city-finances-owe-town>

²⁷ <http://www.myfoxdetroit.com/story/26408239/detroit-barber-shop-has-bills-paid-but-water-shut-off>

²⁸ <http://www.freep.com/article/20140911/NEWS01/309110234/Detroit-Water-NAACP>

²⁹ <http://www.detroitnews.com/article/20140912/METRO01/309120033#ixzz3D6KBdwBj>

³⁰ <http://www.cdc.gov/nceh/lead/tips/water.htm>

³¹ Manz, F. 2013. Hydration and Disease. *Journal of the American College of Nutrition*. 26(sup5):535S-541S.

³² Chan, J. et al. 2002. Water, Other Fluids, and Fatal Coronary Heart Disease: The Adventist Health Study. *American Journal of Epidemiology*. 155(9):827-833.

17. Water shutoffs contribute to an entrenchment of poverty in the city and exacerbate the city's population decline. Since 2008, 180,000 homes have undergone tax foreclosure or are at risk of tax foreclosure. The unaffordability of water in the city for the above reasons contributes to housing loss through a mechanism that permits back water bills to be attached as liens on homes through property taxes. When unpaid these homes can be foreclosed upon when residents have never been delinquent on mortgage payments. Given that property ownership is one of the most important forms of wealth accumulation, these policies directly contribute to the continued marginalization of African American residents and the growing wealth gap between white and black families in America.

3. Recommendations

18. In order to fulfill its constitutional and international obligations protecting the human rights of persons within its jurisdiction, the United States government should move to immediately intervene in the water crisis in Detroit to stop the mass water shut off program by Detroit Water and Sewer Department. The U.S. should immediately intervene in all legal proceedings relevant to the mass water shut off program to ensure that the national constitution, and laws, are implemented at the state and local levels. At the national level, relevant government agencies should establish regulation and procedures that:

- Affirm the universal human right to basic water and sanitation and ensure that the right is enforceable within the existing legal framework at the national, state and local levels.
- Prohibit the termination of basic water services to residences for lack of ability to pay and for vulnerable populations including children, infirmed, persons with disabilities, and the elderly.
- Develop and enforce nation-wide policies that ensure the affordability of basic water and sanitation.
- Eliminate policies that attach unrelated debt to property titles.
- Hold a national interagency consultation on water and sanitation to address the challenges experienced in Detroit in order to identify the root causes of the crisis, gaps in policy, data, and research to address the challenges.
- Hold water and sewer utilities accountable by requiring them to provide publicly available, geographically coded data on the number of water shutoffs and the number of those accounts that are turned back on.
- Ratify, and implement all international agreements signed by the United States that enshrine the human rights to safe drinking water and sanitation.