

Prof. Philip Alston
Special Rapporteur on Extreme Poverty and Human Rights

Office of the High Commissioner for Human Rights (OHCHR)
Palais Wilson
Rue des Paquis, 52
1201 Geneva
Switzerland

**Re: Visit to the United States of America, December 4-15, 2017**

October 4, 2017

Dear Professor Alston:

 In response to the invitation to provide input for your upcoming official visit to the United States, Maryland Legal Aid Bureau (MLA) and the Program on Human Rights and Global Economy (PHRGE) respectfully submit the following letter. This letter addresses the topic of tax lien sales and the human right to water in the United States, with a focus on Baltimore, Maryland. Specifically, it provides background information on Maryland’s tax lien sale laws and how those laws are imposed on individual rate payers in arrears on water bills, and briefly explores the effects of such policies on vulnerable populations and their right to water.

 Both MLA and PHRGE have been engaged in water rights advocacy through various efforts including client advocacy, working with other nonprofit and public agencies, and research and community outreach. MLA provides free civil legal services to qualified individuals on a variety of issues including consumer rights, housing, public benefits, employment law, and family law. With regards to water rights, MLA has represented individuals challenging unduly high water bills, has worked with other NGO’s to engage the City of Baltimore’s Department of Public Works (DPW) on billing processes and transparency, and has been an active participant in the city and state-level dialogue on water affordability. From its base at Northeastern University School of Law, PHRGE works closely with scholars and institutions nationally and internationally to promote economic, social and cultural rights. In 2014, PHRGE sponsored and conducted a survey of the human right to water in the United States and continues to study the right to water through its ongoing work.

Given our interests in water and human rights, we thank you for this opportunity to share our observations on this important issue and we hope it will inform your visit.

**The Human Right to Water in the U.S.: Tax Liens, Water Affordability and Water Access**

*The International and National Water Rights Framework*

Although the human right to water was only formally recognized in 2010 upon the United Nations General Assembly’s adoption of Resolution 64/292,[[1]](#footnote-1) this right has long been inferred from existing human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[[2]](#footnote-2) The ICCPR provides “an inherent right to life” while the ICESCR’s “right to an adequate standard of living” has been “interpreted to include an implied right to water.”[[3]](#footnote-3)

The United States, the country with the highest gross domestic product (GDP) in 2016,[[4]](#footnote-4) provides a powerful case study of the need for vigilance in protecting this critical human right. There is no “constitutional right to affordable water for drinking, hygiene, and sanitation” in the United States. [[5]](#footnote-5) However, since the US has ratified the ICCPR, which incorporates the right to water into its right to life, and signed the ICESCR, which incorporates the right to water into its provisions on health and standard of living, the country’s policies regarding water should be critiqued not only under domestic law, but also in view of human rights standards.

The operation of tax lien sales presents a particularly challenging problem that cuts across water affordability and access. The issue can be summarized as follows: in some local U.S. jurisdictions, an unpaid water bill can trigger a tax lien sale and foreclosure process that permits the state or local jurisdiction to sell debt consisting of unpaid property taxes and water bills on real property to investors, the purpose being to retrieve funds in order to “provide essential government services.” [[6]](#footnote-6)

Tax lien property foreclosure issues have become particularly acute due to rising water costs and growing economic inequality, which puts water payments increasingly out of reach for low income households.[[7]](#footnote-7) Addressing the tax lien sale system thus falls within the scope of human rights law, and is directly connected to the fundamental rights to water and housing.

*A Brief Overview of Tax Lien Sales in the United States*

Water laws and regulations in the United States are based on a “complex amalgam of federal and state statutes and common law principles.”[[8]](#footnote-8) Laws concerning tax lien sales are part of this complex system. In general, tax lien sales with regard to property and water bills occur in the following way, though there may be significant differences among states and local jurisdictions.

First, a jurisdiction becomes aware of a property with an unpaid water bill and notifies the property owner in accordance with local law and constitutional due process requirements. A continued failure to pay the bill after notice (through mail and newspaper notices) then triggers a tax lien sale auction, where the highest bidder obtains a right to collect the amount of the tax lien certificate in exchange for paying the lien amount to the jurisdiction. The property owner is given the opportunity to redeem the property (and maintain ownership) from the bidder at an inflated cost that includes interest, legal fees and costs. Failure to redeem within a specified period forecloses the owner’s right to redeem and the property title is transferred to the holder of the tax lien certificate.

The problem with tax liens on unpaid water bills is not that such policies exist, but that the policies often fail to take account of current economic conditions. Some tax lien sale laws set interest rates for property redemption that reflect the economic climate at the time the laws were enacted rather than current norms, resulting in rates as high as 18 percent even though other financial institutions refrain from charging rates above 1 percent.[[9]](#footnote-9) Such high interest rates provide compelling incentives to investors who bid on tax lien sales as part of a “‘get-rich-quick’” scheme.[[10]](#footnote-10) A 2012 study estimated that yearly property tax delinquencies in the United States totaled $15 billion, a figure that illuminates the breadth and scope of the property tax sale industry.[[11]](#footnote-11)

The tax lien process can be confusing to homeowners, and better education and communication can certainly help homeowners become aware of their payment expectations. However, information alone is insufficient. Water costs are rapidly rising, bringing with it “cascading economic impacts associated with widespread affordability issues.”[[12]](#footnote-12) According to conservative projections, the percentage of households in the United States for which water is unaffordable may rise from 11.9 percent to 35.6 percent over the next five years.[[13]](#footnote-13) Rates can currently reach as high as $325.52 per month for a family of four in Atlanta, Georgia[[14]](#footnote-14) – an amount that can easily exceed the recommended Environmental Protection Agency guideline of capping water bills at 2.5 percent of the median household income.[[15]](#footnote-15) These increasing costs reflect a variety of factors including the costs of replacing infrastructure, climate change, and changing population dynamics in urban and sub-urban areas.[[16]](#footnote-16) Moreover, the negative impacts of rising costs are further compounded by the lack of adequate state or federal protections or policies that would enable individuals to afford these costs and avoid loss of their homes.[[17]](#footnote-17)

**Baltimore as a Case Study**

 One city that exemplifies the challenges and impacts of imposing tax liens on water bills is Baltimore, Maryland. For the past six years water bills have increased annually at a rate of more than 9 percent. In July 2017, the costs of water in Baltimore increased by 9.4 percent as part of a three-stage increase scheduled through 2018.[[18]](#footnote-18) This increase is estimated to add between $7 and $84 to a household’s monthly water bill.[[19]](#footnote-19) Although the purpose of these increases is to help offset the costs of repairing water infrastructure, [[20]](#footnote-20) such radical increases in water bills are expected to, and have already, adversely affected vulnerable populations including the poor and the elderly.[[21]](#footnote-21)

 In Baltimore, “tax sale is a large operation.”[[22]](#footnote-22) The city can sell certificates to properties that have unpaid water bills delinquent by nine months, and for amounts as low as $750 dollars in owner-occupied properties and $350 in non-owner occupied properties.[[23]](#footnote-23) To compare, consider New York’s law, which enforces tax lien sales on water bills delinquent by a year or more and for amounts at or exceeding $1,000 to $2,000.[[24]](#footnote-24) In 2016, Baltimore enforced tax lien sales on 315 owner occupied properties, while in 2015 that number was 388.[[25]](#footnote-25) This number reportedly increased in 2017, with 1,000 properties going to tax sale in May.[[26]](#footnote-26)

Not all affected property owners go on to lose their homes due to a tax lien foreclosure. Maryland law permits Baltimore property owners to redeem their properties after the sale. However, the redemption process includes repayment of the lien certificates with 12 percent for owner-occupied properties and 18 percent interest for non-owner occupied properties, legal fees, postage, updated property taxes and other associated costs.[[27]](#footnote-27) As one anecdote reveals, a woman whose house was put up for sale and auctioned for a $362 unpaid water bill could only redeem it at a final cost of $3,600, far more than what she could afford. She subsequently lost her home over that $362 bill that she could not pay.[[28]](#footnote-28) The initial unaffordability of water combined with the costs of the tax sale process, including redemption, thus creates a snowball effect that places insurmountable financial burdens on low income homeowners.

Additionally, the tax sale process does not always yield the revenue that the city expects, placing into question the efficacy and purpose of the tax lien policy itself. According to one city council member, “[w]hat's meant to be an enforcement tool to collect debt sometimes fails to yield money for government coffers because not all properties are sold.”[[29]](#footnote-29) Exactly how much money is raised for necessary services like police and schools – a stated purpose of tax lien sale laws – also remains unclear.[[30]](#footnote-30) Failure to sell properties also leads to increased vacancy, which in turn has negative impacts on community and neighborhood culture, economics and aesthetics.

Beyond water unaffordability, billing irregularity may also contribute to the vulnerability of Baltimore residents to tax liens.

First, until 2017, the water bills in Baltimore city were based on a minimum fixed amount, were presented quarterly instead of monthly, and were susceptible to human error.[[31]](#footnote-31) In 2016, the Department of Public Works (DPW) launched BaltiMeter Billing, a system aimed at rectifying these issues. The new system provides customers monthly bills; bases the bill on water consumption instead of a set minimum; and allows customers to track their consumption levels.[[32]](#footnote-32)

In spite of functional improvements, the underlying issues with the billing system have not been adequately addressed. Upon the system’s launch, the city received several complaints from customers regarding higher than usual bills despite supposed adjustments. [[33]](#footnote-33) One possible reason for these high bills concerns how included fees – which can be high as $30 per month and raise bill amounts even if consumption is minimal – have been recalculated to fit monthly instead of quarterly bills.[[34]](#footnote-34) The city’s enforcement of tax liens on an estimated 1,000 homeowners in 2017[[35]](#footnote-35) is the clearest indication that the new billing structure, though improved, does not fully address the general affordability issues that preclude some residents from paying their water bills on time and in full.

Second, the water billing process remains susceptible to error and bureaucratic hurdles. Baltimore’s water issues came to the forefront in 2012 when investigations revealed that human and clerical error had led to properties ranging from individual homes to corporate entities being significantly overcharged.[[36]](#footnote-36) Advocates have been vocal in expressing their “fear [that] homeowners could lose their houses over water bills possibly inflated by billing glitches, faulty meter readings or unexplained spikes in usage.”[[37]](#footnote-37) Although some human error in reading meters or calculating charges is unavoidable in a city with a population of approximately 614,000 people,[[38]](#footnote-38) the costs of such human error are particularly high in Baltimore given that unpaid bills as low as $350 to $750 dollars can trigger a tax sale.[[39]](#footnote-39)

Third, the people who have access to payment assistance or house plumbing repair programs may not always know that they are eligible, or may not get all the benefits of being enrolled in such programs. Baltimore City has established at least three assistance programs for qualified low-income and senior consumers. These programs are “limited to Baltimore City residents who get a water bill directly from DPW” and thus do not extend to those residents who may receive water and be billed by other sources including private utility companies.[[40]](#footnote-40) While these programs go a long way in helping eligible customers pay their water bills, available data suggests that they do not reach as many of these eligible residents as they could.[[41]](#footnote-41)

For example, the Low Income Water Bill Assistance Program assists those candidates who already have delinquent bills and meet certain monthly and yearly income criteria.[[42]](#footnote-42) A household of four must have income at or below $43,050 to qualify.[[43]](#footnote-43) In Baltimore, where the estimated median income was $42,421 and poverty levels reached 22 percent in 2016, the assistance program, in theory, should reach a sizeable number of account holders.[[44]](#footnote-44) However, only “1,400 account holders who are behind on payments and fall under income limits participate in the low-income grant program.”[[45]](#footnote-45) More research is required to determine why those residents in need of assistance are not receiving it. For now, the reality is that residents of poor neighborhoods and members of vulnerable groups including low-income households and seniors are still paying above the recommend limit of 2.5 percent of their yearly incomes,[[46]](#footnote-46) and are not receiving adequate assistance from the city in an efficient and timely way.

 There are other challenges that contribute to water and property insecurity in Baltimore, including information and education barriers; bureaucratic hurdles to receiving information and resolving issues; the pace of water infrastructure and repair development; access to legal aid and services; and potential pushback from the property tax sale industry, among others. While tax lien sale laws play a role in contributing to city services, they also place undue burdens on individuals that affect basic human dignity and rights.

*Conclusion*

 We invite the Special Rapporteur on Extreme Poverty and Human Rights to visit Baltimore City during your upcoming official visit to the United States. Baltimore is emblematic of the challenges faced by vulnerable populations in the U.S. with regard to water affordability and risks of property foreclosures. Ultimately, ensuring “affordable access to water…makes moral and economic sense.”[[47]](#footnote-47) We hope that this letter sheds light on some of the challenges to this tenet, and prompts closer study of these issues during and after your visit to the United States.

 Respectfully submitted,



C. Shawn Boehringer

Chief Counsel

Maryland Legal Aid

500 E. Lexington Street

Baltimore, MD  21202

Telephone:  410.951.7637

Facsimile:  410.951.7778

email:  sboehringer@mdlab.org



Kevin Murray
Executive Director
Program on Human Rights and the Global Economy (PHRGE)
Northeastern University
School of Law
(617)373-4972

\*The parties thank Taarika C. Sridhar, a J.D. candidate at Northeastern University School of Law, for her assistance in preparing this submission.

1. G.A. Res. 64/292, (Jul. 28, 2010). [↑](#footnote-ref-1)
2. Jootaek Lee & Maraya Best, *The Human Right to Water: Research Guide & Annotated Bibliography*, The Program on Human Rights and the Global Economy, 10 (2017) [hereinafter PHRGE]. [↑](#footnote-ref-2)
3. PHRGE, *supra* note 2, at 10. [↑](#footnote-ref-3)
4. Gross Domestic Product 2016, World Bank, http://databank.worldbank.org/data/download/GDP.pdf. (last visited Sept. 24, 2017). [↑](#footnote-ref-4)
5. Sharmila Murthy, *A New Constitutive Commitment to Water*, 36 B.C. J.L. & Soc. Just. 159, 160 (2016). [↑](#footnote-ref-5)
6. *The Other Foreclosure Crisis: Property Tax Lien Sales*, Nat’l Consumer L. Ctr., 1, 4, 12 (Jul. 2012), http://www.nclc.org/images/pdf/foreclosure\_mortgage/tax\_issues/tax-lien-sales-report.pdf [hereinafter NLC]. [↑](#footnote-ref-6)
7. *See* Elizabeth A. Mack & Sarah Wrase, *A Burgeoning Crisis? A Nationwide Assessment of the Geography of Water Affordability in the United States*, s, 1 (Jan. 11, 2017), http://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0169488&type=printable (The study highlights “high-risk and at-risk households for water poverty or unaffordable water services.”). [↑](#footnote-ref-7)
8. Catarina de Albuquerque (Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation), *Mission to the United States of America*, ¶ 7, U.N. Doc. A/HRC/18/33/ADD.4 (Aug. 2, 2011). [↑](#footnote-ref-8)
9. NLC, *supra* note 6, at 10. [↑](#footnote-ref-9)
10. NLC, *supra* note 6, at 10. [↑](#footnote-ref-10)
11. NLC, *supra* note 6, at 5. [↑](#footnote-ref-11)
12. Mack, *supra* note 7, at 1. [↑](#footnote-ref-12)
13. Mack, *supra* note 7, at 1. [↑](#footnote-ref-13)
14. Mack, *supra* note 7, at 2. [↑](#footnote-ref-14)
15. *Tapped Out: Threats to the Human Right to Water in the Urban United States*, Geo. L. Hum. Rts. Inst. Fact-Finding Practicum, 3, 18 (Apr. 2013), http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf. [↑](#footnote-ref-15)
16. Mack, *supra* note 7, at 2. [↑](#footnote-ref-16)
17. NLC, *supra* note 6, at 8. [↑](#footnote-ref-17)
18. *Discounts, Grants for City Water/Sewer Bills to Rise on July 1*, Baltimore City Dep’t of Pub. Works (Jun. 29, 2017), https://publicworks.baltimorecity.gov/news/press-releases/2017-06-29-discounts-grants-city-watersewer-bills-rise-july-1. [↑](#footnote-ref-18)
19. Yvonne Wenger & Ian Duncan, *Latest Water Rate Increase Comes Amid Fresh Debate on Affordability for the Poor*, The Baltimore Sun (Jun. 30, 2017), http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-rate-discounts-20170701-story.html. [↑](#footnote-ref-19)
20. Wenger & Duncan, *supra* note 19. [↑](#footnote-ref-20)
21. Wenger & Duncan, *supra* note 19. [↑](#footnote-ref-21)
22. Joan Jacobson, *The Steep Price of Paying to Stay: Baltimore City’s Tax Sale, the Risks to Vulnerable Homeowners, and Strategies to Improve the Process*, Abell Found., 3 (Oct. 2014), http://www.abell.org/sites/default/files/publications/ec-taxsale1014.pdf. [↑](#footnote-ref-22)
23. Jacobson, *supra* note 22, at 9-10; House Bill 453. ACM, Tax-Property Art. §14-849.1 [↑](#footnote-ref-23)
24. *NYC Lien Sale & Payment Agreements*, (last visited Oct. 2, 2017), http://www.nyc.gov/html/dep/html/customer\_services/lienfaq.shtml#a3. [↑](#footnote-ref-24)
25. Yvonne Wenger, *Unpaid Water Bills Trigger Tax Sales for Baltimore Homeowners*, The Baltimore Sun (May 5, 2017), http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-tax-sale-20170505-story.html. [↑](#footnote-ref-25)
26. *Losing your Home over a Water Bill*, The Baltimore Sun (Jun. 4, 2017), http://www.baltimoresun.com/news/opinion/editorial/bs-ed-tax-sales-20170604-story.html. [↑](#footnote-ref-26)
27. Jacobson, *supra* note 22, at 11. [↑](#footnote-ref-27)
28. Chris Morran, *How Does Someone Lose Their House Over A $474 Water Bill?*, Consumerist, (Jul. 10, 2012), https://consumerist.com/2012/07/10/how-does-someone-lose-their-house-over-a-474-water-bill/. [↑](#footnote-ref-28)
29. Wenger, *supra* note 25. [↑](#footnote-ref-29)
30. Jacobson, *supra* note 22, at 9. [↑](#footnote-ref-30)
31. Luke Broadwater, *As New Water-billing System Begins in Baltimore, Some Complain of Spiking Bills*, The Baltimore Sun (Oct. 12, 2016), http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-new-water-bills-20161012-story.html. [↑](#footnote-ref-31)
32. ##  *New Water Billing System*, Baltimore City Dep’t of Pub. Works, (last visited Sept. 24, 2017),

 https://publicworks.baltimorecity.gov/new-water-billing-system. [↑](#footnote-ref-32)
33. Broadwater, *supra* note 31. [↑](#footnote-ref-33)
34. Call with Louise Carwell from Maryland Legal Aid (Sept. 21, 2017); See *New Water Billing System*, *supra* note 32 (fees include an “Account Management Fee,” “an Infrastructure Fee,” and a “Stormwater Fee and Bay Restoration Fee.”). [↑](#footnote-ref-34)
35. *Losing your Home over a Water Bill*, *supra* note 26. [↑](#footnote-ref-35)
36. *See* Wenger, *supra* note 25 (“The city's had a history of water billing errors, such as sending customers bills that were tens of thousands of dollars too high or based on meter readings that some workers made up.”); *See also* Broadwater, *supra* note 31 (“Customers have long complained about erroneous water bills, but the issue gained widespread attention in 2012 when the city auditor found that the Department of Public Works had overcharged thousands of homes and businesses by a total of at least $9 million.”). [↑](#footnote-ref-36)
37. Yvonne Wenger, *Unpaid Water Bills Trigger Tax Sales for Baltimore Homeowners*, The Baltimore Sun (May 5, 2017), http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-tax-sale-20170505-story.html. [↑](#footnote-ref-37)
38. Natalie Sherman, *Baltimore Population Falls, Nearing a 100-year Low, U.S. Census says*, The Baltimore Sun (Mar. 23, 2017), http://www.baltimoresun.com/news/maryland/baltimore-city/bs-bz-baltimore-population-loss-jumps-20170322-story.html. [↑](#footnote-ref-38)
39. Jacobson, *supra* note 22, at 9-10; House Bill 453. [↑](#footnote-ref-39)
40. ##  *Discounts, Grants for City Water/Sewer Bills to Rise on July 1*, Baltimore City Dep’t of Pub. Works (Jun. 29, 2017), https://publicworks.baltimorecity.gov/news/press-releases/2017-06-29-discounts-grants-city-watersewer-bills-rise-july-1.

 [↑](#footnote-ref-40)
41. *See* Yvonne Wenger & Ian Duncan, *Baltimore Water Discount Program Short of Meeting Need of Tens of Thousands of Families*, The Baltimore Sun (Jun. 17, 2017), http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-affordability-20170617-story.html. (Baltimore set a goal of “enrolling 10 percent of customers” or approximately 20,000 water accounts in its three water assistance programs. Yet, only “8,800 water accounts are enrolled” according to publicly available data.) [↑](#footnote-ref-41)
42. #  *Low Income Water Bill Assistance Program*, Baltimore City Dep’t of Pub. Works (last visited Sept. 24, 2017), https://publicworks.baltimorecity.gov/low-income-water-bill-assistance-program

 [↑](#footnote-ref-42)
43. *Low Income Water Bill Assistance Program*, *supra* note 42. [↑](#footnote-ref-43)
44. U.S. Census Bureau (last visited Oct. 2, 2017), https://www.census.gov/quickfacts/fact/table/baltimorecitymarylandcounty/AGE295216. [↑](#footnote-ref-44)
45. Wenger & Duncan, *supra* note 41. [↑](#footnote-ref-45)
46. *Recommendations of the National Drinking Water Advisory Council to U.S. EPA on Its National Small Systems Affordability Criteria*, NDWAC, xi (Jul. 2003), https://www.epa.gov/sites/production/files/2015-09/documents/recommendations-of-the-ndwac-to-us-epa-on-its-nssa-criteria.pdf; *See also* Wenger & Duncan, *supra* note 41 (“[I]n Cherry Hill, Sandtown-Winchester, Oldtown and other poor city neighborhoods, where majorities of households live off incomes of less than $25,000 a year, a typical water bill could represent as much as 4.7 percent of income.”). [↑](#footnote-ref-46)
47. Sharmila Murthy, *A New Constitutive Commitment to Water*, 36 B.C. J.L. & Soc. Just. 159, 163 (2016). [↑](#footnote-ref-47)