

**POST-THEMATIC HEARING REPORT  
ON**

**The Human Rights to Water and  
Sanitation in the United States**

**Submitted on behalf of:**

**The US Human Rights Network National Human Rights to  
Water and Sanitation Coalition  
by the International Human Rights Clinic at Santa Clara  
University School of Law**

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# EXECUTIVE SUMMARY

1. **The United States is failing to guarantee the human rights to water and sanitation** for thousands of low-income, people of color, and indigenous communities across the nation. On October 23, 2015, the US Human Rights Network and coalition partners representing affected communities came together in Washington, D.C. to inform the Inter-American Commission on Human Rights about the human suffering and public health risks created by this water crisis. Through a regional [thematic hearing on the right to water](#), and in meetings with U.S. government officials, coalition members discussed the three main barriers to the full and equal realization of the human rights to water and sanitation in the U.S.: **lack of affordability, contamination, and inadequate infrastructure**. This report supplements the information presented to the Commission about each of these three issues. It provides more details about the applicable legal framework, the case studies that highlight the interplay between these barriers, and the disproportionate impact suffered by people of color, Indigenous Peoples, the poor, women, and children. This report also offers policy recommendations directed toward the international community and U.S. federal and state agencies to promote the full and equitable realization of the human rights to water and sanitation in the United States.

## *Legal framework*

2. **U.S. law is out of step with minimum international standards on water and sanitation**. The human rights to water and sanitation have been internationally recognized since at least 2010, when the United Nations General Assembly adopted Resolution 64/292 to officially “recognize[] the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights[.]”<sup>1</sup> This resolution was preceded by the Committee on Economic, Social, and Cultural Rights’ (CESCR) 2002 General Comment No. 15, which recognized the human right to water and sanitation as components of the right to an adequate standard of living and the right to health under the International Covenant on Economic, Social, and Cultural Rights (ICESCR). In General Comment 15, the CESCR declared that “the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”<sup>2</sup> The Inter-American

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<sup>1</sup> UNGA, Resolution: *The human right to water and sanitation*, 2010 (A/RES/64/292), available at <http://docbox.un.org/DocBox/docbox.nsf/GetFile?OpenAgent&DS=A/RES/64/292&Lang=E&Type=DOC>. For a more detailed discussion of the international framework on the human rights to water and sanitation, see the attached report from Human Rights Advocates (Annex), available at <http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/The-Human-Right-to-Water-An-Imperative.pdf>.

<sup>2</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 2, 29th Sess., 2002, U.N. Doc.

Human Rights System has similarly recognized the right to water by interpreting relevant treaty law broadly, linking the right to water to other enforceable or justiciable treaty rights, and developing jurisprudence in very factual-specific contexts mostly involving indigenous peoples. In contrast, the United States has yet to recognize the human rights to water and sanitation at a national level, although the states of California,<sup>3</sup> Massachusetts,<sup>4</sup> and Pennsylvania<sup>5</sup> have recognized the human right to water under state law. The United States has also not ratified most of the international treaties that recognize these rights, such as the ICESCR, the San Salvador Protocol, or the American Convention on Human Rights. However, during the second UN Universal Periodic Review, the U.S. supported in part several recommendations that encouraged it to implement the human rights to water and sanitation.<sup>6</sup>

3. **U.S. federal legislation and regulations only address the quality of drinking water; they do not recognize the human rights to water and sanitation.** The two main federal laws that regulate water quality in the U.S. are the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). Although CWA has helped safeguard and improve water quality in the U.S., the law has many loopholes, including an exemption for agricultural activities,<sup>7</sup> and contains weak enforcement mechanisms.<sup>8</sup> Neither the states nor the federal government dedicate sufficient resources and funding to enforcement of CWA and SDWA,<sup>9</sup> and they rarely issue citations or fines against the more than 20% of U.S. drinking water systems that have violated SDWA standards.<sup>10</sup>

4. U.S. states have the power to exceed the protections provided under CWA and SDWA, and **some have decided to recognize the human right to water at a state level.** California, for example, took a critical first step toward achieving full realization of the human right to water

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E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>3</sup> AB 685, 2011-2012 Leg. Reg. Sess. (Cal. 2012) (codified at Cal. Water Code § 106.3 (West 2012)), available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf).

<sup>4</sup> See Constitution of the Commonwealth of Massachusetts, art. XCVII.

<sup>5</sup> See Constitution of the Pennsylvania, Art. 1, sec. 27.

<sup>6</sup> US Human Rights Network, U.S. Government Addendum to the Working Group Report of The UN Human Rights Council Universal Periodic Review Of The United States: USHRN Annotated Document with Insertion of Recommendation Language (2015), [www.ushrnetwork.org/resources-media/us-government-addendum-working-group-report-un-human-rights-council-universal](http://www.ushrnetwork.org/resources-media/us-government-addendum-working-group-report-un-human-rights-council-universal).

<sup>7</sup> Jan G. Laitos and Heidi Ruckriegle. *The Clean Water Act and the Challenge of Agricultural Pollution*. Vermont Law Review, Vol. 37: 1033 (2013), available at <http://lawreview.vermontlaw.edu/files/2013/08/14-Laitos-Ruckriegle.pdf>.

<sup>8</sup> American Rivers. *Weathering Change: Policy Reforms That Save Money and Make Communities Safer*, “Clean Water Act,” pp. 28-31, available at <https://www.americanrivers.org/assets/pdfs/global-warming-docs/weathering-change/weathering-change-full-report.pdf>

<sup>9</sup> Clifford Rechtshaffen, Center for Progressive Regulation, White Paper: Enforcing the Clean Water Act in the Twenty-first Century: Harnessing the Power of the Public Spotlight (Oct. 2004), available at [http://www.progressivereform.net/articles/Enforcement\\_WP\\_Oct\\_2004.pdf](http://www.progressivereform.net/articles/Enforcement_WP_Oct_2004.pdf);

<sup>10</sup> Charles Duhigg, *New York Times*. *Millions in the U.S. Drink Dirty Water, Records Show* (Dec. 2009), available at [http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?\\_r=0](http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?_r=0).

with the passage of AB 685.<sup>11</sup> By requiring state agencies to consider the human right to water when making decisions about how water is used in California, the law promotes a greater attention to the needs of disadvantaged communities that lack equal access to safe affordable water. Despite certain structural flaws that weaken its potential, California's human right to water framework has positively changed public discourse about water by framing it in terms of human rights, and it may provide a helpful model for better practices that other U.S. states should consider adopting.

### *Lack of Affordability*

5. **Low-income minority communities in the U.S. lack equal access to affordable drinking water and sanitation.** Thousands of low-income families must make difficult choices between paying for water and other basic services. Although the federal government funds assistance programs for electricity and heating bills, it provides no funding to assist with water bills. The situation has only worsened since the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation highlighted the issue after her 2011 country visit.

6. Several case studies from cities and communities all around the U.S. confirm and illustrate the disparate impact of water access deficiencies on communities or groups who have historically suffered discrimination, as well as the particular challenges faced by women and children. Urban **low-income minority communities** in Detroit, Baltimore, and Boston, for example, **have lost or risk losing access to water due to mass shutoffs** instituted when public utilities refuse to provide basic levels of drinking water to those who cannot afford to pay for water. Although corporate entities represent the largest piece of the missing revenue represented by past-due accounts, utilities instead target thousands of low-income minority residents by threatening or carrying out service disconnections. Those individuals who attempt to reconnect the water service for their homes are criminalized for doing so. Communities in Detroit and Highland Park in Michigan have faced similar mass water shut-offs due to unaffordable water and failed water governance. In March 2015, the city of Baltimore followed Detroit's example and announced plans to shut off water service to roughly 60,000 people.

7. These shutoffs affect the victims' enjoyment of other rights. Under UN standards, the affordability component of the human right to water "requires that [...] costs related to water and sanitation should not [...] compromise [the] ability to enjoy other rights, such as the right to food, housing, health and education."<sup>12</sup> **Shutoffs in the U.S. have affected peoples' health, placed mothers at risk of losing custody of their children** based on applicable child protection laws that require running water in households with children, **and increased the risk of loss of**

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<sup>11</sup> CA. ASSEMB. BILL 685, *supra* note 3.

<sup>12</sup> U.N. High Comm'r for Human Rights, Report 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, ¶ 28 U.N. Doc. A/HRC/6/3 (Aug. 16, 2007); *see also* CESCR General Comment No. 15, *supra* note 2.

**housing through foreclosure** caused by the city collecting unpaid water bills through tax lien sales on homes, among other serious problems.<sup>13</sup>

8. Water shutoffs in the U.S. have also been almost uniformly characterized by a denial of due process rights and other safeguards to ensure continuity of service. Contrary to applicable international standards, **victims of shutoffs are often not informed in advance, with reasonable notice, of the planned disconnections, nor do they have recourse to legal remedies and legal assistance to obtain remedies.** Residents in cities affected by mass shutoffs in all the named cities have reported serious billing errors that give rise to shutoffs, as well as a lack of meaningful opportunities to challenge erroneous bills. Additionally, no utility in the country is required to report on water shutoffs, and as a result, it is almost impossible to obtain official data on the number of shutoffs in a particular jurisdiction, much less statistical information on the characteristics of those affected by shutoffs, such as age, gender, race, economic status, or disability. None of the cities described above have instituted mandatory reporting mechanisms to inquire about the presence of vulnerable individuals living in households scheduled for shutoff.<sup>14</sup> Consequently, these utilities fail to take into account risks of special danger to vulnerable individuals like the disabled, elderly, children, and pregnant women, who may be residing in the home scheduled for shutoff.<sup>15</sup>

9. In the midst of the crisis described above, **a small number of U.S. jurisdictions have begun developing local water affordability measures that carry some promise for better practices on this issue.**<sup>16</sup> Philadelphia's new income-based water rate assistance program, for example, focuses on developing a water rate structure that is tied to income, in order to assure that all households have access to affordable water service.<sup>17</sup> This new approach represents an important policy shift away from assistance, which is about charity, to affordability, which is

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<sup>13</sup> UN High Comm'r for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.

<sup>14</sup> U.N. High Comm'r for Human Rights, Detroit's water shut-offs target the poor, vulnerable and African Americans (Oct. 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15190&LangID=E>; MintPress News Desk, Baltimore Shutting Off Water to Thousands of Households While Ignoring Corporate Debtors (April 15, 2015), available at <http://www.mintpressnews.com/baltimore-shutting-off-water-to-thousands-of-households-while-ignoring-corporate-debtors/204373/>.

<sup>15</sup> Alice Jennings, Lansing Water Hearings, The Boggs Blog (June 7, 2015), available at <https://conversationthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>16</sup> See Christine Ferretti, The Detroit News. *Advocates seek income-based water bills for Detroiters* (July 29, 2015), available at <http://www.detroitnews.com/story/news/local/detroit-city/2015/07/29/water/30830703/>.

<sup>17</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015). For the full text of the IWRAP law, see Philadelphia City Council, Legislation: #140607-AA (Nov. 19, 2015), available at <https://phila.legistar.com/LegislationDetail.aspx?ID=1821444&GUID=EE8B7A07-A75F-4EBD-A0BF-4D71FEB5919B&Options=ID|Text|&Search=IWRAP>.



about fairness.<sup>18</sup> It has the potential to bring Philadelphia into greater compliance with the human right to water and could potentially be replicated in other jurisdictions.

### *Quality*

10. **Low-income, people of color, and indigenous communities in the U.S. lack access to safe drinking water due to agricultural and industrial contamination.** In California, for example, more than a **million farmworker families in the Salinas and San Joaquin Valleys depend on drinking water contaminated with arsenic and nitrates** used in nearby agricultural activities, which poses particularly serious risks for pregnant and nursing women, children, and the elderly.<sup>19</sup> This **contamination also increases the cost of water** for low-income rural communities in California in two ways: 1) residents pay twice for water because they must continue paying for the unsafe water provided by the local utility yet also pay for alternative safe sources, and 2) the utility company charges increasingly high water rates to cover the cost of testing, fines imposed by state regulators, providing service to a diminishing customer base, or financing and operating a treatment facility.<sup>20</sup> As a result, residents in California's poorest communities are paying up to 20% of their household incomes to avoid drinking and using contaminated water.<sup>21</sup>

11. Indigenous Peoples of the Navajo Nation in New Mexico face the loss of their public water system<sup>22</sup> and struggle to secure access to safe drinking water due to groundwater

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<sup>18</sup> *Id.*

<sup>19</sup> U.C. Davis California Nitrate Project, *Addressing Nitrate in California's Drinking Water*, (Jan. 2012), available at <http://groundwaternitrate.ucdavis.edu/files/138956.pdf>; Carolina Balazs et al., *Social Disparities in Nitrate-Contaminated Drinking Water in California's San Joaquin Valley*, 119 ENVTL. HEALTH PERSP. 1272 (2011), 1275 [right column], available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3230390/pdf/ehp.1002878.pdf>; US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 7, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf); Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, "Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California," Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), pp. 11-12, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf).

<sup>20</sup> Shadow Report to the UN Committee on the Elimination of Racial Discrimination, *supra* note 18, pp. 12-15; UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶39, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); US Human Rights Network, Thematic Hearing Request, *supra* note 18, p. 7.

<sup>21</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report on Mission to the United States of America, *supra* note 19, ¶39; US Human Rights Network, Thematic Hearing Request, *supra* note 18, p. 8.

<sup>22</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report on Mission to the United States of America, *supra* note 19, ¶63; United States Government Accountability Office, Uranium Contamination: Overall Scope, Time Frame and Cost Information is Needed for Contamination Cleanup on the Navajo Reservation, GAO-14-323 (May 2014), p. 3, available at: <http://www.gao.gov/products/GAO-14-323>.

contamination caused by unremediated uranium mining waste.<sup>23</sup> **Uranium contamination, including the kind of continuous exposure to low levels of uranium suffered by Navajo communities in northwestern New Mexico, also causes serious health consequences** that can be particularly severe for children and pregnant women. The United Nations Committee on the Elimination of Racial Discrimination recently called upon the United States to redress the disparate impact of environmental pollution on indigenous peoples and specifically recommended that the U.S. clean up radioactive waste affecting indigenous peoples “as a matter of urgency.”<sup>24</sup>

### *Infrastructure*

12. **In the United States, lack of access to safe, affordable drinking water and adequate sanitation is also due to infrastructure deficits.** Distribution and treatment infrastructure throughout the nation’s cities, towns, and rural communities is now cracked and crumbling. As the nation’s water infrastructure has aged, the federal government has replaced grant programs for infrastructure improvements with loans.<sup>25</sup> This shift passes the costs to individual water utilities and then onto consumers in the form of increased rates.<sup>26</sup> Through water and sewer rates, consumers pay 90% of the cost to maintain and operate current water and sanitation infrastructure in the U.S.<sup>27</sup>

13. In Alabama’s Black Belt region, for example, a large proportion of low-income households do not have adequate sanitation infrastructure.<sup>28</sup> In Lowndes County, according to the Alabama Department of Public Health, approximately “40 to 90% of households have either inadequate or no septic system,”<sup>29</sup> and half of the county’s septic systems are failing or in poor

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<sup>23</sup> Multicultural Alliance for a Safe Environment, Shadow Report to the Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination, (July 1, 2014), p. 3, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/mase\\_cerd\\_shadow\\_report\\_final\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/mase_cerd_shadow_report_final_1.pdf).

<sup>24</sup> U.N. Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of United States of America, CERD/C/USA/CO/7-9 (August 29, 2014), ¶10, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD\\_C\\_USA\\_CO\\_7-9\\_18102\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf).

<sup>25</sup> Santa Clara IHRC Interview with Patricia Jones, Senior Program Leader for the human right to water at the Unitarian Universalist Service Committee (UUSC), Santa Clara, California (Oct. 19, 2015); Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), p. 21, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>26</sup> Santa Clara IHRC Interview with Patricia Jones, *supra* note 24; Georgetown Law Human Rights Institute, Tapped Out, *supra* note 24, p. 21.

<sup>27</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report on Mission to the United States of America, *supra* note 19, ¶17.

<sup>28</sup> Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report on Mission to the United States of America, *supra* note 19, ¶20; US Human Rights Network, Thematic Hearing Request, *supra* note 18, p. 8.

<sup>29</sup> Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-belt-counties.html>.

condition.<sup>30</sup> **Residents are routinely exposed to raw sewage, particularly those living in mobile homes and trailers, which leads to serious health impacts.**<sup>31</sup> State law places the burden of alleviating this crisis on individual households by requiring that homes have a working septic system, but many residents cannot afford to purchase or maintain a septic tank.<sup>32</sup> Alabama then criminalizes the inability to afford adequate sanitation by imposing criminal charges against homeowners who cannot afford to have septic systems that conform with state health and safety requirements.<sup>33</sup>

14. **Deficient public sanitation infrastructure particularly affects the homeless population**, who lacks equal access – or any access – to adequate water and sanitation.<sup>34</sup> Policies that restrict access to public restrooms and drinking fountains in public areas<sup>35</sup> and laws criminalizing public urination or defecation exacerbate the problems homeless populations face by their lack of access to housing and reflect the State’s discriminatory attitude toward this vulnerable group.<sup>36</sup> For example, the city of Sacramento, California decreased access to clean drinking water by decommissioning public water fountains near homeless communities without providing alternative safe water sources.<sup>37</sup> With no access to public sanitation services, homeless populations are forced to clean up their own human waste and find alternative ways to dispose of it.<sup>38</sup> This situation poses a public health problem as well as a human rights concern,

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<sup>30</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report on Mission to the United States of America, *supra* note 19, ¶20.

<sup>31</sup> Catherine Coleman Flowers, Founder and Director Alabama Center for Rural Enterprise CDC Inc. at America’s Dirty Secret: Living amongst Raw Sewage, event in 2014, recording available at <https://www.youtube.com/watch?v=5d-d0Pa1AF8>; Jessica Cook Wedgworth, Joe Brown; Water Quality, Exposure and Health; “Limited Access to Safe Drinking Water and Sanitation in Alabama’s Black Belt: A Cross-Sectional Case Study,” June 2013, Vol. 5, Issue 2, pp. 69-74, available at <http://www.researchgate.net/publication/257781005>.

<sup>32</sup> Ashley Cleek, *supra* note 28.

<sup>33</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report on Mission to the United States of America, *supra* note 19, ¶21; Ashley Cleek, *supra* note 28.

<sup>34</sup> See Food and Water Watch, Our Right to Water (May 2012), p. 7, available at <http://documents.foodandwaterwatch.org/doc/OurRighttoWater.pdf>; Shadow Report to the UN Committee on the Elimination of Racial Discrimination, *supra* note 18, pp. 19-21.

<sup>35</sup> Shadow Report to the UN Committee on the Elimination of Racial Discrimination, *supra* note 18, p. 2.

<sup>36</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report on Mission to the United States of America, *supra* note 19, ¶56; see also National Law Center for Homelessness and Poverty, “When There’s No Alternative: Rights to Water and Sanitation,” (February 25, 2011), available at <http://homelessnesslaw.org/2011/02/when-theres-no-alternative-rights-to-water-sanitation/>. Homeless individuals are also subject to social stigma because of their status, and lack of access to water and sanitation worsens this problem as well. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Stigma and the Realization of the Human Rights to Water and Sanitation, U.N. Doc. A/HRC/21/42 (July 2, 2012), ¶¶ 37, 42, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-42\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-42_en.pdf).

<sup>37</sup> Homelessness Law, *UN to Sacramento: You are Violating the Human Rights of Homeless People*, (Feb. 6, 2012), available at <http://homelessnesslaw.org/2012/02/un-to-sacramento-youre-violating-human-rights-of-homeless-people/>.

<sup>38</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report on Mission to the United States of America, *supra* note 19, ¶58-59.

particularly given that adequate sanitation is required to enjoy the fundamental right to privacy and human dignity.<sup>39</sup>

15. **‘Colonia’ towns on the US-Mexico Border in Arizona, California, New Mexico, and Texas** provide an additional example of how rural low-income minority communities in the U.S. lack adequate water and sanitation infrastructure.<sup>40</sup> Colonias are rural communities that **lack potable water, adequate sewage systems, and decent, sanitary housing.**<sup>41</sup> Most residents in colonias are low-income minorities, with 64.4% of residents being Latina/o.<sup>42</sup>

16. **Lack of equal access to water and water contamination also affects the cultural rights of indigenous peoples**, for whom water is considered to be culturally significant.<sup>43</sup> Federally unrecognized tribes **like the Winnemem Wintu tribe in California** are particularly vulnerable.<sup>44</sup> The tribe is not connected to any public water system and is ineligible for financial assistance because of their lack of federal recognition – the government categorizes them as individual households and not as a tribe.<sup>45</sup> Their cultural practices depend heavily on access to rivers for various spiritual and subsistence activities, yet policy decisions by the federal U.S. and California state governments have significantly reduced their access to safe drinking water and traditional water sources for ceremonial purposes.<sup>46</sup> Despite the ongoing threat to the tribe’s physical and cultural survival, California currently plans to raise the water level of a dam near the Winnemem Wintu territory, which would result in the flooding of the tribe’s sacred sites.<sup>47</sup>

17. **Inadequate infrastructure and mismanagement of water sources in Puerto Rico**, compounded by a severe drought, led the government to declare a state of emergency in the

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<sup>39</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report on Mission to the United States of America, *supra* note 19, ¶19.

<sup>40</sup> National Law Center on Homelessness and Poverty, *supra* note 35, at 49; 42 U.S.C. § 1479 (f)(8); and Federal Reserve Bank of Texas, *Texas Colonias a Thumbnail Sketch of Conditions, Issues, Challenges, and Opportunities*, at 3 available at [www.dallasfed.org/assets/documents/cd/pubs/colonias.pdf](http://www.dallasfed.org/assets/documents/cd/pubs/colonias.pdf).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Statement to the Permanent Forum on Indigenous Issues, (May 24, 2011), available at [http://www.un.org/esa/socdev/unpfii/documents/session\\_10\\_statement\\_SR\\_water.pdf](http://www.un.org/esa/socdev/unpfii/documents/session_10_statement_SR_water.pdf).

<sup>44</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report on Mission to the United States of America, *supra* note 19, ¶68.

<sup>45</sup> *Id.*

<sup>46</sup> Cal. Dept. of Water Res., 2009 California Tribal Water Summit Proceedings: Protect our Sacred Water, pp. 31-32 (2009), available at [http://www.waterplan.water.ca.gov/docs/tws/CTWS\\_ProceedingsFull\\_v2df\\_02-08-10.pdf](http://www.waterplan.water.ca.gov/docs/tws/CTWS_ProceedingsFull_v2df_02-08-10.pdf).

<sup>47</sup> US Human Rights Network, Thematic Hearing Request, *supra* note 18, p. 11; (citing Cal. Dept. of Water Res., at 3; Don L. Hankins, Water as Sacred, in TRIBAL WATER STORIES 66-67 (Kym Trippsmith, ed., 2010)); *see also* Theo Gibbs & Chris Schweidler, Our Maps, “Water Wars and the Winnemem Wintu: Mapping Endangered Sacred Sites and Sacred Stories,” available at <http://ourmaps.net/waterwarswinnememwintu/>.

summer of 2015 and restrict residential access to water service.<sup>48</sup> The government's rationing efforts **left thousands without access to water** for 24 or even 48 hours, while others had access to water only two days a week.<sup>49</sup> Water rationing measures were imposed disproportionately on low-income residents, leaving tourist businesses to operate without interruption.<sup>50</sup> The lack of water particularly affected children living in poverty – approximately half of all Puerto Rican children, and led to shortened school days.<sup>51</sup> Although drought conditions have improved,<sup>52</sup> the situation raises concerns that without improved management practices, the government may again resort to water shutoffs if, as is likely,<sup>53</sup> drought recurs in the future. Inadequate sanitation infrastructure has also led to the contamination of the Martín Peña Canal in Puerto Rico, where approximately 26,000 residents of a slum community on the banks of the canal live surrounded by untreated sewage, and suffer serious health consequences as a result.<sup>54</sup> Residents claim the government is discriminating against them by failing to carry out the dredging and restoration process in a timely manner, considering that the project has languished for forty years.<sup>55</sup>

### Conclusion

18. As these case studies indicate, low-income, people of color, homeless, and indigenous communities in the United States lack equal access to basic levels of drinking water where water service is not affordable and where water is unsafe for human consumption or is inaccessible due

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<sup>48</sup> Marlon Ramtahal, NBC News, “Puerto Rico Restricting Water, Shutting Down Taps as Drought Deepens,” (August 5, 2015) available at <http://www.nbcnews.com/news/latino/puerto-rico-restricting-water-shutting-down-taps-drought-deepens-n404786>; Alice Ollstein, Think Progress, “Water Rationing in Puerto Rico Hits the Poor, Leaves Resorts Untouched,” (August 10, 2015), available at <http://thinkprogress.org/climate/2015/08/10/3689223/as-puerto-rico-runs-out-of-cash-it-is-also-running-out-of-water/>.

<sup>49</sup> Primera Hora, 100 días sin agua para abonados de Carraízo, Aug. 20, 2015, available at <http://www.primerahora.com/noticias/puerto-rico/nota/100diasinaguaparaabonadosdecarraizo-1103319/>.

<sup>50</sup> Alice Ollstein, Think Progress, *supra* note 47.

<sup>51</sup> *Id*; Jessica Dinapoli, Reuters News, “Puerto Rico seeks U.S. help as drought impact worsens,” (August 12, 2015), available at <http://www.reuters.com/article/2015/08/12/us-usa-puertorico-drought-idUSKCN0QH20X20150812>

<sup>52</sup> El Nuevo Día, “Leve alivio a la sequía en Puerto Rico,” Sept. 10, 2015, available at <http://www.elnuevodia.com/noticias/locales/nota/levealivioalasequiaenpuertorico-2097314/>.

<sup>53</sup> United States Department of Agriculture, Historic drought in Puerto Rico affecting 2.7 million people, (August 6, 2015), available at <http://climatehubs.oce.usda.gov/content/historic-drought-puerto-rico-affecting-2-7-million-people> (indicating that drought is likely to recur due to current El Niño pattern).

<sup>54</sup> See U.S. Environmental Protection Agency, Puerto Rico Aqueduct and Sewer Authority to Upgrade Sewage Infrastructure; Sewage Pollution in Martín Peña Canal, San Juan Bay, Condado Lagoon, and Atlantic Ocean will be Reduced, Sept. 15, 2015, available at <http://yosemite.epa.gov/opa/admpress.nsf/d10ed0d99d826b068525735900400c2a/da8ad2d4195f6c5685257ec1006912f3!OpenDocument>; U.S. Environmental Protection Agency, EPA Provides \$388,000 to Assess Contaminated Properties in the Cano Martín Peña Communities in San Juan, Puerto Rico, available at <http://yosemite.epa.gov/opa/admpress.nsf/d10ed0d99d826b068525735900400c2a/e14844267f20747285257ce600629d0>; For more information, see Leysa Caro Gonzalez, Primera Hora, “Residentes del caño Martín Peña exigen que acabe el discrimen,” (April 22, 2015), available at <http://www.primerahora.com/noticias/puerto-rico/nota/residentesdelcanomartinpenaexigenqueacabeeldiscrimen-1078623/>; see also various articles from Primera Hora, available at <http://www.primerahora.com/tags/canomartinpena-2436/>.

<sup>55</sup> The Urban Waters Federal Partnership, “New Life for Caño Martín Peña,” available at <http://www.urbanwaters.gov/pdf/MartinPenaBackgrounder.pdf>.

to inadequate or inexistent infrastructure. The U.S. and state authorities have failed to adopt adequate safeguards to ensure affordability of basic levels of drinking water. They have also failed to prevent contamination of drinking water sources or provide adequate alternative sources. Low-income, people of color, and indigenous communities disproportionately bear the burden of these failures.

### **Recommendations and Calls to Action**

19. The following recommendations for the international community and for the federal U.S. government represent the collected views of a nationwide coalition of groups advocating on behalf of affected communities to achieve full realization of the human rights to water and sanitation in the U.S., and are described in more detail at the end of the report.

#### *Recommendations for the Inter-American Commission on Human Rights*

We invite the Commission to:

- visit the U.S. to investigate violations of the human rights to water and sanitation;
- adopt specific standards on the human rights to water and sanitation similar to those recognized by the United Nations;
- include the issue of the rights to water and sanitation in future reports;
- recommend that the U.S. issue immediate moratoriums 1) on residential water shutoffs for inability to pay and 2) on extractive and agricultural industry operations that contaminate current or potential drinking water resources;
- hold seminars throughout the Americas, including in the U.S., to educate civil society and state officials on the human rights to water and sanitation, and
- continue to hold hearings on the human rights to water and sanitation in the U.S. and the region.

#### *Recommendations for the United States Government*

We request that the U.S. government:

- issue immediate moratoriums 1) on shutoffs to residential water utility services and 2) on extractive and agricultural industry operations that contaminate current or potential drinking water resources;
- take immediate action to prevent and remediate groundwater contamination;
- establish a national plan of action and policy on water affordability and quality, and sanitation infrastructure;
- establish and fund a program of public funding for adequate, safe water and sanitation;
- require public and private utilities to keep records and publish reports that cover information necessary to analyze discriminatory impacts and due process violations, including age, disability, chronic or severe illness, race, gender, and income level;
- enact legislation that guarantees 24-hour access to clean and safe public restrooms and drinking water facilities, and

- enact legislation to prevent home foreclosure and child removal proceedings over unpaid water bills.

# I. Introduction

1. To supplement the information presented during the thematic hearing on the Human Right to Water in the Americas held during the Commission's 156th Period of Sessions on October 23, 2015, the US Human Rights Network (USHRN), in partnership with the undersigned organizations, welcomes the opportunity to provide this honorable Commission with more detailed information on the realization of the human rights to water and sanitation in the United States and Puerto Rico. The information provided here supplements the information submitted in the written submission of the International Human Rights Clinic at Santa Clara University School of Law (Santa Clara IHRC) in response to this honorable Commission's questionnaire for Chapter IV.A of the 2015 Annual Report, and this report was prepared on behalf of the USHRN by the Santa Clara IHRC. This report also seeks to respond to the specific requests for further information made by this honorable Commission during the thematic hearing, including information about the U.S. legal framework pertinent to the human right to water, the ways in which discrimination poses a structural barrier to access to water in the U.S., instances where individuals have been criminalized for their lack of access to adequate water and sanitation, and some emerging best practices to address the problems highlighted in this report.<sup>56</sup> The information contained in this submission is the result of research conducted by Santa Clara IHRC in partnership with a nationwide coalition of civil society organizations led by USHRN.

2. This report provides an overview of the legal framework governing the human rights to water and sanitation and then presents case studies illustrating violations of these rights and emerging best practices throughout the United States and Puerto Rico. First, this report discusses sources of international, federal, and state law that define, promote, and regulate the human rights to water and sanitation. Second, the selected case studies represent the three main barriers to the full and equal realization of these human rights: affordability, contamination, and inadequate infrastructure. While each case study focuses on these problems through differing geographic, racial, and socioeconomic lenses, they represent countless other communities facing similar issues. Additionally, they illustrate the interplay between these barriers and emphasize the disproportionate impact suffered by racial minorities, indigenous populations, the poor, women, and children. Last, this report offers policy recommendations directed toward the international community and the U.S. government to promote the full and equitable realization of the human rights to water and sanitation in the United States.

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<sup>56</sup> With respect to this honorable Commission's question about how it might evaluate a request for precautionary measures arising from the violations described within this report, the US Human Rights Network is currently conducting research into this matter and will submit a separate document with its findings at a later date.



## II. Despite International Recognition of the Human Rights to Water and Sanitation, U.S. Federal Law Does Not Recognize These Rights

3. The United Nations and the Inter-American Human Rights System have recognized the human rights to water and sanitation through resolutions, general comments, jurisprudence and reports. In contrast, the United States has yet to recognize the human rights to water and sanitation at a national level, although the states of California, Massachusetts, and Pennsylvania have recognized the human right to water under state or local law. The following section provides a brief overview of these legal frameworks.<sup>57</sup>

### A. The United Nations and the Inter-American Human Rights System Recognize the Human Rights to Water and Sanitation

4. The human rights to water and sanitation have been internationally recognized since 2010, when the United Nations General Assembly (UNGA) adopted Resolution 64/292 to officially “recognize[] the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights[.]”<sup>58</sup> This resolution was preceded by the Committee on Economic, Social, and Cultural Rights’ (CESCR) 2002 General Comment No. 15, which recognized the human right to water and sanitation as components of the right to an adequate standard of living and the right to health under the International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>59</sup> In General Comment 15, the CESCR declared that “the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”<sup>60</sup> The UN Human Rights Council echoed the 2010 UNGA resolution and affirmed “that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and

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<sup>57</sup> For a more detailed discussion of the international framework on the human rights to water and sanitation, see the attached report from Human Rights Advocates (Annex), available at <http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/The-Human-Right-to-Water-An-Imperative.pdf>.

<sup>58</sup> UNGA, Resolution: The human right to water and sanitation, 2010 (A/RES/64/292), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/479/35/PDF/N0947935.pdf?OpenElement>.

<sup>59</sup> Articles 11(1), 12(1). International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>60</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 2, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf). For a discussion on the need for recognition of water and sanitation as separate rights, see Catarina de Albuquerque, *Realising the Human Rights to Water and Sanitation: A Handbook* by the UN Special Rapporteur, Introduction p. 19 (2014), available at <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>.

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.”<sup>61</sup> This derivation of the rights to water and sanitation from Articles 11 (adequate standard of living) and 12 (health) of the ICESCR follows the analysis of the CESCR in its General Comment 15. The 2010 UNGA and Human Rights Council resolutions also based their recognition of the human right to water and sanitation in a range of other international instruments that “entail obligations for States parties in relation to access to safe drinking water and sanitation[,]”<sup>62</sup> including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.<sup>63</sup>

5. On December 17, 2015 the UN General Assembly adopted Resolution A/RES/70/169 on the human rights to safe drinking water and sanitation.<sup>64</sup> This resolution explicitly recognizing the human right to sanitation as a distinct right, together with the human right to safe drinking water. Upon the adoption of the resolution Waleed Sadi Chair of the UN Committee on Economic, Social and Cultural Rights said: “The Committee welcomes the full recognition of the right to sanitation by States, and highlights the importance of complying with principles related to non-discrimination, gender equality, participation and accountability in this regard,”

6. The UNGA and Human Rights Council have reaffirmed their recognition of the human right to water and sanitation in a set of 2013 resolutions.<sup>65</sup> Nevertheless, until last month they had declined to define the right(s), leaving General Comment 15 as the primary source for the international definition of the human rights to water and sanitation.<sup>66</sup> General Comment 15 defines the human right to water and refers to sanitation as a dimension of this right; CESCR

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<sup>61</sup> HRC, Resolution: Human rights and access to safe drinking water and sanitation, 2010 (A/HRC/RES/15/9), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/33/PDF/G1016633.pdf?OpenElement>.

<sup>62</sup> HRC, Resolution: Human rights and access to safe drinking water and sanitation, 2010 (A/HRC/RES/15/9), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/33/PDF/G1016633.pdf?OpenElement>. The Human Rights Council also created the mandate of the UN Special Rapporteur on the human right to safe drinking water and sanitation in this resolution.

<sup>63</sup> UNGA, Resolution: The human right to water and sanitation, 2010 (A/RES/64/292), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/479/35/PDF/N0947935.pdf?OpenElement>; HRC, Resolution: Human rights and access to safe drinking water and sanitation, 2010 (A/HRC/RES/15/9), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/33/PDF/G1016633.pdf?OpenElement>.

<sup>64</sup> UN Office of the High Commissioner for Human Rights, Right to sanitation, a distinct human right – Over 2.5 billion people lack access to sanitation, (Dec. 18, 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16903&LangID=E>.

<sup>65</sup> UNGA, Resolution: The human right to safe drinking water and sanitation, 2013 (A/RES/68/157), and HRC, Resolution: The human right to safe drinking water and sanitation, 2013 (A/HRC/RES/24/18).

<sup>66</sup> See also UN Special Rapporteur on the human right to safe drinking water and sanitation, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque: Common violations of the human rights to water and sanitation, 2014 (A/HRC/27/55), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/069/10/PDF/G1406910.pdf?OpenElement>.

later recognized the right to sanitation as a separate component of the human right to an adequate standard of living in a 2010 statement.<sup>67</sup> Under General Comment 15, “[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.”<sup>68</sup> The CESCR statement on the right to sanitation further provides that “States must ensure that everyone, without discrimination, has physical and affordable access to sanitation, ‘in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity’.”<sup>69</sup> Both CESCR and the UN Special Rapporteur on the human right to safe drinking water and sanitation have also emphasized that “[t]he human rights principles of non-discrimination and equality, access to information, participation and accountability must be ensured in the context of realizing . . . the human rights to water and sanitation.”<sup>70</sup>

7. As outlined by the Committee on Economic, Social, and Cultural Rights in General Comment 15, the human rights to water and sanitation require that everyone have access to clean, safe, and affordable water.<sup>71</sup> The Committee has noted that access means both physical access – including for households, schools, and workplaces – as well as economic access, or affordable water and sanitation.<sup>72</sup> Likewise, the Committee indicated that States must ensure universal access to water and sanitation without discrimination and provide for “full and equal

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<sup>67</sup> Committee on Economic, Social and Cultural Rights (CESCR), Statement on the right to sanitation (E/C.12/2010/1).

<sup>68</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 2, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>69</sup> Committee on Economic, Social and Cultural Rights (CESCR), Statement on the right to sanitation (E/C.12/2010/1) (quoting the UN Special Rapporteur on the human right to safe drinking water and sanitation).

<sup>70</sup> Catarina de Albuquerque, *Realising the Human Rights to Water and Sanitation: A Handbook* by the UN Special Rapporteur, Introduction p. 29 (2014), available at <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>; see also Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, paras. 48, 55, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>71</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 2, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>72</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 12, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

access to information concerning water, water services, and the environment held by public authorities or third parties,”<sup>73</sup> as well as opportunities for community members to participate at all levels of decision making.<sup>74</sup> Finally, States should implement the human rights to water and sanitation by providing remedies for those suffering violations of these rights,<sup>75</sup> adopting a “national water strategy and plan of action [that is] based on the principles of accountability, transparency and independence of the judiciary,”<sup>76</sup> and “establish[ing] accountability mechanisms to ensure the implementation of the strategy.”<sup>77</sup> Accountability also requires States to assess compliance with the human rights to water and sanitation through monitoring that “focuses on inequalities in access to services[.]”<sup>78</sup>

8. The human rights to water and sanitation carry both immediate and progressive obligations for States. As the UN Special Rapporteur on the human right to safe drinking water and sanitation has emphasized,

[w]hile some aspects of the rights to water and sanitation are subject to progressive realization, human rights law also contemplates obligations of immediate effect that should dictate State priorities and decision-making in the short term. In the context of the rights to water and sanitation, this involves, inter alia, prioritizing access to minimum

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<sup>73</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 48, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>74</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, paras. 37, 48, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf); UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶¶ 29-31, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203).

<sup>75</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 55, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>76</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 49, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>77</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 47, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>78</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 35, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203).

essential levels of water and sanitation on a non-discriminatory basis; adopting and implementing a national water and sanitation strategy; and beginning to monitor the extent of the realization of the rights to water and sanitation.<sup>79</sup>

9. In his recent report on how States should prioritize the progressive realization of the human rights to water and sanitation, the Rapporteur noted that, to fulfill their obligation of non-discrimination in providing water and sanitation, “States must take positive measures to include everyone and to redress past disadvantage and reverse patterns of inequalities.”<sup>80</sup> In order to do so, States should review water and sanitation service provision through a non-discrimination lens to highlight the ways in which low-income, people of color, and indigenous communities disproportionately suffer from service deficits.<sup>81</sup> With this information, States should “[f]ocus on the unserved and underserved as a matter of priority.”<sup>82</sup> In particular, the Rapporteur emphasized that “[w]here parts of the population do not even have access to an essential level of service, States must prioritize the realization of their human rights.”<sup>83</sup>

10. The Inter-American Human Rights System (IAHRS) has similarly recognized the human rights to water and sanitation, although it has not done so in a similarly comprehensive manner as the UN. In the IAHRS, the human rights to water and sanitation have been recognized by jurisprudence and reports, and arguably by treaty law. Article 11(1) (Right to a Healthy Environment) of the San Salvador Protocol to the American Convention on Human Rights

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<sup>79</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Financing for the Realization of the Rights to Water and Sanitation, ¶ 12, U.N. Doc. A/66/255 (Aug. 3, 2011), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/64/PDF/N1144364.pdf> (citing General Comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights, para. 10; General Comment No. 15 (2002) of the Committee on Economic, Social and Cultural Rights, para. 37).

<sup>80</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 82, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203) (citing CESCR, General Comment 15 (2002) at para. 12; World Health Organization, Guidelines for Drinking Water Quality, 4th ed. (Geneva, World Health Organization, 2011) (internal citations omitted)).

<sup>81</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 84, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203) (citing CESCR, General Comment 15 (2002) at para. 12; World Health Organization, Guidelines for Drinking Water Quality, 4th ed. (Geneva, World Health Organization, 2011) (internal citations omitted)).

<sup>82</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 99, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203) (citing CESCR, General Comment 15 (2002) at para. 12; World Health Organization, Guidelines for Drinking Water Quality, 4th ed. (Geneva, World Health Organization, 2011) (internal citations omitted)).

<sup>83</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 99, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203) (citing CESCR, General Comment 15 (2002) at para. 12; World Health Organization, Guidelines for Drinking Water Quality, 4th ed. (Geneva, World Health Organization, 2011) (internal citations omitted)).



recognizes the right “to have access to basic public services.”<sup>84</sup> Water and sanitation are basic public services and the right to access water and sanitation can be inferred from Article 11(1). The rights to water and sanitation can also be inferred from Articles 10 (Right to Health) and 12 (Right to Food) of the San Salvador Protocol.<sup>85</sup> Unfortunately, the rights mentioned in Articles 10, 11(1), and 12 of the San Salvador Protocol are “non-justiciable” (victims may not bring cases before the IAHRs alleging violations of these rights). Therefore, there is no jurisprudence in the IAHRs concerning specific violations of these rights. Nevertheless, the Inter-American Court of Human Rights’ (Court) jurisprudence has addressed the right to water as an essential component of the enjoyment of other human rights, like the right to health and the right to a dignified life.<sup>86</sup> Most of the Court’s jurisprudence on the right to water stems from land and property rights issues involving vulnerable indigenous communities, and both the Court and the Commission have addressed state obligations with regards to the right to water in broader contexts involving the principle of non-discrimination.<sup>87</sup> Thus, the IAHRs has recognized the right to water by interpreting relevant treaty law broadly, linking the right to water to other enforceable or justiciable treaty rights, and developing jurisprudence in very factual-specific contexts mostly involving indigenous peoples, but States within the IAHRs could certainly benefit from clearer guidelines on their obligations to respect, protect, and guarantee the rights to water and sanitation.

## B. The U.S. Legal Framework Does Not Adequately Protect the Human Rights to Water and Sanitation

11. The international framework on the human right to water highlighted in the previous section emphasizes the responsibility of States to respect, protect, and guarantee the human rights to water and sanitation.<sup>88</sup> The United States has not recognized the human rights to water

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<sup>84</sup> Protocol to the American Convention on Human Rights (“Protocol of San Salvador”), Art. 11(1), available at <http://www.oas.org/juridico/english/treaties/a-52.html>.

<sup>85</sup> The ESCR Committee did a similar interpretation of Articles 11 and 12 of the ICESCR. See Economic, Social and Cultural Rights Committee, General Comment No. 15. The Right to Water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2002/11, January 20, 2003, available at [http://www2.ohchr.org/english/issues/water/docs/CESCR\\_GC\\_15.pdf](http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf).

<sup>86</sup> See, for example, Case of the Yakye Axa Indigenous Community v Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. C Series, No. 125, paras. 167, 175, and 176.

<sup>87</sup> See generally IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II. Doc. 56/09. 30 December 2009, available at <http://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf>.

<sup>88</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

and sanitation, nor has it ratified most of the international treaties that recognize these rights,<sup>89</sup> such as the ICESCR, the San Salvador Protocol, or the American Convention on Human Rights.<sup>90</sup> However, during the second Universal Periodic Review, the U.S. supported in part several recommendations that encouraged it to implement the human rights to water and sanitation, with the caveat that it does not consider the UNGA resolution recognizing the human right to water as legally binding.<sup>91</sup> Additionally, the U.S. has ratified other treaties that are relevant to the human rights to water and sanitation, including the International Covenant on Civil and Political Rights (right to life) and the International Convention on the Elimination of all forms of Racial Discrimination.<sup>92</sup>

12. U.S. federal legislation and regulations address the quality of drinking water, but no national U.S. law currently recognizes the human rights to water and sanitation.<sup>93</sup> Legal frameworks in several U.S. states provide certain protections with respect to access to water and sanitation, and a small number of states have recognized the human right to water. Therefore, comprehensive federal legislation on water quality represents an important yet incomplete step towards the domestic legal framework necessary to achieve full realization of these rights in the United States. This section provides a brief overview of federal and state legal frameworks related to water issues in the U.S. and some emerging best practices.

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<sup>89</sup> Emily M. Thor. *The Human Right to Water in the U.S.: Why So Dangerous?* 315 *Global Business & Development Law Journal* Vol. 26, 324-325 (Feb. 2013), available at [http://www.mcgeorge.edu/Documents/Publications/261\\_13Thor.pdf](http://www.mcgeorge.edu/Documents/Publications/261_13Thor.pdf).

<sup>90</sup> The U.S. signed the ICESCR and the American Convention on Human Rights in 1977 (see <http://indicators.ohchr.org/> and [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm)).

<sup>91</sup> U.S. Government, Addendum of the United States of America to the Report of the Working Group on its Universal Periodic Review (Aug. 31, 2015), available at <https://geneva.usmission.gov/2015/09/01/addendum-of-the-united-states-of-america-to-the-report-of-the-working-group-on-its-universal-periodic-review/>. The full text of the recommendations and the U.S. response are as follows:

309 [Guarantee the right by all residents in the country to adequate housing, food, health and education, with the aim of decreasing poverty, which affects 48 millions of people in the country],  
311 [Continue efforts to implement the human right to safe water and sanitation, ensuring this human right without discrimination for the poorest sectors of the population, including indigenous peoples and migrants],

312[Ensure compliance with the human right to water and sanitation according to General Assembly Resolution 64/292], and

314 [Continue efforts regarding access to the right to health].

The U.S. is not a party to the ICESCR, and we understand the rights therein are to be realized progressively. We understand #311-312 as referencing a right to safe drinking water and sanitation, derived from the right to an adequate standard of living. We continue to improve our domestic laws and policies to promote access to housing, food, health, and safe water and sanitation, with the aim of decreasing poverty and preventing discrimination. Concerning #312, we do not regard UNGA Resolution 64/292 as legally-binding.

<sup>92</sup> U.S. Department of State, U.S. Treaty Reports, available at <http://www.state.gov/j/drl/reports/treaties/index.htm>.

<sup>93</sup> Mark J. Cassayre, Webcast of Explanation of United States Vote on Resolution A/HRC/15/L.14, U.N. HUM. RTS. COUNCIL (Sept. 30, 2010), <http://www.un.org/webcast/unhrc/archive.asp?go=100930>.

## 1. U.S. Federal Legislation and Regulations Provide Limited Protections of Drinking Water Quality

13. It is regrettably outside the scope of this report to provide a detailed analysis of federal laws and regulations pertinent to the human rights to water and sanitation.<sup>94</sup> As mentioned above, no federal U.S. law recognizes the human rights to water and sanitation. However, the U.S. has developed a legislative and regulatory regime that is relatively protective of water quality. This section provides a brief description and critique of the two main federal laws that regulate water quality in the U.S., the Clean Water Act and the Safe Drinking Water Act.

14. The Clean Water Act (CWA)<sup>95</sup> is the primary federal law governing water pollution.<sup>96</sup> Amended and updated in 1972, the CWA established the basic structure for regulating discharges of pollutants and wastewater into the waters of the United States and regulating quality for surface water.<sup>97</sup> Under the CWA, the U.S. Environmental Protection Agency (EPA) has implemented pollution control programs and claims to work with federal, state, and tribal regulatory partners to monitor and ensure compliance with clean water laws and regulations in order to protect human health and the environment.<sup>98</sup> The federal government has delegated, or devolved, enforcement for many of the law's provisions to state governments, including for all nonpoint sources, which has undermined the strength of the law's power to protect water quality.<sup>99</sup> Environmental groups have found that although CWA has helped safeguard and improve water quality in the U.S., the law has many loopholes, including an exemption for

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<sup>94</sup> This submission does not provide detailed information on the complex web of federal, state, and local laws and regulations that regulate water quality and access in the United States. For more information, see UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶¶ 7-13, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>95</sup> 33 U.S.C. § 1251 (2006).

<sup>96</sup> Clean Water Act (CWA) Compliance Monitoring, The United States Environmental Protection Agency, accessed at <http://www2.epa.gov/compliance/clean-water-act-cwa-compliance-monitoring>.

<sup>97</sup> Summary of the Clean Water Act, 33 U.S.C. §1251 et seq. (1972), The United States Environmental Protection Agency, accessed at <http://www2.epa.gov/laws-regulations/summary-clean-water-act>

<sup>98</sup> Clean Water Act (CWA) Compliance Monitoring, The United States Environmental Protection Agency, accessed at <http://www2.epa.gov/compliance/clean-water-act-cwa-compliance-monitoring>

<sup>99</sup> Jan G. Laitos and Heidi Ruckriegle. *The Clean Water Act and the Challenge of Agricultural Pollution*. Vermont Law Review, Vol. 37: 1033 (2013), available at <http://lawreview.vermontlaw.edu/files/2013/08/14-Laitos-Ruckriegle.pdf>.



agricultural activities,<sup>100</sup> and “even protected waters remain at risk due to weak enforcement and implementation of existing policies.”<sup>101</sup>

15. Likewise, the Safe Drinking Water Act (SDWA)<sup>102</sup> is the primary federal law governing the quality of drinking water in the U.S. According to the EPA, “SDWA was originally passed by Congress in 1974 to protect public health by regulating the nation's public drinking water supply[] . . . and requires many actions to protect drinking water and its sources: rivers, lakes, reservoirs, springs, and ground water wells.”<sup>103</sup> The law provides the EPA with the authority “to set national health-based standards for drinking water to protect against both naturally-occurring and man-made contaminants that may be found in drinking water.”<sup>104</sup> To enforce these standards, EPA works with state agencies and individual water systems.<sup>105</sup> Because management of water and sanitation is a power devolved from the federal government to state governments, states have the primary responsibility for implementation of SDWA, though ultimate enforcement responsibility rests with the EPA.<sup>106</sup>

16. Although these laws have the potential to provide strong protections to ensure water quality, their enforcement at the federal and state level has been characterized as weak and ineffective.<sup>107</sup> According to studies, neither the states nor the federal government dedicate sufficient resources and funding to enforcement of CWA and SDWA,<sup>108</sup> and they rarely issue citations or fines against the more than 20% of U.S. drinking water systems that have violated

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<sup>100</sup> Jan G. Laitos and Heidi Ruckriegle. *The Clean Water Act and the Challenge of Agricultural Pollution*. Vermont Law Review, Vol. 37: 1033 (2013), available at <http://lawreview.vermontlaw.edu/files/2013/08/14-Laitos-Ruckriegle.pdf>.

<sup>101</sup> American Rivers. *Weathering Change: Policy Reforms That Save Money and Make Communities Safer*, “Clean Water Act,” pp. 28-31, available at <https://www.americanrivers.org/assets/pdfs/global-warming-docs/weathering-change/weathering-change-full-report.pdf>

<sup>102</sup> 42 U.S.C. §§ 300f *et. seq.* (2006); see also U.S. Environmental Protection Agency, Summary of the Safe Drinking Water Act, available at <http://www.epa.gov/laws-regulations/summary-safe-drinking-water-act>.

<sup>103</sup> U.S. Environmental Protection Agency, Water: Safe Drinking Water Act (SDWA), available at <http://water.epa.gov/lawsregs/rulesregs/sdwa/index.cfm>.

<sup>104</sup> U.S. Environmental Protection Agency, Water: Safe Drinking Water Act (SDWA), available at <http://water.epa.gov/lawsregs/rulesregs/sdwa/index.cfm>.

<sup>105</sup> U.S. Environmental Protection Agency, Water: Safe Drinking Water Act (SDWA), available at <http://water.epa.gov/lawsregs/rulesregs/sdwa/index.cfm>.

<sup>106</sup> U.S. Environmental Protection Agency, Factsheet: Understanding the Safe Drinking Water Act (2004), available at [http://water.epa.gov/lawsregs/guidance/sdwa/upload/2009\\_08\\_28\\_sdwa\\_fs\\_30ann\\_sdwa\\_web.pdf](http://water.epa.gov/lawsregs/guidance/sdwa/upload/2009_08_28_sdwa_fs_30ann_sdwa_web.pdf); U.S. Environmental Protection Agency, Factsheet: Drinking Water Monitoring, Compliance, and Enforcement (2004), available at [http://water.epa.gov/lawsregs/guidance/sdwa/upload/2009\\_08\\_28\\_sdwa\\_fs\\_30ann\\_monitoring\\_web.pdf](http://water.epa.gov/lawsregs/guidance/sdwa/upload/2009_08_28_sdwa_fs_30ann_monitoring_web.pdf).

<sup>107</sup> American Rivers. *Weathering Change: Policy Reforms That Save Money and Make Communities Safer*, “Clean Water Act,” pp. 28-31, available at <https://www.americanrivers.org/assets/pdfs/global-warming-docs/weathering-change/weathering-change-full-report.pdf>; Charles Duhigg, *New York Times*. *Millions in the U.S. Drink Dirty Water, Records Show* (Dec. 2009), available at [http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?\\_r=0](http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?_r=0).

<sup>108</sup> Clifford Rechtshaffen, Center for Progressive Regulation, White Paper: Enforcing the Clean Water Act in the Twenty-first Century: Harnessing the Power of the Public Spotlight (Oct. 2004), available at [http://www.progressivereform.net/articles/Enforcement\\_WP\\_Oct\\_2004.pdf](http://www.progressivereform.net/articles/Enforcement_WP_Oct_2004.pdf);

SDWA standards.<sup>109</sup> A *New York Times* study of SDWA enforcement revealed that these violations have occurred in every U.S. state and reported that “[t]he problem, [according to] current and former government officials, is that enforcing the Safe Drinking Water Act has not been a federal priority.”<sup>110</sup> The EPA has also exempted hydraulic fracturing, or fracking, for natural gas extraction from regulation under SDWA, despite the fact that the agency heavily regulates most underground injection technologies under the law.<sup>111</sup> U.S. states have the power to exceed the protections provided under these laws, and the following section addresses their efforts to recognize the human right to water.

## 2. Few U.S. States Have Recognized the Human Right to Water Under State Law

17. As noted above, a small group of U.S. states has established legal protections for certain aspects of the human rights to water and sanitation, and California,<sup>112</sup> Massachusetts,<sup>113</sup> and Pennsylvania<sup>114</sup> have expressly recognized the human right to water under state law. Although it is outside the scope of this report to provide a detailed analysis of these legal regimes, the case studies in subsequent sections offer some specific information. In addition, this section provides a brief discussion of the strengths and weaknesses of California Assembly Bill (AB) 685, California’s human right to water law.

### California’s Recognition of the Human Right to Water: AB 685 and Its Implementation

18. With passage of AB 685, California took a critical first step toward achieving full realization of the human right to water by recognizing the right under state law and directing

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<sup>109</sup> Charles Duhigg, *New York Times*. *Millions in the U.S. Drink Dirty Water, Records Show* (Dec. 2009), available at [http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?\\_r=0](http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?_r=0).

<sup>110</sup> Charles Duhigg, *New York Times*. *Millions in the U.S. Drink Dirty Water, Records Show* (Dec. 2009), available at [http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?\\_r=0](http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?_r=0).

<sup>111</sup> See Angela C. Cupas, *The Not-So-Safe Drinking Water Act: Why We Must Regulate Hydraulic Fracturing at the Federal Level*, 33 *Wm. & Mary Env’tl. L. & Pol’y Rev.* 605 (2009), available at <http://scholarship.law.wm.edu/wmelpr/vol33/iss2/7>.

<sup>112</sup> AB 685, 2011-2012 Leg. Reg. Sess. (Cal. 2012) (codified at Cal. Water Code § 106.3 (West 2012)). For more information on federal and California laws pertaining to the regulation of drinking water, see Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, “Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California,” Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), pp. 7-8, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf); see also Emily M. Thor, *The Human Right to Water in the U.S.: Why So Dangerous?* 315 *Global Business & Development Law Journal* Vol. 26 (Feb. 2013), available at [http://www.mcgeorge.edu/Documents/Publications/261\\_13Thor.pdf](http://www.mcgeorge.edu/Documents/Publications/261_13Thor.pdf).

<sup>113</sup> See Constitution of the Commonwealth of Massachusetts, art. XCVII.

<sup>114</sup> See Constitution of the Commonwealth of Pennsylvania, Art. 1, sec. 27.

relevant state agencies to consider this recognition in carrying out their functions.<sup>115</sup> According to civil society experts, California’s human right to water framework has changed public discourse about water by framing it in terms of human rights.<sup>116</sup> State officials and agencies now address water as a human rights issue.<sup>117</sup> Although AB 685 passed into law on September 25, 2012, much work remains to ensure its effective implementation within California.<sup>118</sup>

19. The law declares “the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”<sup>119</sup> It establishes that “[a]ll relevant state agencies . . . shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when . . . [they] are pertinent to the uses of water . . .”<sup>120</sup> Although this law represents an important advance for the human right to water in California, certain structural flaws weaken its potential. First, the law does not provide a private right of action, meaning that individuals cannot sue the state in California courts for violations of their human right to water, and it states that the right is not enforceable.<sup>121</sup> Similarly, while the law designates certain key state agencies for implementation,<sup>122</sup> it leaves out a large set of entities with significant power over access to water in California, including irrigation districts, private water providers, and municipal utility districts.<sup>123</sup> Finally, the law fails to require state agencies to dedicate funding to secure the human right to water; instead it explicitly states that it “does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the” requirement noted above to consider the human right to water.<sup>124</sup>

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<sup>115</sup> For a detailed analysis of AB 685 and guidelines for its implementation, see The Human Right to Water Bill in California: An Implementation Framework for State Agencies. International Human Rights Law Clinic, UC Berkeley School of Law (May 2013), pp. 3-4, available at [https://www.law.berkeley.edu/files/Water\\_Report\\_2013\\_Interactive\\_FINAL.pdf](https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL.pdf).

<sup>116</sup> Santa Clara IHRC Interview of Colin Bailey (Nov. 4, 2015).

<sup>117</sup> Santa Clara IHRC Interview of Colin Bailey (Nov. 4, 2015).

<sup>118</sup> CA. ASSEMB. BILL 685 available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf).

<sup>119</sup> CA. ASSEMB. BILL 685 available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf).

<sup>120</sup> CA. ASSEMB. BILL 685 available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf); CA. WATER CODE § 106.3(b) available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf).

<sup>121</sup> CA. ASSEMB. BILL 685 available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf); Santa Clara IHRC Interview of Colin Bailey (Nov. 4, 2015).

<sup>122</sup> CA. ASSEMB. BILL 685 available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf); CA. WATER CODE § 106.3(b) available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf).

<sup>123</sup> Santa Clara IHRC Interview of Colin Bailey (Nov. 4, 2015). Municipal utility districts tend to be the primary providers of municipal drinking water supply in California, so this gap in the law is significant.

<sup>124</sup> CA. ASSEMB. BILL 685 available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf); CA. WATER CODE § 106.3(b) available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf).

20. Ultimately, California’s recognition of the human right to water represents an important first step towards more full realization of the right and may provide a helpful model for better practices that other U.S. states should consider adopting. By requiring state agencies to consider the human right to water when making decisions about how water is used in California, the law promotes a greater attention to the needs of disadvantaged communities that lack equal access to safe affordable water. California civil society continues to monitor implementation of the law to evaluate its strengths and weaknesses as an approach that might be replicated in other parts of the U.S. At this time, however, low-income, people of color, and indigenous communities throughout the U.S., including in California, continue to suffer violations of the human rights to water and sanitation, as detailed below.

### III. Low-Income, People of Color, and Indigenous Communities in the United States Lack Equal Access to Basic Levels of Safe and Affordable Drinking Water

21. This section highlights several cases that illustrate the significant gaps that currently exist in the realization of the human rights to water and sanitation in the United States. In the United States, conservative estimates identify at least 1.8 million people who lack access to safe and affordable water and sanitation,<sup>125</sup> and existing measures deprive groups who have historically suffered discrimination of equal access to these basic rights.<sup>126</sup> In many of these cases, communities lack access to safe drinking water despite paying high rates for water service. As the previous United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation recently noted after a country visit to the United States, “those who are facing obstacles in the enjoyment of the rights to water and sanitation are disproportionately Black, Latino, American Indian, homeless, or otherwise disadvantaged.”<sup>127</sup> These communities lack access to water as a result of one or more of the following problems: they cannot afford a basic

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<sup>125</sup> UUSC Report on Discrimination in the U.S. Water and Sanitation Sector, forthcoming, 2016. This is a conservative estimate; the preliminary findings of this study, which used official U.S. Census data, indicate that at least 1.8 million people in the U.S. lack basic water and sanitation services.

<sup>126</sup> International Human Rights Clinic, Berkeley Law, “United States Government Consultation on Environmental Issues Relating to the Universal Periodic Review: A Summary. October 7, 2014, UC Berkeley School of Law,” p. 8, available at [https://www.law.berkeley.edu/files/UPR\\_Enviro\\_Consultation\\_Outcome\\_Doc\\_141208.pdf](https://www.law.berkeley.edu/files/UPR_Enviro_Consultation_Outcome_Doc_141208.pdf).

<sup>127</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 79, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

level of drinking water, available drinking water is not safe for human consumption, or they lack adequate water or sanitation infrastructure. Women and children face additional risks as a result of this situation, as demonstrated in cases like the current crisis in Flint, Michigan, where children continue to suffer irreversible health and developmental harms and women face risks to their reproductive health as a result of city-wide lead poisoning from contaminated drinking water caused by government negligence, deliberate indifference, and callous disregard. Accordingly, the cases presented in this report illustrate the disparate impact of water access deficiencies on communities or groups who have historically suffered discrimination, as well as the particular challenges faced by women and children.

22. First, this section illustrates violations of the right to affordable water by providing information on urban low-income minority communities in Detroit, Baltimore, and Boston that have lost or risk losing access to water due to mass shutoffs instituted when public utilities refuse to provide basic levels of drinking water to those who cannot afford to pay for water. These case studies also include information about criminalization of those who attempt to reconnect water service and the lack of due process and other safeguards to ensure continuity of service, as well as risks faced by women and children. Next, this section describes the loss of access caused by unsafe drinking water, looking specifically at the situation of rural low-income minority communities in California's Salinas and San Joaquin Valleys as well as the particular impacts on indigenous communities in northwestern New Mexico. Finally, it addresses the absence of infrastructure improvement and financial support measures to ensure access to adequate water and sanitation for low-income, indigenous, and homeless communities in Alabama, northern California, Texas, and Puerto Rico.

## A. (Un)Affordability: Low-Income, Minority Communities in the United States Face Economic Barriers to the Human Rights to Water and Sanitation

23. Economic barriers regarding affordability of basic adequate water and sanitation present an especially urgent issue of public safety and health in the United States. Access to adequate water and sanitation for basic human needs is generally conditioned on the ability to pay for these municipal services. Consequently, in the absence of effective and accessible affordability programs, low-income, homeless and indigenous communities are excluded from enjoyment of this basic right.<sup>128</sup> Although affordability is an essential component of the human rights to water

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<sup>128</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶¶17, 48-49, 56, 63, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

and sanitation, many communities in the U.S. lack equal access to affordable water and sanitation. In particular, poor minority residents of cities like Detroit, Baltimore, and Boston have faced mass water shut-offs due to their inability to pay unaffordable water bills; thousands in these cities remain without water. This section provides a brief overview of international and domestic standards relating to water affordability and presents detailed information about case studies illustrating lack of equal access to affordable water in the U.S. It concludes by presenting information about an innovative new program that will tie water rates to income in the city of Philadelphia as a promising practice to address affordability challenges in the U.S.

## 1. The Human Rights to Water and Sanitation Require that Water Be Affordable, But U.S. Law Fails to Ensure Affordability

24. Under UN standards, the affordability component of the human right to water “requires that direct and indirect costs related to water and sanitation should not prevent a person from accessing safe drinking water and should not compromise his or her ability to enjoy other rights, such as the right to food, housing, health and education.”<sup>129</sup> This standard does not require free water and sanitation but rather provides a relative measure of affordability that ties the allowable cost of water service to individual income.<sup>130</sup> However, as the UN Special Rapporteur on the human right to safe drinking water and sanitation noted in his recent affordability report “[w]here people face an inability to pay, the human rights framework indeed requires free services that must be financed through sources other than user contributions.”<sup>131</sup> Ultimately, the Special Rapporteur concluded that “human rights require ensuring affordable service provision for all,

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<sup>129</sup> UN High Comm’r for Human Rights, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the United Nations High Commissioner for Human Rights and the Secretary-General: 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, ¶ 28 U.N. Doc. A/HRC/6/3 (Aug. 16, 2007); *see also* Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 12, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>130</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 15, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf); Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the Human Rights Council on Affordability of water and sanitation services, ¶¶ 6, 25, U.N. Doc. A/HRC/30/39 (Aug. 5, 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/172/77/PDF/G1517277.pdf?OpenElement>.

<sup>131</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the Human Rights Council on Affordability of water and sanitation services, ¶ 7, U.N. Doc. A/HRC/30/39 (Aug. 5, 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/172/77/PDF/G1517277.pdf?OpenElement>.



regardless of ability to pay[.]”<sup>132</sup> He also reiterated the principle that “[d]isconnection of services due to an inability to pay for the service is a retrogressive measure and constitutes a violation of the human rights to water and sanitation.”<sup>133</sup> Accordingly, water and sanitation services must typically be financed by a combination of State investment and individual tariffs.<sup>134</sup> The international consensus is that “States should aim to spend 1 per cent of gross domestic product on water and sanitation[.]”<sup>135</sup> and total individual expenditures for water and sewer service combined should not exceed 3-5% of an individual household’s income.<sup>136</sup>

25. The U.S. has not set binding standards for water and sanitation affordability,<sup>137</sup> though a small number of local jurisdictions have begun to pilot policies designed to tie rates to income.<sup>138</sup> Additionally, although the federal government funds assistance programs for electricity and heating bills, it provides no funding to assist with water bills.<sup>139</sup> The Environmental Protection Agency has issued affordability guidelines designed to mitigate the potential rise in water rates caused when a utility passes the costs of Safe Drinking Water Act compliance on to ratepayers; these guidelines suggest that provision of water and sanitation services should cost no more than 2.5% of *median* household income.<sup>140</sup>

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<sup>132</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the Human Rights Council on Affordability of water and sanitation services, ¶ 4, U.N. Doc. A/HRC/30/39 (Aug. 5, 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/172/77/PDF/G1517277.pdf?OpenElement>.

<sup>133</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the Human Rights Council on Affordability of water and sanitation services, ¶ 33, U.N. Doc. A/HRC/30/39 (Aug. 5, 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/172/77/PDF/G1517277.pdf?OpenElement> (citing Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002) (E/C.12/2002/11), para. 44a)).

<sup>134</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Financing for the Realization of the Rights to Water and Sanitation, ¶¶ 25-26, U.N. Doc. A/66/255 (Aug. 3, 2011), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/64/PDF/N1144364.pdf?OpenElement>.

<sup>135</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Financing for the Realization of the Rights to Water and Sanitation, ¶ 12, U.N. Doc. A/66/255 (Aug. 3, 2011), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/64/PDF/N1144364.pdf?OpenElement> (citing UN Development Programme, *Human Development Report 2006: Beyond Scarcity — Power, Poverty and the Global Water Crisis* (New York, 2006), p. 9.).

<sup>136</sup> Inga T. Winkler, *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation* 138 (2012).

<sup>137</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 53, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>138</sup> See Cassie Owens, Next City. *Philly City Council Helps with Water Shutoffs and Blight Prevention* (June 25, 2015), available at <https://nextcity.org/daily/entry/philadelphia-water-bills-low-income-payment-plans>. Section XX, *infra*, provides a discussion of Philadelphia’s new income-based water rate policy.

<sup>139</sup> Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), p. 39, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>140</sup> The SDWA grants EPA the authority to provide small public drinking water systems a variance – effectively, an exemption – when the system cannot affordably provide water that meets the law’s water quality standards. This variance system is problematic not only because tying affordability to median household income disproportionately burdens the poor, as discussed *infra*, but because it essentially allows utilities to trade one component of the human

26. These EPA affordability guidelines are neither binding nor widely applicable. Additionally, they fail to meet international standards by tying water rates to median rather than individual household income. According to a recent study of water affordability in California, “[e]xamining water affordability at the median household income only ensures that households at, or above, the median income have access to affordable water.”<sup>141</sup> Calculating affordability in terms of median household income disproportionately burdens households whose income is below the median<sup>142</sup> – a household that earns less than the median may pay as much as 20% of household income for water in a system where those at or above the median pay a rate that meets affordability criteria.<sup>143</sup> For example, the California study found that in one test case, the number of households with unaffordable water rates jumped significantly when individual household income was used as the basis for determining affordability instead of median household income.<sup>144</sup> Households below the median may also be more vulnerable to water shutoffs in water systems with a rate that appears affordable using the median household income standard.<sup>145</sup> As Patricia Jones, Unitarian Universalist Service Committee, Senior Program Leader on the Human Right to Water points out:

Findings from the US Conference of Mayors and our own research document that for the lowest 20% income earners in the U.S., water and sanitation services command from 5-20% of monthly household income, 2-10 times the international guideline for the human right to water. Historic racism has locked our lowest income populations in cyclical poverty that is pushing thousands out of their homes with mass water shut offs deployed by public utilities against those who cannot pay increasing rates, rising at 5-8% per annum and over 41% since 2010.<sup>146</sup>

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right to water (quality) for another (affordability). For a more detailed explanation of the variance system, see EPA, *Small Drinking Water Systems Variances*, available at <http://water.epa.gov/infrastructure/drinkingwater/pws/affordability.cfm>.

<sup>141</sup> Juliet Christian-Smith, et al., Pacific Institute. *Assessing Water Affordability: A Pilot Study in Two Regions in California*, p. 9 (Aug. 2013), available at <http://www.pacinst.org/publication/assessing-water-affordability/>.

<sup>142</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 49, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque). For a more complete analysis of this point, see National Consumer Law Center, *Review and Recommendations for Implementing Water and Wastewater Affordability Programs in the United States* (March 2014), pp. 7-9, available at <http://www.nclc.org/images/pdf/pr-reports/report-water-affordability.pdf>.

<sup>143</sup> US Human Rights Network. *Press Release: International Human Rights Commission to Hold Hearing on Right to Water and Sanitation in the U.S.* (Sept. 21, 2015), available at <http://www.ushrnetwork.org/resources-media/international-human-rights-commission-hold-hearing-right-water-sanitation-us>.

<sup>144</sup> Juliet Christian-Smith, et al., Pacific Institute. *Assessing Water Affordability: A Pilot Study in Two Regions in California*, p. 13 (Aug. 2013), available at <http://www.pacinst.org/publication/assessing-water-affordability/>.

<sup>145</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015); Santa Clara IHRC Interview with Patricia Jones, Senior Program Leader for the human right to water at the Unitarian Universalist Service Committee (UUSC), Santa Clara, California (Oct. 19, 2015).

<sup>146</sup> Santa Clara IHRC Interview with Patricia Jones, Senior Program Leader for the human right to water at the Unitarian Universalist Service Committee (UUSC), Santa Clara, California (Oct. 19, 2015) (citing to U.S. Conference of Mayors, *Public Water Cost Per Household: Assessing Financial Impacts of EPA Affordability in California Cities* (Nov. 2014), available at <http://www.usmayors.org/pressreleases/uploads/2014/1202-report->



27. After her country visit to the U.S., the UN Special Rapporteur on the human right to safe drinking water and sanitation observed that under these circumstances, low-income households must make difficult choices between paying for water and other basic services<sup>147</sup> and recommended that the U.S. “adopt a mandatory federal standard on affordability for water and sanitation.”<sup>148</sup> The findings of this report further support this recommendation.

28. In the absence of binding, fair affordability standards for water and sanitation services in the U.S., low-income communities suffer economic barriers to access to these basic services. The following case studies provide information on the most egregious examples of this problem: mass water shut-offs targeting low-income minority communities in cities like Detroit, Baltimore, and Boston.

## 2. Low-Income Minority Communities in Urban Areas Face the Loss of Access to Basic Levels of Water Due to Mass Service Disconnections for Unpaid Accounts

29. Low-income, minority communities disproportionately suffer the consequences of this lack of effective affordability standards in the U.S. Despite the mandate that water be affordable and clear international recognition that service shutoffs for inability to pay violate human rights, low-income residents throughout the United States face mass shutoffs due to their inability to pay the rising costs of water.<sup>149</sup> This section provides information on the way that the recent trend of water service disconnections, or shutoffs, disproportionately target low-income minority residents in cities such as Detroit, Baltimore, and Boston and deprive them of access to basic levels of water. It also provides information about the economic and health consequences of shutoffs as well as the due process implications of shutoffs, including the insufficiency or lack of

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[watercostsCA.pdf](#); Circle of Blue, Price of Water 2015: Up 6 Percent in 30 Major U.S. Cities; 41 Percent Rise Since 2010 (Apr. 22, 2015), available at <http://www.circleofblue.org/waternews/2015/world/price-of-water-2015-up-6-percent-in-30-major-u-s-cities-41-percent-rise-since-2010/>; UUSC Report on Affordability in the U.S. Water and Sanitation Sector, forthcoming, 2016).

<sup>147</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 49, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>148</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 53, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>149</sup> For a comparative discussion of water shutoff trends and protocols in the United States, see Wisely, John., Detroit Not Alone in Shutting off water to prod people to pay bills, Detroit Free Press. July 27, 2014, available at <http://archive.freep.com/article/20140727/NEWS01/307270078/Detroit-water-shutoffs-other-cities>.

measures in communities affected by shutoffs to ensure continuity of a basic level of water service for residents who cannot afford it. Finally, it addresses the criminalization of those who engage in self-help by reconnecting to the water system, and outlines the additional risks that water shutoffs pose to women and children.

30. In the United States, the affordability of water has become a serious problem for low-income minority communities, and the situation has only worsened since the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation highlighted the issue after her 2011 country visit.<sup>150</sup> Such communities already struggle to afford basic necessities such as water, food, and housing, and the absence or insufficiency of social safety nets, rate programs that index utility rates to income, or free provision of minimum levels of water service for basic human needs exacerbate the risks these communities face.<sup>151</sup> Against this backdrop, large cities facing difficult economic circumstances, such as Detroit and Baltimore, have increasingly turned to the collection of delinquent water bills as a means to improve municipal finances.<sup>152</sup> Although corporate entities represent the largest piece of the missing revenue represented by past-due accounts, utilities instead target thousands of low-income minority residents by threatening or carrying out service disconnections.<sup>153</sup> As a result, it is primarily

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<sup>150</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶¶ 47-54, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); International Human Rights Clinic, Berkeley Law, “United States Government Consultation on Environmental Issues Relating to the Universal Periodic Review: A Summary. October 7, 2014, UC Berkeley School of Law,” p. 10, available at [https://www.law.berkeley.edu/files/UPR\\_Enviro\\_Consultation\\_Outcome\\_Doc\\_141208.pdf](https://www.law.berkeley.edu/files/UPR_Enviro_Consultation_Outcome_Doc_141208.pdf); National Consumer Law Center, “Review and Recommendations for Implementing Water and Wastewater Affordability Programs in the United States,” (March 2014), available at <http://www.nclc.org/images/pdf/pr-reports/report-water-affordability.pdf>.

<sup>151</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶¶ 47-54, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 6, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf); National Consumer Law Center, “Review and Recommendations for Implementing Water and Wastewater Affordability Programs in the United States,” (March 2014), available at <http://www.nclc.org/images/pdf/pr-reports/report-water-affordability.pdf>; Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 11-12, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>152</sup> See e.g., Luke Broadwater, Baltimore to send water turn-off notices to 25,000 delinquent customers, BALTIMORE SUN, March 26, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-bills-20150326-story.html>; Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 22-23, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>153</sup> US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 4, available at

these residents who have been affected by mass water shutoffs due to unpaid bills, with all the resulting fear, humiliation, and damage to human health and the right to live a dignified life that this practice engenders.<sup>154</sup>

31. After a joint visit to investigate water shutoffs in Detroit, the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation and the UN Special Rapporteur on the Right to Adequate Housing publicly condemned the United States for this practice, stating that “[d]isconnection of water services because of failure to pay due to lack of means constitutes a violation of the human right to water and other international human rights,”<sup>155</sup> and noting that the shutoffs have “disproportionate effects on vulnerable people and low income African Americans.”<sup>156</sup> These experts further noted that water shutoffs can only be justified under human rights law if the delinquency is not a result of a genuine inability to pay.<sup>157</sup>

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[http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf); Luke Broadwater, Baltimore to send water turn-off notices to 25,000 delinquent customers, BALTIMORE SUN, March 26, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-bills-20150326-story.html>.; International Human Rights Clinic, Berkeley Law, “United States Government Consultation on Environmental Issues Relating to the Universal Periodic Review: A Summary. October 7, 2014, UC Berkeley School of Law,” p. 10, available at [https://www.law.berkeley.edu/files/UPR\\_Enviro\\_Consultation\\_Outcome\\_Doc\\_141208.pdf](https://www.law.berkeley.edu/files/UPR_Enviro_Consultation_Outcome_Doc_141208.pdf); Sarah Lazare, Groups Appeal to UN for ‘Humanity’ as Detroit Shuts Water Off to Thousands,” (June 18, 2014), available at <http://www.commondreams.org/news/2014/06/18/groups-appeal-un-humanity-detroit-shuts-water-thousands>.

<sup>154</sup> US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 4, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf); National Law Center on Homelessness and Poverty, et al., Housing and Homelessness in the United States of America, Submission to the Universal Periodic Review of the United States of America (September 15, 2014), para. 24, available at [http://www.nlchp.org/documents/UPR\\_Housing\\_Report\\_2014](http://www.nlchp.org/documents/UPR_Housing_Report_2014); Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>155</sup> Office of the UN High Commissioner for Human Rights, Detroit: Disconnecting water from people who cannot pay –an affront to human rights say UN experts, (Jun 25, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777>.

<sup>156</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>; See also UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 50, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>157</sup> Detroit: Disconnecting water from people who cannot pay - an affront to human rights, U.N. experts say, United Nations Human Rights (June 25, 2014) available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>

a. Detroit and Highland Park, Michigan

32. Detroit provides a particularly egregious and emblematic example of the human rights consequences of water service disconnections in the United States. Despite the fact that Michigan is surrounded by five Great Lakes, which make up about 20% of the world's fresh water, residents are experiencing a crisis with access to water.<sup>158</sup> Since early 2013, the city has carried out mass disconnections of individual residential accounts, primarily affecting people of color and low-income households in Detroit and surrounding areas served by Detroit's municipal water system, like Highland Park.<sup>159</sup>

33. Through the Detroit Water and Sewerage Department (DWSD), the city operates the third-largest municipal water system in the United States.<sup>160</sup> A host of factors, including the city's 2013 declaration of bankruptcy, has prompted water and sanitation rate increases.<sup>161</sup> Over the past ten years, as the city's population has diminished, shrinking the utility's ratepayer base, and the costs of maintaining the water system's aging infrastructure has increased, DWSD has raised water and sanitation rates multiple times,<sup>162</sup> causing an affordability crisis.<sup>163</sup>

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<sup>158</sup> Alice Jennings, *Lansing Water Hearings by Alice Jennings*, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>

<sup>159</sup> See Laura Gottesdiener, *Detroit is Ground Zero in the New Fight for Water Rights*, The Nation, July 15, 2015, available at <http://www.thenation.com/article/detroit-is-ground-zero-in-the-new-fight-for-water-rights/>; People's Water Board, et al., Submission to the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation Regarding Water Cut-offs in the City of Detroit, Michigan, (June 18, 2014), available at <http://www.blueplanetproject.net/wordpress/wp-content/uploads/Detroit-HRTW-submission-June-18-2014.pdf> (describing the first wave of shutoffs beginning in March 2014, affecting up to 83,000 residential accounts); Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 22-23, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>160</sup> U.S. Cong. Budget Office, *Future Investment in Drinking Water and Wastewater Infrastructure XVII* (2002).

<sup>161</sup> Food and Water Watch, "Groups Pressure United Nations to Restore Water Service in Detroit," (June 18, 2014), available at <http://www.foodandwaterwatch.org/pressreleases/as-water-crisis-in-detroit-escalates-groups-pressure-united-nations-to-take-action-restore-water-service-to-thousands-of-residents-and-ensure-the-human-right-to-water/>.

<sup>162</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>. According to watchdog organization Food and Water Watch, Detroit's water rates have increased 119 percent over the past 10 years. Sarah Lazare, Groups Appeal to UN for 'Humanity' as Detroit Shuts Water Off to Thousands," (June 18, 2014), available at <http://www.commondreams.org/news/2014/06/18/groups-appeal-un-humanity-detroit-shuts-water-thousands>. The Detroit City Council approved the 8.7% rate increase cited by the UN experts during the 2014 wave of shutoffs and four months before the UN visit. See Joe Guillen, Detroit Free Press, "Detroit City Council approves 8.7% water rate increase," (June 17, 2014), available at <http://www.freep.com/article/20140617/NEWS01/306170107/City-Council-water-rate-hike>.

<sup>163</sup> Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 22-23, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

34. Similar problems have affected Highland Park due to the city's alleged mismanagement of water service and DWSD rate increases. During the early 2000s, up to half of the city's residents faced water shutoffs as part of an emergency manager's efforts to improve the city's finances.<sup>164</sup> Following this crisis, the Mayor of Highland Park outsourced water service to DWSD in 2012, and the town's roughly 10,400 residents began receiving seemingly unjustifiable water bills as high as \$4,000.<sup>165</sup> In addition to the high bills, residents report inconsistent, confusing billing practices, such as bills being sent at irregular intervals.<sup>166</sup> The city continues to mismanage its water system; according to a recent newspaper report, since DWSD became the city's water service provider, "Highland Park never paid [Detroit] for its wholesale purchase of water."<sup>167</sup> A Michigan state judge recently ruled that Highland Park owes DWSD nearly \$20 million in unpaid water fees, and DWSD has threatened to cut off service to the entire community as a result.<sup>168</sup> In the midst of this fiscal crisis, water rates have increased by more than 110%.<sup>169</sup> The \$20 million judgment may result in even higher rates or more dire consequences: increased foreclosures caused by unpaid water bills that have been added to residents' property taxes, and perhaps even the dissolution of the city itself.<sup>170</sup>

35. Although Detroit ostensibly initiated mass shutoffs in response to the city's financial crisis, it is unclear whether the city has recouped enough revenue to justify the financial costs of this policy. In mid-2013, Detroit's city government hired an expensive private contractor to carry out water shutoffs for \$5.6 million.<sup>171</sup> In May of 2015, while decision-making by City Council on whether to place a moratorium on shutoffs was still underway, the DWSD Board of Water Commissioners voted to extend this contract by nearly \$1 million more to a total of \$6.4

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<sup>164</sup> Ryan Felton, The Guardian. *Not just Detroit: residents of nearby Michigan city face \$11,000 water bills* (July 6, 2015), available at <http://www.theguardian.com/us-news/2015/jul/06/detroit-water-bills-michigan-highland-park>.

<sup>165</sup> Georgetown Law Human Rights Institute, *Tapped Out: Threats to the Human Right to Water in the Urban United States* (April 2013), p. 23, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>; Matt Helms, Detroit Free Press. *Judge orders Highland Park to pay \$20 million for water* (Apr. 24, 2015), available at <http://www.freep.com/story/news/local/michigan/wayne/2015/04/24/highland-park-water-detroit/26337625/>.

<sup>166</sup> Georgetown Law Human Rights Institute, *Tapped Out: Threats to the Human Right to Water in the Urban United States* (April 2013), pp. 41-42, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>; Ryan Felton, The Guardian. *Not just Detroit: residents of nearby Michigan city face \$11,000 water bills* (July 6, 2015), available at <http://www.theguardian.com/us-news/2015/jul/06/detroit-water-bills-michigan-highland-park>.

<sup>167</sup> Ryan Felton, The Guardian. *Not just Detroit: residents of nearby Michigan city face \$11,000 water bills* (July 6, 2015), available at <http://www.theguardian.com/us-news/2015/jul/06/detroit-water-bills-michigan-highland-park>.

<sup>168</sup> Matt Helms, Detroit Free Press. *Judge orders Highland Park to pay \$20 million for water* (Apr. 24, 2015), available at <http://www.freep.com/story/news/local/michigan/wayne/2015/04/24/highland-park-water-detroit/26337625/>.

<sup>169</sup> Ryan Felton, The Guardian. *Not just Detroit: residents of nearby Michigan city face \$11,000 water bills* (July 6, 2015), available at <http://www.theguardian.com/us-news/2015/jul/06/detroit-water-bills-michigan-highland-park>.

<sup>170</sup> Ryan Felton, The Guardian. *Not just Detroit: residents of nearby Michigan city face \$11,000 water bills* (July 6, 2015), available at <http://www.theguardian.com/us-news/2015/jul/06/detroit-water-bills-michigan-highland-park>.

<sup>171</sup> Laura Gottesdiener, Al Jazeera. *UN officials "shocked" by Detroit's mass water shutoffs* (Oct. 20, 2014), available at <http://america.aljazeera.com/articles/2014/10/20/detroit-water-un.html>.



million.<sup>172</sup> According to a Georgetown Law study, “[i]t is possible that the cost of disconnection and reconnection might be more expensive than simply letting customers pay what they can afford, even if only a minimal amount.”<sup>173</sup>

36. In April 2014, the DWSD shutoff policy was to discontinue service if the bill was more than two months late, or over \$150.00.<sup>174</sup> The city shut off water for upwards of at least 33,000 accounts in 2014 alone,<sup>175</sup> and a class action attorney representing shutoff victims reported that repeated requests for official information revealed “that of the thirty-three (33,000) thousand shutoffs occurring in 2014, only approximately eighteen (18,000) thousand homes were restored to service by the end of the year.”<sup>176</sup> The city temporarily suspended water shutoffs at various points in 2014, but the shutoffs ultimately continued,<sup>177</sup> and a second wave of shutoffs took place in early 2015. Although the city refuses to release data on the number of shutoffs it carried out, its original plan included shutoffs of up to 40% of Detroit’s residential water accounts.<sup>178</sup> Civil society estimates that at least 40,000 residential accounts have been shut off since March 2014.<sup>179</sup> The class action attorney reported that from January 2013 to June 2015, “over fifty-three (53,000) thousand Detroiters, residential customers of [DWSD], had water and sewerage abruptly terminated to their homes.”<sup>180</sup> According to a May 2015 DWSD report, from January 2015 to April 11, 2015, the city found 5,794 additional accounts to be delinquent and scheduled them for shut off.<sup>181</sup>

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<sup>172</sup> Alice Jennings, *Lansing Water Hearings* by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>

<sup>173</sup> Georgetown Law Human Rights Institute, *Tapped Out: Threats to the Human Right to Water in the Urban United States* (April 2013), p. 38, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>174</sup> Alice Jennings, *Lansing Water Hearings* by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>

<sup>175</sup> US Human Rights Network, *Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States*, (July 28, 2015), p. 4, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf); Laura Gottesdiener, *Detroit is Ground Zero in the New Fight for Water Rights*, *The Nation*, July 15, 2015, available at <http://www.thenation.com/article/detroit-is-ground-zero-in-the-new-fight-for-water-rights/>.

<sup>176</sup> Alice Jennings, *Lansing Water Hearings* by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>177</sup> Laura Gottesdiener, *Detroit is Ground Zero in the New Fight for Water Rights*, *The Nation*, (July 15, 2015), available at <http://www.thenation.com/article/detroit-is-ground-zero-in-the-new-fight-for-water-rights/>.

<sup>178</sup> See Meeko Williams, *Detroit Water Brigade*, “Detroit Water Shutoffs: Here We Go Again,” (April 25, 2015), available at <http://detroitwaterbrigade.org/detroit-water-shutoffs-here-we-go-again/>.

<sup>179</sup> Lauren Gaynor, “The City of Detroit Withheld Water from 40,000 People – So Activists Tapped the Mayor’s Mansion,” *In These Times*, (September 9, 2015), available at <http://inthesetimes.com/article/18379/mayor-mike-duggan-withheld-water-from-40000-detroiters-so-activists-tapped-h>.

<sup>180</sup> Alice Jennings, *Lansing Water Hearings* by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>181</sup> Alice Jennings, *Lansing Water Hearings* by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>

37. As noted above, in the midst of the 2014 wave of shutoffs, the UN Special Rapporteur on the Human Right to Safe Drinking Water and the UN Special Rapporteur on Adequate Housing conducted a joint visit to Detroit to investigate the resulting human rights violations.<sup>182</sup> They found that the thousands of people suffering from shutoffs or threatened shutoffs were disproportionately low-income and minority individuals who could not afford the high water rates and were being “forced to make . . . impossible choices . . . to either pay their rent or their medical bill, or to pay their water bill.”<sup>183</sup> Detroit’s population is 80% African American and nearly half (41%) lives below the poverty line,<sup>184</sup> of those living below the poverty line, 99% are African American.<sup>185</sup> Highland Park’s demographics are even more stark – the city is 93% African American<sup>186</sup> and 51% live below the federal poverty line.<sup>187</sup> City officials should have been aware that this population would be disproportionately affected by the shutoffs, yet the UN experts noted that “the city has no data on how many people have been and are living without tap water, let alone information on age, disabilities, chronic illness, race or income level of the

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<sup>182</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>. The UN experts’ visit was prompted by a cry for help from Detroit civil society as the utility shut off service to thousands of residential accounts. See People’s Water Board, et al., Submission to the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation Regarding Water Cut-offs in the City of Detroit, Michigan, (June 18, 2014), available at <http://www.blueplanetproject.net/wordpress/wp-content/uploads/Detroit-HRTW-submission-June-18-2014.pdf>; Sarah Lazare, Groups Appeal to UN for ‘Humanity’ as Detroit Shuts Water Off to Thousands,” (June 18, 2014), available at <http://www.commondreams.org/news/2014/06/18/groups-appeal-un-humanity-detroit-shuts-water-thousands>.

<sup>183</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>; see also UN News Service, “Widespread water shutoffs in US city of Detroit prompt outcry from UN rights experts,” (June 25, 2014), available at <http://www.un.org/apps/news/story.asp?NewsID=48129#.VfhlsM6kV2V>.

<sup>184</sup> US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 4, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf).

<sup>185</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.

<sup>186</sup> Ryan Felton, The Guardian. *Not just Detroit: residents of nearby Michigan city face \$11,000 water bills* (July 6, 2015), available at <http://www.theguardian.com/us-news/2015/jul/06/detroit-water-bills-michigan-highland-park>.

<sup>187</sup> Matt Helms, Detroit Free Press. *Judge orders Highland Park to pay \$20 million for water* (Apr. 24, 2015), available at <http://www.freep.com/story/news/local/michigan/wayne/2015/04/24/highland-park-water-detroit/26337625/>.

affected population.”<sup>188</sup> The experts further noted that shutoffs posed multiple harms to victims, including health problems, threatened removal of children from homes, loss of housing through foreclosure, and other serious problems.<sup>189</sup>

38. Almost a year later, the situation has not improved meaningfully, with residents still facing rate increases and shutoffs and the city still struggling to find a way to make water affordable.<sup>190</sup> In a recent statement, a class action attorney representing shutoff victims reported that despite the UN visit, “[a]nother thirty thousand homes are scheduled for shutoff in the next season of shutoffs”, yet “no analytical tool, study or review has been created by state or local government prior to the shutoffs, or at any time to capture the data on the social demographic of the inhabitants in the shutoff homes.”<sup>191</sup>

39. Even if water service were affordable, Michigan communities are suffering from contaminated water as well. At a recent hearing at the Michigan state legislature, residents of Detroit raised concerns about contamination issues as well as shutoffs.<sup>192</sup> Residents testified about their ongoing experience of caustic water with high turbidity that is contaminated with lead and copper.<sup>193</sup> Several residents reported symptoms like hair loss and serious health problems due to contamination including Hashimoto’s disease, copper poisoning, and bacterial infections.<sup>194</sup> One woman testified that she and her children have lead poisoning, and the utility provider asked her to sign a contract relieving them of any responsibility, which she refused to do.<sup>195</sup> Residents were not notified about the condition of their water for months and received

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<sup>188</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.

<sup>189</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.

<sup>190</sup> See Mark Hicks and Christine Ferretti, The Detroit News, “Detroit city council rejects water, sewer rate hikes,” (July 1, 2015), available at <http://www.detroitnews.com/story/news/local/detroit-city/2015/06/30/detroit-hearing-proposed-water-rate-increases/29514659/>.

<sup>191</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>192</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>193</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>194</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>195</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.



erroneous instructions to boil their water.<sup>196</sup> In Flint, Michigan, where the city is in crisis because of lead-poisoned water, the utility continues to issue shutoff notices on past-due accounts, requiring residents to pay for contaminated water.<sup>197</sup> The situation in Flint, Michigan illustrates the connections between water unaffordability, water contamination, and inadequate water infrastructure. This report discusses the lead poisoning crisis in Flint in more detail in the following section on water quality.

b. Baltimore, Maryland

40. In March 2015, the city of Baltimore followed Detroit's example and announced plans to shut off water service to customers with delinquent accounts owing \$250 or more with at least six months of arrears, which amounted to roughly 60,000 people.<sup>198</sup> Baltimore's Department of Public Works subsequently issued water shutoff notices to 25,000 delinquent residential accounts.<sup>199</sup> Although Baltimore has historically shut off about 3,000 accounts per year, out of a total of approximately 411,000 accounts, the new shutoff policy has triggered a dramatic increase in shutoffs.<sup>200</sup> Under the new policy, the city could carry out up to 600 shutoffs per week.<sup>201</sup>

41. As of April 7, 2015, the first week of the shutoffs, the city had shut off service to over 300 households.<sup>202</sup> By May 15, 2015, that number rose to 1,600 disconnected residential accounts.<sup>203</sup> According to Food and Water Watch, a civil society group monitoring the shutoffs, Baltimore carried out shutoffs from April to October 2015, and during that time, "the Baltimore

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<sup>196</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>

<sup>197</sup> Gary Ridley, *Flint Restarts Water Shutoff Notices After Brief Holiday Reprieve*, MLive (Jan. 15, 2016), at [www.mlive.com/news/flint/index.ssf/2016/01/city\\_to\\_restart\\_water\\_shutoff.html](http://www.mlive.com/news/flint/index.ssf/2016/01/city_to_restart_water_shutoff.html).

<sup>198</sup> Food and Water Watch, Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf).

<sup>199</sup> Cheryl Conner, ABC News, "Baltimore City to send water turnoff notices to 25,000 delinquent customers," (March 27, 2015), available at <http://www.abc2news.com/news/region/baltimore-city/baltimore-city-to-send-water-turnoff-notices-to-25000-delinquent-customers>.

<sup>200</sup> Wisely, John., Detroit Not Alone in Shutting off water to prod people to pay bills, Detroit Free Press. July 27, 2014, available at <http://archive.freep.com/article/20140727/NEWS01/307270078/Detroit-water-shutoffs-other-cities>.

<sup>201</sup> Reutter, Mark and Danielle Sweeny. "Crackdown on unpaid water bills will involve 600 shutoffs a week." Baltimore Brew. April 8, 2015, available at <https://www.baltimorebrew.com/2015/04/08/crackdown-on-unpaid-water-bills-will-involve-600-shutoffs-a-week/>.

<sup>202</sup> Yvonne Wenger, Baltimore collects \$1 million in unpaid water bills, Baltimore Sun. April 7, 2015, available at <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-dpw-water-20150407-story.html>.

<sup>203</sup> Luke Broadwater, The Baltimore Sun, "City shuts off water to delinquent residents, hits Baltimore Co. homes hardest," (May 15, 2015), available at <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-shutoffs-20150515-story.html>.

Department of Public Works shut off the water service of 8,055 customers. As of mid-November, it had restored service to half of those accounts, leaving 4,014 customers without water service.”<sup>204</sup>

42. These mass shutoffs took place in a context where water and sewer service is increasingly unaffordable for Baltimore residents. Baltimore’s water and sewer rates have tripled since 2000 and continue to rise.<sup>205</sup> In July 2015, rates increased by another 11 percent.<sup>206</sup> This increase in rates reflects the disproportionate burden placed on low-income communities as a result of insufficient State funding for water and sanitation infrastructure; the city has reported that “[t]he increases are to fund major capital improvement projects, not changes in operating costs.”<sup>207</sup> According to Food and Water Watch, water service is unaffordable for more than a third of Baltimore households, or more than 80,000 households.<sup>208</sup> One third of Baltimore households make less than \$25,000 a year, yet the average household pays about \$804 a year on water and sewer service as of April 2015.<sup>209</sup> Thirty-three percent of households in Baltimore are paying more than the international affordability standard of 3% of household income.<sup>210</sup>

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<sup>204</sup> Food and Water Watch, Report to Santa Clara IHRC Regarding Current Statistics on Water Shutoffs in Baltimore, Maryland, (Nov. 23, 2015), on file with authors. At the time, according to Food and Water Watch Baltimore researcher Mary Grant, “I obtained this information by submitting a Maryland Public Information Act request to Rudy Chow, the head of the Baltimore Public Works Department. There is not a clear, simple and transparent process for submitting public information requests to Baltimore’s Department of Public Works or the Office of the Mayor: There is no standard request form, no electronic submission, no information about how to submit these requests, and no information about to whom you submit them on the city website. It seems like it would be very difficult for a concerned resident without experience in the process to obtain the records.” Subsequently, the City of Baltimore updated the website of the Department of Public Works to include information on submitting information requests, which represents an important advance in improving transparency in this area.

<sup>205</sup> Food and Water Watch, Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf).

<sup>206</sup> Food and Water Watch, Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf).

<sup>207</sup> Food and Water Watch, Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf) (citing Baltimore City (MD). “Fiscal Year 2015 Agency Detail: Board of Estimate Recommendations Volume II.” April 2014 at 100).

<sup>208</sup> Food and Water Watch, Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf).

<sup>209</sup> Baltimore City (MD). Department of Public Works (DPW). “City of Baltimore Water and Wastewater Rates.” Available at <http://publicworks.baltimorecity.gov/Bureaus/WaterWastewater/CustomersupportandServices/Rates.aspx>; Food and Water Watch, Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf).

<sup>210</sup> Food and Water Watch, Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf).

43. Baltimore's approach to water shutoffs disproportionately targets low-income minority residents. The city reports that overdue accounts represent approximately USD \$40 million in lost revenue; although corporate and government accounts are responsible for USD \$15 million of that total,<sup>211</sup> DPW has only disconnected service for residential accounts.<sup>212</sup> Like Detroit, the majority of Baltimore's population is minority and low-income; specifically, 63% of residents are African American and nearly a quarter of residents and a third of children in Baltimore are living in poverty.<sup>213</sup> According to data collected by Baltimore civil society group the Right to Housing Alliance, Baltimore's low-income, minority, and female-headed households are significantly more likely to experience a water shutoff than their richer, whiter counterparts.<sup>214</sup> Accordingly, the shutoffs primarily affect low-income, minority households. Not only would it be more cost effective and equitable for the city to prioritize collecting overdue bills from business accounts, but to do so would put utilities in line with the international standards that require States to prioritize the provision of water for household use.<sup>215</sup>

c. Boston, Massachusetts

44. Low-income, minority<sup>216</sup> residents of the city of Boston have also faced large scale threatened water shutoffs for delinquent accounts, with a sharp increase in shutoffs from 2003 to 2006.<sup>217</sup> The problem persists to this day.<sup>218</sup> According to a USA Today study, Boston's water

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<sup>211</sup> To date, the city has not released the list of delinquent businesses. Food and Water Watch, Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf).

<sup>212</sup> Luke Broadwater, The Baltimore Sun, "Baltimore to send shutoff notices to 25,000 delinquent customers," (March 26, 2015), available at <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-bills-20150326-story.html>; Luke Broadwater, The Baltimore Sun, "City shuts off water to delinquent residents, hits Baltimore Co. homes hardest," (May 15, 2015), available at <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-shutoffs-20150515-story.html>.

<sup>213</sup> Food and Water Watch, Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf).

<sup>214</sup> See Annex, maps from the Baltimore Right to Housing Alliance. These maps show that virtually all of Baltimore's shutoffs have taken place in areas with predominantly black, low-income, and female-headed households; in those areas with few black residents, almost no shutoffs have occurred. Households with residents over the age of 45 are also more likely to have experienced a shutoff.

<sup>215</sup> Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, Food and Water Watch (April 23, 2015) online publication accessed at: [foodandwaterwatch.org](http://foodandwaterwatch.org)

<sup>216</sup> For more information about the linkage between water shutoffs and race in Boston, see Massachusetts Global Action, The Color of Water: A Report on the Human Right to Water in the City of Boston, July 2014, available at [http://massglobalaction.org/projects/colorofwater/primary\\_report\\_shutoffs\\_pre-pub.pdf](http://massglobalaction.org/projects/colorofwater/primary_report_shutoffs_pre-pub.pdf).

<sup>217</sup> Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 25-27, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>218</sup> See Suren Moodilar, Massachusetts Global Action, "Human Right to Water: Race and Affordability Challenges in a Major American City, Boston, Massachusetts, Submission to the United Nations Universal Periodic Review of

rates rose approximately 119% from 2000 to 2012.<sup>219</sup> The UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation found that Boston’s “water shut-off policies disproportionately impact marginalized persons along race, class and gender.”<sup>220</sup> She cited to a study analyzing the demographics of Boston water shutoffs that “found that for every one per cent increase in the city ward’s percentage of people of colour, the number of threatened cut-offs increases by four per cent.”<sup>221</sup> Simply put, if you live in black Boston, you are 10 times more likely to receive a water shutoff notice than if you live in white Boston. According to Massachusetts Global Action’s Color of Water Project, whose research revealed these disparities, the threat of water shutoffs correlates closely with race and income, resulting in insecurity, particularly in the absence of income-based protections against shutoffs. Despite these concerns, Boston does not appear to have taken any steps to assess the disparate impact of water shutoffs or to assure water affordability for its most vulnerable residents.<sup>222</sup>

### 3. Water Shutoffs Pose Severe Health and Economic Consequences

45. Water shutoffs create unsanitary conditions in people’s homes, which can potentially lead to serious public health problems.<sup>223</sup> In addition to posing an immediate threat to public health,

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the United States of America,” (2015), available at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1741&file=CoverPage>.

<sup>219</sup> Kevin McCoy, Water Costs Getting More Expensive, USA Today, Sept. 29, 2012, available at <http://www.usatoday.com/story/money/business/2012/09/27/rising-water-rates/1595651/>.

<sup>220</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶50, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>221</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶50, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>222</sup> See Suren Moodilar, Massachusetts Global Action, “Human Right to Water: Race and Affordability Challenges in a Major American City, Boston, Massachusetts, Submission to the United Nations Universal Periodic Review of the United States of America,” (2015), available at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1741&file=CoverPage>.

<sup>223</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>; See Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 31-32, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>; Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015), available at <https://conversationthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>

unaffordable water rates and shutoffs can have severe economic consequences for low-income residents, including the loss of housing.<sup>224</sup>

a. Water Shutoffs Have Negative Economic Effects and Can Lead to Violations of the Human Right to Adequate Housing Due to Foreclosures

46. For low-income communities in the U.S., unaffordable water rates and service shutoffs can trigger a host of economic consequences with human rights implications. First, as noted above, unaffordable water rates and shutoffs force households to make impossible choices between essential services.<sup>225</sup> Residents of Detroit have reported that to pay their water bill, they must fall behind in payment of rent, gas, or electric bills.<sup>226</sup>

47. Not only does a water shut-off itself represent a violation of the right to housing, since the right to water is a component of the right to housing, but water shut-offs can lead to a loss of housing as well.<sup>227</sup> Delinquency in payment of utility bills can be a basis for eviction in some jurisdictions where the water bill is included in rent, like in Baltimore,<sup>228</sup> and for homeowners, it can lead to foreclosure or tax lien sales; in either case, the result can be the loss of housing and homelessness.<sup>229</sup> In Baltimore, the city will place a home on the tax sale list if the owner owes

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<sup>224</sup> See Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 32-33, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>; Cassie Owens, Next City, *Philly City Council Helps with Water Shutoffs and Blight Prevention* (June 25, 2015), available at <https://nextcity.org/daily/entry/philadelphia-water-bills-low-income-payment-plans>.

<sup>225</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶49, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.

<sup>226</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.

<sup>227</sup> See Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 32-33, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>228</sup> Sarah Lazare, Common Dreams, *Brewing Human Rights Crisis in Baltimore as City Threatens Mass Water Shutoffs* (April 7, 2015), available at <http://www.commondreams.org/news/2015/04/07/brewing-human-rights-crisis-baltimore-city-threatens-mass-water-shutoffs>.

<sup>229</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.



more than \$500 in delinquent water bills; this practice can lead to foreclosure.<sup>230</sup> Following her investigation of the Detroit water shutoffs, the UN Special Rapporteur on the right to adequate housing found that “unpaid water bills are being attached to property taxes increasing the risk of foreclosure” resulting in “a number of households who have been ‘constructively’ evicted from their homes due to the water being shut-off and are now homeless.”<sup>231</sup> According to a National Consumer Law Center report, these kinds of tax lien foreclosures disproportionately affect African American and Latino neighborhoods and can place disabled and elderly residents at particular risk.<sup>232</sup> Another less severe consequence for low-income homeowners is that shutoffs may decrease the value of their homes as a result of sewage problems or increased vacancies and blight in a neighborhood, diminishing the value of one of their few assets.<sup>233</sup>

b. Water Shutoffs Pose Serious Public Health Risks to Affected Communities and Can Cause Violations of the Human Right to Health

48. To some degree, the health consequences of water service shutoffs are obvious; modern water and sanitation service represents an important public health advance, and shutoffs roll back these gains.<sup>234</sup> Experts describe mass water shut-offs as “a public health crisis in the making.”<sup>235</sup> Sewage can back up following a shut-off, and lack of access to water and sanitation can cause a host of health problems, beyond the immediate problem of dehydration.<sup>236</sup>

49. Families facing shutoffs are at risk of developing health problems - especially women - such as increased urinary tract infections, gastrointestinal problems, hepatitis A, influenza, and

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<sup>230</sup> Luke Broadwater, The Baltimore Sun. Baltimore to send water turn-off notices to 25,000 delinquent customers (March 26, 2015), available at <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-water-bills-20150326-story.html>.

<sup>231</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.

<sup>232</sup> National Consumer Law Center, The Other Foreclosure Crisis: Tax Lien Sales (July 2012), p. 5, available at [http://www.nclc.org/images/pdf/foreclosure\\_mortgage/tax\\_issues/tax-lien-sales-report.pdf](http://www.nclc.org/images/pdf/foreclosure_mortgage/tax_issues/tax-lien-sales-report.pdf).

<sup>233</sup> Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), p. 33, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>234</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶88, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>235</sup> Sarah Lazare, Common Dreams. Brewing Human Rights Crisis in Baltimore as City Threatens Mass Water Shutoffs (April 7, 2015), available at <http://www.commondreams.org/news/2015/04/07/brewing-human-rights-crisis-baltimore-city-threatens-mass-water-shutoffs>.

<sup>236</sup> See Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 31-32, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

other diseases that are linked to unsafe water and poor sanitation.<sup>237</sup> For vulnerable residents such as children, pregnant women, the elderly, or the sick, the consequences can be even more severe.<sup>238</sup> For example, a human rights report investigating the effects of water shutoffs found that “elderly people are particularly harmed[,] and that “[c]hildren can develop conditions such as psoriasis and eczema due to a lack of clean water[.]”<sup>239</sup> Infants and small children are particularly vulnerable to dehydration, and experts fear the shutoffs will lead to an increase in infant mortality in cities like Detroit.<sup>240</sup> Water shutoffs may also have particularly negative health consequences for those suffering from illnesses where treatment requires access to water.<sup>241</sup> Likewise, pregnant or nursing women may be unable to fulfill their increased drinking water needs, and mothers of infants may be unable to provide safe water to prepare formula or other nutrition for their children.

50. Although residents facing shutoffs can request temporary relief due to medical hardship in most jurisdictions, procedural barriers limit access. As described in the following section, shutoffs frequently take place without proper notice, depriving vulnerable residents of the opportunity to apply for medical hardship. Even where notice is adequate, utilities fail to alert customers to the possibility of a medical hardship exemption, and the process to apply for medical hardship can be burdensome.<sup>242</sup> In Detroit, lawyers representing shutoff victims claim DWSD failed to inform sick or disabled customers of the utility’s medical hardship exemption and report that the utility carried out shutoffs against individuals with chronic illnesses.<sup>243</sup> Likewise, Boston illustrates the difficulty sick customers face in applying for a medical hardship exemption. The Boston Water and Sewer Commission’s website states that in order to claim

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<sup>237</sup> Martina Guzman, Exploring the public health consequences of Detroit’s water shutoffs, Model D Media (Oct. 6, 2015), available at <http://www.modeldmedia.com/features/water-shut-offs-100615.aspx>; *Lyda et al v. City of Detroit*, Brief in Support of Plaintiffs’ Motion for Temporary Restraining Order, U.S. Bankr. Ct. E.D. Mich. (Aug. 2014), page 16, accessed at: [http://www.naacpldf.org/files/case\\_issue/LYDA,%20et%20al.%20v.%20Detroit-Brief%20in%20Support%20of%20Plaintiffs%20Motion%20for%20Temporary%20Restraining%20Order.pdf](http://www.naacpldf.org/files/case_issue/LYDA,%20et%20al.%20v.%20Detroit-Brief%20in%20Support%20of%20Plaintiffs%20Motion%20for%20Temporary%20Restraining%20Order.pdf) (citing Exhibit 6-5, June 30, 2014 letter from G. Gaines, Former Deputy Director, Detroit Health Department, to V. Anthony, Director, Detroit Department of Health and Wellness Promotion).

<sup>238</sup> See Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 31-32, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>; Sarah Lazare, Common Dreams. Brewing Human Rights Crisis in Baltimore as City Threatens Mass Water Shutoffs (April 7, 2015), available at <http://www.commondreams.org/news/2015/04/07/brewing-human-rights-crisis-baltimore-city-threatens-mass-water-shutoffs>.

<sup>239</sup> See Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 31-32, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>240</sup> Commentary: Exploring the Public Health Consequences of Detroit’s Water Shutoffs (Oct. 13, 2015), available at [http://www.mlive.com/news/detroit/index.ssf/2015/10/commentary\\_exploring\\_the\\_publi.html](http://www.mlive.com/news/detroit/index.ssf/2015/10/commentary_exploring_the_publi.html).

<sup>241</sup> Laura Gottesdiener, Al Jazeera. *UN officials “shocked” by Detroit’s mass water shutoffs* (Oct. 20, 2014), available at <http://america.aljazeera.com/articles/2014/10/20/detroit-water-un.html>.

<sup>242</sup> Santa Clara IHRC Interview with Philadelphia Community Legal Services (Nov. 19, 2015).

<sup>243</sup> NAACP Legal Defense and Education Fund and the American Civil Liberties Union of Michigan, Detroit Water Shutoff Letter to the UN (Oct. 16, 2014), available at [http://www.naacpldf.org/files/case\\_issue/Detroit%20Water%20Shutoff%20Letter%20to%20UN.pdf](http://www.naacpldf.org/files/case_issue/Detroit%20Water%20Shutoff%20Letter%20to%20UN.pdf).

medical hardship to establish a right to service, a physician or the Boston Public Health Commission must forward documentation to BWSC explaining the condition within 7 days of the claim of medical hardship.<sup>244</sup> In addition to the medical documentation, a Certificate of Financial Hardship must also be forwarded to the Commission's Collections Department.<sup>245</sup> Even if a resident overcomes these procedural hurdles, they must renew the medical hardship exemption monthly, or quarterly where the Commission finds the illness to be chronic.<sup>246</sup> These complicated mechanisms that would prevent water shutoffs for medical reasons place a heavy burden on people who are sick and are already in financial distress, all of which potentially exacerbates their physical and mental anguish and reduce the likelihood of preventing shutoffs in practice.

#### 4. Water Shutoffs Do Not Meet Due Process Standards

51. Municipal authorities responsible for the water shutoffs described above do not appear to comport with basic due process guarantees when making and carrying out the decision to disconnect a residential customer's water service. According to the UN Special Rapporteur on the human right to safe drinking water and sanitation, "[h]uman rights call for safeguards in the process of setting tariffs and determining subsidies, both in procedural and substantive terms, which include the human rights principles of transparency, access to information, participation and accountability."<sup>247</sup> Specifically with respect to water shutoffs, the Rapporteur has also noted that the human rights to water and sanitation require that the "authorities must ensure that the person faced with the disconnection is given opportunities for consultation and for rectifying the situation."<sup>248</sup> Similarly, the Rapporteur has indicated that human rights law requires that "[w]hen disconnections occur, those affected must be informed in advance, with reasonable notice, of the planned disconnection, recourse to legal remedies and legal assistance to obtain remedies."<sup>249</sup> Despite these standards, residents of cities carrying out mass shutoffs have

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<sup>244</sup> Boston Water and Sewer Commission, Right to Service: Medical Hardship, available at [http://www.bwsc.org/SERVICES/billing\\_assistance/rights.asp](http://www.bwsc.org/SERVICES/billing_assistance/rights.asp).

<sup>245</sup> Boston Water and Sewer Commission, Right to Service: Medical Hardship, available at [http://www.bwsc.org/SERVICES/billing\\_assistance/rights.asp](http://www.bwsc.org/SERVICES/billing_assistance/rights.asp).

<sup>246</sup> Boston Water and Sewer Commission, Right to Service: Medical Hardship, available at [http://www.bwsc.org/SERVICES/billing\\_assistance/rights.asp](http://www.bwsc.org/SERVICES/billing_assistance/rights.asp).

<sup>247</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the Human Rights Council on Affordability of water and sanitation services, ¶ 8, U.N. Doc. A/HRC/30/39 (Aug. 5, 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/172/77/PDF/G1517277.pdf?OpenElement>.

<sup>248</sup> Catarina de Albuquerque with Virginia Roaf, On the Right Track: Good practices in realising the rights to water and sanitation, (2012), p. 61, available at [http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices\\_en.pdf](http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices_en.pdf).

<sup>249</sup> Catarina de Albuquerque with Virginia Roaf, On the Right Track: Good practices in realising the rights to water and sanitation, (2012), p. 61, available at [http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices\\_en.pdf](http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices_en.pdf) (citing CESCR, General Comment No. 15, para. 56).



reported a number of procedural problems that represent independent human rights violations that compound the problems caused by the shutoffs.

a. Government Agencies Refuse to Provide Information about Shutoffs and Fail to Monitor Their Impacts

52. Mass water shutoffs in the U.S. have been almost uniformly characterized by a denial of access to information. No utility in the country is required to report on water shutoffs, and as a result, it is almost impossible to obtain official data on the number of shutoffs in a particular jurisdiction, much less statistical information on the characteristics of those affected by shutoffs, such as age, gender, race, economic status, or disability.<sup>250</sup> Similarly, state and local governments have failed to create any monitoring system to capture social and demographic data about residents facing shutoffs, in disregard of the UN Special Rapporteur's recommendations.<sup>251</sup> This lack of information hides the disparate impact of water shutoffs on low-income minority communities and facilitates the failure of utilities to protect vulnerable residents against shutoffs.

53. Not only do public utilities fail to report even basic information about the number or demographics of households affected by shutoffs, they have made it difficult to access the limited information that does exist. For example, in describing the process by which they obtained the information reported above on Baltimore's 2015 water shutoffs, Food and Water Watch observed that "[t]here is no standard request form, no electronic submission, no information about how to submit these requests, and no information about to whom you submit them on the city website."<sup>252</sup> They further reported that because "there is not a clear, simple and transparent process" to obtain public information about shutoffs, "it would be very difficult for a concerned resident without experience in the process to obtain the records."<sup>253</sup> Baltimore has also refused to release information about corporate customers with overdue water bills. In Baltimore, 369 commercial customers collectively owed \$15 million in overdue water bills.<sup>254</sup>

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<sup>250</sup> Santa Clara IHRC Interview with Patricia Jones, Senior Program Leader for the human right to water at the Unitarian Universalist Service Committee (UUSC), Santa Clara, California (Oct. 19, 2015); UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶82, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>251</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015) accessed at: <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>

<sup>252</sup> Food and Water Watch, Report to Santa Clara IHRC Regarding Current Statistics on Water Shutoffs in Baltimore, Maryland, (Nov. 23, 2015), on file with authors.

<sup>253</sup> Food and Water Watch, Report to Santa Clara IHRC Regarding Current Statistics on Water Shutoffs in Baltimore, Maryland, (Nov. 23, 2015), on file with authors.

<sup>254</sup> Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, Food and Water Watch (April 23, 2015) online publication accessed at: [foodandwaterwatch.org](http://foodandwaterwatch.org)

To date, the city has not released the list of delinquent businesses.<sup>255</sup> The withholding of this information is a violation of the right to information.

54. The lack of access to information in the context of water shutoffs reflects the federal government's failure to monitor access to water. Nationally, official data about access to water tends to be limited and outdated, despite the fact that even this data indicates that approximately 1.8 million people in the U.S. currently lack complete plumbing, which may indicate a lack of access to water service.<sup>256</sup> Even the national census and American Communities Survey<sup>257</sup> (ACS) (an annual survey to supplement census data) include virtually no questions that could help the government assess nationwide access to water; the best approximation derives from an ACS question that asks whether complete plumbing facilities exist in the household.<sup>258</sup> As the UN Special Rapporteur on the human right to safe drinking water and sanitation recommended after her country visit, the U.S. government should improve its monitoring of access to water, including a demographic breakdown of disparities in access, and provide accurate and transparent information to the public.<sup>259</sup>

#### b. Utilities Carry Out Shutoffs Despite Significant Billing Errors and a Lack of Opportunities to Challenge Incorrect Bills

55. Residents affected by mass shutoffs in all the named cities have also reported serious billing errors that give rise to shutoffs as well as a lack of meaningful opportunities to challenge erroneous bills. Residents should be able to access information publicly or upon request regarding how their rates are set and how billing practices are carried out, but public utilities carrying out mass shutoffs do not appear to be respecting these principles.<sup>260</sup>

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<sup>255</sup> Food and Water Watch, Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf).

<sup>256</sup> Santa Clara IHRC Interview with Patricia Jones, Senior Program Leader for the human right to water at the Unitarian Universalist Service Committee (UUSC), Santa Clara, California (Oct. 19, 2015).

<sup>257</sup> See U.S. Census Bureau, *American Communities Survey*, available at <https://www.census.gov/programs-surveys/acs/>.

<sup>258</sup> Santa Clara IHRC Interview with Patricia Jones, Senior Program Leader for the human right to water at the Unitarian Universalist Service Committee (UUSC), Santa Clara, California (Oct. 19, 2015); see also U.S. Census Bureau, *American Community Survey (ACS), Why We Ask: Plumbing Facilities, Kitchen Facilities, & Telephone Service*, available at [http://www2.census.gov/programs-surveys/acs/about/qbyqfact/Plumbing\\_Kitchen\\_Telephone.pdf](http://www2.census.gov/programs-surveys/acs/about/qbyqfact/Plumbing_Kitchen_Telephone.pdf).

<sup>259</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶82, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>260</sup> Tapped Out: Threats to the Human Right to Water in The Urban United States, a Project by the Georgetown Law Human Rights Institute (April 2013), accessed at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

56. Utility billing practices appear to be inconsistent and erratic, posing another barrier to equal access to water. As mentioned above, residents in the Detroit area reported that they received their water bills at irregular intervals, and that each new city administration used different billing methods than the last.<sup>261</sup> DWSD documents recently unearthed in response to a Freedom of Information Act request revealed that Detroit’s mass water shutoffs were partially motivated by the utility’s efforts to rectify its failure to collect sewage fees for six years.<sup>262</sup> In Boston, residents claim that their bills arrived inconsistently and in an untimely manner.<sup>263</sup> The lack of consistent billing practices compounds the affordability challenges faced by low-income residents and increases the risk of shutoffs.<sup>264</sup>

57. Even more troubling, utilities appear to be basing the decision to shut off water on erroneously high water or sewer bills, despite evidence of billing errors. For example, in Detroit, the UN experts received reports of “repeated cases of gross errors on water bills . . . which are also used as a ground for disconnections.”<sup>265</sup> They further found that “people have no means to prove the errors and hence the bills are impossible to challenge.”<sup>266</sup> Residents of Detroit and Highland Park reported outrageously high water and sewer bills, claiming that in one particularly egregious case, an 86-year-old woman received an unjustifiable \$11,000 water bill.<sup>267</sup> In Highland Park, which receives water service from Detroit, residents reported the same types of

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<sup>261</sup> *Lyda et al v. City of Detroit*, Brief in Support of Plaintiffs’ Motion for Temporary Restraining Order, U.S. Bankr. Ct. E.D. Mich. (Aug. 2014), page 16, accessed at: [http://www.naacpldf.org/files/case\\_issue/LYDA,%20et%20al.%20v.%20Detroit-Brief%20in%20Support%20of%20Plaintiffs%20Motion%20for%20Temporary%20Restraining%20Order.pdf](http://www.naacpldf.org/files/case_issue/LYDA,%20et%20al.%20v.%20Detroit-Brief%20in%20Support%20of%20Plaintiffs%20Motion%20for%20Temporary%20Restraining%20Order.pdf).

<sup>262</sup> NAACP Legal Defense and Education Fund, Documents Reveal Thousands of Detroit Residents Were Blindsided by with Over \$115 Million in Retroactive Sewage Bills Due to DWSD System Errors (Sept. 11, 2014), available at <http://www.naacpldf.org/press-release/argument-detroit-bankruptcy-court-civil-rights-attorneys-urge-judge-restore-detroit-wa>; Heather Smith, The Grist. Those Detroit water shutoffs? Blame ‘em on botched bookkeeping (Sept. 15, 2014), available at <http://grist.org/cities/those-detroit-water-shutoffs-blame-em-on-botched-bookkeeping/>.

<sup>263</sup> Tapped Out: Threats to the Human Right to Water in The Urban United States, a Project by the Georgetown Law Human Rights Institute (April 2013), accessed at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>264</sup> See, e.g., Ryan Felton, The Guardian. *Not Just Detroit: residents of nearby Michigan city face \$11,000 water bills* (July 6, 2015), available at <http://www.theguardian.com/us-news/2015/jul/06/detroit-water-bills-michigan-highland-park>.

<sup>265</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.

<sup>266</sup> Office of the UN High Commissioner for Human Rights, 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) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.

<sup>267</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015), available at <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

problems, including inconsistent billing and faulty meters.<sup>268</sup> In Baltimore, residents also report inaccurate bills due to the utility’s former practice of estimating water usage rather than reading water meters; according to Food and Water Watch, although the city has resolved the meter reading issue, “[s]ome residents have [] reported that they carry past-due amounts related to historical overbillings and have struggled to get the city to adjust their bills.”<sup>269</sup> Given this history of billing errors, utilities should suspend shut-offs and ensure that residents have recourse to challenge erroneous bills.

c. Utilities Fail to Provide Adequate Notice of Impending Shutoffs or Meaningful Opportunities to Challenge Shutoffs

58. Likewise, the UN Special Rapporteur on Adequate Housing noted her concern regarding “the fact that many residents were not provided with any advance notice before their water was shut off and there seems to be no administrative or legal remedies for disputed bills and water disconnections[.]”<sup>270</sup> A human rights report investigating shutoffs found that some residents learned of an impending shutoff only at the moment when utility workers arrived at their homes to shut off their water.<sup>271</sup> In the case of Detroit resident Nicole Hill, three months after the city restored her water service, DWSD’s contractor shut off her water without notice; she received written notice nine hours *after* this second shutoff had been carried out.<sup>272</sup> Residents have also alleged that the city carried out shutoffs even where the customer was actively disputing their water bill and during times when the city had announced a supposed moratorium on shutoffs.<sup>273</sup> The Detroit People’s Water Board, a community group providing support to shutoff victims, has reported stories “from people impacted by the water cut-offs who say they were given no warning and had no time to fill buckets, sinks and tubs before losing access to water [and that] [i]n some cases, the cut-offs occurred before the deadline given in notices sent by the city.”<sup>274</sup>

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<sup>268</sup> Ryan Felton, The Guardian. *Not Just Detroit: residents of nearby Michigan city face \$11,000 water bills* (July 6, 2015), available at <http://www.theguardian.com/us-news/2015/jul/06/detroit-water-bills-michigan-highland-park>.

<sup>269</sup> Food and Water Watch, *Baltimore Must Stop Household Water Shutoffs: An analysis of key facts, figures, and trends*, (April 23, 2015), available at [https://www.foodandwaterwatch.org/sites/default/files/baltimore\\_water\\_shutoff\\_analysis.pdf](https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf).

<sup>270</sup> Office of the UN High Commissioner for Human Rights, *Detroit’s water shut-offs target the poor, vulnerable and African Americans* (Oct. 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15190&LangID=E>.

<sup>271</sup> Georgetown Law Human Rights Institute, *Tapped Out: Threats to the Human Right to Water in the Urban United States* (April 2013), p. 11, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>272</sup> Laura Gottesdiener, Al Jazeera. *UN officials “shocked” by Detroit’s mass water shutoffs* (Oct. 20, 2014), available at <http://america.aljazeera.com/articles/2014/10/20/detroit-water-un.html>.

<sup>273</sup> Heather Smith, The Grist. *Those Detroit water shutoffs? Blame ‘em on botched bookkeeping* (Sept. 15, 2014), available at <http://grist.org/cities/those-detroit-water-shutoffs-blame-em-on-botched-bookkeeping/>.

<sup>274</sup> People’s Water Board, et al., *Submission to the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation Regarding Water Cut-offs in the City of Detroit, Michigan*, (June 18, 2014), p. 4, available at <http://www.blueplanetproject.net/wordpress/wp-content/uploads/Detroit-HRTW-submission-June-18-2014.pdf>

59. The lack of due process protections against water shutoffs has led to criminalization of shutoff victims. In Detroit, residents suffering from water shutoffs who reconnect themselves to the water system have been subjected to harsh criminal penalties for so-called “water theft.”<sup>275</sup> Instead of providing water to these desperate families, the city has caused further harm by “prosecut[ing] or threaten[ing] with prosecution for violating . . . a law that makes it a felony to tamper with water lines and other utilities.”<sup>276</sup> Likewise, those who protested the mass water shutoffs by engaging in passive demonstrations to block trucks carrying out water shutoffs have also been subjected to criminal charges for “disorderly conduct.”<sup>277</sup> Such criminalization compounds the human rights violations represented by the shutoff and illustrate the Detroit city government’s failure to respect the basic human rights of its most vulnerable residents.

60. Collectively, the failure of the U.S. to follow due process principles when carrying out mass water shutoffs underscores the need for an immediate moratorium on such shutoffs and the establishment of strong protections against the reoccurrence of these violations.

## 5. Water Shutoffs Pose Additional Risks to Women, Children, and Other Vulnerable Groups

61. In addition to economic impacts, women are particularly vulnerable to the health risks of water shutoffs. Residents also reported that utilities in these cities fail to take into account risks of special danger to vulnerable individuals like the disabled, elderly, children, and pregnant women, who may be residing in the home scheduled for shutoff.<sup>278</sup> None of the cities described above have instituted mandatory reporting mechanisms to inquire about the presence of vulnerable individuals living in households scheduled for shutoff.<sup>279</sup> Utilities in cities like Detroit do not provide special protections against shutoffs for households where vulnerable

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<sup>275</sup> Alice Jennings, Zocalo. How Detroit’s Water Problem Became a Humanitarian Crisis: Public Health Is at Stake When You Cut Off People Who Can’t Pay (May 29, 2015), available at <http://www.zocalopublicsquare.org/2015/05/29/detroits-water-problem-humanitarian-crisis-2/ideas/nexus/>.

<sup>276</sup> National Conference of Black Lawyers, Statement on Detroit Mass Water Shut-Offs (Dec. 7, 2015), available at <http://www.ncbl.org/2015/12/21/detroit-mass-water-shut-offs/>.

<sup>277</sup> Sarah Cwiek, Michigan Radio. In uncommon move, judge steps in to halt trial of Detroit water protesters (Dec. 2, 2015), available at <http://michiganradio.org/post/uncommon-move-judge-steps-halt-trial-detroit-water-protesters#stream/0>.

<sup>278</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015), available at <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>279</sup> Office of the UN High Commissioner for Human Rights, Detroit’s water shut-offs target the poor, vulnerable and African Americans (Oct. 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15190&LangID=E>; MintPress News Desk, Baltimore Shutting Off Water to Thousands of Households While Ignoring Corporate Debtors (April 15, 2015), available at <http://www.mintpressnews.com/baltimore-shutting-off-water-to-thousands-of-households-while-ignoring-corporate-debtors/204373/>.

individuals such as pregnant women or children reside. As noted above, these practices can severely exacerbate the health consequences of water shutoffs. Accordingly, they fail to take into account risks of special danger to vulnerable individuals like the disabled, elderly, children, and nursing or pregnant women, who may be residing in the home scheduled for shutoff.<sup>280</sup>

62. Inability to maintain household cleanliness and personal hygiene (including menstruation and post sexual intercourse) as a result of water shutoffs impacts women and girls to a greater degree due to biology and gender-based divisions of labor (e.g., laundry, bathing, dish washing).<sup>281</sup> Water shutoffs deprive victims of access to adequate sanitation and hygiene; in the words of one Detroit resident, “we’re filling up our buckets to flush the toilet, to bathe with [...]. We can’t clean, we can’t wash ourselves, it’s really disgusting, and we need help. Half the people on my block have had their water turned off; we can’t pay our bills.”<sup>282</sup> For girls, water shutoffs cause a lack of access to adequate hygiene that they experience as humiliating and which may prevent them from attending school. One teenage girl whose family’s water had been shut off reported that “she often didn’t bathe before school, had body odor, and sometimes had to shower in the homes of neighbors, friends or family, an experience she says was degrading.”<sup>283</sup> Girls who are unable to bathe may either avoid school out of embarrassment or risk anxiety, shame, and harassment when they do attend.<sup>284</sup> This aspect of shutoffs may affect first responders and service providers as well: Detroit residents report that residential water shutoffs and unaffordable water rates impact teachers, nurse and social workers in women-dominated, service careers when confronted with moral, ethical and legal obligations to address the needs of children and families who lack adequate residential water service.<sup>285</sup>

63. Water shutoffs have severe economic consequences for women, particularly those who are head of household. Women are more likely to be caretakers of children so lack of water access has a greater impact.<sup>286</sup> Single-female headed households that are no longer eligible for government assistance for needy children (due to five-year lifetime limits on the government assistance program for such families (TANF)) are disproportionately impacted by residential water shutoffs and unaffordable water bills.<sup>287</sup> Families without clean, affordable water often

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<sup>280</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015), available at <https://conversationsthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>281</sup> Information provided by the Michigan Welfare Rights Organization (on file with authors).

<sup>282</sup> USHRN, Testimonies of Human Rights at Home: Documenting Injustice in the United States (2015), p. 28, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/testimonies\\_of\\_human\\_rights\\_at\\_home\\_-\\_documenting\\_injustice\\_in\\_the\\_united\\_states.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/testimonies_of_human_rights_at_home_-_documenting_injustice_in_the_united_states.pdf).

<sup>283</sup> Commentary: Exploring the Public Health Consequences of Detroit’s Water Shutoffs (Oct. 13, 2015), available at [http://www.mlive.com/news/detroit/index.ssf/2015/10/commentary\\_exploring\\_the\\_publi.html](http://www.mlive.com/news/detroit/index.ssf/2015/10/commentary_exploring_the_publi.html).

<sup>284</sup> Commentary: Exploring the Public Health Consequences of Detroit’s Water Shutoffs (Oct. 13, 2015), available at [http://www.mlive.com/news/detroit/index.ssf/2015/10/commentary\\_exploring\\_the\\_publi.html](http://www.mlive.com/news/detroit/index.ssf/2015/10/commentary_exploring_the_publi.html).

<sup>285</sup> Information provided by the Michigan Welfare Rights Organization (on file with authors).

<sup>286</sup> Information provided by the Michigan Welfare Rights Organization (on file with authors).

<sup>287</sup> Information provided by the Michigan Welfare Rights Organization (on file with authors).



have to travel significant distances to purchase heavy cases of bottled water and/or gallons of water; and at prices that are greater than equivalent units of gasoline.<sup>288</sup>

64. For those who still have water, women may face additional safety concerns as a result of shutoffs in surrounding neighborhoods. In Detroit, elderly women living alone report residential safety concerns and fears, of criminalization or other concerns, when water has been stolen from spigots on the side of their homes by desperate neighbors or strangers.<sup>289</sup>

65. Water shutoffs may also place mothers at risk of losing custody of their children.<sup>290</sup> Low income families, often female-led, have additional challenges in that not having certain utilities at home can be deemed as neglect and lead to the removal of minor children by government agencies.<sup>291</sup> In Detroit, as in many jurisdictions in the U.S.,<sup>292</sup> including Baltimore,<sup>293</sup> “[n]ot having water service immediately makes a home uninhabitable under Detroit ordinances[.]”<sup>294</sup> which means that once a water shut-off takes place, “[c]hildren under State law can be immediately taken from their parents or family and placed under protective services.”<sup>295</sup> Alarmingly, the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation received information that State agencies “separated [children] from parents and placed [them] into custodial care, based on applicable child protection laws that seek to safeguard the best interest of the child, because the household water supply was shut off.”<sup>296</sup>

66. Residents of several U.S. jurisdictions where water shut-offs take place have reported incidents reflecting this problem. At a recent consultation between the U.S. government and civil society, a presenter provided information about “[a] single mother in Southern Illinois . . .

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<sup>288</sup> Information provided by the Michigan Welfare Rights Organization (on file with authors).

<sup>289</sup> Information provided by the Michigan Welfare Rights Organization (on file with authors).

<sup>290</sup> See Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 33-34, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>291</sup> Information provided by the Michigan Welfare Rights Organization (on file with authors).

<sup>292</sup> Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), p. 34, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf> (reporting that “Twenty-one [U.S.] states define “child neglect” in a manner that may include a parent’s inability to provide water.”).

<sup>293</sup> Carl Gibson, Think Progress, “This City Could Become the Next Detroit,” (April 4, 2015), available at <http://thinkprogress.org/economy/2015/04/04/3642935/baltimore-water-shutoffs/>.

<sup>294</sup> Alice Jennings, Lansing Water Hearings by Alice Jennings, The Boggs Blog (June 7, 2015), available at <https://conversationthatyouwillneverfinish.wordpress.com/2015/06/07/lansing-water-hearings-by-alice-jennings/>.

<sup>295</sup> Office of the UN High Commissioner for Human Rights, Detroit’s water shut-offs target the poor, vulnerable and African Americans (Oct. 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15190&LangID=E>.

<sup>296</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶51, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

[who] lost custody of her three children to state social services due to her inability to afford running water in her home[.]”<sup>297</sup> A recent media investigation of child-removal cases in Michigan found “more than two dozen instances statewide in which utility shutoffs were a factor in the state’s decision to remove children[,] includ[ing] almost a dozen cases in which there were no allegations of abuse, and the lack of utilities was one of the main reasons for removal.”<sup>298</sup> Observers of the Detroit water shutoffs, including the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation and the UN Special Rapporteur on Adequate Housing, also reported that parents feared that their children would be placed in state custody after a shutoff.<sup>299</sup> Parents facing shutoffs in Baltimore also fear that they will lose custody of their children as a result.<sup>300</sup>

67. Both because of this threat and the inability to provide a sanitary home for their children, parents also reported that shut-offs caused them to send their children to live with friends and relatives.<sup>301</sup> For example, Detroit residents reported sending children to live with relatives so that the child welfare agency would not remove them from the home or so the children could have access to running water.<sup>302</sup> In one case, an 8-year old girl sent to live with her extended family was found by a police officer on the streets of Detroit at 2am; she was trying to find her way home because she was afraid she would never see her mother again.<sup>303</sup> Detroit teachers,

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<sup>297</sup> International Human Rights Clinic, Berkeley Law, “United States Government Consultation on Environmental Issues Relating to the Universal Periodic Review: A Summary. October 7, 2014, UC Berkeley School of Law,” p. 10, available at [https://www.law.berkeley.edu/files/UPR\\_Enviro\\_Consultation\\_Outcome\\_Doc\\_141208.pdf](https://www.law.berkeley.edu/files/UPR_Enviro_Consultation_Outcome_Doc_141208.pdf).

<sup>298</sup> Laura Gottesdiener, *Detroit is Ground Zero in the New Fight for Water Rights*, The Nation, July 15, 2015, available at <http://www.thenation.com/article/detroit-is-ground-zero-in-the-new-fight-for-water-rights/>.

<sup>299</sup> Joint Press Statement by United Nations 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), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>; <http://america.aljazeera.com/articles/2014/10/20/detroit-water-un.html>; Dianne Feeley, *Detroit's Crisis Deepens as Water Shutoffs Hit Thousands*, (Jul. 16, 2014), available at <https://solidarity-us.org/node/4218>; Food and Water Watch, *Congressional Representatives and 157,975 Concerned Americans Demand that President Obama and the Department of Health and Human Services Intervene in Detroit Water Crisis*, (Jul. 30, 2014), available at <http://www.foodandwaterwatch.org/pressreleases/congressional-representatives-and-157975-concerned-americans-demand-that-president-obama-and-the-department-of-health-and-human-services-intervene-in-detroit-water-crisis/>.

<sup>300</sup> Carl Gibson, Think Progress, “This City Could Become the Next Detroit,” (April 4, 2015), available at <http://thinkprogress.org/economy/2015/04/04/3642935/baltimore-water-shutoffs/>.

<sup>301</sup> Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), p. 34, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>302</sup> Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), p. 34, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>303</sup> Laura Gottesdiener, Al Jazeera. *UN officials “shocked” by Detroit’s mass water shutoffs* (Oct. 20, 2014), available at <http://america.aljazeera.com/articles/2014/10/20/detroit-water-un.html>.

who are required by state law to report any violations of child welfare standards, reported that they tell their students not to talk about water shut-offs at home to avoid triggering this rule.<sup>304</sup>

68. This aspect of the problem does not appear to have been resolved. At a June 2015 Michigan State Legislature hearing on the water shutoffs, several women whose water had been shut off testified to their fear that their children would be taken if child welfare authorities became aware of the situation.<sup>305</sup> For example, Detroit residents Nicole Hill<sup>306</sup> and Maurikia Lyda<sup>307</sup> testified that they were forced to make alternative living arrangements for their children during the shutoffs, partly due to the fact they were worried that the state child welfare agency would take custody of their children.<sup>308</sup>

69. This practice compounds the harm caused by the water shutoff and places children at risk of being separated from their families, compromising the State's obligation to act in the best interests of the child. In light of this information, the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation "expresse[d] concern about the discriminatory impact of water shut-off policies, particularly for low-income children[.]"<sup>309</sup> Advocates continue to push the federal and state governments to adopt stronger legal protections against shut-offs in homes where children are living<sup>310</sup> and to modify child welfare laws to require that water service be restored in lieu of removing children from the home.

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<sup>304</sup> Laura Gottesdiener, Al Jazeera. *UN officials "shocked" by Detroit's mass water shutoffs* (Oct. 20, 2014), available at <http://america.aljazeera.com/articles/2014/10/20/detroit-water-un.html>.

<sup>305</sup> Water Affordability Hearing at Michigan State Legislature, unedited video, available at <https://vimeo.com/129853822>.

<sup>306</sup> For more information about Ms. Hill's situation, see Laura Gottesdiener, Al Jazeera. *UN officials "shocked" by Detroit's mass water shutoffs* (Oct. 20, 2014), available at <http://america.aljazeera.com/articles/2014/10/20/detroit-water-un.html>.

<sup>307</sup> Ms. Lyda is the lead plaintiff in a class action suit against the City of Michigan for the mass water shutoffs, and Ms. Hill is also a plaintiff in the case. See *Lyda et al v. City of Detroit*, U.S. Bankr. Ct. E.D. Mich. (July 30, 2014), available at <http://www.aclumich.org/sites/default/files/DetroitWater-Lawsuit.pdf>

<sup>308</sup> *Lyda et al v. City of Detroit*, U.S. Bankr. Ct. E.D. Mich. (Aug. 2014), p. 16, available at [http://www.naacpldf.org/files/case\\_issue/LYDA,%20et%20al.%20v.%20Detroit-Brief%20in%20Support%20of%20Plaintiffs%20Motion%20for%20Temporary%20Restraining%20Order.pdf](http://www.naacpldf.org/files/case_issue/LYDA,%20et%20al.%20v.%20Detroit-Brief%20in%20Support%20of%20Plaintiffs%20Motion%20for%20Temporary%20Restraining%20Order.pdf)

<sup>309</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶51, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>310</sup> Massachusetts state law, for example, requires *private* water providers to refrain from service disconnections in homes where children under 12 months of age reside. 220 C.M.R. § 25.03(1)(a).

## 6. Promising Practices for Affordability in the United States: Philadelphia’s New Income-Based Water Rate Assistance Program<sup>311</sup>

70. In the midst of the crisis described above, a small number of U.S. jurisdictions have begun developing local water affordability measures that carry some promise for better practices on this issue.<sup>312</sup> These measures focus on developing a water rate structure that is tied to income, in order to assure that all households have access to affordable water service. This section of the report provides a brief overview of one of these measures: the city of Philadelphia’s new Income-Based Water Rate Assistance Program (IWRAP).<sup>313</sup> This program, which the Philadelphia City Council adopted unanimously on November 19, 2015,<sup>314</sup> essentially subsidizes the water rates of lower income customers.<sup>315</sup> This approach has the potential to bring Philadelphia into greater compliance with the human right to water and could potentially be replicated in other jurisdictions.<sup>316</sup>

71. In adopting the new program, the City Council appears to have been motivated by human rights standards, recognizing the importance of the human right to water. In announcing the new program, Philadelphia City Councilwoman Maria Quiñones-Sánchez, the primary author of the legislation, quoted the UN Special Rapporteurs who investigated the Detroit water shutoffs, stating, “[i]t is contrary to human rights to disconnect water from people who simply do not

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<sup>311</sup> This section seeks to respond to the request of this honorable Commission for more information regarding best practices to address the violations raised here.

<sup>312</sup> U.S. jurisdictions that currently offer some form of income-based water affordability programs include Chicago, St. Louis, and Cleveland. Cassie Owens, Next City. *Philly City Council Helps with Water Shutoffs and Blight Prevention* (June 25, 2015), available at <https://nextcity.org/daily/entry/philadelphia-water-bills-low-income-payment-plans>;

<sup>313</sup> For the full text of the IWRAP law, see Philadelphia City Council, Legislation: #140607-AA (Nov. 19, 2015), available at <https://phila.legistar.com/LegislationDetail.aspx?ID=1821444&GUID=EE8B7A07-A75F-4EBD-A0BF-4D71FEB5919B&Options=ID|Text|&Search=IWRAP>. A copy of the legislation has also been included as an annex to this report.

<sup>314</sup> Philadelphia City Council, Transcript of City Council Meeting (Nov. 19, 2015), p. 70, available at <http://legislation.phila.gov/transcripts/Stated%20Meetings/2015/sm111915.pdf>. The Philadelphia City Council initially passed the legislation on June 18, 2015, but it later pulled the bill for revisions. The version that passed on November 19, 2015 is the final one. See Philadelphia City Councilwoman Maria Quiñones-Sánchez, Press Release: *Quiñones-Sánchez Legislation to Improve Water Bill Collections, Protect Low-Income Water Customers, Passes City Council* (June 18, 2015), available at <http://wethepeopleofdetroit.com/2015/06/22/philadelphia-passes-income-based-water-affordability-plan/>.

<sup>315</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015). In addition to providing legal representation for low-income Philadelphians in utility cases, Community Legal Services (CLS) is the Public Advocate for water customers in Philadelphia and represented ratepayers in the design of the new income-based program.

<sup>316</sup> See Christine Ferretti, The Detroit News. *Advocates seek income-based water bills for Detroiters* (July 29, 2015), available at <http://www.detroitnews.com/story/news/local/detroit-city/2015/07/29/water/30830703/>. The Philadelphia affordability plan is relatively similar to the water affordability plan presented by Detroit civil society in 2006 that the city refused to implement, and both plans were designed with the input of the same economist, Roger Colton. Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

have the means to pay their bills.”<sup>317</sup> IWRAP accordingly represents an important example of how local governments can apply a human rights framework to local policies that affect fundamental human rights like the right to water.<sup>318</sup>

72. Philadelphia residents have experienced many of the same affordability-related barriers to full enjoyment of the human right to water as Detroit, Baltimore, and Boston residents.<sup>319</sup> According to attorneys from Community Legal Services of Philadelphia (CLS), which represents low-income Philadelphians facing utility shutoffs, many of the city’s low-income families “are living without water . . . they are living in the Stone Age in Philadelphia.”<sup>320</sup> Water service has become increasingly unaffordable for the city’s low-income residents; in 2013, the Philadelphia Water Department increased water rates by 17.5% over three years.<sup>321</sup> Low-income residents like Keith Crawley, a sixty year-old grandfather who lives on a fixed income, report that they cannot afford their water bills and must face the risk of a water shutoff to pay for other essentials.<sup>322</sup> Recent reports indicate that this situation is common in Philadelphia, where up to 40% of residents have fallen behind on their water bills.<sup>323</sup> Frequent water pipe breaks also contribute to unaffordable bills.<sup>324</sup> Like the cities described above, water shutoffs in Philadelphia can have devastating consequences for individual families and their communities, leading to public health problems and an increase in foreclosures caused by the city collecting unpaid water bills through tax lien sales on homes.<sup>325</sup>

73. Existing billing practices and assistance programs have failed to alleviate this crisis. According to City Councilwoman Quiñones-Sánchez, “[t]hree flaws in Philadelphia’s current

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<sup>317</sup> Philadelphia City Councilwoman Maria Quiñones-Sánchez, Press Release: *Quiñones-Sánchez Legislation to Improve Water Bill Collections, Protect Low-Income Water Customers, Passes City Council* (June 18, 2015), available at <http://wethepeopleofdetroit.com/2015/06/22/philadelphia-passes-income-based-water-affordability-plan/>.

<sup>318</sup> JoAnn Kamuf Ward, *Widening the Circle, Changing the Conversation*, Human Rights at Home Blog (July 23, 2015) available at [http://lawprofessors.typepad.com/human\\_rights/2015/07/widening-the-circle-changing-the-conversation.html](http://lawprofessors.typepad.com/human_rights/2015/07/widening-the-circle-changing-the-conversation.html).

<sup>319</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>320</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>321</sup> Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, *The Inquirer* (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>322</sup> Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, *The Inquirer* (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>323</sup> Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, *The Inquirer* (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>324</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015) (noting that Philadelphia also shuts off water service to homes that fail to pay the high cost for water pipe repairs within certain timeframes).

<sup>325</sup> Cassie Owens, Next City. *Philly City Council Helps with Water Shutoffs and Blight Prevention* (June 25, 2015), available at <https://nextcity.org/daily/entry/philadelphia-water-bills-low-income-payment-plans> (reporting that according to 2014 Philadelphia Water Department data, liens for water, wastewater, and stormwater bills added up to \$255 million); Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015) (reporting that since 2010, they have seen hundreds of families struggling to keep their homes when faced with a tax lien sale for unpaid utility bills and that for 2014, over 170,000 residential parcels had tax liens on them).



water and waste water billing practices make water service unaffordable or unattainable for a significant portion of the City's population: water bills are too expensive for low income households, enrollment in assistance programs can be prohibitively difficult, and assistance is often undermined by the need to make burdensome additional payments on aged debts."<sup>326</sup> CLS confirmed that it has served a large number of low-income residents suffering from water shutoffs due to unaffordable water bills and that the city needed the new program because its existing water affordability assistance plan is inaccessible and inadequate.<sup>327</sup> In 2014, only 7,200 people were enrolled in the Philadelphia Water Department's low-income assistance programs.<sup>328</sup> In comparison, over 61,000 people were enrolled in Philadelphia Gas Work's similar program.<sup>329</sup> According to CLS, citing a 50% denial rate for the program, this discrepancy is due to high barriers of entry including burdensome paperwork and inconsistent review of applications.<sup>330</sup> For example, they cited to cases where the city denied access one month but granted it the next where nothing in the application had changed.<sup>331</sup>

74. The inaccessibility of the existing assistance programs exacerbates the increase in foreclosures caused by unaffordable water rates. CLS reported that of the hundreds of utility bill tax lien sale cases they have seen, most of the families facing foreclosure should have been eligible for the assistance program but had been unable to enroll.<sup>332</sup> Even for those who do enroll, the assistance program excludes tenants, does not provide a large enough subsidy to make water affordable for most eligible families, participation is limited to homeowners who have already fallen behind on their bill, and once enrolled, a family must reapply every year.<sup>333</sup> Although CLS tries to assist families in accessing the program, they have found that due to these barriers, "it's a tremendous strain on everyone's resources."<sup>334</sup>

75. In replacing its existing program with IWRAP, Philadelphia seeks to "join the forefront in best practices related to water access" by ensuring access to affordable water, improving revenue collections and water conservation, and reducing foreclosures caused by unpaid water

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<sup>326</sup> Philadelphia City Councilwoman Maria Quiñones-Sánchez, *Factsheet: Affordable Access to Water* (2015) (on file with authors).

<sup>327</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015); see also Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, *The Inquirer* (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>328</sup> Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, *The Inquirer* (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>329</sup> Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, *The Inquirer* (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>330</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015); Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, *The Inquirer* (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>331</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>332</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>333</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015); Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, *The Inquirer* (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>334</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).



bills.<sup>335</sup> Several members of Philadelphia’s City Council developed the bill in partnership with CLS, which serves as the Public Advocate for the city’s water customer.<sup>336</sup> The final version of the legislation states clearly that water bills under IRWAP shall be affordable and provides a detailed framework for achieving this mandate, though it leaves the design of certain program elements to the discretion of the relevant regulatory entities.<sup>337</sup>

76. In contrast to the previous model, IWRAP is intended to be preventive and will be open to all low-income residential customers, including tenants.<sup>338</sup> According to Councilwoman Quiñones-Sánchez, the program will feature “a streamlined and transparent application process.”<sup>339</sup> The new program, modeled on Philadelphia’s successful tax repayment program, will offer income-based payment plans and discounts to provide accessible water to lower-income Philadelphians and protect them from the consequences of unpaid water bills.<sup>340</sup> Specifically, the city will develop income-based tiers to determine water affordability for low-income households and charge water rates as a percentage of household income.<sup>341</sup>

77. To avoid waste and improve conservation, the program also operates in connection to water conservation assistance programs.<sup>342</sup> As a condition of enrollment in IWRAP, a customer must accept and reasonably maintain any water conservation measure or treatment provided by the city’s water conservation assistance programs.<sup>343</sup> In addition to improving water conservation, this aspect of the program also protects families from infrastructure problems like water leaks that can cause water bills to rise.<sup>344</sup>

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<sup>335</sup> Philadelphia City Councilwoman Maria Quiñones-Sánchez, Press Release: *Quiñones-Sánchez Legislation to Improve Water Bill Collections, Protect Low-Income Water Customers, Passes City Council* (June 18, 2015), available at <http://wethepeopleofdetroit.com/2015/06/22/philadelphia-passes-income-based-water-affordability-plan/>; JoAnn Kamuf Ward, *Widening the Circle, Changing the Conversation*, Human Rights at Home Blog (July 23, 2015) available at [http://lawprofessors.typepad.com/human\\_rights/2015/07/widening-the-circle-changing-the-conversation.html](http://lawprofessors.typepad.com/human_rights/2015/07/widening-the-circle-changing-the-conversation.html).

<sup>336</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>337</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>338</sup> Unlike the few existing income-based water affordability programs in the U.S., the Philadelphia IWRAP does not require that a customer already be in arrears in order to enroll, nor does it require a large downpayment of the arrearage or a showing of inability to pay. A customer must only show that their household income falls within one of the income tiers established in the legislation. Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>339</sup> Philadelphia City Councilwoman Maria Quiñones-Sánchez, Press Release: *Quiñones-Sánchez Legislation to Improve Water Bill Collections, Protect Low-Income Water Customers, Passes City Council* (June 18, 2015), available at <http://wethepeopleofdetroit.com/2015/06/22/philadelphia-passes-income-based-water-affordability-plan/>.

<sup>340</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015); Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, The Inquirer (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>341</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>342</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>343</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>344</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

78. The program also seeks to reduce consumer water debt, shutoffs, and foreclosures caused by unpaid water bills. IWRAP will offer a debt forgiveness plan, though the details of this aspect of the program have yet to be developed.<sup>345</sup> The legislation further protects against shutoffs by directing the relevant regulatory entities to postpone pending enforcement measures to allow the customer time to apply to IWRAP.<sup>346</sup> Although the legislation does not halt foreclosures caused by unpaid water bills, it increases the required notices the city must issue before a sale takes place, and its proponents intend for the program to significantly reduce this problem.<sup>347</sup> Under the legislation, the city has until late 2017 to implement the new program.<sup>348</sup>

79. Experts like Community Legal Services believe that IWRAP will have a positive impact on low-income Philadelphians. According to Community Legal Services, this new approach represents an important policy shift away from assistance, which is about charity, to affordability, which is about fairness.<sup>349</sup> By passing this legislation, according to CLS, “Philadelphia has taken a huge step in creating a framework for an affordable [water] bill program.”<sup>350</sup>

80. In addition to the benefits to low-income residents, IWRAP provides benefits to both the local government and the city as a whole. For example, by improving affordability, IWRAP will help ensure that the city gains revenue from utilities.<sup>351</sup> Although the Philadelphia Water Department eventually collects about 95% of bills due, it lost approximately \$18 million in unpaid bills in the 2015 fiscal year.<sup>352</sup> IWRAP is designed to close this gap on the theory that low-income residents are more likely to pay a bill they can afford, which will ultimately improve collections.<sup>353</sup> Those who are not in favor of IWRAP fear that this program passes costs on to other residents.<sup>354</sup> However, because shutoffs affect entire neighborhoods by causing public health problems and increasing foreclosures and the spread of urban blight, fewer shutoffs are

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<sup>345</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015); Philadelphia City Councilwoman Maria Quiñones-Sánchez, Press Release: *Quiñones-Sánchez Legislation to Improve Water Bill Collections, Protect Low-Income Water Customers, Passes City Council* (June 18, 2015), available at <http://wethepeopleofdetroit.com/2015/06/22/philadelphia-passes-income-based-water-affordability-plan/>.

<sup>346</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>347</sup> Cassie Owens, Next City. *Philly City Council Helps with Water Shutoffs and Blight Prevention* (June 25, 2015), available at <https://nextcity.org/daily/entry/philadelphia-water-bills-low-income-payment-plans>; Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>348</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>349</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>350</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>351</sup> Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015); Philadelphia City Councilwoman Maria Quiñones-Sánchez, Press Release: *Quiñones-Sánchez Legislation to Improve Water Bill Collections, Protect Low-Income Water Customers, Passes City Council* (June 18, 2015), available at <http://wethepeopleofdetroit.com/2015/06/22/philadelphia-passes-income-based-water-affordability-plan/>.

<sup>352</sup> Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, The Inquirer (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>353</sup> Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, The Inquirer (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

<sup>354</sup> Tricia L. Nadolny, *City Testing the Water on Income-Based Utilities*, The Inquirer (Sept. 7, 2015) available at [http://www.philly.com/philly/news/20150907\\_City\\_testing\\_the\\_water\\_on\\_income-based\\_utility\\_bills.html](http://www.philly.com/philly/news/20150907_City_testing_the_water_on_income-based_utility_bills.html).

good for the entire community.<sup>355</sup> If IWRAP successfully makes water more affordable and reduces shutoffs, it may provide a model that can be replicated in other jurisdictions suffering from similar problems, such as Detroit and Baltimore.

## B. Low-Income, Minority, and Indigenous Communities in the U.S. Disproportionately Lack Access to Clean and Safe Drinking Water

81. Although quality is an essential component of the human right to water, thousands of low-income, minority, and indigenous people in the U.S. lack access to clean and safe drinking water every year. In addition to posing a serious public health and safety problem, this disproportionate lack of access to safe water reveals structural discrimination faced by the most vulnerable communities in the U.S. Weak and inconsistent enforcement of U.S. water quality standards and gaps in these standards result in U.S. failure to ensure that all residents can equally rely on consistent access to water that will not harm their health or the health of their families. This problem also disproportionately affects rural communities, although as outlined above, devastating incidents of water contamination affect urban communities like Flint, Michigan as well. Low-income minority and indigenous communities in California's Salinas and San Joaquin Valleys and the indigenous Navajo Nation in northwestern New Mexico face severe exposure to toxic drinking water contamination allowed by the State. This section provides a brief overview of international and domestic standards relating to water quality and presents detailed information about case studies illustrating lack of equal access to clean and safe drinking water in the U.S.

### 1. The Human Right to Water Requires that Water Be of Sufficient Quality, But Gaps in U.S. Law and Policy Allow Contamination to Affect Vulnerable Communities

82. Under UN standards, the human right to water requires that water be of sufficient quality, which means that it must be safe and not pose a threat to human health.<sup>356</sup> The obligation to

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<sup>355</sup> Cassie Owens, Next City. *Philly City Council Helps with Water Shutoffs and Blight Prevention* (June 25, 2015), available at <https://nextcity.org/daily/entry/philadelphia-water-bills-low-income-payment-plans>; Santa Clara IHRC Interview with Community Legal Services of Philadelphia (Nov. 19, 2015).

<sup>356</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), para. 12, available at [http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

respect requires that States refrain from contaminating water, and the obligation to protect requires States to take active measures to prevent contamination by third parties, including, according to the UN Special Rapporteur on safe drinking water and sanitation, “by agriculture, industry and wastewater[.]”<sup>357</sup> In addition to protecting water quality, CESCR General Comment 15 specifies that States should prioritize water for household use – which includes drinking, cooking, bathing, and basic hygiene – rather than for industrial or agricultural use.<sup>358</sup> The human rights framework does not include specific standards for water quality, but the Rapporteur has cited approvingly to the World Health Organization “guidelines for drinking water quality, which define relevant limits for a wide range of potentially harmful substances to prevent ‘significant risk to health over a lifetime of consumption’.”<sup>359</sup> Although the World Health Organization directs States to adapt these guidelines to domestic conditions,<sup>360</sup> this recognition of the cumulative impact of exposure to contaminants over a person’s lifetime is largely absent from U.S. law and policy on drinking water quality.<sup>361</sup>

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<sup>357</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 17, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203); see also Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), para. 23, available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>358</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), paras. 2,6, available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>359</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 17, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203) (citing World Health Organization, *Guidelines for Drinking Water Quality*, 4th ed. (Geneva, World Health Organization, 2011), p. 1, available at [http://apps.who.int/iris/bitstream/10665/44584/1/9789241548151\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/44584/1/9789241548151_eng.pdf)) (internal citations omitted).

<sup>360</sup> World Health Organization, *Guidelines for Drinking Water Quality*, 4th ed. (Geneva, World Health Organization, 2011), p. 1, available at [http://apps.who.int/iris/bitstream/10665/44584/1/9789241548151\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/44584/1/9789241548151_eng.pdf).

<sup>361</sup> Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), pp. 73-4, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf) (noting that consideration of cumulative impacts is absent from both the formation of drinking water standards under the SDWA and industrial permitting decisions pursuant to the CWA). In this context, the concept of cumulative impacts refers to the total exposures an individual or community experiences over the course of time; the emerging best practice of cumulative impact assessments includes the consideration of this more complete picture in decisionmaking processes that could permit additional pollution sources to affect a particular community. See Rachel Level, Bloomberg Energy and Environment Blog, *One New Environmental Justice Law You Should Know About* (Oct. 14, 2015), available at <http://www.bna.com/one-new-environmental-b57982059441/>. The National Environmental Justice Advisory Council of the U.S. EPA has defined cumulative risks and impacts as “the concept of vulnerability, a matrix of physical, chemical, biological, social, and cultural factors which result in certain communities and sub-populations being more susceptible to environmental toxins, being more exposed to toxins, or having compromised ability to cope with and/or recover from such exposure.” National Environmental Justice Advisory Council, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* (Dec.

83. As discussed above, in the United States, the Clean Water Act (CWA) is the primary federal law governing water pollution<sup>362</sup> and the Safe Drinking Water Act (SDWA) is the primary federal law governing drinking water quality.<sup>363</sup> Both laws provide some important protections that discharge some portion of U.S. obligations to provide water of sufficient quality, but gaps in these laws and their enforcement leave significant aspects of drinking water quality unprotected by federal law or regulation.<sup>364</sup> Neither law provides for consideration of cumulative impacts; the SDWA does not include cumulative impacts in the regulatory process for formation of drinking water standards, nor does the CWA include cumulative impacts in the process of industrial permitting for water pollution.<sup>365</sup> Water policy experts note that this failure to consider cumulative impacts also includes a failure to attend to “the protection of vulnerable populations, such as children or pregnant women, even when contaminants are shown to be particularly harmful for these groups.”<sup>366</sup> These regulatory gaps stand in stark contrast to emerging data indicating significant racial, ethnic, and socioeconomic disparities in the distribution of environmental harms in the U.S. that result in the concentration of pollution and other hazards in low-income minority communities.<sup>367</sup>

84. U.S. federal protections of drinking water quality also fail to extend to certain significant sources of drinking water. For example, although approximately 43 million people – primarily in low-income rural areas – depend on private wells for drinking water and government testing

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2004), p. i, available at <http://www3.epa.gov/environmentaljustice/resources/publications/nejac/nejac-cum-risk-rpt-122104.pdf>.

<sup>362</sup> Clean Water Act (CWA) Compliance Monitoring, The United States Environmental Protection Agency, accessed at <http://www2.epa.gov/compliance/clean-water-act-cwa-compliance-monitoring>

<sup>363</sup> 42 U.S.C. §§ 300f *et. seq.* (2006); see also U.S. Environmental Protection Agency, Summary of the Safe Drinking Water Act, available at <http://www.epa.gov/laws-regulations/summary-safe-drinking-water-act>.

<sup>364</sup> See discussion *supra*, at p. XX.

<sup>365</sup> Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), pp. 73-4, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf) (noting that consideration of cumulative impacts is absent from both the formation of drinking water standards under the SDWA and industrial permitting decisions pursuant to the CWA). It should be noted that the U.S. Environmental Protection Agency has been in the midst of a slow process to consider the inclusion of a cumulative impacts assessment in the environmental permitting process, including for CWA and SDWA permits, but it is not clear whether any meaningful action will result from this process. U.S. Environmental Protection Agency, Considering Environmental Justice in Permitting (2014), available at <http://www3.epa.gov/environmentaljustice/plan-ej/permitting.html>.

<sup>366</sup> Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), p. 74, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf) (noting that consideration of cumulative impacts is absent from both the formation of drinking water standards under the SDWA and industrial permitting decisions pursuant to the CWA).

<sup>367</sup> See, e.g., Lara Cushing, MPH, MA, John Faust, PhD, Laura Meehan August, MPH, Rose Cendak, MS, Walker Wieland, BA, and George Alexeeff, PhD. Racial/Ethnic Disparities in Cumulative Environmental Health Impacts in California: Evidence From a Statewide Environmental Justice Screening Tool (CalEnviroScreen 1.1). *American Journal of Public Health*, Vol. 105, No. 11 (November 2015), available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2015.302643>.



has revealed a high incidence of water contamination in private wells, the SDWA does not regulate this important source of drinking water.<sup>368</sup> Similarly, the federal U.S. government largely fails to regulate groundwater, despite the fact that more than half of U.S. residents, including many low-income and indigenous communities, rely upon it as their primary source of drinking water.<sup>369</sup> For example, more than 85 percent of California residents rely upon groundwater as their primary source of drinking water, and the majority of California water systems that rely solely on contaminated groundwater for drinking water serve small, rural, and low-income communities.<sup>370</sup> In New Mexico, where ten percent of the population is indigenous,<sup>371</sup> roughly 80% of communities rely on groundwater.<sup>372</sup> According to water policy experts, “the [groundwater quality] regulations that do exist have large holes[,]”<sup>373</sup> and federal regulators fail to prioritize groundwater cleanup appropriately; specifically, they note that the federal government’s “overall failure to more proactively manage groundwater [] compounds the already existing inequalities in water regulation in low-income communities and communities of color.”<sup>374</sup>

85. A small number of U.S. states have begun to adopt local legislation to recognize the human right to water and provide stronger protections for drinking water quality. As discussed above, California supplemented its existing drinking water protections by enacting a human right to water law through Assembly Bill 685 in 2012.<sup>375</sup> The law recognizes that all humans have the

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<sup>368</sup> Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), p. 73, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf). Many states, including California, do not require testing of private well water quality. See, e.g., California State Water Resources Control Board. *Communities that Rely on a Contaminated Groundwater Source for Drinking Water: Report to the Legislature* (Jan. 2013), p. 8, available at <http://www.waterboards.ca.gov/gama/ab2222/docs/ab2222.pdf>.

<sup>369</sup> Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), p. 73, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf).

<sup>370</sup> California State Water Resources Control Board. *Communities that Rely on a Contaminated Groundwater Source for Drinking Water: Report to the Legislature* (Jan. 2013), pp. 7-14, available at <http://www.waterboards.ca.gov/gama/ab2222/docs/ab2222.pdf>; see also Thomas Harter, et al., *Addressing Nitrate in California’s Drinking Water: With a Focus on Tulare Lake Basin and Salinas Valley Groundwater*, (University of California, Davis, Center for Watershed Sciences, Report for the SWRCB SBX2 1 Report to the Legislature, January 2012), available at <http://groundwaternitrate.ucdavis.edu>.

<sup>371</sup> U.S. Census Bureau, New Mexico, available at <http://quickfacts.census.gov/qfd/states/35000.html>.

<sup>372</sup> New Mexico Environment Department, Water Resources and Management, available at [https://www.env.nm.gov/nav\\_water.html](https://www.env.nm.gov/nav_water.html).

<sup>373</sup> Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), p. 73, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf).

<sup>374</sup> Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), p. 73.

<sup>375</sup> CA. ASSEMB. BILL 685 available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf). For a brief summary of California drinking water laws and regulations, see *The Human Right to Water Bill in California: An Implementation Framework for State Agencies*. International Human Rights Law Clinic, UC Berkeley School of Law (May 2013), pp. 3-4, available at [https://www.law.berkeley.edu/files/Water\\_Report\\_2013\\_Interactive\\_FINAL.pdf](https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL.pdf).



right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.<sup>376</sup> Despite the passage of this law, low-income minority communities in California's San Joaquin and Salinas Valleys face serious water contamination issues amid years of government neglect.<sup>377</sup> Across the U.S., as demonstrated in a new study based on U.S. census data, low income communities, communities of color, and indigenous communities are most likely to lack access to basic water and sanitation and continue to disproportionately suffer the negative effects of water contamination, infrastructure deficits, and financial barriers to sustainable solutions.<sup>378</sup>

## 2. Low-Income Communities of Color and Indigenous Communities in the U.S. Lack Equal Access to Safe Drinking Water Due to Government Negligence and Agricultural and Industrial Contamination

86. Across the United States, low-income communities of color, including indigenous communities disproportionately lack equal access to safe drinking water due to unremediated agricultural and industrial contamination. Most people in the U.S. have access to safe drinking water, but a forthcoming study that analyzes U.S. census data to evaluate the geographic and demographic distribution of water and sanitation service deficits in the U.S. reveals that they are overwhelmingly concentrated in low-income minority and indigenous communities.<sup>379</sup> Experts report that these communities typically must live with drinking water contamination that is more serious and intractable than that experienced in more affluent communities.<sup>380</sup> Similarly, government data reveals that safe drinking water violations occur at about twice the national rate

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<sup>376</sup> CA. ASSEMB. BILL 685 available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf).

<sup>377</sup> See *infra.*, at XX.

<sup>378</sup> UUSC Report on Discrimination in the U.S. Water and Sanitation Sector, forthcoming, 2016 (see Annex XX for a map reflecting the study's findings on the geographic distribution of water and sanitation service deficits across the United States). See also Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), p. 56, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf).

<sup>379</sup> UUSC Report on Discrimination in the U.S. Water and Sanitation Sector, forthcoming, 2016 (see Annex XX for a map reflecting the study's findings on the geographic distribution of water and sanitation service deficits across the United States). See also Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), p. 56, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf); Charles Duhigg, *New York Times*. *Millions in the U.S. Drink Dirty Water, Records Show* (Dec. 2009), available at [http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?\\_r=0](http://www.nytimes.com/2009/12/08/business/energy-environment/08water.html?_r=0).

<sup>380</sup> Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), p. 57, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf). For a thorough analysis of these issues, see Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 Cal. L. Rev. 223 (2012), available at: <http://scholarship.law.berkeley.edu/californialawreview/vol100/iss1/5>.

in indigenous communities.<sup>381</sup> These facts match with the increasing recognition that these communities are most likely to suffer from multiple environmental harms and their consequences, including serious public health impacts.<sup>382</sup> This phenomenon is already the subject of a case before this honorable Commission; in *Mossville Environmental Action Now v. United States*, residents of a low-income community of color allege discrimination in the U.S. government's decision to permit multiple industrial operations to contaminate community resources, including its drinking water system.<sup>383</sup> This section provides case studies of water contamination affecting low income communities of color in California's San Joaquin and Salinas Valleys and indigenous communities in northwestern New Mexico to illustrate the serious and disproportionate impact such contamination has on some of the most vulnerable communities in the U.S.

### 3. Low-Income Communities of Color Including Flint, Michigan Suffer Disproportionately from Government Negligence Exposing Families to Lead-Contaminated Drinking Water

87. In Flint, Michigan, this low-income community has a majority of residents of color who are facing a city-wide public health crisis as a result of protracted and severe lead contamination of public drinking water and a potential outbreak of Legionnaire's disease.<sup>384</sup> This crisis was caused by the Michigan state government's decision to save money by changing Flint's water supply to the contaminated Flint River in 2014, in combination with the failure to upgrade lead-containing aged drinking water system infrastructure in the city.<sup>385</sup> State and federal officials failed to notify Flint residents until long after they had already been exposed to toxic levels of lead in their drinking water. Children and women have suffered the worst effects.

88. Flint drinking water was contaminated by heavy metals including lead, dangerous bacteria, and other contaminants over an 18-month period violating state and federal drinking water quality standards, and the human rights to safe drinking water of its residents. State and federal officials failed to notify Flint residents until long after they had already been exposed to toxic levels of lead in their drinking water. Access to information was not fulfilled, delayed and

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<sup>381</sup> Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), p. 57, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf) (citing a study from the U.S. EPA).

<sup>382</sup> Peter H. Gleick, Juliet Christian-Smith, Heather Cooley. *A Twenty-First Century U.S. Water Policy*, Oxford University Press (2012), p. 56, available at [http://pacinst.org/wp-content/uploads/2013/02/water\\_and\\_environmental\\_justice\\_ch3.pdf](http://pacinst.org/wp-content/uploads/2013/02/water_and_environmental_justice_ch3.pdf).

<sup>383</sup> *Mossville Environmental Action Now v. United States*, Inter-Am. C.H.R., Report No. 43/10, report on admissibility, March, 2010, at <http://www.oas.org/en/iachr/decisions/admissibilities.asp>.

<sup>384</sup> Dylan Sevett, U.S. Uncut, *People Are Dying in Flint and All Signs Point to the Water*, Jan. 14, 2016, available at <http://usuncut.com/class-war/people-are-dying-in-flint-all-sings-point-to-water/>.

<sup>385</sup> Arthur Delaney and Philip Lewis, *How the Federal Government Botched Flint's Water Crisis*, HUFFPOST (Jan. 12, 2016), available at [http://www.huffingtonpost.com/entry/flint-lead-water-epa\\_us\\_569522a8e4b086bc1cd5373c](http://www.huffingtonpost.com/entry/flint-lead-water-epa_us_569522a8e4b086bc1cd5373c).

perversed by government officials. The health of thousands of Flint residents is seriously impaired as a result, with likely long-term damage to the health of children and other residents. In 2015, testing revealed toxic lead levels in the bloodstreams of Flint's children, with drinking water contamination as the only plausible explanation.<sup>386</sup> On January 5th, 2016, the effects of the lead in Flint's public water system were finally acknowledged, after massive public pressure, when Michigan's governor declared a state of emergency.<sup>387</sup>

a. The Government Allowed Lead Contamination of Flint's Drinking Water to Persist for Over a Year and Denied the Problem

89. On or about April 25, 2014, the City of Flint stopped purchasing drinking water from the Detroit Water and Sewer Department and began taking water from the Flint River directly to treat and provide as drinking water.<sup>388</sup> Rising levels of contamination from lead, copper, bacteria, and other prohibited contaminants rapidly caused a public health emergency, damaging the health of residents in Flint, in particular children. Flint continued to supply water in violation of state and federal drinking water quality standards until at least October, 2015, when it returned to DWSD water as a source.<sup>389</sup> However contaminants, including high levels of lead, still exist in Flint's drinking water today because of inadequate government response, damage to the city's aging water infrastructure caused by Flint River water, violations of statutory duties, and violations of human rights by local, state and federal authorities.

90. Complaints about the water surfaced almost as soon as Flint switched its water source to the Flint River, and citizens and local medical community raised concerns about lead in blood levels in 2014.<sup>390</sup> However, local and state environmental health and water management authorities ignored these concerns, even once they were echoed by a federal Environmental Protection Agency (EPA) expert concerned about the Flint water system's lack of safeguards to prevent lead from leaching into the drinking water supply.<sup>391</sup>

91. Federal regulations under the Safe Drinking Water Act require a public drinking water system the size of Flint's to set water quality parameters and establish an approved corrosion

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<sup>386</sup> Sarah Hulett, National Public Radio, High Lead Levels in Michigan Kids After City Switches Water Source (Oct. 5, 2015), available at <http://www.npr.org/2015/09/29/444497051/high-lead-levels-in-michigan-kids-after-city-switches-water-source>. For official Michigan state data on the lead poisoning, see Michigan State Government, Taking Action on Flint Water, available at <http://www.michigan.gov/flintwater>.

<sup>387</sup> Michigan State Governor's Office, Press Release, Gov. Snyder declares emergency for Genesee County, (Jan. 5, 2016), available at [http://www.michigan.gov/snyder/0,4668,7-277-57577\\_57657-372653--,00.html](http://www.michigan.gov/snyder/0,4668,7-277-57577_57657-372653--,00.html).

<sup>388</sup> Pp. 15-17, <http://somsprod2govm001.usgovcloudapp.net/files/snyder%20emails.pdf>; Arthur Delaney and Philip Lewis, *How the Federal Government Botched Flint's Water Crisis*, HUFFPOST (Jan. 12, 2016), available at [http://www.huffingtonpost.com/entry/flint-lead-water-epa\\_us\\_569522a8e4b086bc1cd5373c](http://www.huffingtonpost.com/entry/flint-lead-water-epa_us_569522a8e4b086bc1cd5373c).

<sup>389</sup> [http://videos.mlive.com/mlive/2015/10/watch\\_flint\\_mayor\\_announce\\_rec.html](http://videos.mlive.com/mlive/2015/10/watch_flint_mayor_announce_rec.html).

<sup>390</sup> <http://www.motherjones.com/politics/2016/01/mother-exposed-flint-lead-contamination-water-crisis>.

<sup>391</sup> <http://www.motherjones.com/politics/2016/01/mother-exposed-flint-lead-contamination-water-crisis>.

control program prior to beginning operation (or using a new primary source of water). However, the Michigan Department of Environmental Quality (MDEQ) failed to establish these safeguards before allowing the switch to Flint River water.<sup>392</sup> While it appears that the state took steps to misinform the EPA about lead levels in Flint’s water, the EPA had enough knowledge about the situation that it should have acted much earlier.<sup>393</sup> Although it the MDEQ misinformed EPA officials about its performance of these requirements in February and March 2015,<sup>394</sup> emails released by the Michigan Governor’s Office reveal that the EPA was aware of the lack of corrosion control – essential to prevent the leaching of lead from pipes into drinking water that happened here – in Flint’s water system as early as April 24, 2015.<sup>395</sup> Additionally, one EPA expert in the agency’s regional office was sounding the alarm about Flint’s lack of corrosion controls, elevated lead test results, and potential problems with the lead testing method being used by the city.<sup>396</sup> Any one of these circumstances should have been enough to trigger further inquiry and response, yet neither the EPA nor the MDEQ took any action on the issue. When the EPA expert’s memo sounding the alarm was leaked to the public in late June 2015, the MDEQ responded by reassuring Flint residents that the water was safe, telling them to “relax.”<sup>397</sup>

92. As noted above, testing in 2015 revealed toxic lead levels in the bloodstreams of Flint’s children, with drinking water contamination caused by the switch to Flint River water as the only plausible explanation.<sup>398</sup> Researchers at the Virginia Technical Institute began testing the water for lead, and a doctor at a local hospital began analyzing blood lead levels of Flint’s children. The Virginia Technical Institute assisted citizens and civil society advocates with lead testing beginning August, 2015 with 300 test kits. Virginia Tech tested 252 of the kits and warned of serious lead levels in early September, 2015; lead levels exceeded all requirements and in some cases were over 1000 parts per billion.<sup>399</sup> Virginia Tech won a National Science Foundation “rapid response” grant to study lead levels in Flint in September, 2015.<sup>400</sup> At the same time,

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<sup>392</sup> <http://flintwaterstudy.org/2015/09/commentary-mdeq-mistakes-deception-flint-water-crisis/>.

<sup>393</sup> It appears that Flint also employed a lead testing method that likely caused understated results and may have omitted high lead samples from its water quality reports to avoid reporting a violation of federal safety standards for lead in drinking water.

<http://flintwaterstudy.org/2015/09/commentary-mdeq-mistakes-deception-flint-water-crisis/>;

<http://bridgemi.com/2016/02/flint-water-disaster-timeline/>.

<sup>394</sup> <http://flintwaterstudy.org/2015/09/commentary-mdeq-mistakes-deception-flint-water-crisis/>.

<sup>395</sup> <http://bridgemi.com/2016/02/flint-water-disaster-timeline/>.

<sup>396</sup> <http://michiganradio.org/post/leaked-internal-memo-shows-federal-regulator-s-concerns-about-lead-flint-s-water#stream/0>.

<sup>397</sup>

<http://michiganradio.org/post/leaked-internal-memo-shows-federal-regulator-s-concerns-about-lead-flint-s-water#stream/0>.

<sup>398</sup> Sarah Hulett, National Public Radio, High Lead Levels in Michigan Kids After City Switches Water Source (Oct. 5, 2015), available at <http://www.npr.org/2015/09/29/444497051/high-lead-levels-in-michigan-kids-after-city-switches-water-source>. For official Michigan state data on the lead poisoning, see Michigan State Government, Taking Action on Flint Water, available at <http://www.michigan.gov/flintwater>.

<sup>399</sup> <http://flintwaterstudy.org/2015/09/our-sampling-of-252-homes-demonstrates-a-high-lead-in-water-risk-flint-should-be-failing-to-meet-the-epa-lead-and-copper-rule/>

<sup>400</sup> <http://www.vtnews.vt.edu/articles/2015/09/091415-engineering-edwardsflint.html>

local medical providers documented rising lead levels in children blood samples taken as a result of medical visits, raising concerns in a press conference on September 24, 2015.<sup>401</sup> City and state officials disputed both sets of findings, accusing researchers of irresponsibly alarming the public and claiming that the water was safe to drink.

93. Despite the fact that the Flint water system appears to have been operating in violation of federal drinking water safety standards since the switch to Flint River water and the red flags raised by concerned citizens and the EPA expert mentioned above, no official government announcement warning Flint residents not to drink the water was released until late September 2015. Until early October, 2015, the City of Flint and the state government of Michigan continued to reassure Flint residents about the safety of the water and to dispute the findings of the Virginia Tech researchers and the Hurley Medical Center doctors. Essentially, state officials charged with ensuring the quality of drinking water and protecting the public health knew or had reason to know about the lead contamination for months before they warned the public or took any other action to remedy the situation.

94. Flint put out a [lead advisory](#) on Sept. 25, 2015, stating "[t]he City of Flint is issuing a Lead Advisory for residents to be aware of lead levels in drinking water after hearing concerns from the medical community. While the city is in full compliance with the Federal Safe Drinking Water Act, this information is being shared as part of a public awareness campaign to ensure that everyone takes note that no level of lead is considered safe."<sup>402</sup> On September 29, Genesee County also issued a [health warning](#) about Flint Water based on concerns about lead.<sup>403</sup> On October 1, 2015, Genesee County public health officials issue an [emergency public health warning](#) Flint residents not to drink the water.<sup>404</sup> On October 16, 2015, the City switched back to the Detroit Water and Sewerage Department as the source of water,<sup>405</sup> however lead levels remain well above the federal action level of 15 parts per billion in many homes.

95. Ultimately, the history of the Flint water crisis demonstrates that it should never have happened. At the time that Flint switched its water source to the Flint River, State official knew or should have known that 1) Flint River water was highly corrosive, 2) the Flint water system infrastructure consisted of aging, lead-containing pipelines vulnerable to corrosion and leaching lead into drinking water, and 3) the Flint water system had no water quality parameters or corrosion control program in place to prevent lead contamination of drinking water. The State violated multiple human rights of Flint residents from the moment that neither the Michigan nor the federal authorities charged with ensuring drinking water quality required the Flint water

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<sup>401</sup> [http://www.mlive.com/news/flint/index.ssf/2015/09/study\\_shows\\_twice\\_as\\_many\\_flint.html#incart\\_river\\_home](http://www.mlive.com/news/flint/index.ssf/2015/09/study_shows_twice_as_many_flint.html#incart_river_home) ; Hurley Medical Center findings, <http://flintwaterstudy.org/wp-content/uploads/2015/09/Pediatric-Lead-Exposure-Flint-Water-092415.pdf>

<sup>402</sup> <http://www.wnem.com/story/30116282/flint-officials-issue-lead-advisory>.

<sup>403</sup> [http://www.mlive.com/news/flint/index.ssf/2015/09/genesee\\_county\\_also\\_issues\\_pub.html](http://www.mlive.com/news/flint/index.ssf/2015/09/genesee_county_also_issues_pub.html).

<sup>404</sup> [http://www.gc4me.com/docs/public\\_health\\_emergency\\_announcement\\_10\\_1\\_15.pdf](http://www.gc4me.com/docs/public_health_emergency_announcement_10_1_15.pdf).

<sup>405</sup> [http://videos.mlive.com/mlive/2015/10/watch\\_flint\\_mayor\\_announce\\_rec.html](http://videos.mlive.com/mlive/2015/10/watch_flint_mayor_announce_rec.html).

system to employ safeguards required by federal law at the time the switch to the Flint River occurred. From that point in time, the State knowingly exposed Flint residents to unsafe drinking water, violating their human rights to water, life, and health. The State also misrepresented the safety measures in place, manipulated lead test results, ignored and invalidated independent data warning of lead contamination, and falsely reassured residents about the safety of the water for more than eighteen months, not only exacerbating exposure to lead contamination but also violating the right to freedom of information and foundational human rights principles of transparency and accountability.

b. Lead Contamination of Drinking Water Has Severe Health Consequences, Particularly for Women and Children

96. As a result of the water crisis, the State allowed Flint residents to be exposed to dangerous levels of lead in their drinking water for at least nineteen months and lead levels remain high today despite the attention the situation is receiving now. The Virginia Tech study of lead levels in Flint drinking water revealed that the water coming out of the tap in some Flint homes was more than 13,000 ppb – higher than the 5,000ppb threshold for the water to be classified as toxic waste, and nearly 1000 times the amount that should trigger environmental agency action. Given the high levels of lead in Flint’s water, it is unsurprising that the Hurley Medical Center researchers found that the blood lead levels of Flint’s children increased significantly after the switch to Flint River water. Blood tests found that a significant number of children had elevated blood lead levels, with concentrations in certain zip codes. While a smaller subset of children were diagnosed with lead poisoning,<sup>406</sup> researchers estimate that as many as 27,000 children were likely exposed to dangerous levels of lead.

97. Lead is a neurotoxin that can cause miscarriages and irreversible developmental damage to children’s brains.<sup>407</sup> Studies showed that after a similar incident in Washington, D.C. – which also has a majority of residents of color – the number of children with unsafe lead levels doubled<sup>408</sup> and pregnant women experienced a subsequent increase in miscarriages and stillbirths,<sup>409</sup> despite government attempts to cover up the public health impacts of lead contamination of drinking water.<sup>410</sup> Because lead levels in some Flint homes continue to be

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<sup>406</sup> <http://abcnews.go.com/US/wireStory/latest-gov-snyder-names-experts-study-flint-water-36544916>.

<sup>407</sup> Sarah Hulett, National Public Radio, High Lead Levels in Michigan Kids After City Switches Water Source (Oct. 5, 2015), available at <http://www.npr.org/2015/09/29/444497051/high-lead-levels-in-michigan-kids-after-city-switches-water-source>.

<sup>408</sup> Carol D. Leonnig, High Lead Levels Found in D.C. Kids, Washington Post (Jan. 27, 2009), available at [www.washingtonpost.com/wp-dyn/content/article/2009/01/26/AR2009012602402.html?sid=ST2010120107897](http://www.washingtonpost.com/wp-dyn/content/article/2009/01/26/AR2009012602402.html?sid=ST2010120107897).

<sup>409</sup> Lead in Washington, D.C. Drinking Water May Have Caused More Stillbirths And Miscarriages, HUFFPOST (Jan. 23, 2014), available at [http://www.huffingtonpost.com/2013/12/27/lead-washington-dc-drinking-water\\_n\\_4508163.html](http://www.huffingtonpost.com/2013/12/27/lead-washington-dc-drinking-water_n_4508163.html).

<sup>410</sup> *Id.*



well-above federal safety limits and may exceed the levels that can be removed by commercial filters, and because no level of lead exposure has been shown to be safe for developing fetuses and young children, the EPA has advised that pregnant women and households with young children refrain from drinking even filtered tap water. CITATION.

c. Michigan State Fiscal Policy and Austerity Measures Resulted in Human Rights Violations Against Flint Residents

98. Michigan passed Public Act 436 of 2012, Local Financial Stability and Choice Act, which took effect in March, 2013. The Act amended earlier legislation dating back to 1991. The act gives the State of Michigan the authority to supersede local government and management of school districts where there is a determination of “financial stress.” The purpose of the Act is to protect the ‘health, welfare and safety’ of the public where it is threatened by local financial insolvency. Implementation of the Act by Governor Snyder, appointed Emergency Managers, local elected officials, resulted in the violation of human rights of residents of Flint related to the public health crisis of drinking water.

d. Federal and State Responses to the Crisis in Flint Have Been Inadequate to Provide Emergency Drinking Water Supplies and to Remedy the Violations

99. Despite the terrible consequences of city-wide lead poisoning, the situation in Flint was created by a series of government decisions where officials knew or should have known that this crisis could result. One of the primary underlying causes of the tragedy is systematic government failure to invest in upgrading the drinking water infrastructure of low-income cities. In cities like Flint, Michigan and Washington, D.C., low-income residents of the country’s aging affordable housing stock live with the economic and health consequences of these infrastructure deficits, including higher water bills due to leaking pipes and contamination caused by lead or other toxic materials in old water distribution systems.

100. On January 16, 2016, President Obama declared a federal state of emergency in Flint, providing up to \$5 million in assistance with possible Congressional renewal.<sup>411</sup> The U.S. Department of Justice has also opened an investigation into the Flint crisis, and reportedly the U.S. Attorney's Office for the Eastern District of Michigan is working closely with the U.S. Environmental Protection Agency on this investigation.<sup>412</sup> According to reports, the Michigan

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<sup>411</sup> Joe Barrett, *Obama Declares Emergency in Flint*, THE WALL STREET JOURNAL, (Jan. 16, 2016), available at [www.wsj.com/articles/obama-declares-emergency-in-flint-1452982835](http://www.wsj.com/articles/obama-declares-emergency-in-flint-1452982835).

<sup>412</sup> Arthur Delaney, *Justice Department Investigating Toxic Tap Water In Flint*, HUFFPOST (Jan. 5, 2016), available at [www.huffingtonpost.com/entry/flint-michigan-water-lead\\_us\\_568be5abe4b014efe0dbb159](http://www.huffingtonpost.com/entry/flint-michigan-water-lead_us_568be5abe4b014efe0dbb159).

state government “continued to deny a lead poisoning problem even as evidence mounted [in 2014]”<sup>413</sup>

101. Local, state, and federal governments have been slow to take emergency actions to respond to the situation in Flint since the State officially acknowledged the lead poisoning crisis. On Monday, December 14, 2015, Flint “Mayor Karen Weaver declared a State of Emergency in response to a man-made disaster caused by the City switching to the Flint River as a water source[]” in 2014.<sup>414</sup> According to the city’s press release, “[t]his switch has resulted in elevated lead levels in drinking water, which prompted both the City and the County Health department to issue a health advisory earlier this year.”<sup>415</sup> Genesee County supported the call to action by declaring an emergency on January 4th, 2016.<sup>416</sup> The State of Michigan followed suit with a declaration on January 5th.<sup>417</sup> On January 12th, the Governor activated the National Guard to assist with water, filter, and lead testing kit distribution to Flint Water Customers.<sup>418</sup>

102. Reports by the State of Michigan, non-governmental organizations such as the Red Cross, and the City indicate that supplies of bottled water are inadequate to protect rights, and they have not reported any data on the ability of protected groups to access emergency services. For example, Michigan’s Governor reports that efforts to supply bottled water include water response teams door-to-door delivery efforts with American Red Cross and other volunteers, have visited 924 Flint homes. Since Jan. 9, 2016, the following resources have been distributed to residents, both at the water resource sites and by water response teams, who have distributed: 216,605 cases of water; 98,641 water filters; and 31,111 water testing kits. There is no information about the distribution by age, race, by income, by persons with disabilities, by persons with chronic or catastrophic illness. Reports from advocates indicate that early distribution procedures excluded persons without an address, such as the homeless, and persons without official government documents from water distribution, such as undocumented immigrants.<sup>419</sup> Linguistic minorities, including immigrants, have also been unable to access information about emergency relief measures and lead levels in their drinking water due to a lack of translation.

103. **Prisoners**

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<sup>413</sup> *Id.*

<sup>414</sup> <https://www.cityofflint.com/2015/12/15/mayor-karen-weaver-declares-state-of-emergency/>.

<sup>415</sup> <https://www.cityofflint.com/2015/12/15/mayor-karen-weaver-declares-state-of-emergency/>.

<sup>416</sup> <https://www.cityofflint.com/2016/01/04/genesee-county-commissioners-declare-emergency/>.

<sup>417</sup> [https://www.michigan.gov/documents/snyder/2016-01-05\\_Flint\\_Water\\_Governors\\_Declaration\\_Final\\_509966\\_7.pdf](https://www.michigan.gov/documents/snyder/2016-01-05_Flint_Water_Governors_Declaration_Final_509966_7.pdf).

<sup>418</sup> [http://www.michigan.gov/snyder/0,4668,7-277-57577\\_57657-373328--,00.html](http://www.michigan.gov/snyder/0,4668,7-277-57577_57657-373328--,00.html).

<sup>419</sup> Michelle Chen, Culturestrike. Where Injustice Rolls: The Refugees of Flint’s Water Crisis (Jan. 2016), available at <http://www.culturestrike.org/magazine/where-injustice-rolls>.

104. The emergency response is inadequate to meet minimum international human rights standards and obligations by the U.S. government. The U.S. government must take immediate steps to ensure all residents regardless of age, race, income, ability, or status have immediate access and deliver to the household sufficient supplies of safe drinking water to meet daily needs following international standards under emergencies at a minimum, and the World Health Organization standards for the minimum needed to sustain life.<sup>420</sup>

105. While Flint residents call for justice, more and more communities are coming forward with their own stories of water contamination and the deliberate indifference of government officials and other entities charged with protecting their safety. The Flint lead poisoning tragedy was caused by a combination of deliberate government negligence and poor infrastructure. Women and children suffer the most severe effects of lead poisoning, as detailed above. Accordingly, where inadequate infrastructure poses the risk of exposing communities to contaminants that have particularly adverse effects on women and children, the inadequate infrastructure itself causes gendered harms that must be addressed. As the Flint crisis unfolds, research reveals that many communities in the U.S. face the risk of a similar lead poisoning incident due to infrastructure deficits in the form of lead pipes in their water systems.<sup>421</sup> According to a water safety expert who studies lead drinking water contamination from lead pipes, “[t]here is nothing a water utility can do to completely prevent lead leaching from a lead service line.”<sup>422</sup> Despite increasing recognition that lead exposure has grave health consequences for women and children even at very low levels, the U.S. lacks any plan to remove these lead pipes, and no government actor appears to be considering the gender dimensions of this incipient public health disaster.<sup>423</sup>

#### 4. Low-Income Communities of Color in California’s Salinas and San Joaquin Valleys Lack Access to Safe Drinking Water Due to Agricultural Contamination

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<sup>420</sup> World Health Organization, How much water is needed in emergencies (2013), available at [http://www.who.int/water\\_sanitation\\_health/publications/2011/WHO\\_TN\\_09\\_How\\_much\\_water\\_is\\_needed.pdf?ua=1](http://www.who.int/water_sanitation_health/publications/2011/WHO_TN_09_How_much_water_is_needed.pdf?ua=1).

<sup>421</sup> Arthur Delaney, The Huffington Post, Lots Of Cities Have The Same Lead Pipes That Poisoned Flint: And there’s no plan to dig them up, (Jan. 28, 2016), available at [http://www.huffingtonpost.com/entry/lead-pipes-everywhere\\_us\\_56a8e916e4b0f71799288f54](http://www.huffingtonpost.com/entry/lead-pipes-everywhere_us_56a8e916e4b0f71799288f54).

<sup>422</sup> Arthur Delaney, The Huffington Post, Lots Of Cities Have The Same Lead Pipes That Poisoned Flint: And there’s no plan to dig them up, (Jan. 28, 2016), available at [http://www.huffingtonpost.com/entry/lead-pipes-everywhere\\_us\\_56a8e916e4b0f71799288f54](http://www.huffingtonpost.com/entry/lead-pipes-everywhere_us_56a8e916e4b0f71799288f54).

<sup>423</sup> Arthur Delaney, The Huffington Post, Lots Of Cities Have The Same Lead Pipes That Poisoned Flint: And there’s no plan to dig them up, (Jan. 28, 2016), available at [http://www.huffingtonpost.com/entry/lead-pipes-everywhere\\_us\\_56a8e916e4b0f71799288f54](http://www.huffingtonpost.com/entry/lead-pipes-everywhere_us_56a8e916e4b0f71799288f54).

106. Low-income, minority communities in rural California lack access to safe drinking water due to contamination caused by insufficient regulation of the agricultural industry.<sup>424</sup> Farmworker families in the Salinas and San Joaquin Valleys are particularly affected. These communities depend primarily on groundwater, which is largely unregulated by the state or federal government, yet their water systems are continuously found to be in violation of federal and state drinking water quality standards, with dangerously high levels of contaminants that have leached into the groundwater from nearby agricultural operations.<sup>425</sup>

107. According to official California state data, over 21 million Californians living in 680 rural and urban communities rely partially or wholly upon groundwater that is contaminated with bacteria, disinfectant byproducts, pesticides, fracking fluids, arsenic and nitrates for their primary source of household water.<sup>426</sup> A 2012 report by the University of California found that, for the four California counties with the largest agricultural production in the U.S., 96 percent of groundwater contamination has been caused by nitrate leaching from agriculture.<sup>427</sup> As California's historic drought wears on, drinking water contamination has worsened as shrinking water tables concentrate already high contaminant levels and over 2,400 households – primarily in agricultural areas – have been left without water.<sup>428</sup>

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<sup>424</sup> See Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, “Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California,” Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), pp. 1, 9, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf).

<sup>425</sup> Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, “Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California,” Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), pp. 9-11, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf); Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 Cal. L. Rev., 223, 238 (2012), available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1019&context=californialawreview> (noting that “Despite forty years of statutory water protection regimes, the New York Times reports that over 20 percent of American water systems failed key provisions of the U.S. Safe Drinking Water Act from 2004 to 2009. The majority of these water violations occurred within small and rural water systems that served fewer than twenty thousand residents.” (internal citations omitted)).

<sup>426</sup> California State Water Resources Control Board. Communities that Rely on a Contaminated Groundwater Source for Drinking Water: Report to the Legislature (Jan. 2013), pp. 5, 13, available at <http://www.waterboards.ca.gov/gama/ab2222/docs/ab2222.pdf>.

<sup>427</sup> Thomas Harter, et al., Addressing Nitrate in California's Drinking Water: With a Focus on Tulare Lake Basin and Salinas Valley Groundwater, (University of California, Davis, Center for Watershed Sciences, Report for the SWRCB SBX2 1 Report to the Legislature, January 2012), available at <http://groundwaternitrate.ucdavis.edu>.

<sup>428</sup> Darryl Fears, California's rural poor hit hardest as massive drought makes remaining water toxic, The Washington Post (July 5, 2015), available at [https://www.washingtonpost.com/national/health-science/californias-rural-poor-hit-hardest-as-groundwater-vanishes-in-long-drought/2015/07/05/0ed88938-1452-11e5-9518-f9e0a8959f32\\_story.html](https://www.washingtonpost.com/national/health-science/californias-rural-poor-hit-hardest-as-groundwater-vanishes-in-long-drought/2015/07/05/0ed88938-1452-11e5-9518-f9e0a8959f32_story.html); see also Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 Cal. L. Rev. 223 (2012), available at: <http://scholarship.law.berkeley.edu/californialawreview/vol100/iss1/5>.

108. In California's agricultural regions, a large number of community drinking water systems suffer from SDWA violations, including for toxic contaminants nitrate and arsenic.<sup>429</sup> More than half (57 %) of the 2.6 million people living in the Salinas Valley and in four counties in the San Joaquin Valley (specifically Fresno, Tulare, Kings, and Kern counties) depend on drinking water with nitrate levels exceeding federal safety standards.<sup>430</sup> Experts predict that this percentage may increase to 80% by 2050 if the State does not take stronger affirmative measures to prevent and remediate groundwater contamination in the area.<sup>431</sup> Nitrate pollution occurs as a result of excessive fertilizer application from industrial agriculture.<sup>432</sup> In addition to nitrates, arsenic contamination affects a large number of water systems and private wells in the San Joaquin Valley and other parts of the U.S.,<sup>433</sup> while arsenic is naturally occurring, new research demonstrates that industrial, water management, and other human activities may be increasing the toxic element's concentration in U.S. drinking water supplies.<sup>434</sup>

109. At the same time, a University of California study found that low-income minority communities in California are significantly more likely to have unsafe drinking water than their wealthier white counterparts.<sup>435</sup> As described below, this situation has significant health consequences for these vulnerable communities. It also forces residents either to continue to use contaminated drinking water, or to devote additional resources to obtaining safe water since the State has largely failed to address the contamination or acknowledge its disproportionate impact on low-income minority communities.<sup>436</sup>

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<sup>429</sup> Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 Cal. L. Rev. 223, 244 (2012), available at: <http://scholarship.law.berkeley.edu/californialawreview/vol100/iss1/5>

<sup>430</sup> U.C. Davis California Nitrate Project, *Addressing Nitrate in California's Drinking Water*, (Jan. 2012), available at <http://groundwaternitrate.ucdavis.edu/files/138956.pdf>; Carolina Balazs et al., *Social Disparities in Nitrate-Contaminated Drinking Water in California's San Joaquin Valley*, 119 ENVTL. HEALTH PERSP. 1272 (2011), 1275 [right column], available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3230390/pdf/ehp.1002878.pdf>; US Human Rights Network, *Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States*, (July 28, 2015), p. 7, available at <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrnetwork.righttowater.1.pdf>.

<sup>431</sup> U.C. Davis California Nitrate Project, *Addressing Nitrate in California's Drinking Water*, (Jan. 2012), pp. 5, 51, available at <http://groundwaternitrate.ucdavis.edu/files/138956.pdf>.

<sup>432</sup> Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 Cal. L. Rev. 223, 244 (2012), available at: <http://scholarship.law.berkeley.edu/californialawreview/vol100/iss1/5>.

<sup>433</sup> Deborah Blum, *New York Times Blog. The Arsenic in Our Drinking Water* (Sept. 20, 2013), available at [http://well.blogs.nytimes.com/2013/09/20/the-arsenic-in-our-drinking-water/?\\_r=0](http://well.blogs.nytimes.com/2013/09/20/the-arsenic-in-our-drinking-water/?_r=0).

<sup>434</sup> Joseph D. Ayotte, Zoltan Szabo, Michael J. Focazio, Sandra M. Eberts. *Effects of human-induced alteration of groundwater flow on concentrations of naturally-occurring trace elements at water-supply wells*. *Applied Geochemistry*, Vol. 26, Issue 5, May 2011, pp. 747-762, available at <http://www.sciencedirect.com/science/article/pii/S088329271100045X>.

<sup>435</sup> Carolina Balazs, *Just Water? Social Disparities in Nitrate Contaminated Drinking Water in California's Central Valley*, ph.D dissertation, UC Berkeley (cited in UN Report at p. 10).

<sup>436</sup> Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, "Racial Discrimination and Access to Safe, Affordable Water for

a. Contamination of California Groundwater Endangers Residents' Health, Particularly Women and Children

110. Similar to the problem in the Black Belt region of Alabama (see *infra*), the United States' failure to protect the drinking water supply of communities in the Salinas and San Joaquin Valleys has endangered their residents' health, in addition to depriving them of equal access to safe drinking water. These communities already suffer from other serious threats to their health in addition to drinking water contamination; multiple studies recognize that California's Central Valley residents suffer from high rates of asthma, diabetes, malnutrition, and pesticide exposure.<sup>437</sup> The most prevalent contaminants found in the drinking water systems of these communities – arsenic and nitrates – compound these burdens and pose particularly serious risks for pregnant and nursing women, children, and the elderly.<sup>438</sup>

15. Nitrate can cause serious health problems,<sup>439</sup> such as gastrointestinal diseases and a range of long-term illnesses, including various cancers, digestive tract impairments, thyroid conditions, and nervous system disabilities.<sup>440</sup> It can also have immediate toxic effects on vulnerable individuals such as babies and pregnant women.<sup>441</sup> If an infant drinks water containing too much

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Communities of Color in California,” Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), pp. 12-13, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf);

<sup>437</sup> Camille Pannu, Drinking Water and Exclusion: A Case Study from California's Central Valley, 100 Cal. L. Rev. 223, 228-229 (2012), available at: <http://scholarship.law.berkeley.edu/californialawreview/vol100/iss1/5>

<sup>438</sup> Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, “Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California,” Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), pp. 11-12, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf).

<sup>439</sup> For medical studies on the health impacts of nitrate contamination, see Gupta, Sunil Kumar et al. “Recurrent acute respiratory tract infections in areas with high nitrate concentrations in drinking water.” *Environmental Health Perspectives*, Vol. 108, Iss. 4. April 2000 at 363 to 366; Ward, Mary H. et al. “Workgroup report: Drinking water nitrate and health – recent findings and research needs.” *Environmental Health Perspectives*, Vol. 113, Iss. 11. November 2005 at 1607 to 1614; Manassaram, Deana M. et al. “A Review of Nitrates in Drinking Water: Maternal Exposure and Adverse Reproductive and Developmental Outcomes.” *Environmental Health Perspectives*, Vol. 114, Iss. 3. March 2006 at 320 to 327; Weyer, Peter J. et al. “Municipal drinking water nitrate level and cancer risk in older women: the Iowa Women’s Health Study.” *Epidemiology*, Vol. 11, Iss. 3. May 2001 at 327 to 338.

<sup>440</sup> Community Water Center, *Water And Health In The Valley: Nitrate Contamination Of Drinking Water And The Health Of San Joaquin Valley Residents*, (2011), pp. 8-9, available at [http://www.communitywatercenter.org/water\\_and\\_health\\_in\\_the\\_valley](http://www.communitywatercenter.org/water_and_health_in_the_valley).

<sup>441</sup> Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, “Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California,” Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), p. 11, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf);  
Community Water Center, *Water And Health In The Valley: Nitrate Contamination Of Drinking Water And The*



nitrate, it may suffocate and die without treatment, as the nitrate decreases the ability of blood to carry oxygen (“Blue Baby Syndrome”).<sup>442</sup> Pregnant women exposed to nitrate contamination can be affected with reduced cognitive functioning, miscarriage, stillbirth, premature birth and maternal reproductive complications.<sup>443</sup> New studies demonstrate a strong correlation between nitrate exposure *in utero* as a result of drinking water contamination and severe birth defects such as spina bifida and missing limbs.<sup>444</sup>

111.

112. While the deadly effects of exposure to large quantities of arsenic are well-known, new research has demonstrated that continuous exposure to low levels of arsenic, including through drinking water, causes a range of serious health problems.<sup>445</sup> These negative health effects include chronic respiratory ailments in children and adults; cardiovascular disease; diabetes; and skin, lung, and bladder cancers.<sup>446</sup> One new study found that even for low levels of arsenic, as maternal exposure to arsenic increased, their children suffered from higher numbers of respiratory infections.<sup>447</sup>

113. Accordingly, nitrate and arsenic contamination of groundwater in the Salinas and San Joaquin Valleys deprives low-income minority communities of equal access to clean and safe drinking water and particularly endangers the health and personal integrity of women and children.

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*Health Of San Joaquin Valley Residents*, (2011), p. 4, available at [http://www.communitywatercenter.org/water\\_and\\_health\\_in\\_the\\_valley](http://www.communitywatercenter.org/water_and_health_in_the_valley).

<sup>442</sup> Carolina Balazs et al., *Social Disparities in Nitrate-Contaminated Drinking Water in California’s San Joaquin Valley*, 119 ENVTL. HEALTH PERSP. 1272 (2011); U.C. Davis California Nitrate Project, *Addressing Nitrate in California’s Drinking Water*, (Jan. 2012), p. 9 [right column], available at <http://groundwaternitrate.ucdavis.edu/files/138956.pdf>.

<sup>443</sup> Carolina Balazs et al., *Social Disparities in Nitrate-Contaminated Drinking Water in California’s San Joaquin Valley*, 119 ENVTL. HEALTH PERSP. 1272 (2011); U.C. Davis California Nitrate Project, *Addressing Nitrate in California’s Drinking Water*, (Jan. 2012), p. 9 [right column], available at <http://groundwaternitrate.ucdavis.edu/files/138956.pdf>; US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 7, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf).

<sup>444</sup> Mark Grossi, Fresno Bee. Birth Defects Linked to Bad Water in California’s San Joaquin Valley (July 15, 2013), available at <http://www.mcclatchydc.com/news/nation-world/national/article24751075.html>.

<sup>445</sup> Deborah Blum, New York Times Blog. The Arsenic in Our Drinking Water (Sept. 20, 2013), available at [http://well.blogs.nytimes.com/2013/09/20/the-arsenic-in-our-drinking-water/?\\_r=0](http://well.blogs.nytimes.com/2013/09/20/the-arsenic-in-our-drinking-water/?_r=0).

<sup>446</sup> Deborah Blum, New York Times Blog. The Arsenic in Our Drinking Water (Sept. 20, 2013), available at [http://well.blogs.nytimes.com/2013/09/20/the-arsenic-in-our-drinking-water/?\\_r=0](http://well.blogs.nytimes.com/2013/09/20/the-arsenic-in-our-drinking-water/?_r=0).

<sup>447</sup> Shohreh F. Farzan, et al., *In utero* arsenic exposure and infant infection in a United States cohort: A prospective study. *Environmental Research*, Vol. 126, Oct. 2013, pp. 24-30, available at <http://www.sciencedirect.com/science/article/pii/S0013935113000856>.

## b. Contamination of California's Water Supply Raises the Cost of Water

114. Contamination increases the cost of water for low-income rural communities in California. This happens in one of two ways: 1) residents pay twice for water because they must continue paying for the unsafe water provided by the local utility yet also pay for alternative safe sources, or 2) the utility company charges increasingly high water rates to cover the cost of testing, fines imposed by state regulators, providing service to a diminishing customer base, or financing and operating a treatment facility.<sup>448</sup> As a result of this situation, despite government guidelines specifying that no more than 2.5% of household income should be spent on water, residents in California's poorest communities are paying up to 20% of their household incomes to avoid water contaminated with toxic substances like arsenic and nitrates.<sup>449</sup> Privatization of small community water systems has exacerbated this problem. For example, one of the poorest communities in the second poorest county in California, the community of Lucerne in Lake County, CA, has experienced a 50% water utility rate increase every year, since it was privatized by Cal Water – amounting to a 500% increase in 10 years.<sup>450</sup> It has reached a tipping point where, like Detroit, many owe more in water bills than their home is worth, so people are fleeing, leaving fewer people behind to pay more and more per household.<sup>451</sup>

115. Under the first scenario, to avoid the grave health risks described above, families typically seek out alternative sources for water, which costs them in time, money, and opportunity. Based on her visit to the San Joaquin Valley, the UN Special Rapporteur on the human right to safe drinking water and sanitation found that these avoidance costs could raise

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<sup>448</sup> Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, "Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California," Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), pp. 12-15, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf); UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶39, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 7, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf).

<sup>449</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶¶ 39, 48, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 8, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf).

<sup>450</sup> Glenda Anderson, Tiny Lucerne faces huge water bills, The Press Democrat (Sept. 25, 2012), available at <http://www.pressdemocrat.com/news/2307387-181/tiny-lucerne-faces-huge-water>.

<sup>451</sup> Elizabeth Larson, Lucerne residents appeal to CPUC to deny Cal Water rate hike, Lake County News (Apr. 13, 2013), available at [http://www.lakeconews.com/index.php?option=com\\_content&id=30695:lucerne-residents-appeal-to-cpuc-to-deny-cal-water-rate-hike&Itemid=197](http://www.lakeconews.com/index.php?option=com_content&id=30695:lucerne-residents-appeal-to-cpuc-to-deny-cal-water-rate-hike&Itemid=197).

household water expenditures to nearly four times what the EPA considers affordable.<sup>452</sup> Specifically, she found that in the San Joaquin Valley community of Seville, which has water contaminated with nitrates, households spend approximately USD \$2,800 per year – 20% of their annual median income of USD \$14,000 – for water and sanitation services and bottled water.<sup>453</sup> She further observed that “[h]ouseholds who are unable to afford alternative solutions, such as buying bottled water, uninformed about the water quality or forced to make difficult trade-offs, such as forgoing other basic needs, fall into a protection gap.”<sup>454</sup>

116. Under the second scenario, water rates may rise significantly when water contamination causes utilities to pass the increased cost of meeting state and federal drinking water quality standards onto consumers. For example, in another impoverished San Joaquin Valley community, Lanare, water rates rose so steeply when the utility passed along the cost of operating an arsenic treatment plant to residents that they were forced to shut it down and resume provision of contaminated water.<sup>455</sup> According to a recent study of this issue, government inaction combined with the inability of low-income communities to afford water treatment infrastructure “imposes an ugly choice on rural unincorporated water users: either residents can report water quality violations and risk eliminating all access to residential water, or they can choose not to report violations and risk exposure to unsafe water.”<sup>456</sup>

117. By forcing these communities to pay twice for water or pay unusually high water rates, the State has allowed affordability to become yet another barrier to equal access to safe drinking water. In this way, government indifference allows low-income communities of color to bear the

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<sup>452</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶39, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>453</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 39, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 8, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf).

<sup>454</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶39, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>455</sup> Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, “Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California,” Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), p. 14, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf).

<sup>456</sup> Camille Pannu, Drinking Water and Exclusion: A Case Study from California's Central Valley, 100 Cal. L. Rev. 223, 238 (2012), available at: <http://scholarship.law.berkeley.edu/californialawreview/vol100/iss1/5>

cost of unremediated drinking water contamination by the agricultural industry, either through their household finances or their health.

## 5. Indigenous Peoples in the U.S. Lack Equal Access to Safe Drinking Water Due to Contamination and Cultural Barriers

118. In addition to the cases mentioned above concerning communities in Detroit, Baltimore, Boston, and rural California, indigenous peoples disproportionately face similar problems in accessing adequate water and sanitation in the United States. After her 2011 country visit to the United States, the UN Special Rapporteur on the Human Right to Water and Sanitation found that “American Indian communities lack access to safe drinking water and basic sanitation in disproportionate numbers.”<sup>457</sup> She further found that “[t]his disparity is particularly pronounced in Interior and Western Alaska communities and Navajo Nation.”<sup>458</sup> In particular, Navajo communities lack access to safe drinking water due to contamination caused by unremediated uranium mine waste.<sup>459</sup> This section addresses the effects of contaminated drinking water upon indigenous Navajo communities in New Mexico.

### a. Indigenous Peoples in Northwestern New Mexico Lack Equal Access to Safe Drinking Water Due to Contamination Caused by Uranium Mining

119. In New Mexico, government refusal to clean up uranium mine and mill contamination forces indigenous Navajo communities to choose between exposure to radiation and access to safe drinking water. The Navajo Nation is home to more than 500 abandoned uranium mines

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<sup>457</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶63, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); see also U.N. Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of United States of America, CERD/C/USA/CO/7-9 (August 29, 2014), ¶10, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD\\_C\\_USA\\_CO\\_7-9\\_18102\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf) (noting the disparate impact of environmental pollution on indigenous peoples in the United States).

<sup>458</sup> Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶63, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>459</sup> Indigenous Navajo farming communities in Shiprock, New Mexico also have dealt with the contamination of their water source – the San Juan River – from a toxic mining waste spill caused by a government contractor (the King Gold Mine disaster), with devastating effects on their cultural practices and subsistence agricultural activities. It is incumbent on the US to develop an alternative water source for the Navajo farming communities.

and 1,100 individual uranium waste sites, the vast majority of them unremediated.<sup>460</sup> At least 15 to 20 percent of all drinking water sources on the Navajo Nation test for uranium concentrations above government-set safety limits.<sup>461</sup> Not only do a large percentage of indigenous Navajo communities lack a public water system,<sup>462</sup> those in northwestern New Mexico further struggle to secure access to safe drinking water due to groundwater contamination caused by unremediated uranium mining waste.<sup>463</sup>

120. According to academic experts, “Church Rock, New Mexico, is already one of the most highly contaminated areas in the country due to the abandoned [uranium] mines at Northeast Church Rock and Quivira, which house some of the largest piles of radioactive tailings in the world.”<sup>464</sup> The United Nations Committee on the Elimination of Racial Discrimination recently called upon the United States to redress the disparate impact of environmental pollution on indigenous peoples and specifically recommended that the U.S. clean up radioactive waste affecting indigenous peoples “as a matter of urgency.”<sup>465</sup>

121. As noted above, approximately 81% of New Mexico’s heavily indigenous population relies on groundwater as a drinking source.<sup>466</sup> However, as a result of contamination from uranium mining in the northwestern part of the state, many wells used by indigenous communities on the Navajo Nation have been closed, forcing residents to search for alternative

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<sup>460</sup> Chris Shuey, Preliminary Results of the Navajo Birth Cohort Study and Selected Case Studies of Exposures to Uranium in Mining Wastes and Drinking Water (Dec. 3, 2015), pp. 3-4 available at [http://www.sric.org/nbcs/docs/NDOH\\_CHR\\_conf\\_presentation\\_120315.pdf](http://www.sric.org/nbcs/docs/NDOH_CHR_conf_presentation_120315.pdf).

<sup>461</sup> Chris Shuey, Preliminary Results of the Navajo Birth Cohort Study and Selected Case Studies of Exposures to Uranium in Mining Wastes and Drinking Water (Dec. 3, 2015), pp. 3-4 available at [http://www.sric.org/nbcs/docs/NDOH\\_CHR\\_conf\\_presentation\\_120315.pdf](http://www.sric.org/nbcs/docs/NDOH_CHR_conf_presentation_120315.pdf).

<sup>462</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶63, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque). Although this section of the report focuses on contamination of drinking water on the Navajo Nation, it should be noted that the Special Rapporteur emphasized the U.S. Environmental Protection Agency “estimate[] that 54,000 members of Navajo Nation lack access to a public water system.” *Id.* Likewise, a 2014 study by the United States Government Accountability Office estimated that between 15% and 30% of all households on the Navajo Nation lack piped, regulated drinking water systems in their homes. United States Government Accountability Office, Uranium Contamination: Overall Scope, Time Frame and Cost Information is Needed for Contamination Cleanup on the Navajo Reservation, GAO-14-323 (May 2014), p. 3, available at: <http://www.gao.gov/products/GAO-14-323>.

<sup>463</sup> Multicultural Alliance for a Safe Environment, Shadow Report to the Periodic Report of the United States of America to the United Nations Committee on the Elimination of Racial Discrimination, (July 1, 2014), p. 3, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/mase\\_cerd\\_shadow\\_report\\_final\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/mase_cerd_shadow_report_final_1.pdf).

<sup>464</sup> Rebecca Tsosie, *Indigenous Peoples and the Ethics of Remediation: Redressing the Legacy of Radioactive Contamination for Native Peoples and Native Lands*, 13 SANTA CLARA J. INT’L L. 203, 204 (2015). Available at: <http://digitalcommons.law.scu.edu/scujil/vol13/iss1/10>.

<sup>465</sup> UN Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventh to ninth periodic reports of United States of America, CERD/C/USA/CO/7-9 (August 29, 2014), ¶10, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD\\_C\\_USA\\_CO\\_7-9\\_18102\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf).

<sup>466</sup> New Mexico Environment Department, *Water Resources and Management*, available at [https://www.env.nm.gov/nav\\_water.html](https://www.env.nm.gov/nav_water.html).

sources in an isolated and arid area.<sup>467</sup> For example, a well near the Navajo community of Churchrock was abandoned due to elevated uranium concentrations.<sup>468</sup> Similarly, in 1983, residents of Milan, New Mexico were forced to abandon several drinking water wells due to uranium contamination caused by the still-unremediated Homestake uranium mill tailings site.<sup>469</sup>

122. Despite this situation, the U.S. government not only fails to remediate the contamination and provide safe drinking water, but it also continues to promote uranium mining in the area against local wishes. In the Navajo Chapter of Churchrock, located in northwestern New Mexico, Federal and state regulators issued permits for a uranium mine to develop uranium in an underground source of drinking water. Federal regulatory agencies concede that if uranium mining occurs, the underground source of drinking water will be irrevocably contaminated. Although mining has not yet occurred, the threat is ever present because regulatory agencies have determined that mineral extraction should take precedence over every other use, including drinking water.

b. The indigenous Navajo Red Water Pond Road Community in northwestern New Mexico demonstrates the struggle with uranium contaminated water

123. The Red Water Pond Road community (RWPRC), located within the Navajo Nation in northwestern New Mexico, is representative of the problems caused by uranium contamination of groundwater. The RWPRC lies near three uranium mining and processing sites with hazardous waste resulting in exposure to radiation and heavy metals.<sup>470</sup> Preliminary results from a National Institute of Environmental Health Sciences-funded study indicate that “the uranium from these ponds, waste and tailings piles, and the mines themselves is still present in highly

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<sup>467</sup> See e.g., EPA Superfund Record of Decision: Homestake Mining Co., EPA/ROD/R06-89/050 (1989), <http://www.epa.gov/superfund/sites/rods/fulltext/r0689050.pdf>; US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 10, note 41, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf).

<sup>468</sup> US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 10, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf).

<sup>469</sup> EPA Superfund Record of Decision: Homestake Mining Co., EPA/ROD/R06-89/050 (1989), p. 6, available at <http://www.epa.gov/superfund/sites/rods/fulltext/r0689050.pdf>; US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 10, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf).

<sup>470</sup> US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), pp. 10-11, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf); Carrie Arnold, Once Upon a Mine: The Legacy of Uranium on the Navajo Nation, 122 Environmental Health Perspectives A45, A47 (Feb. 2014), available at <http://ehp.niehs.nih.gov/122-a44/>.



chemically soluble forms that have been leaching into the area's drinking water, according to water testing []<sup>471</sup>.

124. Although the U.S. government has been conducting surface reclamation of these sites, the cleanup plan does not include groundwater remediation.<sup>472</sup> Despite community objections, the EPA and other responsible parties have decided to transport the surface waste from the Northeast Churchrock and Quivira mines to be dumped at the UNC Mill site less than a mile away from the RWPRC.<sup>473</sup> After uranium contamination forced the closure of the community's primary drinking water well in 2003, the Navajo Nation created a public water system that pumps water from 20 miles away to serve RWPRC and 4,500 other customers; however, the Navajo utility company has found increasing levels of uranium contamination in this supply as well.<sup>474</sup> As a result of the United States' failure to require groundwater remediation from uranium mining and milling operations and without public investment in adequate water infrastructure, communities like RWPRC and others must haul water for domestic use.<sup>475</sup>

125. Meanwhile, the U.S. and New Mexico have taken steps toward the approval of new uranium mining and processing operations, despite their failure to remediate the damage caused by previous mining operations and to assess the risk to drinking water supplies that new operations would pose.<sup>476</sup> For example, a company (Colorado based Uranium Resources, Inc.) proposes to build a new uranium mine in an aquifer near the RWPRC that has not been contaminated yet using risky new technology.<sup>477</sup>

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<sup>471</sup> Carrie Arnold, *Once Upon a Mine: The Legacy of Uranium on the Navajo Nation*, 122 *Environmental Health Perspectives* A47 (Feb. 2014), available at <http://ehp.niehs.nih.gov/122-a44/>.

<sup>472</sup> U.S. Environmental Protection Agency, Region 9, Engineering Evaluation/Cost Analysis: Northeast Churchrock (NECR) Mine Site, Gallup, New Mexico (May 30, 2009), pp. 10-11, available at [http://yosemite.epa.gov/r9/sfund/r9sfdocw.nsf/cadf7f8d48234c98882574260073d787/f453d4346e384945882575cf007fd4bf/\\$FILE/EECANarrative053009final.pdf](http://yosemite.epa.gov/r9/sfund/r9sfdocw.nsf/cadf7f8d48234c98882574260073d787/f453d4346e384945882575cf007fd4bf/$FILE/EECANarrative053009final.pdf).

<sup>473</sup> New Mexico Environmental Law Center, Eric Jantz: Re: Questionnaire Chapter IV.A - United States of America, August 2015, p. 8

<sup>474</sup> US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), pp. 10-11, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf).

<sup>475</sup> See, e.g., U.S. Environmental Protection Agency, *Uranium Contaminated Water Sources* (2011), available at <http://www.epa.gov/region9/superfund/navajo-nation/pdf/stakeholders/2011/USEPA-UraniumContaminated-Water-Sources-UCSW-Nov2011.pdf>.

<sup>476</sup> US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 11, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf). See, generally, Rebecca Tsosie, *Indigenous Peoples and the Ethics of Remediation: Redressing the Legacy of Radioactive Contamination for Native Peoples and Native Lands*, 13 *SANTA CLARA J. INT'L L.* 203 (2015), available at: <http://digitalcommons.law.scu.edu/scujil/vol13/iss1/10>.

<sup>477</sup> New Mexico Environmental Law Center, Eric Jantz: Re: Questionnaire Chapter IV.A - United States of America, August 2015, p. 9 (on file with authors).

126. Rather than removing the waste piles, the U.S. government has offered to relocate the RWPRC to a traditional use area at a safe distance from the contamination.<sup>478</sup> However, due to infrastructure deficits in the area, the traditional use area does not currently have adequate drinking water infrastructure to meet the community's needs.<sup>479</sup> Despite this fact, the government has neither found another suitable alternative nor committed to dedicate funding to build an adequate drinking water system at the traditional use area.<sup>480</sup>

c. Uranium Contamination causes serious health consequences that affect children and pregnant women in particular

127. Uranium contamination, including the kind of continuous exposure to low levels of uranium suffered by Navajo communities in northwestern New Mexico, causes serious health consequences that can be particularly severe for children and pregnant women. Lack of government response to this contamination and its health consequences also reflects discrimination against indigenous women. According to the Multicultural Alliance for a Safe Environment, “[t]he unequal speed at which uranium mining and processing waste is remediated in minority compared to non-minority communities, results in minority communities suffering significantly higher risks of death and disease attributable to exposure to uranium mining and processing wastes.”<sup>481</sup>

128. While exposure to high levels of uranium results in health problems associated with radioactivity, such as lung and brain cancer, health studies have demonstrated a connection between exposure to low levels of uranium and increases in the incidence of kidney disease, autoimmune diseases, heart disease, and hypertension.<sup>482</sup> Scientific studies have also linked uranium exposure through drinking water contamination to increased rates of cancers,

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<sup>478</sup> Michelle Chen, The Nation. What If Your Tap Water Was Too Polluted to Drink? This sorry state of affairs is the daily reality for too many Americans (Oct. 30, 2015), available at <http://www.thenation.com/article/what-if-your-tap-water-was-too-polluted-to-drink/>.

<sup>479</sup> Michelle Chen, The Nation. What If Your Tap Water Was Too Polluted to Drink? This sorry state of affairs is the daily reality for too many Americans (Oct. 30, 2015), available at <http://www.thenation.com/article/what-if-your-tap-water-was-too-polluted-to-drink/>.

<sup>480</sup> Michelle Chen, The Nation. What If Your Tap Water Was Too Polluted to Drink? This sorry state of affairs is the daily reality for too many Americans (Oct. 30, 2015), available at <http://www.thenation.com/article/what-if-your-tap-water-was-too-polluted-to-drink/>.

<sup>481</sup> Multicultural Alliance for a Safe Environment (MASE), RESPONSE TO THE PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (July 1, 2014), para. 13, available at <http://masecoalition.org/wp-content/uploads/2015/05/MASE-CERD-Shadow-Report-FINAL.pdf>.

<sup>482</sup> Carrie Arnold, Once Upon a Mine: The Legacy of Uranium on the Navajo Nation, 122 Environmental Health Perspectives (Feb. 2014), available at <http://ehp.niehs.nih.gov/122-a44/>; Multicultural Alliance for a Safe Environment (MASE), RESPONSE TO THE PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (July 1, 2014), available at <http://masecoalition.org/wp-content/uploads/2015/05/MASE-CERD-Shadow-Report-FINAL.pdf>.

particularly breast cancer.<sup>483</sup> A 2008 study by a Navajo researcher found that Navajo women exposed to uranium had very high rates of breast cancer; this study was the first to reveal that uranium exposure is particularly dangerous for women because uranium acts as an estrogen mimic and can disrupt hormonal function leading to cancer.<sup>484</sup> For pregnant women and children, uranium exposure appears to be associated with higher rates of infertility, miscarriages, stillbirths, birth defects, and maternal complications. A recent study of Navajo births found “that children of women who lived near abandoned uranium sites were 1.83 times more likely to have 1 of 33 selected defects.”<sup>485</sup> The ongoing Navajo Birth Cohort Study has found that Navajo babies are 2.5 times more likely than the average U.S. resident to be born with cleft palate,<sup>486</sup> and it detected uranium levels in newborns exceeding the levels for 95% of the U.S. population.<sup>487</sup>

129. U.S. standards to determine the legal limits for exposure to uranium also have a disparate impact on women and girls. Rather than taking into account the fact that the safe amount of exposure for women, men, children, and the elderly likely differs, the same federal standard applies to all individuals and is based on the average male – “reference man.”<sup>488</sup> This failure to account for gender disparities in physical tolerance for exposure to substances like uranium that are toxic even in very small quantities results in a standard that dangerously underestimates the health impacts of uranium exposure for women. According to a Navajo expert on this issue,

There is such a thing as allowable limits [of exposure to nuclear waste] so the government says, well this is what’s allowable for waste and what we can expose people to. And one of those allowable limits is based on reference man. So a reference man is – so they look at this and say well, what is this substance or what is this exposure going to do to a reference man. So that’s a 155.54 pound white male and how it might impact that model, that

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<sup>483</sup> Sara E. Wagner, et al. Groundwater uranium and cancer incidence in South Carolina. *Cancer Causes Control* (Jan. 22, 2011), pp. 41-50, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3383652/>.  
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Lucinda Marshall, *Alternet*. The Biggest Breast Cancer Risk Factor No One is Talking About (Oct. 23, 2008), available at [http://www.alternet.org/story/104014/the\\_biggest\\_breast\\_cancer\\_risk\\_factor\\_that\\_no\\_one\\_is\\_talking\\_about](http://www.alternet.org/story/104014/the_biggest_breast_cancer_risk_factor_that_no_one_is_talking_about) (citing Lauren Moret, Namaste, "Populations Exposed to Environmental Uranium: Increased Risk of Infertility and Reproductive Cancers," (2008)). See also Stephanie Raymond-Whish, et al., Drinking Water with Uranium below the U.S. EPA Water Standard Causes Estrogen Receptor–Dependent Responses in Female Mice, *Environ Health Perspect.* 2007 Dec; 115(12): 1711–1716, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2137136/> (showing higher levels of breast cancer in mice exposed to uranium).

<sup>485</sup> Carrie Arnold, Once Upon a Mine: The Legacy of Uranium on the Navajo Nation, 122 *Environmental Health Perspectives* (Feb. 2014) A49, available at <http://ehp.niehs.nih.gov/122-a44/>.

<sup>486</sup> Chris Shuey, et al., Overview of the Navajo Birth Cohort Study (June 2014), available at [http://www.sric.org/nbcs/docs/NBCS\\_overview\\_063014.pdf](http://www.sric.org/nbcs/docs/NBCS_overview_063014.pdf).

<sup>487</sup> Chris Shuey, Preliminary Results of the Navajo Birth Cohort Study and Selected Case Studies of Exposures to Uranium in Mining Wastes and Drinking Water (Dec. 3, 2015), pp. 16, 31, available at [http://www.sric.org/nbcs/docs/NDOH\\_CHR\\_conf\\_presentation\\_120315.pdf](http://www.sric.org/nbcs/docs/NDOH_CHR_conf_presentation_120315.pdf).

<sup>488</sup> United States Nuclear Regulatory Commission (U.S. NRC), Glossary, Reference man, available at <http://www.nrc.gov/reading-rm/basic-ref/glossary/reference-man.html>.

‘person.’ And it doesn’t take into account women and women of childbearing age and it doesn’t take into account elderly.<sup>489</sup>

130. Uranium mining and resulting contamination has caused spiritual and cultural harm to the Navajo as well. Indigenous peoples throughout the Southwest, including Navajos, consider water to be spiritually and culturally important.<sup>490</sup> Contamination from uranium mining and milling has destroyed innumerable culturally significant water sources.

131. The U.S. government needs to prevent further groundwater contamination in the Navajo Nation and to end the lack of access to clean drinking water for indigenous communities. According to the Multicultural Alliance for a Safe Environment, which represents uranium-impacted communities, the State’s current unequal “implementation of its laws governing uranium mining and processing have resulted and continue to result in disparate adverse health and environmental impacts on racial and ethnic minorities.”<sup>491</sup> To fulfill its international human rights obligations to protect the lives and health of the Navajo people and redress this history of discrimination, the U.S. government should remediate legacy uranium contamination and prevent further uranium contamination instead of permitting new uranium mines.

### C. In the United States, Low-Income Minority, Indigenous, and Homeless Populations Cannot Access Safe, Affordable Drinking Water and Adequate Sanitation Due to Infrastructure Deficits

132. Rising costs and infrastructure deficits in the water and sanitation sector exacerbate access gaps and disproportionately impact groups who have historically suffered discrimination. At a recent consultation with the U.S. government on environmental issues, experts presented “statistical evidence based on U.S. Census data indicating that communities of color are much more likely to lack infrastructure and adequate facilities than are white populations.”<sup>492</sup> This

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<sup>489</sup> USHRN, Testimonies of Human Rights at Home: Documenting Injustice in the United States (2015), p. 27, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/testimonies\\_of\\_human\\_rights\\_at\\_home\\_-\\_documenting\\_injustice\\_in\\_the\\_united\\_states.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/testimonies_of_human_rights_at_home_-_documenting_injustice_in_the_united_states.pdf).

<sup>490</sup> Statement to the Permanent Forum on Indigenous Issues, Catarina de Albuquerque, UN Special Rapporteur to the human right safe drinking water and sanitation (May 24, 2011), available at [http://www.un.org/esa/socdev/unpfii/documents/session\\_10\\_statement\\_SR\\_water.pdf](http://www.un.org/esa/socdev/unpfii/documents/session_10_statement_SR_water.pdf).

<sup>491</sup> Multicultural Alliance for a Safe Environment (MASE), RESPONSE TO THE PERIODIC REPORT OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (July 1, 2014), ¶18, available at <http://masecoalition.org/wp-content/uploads/2015/05/MASE-CERD-Shadow-Report-FINAL.pdf>.

<sup>492</sup> International Human Rights Clinic, Berkeley Law, “United States Government Consultation on Environmental Issues Relating to the Universal Periodic Review: A Summary. October 7, 2014, UC Berkeley School of Law,” p. 8, available at [https://www.law.berkeley.edu/files/UPR\\_Enviro\\_Consultation\\_Outcome\\_Doc\\_141208.pdf](https://www.law.berkeley.edu/files/UPR_Enviro_Consultation_Outcome_Doc_141208.pdf). For

section provides information about specific cases of low-income, indigenous, and minority communities that lack adequate infrastructure for water and sewer service, with resulting public health problems and other related rights violations.

## 1. International Human Rights Law Requires States to Provide Access to Adequate Water and Sanitation

133. Under the UN framework for the human rights to water and sanitation, in order to ensure that water and sanitation meet human rights criteria, States must provide and maintain adequate infrastructure for delivery of these services.<sup>493</sup> As the UN Special Rapporteur on the human right to safe drinking water and adequate sanitation noted in his recent report on water and sanitation services, with respect to realizing the right to sanitation, States must establish “[t]he necessary structures . . . to ensure the availability of services, such as policies, programmes, institutions and sufficient personnel able to construct, maintain and manage the delivery of services.”<sup>494</sup> He further observed that “[s]anitation facilities must be reliably accessible to satisfy all needs throughout day and night, whether at home, the workplace or in public institutions.”<sup>495</sup> Similarly, with regard to water, he found that to realize the right to water, States must establish “the necessary structures to ensure service provision[.]”<sup>496</sup> and that water “supply must be reliable and continuous[.]”<sup>497</sup>

134. These obligations were initially defined by the UN CESCR in General Comment 15, which provides that States should ensure that “authorities have at their disposal sufficient

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example, studies show that “African Americans in the United States were more than twice as likely and Hispanics were more than three times as likely as non-Hispanic whites to live in homes with incomplete plumbing.” National Law Center on Homelessness and Poverty, “Simply Unacceptable”: Homelessness and the Human Right to Housing in the United States in 2011 (2011), pp. 48-49, available at [http://www.nlchp.org/documents/Simply\\_Unacceptable](http://www.nlchp.org/documents/Simply_Unacceptable).

<sup>493</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203).

<sup>494</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 7, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203).

<sup>495</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 9, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203).

<sup>496</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 15, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203).

<sup>497</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 16, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203).

resources to maintain and extend the necessary water services and facilities.”<sup>498</sup> General Comment 15 also emphasizes State responsibility to maintain adequate water and sanitation infrastructure in rural and low-income urban communities, noting that

States parties should take steps to ensure that . . . [r]ural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status.<sup>499</sup>

135. Despite these obligations, the U.S. has failed to maintain adequate water and sanitation infrastructure for its most vulnerable communities.

## 2. Low-Income Minority and Indigenous Communities Disproportionately Bear the Burden of Failing and Inadequate U.S. Water and Sanitation Infrastructure

136. U.S. water and sanitation infrastructure is failing and in need of major capital investment. As the UN Special Rapporteur on the Human Right to Water and Sanitation observed, “[t]he United States has aging water and wastewater systems, with decreasing investment in research and development, coupled with an increase in the population.”<sup>500</sup> In 2013, the American Society of Civil Engineers gave the U.S. a water infrastructure grade of “D.”<sup>501</sup> Although the federal government provided grants to finance major investments in the creation of water supply networks and treatment facilities in the 1970’s, this infrastructure is reaching the end of its useful life.<sup>502</sup> Distribution and treatment infrastructure throughout the nation’s cities, towns, and rural

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<sup>498</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 51, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>499</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 16, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>500</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶16, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>501</sup> American Society of Civil Engineers, 2013 Report Card for America's Infrastructure: Drinking Water (2013), available at <http://www.infrastructurereportcard.org/a/#/drinking-water/overview>.

<sup>502</sup> American Society of Civil Engineers, 2013 Report Card for America's Infrastructure: Drinking Water (2013), available at <http://www.infrastructurereportcard.org/a/#/drinking-water/overview>; Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 20-22,



communities is now cracked and crumbling, and aging distribution pipe systems crack open daily.<sup>503</sup> For example, Detroit’s infrastructure has been described as “crumbling, outdated, and outmoded.”<sup>504</sup> In the next 10 years, Washington, D.C. plans to make \$3.8 billion in water infrastructure improvements, more than half of which are federally mandated.<sup>505</sup> Some assessments peg the national cost of repairing and replacing old pipes at more than \$1 trillion over the next two decades.<sup>506</sup>

137. These infrastructure deficits exacerbate the affordability concerns raised above. Through water and sewer rates, consumers pay 90% of the cost to maintain and operate current water and sanitation infrastructure in the U.S.<sup>507</sup> However, it seems unlikely that consumers can afford the necessary infrastructure improvements if utilities finance them through rate increases alone; the U.S. Environmental Protection Agency “estimates that over the next 20 years, \$200 to \$400 billion [dollars] will be required to ensure the sustainability of water and wastewater systems.”<sup>508</sup> Despite the affordability concerns raised by this practice, the current structure of water and sanitation funding places this cost squarely on the backs of consumers, and current U.S. law and policy encourages this result.

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available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>503</sup> Walton, Brett, Prices of Water 2015: Up 6 Percent in Major U.S. Cities 41 Percent Rise Since 2010, Circle of Blue (April 22, 2015), [accessed at http://www.circleofblue.org/waternews/2015/world](http://www.circleofblue.org/waternews/2015/world)

<sup>504</sup> Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), p. 10, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>505</sup> Food & Water Watch, Our Right to Water: A People’s Guide to Implementing the UN Recognition of the Right to Safe Drinking Water and Sanitation in the United States, May 2012, [accessed at: https://drive.google.com/drive/folders/0ByDZ1MX9iyXVfkM2VFgwSD1XN0xIz3dvY3pXVkf0cVM5QURucWppZG5IRE43MVk5VDDLVjQ](https://drive.google.com/drive/folders/0ByDZ1MX9iyXVfkM2VFgwSD1XN0xIz3dvY3pXVkf0cVM5QURucWppZG5IRE43MVk5VDDLVjQ)

<sup>506</sup> Walton, Brett, Prices of Water 2015: Up 6 Percent in Major U.S. Cities 41 Percent Rise Since 2010, Circle of Blue (April 22, 2015), [accessed at http://www.circleofblue.org/waternews/2015/world](http://www.circleofblue.org/waternews/2015/world)

<sup>507</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶17, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); Walton, Brett, Prices of Water 2015: Up 6 Percent in Major U.S. Cities 41 Percent Rise Since 2010, Circle of Blue (April 22, 2015), available at <http://www.circleofblue.org/waternews/2015/world>.

<sup>508</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶17, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); see also Claudia Copeland and Mary Tiemann, Congressional Research Service, “Water Infrastructure Needs and Investment: Review and Analysis of Key Issues,” (December 21, 2010), available at <https://www.fas.org/sgp/crs/homesec/RL31116.pdf>; Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 20-21, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf> (noting that other estimates range into the trillions); Food and Water Watch, Our Right to Water (May 2012), p. 3, available at <http://documents.foodandwaterwatch.org/doc/OurRighttoWater.pdf>.

138. Traditional water pricing structures result in a mismatch between utility costs and revenues.<sup>509</sup> Although utilities generally set water rates based on the cost to treat and deliver water, customers have historically paid for water primarily based on the volume of water used.<sup>510</sup> Through conservation efforts spurred largely by climate fluctuations and drought, utilities are selling less water, but due to the infrastructure deficits described above, they need an increasing amount of revenue to cover the substantial costs of operating and maintaining a water system.<sup>511</sup> As a result, utilities are raising water rates and adding additional fixed charges to reduce their reliance on water consumption for revenue.<sup>512</sup> According to one annual water pricing survey of the U.S., the price of residential water service in 30 major U.S. cities rose faster than the cost of nearly every other household staple in 2014, and some utilities have adopted a pricing structure where fixed charges now amount to as much as 25 percent of revenue.<sup>513</sup>

139. At the same time, policy changes have motivated utilities to push more of their costs on to consumers. As the nation's water infrastructure has aged, the federal government has replaced grant programs for infrastructure improvements with loans.<sup>514</sup> This shift passes the costs of infrastructure improvements from the government to individual water utilities and then onto consumers in the form of increased rates.<sup>515</sup> A recent Georgetown Law report on water affordability in the U.S. found that "low-income customers are hit hardest[]" by water rate increases prompted by utilities shifting the costs of infrastructure maintenance and improvement onto consumers.<sup>516</sup>

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<sup>509</sup> Walton, Brett, Prices of Water 2015: Up 6 Percent in Major U.S. Cities 41 Percent Rise Since 2010, Circle of Blue (April 22, 2015), accessed at <http://www.circleofblue.org/waternews/2015/world>.

<sup>510</sup> Walton, Brett, Prices of Water 2015: Up 6 Percent in Major U.S. Cities 41 Percent Rise Since 2010, Circle of Blue (April 22, 2015), accessed at <http://www.circleofblue.org/waternews/2015/world>.

<sup>511</sup> Walton, Brett, Prices of Water 2015: Up 6 Percent in Major U.S. Cities 41 Percent Rise Since 2010, Circle of Blue (April 22, 2015), accessed at <http://www.circleofblue.org/waternews/2015/world>.

<sup>512</sup> Walton, Brett, Prices of Water 2015: Up 6 Percent in Major U.S. Cities 41 Percent Rise Since 2010, Circle of Blue (April 22, 2015), accessed at <http://www.circleofblue.org/waternews/2015/world>. For example, in some cities utilities have added a new stormwater charge to the provision of water services for controlling urban runoff from rainstorms.

<sup>513</sup> Walton, Brett, Prices of Water 2015: Up 6 Percent in Major U.S. Cities 41 Percent Rise Since 2010, Circle of Blue (April 22, 2015), accessed at <http://www.circleofblue.org/waternews/2015/world>.

<sup>514</sup> Santa Clara IHRC Interview with Patricia Jones, Senior Program Leader for the human right to water at the Unitarian Universalist Service Committee (UUSC), Santa Clara, California (Oct. 19, 2015); Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), p. 21, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>515</sup> Santa Clara IHRC Interview with Patricia Jones, Senior Program Leader for the human right to water at the Unitarian Universalist Service Committee (UUSC), Santa Clara, California (Oct. 19, 2015); Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), p. 21, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

<sup>516</sup> Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), p. 22, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>

140. As low-income residents struggle to afford their water bills, it has become clear that this policy of shifting the cost of water and sanitation infrastructure onto ratepayers has a disproportionate impact on vulnerable communities. According to Patricia Jones, Senior Program Leader on the Right to Water for the Unitarian Universalist Service Committee, the government will only replicate existing inequalities if it continues the current model of infrastructure investment “without reforms to the water and sanitation sector that will address the lack of equitable access by race, age, ability and economic status.”<sup>517</sup>

141. Without targeted government efforts to fill the funding gap, an increasing number of consumers will be unable to access basic water and sanitation service due to rising rates or lack of adequate infrastructure.<sup>518</sup> The U.S. already has a history of defining water and wastewater utility service boundaries to exclude low-income and minority communities from service.<sup>519</sup> Accordingly, low-income, indigenous, and homeless communities already face this reality and demonstrate the degree to which problems with access to adequate and affordable water and sanitation affect marginalized groups in the United States.

### 3. Low-Income Communities in Alabama Lack Access to Adequate Sanitation due to Infrastructure Deficits and Economic Barriers

142. Despite the international requirement that “States must ensure that everyone, without discrimination, has physical and affordable access to sanitation, ‘in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity’[.]”<sup>520</sup> the UN Special Rapporteur on the human right to safe drinking water and sanitation found that a large proportion of low-income households in Alabama’s Black Belt region do not have adequate sanitation infrastructure.<sup>521</sup> A recent investigation by Al Jazeera

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<sup>517</sup> Santa Clara IHRC Interview with Patricia Jones, Senior Program Leader for the human right to water at the Unitarian Universalist Service Committee (UUSC), Santa Clara, California (Oct. 19, 2015)

<sup>518</sup> Georgetown Law Human Rights Institute, Tapped Out: Threats to the Human Right to Water in the Urban United States (April 2013), pp. 16-22, available at <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>; Food and Water Watch, Our Right to Water (May 2012), p. 3, available at <http://documents.foodandwaterwatch.org/doc/OurRighttoWater.pdf>.

<sup>519</sup> 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>.

<sup>520</sup> Committee on Economic, Social and Cultural Rights (CESCR), Statement on the right to sanitation (E/C.12/2010/1) (quoting the UN Special Rapporteur on the human right to safe drinking water and sanitation).

<sup>521</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶20, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 8, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrnetwork\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrnetwork_righttowater_1.pdf).

confirms that “[t]he sewage shortcomings in Alabama’s Black Belt have existed for decades[,]”<sup>522</sup> and that this problem has continued without meaningful improvement since the Rapporteur’s 2011 country visit.<sup>523</sup> As the Rapporteur has noted, “[l]eaving residents of low income areas . . . without access to [a piped sewer system] often entrenches inequalities[,]”<sup>524</sup> and she found that in Alabama’s Black Belt region, an area central to U.S. civil rights struggles, the absence of adequate sanitation disproportionately affects low-income, minority families. A recent visit from the UN Working Group on the issue of discrimination against women in law and practice confirmed these findings and exposed the particular harms suffered by women and children.<sup>525</sup>

143. Within the Black Belt, the situation of Lowndes County illustrates the problem. In Lowndes County, 72.9%<sup>526</sup> of the population is African-American and over 26.7%<sup>527</sup> lives below the poverty line. According to the UN Special Rapporteur, over 80% of county households are not “served by conventional municipal sewer systems” and instead must finance their own “on-site wastewater systems, typically septic tanks and in-ground dispersal fields (trenches).”<sup>528</sup>

144. By failing to provide a public sanitation system, the government effectively pushes the cost of sanitation infrastructure onto the county’s poorest residents. According to the UN Special Rapporteur, “[u]se of sanitation facilities and services must be available at a price that is affordable to all people [and t]his must include [the] . . . costs of on-site solutions such as the

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<sup>522</sup> Amy Yurkanin, AL.com, “Sewage problems in Alabama’s Black Belt spawn parasites and serious illness, Al Jazeera reports,” (June 5, 2015), available at [http://www.al.com/news/index.ssf/2015/06/sewage\\_problems\\_in\\_alabamas\\_blackbelt.html](http://www.al.com/news/index.ssf/2015/06/sewage_problems_in_alabamas_blackbelt.html) (citing Carla Crowder, The Birmingham News, “Illness idles in home with make-do sewer,” (November 17, 2002), available at <http://www.al.com/specialreport/birminghamnews/index.ssf?blackbelt/blackbelt18.html>).

<sup>523</sup> Lindsey Rogers, Fight continues to tackle sewage problems across Black Belt, Alabama Channel 12 WSFA (Nov. 24, 2015), available at <http://www.wsfa.com/story/30533411/fight-continues-to-tackle-black-belt-raw-sewage-problems>; Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-belt-counties.html>; UN Working Group on the issue of discrimination against women in law and in practice finalizes country mission to the United States, (Dec. 11, 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16872&LangID=E>.

<sup>524</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 47, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203).

<sup>525</sup> Lindsey Rogers, UN experts tour Lowndes Co. in fact-finding mission, Alabama Channel 6 News WBRC (Dec. 4, 2015), available at <http://www.wbrc.com/story/30665189/un-experts-tour-lowndes-co-in-fact-finding-mission>.

<sup>526</sup> United States Census Bureau, Lowndes County, Alabama, State & County Quick Facts, available at <http://quickfacts.census.gov/qfd/states/01/01085.html>.

<sup>527</sup> United States Census Bureau, Lowndes County, Alabama, State & County Quick Facts, available at <http://quickfacts.census.gov/qfd/states/01/01085.html>.

<sup>528</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 20, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); United States Census Bureau, Lowndes County, Alabama, State & County Quick Facts, 4 November 2010, available at <http://quickfacts.census.gov/qfd/states/01/01085.html>.

construction or maintenance of [] septic tanks.”<sup>529</sup> Despite this standard, on-site wastewater systems are not affordable for Lowndes County’s low-income residents. The annual median income in Lowndes County is \$26,230,<sup>530</sup> and the costs for adequate alternative on-site wastewater systems ranges between \$6,000 - \$30,000.<sup>531</sup> This explains why in Lowndes County, according to the Alabama Department of Public Health, approximately “40 to 90% of households have either inadequate or no septic system,”<sup>532</sup> and half of the county’s septic systems are failing or in poor condition.<sup>533</sup>

a. On-site Septic Systems Fail Due to Soil Conditions, and the Government Should Provide Sanitation Infrastructure that Operates Properly Under Local Conditions

145. Even where Lowndes County households have on-site wastewater systems in place, these systems routinely fail due to the unique soil conditions in Alabama’s Black Belt.<sup>534</sup> The soil conditions in Lowndes County are good for farming, but bad for sewage as the soil does not hold water.<sup>535</sup> Native soils in Lowndes County consist of heavy clay material that does not absorb water well.<sup>536</sup> This has serious effects: when the water is not absorbed, sewage overflows from

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<sup>529</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 12, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203) (citing to Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the Human Rights Council on Affordability of water and sanitation services, ¶ 7, U.N. Doc. A/HRC/30/39 (Aug. 5, 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/172/77/PDF/G1517277.pdf?OpenElement>.) (internal citations omitted).

<sup>530</sup> United States Census Bureau, Lowndes County, Alabama, State & County Quick Facts, available at <http://quickfacts.census.gov/qfd/states/01/01085.html>. This figure is only slightly higher than the federal poverty level in the U.S. for a family of four. See U.S. Department of Health and Human Services, 2015 Poverty Guidelines, available at <https://aspe.hhs.gov/2015-poverty-guidelines#thresholds>.

<sup>531</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 22, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>532</sup> Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-belt-counties.html>.

<sup>533</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 20, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>534</sup> Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-belt-counties.html>; Lindsey Rogers, Fight continues to tackle sewage problems across Black Belt, Alabama Channel 12 WSFA (Nov. 24, 2015), available at <http://www.wsfa.com/story/30533411/fight-continues-to-tackle-black-belt-raw-sewage-problems>.

<sup>535</sup> Catherine Coleman Flowers, Founder and Director Alabama Center for Rural Enterprise, America’s Dirty Secret: Living amongst Raw Sewage, Duke Franklin Humanities Institute (Dec. 9, 2014), recording available at <https://www.youtube.com/watch?v=5d-d0Pa1AF8>.

<sup>536</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 22, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at



septic systems.<sup>537</sup> Therefore, significant effluent run-off problems lead to a public health crisis as a result of sewage overflow.<sup>538</sup>

146. Combined with the affordability problem outlined above, the lack of adequate sanitation infrastructure that functions properly under local conditions results in a situation where residents are routinely exposed to raw sewage. Where individuals cannot afford an adequate septic system or septic systems fail due to soil conditions, sewage is piped directly onto the ground.<sup>539</sup> Because of the impermeable soil, this wastewater remains on the surface next to homes, primarily mobile homes and trailers, and people are surrounded by raw sewage.<sup>540</sup> Children play on the streets in between pools of wastewater and toilet paper.<sup>541</sup> The resulting exposure to raw sewage leads to serious health impacts, which are described in more detail below. These heavy effluent run-off problems intensify the urgent need for adequate wastewater systems in this region. The government has an obligation to provide affordable sanitation infrastructure that operates properly under these local soil conditions.

b. The Alabama Department of Public Health criminalizes residents for being unable to afford sanitation

147. State officials place the burden of alleviating this crisis on individual households. Alabama law requires that homes have a working septic system, but many residents cannot afford to purchase or maintain a septic tank.<sup>542</sup> As mentioned above, the level of poverty in

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[http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>537</sup> Lindsey Rogers, Fight continues to tackle sewage problems across Black Belt, Alabama Channel 12 WSFA (Nov. 24, 2015), available at <http://www.wsfa.com/story/30533411/fight-continues-to-tackle-black-belt-raw-sewage-problems>.

<sup>538</sup> Lindsey Rogers, Fight continues to tackle sewage problems across Black Belt, Alabama Channel 12 WSFA (Nov. 24, 2015), available at <http://www.wsfa.com/story/30533411/fight-continues-to-tackle-black-belt-raw-sewage-problems>.

<sup>539</sup> Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-belt-counties.html>; Catherine Coleman Flowers, Founder and Director Alabama Center for Rural Enterprise, America's Dirty Secret: Living amongst Raw Sewage, Duke Franklin Humanities Institute (Dec. 9, 2014), recording available at <https://www.youtube.com/watch?v=5d-d0Pa1AF8>.

<sup>540</sup> Catherine Coleman Flowers, Founder and Director Alabama Center for Rural Enterprise, America's Dirty Secret: Living amongst Raw Sewage, Duke Franklin Humanities Institute (Dec. 9, 2014), recording available at <https://www.youtube.com/watch?v=5d-d0Pa1AF8>; Lindsey Rogers, Fight continues to tackle sewage problems across Black Belt, Alabama Channel 12 WSFA (Nov. 24, 2015), available at <http://www.wsfa.com/story/30533411/fight-continues-to-tackle-black-belt-raw-sewage-problems>.

<sup>541</sup> Catherine Coleman Flowers, Founder and Director Alabama Center for Rural Enterprise, America's Dirty Secret: Living amongst Raw Sewage, Duke Franklin Humanities Institute (Dec. 9, 2014), recording available at <https://www.youtube.com/watch?v=5d-d0Pa1AF8>.

<sup>542</sup> Lindsey Rogers, Fight continues to tackle sewage problems across Black Belt, Alabama Channel 12 WSFA (Nov. 24, 2015), available at <http://www.wsfa.com/story/30533411/fight-continues-to-tackle-black-belt-raw-sewage-problems>; Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-belt-counties.html>.



Lowndes County is among the highest in the U.S., but Alabama does not provide financial assistance for low-income households to meet this requirement.<sup>543</sup> Instead, Alabama criminalizes the inability to afford adequate sanitation by imposing criminal charges against homeowners who do not have septic systems that conform with state health and safety requirements.<sup>544</sup>

148. Criminalization for the inability to afford sanitation places additional burdens on vulnerable households. For example, In 1999, the Alabama Department of Public Health initiated legal action (litigation and arrests) against 41 Lowndes County sites for releasing raw sewage onto the ground, aiming to enforce state environmental and health standards.<sup>545</sup> The County gives residents with non-compliant septic systems 30 days to bring them into compliance but will take legal action against residents unable to comply within that time frame.<sup>546</sup> A recent statement from an Alabama government official confirmed that this policy remains in place,<sup>547</sup> and advocates report individuals facing criminal charges for not having a septic system as recently as 2014.<sup>548</sup> In the 1999 cases, many low-income residents who could not afford to take remedial action were arrested, and they now have arrest records for not being able to afford the costly remedy of a new or repaired on-site septic system.<sup>549</sup>

149. This policy not only criminalizes them for their lack of access to adequate sanitation (including the career consequences of having a criminal record) but also places mothers at risk of

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<sup>543</sup> Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-belt-counties.html>.

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<sup>544</sup> Lindsey Rogers, Fight continues to tackle sewage problems across Black Belt, Alabama Channel 12 WSFA (Nov. 24, 2015), available at <http://www.wsfa.com/story/30533411/fight-continues-to-tackle-black-belt-raw-sewage-problems>.

<sup>545</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 21, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque)

<sup>546</sup> Lindsey Rogers, Fight continues to tackle sewage problems across Black Belt, Alabama Channel 12 WSFA (Nov. 24, 2015), available at <http://www.wsfa.com/story/30533411/fight-continues-to-tackle-black-belt-raw-sewage-problems>.

<sup>547</sup> Lindsey Rogers, Fight continues to tackle sewage problems across Black Belt, Alabama Channel 12 WSFA (Nov. 24, 2015), available at <http://www.wsfa.com/story/30533411/fight-continues-to-tackle-black-belt-raw-sewage-problems>.

<sup>548</sup> Catherine Coleman Flowers, Founder and Director Alabama Center for Rural Enterprise, America's Dirty Secret: Living amongst Raw Sewage, Duke Franklin Humanities Institute (Dec. 9, 2014), recording available at <https://www.youtube.com/watch?v=5d-d0Pa1AF8>.

<sup>549</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 21, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque)

losing custody of their children.<sup>550</sup> The UN Special Rapporteur on the Human Right to Water and Sanitation received information on the case of “a 27-year-old woman with an autistic child, living on \$12,000 a year of disability income, whom law enforcement officials threatened to arrest and separate from her child because she has not been able to install a septic system that would have cost half her annual income.”<sup>551</sup>

c. Lack of access to proper sanitation causes serious health risks, including diseases thought to be eradicated in the U.S.

150. Lack of access to adequate sanitation infrastructure also has negative health consequences for these communities, particularly women and children. As the UN Special Rapporteur on the human right to safe drinking water and adequate sanitation noted in his recent report on water and sanitation services, with respect to realizing the right to sanitation, “[h]uman rights require that sanitation facilities must be hygienically safe to use and easy to clean and maintain. They must effectively prevent human and animal, including insect, contact with human excreta to avert the spread of disease.”<sup>552</sup>

151. In Alabama, the affected population suffers from serious health problems caused by inadequate sanitation, including parasites, gastrointestinal symptoms and other diseases associated with inadequate sanitation, including “diseases long thought eradicated in the U.S.”<sup>553</sup> The hot tropical conditions combined with the raw sewage facilitate the development of bacteria and parasites - a dangerous trend, since the local doctors in the area are not trained to test for or treat tropical illnesses they assume do not exist in the U.S.<sup>554</sup> A 2013 water quality study of the

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<sup>550</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 21, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-blackbelt-counties.html>.

<sup>551</sup> Equal Justice Initiative, Alabama Rural Poverty and the Basic Human Right to Water and Sanitation Is Subject of United Nations Inquiry (March 3, 2011), available at <http://www.eji.org/node/510>; UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 21, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/AHRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/AHRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>552</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report to the UN General Assembly on Different levels and types of services and the human rights to water and sanitation, ¶ 11, U.N. Doc. A/70/203 (July 27, 2015), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/203](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/203).

<sup>553</sup> Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-blackbeltcounties.html>; US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 9, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_1.pdf).

<sup>554</sup> Catherine Coleman Flowers, Founder and Director Alabama Center for Rural Enterprise, America’s Dirty Secret: Living amongst Raw Sewage, Duke Franklin Humanities Institute (Dec. 9, 2014), recording available at <https://www.youtube.com/watch?v=5d-d0Pa1AF8>.

Black Belt found high rates of water contamination related to inadequate sanitation infrastructure, with a corresponding increase in gastrointestinal illness.<sup>555</sup> Doctors in the area also report observing a high incidence of gastrointestinal illnesses and rare parasitic diseases.<sup>556</sup> Recent studies suggest that women are more impacted than men by these parasitic infections caused by exposure to raw sewage.

152. According to reports, “Alabama’s Black Belt has long been plagued with diseases related to poor sewage, like hookworm, a tiny parasite that enters the body often through bare feet and sucks blood from the lining of the intestines.”<sup>557</sup> Although hookworm infection is not fatal, it can cause serious health problems such as anemia, or in children, stunted growth or intellectual delays.<sup>558</sup> Black Belt children are particularly susceptible to hookworm infection because they play outside in areas where raw sewage is present.<sup>559</sup> A 1993 health study found that in one small clinic in the Black Belt, 34% of children under 10 were infected with hookworm.<sup>560</sup> The most recent health study, based on 2013 testing by Baylor University’s National School for Tropical Medicine,<sup>561</sup> discovered hookworm eggs in every patient (56 individuals aged between 8 and 60 living in poor sanitation areas in Lowndes County) they studied.<sup>562</sup> They also found

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<sup>555</sup> Jessica Cook Wedgworth, Joe Brown; Water Quality, Exposure and Health; “Limited Access to Safe Drinking Water and Sanitation in Alabama’s Black Belt: A Cross-Sectional Case Study,” June 2013, Vol. 5, Issue 2, pp. 69-74, available at

[http://www.researchgate.net/publication/257781005\\_Limited\\_Access\\_to\\_Safe\\_Drinking\\_Water\\_and\\_Sanitation\\_in\\_Alabamas\\_Black\\_Belt\\_A\\_Cross-Sectional\\_Case\\_Study](http://www.researchgate.net/publication/257781005_Limited_Access_to_Safe_Drinking_Water_and_Sanitation_in_Alabamas_Black_Belt_A_Cross-Sectional_Case_Study).

<sup>556</sup> Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-beltcounties.html>.

<sup>557</sup> Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-blackbelt-counties.html>.

<sup>558</sup> U.S. Centers for Disease Control and Prevention, Parasites – Hookworm, available at [http://www.cdc.gov/parasites/hookworm/gen\\_info/faqs.html](http://www.cdc.gov/parasites/hookworm/gen_info/faqs.html); Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-blackbelt-counties.html>.

<sup>559</sup> Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-blackbelt-counties.html>.

<sup>560</sup> Ashley Cleek, Filthy water and shoddy sewers plague poor Black Belt counties, Al Jazeera (June 3, 2015), available at <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-blackbelt-counties.html>.

<sup>561</sup> Lindsey Rogers, Fight continues to tackle sewage problems across Black Belt, Alabama Channel 12 WSFA (Nov. 24, 2015), available at <http://www.wsfa.com/story/30533411/fight-continues-to-tackle-black-belt-raw-sewage-problems>.

<sup>562</sup> Megan McKenna, Rojelio Mejia, Tabitha Ward, Catherine Flowers, Identification of Human Intestinal Parasites in Rural Alabama, United States of America, about to be released, abstract available at <http://www.abstractsonline.com/Plan/ViewAbstract.aspx?sKey=a072e15a-59ff-43c8-99e4-52ebb7ad635b&cKey=672600d8-5c21-4b39-9f36-66e6d2410c44&mKey=%7bAB652FDF-0111-45C7-A5E5-0BA9D4AF5E12%7d>.

evidence of gastrointestinal parasites that are endemic to less developed countries.<sup>563</sup> Without adequate sanitation, Lowndes County residents live in the midst of an unending public health crisis.

153. The lack of adequate sanitation infrastructure in Alabama’s Black Belt and its disproportionate impact on low-income, minority individuals represents an egregious violation of the human rights to water and sanitation in the U.S. The State should provide emergency assistance and develop a long-term plan to ensure adequate sanitation as a matter of urgency.

#### 4. Homeless Communities in Northern California Lack Access to Basic Levels of Water and Sanitation and Are Criminalized for Fulfilling Basic Human Needs

154. In the U.S., where up to 3.5 million people experience homelessness every year,<sup>564</sup> homeless populations systematically lack equal access – or any access – to adequate water and sanitation.<sup>565</sup> According to the National Law Center on Homelessness and Poverty, for homeless populations “lack of shelter often means lack of these basic resources” because “[e]xisting infrastructure in the U.S. inextricably links housing or other facilities with access to water,

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<sup>563</sup> Megan McKenna, Rojelio Mejia, Tabitha Ward, Catherine Flowers, Identification of Human Intestinal Parasites in Rural Alabama, United States of America, about to be released, abstract available at <http://www.abstractsonline.com/Plan/ViewAbstract.aspx?sKey=a072e15a-59ff-43c8-99e4-52ebb7ad635b&cKey=672600d8-5c21-4b39-9f36-66e6d2410c44&mKey=%7bAB652FDF-0111-45C7-A5E5-0BA9D4AF5E12%7d>.

<sup>564</sup> U.S. government data indicates that a disproportionate percentage of the U.S. homeless population is African-American. See National Law Center on Homelessness and Poverty, Factsheet “Homelessness in America: Overview of Data and Causes,” (January 2015), p. 1, available at [http://www.nlchp.org/documents/Homeless\\_Stats\\_Fact\\_Sheet](http://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet); UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 56, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque). For more information on racial disparities in homelessness in the United States, see National Law Center on Homelessness and Poverty and Los Angeles Community Action Network, Racial Discrimination in Housing and Homelessness in the United States: A Report to the U.N. Committee on the Elimination of Racial Discrimination, (July 3, 2014), paras. 7-10, available at [http://www.nlchp.org/documents/CERD\\_Housing\\_Report\\_2014](http://www.nlchp.org/documents/CERD_Housing_Report_2014).

<sup>565</sup> See Food and Water Watch, Our Right to Water (May 2012), p. 7, available at <http://documents.foodandwaterwatch.org/doc/OurRighttoWater.pdf>; Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, “Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California,” Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), pp. 19-21, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf).

sanitation, and other basic services.”<sup>566</sup> Policies that restrict access to public restrooms and drinking fountains in public areas<sup>567</sup> and laws criminalizing public urination or defecation exacerbate the problems caused by their lack of access to adequate water and sanitation.<sup>568</sup> The selective enforcement of these laws against homeless individuals, who have no other alternatives, has a discriminatory impact on this vulnerable population, further undermining full realization of the right to water and sanitation.<sup>569</sup>

155. Homeless women in the U.S. face particularly stark gendered impacts of the lack of access to water and sanitation that frequently accompanies homelessness in the U.S. Not only do homeless women suffer from dehydration and the inability to maintain hygiene, they also risk criminal charges and sexual violence when forced by the lack of public restrooms to relieve themselves in public. They also face gender-based discrimination in accessing services.

156. Women without access to proper sanitation facilities, including homeless women in the U.S., are often forced to go without relieving themselves at night for fear of being arrested. According to a California water justice expert, at a water management convening last year, a homeless organizer highlighted that the closure of public restrooms because of California’s drought would affect access for many homeless people, more so for women and children, who find it more difficult to defecate outdoors than men do, particularly for women that are large or

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<sup>566</sup> National Law Center on Homelessness and Poverty, et al., Housing and Homelessness in the United States of America, Submission to the Universal Periodic Review of the United States of America (September 15, 2014), para. 23, available at [http://www.nlchp.org/documents/UPR\\_Housing\\_Report\\_2014](http://www.nlchp.org/documents/UPR_Housing_Report_2014).

<sup>567</sup> Safe Water Alliance, Environmental Justice Coalition for Water, and the International Human Rights Law Clinic, University of California, Berkeley, School of Law, “Racial Discrimination and Access to Safe, Affordable Water for Communities of Color in California,” Shadow Report to the UN Committee on the Elimination of Racial Discrimination (August 2014), p. 2, available at [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_17884\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf).

<sup>568</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 56, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); see also National Law Center for Homelessness and Poverty, “When There’s No Alternative: Rights to Water and Sanitation,” (February 25, 2011), available at <http://homelessnesslaw.org/2011/02/when-theres-no-alternative-rights-to-water-sanitation/>. Homeless individuals are also subject to social stigma because of their status, and lack of access to water and sanitation worsens this problem as well. UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Stigma and the Realization of the Human Rights to Water and Sanitation, U.N. Doc. A/HRC/21/42 (July 2, 2012), ¶¶ 37, 42, available at [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-42\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-42_en.pdf).

<sup>569</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 56, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque). For example, advocates filed a 2009 class action complaint in St. Petersburg, Florida, on behalf of the city’s homeless who were routinely penalized for using public space to perform basic bodily functions when they had nowhere else to go. National Law Center on Homelessness and Poverty, et al., Criminalization of Homelessness in the United States of America: A Report to U.N. Committee Against Torture, (Sept. 22, 2014), note 10, available at [http://www.nlchp.org/documents/CAT\\_Criminalization\\_Shadow\\_Report\\_2014](http://www.nlchp.org/documents/CAT_Criminalization_Shadow_Report_2014) (see para. 2 for more information about discriminatory enforcement of such provisions).



have some form of disability. He noted that it is also much more risky for them to do this at night because of safety concerns, so many of them do not drink water at all to avoid going to the bathroom. Public restrooms all over the North, East and South Bay Area, California have been closed indefinitely since spring of 2015. Similarly, a recent report by the National Law Center on Homelessness and Poverty notes the harsh effects of lack of access to water and sanitation on homeless women, citing the example of Jo Anne Reynolds, a homeless woman in St. Petersburg, Florida, with “kidney problems that also made it difficult to get through the night. As a result, she refrained from drinking water in the evenings because it was the only way she could ensure she would avoid arrest for public urination.”<sup>570</sup>

157. A Christian homeless center in Kentucky recently adopted a policy banning women and children in order to avoid any sexual conduct with the shelter’s majority male patrons, which the shelter’s director claims has become a problem.<sup>571</sup> The shelter, which is the only one in Williamsburg, Kentucky, forced 12 women to leave when it put the policy in place.<sup>572</sup> Women who are turned away are forced to seek shelter at another facility for women, thirty minutes away by car, or remain on the street in harsh winter conditions.<sup>573</sup> The change in policy affects roughly ten to twelve women per week.<sup>574</sup> This type of policy has an obvious disparate impact on women’s access to shelter, but it further impacts their access to water and sanitation as well, in that most women go to shelters to find a place to bathe, drink water, and rest.<sup>575</sup> Some homeless

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<sup>570</sup> National Law Center for Homelessness and Poverty, *Cruel, Inhuman, and Degrading: Homelessness in the United States under the International Covenant on Civil and Political Rights*, (Aug. 23, 2013), p. 8, available at [http://www.nlchp.org/Cruel\\_Inhuman\\_and\\_Degrading](http://www.nlchp.org/Cruel_Inhuman_and_Degrading).

<sup>571</sup> See Jon Livesey, *The Mirror*, *Christian homeless shelter bans women after “sex problem” emerges at facility*, (Dec. 14, 2015), available at <http://www.mirror.co.uk/news/world-news/christian-homeless-shelter-bans-women-7010472>; David Edwards, *Raw Story*, *Kentucky shelter tosses out all women days before holidays because they tempt men with ‘ungodly’ sex*, (Dec. 14, 2015), available at <http://www.rawstory.com/2015/12/kentucky-shelter-tosses-out-all-women-days-before-holidays-because-they-tempt-men-with-ungodly-sex/>.

<sup>572</sup> See Jon Livesey, *The Mirror*, *Christian homeless shelter bans women after “sex problem” emerges at facility*, (Dec. 14, 2015), available at <http://www.mirror.co.uk/news/world-news/christian-homeless-shelter-bans-women-7010472>; David Edwards, *Raw Story*, *Kentucky shelter tosses out all women days before holidays because they tempt men with ‘ungodly’ sex*, (Dec. 14, 2015), available at <http://www.rawstory.com/2015/12/kentucky-shelter-tosses-out-all-women-days-before-holidays-because-they-tempt-men-with-ungodly-sex/>.

<sup>573</sup> See Jon Livesey, *The Mirror*, *Christian homeless shelter bans women after “sex problem” emerges at facility*, (Dec. 14, 2015), available at <http://www.mirror.co.uk/news/world-news/christian-homeless-shelter-bans-women-7010472>; David Edwards, *Raw Story*, *Kentucky shelter tosses out all women days before holidays because they tempt men with ‘ungodly’ sex*, (Dec. 14, 2015), available at <http://www.rawstory.com/2015/12/kentucky-shelter-tosses-out-all-women-days-before-holidays-because-they-tempt-men-with-ungodly-sex/>.

<sup>574</sup> See Jon Livesey, *The Mirror*, *Christian homeless shelter bans women after “sex problem” emerges at facility*, (Dec. 14, 2015), available at <http://www.mirror.co.uk/news/world-news/christian-homeless-shelter-bans-women-7010472>; David Edwards, *Raw Story*, *Kentucky shelter tosses out all women days before holidays because they tempt men with ‘ungodly’ sex*, (Dec. 14, 2015), available at <http://www.rawstory.com/2015/12/kentucky-shelter-tosses-out-all-women-days-before-holidays-because-they-tempt-men-with-ungodly-sex/>.

<sup>575</sup> See Jon Livesey, *The Mirror*, *Christian homeless shelter bans women after “sex problem” emerges at facility*, (Dec. 14, 2015), available at <http://www.mirror.co.uk/news/world-news/christian-homeless-shelter-bans-women-7010472>; David Edwards, *Raw Story*, *Kentucky shelter tosses out all women days before holidays because they tempt men with ‘ungodly’ sex*, (Dec. 14, 2015), available at <http://www.rawstory.com/2015/12/kentucky-shelter-tosses-out-all-women-days-before-holidays-because-they-tempt-men-with-ungodly-sex/>.



women find refuge in emergency medical facilities that may give them food and water, but typically health facilities will refer homeless women back to shelters that may not necessarily accept them pursuant to this kind of discriminatory policy, leaving them without access to water, sanitation, or hygiene.

158. The situation of Sacramento, California's large homeless population is emblematic of the cascade of human rights violations that arise from depriving homeless persons of access to water and sanitation. According to a 2015 survey, Sacramento County's homeless population consists of 2,659 individuals who live in shelters, parks, and along the American River.<sup>576</sup> Advocates and observers including the UN Special Rapporteur on the human right to safe drinking water and sanitation have found that Sacramento discriminates against its homeless population by denying homeless persons access to public restrooms and drinking fountains and criminalizing them for fulfilling basic human needs through selective enforcement of local ordinances that ban 'illegal' camping and public defecation.<sup>577</sup> Sacramento's actions have forced its homeless communities to address water and sanitation issues through their own initiatives.<sup>578</sup> Since 2011, homeless communities have been forced to establish makeshift toilets and then transport human waste for disposal at public restrooms located miles away from tent cities.<sup>579</sup>

159. The Special Rapporteur documented this situation during her 2011 country visit to the United States, looking specifically at the situation of a large homeless encampment in Sacramento.<sup>580</sup> She found that, with no access to public sanitation services, homeless populations are forced to clean up their own human waste and find alternative ways to dispose of

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<sup>576</sup> Cynthia Hubert, *Number of Homeless People in Sacramento County Largely Unchanged, Survey Shows*, Sacramento Bee, July 24, 2015, available at <http://www.sacbee.com/news/local/article28671886.html#storylink=cpy>.

<sup>577</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Letter to the Mayor of Sacramento, (January 23, 2012), available at <http://www.scribd.com/doc/80310395/Letter-to-Mayor-Johnson-from-UN> (by Catarina de Albuquerque); see also National Law Center on Homelessness and Poverty, "UN to Sacramento: You're Violating Human Rights of Homeless People," (February 6, 2012), available at <http://homelessnesslaw.org/2012/02/un-to-sacramento-youre-violating-human-rights-of-homeless-people/>; Brooke Purves, *Street Strife: Activists Say the City is Criminalizing Homelessness. Others Point Out All the Positive Changes*, (Jan. 15, 2015) available at

<http://www.newsreview.com/sacramento/street-strife/content?oid=16029134>.

<sup>578</sup> Homelessness Law, *UN to Sacramento: You are Violating the Human Rights of Homeless People*, (Feb. 6, 2012) available at

<http://homelessnesslaw.org/2012/02/un-to-sacramento-youre-violating-human-rights-of-homeless-people/>.

<sup>579</sup> Homelessness Law, *UN to Sacramento: You are Violating the Human Rights of Homeless People*, (Feb. 6, 2012) available at

<http://homelessnesslaw.org/2012/02/un-to-sacramento-youre-violating-human-rights-of-homeless-people/>.

<sup>580</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶¶ 56-60, U.N. Doc. A/HRC/18/33/Add.4 (August 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

it.<sup>581</sup> The Special Rapporteur reported the story of the Sacramento encampment’s ‘sanitation technician,’ a man who voluntarily collected the solid waste of the community members and manually disposed of it.<sup>582</sup> Her report indicated that this situation poses a public health problem as well as a human rights concern, particularly given that adequate sanitation is required to enjoy the fundamental right to privacy and human dignity.<sup>583</sup> She emphasized the importance of access to sanitation services for homeless individuals, noting that the “denial of opportunities to [exercise basic bodily functions] in a lawful and dignified manner can both compromise human dignity and cause suffering,” even rising to the level of “cruel, inhumane or degrading treatment.”<sup>584</sup> In a 2012 letter to Sacramento’s mayor, she reiterated this concern and strongly urged the city to provide immediate access to public restrooms as an interim solution and to stop the discriminatory enforcement of criminal laws penalizing public urination and defecation against homeless individuals.<sup>585</sup> Unfortunately, the Clinic has found no information indicating that the situation has improved.<sup>586</sup>

160. Current reports indicate that Sacramento may still be discriminating against its homeless population. These reports suggest that Sacramento continues to arrest homeless residents for ‘illegal’ camping and deprive them of access to water and sanitation by closing public restrooms

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<sup>581</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶¶ 58-59, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>582</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶¶ 58-59, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>583</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 19, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>584</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 56, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>585</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Letter to the Mayor of Sacramento, (January 23, 2012), available at <http://www.scribd.com/doc/80310395/Letter-to-Mayor-Johnson-from-UN> (by Catarina de Albuquerque); see also National Law Center on Homelessness and Poverty, “UN to Sacramento: You’re Violating Human Rights of Homeless People,” (February 6, 2012), available at <http://homelessnesslaw.org/2012/02/un-to-sacramento-youre-violating-human-rights-of-homeless-people/>.

<sup>586</sup> A recent article from a local newspaper indicates that, according to Sacramento police data, arrests of homeless individuals for violations of Sacramento’s illegal camping ordinance and shut-downs of accessible restrooms have increased. See Brook Purves, Sacramento News & Mail, “Street Strife,” (January 15, 2015), available at <http://www.newsreview.com/sacramento/street-strife/content?oid=16029134>. For more information about increased criminalization of homelessness in the U.S. more broadly, see National Law Center on Homelessness and Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities*, (July 2014), available at [http://www.nlchp.org/documents/No\\_Safe\\_Place](http://www.nlchp.org/documents/No_Safe_Place).

or water fountains adjacent to homeless communities.<sup>587</sup> According to the Sacramento Police Department Spokesman, the number of “illegal camping arrests” increased 140% between 2013 and 2014.<sup>588</sup> In response to complaints from residents of wealthy neighborhoods, the city government sent rangers to enforce the illegal camping ordinance by destroying homeless individuals’ camps and confiscating their property.<sup>589</sup> Sacramento has also deprived homeless communities of access to sanitation by permanently closing public restrooms or setting early times to lock public restrooms.<sup>590</sup> For example, it closed public restrooms at Cesar Chavez Park, a gathering center for Sacramento’s homeless population and related charities.<sup>591</sup> Although the city government claimed that it lacked funds to fix broken facilities, all closed restrooms happened to be adjacent to homeless communities.<sup>592</sup> As a result, homeless individuals are forced to spend money to access ‘for customers only’ restrooms inside private businesses or go outside and risk arrest.<sup>593</sup> Similarly, Sacramento has decreased access to clean drinking water by decommissioning public water fountains near homeless communities without providing alternative safe water sources.<sup>594</sup>

161. The UN Special Rapporteur on the right to safe drinking water and sanitation has condemned Sacramento’s practices toward its homeless population as “unacceptable, an affront to human dignity and a violation of human rights that may amount to cruel, inhuman or degrading treatment.”<sup>595</sup> The Special Rapporteur emphasized that Sacramento should implement an “immediate interim solution” to increase homeless persons’ access to clean water and restrooms, especially at night.<sup>596</sup> Advocates support this recommendation and urge Sacramento

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<sup>587</sup> Santa Clara IHRC Interview of Colin Bailey, Executive Director of the Environmental Justice Coalition for Water (Nov. 4, 2015). Mr. Bailey has worked closely with Sacramento’s homeless population on these issues.

<sup>588</sup> Brooke Purves, *Street Strife: Activists Say the City is Criminalizing Homelessness. Others Point Out All the Positive Changes*, (Jan. 15, 2015) available at <http://www.newsreview.com/sacramento/street-strife/content?oid=16029134>.

<sup>589</sup> Santa Clara IHRC Interview of Colin Bailey, Executive Director of the Environmental Justice Coalition for Water (Nov. 4, 2015).

<sup>590</sup> Santa Clara IHRC Interview of Colin Bailey, Executive Director of the Environmental Justice Coalition for Water (Nov. 4, 2015).

<sup>591</sup> Brooke Purves, *Street Strife: Activists Say the City is Criminalizing Homelessness. Others Point Out All the Positive Changes*, (Jan. 15, 2015) available at <http://www.newsreview.com/sacramento/street-strife/content?oid=16029134>.

<sup>592</sup> Santa Clara IHRC Interview of Colin Bailey, Executive Director of the Environmental Justice Coalition for Water (Nov. 4, 2015).

<sup>593</sup> Brooke Purves, *Street Strife: Activists Say the City is Criminalizing Homelessness. Others Point Out All the Positive Changes*, (Jan. 15, 2015) available at <http://www.newsreview.com/sacramento/street-strife/content?oid=16029134>.

<sup>594</sup> Homelessness Law, *UN to Sacramento: You are Violating the Human Rights of Homeless People*, (Feb. 6, 2012) available at <http://homelessnesslaw.org/2012/02/un-to-sacramento-youre-violating-human-rights-of-homeless-people/>.

<sup>595</sup> National Law Center on Homelessness and Poverty, *“Simply Unacceptable”: Homelessness and the Human Right to Housing in the United States* (June 2011) 42 available at [http://www.nlchp.org/Simply\\_Unacceptable](http://www.nlchp.org/Simply_Unacceptable).

<sup>596</sup> National Law Center on Homelessness and Poverty, *“Simply Unacceptable”: Homelessness and the Human Right to Housing in the United States* (June 2011) 42 available at [http://www.nlchp.org/Simply\\_Unacceptable](http://www.nlchp.org/Simply_Unacceptable).

to recognize that housing is the solution to homelessness<sup>597</sup> and establish long-term programs to secure safe housing with clean water and sanitation infrastructure for all its residents.<sup>598</sup>

## 5. Low-Income Minority and Immigrant Residents of Informal Colonia Settlements on the U.S.-Mexico Border Lack Access to Basic Water and Sanitation Infrastructure

162. Informal colonia settlements on the U.S.-Mexico Border provide a particularly egregious example<sup>599</sup> of how rural low-income minority communities in the U.S. lack access to water and sanitation.<sup>600</sup> A U.S. federal law, the 1990 Cranston-Gonzalez National Affordable Housing Act, defines colonias as underserved rural communities on the U.S.-Mexico border in Arizona, California, New Mexico, or Texas<sup>601</sup> that “lack [a] potable water supply, [] adequate sewage systems, and [] decent, safe, and sanitary housing.”<sup>602</sup> Colonias suffer from a lack of legal protections and government investment; in addition to these problems, because most colonia residents are immigrants, they face discrimination on this basis as well.<sup>603</sup> Given that colonias feature high rates of extreme poverty<sup>604</sup> and 64.4% of colonia residents are Latina/o,<sup>605</sup> this lack

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<sup>597</sup> Scott Carrier, Room for Improvement: The Shockingly Simple, Surprisingly Cost-Effective Way to End Homelessness, Mother Jones (March/April 2015), available at <http://www.motherjones.com/politics/2015/02/housing-first-solution-to-homelessness-utah> (describing the success of Utah’s housing first approach to ending homelessness); Rosanne Haggerty, President of Community Solutions. For Even the Neediest, Housing Is the Solution to Homelessness, New York Times Opinion Pages (Feb. 19, 2015), available at <http://www.nytimes.com/roomfordebate/2015/02/19/homes-for-the-homeless/for-even-the-neediest-housing-is-the-solution-to-homelessness>.

<sup>598</sup> Homelessness Law, *UN to Sacramento: You are Violating the Human Rights of Homeless People* (Feb. 6, 2012) 42 available at <http://homelessnesslaw.org/2012/02/un-to-sacramento-youre-violating-human-rights-of-homeless-people/>; Santa Clara IHRC Interview of Colin Bailey, Executive Director of the Environmental Justice Coalition for Water (Nov. 4, 2015).

<sup>599</sup> Advocates working with the farmworker communities in California’s San Joaquin and Salinas Valleys described above, supra at XX, describe these communities as the “new” colonias because they face similar infrastructure deficits. Housing Assistance Council, *Rural Voices: Building a Brighter Future in the Colonias* (Winter 2009-2010, Vol. 14, No. 1), pp. 15-17, available at <http://www.ruralhome.org/storage/documents/winter09.pdf>.

<sup>600</sup> National Law Center on Homelessness and Poverty, *“Simply Unacceptable”: Homelessness and the Human Right to Housing in the United States*, (June 2011) at 49, available at [http://www.nlchp.org/Simply\\_Unacceptable](http://www.nlchp.org/Simply_Unacceptable).

<sup>601</sup> For additional details on the situation of colonias in Texas, see Environmental Justice Atlas, *Water Disparities in Texas Colonias, USA*, available at <https://ejatlas.org/conflict/water-disparities-in-texas-colonias-usa>.

<sup>602</sup> 42 U.S.C. § 1479 (f)(8) (1990); National Law Center on Homelessness and Poverty, *“Simply Unacceptable”: Homelessness and the Human Right to Housing in the United States*, (June 2011) at 49 available at [http://www.nlchp.org/Simply\\_Unacceptable](http://www.nlchp.org/Simply_Unacceptable).

<sup>603</sup> Housing Assistance Council, *Rural Voices: Building a Brighter Future in the Colonias* (Winter 2009-2010, Vol. 14, No. 1), pp. 7-8, available at <http://www.ruralhome.org/storage/documents/winter09.pdf>.

<sup>604</sup> U.S. Department of Housing and Urban Development and the U.S. Geological Survey, *Monitoring Colonias Along the U.S.-Mexico Border*, available at [http://www.aag.org/galleries/gisum\\_files/HUDColoniasGISfactsheet.pdf](http://www.aag.org/galleries/gisum_files/HUDColoniasGISfactsheet.pdf); Familas Triunfadoras, *What are Colonias?*, available at <http://familiastrunfadoras-org.doodlekit.com/home/demographics>.

of water and sanitation infrastructure disproportionately impacts low-income minority groups.<sup>606</sup> The lack of adequate sanitation exposes colonia residents to many of the same problems described above in Alabama, including water contamination and increased illness.<sup>607</sup> A substantial number of people live in colonias; according to an organization that provides services to colonia residents, “[t]here are over 500,000 resident[s] living in 1,400 colonias along the Texas/Mexico border[.]” alone,<sup>608</sup> and 100,000 of them are children.<sup>609</sup> The same organization reports that “[o]ver 50% of the colonias in the state of Texas lack water and wastewater services[.]”<sup>610</sup> In California, the Coachella Valley is home to as many as 500 trailer parks that function as colonias; advocates report that these parks are subject to “overcrowding, poor water and septic facilities, and serious illnesses.”<sup>611</sup>

163. Because most colonias were created by unscrupulous developers offering cheap housing to migrants who came to the U.S. for work, they are typically built on inexpensive, marginal land<sup>612</sup> near agricultural or industrial centers.<sup>613</sup> For example, most colonias exist in deserts, floodplains, and steep slopes in unincorporated areas that are loosely governed by county governments.<sup>614</sup> The developers who created the colonias failed to provide safe housing or adequate infrastructure using what the federal U.S. Department of Housing and Urban Development calls a “legal loophole” to avoid government oversight.<sup>615</sup> They also sold these substandard homes using a predatory form of home ownership called contract for deed, which means that the homebuyer only acquires title to the property after paying off the entire purchase

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<sup>605</sup> Federal Reserve Bank of Texas, *Texas Colonias a Thumbnail Sketch of Conditions, Issues, Challenges, and Opportunities*, at 3 available at [www.dallasfed.org/assets/documents/cd/pubs/colonias.pdf](http://www.dallasfed.org/assets/documents/cd/pubs/colonias.pdf).

<sup>606</sup> Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008) at 1115, available at <http://scholarship.law.berkeley.edu/facpubs/1944>.

<sup>607</sup> Familas Triunfadoras, What are Colonias?, available at <http://familiartrunfadoras-org.doodlekit.com/home/demographics>.

<sup>608</sup> Familas Triunfadoras, What are Colonias?, available at <http://familiartrunfadoras-org.doodlekit.com/home/demographics>.

<sup>609</sup> John Quinones, Ben Newman, and Roxanna Sherwood. Hidden America: ‘Forgotten Ones’ Struggle to Survive in Texas’ Barren ‘Colonias’, CNN, (Apr. 25, 2012) available at <http://abcnews.go.com/US/hidden-america-forgotten-struggle-survive-texas-barren-colonias/story?id=16213828>.

<sup>610</sup> Familas Triunfadoras, What are Colonias?, available at <http://familiartrunfadoras-org.doodlekit.com/home/demographics>.

<sup>611</sup> Housing Assistance Council, *Rural Voices: Building a Brighter Future in the Colonias* (Winter 2009-2010, Vol. 14, No. 1), p. 23, available at <http://www.ruralhome.org/storage/documents/winter09.pdf>; see also California Rural Legal Assistance, *Fighting to Live: California Colonias and Community Advocacy through a Civil Rights Lens* (July 13, 2011), available at <http://www.nalcab.org/webdocs/BorderSummitJuly2011/Presentation%20by%20Megan%20Beaman.pdf>.

<sup>612</sup> U.S. Department of Housing and Urban Development, *Colonias History*, available at <https://www.hudexchange.info/cdbg-colonias/colonias-history/>.

<sup>613</sup> Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008) at 1115, available at <http://scholarship.law.berkeley.edu/facpubs/1944>.

<sup>614</sup> Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008) at 1115, available at <http://scholarship.law.berkeley.edu/facpubs/1944>.

<sup>615</sup> U.S. Department of Housing and Urban Development, *Colonias History*, available at <https://www.hudexchange.info/cdbg-colonias/colonias-history/> (noting that although this loophole has been closed in Texas and New Mexico, it remains a part of Arizona law).



price.<sup>616</sup> Despite this history, most counties have only enacted minimal, if any, building and land use codes that apply to these predominantly unincorporated locations.<sup>617</sup> Although the federal government has begun to play a larger role in monitoring colonia conditions<sup>618</sup> and the state governments of Texas, New Mexico, Arizona, and California have made some important legal and policy advances to meet the needs of colonias,<sup>619</sup> including to convert contracts for deed into more secure forms of property ownership,<sup>620</sup> infrastructure deficits like untreated water, inadequate sewer systems, and unpaved roads appear to remain the norm.<sup>621</sup>

164. Colonia residents suffer health detriments because they are forced to create their own improvised sewage disposal systems that accidentally contaminate residential water supplies.<sup>622</sup> The lack of flood protection infrastructure coupled with the hazardous locations of most colonias compounds the risk of exposure to contaminated groundwater and hazardous standing water.<sup>623</sup> Residents suffer health problems related to lack of access to adequate clean water and sanitation, including cholera, skin infections, viruses, and intestinal disorders.<sup>624</sup> Colonia residents are much more likely to contract water-borne illnesses than non-colonia residents; in Texas, for example, colonia residents contract diseases like dysentery, cholera, tuberculosis, and hepatitis A at a significantly higher rate than in the rest of the state.<sup>625</sup>

165. Colonias represent an extreme case of U.S. indifference towards the disparate impact of water and sanitation infrastructure deficits on low-income minority communities. The U.S.

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<sup>616</sup> U.S. Department of Housing and Urban Development, Colonias History, available at <https://www.hudexchange.info/cdbg-colonias/colonias-history/>; Familas Triunfadoras, What are Colonias?, available at <http://familiastrunfadoras-org.doodlekit.com/home/demographics>.

<sup>617</sup> Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008) at 1115, available at <http://scholarship.law.berkeley.edu/facpubs/1944>.

<sup>618</sup> U.S. Department of Housing and Urban Development and the U.S. Geological Survey, Monitoring Colonias Along the U.S.-Mexico Border, available at [http://www.aag.org/galleries/gisum\\_files/HUDColoniasGISfactsheet.pdf](http://www.aag.org/galleries/gisum_files/HUDColoniasGISfactsheet.pdf).

<sup>619</sup> U.S. Department of Housing and Urban Development, Colonias History, available at <https://www.hudexchange.info/cdbg-colonias/colonias-history/>.

<sup>620</sup> U.S. Department of Housing and Urban Development, Colonias History, available at <https://www.hudexchange.info/cdbg-colonias/colonias-history/>; Housing Assistance Council, Rural Voices: Building a Brighter Future in the Colonias (Winter 2009-2010, Vol. 14, No. 1), pp. 9-10, available at <http://www.ruralhome.org/storage/documents/winter09.pdf>.

<sup>621</sup> Federal Reserve Bank of Texas, *Texas Colonias a Thumbnail Sketch of Conditions, Issues, Challenges, and Opportunities*, at 3 available at [www.dallasfed.org/assets/documents/cd/pubs/colonias.pdf](http://www.dallasfed.org/assets/documents/cd/pubs/colonias.pdf); see also California Rural Legal Assistance, Fighting to Live: California Colonias and Community Advocacy through a Civil Rights Lens (July 13, 2011), available at <http://www.nalcab.org/webdocs/BorderSummitJuly2011/Presentation%20by%20Megan%20Beaman.pdf>.

<sup>622</sup> Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008) at 1116, available at <http://scholarship.law.berkeley.edu/facpubs/1944>.

<sup>623</sup> Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008), available at <http://scholarship.law.berkeley.edu/facpubs/1944>.

<sup>624</sup> National Law Center on Homelessness and Poverty, "Simply Unacceptable": Homelessness and the Human Right to Housing in the United States, (June 2011) at 49 available at [http://www.nlchp.org/Simply\\_Unacceptable](http://www.nlchp.org/Simply_Unacceptable).

<sup>625</sup> Familas Triunfadoras, What are Colonias?, available at <http://familiastrunfadoras-org.doodlekit.com/home/demographics>.



should take immediate steps to provide safe drinking water and adequate sanitation infrastructure to these vulnerable communities.

## 5. Federally Unrecognized Indigenous Tribes, like the Winnemem Wintu in Northern California, Lack Access to Adequate Water, Sanitation, and Cultural Uses of Water

166. Lack of equal access to water and water contamination also affect the cultural rights of indigenous peoples, for whom water is considered to be culturally significant.<sup>626</sup> The United States frequently deprives indigenous peoples of access to traditional water sources and sacred sites that are affected by water management decisions.<sup>627</sup> This practice represents a failure to respect the cultural rights of indigenous peoples and further undermines the ability of these communities to fully realize the human right to water. Federally unrecognized tribes are particularly vulnerable. In her report on the U.S., the UN Special Rapporteur on the human right to safe drinking water and adequate sanitation emphasized the “protection gap” faced by federally unrecognized tribes like the Winnemem Wintu tribe in California, which lacks access to adequate drinking water, sanitation, and water sources with cultural significance.<sup>628</sup>

a. The Federally Unrecognized Indigenous Winnemem Wintu Tribe lacks adequate access to safe drinking water, to traditional water sources for ceremonial purposes, and to proper sanitation infrastructure

167. The situation of the Winnemem Wintu, a small federally unrecognized indigenous tribe living in Northern California, illustrates these cultural barriers to the full enjoyment of the human right to water for indigenous communities in the United States.<sup>629</sup> “Winnemem” means “middle

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<sup>626</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Catarina de Albuquerque, Statement to the Permanent Forum on Indigenous Issues, (May 24, 2011); [http://www.un.org/esa/socdev/unpfii/documents/session\\_10\\_statement\\_SR\\_water.pdf](http://www.un.org/esa/socdev/unpfii/documents/session_10_statement_SR_water.pdf).

<sup>627</sup> See, e.g. Robert Charles Ward, *The Spirits Will Leave: Preventing the Desecration and Destruction of Native American Sacred Sites on Federal Land*, 19 *Ecology L.Q.* (1992). Available at: <http://scholarship.law.berkeley.edu/elq/vol19/iss4/4>; McDonald, Amber L. (2004) "Secularizing the Sacrosanct: Defining "Sacred" for Native American Sacred Sites Protection Legislation," *Hofstra Law Review*: Vol. 33: Iss. 2, Article 9. Available at: <http://scholarlycommons.law.hofstra.edu/hlr/vol33/iss2/9>.

<sup>628</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶68, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

<sup>629</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶69, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque) (noting that “[t]he situation of Winnemem Wintu resembles that of other [U.S.] tribes.”).

water people”, which reflects that water is core to the identity of the tribe.<sup>630</sup> Their cultural practices depend heavily on access to rivers for various spiritual and subsistence activities;<sup>631</sup> in the words of the tribe’s Chief Caleen Sisk, “[f]or us, the right to water means more than just good tap water[.]”<sup>632</sup> However, policy decisions by the federal U.S. and California state governments have significantly reduced their access to safe drinking water, traditional water sources for ceremonial purposes, and proper sanitation infrastructure.<sup>633</sup>

1) The Winnemem Wintu lack access to adequate water and sanitation infrastructure

168. As a federally unrecognized tribe, the Winnemem Wintu does not have its own sovereign territory.<sup>634</sup> Instead, the tribe currently occupies a single 42-acre plot of land that is outside the boundaries of the nearest city - Redding, California - and therefore is not connected to any public water system.<sup>635</sup> In addition, it is not feasible to drill a private well.<sup>636</sup> According to the UN Special Rapporteur on the human right to safe drinking water and sanitation, who visited the Winnemem Wintu during her 2011 country visit to the U.S.,<sup>637</sup> “the tribe must partner with the City of Redding or the county to obtain access to water [and] . . . individual households find alternative means of connecting to water sources.”<sup>638</sup> The tribe also suffers from water

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<sup>630</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 66, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque)

<sup>631</sup> CAL. DEP’T OF WATER RES., 2009 CALIFORNIA TRIBAL WATER SUMMIT PROCEEDINGS: PROTECT OUR SACRED WATER, pp. 31-32 (2009), available at [http://www.waterplan.water.ca.gov/docs/tws/CTWS\\_ProceedingsFull\\_v2df\\_02-08-10.pdf](http://www.waterplan.water.ca.gov/docs/tws/CTWS_ProceedingsFull_v2df_02-08-10.pdf).

<sup>632</sup> Marc Dadigan, U.N. human rights expert visits California tribe, High Country News (Feb. 28, 2011), available at <http://www.hcn.org/greenjustice/blog/u.n.-human-rights-expert-visits-california-tribe>.

<sup>633</sup> CAL. DEP’T OF WATER RES., 2009 CALIFORNIA TRIBAL WATER SUMMIT PROCEEDINGS: PROTECT OUR SACRED WATER, pp. 31-32 (2009), available at [http://www.waterplan.water.ca.gov/docs/tws/CTWS\\_ProceedingsFull\\_v2df\\_02-08-10.pdf](http://www.waterplan.water.ca.gov/docs/tws/CTWS_ProceedingsFull_v2df_02-08-10.pdf).

<sup>634</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 68, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque)

<sup>635</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 68, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque)

<sup>636</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 68, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque)

<sup>637</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 66, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque)

<sup>638</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 68, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque)

contamination; according to Chief Sisk, “[m]ost of the wells, the traditional source of water [], have long been contaminated or sucked dry by development[.]”<sup>639</sup> The Special Rapporteur also observed that the tribe struggles to access adequate sanitation; it is not connected to a piped sewage system and individual households often must rely on on-site septic systems.<sup>640</sup> Because the government refuses to recognize their land as tribal territory, state regulations that do not recognize communal living restrict the tribe’s ability to improve its sewage and drinking water infrastructure.<sup>641</sup> Similarly, the lack of federal recognition renders the tribe ineligible for financial assistance to improve water and sanitation infrastructure through federal funds designated for indigenous groups.<sup>642</sup>

2) The raise of Shasta Dam would result in flooding of sacred sites of the Winnemem Wintu Tribe

169. Despite the ongoing threat to the tribe’s physical and cultural survival, California currently plans to raise the water level of a dam near the Winnemem Wintu territory, which would result in the flooding of the tribe’s sacred sites.<sup>643</sup> The Shasta Dam was built in 1945.<sup>644</sup> At that time, the Winnemem Wintu were not compensated despite the fact that the tribe lost over ninety percent of its ancestral lands due to flooding caused by the Shasta Dam.<sup>645</sup> Now, Westlands Water District and the federal government is considering a legislative proposal to raise this dam in both the U.S. House of Representatives<sup>646</sup> and the U.S. Senate.<sup>647</sup> The latest

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<sup>639</sup> Marc Dadigan, U.N. human rights expert visits California tribe, High Country News (Feb. 28, 2011), available at <http://www.hcn.org/greenjustice/blog/u.n.-human-rights-expert-visits-california-tribe>.

<sup>640</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 68, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque)

<sup>641</sup> Marc Dadigan, U.N. human rights expert visits California tribe, High Country News (Feb. 28, 2011), available at <http://www.hcn.org/greenjustice/blog/u.n.-human-rights-expert-visits-california-tribe>.

<sup>642</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 68, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque); see also Winnemem Wintu, Who We Are, available at <http://www.winnememwintu.us/who-we-are/>.

<sup>643</sup> US Human Rights Network, Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, (July 28, 2015), p. 11, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrnetwork\\_righttowater\\_1.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrnetwork_righttowater_1.pdf); (citing CAL. DEP’T OF WATER RES., 2009 CALIFORNIA TRIBAL WATER SUMMIT PROCEEDINGS: PROTECT OUR SACRED WATER, 3 (2009), available at [http://www.waterplan.water.ca.gov/docs/tws/CTWS\\_ProceedingsFull\\_v2df\\_02-08-10.pdf](http://www.waterplan.water.ca.gov/docs/tws/CTWS_ProceedingsFull_v2df_02-08-10.pdf); Don L. Hankins, Water as Sacred, in TRIBAL WATER STORIES 66-67 (Kym Trippsmith, ed., 2010)); see also Theo Gibbs & Chris Schweidler, Our Maps, “Water Wars and the Winnemem Wintu: Mapping Endangered Sacred Sites and Sacred Stories,” available at <http://ourmaps.net/waterwarswinnememwintu/>.

<sup>644</sup> Winnemem Wintu, *Shasta Dam Raise*, available at <http://www.winnememwintu.us/journey-to-justice/shasta-dam-raise/>.

<sup>645</sup> Association of Pacific Coast Geographers Annual Meeting September 30–October 3, 2009 San Diego, California: Abstracts for Oral Presentations and Posters; Source: Yearbook of the Association of Pacific Coast Geographers, Vol. 72 (2010), pp. 140-201, published by: University of Hawai’i Press, p. 177 available at <http://www.jstor.org/stable/24043351>.

<sup>646</sup> Winnemem Wintu, *Shasta Dam Raise*, available at <http://www.winnememwintu.us/journey-to-justice/shasta-dam-raise/>.

proposal would damage more than 40 sacred sites, including the tribe's traditional site for its Coming of Age ceremony on the Winnemem Waywagat (McCloud River).<sup>648</sup> If passed, the raising of the Shasta Dam would pose an imminent danger for the sacred sites and cultural survival of the Winnemem Wintu.<sup>649</sup>

3) The lack of federal recognition contributes to the water and sanitation problems

170. As mentioned above, the Winnemem Wintu are not recognized federally, which greatly limits their options to secure access to a continuous supply of safe drinking water and adequate sanitation.<sup>650</sup> It also limits their standing to challenge policies that would damage their access to objects and places of cultural significance, such as the proposed Shasta Dam raise.<sup>651</sup> Until 1985, the Winnemem held federal tribal status, but the federal government rescinded it without explanation.<sup>652</sup> The loss of federal recognition resulted in the tribe losing access to federal government services through the Bureau of Indian Affairs, such as educational grants, housing assistance, and health services.<sup>653</sup> Renewed federal recognition would carry several benefits: it would create a trust relationship between the tribe and the Federal Government, entitle tribe and members to federal benefits and activate the body of domestic law requiring respect for tribal sovereignty.<sup>654</sup>

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<sup>647</sup> Winnemem Wintu, *Shasta Dam Raise*, available at <http://www.winnememwintu.us/journey-to-justice/shasta-dam-raise/>.

<sup>648</sup> Winnemem Wintu, *Shasta Dam Raise*, available at <http://www.winnememwintu.us/journey-to-justice/shasta-dam-raise/>.

<sup>649</sup> IACHR Thematic Hearing Request: Barriers to Access to Safe and Affordable Water in the United States, submitted on July 28, 2015 by US Human Rights Network et al., p. 11, available at [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\\_righttowater\\_0\\_0.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_righttowater_0_0.pdf).

<sup>650</sup> <http://www.winnememwintu.us/ajr-39-and-nahc-letter/>

<sup>651</sup> Winnemem Wintu, Who We Are, available at <http://www.winnememwintu.us/who-we-are/>.

<sup>652</sup> Winnemem Wintu, Who We Are, available at <http://www.winnememwintu.us/who-we-are/>; Association of Pacific Coast Geographers Annual Meeting September 30–October 3, 2009 San Diego, California: Abstracts for Oral Presentations and Posters; Source: Yearbook of the Association of Pacific Coast Geographers, Vol. 72 (2010), pp. 140-201, published by: University of Hawai'i Press, p. 177, available at <http://www.jstor.org/stable/24043351>.

<sup>653</sup> Winnemem Wintu, Who We Are, available at <http://www.winnememwintu.us/who-we-are/>; Association of Pacific Coast Geographers Annual Meeting September 30–October 3, 2009 San Diego, California: Abstracts for Oral Presentations and Posters; Source: Yearbook of the Association of Pacific Coast Geographers, Vol. 72 (2010), pp. 140-201, published by: University of Hawai'i Press, p. 177, available at <http://www.jstor.org/stable/24043351>.

<sup>654</sup> UN Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 67, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

## 6. Puerto Rico: Puerto Rican Households Lack Access to Basic Levels of Water Due to Public Mismanagement of Drought and Lack of Adequate Infrastructure

171. Due to public mismanagement of a severe drought affecting up to twenty percent of Puerto Rico's landmass and inadequate infrastructure to collect and store rain and groundwater, government officials in Puerto Rico declared a state of emergency in the summer of 2015 and restricted residential access to water service.<sup>655</sup> As of August 5, 2015, federal officials declared at least 20 municipalities in Puerto Rico to be natural disaster areas because of the drought.<sup>656</sup> Although the restrictions have since been lifted, up to 2.5 million people were affected and faced water shutoffs for multiple days at a time.<sup>657</sup> Due to government-imposed water rationing measures, "[h]undreds of thousands of Puerto Ricans . . . had tap water only every third day."<sup>658</sup> Reports indicate that the government's rationing efforts left thousands without access to water for 24 or even 48 hours, while others had access to water only two days a week.<sup>659</sup> Journalists have also reported that water-rationing measures were imposed disproportionately on low-income residents, leaving tourist businesses to operate without interruption.<sup>660</sup> According to Puerto Rican academic José Rivera, "[t]he most affected residents have been those with the fewest resources[.]"<sup>661</sup> Although drought conditions have improved,<sup>662</sup> the situation raises

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<sup>655</sup> Marlon Ramtahal, NBC News, "Puerto Rico Restricting Water, Shutting Down Taps as Drought Deepens," (August 5, 2015) available at <http://www.nbcnews.com/news/latino/puerto-rico-restricting-water-shutting-down-taps-drought-deepens-n404786>; Alice Ollstein, Think Progress, "Water Rationing in Puerto Rico Hits the Poor, Leaves Resorts Untouched," (August 10, 2015), available at <http://thinkprogress.org/climate/2015/08/10/3689223/as-puerto-rico-runs-out-of-cash-it-is-also-running-out-of-water/>.

<sup>656</sup> Marlon Ramtahal, NBC News, "Puerto Rico Restricting Water, Shutting Down Taps as Drought Deepens," (August 5, 2015) available at <http://www.nbcnews.com/news/latino/puerto-rico-restricting-water-shutting-down-taps-drought-deepens-n404786>.

<sup>657</sup> Marlon Ramtahal, NBC News, "Puerto Rico Restricting Water, Shutting Down Taps as Drought Deepens," (August 5, 2015) available at <http://www.nbcnews.com/news/latino/puerto-rico-restricting-water-shutting-down-taps-drought-deepens-n404786>.

<sup>658</sup> Alice Ollstein, Think Progress, "Water Rationing in Puerto Rico Hits the Poor, Leaves Resorts Untouched," (August 10, 2015), available at <http://thinkprogress.org/climate/2015/08/10/3689223/as-puerto-rico-runs-out-of-cash-it-is-also-running-out-of-water/>; see also AP, Orlando Sentinel, "Por grave sequía, Puerto Rico aumenta restricciones al agua," (August 5, 2015), available at <http://www.orlandosentinel.com/elsentinel/os-puerto-rico-sequia-agrava-20150805-story.html>.

<sup>659</sup> Primera Hora, 100 días sin agua para abonados de Carraízo, Aug. 20, 2015, available at <http://www.primerahora.com/noticias/puerto-rico/nota/100diasinaguaparaabonadosdecarraizo-1103319/>.

<sup>660</sup> Alice Ollstein, Think Progress, "Water Rationing in Puerto Rico Hits the Poor, Leaves Resorts Untouched," (August 10, 2015), available at <http://thinkprogress.org/climate/2015/08/10/3689223/as-puerto-rico-runs-out-of-cash-it-is-also-running-out-of-water/>.

<sup>661</sup> Alice Ollstein, Think Progress, "Water Rationing in Puerto Rico Hits the Poor, Leaves Resorts Untouched," (August 10, 2015), available at <http://thinkprogress.org/climate/2015/08/10/3689223/as-puerto-rico-runs-out-of-cash-it-is-also-running-out-of-water/>.

<sup>662</sup> El Nuevo Día, "Leve alivio a la sequía en Puerto Rico," Sept. 10, 2015, available at <http://www.elnuevodia.com/noticias/locales/nota/levealivioalasequiaenpuertorico-2097314/>.



concerns that without improved management practices, the government may again resort to water shutoffs if, as is likely,<sup>663</sup> drought recurs in the future.

172. The lack of water particularly affected children. According to Puerto Rico's representative to the U.S. Congress, "because of water rationing, schools affected by the drought . . . operate[d] only Monday through Thursday and with a shortened school day," and school lunches were also limited.<sup>664</sup> Media reports confirm that hundreds of schools had to modify their academic schedules,<sup>665</sup> and that these impacts were most severe for children living in poverty – approximately half of all Puerto Rican children.<sup>666</sup>

173. Although the USHRN is not in a position to offer detailed information at this time, we would also like to bring the case of the Caño Martín Peña (Martin Peña Canal) to the attention of this honorable Commission. Contamination of the canal currently affects the approximately 26,000 to 27,000 residents of a slum community on the banks of the canal, with serious health consequences. The EPA has recognized that Puerto Rico has violated federal laws related to water contamination by allowing "releases of untreated sewage and other pollutants into waterways in the San Juan area including the . . . Martín Peña Canal . . . These releases have been in violation of [federal] permits and the Clean Water Act."<sup>667</sup> EPA Regional Administrator Judith A. Enck has stated "[p]eople living in the communities along the Martin Pena Canal are getting sick from exposure to raw sewage and untreated wastewater in their frequently flooded neighborhoods."<sup>668</sup> The contamination is caused by a lack of adequate sanitation infrastructure for the residents, who are calling for the canal to be dredged and restored, as well as improved sanitation facilities for their community. They claim that government is discriminating against

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<sup>663</sup> United States Department of Agriculture, Historic drought in Puerto Rico affecting 2.7 million people, (August 6, 2015), available at <http://climatehubs.oce.usda.gov/content/historic-drought-puerto-rico-affecting-2-7-million-people> (indicating that drought is likely to recur due to current El Niño pattern).

<sup>664</sup> Jessica Dinapoli, Reuters News, "Puerto Rico seeks U.S. help as drought impact worsens," (August 12, 2015), available at <http://www.reuters.com/article/2015/08/12/us-usa-puertorico-drought-idUSKCN0QH20X20150812>.

<sup>665</sup> El Nuevo Día, Educación evalúa retomar horario regular de clases, Sept. 9, 2015, available at <http://www.elnuevodia.com/noticias/locales/nota/educacionevaluetomarhorarioregulardeclases-2096668/>.

<sup>666</sup> Alice Ollstein, Think Progress, "Water Rationing in Puerto Rico Hits the Poor, Leaves Resorts Untouched," (August 10, 2015), available at <http://thinkprogress.org/climate/2015/08/10/3689223/as-puerto-rico-runs-out-of-cash-it-is-also-running-out-of-water/>.

<sup>667</sup> See U.S. Environmental Protection Agency, Puerto Rico Aqueduct and Sewer Authority to Upgrade Sewage Infrastructure; Sewage Pollution in Martín Peña Canal, San Juan Bay, Condado Lagoon, and Atlantic Ocean will be Reduced, Sept. 15, 2015, available at <http://yosemite.epa.gov/opa/admpress.nsf/d10ed0d99d826b068525735900400c2a/da8ad2d4195f6c5685257ec1006912f3!OpenDocument>.

<sup>668</sup> U.S. Environmental Protection Agency, EPA Provides \$388,000 to Assess Contaminated Properties in the Cano Martin Pena Communities in San Juan, Puerto Rico, available at <http://yosemite.epa.gov/opa/admpress.nsf/d10ed0d99d826b068525735900400c2a/e14844267f20747285257ce600629d0>.



them by failing to carry out the dredging and restoration process in a timely manner, considering that the project has languished for forty years.<sup>669</sup>

## IV. Conclusion and Recommendations

174. As these case studies indicate, people of color, low-income, homeless, and indigenous communities in the United States lack equal access to basic levels of drinking water where water service is not affordable and where water is unsafe for human consumption or is inaccessible due to inadequate or nonexistent infrastructure. The State has failed to adopt adequate safeguards to ensure affordability of basic levels of drinking water. It has also failed to prevent contamination of drinking water sources or provide adequate alternative sources. People of color, low-income, and indigenous communities disproportionately bear the burden of these failures. As the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation noted at the conclusion of her country visit, the United States “must . . . do more to ensure that not only de jure but also de facto discrimination is eliminated regarding access to water and sanitation.”<sup>670</sup> Although she also recommended that the United States adopt federal water affordability standards and “a national water policy and plan of action guided by the normative content of the rights to water and sanitation[,]”<sup>671</sup> the U.S. does not appear to have made meaningful progress towards implementing these recommendations.

175. Accordingly, this report concludes by providing a comprehensive set of policy recommendations for this honorable Commission, the federal U.S. government, and state governments. These recommendations represent the collective views of a nationwide coalition of groups advocating on behalf of affected communities to achieve full realization of the human rights to water and sanitation in the U.S.

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<sup>669</sup> For more information, see Leysa Caro Gonzalez, Primera Hora, “Residentes del caño Martín Peña exigen que acabe el discrimen,” (April 22, 2015), available at <http://www.primerahora.com/noticias/puerto-rico/nota/residentesdelcanomartinpenaexigenqueacabeeldiscrimen-1078623/>; various articles from Primera Hora, available at <http://www.primerahora.com/tags/canomartinpena-2436/>; and The Urban Waters Federal Partnership, “New Life for Caño Martín Peña,” available at <http://www.urbanwaters.gov/pdf/MartinPenaBackgrounder.pdf>

<sup>670</sup> United Nations, Press Release: “Catarina de Albuquerque, UN Independent Expert on the right to water and sanitation: Mission to the United States of America from 22 February to 4 March 2011,” (March 4, 2011), available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10807&LangID=E>.

<sup>671</sup> UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶¶ 88, 92, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque).

## A. Recommendations to the Inter-American Commission on Human Rights

In addition to reiterating our invitation to this honorable Commission to visit the U.S. to investigate violations of the human rights to water and sanitation, we recommend that the Commission consider taking the following actions:

- 1) Recognize the severity, prevalence, and discriminatory impact of violations of the human rights to water and sanitation in the United States;
- 2) Continue to hold thematic hearings on the human rights to water and sanitation in the U.S. and the region;
- 3) Prioritize this issue in your monitoring of the United States, including in any press releases, statements, and reports, as well as your work on racial justice in the United States.
- 4) Include violations of the rights to water and sanitation in the U.S. in future regional reports on this issue;
- 5) Request precautionary measures to protect vulnerable individuals from irreparable harm caused by the violations described in this report;
- 6) Send the U.S. an Article 41 letter to request more information about violations of the human rights to water and sanitation and efforts to redress these violations;
- 7) Recommend that the U.S. issue an immediate moratorium on water shutoffs for inability to pay;
- 8) Recommend that the U.S. issue an immediate moratorium on activities that contaminate drinking water supplies;
- 9) Partner with the UN Special Rapporteur on the human right to safe drinking water and sanitation to promote the normative development of the human rights to water and sanitation and to monitor violations of these rights in the Americas;
- 10) Hold seminars throughout the Americas, including in the U.S. to educate civil society and state officials on the human rights to water and sanitation; and
- 11) Recognize the human rights to water and sanitation as independent rights that derive from the right to life, the right to health, and the right to a healthy environment, specifically:
  - a) Adopt specific standards on the human rights to water and sanitation similar to those recognized by the United Nations;
  - b) Emphasize the indivisibility of human rights and the interrelatedness of the rights to water and sanitation to other rights like the rights to property, health, a clean environment, (a dignified) life, integrity, and equality and non-discrimination.
  - c) These standards should apply to all persons in the region and specify that States have a heightened duty to guarantee the rights to water and sanitation with respect to vulnerable groups such as indigenous peoples, children, the elderly, the sick, pregnant women, persons deprived of liberty, persons in situations of poverty, minorities facing historic discrimination, and other groups whose lack of access to water and

sanitation might place them in a particularly vulnerable situation with regard to the enjoyment of other rights;

- d) In addition, the Commission should emphasize that States have an obligation to respect and protect the human rights to water and sanitation, which includes the obligation to prevent violations of these rights by private parties and to investigate and punish those responsible for any violations thereof.

## B. Recommendations to the U.S. Government

The coalition has drafted a list of actions that can be taken by U.S. government actors to address the violations raised in this report. There is a clear need for the federal U.S. government to exercise effective leadership and supervision toward commercial interests as well as state and local governments when these actors deprive vulnerable groups of water and sanitation. Given the severity of these problems, the fundamental nature of these services, and the complexity of water and sanitation regulation and provision in the U.S., the federal government needs to prioritize water and sanitation and assume a leadership role in taking concrete measures to ensure universal, equal access to safe, affordable, and adequate water and sanitation in the U.S. Accordingly, the coalition makes the following recommendations for federal leadership to ensure that the U.S. has a water future that is not only sustainable, but just.

To summarize, we respectfully request that the Executive Branch of the federal government:

1. Take immediate Executive Branch action as a matter of urgency to stop water shutoffs and contamination of drinking water while remedying the harms caused by these crises;
2. Issue an executive order announcing a federal prioritization of achieving universal, equal access to safe, affordable, adequate water and sanitation by creating a high-level Inter-Agency Working Group to develop a national plan of action on the human right to water and sanitation; and
3. Issue guidance to federal, state, and local agencies to promote achievement of universal, equal access to safe, affordable, adequate water and sanitation and allocate resources to reach this goal as expeditiously as possible.

The first set of recommendations prompt immediate action by the U.S. government in the name of public health and safety and are followed by recommendations for longer-term action by the Obama Administration (and future Administrations), federal agencies, the U.S. Congress, and state and local governments.

### 1. Urgent Actions to Protect Public Health and Safety

We present the following recommendations for immediate, emergency action in order to fulfill the fundamental human right to an adequate standard of living and life, without discrimination based on race, gender, age, economic status, or ability. We ask the U.S. government to take all necessary steps to guarantee the fundamental rights of people in the United States as a matter of urgency, and immediately:

- 1) Recognize the severity and magnitude of the lack of access to safe, affordable water and sanitation and act immediately to coordinate and extend emergency assistance to protect households without safe and affordable water and sanitation services and provide funding for local projects to meet safe, affordable drinking water and sanitation standards, waiving requirements that local communities match federal funds linked to providing these emergency services;
- 2) Order an immediate moratorium on water shutoffs for lack of ability to pay and provide funding to guarantee affordable drinking water;
- 3) Order an immediate moratorium on home tax lien foreclosures due to unpaid water bills;
- 4) Order an immediate moratorium on extractive and agricultural industry operations that contaminate current or potential drinking water resources;
- 5) Act immediately to secure communities' right to access clean and safe water by providing emergency interim supplies of water and offering emergency assistance to remediate ground and surface water sources contaminated by extractive and agricultural industries, among others.
- 6) Provide funding and technical assistance to relieve communities paying for water that does not meet national quality standards and to complete feasibility studies, engineering plans, and to assist communities in meeting funding eligibility requirements;
- 7) Hold accountable those public officials responsible for the decisions to prioritize economics over people in situations that lead to contaminated drinking water, such as that in Flint, MI, where the decision was made for the local utility to deliver corrosive, untreated river water to the homes of the people, when it would have cost \$100 a day to treat this water and where it has resulted in the irreversible lead poisoning of the city's children.
  - a) In Flint, take immediate steps to guarantee funding for 1) removal and replacement of all lead water distribution pipes in the city and 2) long-term health care and services for children affected by lead poisoning;
  - b) Direct the Department of Justice investigation of the manmade public health disaster in Flint, Michigan to include consideration of relevant human rights frameworks in determining responsibility for this crisis;
- 8) Direct the Environmental Protection Agency to modify the Lead and Copper Rule to require proactive and full replacement of lead service lines without delay, public education on the hazards posed by lead in drinking water and the limitations of existing

testing programs, improved and mandatory corrosion control treatment where lead service lines remain, and enhanced monitoring and reporting requirements.<sup>672</sup>

- 9) Order an immediate moratorium on all criminal proceedings against individuals due to their inability to pay for water and sanitation due to lack of access to affordable options, and expunge the criminal records of all individuals previously convicted for said reasons;
  - a) Stop all prosecutions of previously disconnected household water reconnections;
  - b) Stop all criminal prosecutions of households without adequate sanitation;
  - c) Enforce the DOJ finding that criminalization of homelessness is unconstitutional and stop all prosecutions of homeless persons, particularly for offenses caused by the lack of adequate sanitation and drinking water;<sup>673</sup> and
- 10) Order an immediate moratorium on removing children from the custodial care of their parents solely on the grounds of a water shut off or lack of adequate sanitation; recognize the right to family, and stop all charges of child neglect due to lack of the basic right of access to safe, affordable, and adequate water and sanitation; offer immediate emergency assistance to connect households with children and other vulnerable persons to water and sanitation services.
- 11) Promote the adoption of legislation by the U.S. Congress that would achieve full realization of the human rights to water and sanitation. Discourage or commit to veto measures that run counter to this commitment or that would shield companies from compliance with relevant regulations or liability for harms caused in the course of their operations.
  - a. For example, commit to veto legislation that shields from liability mining companies that take over abandoned mine reclamation, like that proposed by Colorado's congressional delegation in the wake of the King Gold Mine spill.
- 12) Encourage the adoption of a national water affordability standard and provide funding for states and localities to develop affordability plans, including a recognized right to service and shut-off protections for vulnerable groups.
- 13) Modify the U.S. Census survey and the American Communities Survey to include questions that reflect whether households have access to safe, affordable drinking water and adequate sanitation. The new questions should also aim to collect information about households living with decentralized wastewater systems and/or septic tanks.

We further respectfully request that the Executive Branch undertake the following long-term actions, including an executive order on water and sanitation, the issuance of guidance to key federal agencies and local governments, and the reallocation of resources to support agencies and offices that are well-situated to address these issues.

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<sup>672</sup> For more detail, see <http://www.epa.gov/sites/production/files/2015-11/documents/ndwacldrstatementofdissent.pdf>.

<sup>673</sup> US DOJ, COPS Newsletter, Alternatives to Criminalization: The Role of Law Enforcement, (Dec. 2015) [http://cops.usdoj.gov/html/dispatch/12-2015/alternatives\\_to\\_criminalization.asp](http://cops.usdoj.gov/html/dispatch/12-2015/alternatives_to_criminalization.asp).

## 2. Recommendations for an Executive Order by the Obama Administration

We ask that President Obama issue an executive order on the water crisis and the human rights to affordable, safe and adequate water and sanitation. This executive order should establish an Executive Branch policy commitment to ensure universal, equal access to safe, affordable, and adequate water and sanitation in the U.S. and create a high level Inter-Agency Working Group, with White House leadership, which will develop a national water and sanitation policy and plan of action to:

- 1) Direct emergency action to alleviate the suffering and public health crisis associated with mass water shut-offs, drinking water contamination, and lack of adequate sanitation;
- 2) Fulfill the U.S. government's constitutional and international legal obligations to ensure non-discriminatory access to basic public services sufficient for an adequate standard of living, and access to remedies when rights are violated;
  - a) Including by fulfilling the 2011 recommendation of the UN Special Rapporteur on the Human Right to Safe Drinking Water and Adequate Sanitation that the United States "devote priority attention to improving aging infrastructure, as well as innovative designs and approaches that promote human rights, are affordable and create more value in terms of public health improvements, community development and sustainability." Ensure that low-income individuals do not bear the costs for such infrastructure improvements.
- 3) Direct the Civil Rights Division of the U.S. Department of Justice to conduct an investigation into the discriminatory impact of current water and sanitation services and the violations of the human rights to life, adequate water and sanitation, an adequate standard of living, non-discrimination, and equal protection;
- 4) Direct the Department of Justice, the Environmental Protection Agency Office of Water, and the National Environmental Justice Advisory Council, with oversight by the Office of Management and Budget, to conduct a comprehensive study of water affordability in the U.S., which should include collection and analysis of data on water and sewer rates, rate increases, water shutoffs, and related information for all major utilities in the country; and an analysis of existing state and federal legal provisions that address water and sanitation affordability, the right of service, and water shutoffs. The study should provide recommendations for proposed federal policy and guidance to utilities on affordability standards, shutoff protections, and the right of service to bring the U.S. in line with international human rights norms;
- 5) Designate the appropriate federal agency to mandate reporting, collecting, analyzing, and publishing information about violations of these human rights, including information that would facilitate the identification of disparate impacts on the basis of race, gender, age, ability, and socioeconomic status, and elaborate a plan of action to address gaps in regulation, policy, public funding, and oversight that have contributed to the crisis;



- 6) Ensure that the federal government collects and publishes data on people living without water and sanitation, and require states and localities to collect and publish data about water shutoffs, including the number of shutoffs experienced by children, the elderly, disabled persons, chronically ill persons, and other vulnerable groups;
- 7) Direct the relevant agencies to take all necessary steps to alleviate the water and sanitation crisis and increase funding and staffing as needed to make such action prompt and effective;
  - a) Add a federal dedicated source of funding to the Drinking Water State Revolving Fund (with funds set aside for disadvantaged communities) and a renewal of the Build America Bonds Program to address aging water and sewerage infrastructure like that in Flint, Michigan.
- 8) Develop and impose heightened human rights due diligence requirements in industries that are likely to impact access to water and/or sanitation;
- 9) Develop and promote comprehensive federal guidelines for achieving universal, equal access to safe, affordable, adequate water and sanitation for federal and state agencies. Create model state legislation and regulation to achieve these policy targets and provide relevant agencies with resources and training to tailor and adopt these model policies;
- 10) Ensure consistency between U.S. climate change commitments and domestic water and sanitation policies;
- 11) Fulfill the commitments made by the United States government during the United Nations Universal Periodic Review to ensure the human right to affordable and safe water and adequate sanitation, as a matter of urgency; and
- 12) Stop engagement in behavior at the international level to weaken or diminish the international recognition of the rights to water and sanitation.

We respectfully recommend that the proposed high-level Inter-Agency Working Group be led by the White House and have sufficient authority to carry out its mandate. Based on U.S. human rights groups' experiences with the Equality Working Group, created after the 2010 UPR to implement the recommendations of the Universal Periodic Review, and chaired by the Department of State and the Department of Justice, an ad hoc body without sufficient authority or mandate to monitor agency actions, will not be successful.<sup>674</sup> Similarly, the Interagency Working Group on Human Rights under Executive Order 13107 has had very limited engagement over the past six years with the implementation of the UPR and other treaty body recommendations in the United States.

Finally, we recommend that the proposed Working Group include, at a minimum, the following agencies, and have strong White House leadership: the Domestic Policy Council, the Environmental Protection Agency (including the Office of Water, the Office of Wastewater

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<sup>674</sup> The Leadership Conference on Civil and Human Rights, Civil Rights Act Report 2014: Human Rights (Dec. 2014), available at <http://www.civilrights.org/publications/reports/civil-rights-act-report-december-2014/human-rights.html>.

Management (including Decentralized Wastewater), and the Office of Environmental Justice), the Department of Housing and Urban Development, the Department of Justice (Civil Rights Division and Environmental and Natural Resources Division), the Department of Agriculture (including the Forest Service), the Department of Health and Human Services, the Department of the Interior (including the U.S. Geological Survey, the Bureau of Reclamation, the Bureau of Indian Affairs, the Bureau of Land Management, and the U.S. Fish and Wildlife Service), the Department of State, the Department of Homeland Security (including the Federal Emergency Management Agency), the Department of Commerce (including the National Oceanic and Atmospheric Administration), the Department of Energy, the Nuclear Regulatory Commission, and the Department of Transportation.

### 3. Recommendations to the Executive Branch of the U.S. Government

The federal agencies of the executive branch of the U.S. government also have an important role to play in ensuring full realization of the human rights to water and sanitation in the U.S.

#### **Policy Guidance and Allocation of Resources to Specific Agencies**

Because of the complexity of the water and sanitation sector in the U.S., the Executive Branch should also provide policy guidance to specific agencies, state and local governments, and the private sector on measures to respect and protect the human rights to water and sanitation. This guidance should be developed in consultation with affected communities and civil society. Specifically, we recommend that the Executive Branch:

- 1) Develop and provide guidance to federal agencies on measures to respect and protect the human rights to water. Include analysis of existing measures and provide model regulation and policies to promote the achievement of universal access to safe, affordable, adequate water and sanitation.
  - a. Ensure that this guidance encompasses the responsibilities of regional offices as well as agency headquarters.
  - b. As part of the incorporation of environmental justice into review under the National Environmental Protection Act, ensure that all environmental impact assessments include an assessment of likely impacts to the quality, affordability, and accessibility of drinking water and sanitation.
- 2) Increase the capacity of regional offices of key federal agencies to protect against violations of the human rights to water and sanitation.
- 3) Ensure that federal agencies with responsibility to protect water quality have and can mobilize the necessary resources to discharge this responsibility effectively.

- 4) Increase the capacity of offices that support or regulate decentralized wastewater and septic tanks, including regional offices or to otherwise promote the accessibility of these services for remote rural communities.
- 5) Provide resources to promote the development of water and sanitation affordability standards and programs.
- 6) Develop and provide guidance to state and local governments on measures to respect and protect the human rights to water. Include analysis of existing measures and provide model legislation and policies to promote the achievement of universal access to safe, affordable, adequate water and sanitation.
  - a. This guidance should also include a section on measures to avoid, including those that shield companies from liability or other forms of responsibility to respect the human rights to water and sanitation or to provide a remedy for adverse impacts.
  - b. This guidance should draw from existing legislation such as California's AB 685 but should also recognize the weakness of this legislation, including its failure to extend to utilities or to create a private right of action.
  - c. Integrate the Human right to Water in long term integrated water resources planning efforts.
- 7) Develop and provide guidance to utilities and other companies that impact the rights to water and sanitation on compliance with their obligation to respect the human rights to water and sanitation, including model policies for ensuring transparency, participation, and affordability.
  - d. Include guidance on the development of low-income affordability programs, looking to the program currently being developed by Philadelphia as a model.<sup>675</sup>
  - e. Include guidance encouraging all utilities and other companies that impact water and sanitation to conduct watershed risk analysis and other due diligence measures that would allow them to predict and assess impacts to these rights from their activities.
- 8) Develop and provide guidance to existing local human rights commissions to expand their focus to a broader array of human rights, including the rights to water and sanitation.
- 9) Commit to include respect for the rights to water and sanitation in federal government contracts, particularly where the purpose of the contract is likely to impact these rights.
- 10) Include consideration of human rights, water affordability, access to water and sanitation, and the disparate impact of water and sanitation problems on vulnerable groups in all convenings relevant to water and sanitation, including the upcoming White House Water Summit on March 22, 2016. Legal and policy tools should be considered as well as technological advances to meet the challenges of America's water and sanitation crisis.

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<sup>675</sup> Philadelphia City Council, Income-Based Water Rate Affordability Program, available at <http://www.phila.gov/water/rateboard/PDF/140607-AA.pdf>.

Additionally, we recommend:

- 1) That the relevant federal agencies hold a national civil society consultation on the right to water and sanitation, and require that water and sanitation utilities collect data and report annually on water shutoffs about age, income level, disability, race and chronic or severe illness. We ask that practices with a discriminatory impact be discontinued;
- 2) That the Environmental Protection Agency establish guidelines to implement the human rights to water and sanitation. These guidelines should create funding for pilot program(s) to assist low-income populations, and include a list of sanctions and penalties for violations;
- 3) That the President designates the appropriate federal agency to collect and publish information necessary to analyze discriminatory impacts and due process violations, including: age, disability, chronic or severe illness, race, and income level. To gather this information, the U.S. Census Bureau should add questions regarding access to water and sanitation to the American Communities Survey questionnaire and the U.S. Census survey;
- 4) That the Universal Periodic Review (UPR) Civil Rights and Discrimination Working Group convene with the Economic, Social, and Cultural Rights Working Group to follow up on recommendations made to and accepted by the U.S. during the second round of the UN Universal Periodic Review;
- 5) That the Civil Rights Division of the U.S. Department of Justice conduct an investigation into the existence of a discriminatory impact to water rights violations and that the Office of Civil Rights of the U.S. Environmental Protection Agency conduct an investigation into the discriminatory impact of permitting decisions that affect access to affordable, safe drinking water and adequate sanitation;
- 6) That the relevant agencies require as a condition of granting environmental permits for activities that may pollute drinking water, the applicant provide set aside funding for damages to consumers and communities if water sources are compromised;
- 7) That the relevant agencies conduct studies evaluating the public health impact from historic uranium mining and processing in minority communities and cease permitting new uranium mining and processing operations until waste from historic uranium mining and processing has been remediated to standards consistent with the right to health. Ensure that the relevant state agencies do the same;
  - a) Regarding the RWPRC, 1) restore the community to pre-mining communities by expediting and expanding current cleanup efforts to include groundwater and relocating all radioactive waste piles to locations at a safe distance from human settlements; or 2) in the alternative, relocate the community to its traditional use area on Black Tree Mesa and guarantee the provision of all necessary infrastructure, including for drinking water.
- 8) That the relevant agencies strengthen current efforts to recognize criminalization of homelessness as a human rights violation and provide technical and financial assistance

to promote the repeal of local laws and policies that criminalize homelessness and the fulfillment of basic human needs by the homeless; ensure that homeless populations have 24-hour access to adequate safe drinking water and sanitation in the short-term; promote a housing-first approach to ending homelessness and guarantee that all housing provided to formerly homeless individuals includes access to adequate safe drinking water and sanitation; and

- 9) That the Bureau of Indian Affairs restore federal recognition of the Winnemem Wintu tribe, ensure that they have access to adequate safe drinking water and sanitation, and halt all actions that may affect the tribe's cultural survival without free, prior and informed consent.

#### 4. Recommendations to Members of the U.S. Congress

Likewise, the legislative branch of the U.S. government has an important responsibility to monitor the fulfillment of the human rights to water and sanitation and to enact legislation to respect, protect, and guarantee these rights. We request that Congress:

- 1) Hold an investigatory hearing and direct the Congressional Research Service to produce a report about violations of civil rights, discriminatory impacts, and violations of the right to life and an adequate standard of living, and the human rights to water and sanitation in the United States, including data on the number of people living without safe tap water and sanitation (including where water fails to meet national quality standards), the number of people relying upon lead service lines for drinking water service, information on age, disabilities, chronic illness, race or income level of the affected populations, and recommend mitigation measures.
- 2) Fulfill the commitment made by the United States government during the Universal Periodic Review to consider early ratification of the International Covenant on Economic, Social, and Cultural Rights (which the U.S. signed in 1977). As well as fulfill the UPR commitments to expedite/urgently move towards the ratification of the Convention on the Rights of Persons with Disabilities and the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child. Additionally, ratify the American Convention on Human Rights and all other Inter-American human rights treaties, and recognize the jurisdiction of the Inter-American Court of Human Rights.
- 3) Enact federal legislation establishing a policy on water and sewage affordability, and requiring each U.S. state to enact statutes on affordability, accessibility, and safety.
  - a) The standard should be income-based according to monthly combined income rather than median household income.

- 4) Enact legislation that requires public and private utilities to keep records and publish reports that cover information about customers like age, disability, chronic or severe illness, race, and income level.
- 5) Establish and fund a program of public funding for adequate, safe water and sanitation, including:
  - a) A federal dedicated source of funding to the Drinking Water State Revolving Fund and a renewal of the Build America Bonds Program to address aging water and sewage infrastructure.
- 6) Repeal the General Mining Law of 1872, 30 U.S.C. 22, or amend it to clarify that it is subject to the provisions of all other domestic laws protecting public health, cultural and religious rights, and the environment.

## 5. Recommendations to State and Local Governments, including the City of Detroit and Other Similarly Situated Cities

Many of the issues described in this report remain under the jurisdiction of state and local governments. Accordingly, we offer the following recommendations for this important set of government actors.

- 1) Order an immediate moratorium on water shutoffs and on activities that contaminate drinking water supplies;
- 2) Conduct an immediate assessment of households living without safe or any water, including a survey of the inhabitants. Provide emergency assistance and a minimum level of free water service to households that cannot afford to reconnect their service or that are living with contaminated water;
- 3) Enact state or local legislation to create a database and reporting mechanism for the location and number of homes shutoff that includes a built-in check to ensure that shutoffs are not affecting vulnerable groups such as children, elders, and the disabled;
- 4) Design and implement income-based affordability plans for water and sewer bills, using the Philadelphia IWRAP as a model. In Detroit, adopt and implement the Detroit Water Affordability Plan created by Roger Colton;
- 5) Enact protections against water shutoffs and exposure to contaminated water for vulnerable individuals, including low-income homeowners and renters, as well as the elderly, disabled, chronically ill, pregnant women, and children;
- 6) Order an immediate moratorium on all criminal proceedings against individuals due to their inability to pay for water and sanitation due to lack of access to affordable options, and expunge the criminal records of all individuals previously convicted for said reasons;
- 7) Prevent home foreclosure over unpaid water and sewer bills and reverse all local policies that result in tax liens on residential property as a result of water and sewer debt;



- 8) Cease discriminatory enforcement of local ordinances against homeless populations for their actions in fulfillment of basic human needs and ensure they have 24-hour access to adequate safe drinking water and clean and safe sanitation and hygiene facilities. In the long term, provide adequate housing with water and sanitation infrastructure that meets international standards;
- 9) When granting environmental permits for activities that may pollute drinking water, require set aside funding for damages to consumers and communities if water sources are compromised; and
- 10) Ensure nondiscriminatory enforcement of state environmental laws and evaluate disparate and cumulative impact of permitting and other decisions on low-income minority and indigenous communities.

Members of the Coalition that Signed-on to the thematic hearing request include:

The US Human Rights Network (USHRN); UC Berkley, School of Law, International Human Rights Law Clinic (IHRLC); Alabama Center for Rural Enterprise Co. Inc.; The Albuquerque, Center for Peace and Justice; Detroit/Michigan Chapter of the National Lawyers Guild; Environmental Justice Coalition for Water (EJCW); Food & Water Watch; Global Initiative for Economic, Social and Cultural Rights; Human Rights Advocates; Massachusetts Global Action/Color of Water Project; The Metro Atlanta Task Force for the Homeless; Michigan Welfare Rights Organization; People’s Water Board; National Economic & Social Rights Initiative; National Lawyers Guild; New Mexico Environmental Law Center; The Program on Human Rights and the Global Economy (PHRGE), Northeastern University; Santa Clara University School of Law, International Human Rights Clinic; Unitarian Universalist Service Committee; Curtis Cooper, the Law Office of Curtis Cooper; Cynthia Soohoo, Associate Professor CUNY Law School; Edwards and Jennings, PC, Lyda et al. v City of Detroit, Dept of Water and Sewage, Pro Bono Legal Committee, and the Sugar Law Center.

