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**INTERNATIONAL
HUMAN RIGHTS
CLINIC**

The Human Right to Water in the United States

Written submission prepared by the

**International Human Rights Clinic
at Santa Clara University School of Law**

before the

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

for its

STATE AND CIVIL SOCIETY CONSULTATION QUESTIONNAIRE IN
PREPARATION OF THE ANNUAL OVERVIEW OF THE
HUMAN RIGHTS SITUATION IN THE HEMISPHERE
(Chapter IV.A of the 2015 Annual Report)

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Dear Secretary Álvarez Icaza,

In response to the 2015 State and Civil Society Consultation Questionnaire for Preparation of the Annual Overview of the Human Rights Situation in the Hemisphere, Chapter IV.A of the Annual Report, the International Human Rights Clinic at Santa Clara University School of Law (the Clinic) welcomes the opportunity to provide this honorable Commission with information on the realization of the human right to water in the United States and Puerto Rico. We have provided a brief answer to Question 1, but the majority of our submission answers Questions 3 and 7 jointly.

The information contained in this submission is the result of the Clinic's research on the right to water in the United States, and of our partnership with local human rights NGOs and attorneys. As you may remember, the Clinic is a co-petitioner in a requested thematic hearing on the human right to water in the United States, proposed to be held during the Commission's 156th Period of Sessions this coming October. The information provided here complements the information that would be presented to the Commission during that hearing. We will continue our investigation of these issues and plan to submit a more comprehensive report to accompany the hearing, if granted.

In our submission, we have highlighted several cases that illustrate the significant gaps that currently exist in the realization of the human right to water in the United States. Specifically, we provide information on low-income minority and indigenous communities that lack equal access to basic levels of safe and affordable drinking water in the U.S. jurisdictions of Detroit, Baltimore, Boston, California, Alabama, New Mexico, and Puerto Rico. In many of these cases, communities lack access to safe drinking water despite paying high rates for water service. These cases 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.

We also address the serious problem of water shutoffs currently taking place in multiple U.S. cities where low-income, minority residents have been unable to afford to pay for municipal water services and have been disproportionately targeted by agencies seeking to collect on past due accounts. We further provide preliminary information on the due process implications of these shutoffs. Finally, we include case studies that describe the problem of communities that lack a basic supply of drinking water or adequate sanitation due to the high cost of infrastructure improvements.

Our submission emphasizes three of the five criteria set out by the United Nations framework on the human right to water, specifically accessibility, quality and affordability.¹ This framework provides a helpful lens through which to analyze the facts presented in this submission by identifying the specific aspects of the right to water that communities in the United States struggle to enjoy.

¹ See 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).

Question 1: List the main provisions in the national and/or local laws and regulations, public policies, and programs that address the right to water in the country in question.

1. While the federal government of the United States does not recognize the human right to water as such, federal law includes some provisions that play an important role in promoting certain aspects of the right.² The two main statutes, the Safe Drinking Water Act³ and the Clean Water Act,⁴ only address water quality. Additionally, the state of California recently passed a law that recognizes the human right to water,⁵ and the constitutions of Massachusetts and Pennsylvania recognize the right to water.⁶

² 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 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 (by Catarina de Albuquerque).

³ 42 U.S.C. §§ 300f *et. seq.* (2006).

⁴ 33 U.S.C. § 1251 (2006).

⁵ 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.

⁶ See Constitution of the Commonwealth of Massachusetts, art. XCVII; and Constitution of the Commonwealth of Pennsylvania, Art. 1, sec. 27.

Joint Response to Questions 3 and 7:

Question #3: Specify existing measures for ensuring equal access, or access to at least basic levels of drinking water, especially in the case of persons and groups who have historically suffered discrimination. If applicable, note the main structural, social, and cultural challenges that prevent women from having equal access to water; in addition, identify whether there are specific groups of women and children who are at risk in terms of enjoyment of this right.

Question #7: Identify the measures adopted by the State to ensure the supply of drinking water, and indicate whether the access to this supply is paid or free. In the case of paid access, indicate if there are measures to ensure the continuity of the service, in particular as regards persons who have limited resources or would be unable to pay the fees.

I. Low-Income Minority and Indigenous Communities in the United States Lack Equal Access to Basic Levels of Safe and Affordable Drinking Water

2. In the United States, existing measures deprive groups who have historically suffered discrimination of equal access to basic levels of safe and affordable drinking water.⁷ As the 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.”⁸ These communities lack access to water as a result of one or both of the following problems: they cannot afford a basic level of drinking water, or available drinking water is not safe for human consumption. Women and children face additional risks as a result of this situation.

3. This section will identify case studies that demonstrate the lack of equal access to water for basic human needs faced by low-income minority and indigenous communities in the United States. First, it will address the absence of infrastructure improvement and financial support measures to ensure access to adequate water and sanitation for low-income and homeless communities in Alabama, northern California, and Puerto Rico. Next, this section demonstrates the resulting lack of access where water is not affordable by providing information on urban low-income minority communities in Detroit, Baltimore, and Boston that have lost or risk losing

⁷ 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.

⁸ 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 (by Catarina de Albuquerque).

access to water due to water service shutoffs instituted when public utilities refuse to provide basic levels of drinking water to those who cannot afford to pay for water. The information provided on these cases also describes the lack of due process and other safeguards to ensure continuity of service, as well as risks faced by women and children. Finally, it will describe 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 and California.

II. *In the United States, Low-Income and Homeless Populations Cannot Access Safe, Affordable Drinking Water and Adequate Sanitation*

4. 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 assistance programs, low-income, homeless and indigenous communities are excluded from enjoyment of this basic right.⁹ These infrastructure deficits 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.”¹⁰

5. Rising costs and infrastructure deficits exacerbate this problem. 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.”¹¹ Through water and sewer rates, consumers pay 90% of the

⁹ 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 (by Catarina de Albuquerque).

¹⁰ 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. For 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.

¹¹ 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 (by Catarina de Albuquerque).

cost to maintain and operate current water and sanitation infrastructure in the U.S.¹² However, consumers cannot afford needed infrastructure improvements 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.”¹³ 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.¹⁴ Low-income 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.

A. Low-Income Communities in Alabama Lack Access to Adequate Sanitation Due to Economic Barriers

6. 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.¹⁵ A recent investigation by Al Jazeera confirms that “[t]he sewage shortcomings in Alabama’s Black Belt have existed for decades[,]”¹⁶ and that this

¹² 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 (by Catarina de Albuquerque).

¹³ 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 (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>.

¹⁴ 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>.

¹⁵ 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 (by Catarina de Albuquerque); U.S. 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.ushr_righttowater_1.pdf.

¹⁶ 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_bl.html (citing Carla Crowder, The

problem has continued without meaningful improvement since the Rapporteur's 2011 country visit.¹⁷ The situation of Lowndes County, where 70% of the population is African-American and over 25% lives below the poverty line, illustrates the problem.¹⁸ According to the U.N. 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).”¹⁹ Reports indicate that neither municipal sewer systems nor private septic systems are adequate. According to the Alabama Department of Public Health, approximately “40 to 90% of households have either inadequate or no septic system,”²⁰ and half of the county's septic systems are failing or in poor condition.²¹

7. 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.²² For example, the level of poverty in 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.²³ Residents who cannot afford to install or maintain septic systems face arrest, which not only criminalizes them for their lack of access to

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>.

¹⁷ 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>.

¹⁸ 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 (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>.

¹⁹ 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 (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>.

²⁰ 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>.

²¹ 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 (by Catarina de Albuquerque).

²² 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>.

²³ 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>.

adequate sanitation but also places mothers at risk of losing custody of their children.²⁴ 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.”²⁵

8. Lack of access to proper sanitation also has negative health consequences for these communities. 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.”²⁶ A 2013 water quality study of the Black Belt found high rates of water contamination related to inadequate sanitation infrastructure, with a corresponding increase in gastrointestinal illness.²⁷ 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.”²⁸ Children are particularly endangered: a 1993 health study found that in one small clinic in the Black Belt, 34% of children under 10 were infected with hookworm.²⁹

²⁴ 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 (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-black-belt-counties.html>.

²⁵ 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>; 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 (by Catarina de Albuquerque).

²⁶ 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>; U.S. 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.

²⁷ 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.

²⁸ 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>.

²⁹ 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>.

B. Homeless Communities in Northern California Lack Access to Basic Levels of Water and Sanitation and Are Criminalized

9. In the U.S., where up to 3.5 million people experience homelessness every year,³⁰ homeless populations systematically lack equal access – or any access – to adequate water and sanitation.³¹ 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, sanitation, and other basic services.”³² Policies that restrict access to public restrooms and drinking fountains in public areas³³ and laws criminalizing public urination or defecation exacerbate the problems caused by their lack of access to adequate water and sanitation.³⁴ The selective enforcement of these laws against homeless individuals, who have no other alternatives,

³⁰ 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; 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 (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.

³¹ 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.

³² 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.

³³ 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.

³⁴ 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 (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. 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.

has a discriminatory impact on this vulnerable population, further undermining full realization of the right to water and sanitation.³⁵

10. The UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation documented this situation during her 2011 country visit to the United States, looking specifically at the situation of a large homeless encampment in Sacramento, California.³⁶ 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 it.³⁷ 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.³⁸ 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.³⁹ 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."⁴⁰ In a 2012 letter to Sacramento's

³⁵ 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 (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 (see para. 2 for more information about discriminatory enforcement of such provisions).

³⁶ 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 (by Catarina de Albuquerque).

³⁷ 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 (by Catarina de Albuquerque).

³⁸ 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 (by Catarina de Albuquerque).

³⁹ 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 (by Catarina de Albuquerque).

⁴⁰ 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 (by Catarina de Albuquerque).

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.⁴¹ Unfortunately, the Clinic has found no information indicating that the situation has improved.⁴²

C. Puerto Rican Households Lack Access to Basic Levels of Water Due to Public Mismanagement of Drought⁴³

11. Due to public mismanagement of a severe drought affecting up to twenty percent of the island's landmass, government officials have declared a state of emergency and restricted residential access to water service.⁴⁴ As of August 5, 2015, federal officials declared at least 20

⁴¹ 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/>.

⁴² 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.

⁴³ Although the Clinic 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." See, 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>. 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." 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>. The contamination is caused by a lack of adequate sanitation 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 them by failing to carry out the dredging and restoration process in a timely manner, considering that the project has languished for forty years. 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>.

⁴⁴ 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->

municipalities in Puerto Rico to be natural disaster areas because of the drought.⁴⁵ Up to 2.5 million people have been affected and face water shut offs for multiple days at a time.⁴⁶ Due to government-imposed water rationing measures, “[h]undreds of thousands of Puerto Ricans . . . have had tap water only every third day.”⁴⁷ 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.⁴⁸ Journalists have also reported that water rationing measures were imposed disproportionately on low-income residents, leaving tourist businesses to operate without interruption.⁴⁹ According to Puerto Rican academic José Rivera, “The most affected residents have been those with the fewest resources[.]”⁵⁰ Although drought conditions have improved,⁵¹ the situation raises concerns that without improved management practices, the government may again resort to water shutoffs if, as is likely,⁵² drought recurs in the future.

12. The lack of water has 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

[taps-drought-deepens-n404786](http://thinkprogress.org/climate/2015/08/10/3689223/as-puerto-rico-runs-out-of-cash-it-is-also-running-out-of-water/); 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/>.

⁴⁵ 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>.

⁴⁶ 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>.

⁴⁷ 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>.

⁴⁸ 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/>.

⁴⁹ 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/>.

⁵⁰ 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/>.

⁵¹ 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/>.

⁵² 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).

lunches were also limited.⁵³ Media reports confirm that hundreds of schools had to modify their academic schedules,⁵⁴ and that these impacts were most severe for children living in poverty – approximately half of all Puerto Rican children.⁵⁵

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

13. 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 insufficiency or lack of measures in communities affected by shutoffs to ensure continuity of a basic level of water service for residents who cannot afford it. Finally, it outlines the additional risks that water shutoffs pose to women and children.

14. 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 U.N. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation highlighted the issue after her 2011 country visit.⁵⁶ 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.⁵⁷ Against this backdrop, large cities

⁵³ 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>.

⁵⁴ El Nuevo Día, Educación evalúa retomar horario regular de clases, Sept. 9, 2015, available at <http://www.elnuevodia.com/noticias/locales/nota/educacionevaluarretomarhorarioregulardeclases-2096668/>.

⁵⁵ 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/>.

⁵⁶ 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 (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; 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>.

⁵⁷ 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 (by Catarina de Albuquerque); U.S. 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_righttwater_1.pdf; National Consumer Law Center, “Review and Recommendations for Implementing Water and Wastewater Affordability Programs in

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.⁵⁸ However, 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.⁵⁹ As a result, it is primarily these residents who have been affected by mass water shutoffs due to unpaid bills.⁶⁰ 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,”⁶¹ and noting that the shutoffs have “disproportionate effects on vulnerable people and low income African Americans.”⁶²

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>.

⁵⁸ 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>.

⁵⁹ U.S. 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; 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; 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>.

⁶⁰ U.S. 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; 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.

⁶¹ 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>.

⁶² 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 Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 50, U.N. Doc.

A. Detroit

15. Detroit provides a particularly egregious and emblematic example of the human rights consequences of water service disconnections in the United States. Since early 2014, the city has carried out mass disconnections of individual residential accounts, primarily affecting low-income, minority households.⁶³ Through the Detroit Water and Sewerage Department (DWSD), the city operates the third-largest municipal water system in the United States.⁶⁴ A host of factors, including the city's 2013 declaration of bankruptcy, has prompted water and sanitation rate increases.⁶⁵ 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,⁶⁶ causing an "acute affordability crisis."⁶⁷ The city shut off water for 33,000 accounts in 2014.⁶⁸ Although the city

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 (by Catarina de Albuquerque).

⁶³ 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 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);

⁶⁴ U.S. Cong. Budget Office, *Future Investment in Drinking Water and Wastewater Infrastructure XVII* (2002).

⁶⁵ 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/>.

⁶⁶ 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>.

⁶⁷ 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>.

⁶⁸ U.S. 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.ushr_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/>.

temporarily suspended water shutoffs at various points in 2014, the shutoffs continued,⁶⁹ 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,⁷⁰ and civil society estimates that at least 40,000 residential accounts have been shut off since March 2014.⁷¹

16. 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.⁷² 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.”⁷³ Detroit's population is 80% African American and nearly half (41%) lives below the poverty line;⁷⁴ of those living below the poverty line, 99% are African American.⁷⁵ City officials should have been aware that this population would be

⁶⁹ 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/>.

⁷⁰ 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/>.

⁷¹ 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>.

⁷² 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>.

⁷³ 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>.

⁷⁴ U.S. 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.ushr_righttowater_1.pdf.

⁷⁵ 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

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 affected population.”⁷⁶ 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.⁷⁷ 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.⁷⁸

B. Baltimore

17. In early 2015, the city of Baltimore followed Detroit’s example and issued water shutoff notices to 25,000 delinquent residential accounts.⁷⁹ Like Detroit, the majority of Baltimore’s population is minority and low-income; specifically, 63% of residents are African American and 25% of residents live below the poverty line. Accordingly, the shutoffs primarily affect low-income, minority households. Despite this fact, the city’s Department of Public Works (DPW) decided to threaten and carry out mass water shutoffs against thousands of residents with outstanding balances of \$250 or more on their accounts; as of April 7, 2015, the first week of the shutoffs, the city had shut off service to over 300 households.⁸⁰ By May 15, 2015, that number rose to 1,600 disconnected residential accounts.⁸¹ The city reports that overdue accounts

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>.

⁷⁶ 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>.

⁷⁷ 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>.

⁷⁸ 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/>.

⁷⁹ 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>.

⁸⁰ 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>.

⁸¹ 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>.

represent approximately USD \$40 million in lost revenue; although corporate and government accounts are responsible for USD \$15 million of that total, DPW has only disconnected service for residential accounts.⁸²

C. Boston

18. Low-income, minority⁸³ residents of the city of Boston have also faced water shutoffs for delinquent accounts, with a sharp increase in shutoffs from 2003 to 2006.⁸⁴ The problem persists to this day.⁸⁵ According to a USA Today study, Boston's water rates rose approximately 119% from 2000 to 2012.⁸⁶ The U.N. 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."⁸⁷ She cited to a study analyzing the demographics of 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."⁸⁸ 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.⁸⁹

⁸² 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>.

⁸³ 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.

⁸⁴ 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>.

⁸⁵ 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>.

⁸⁶ 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/>.

⁸⁷ 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 (by Catarina de Albuquerque).

⁸⁸ 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 (by Catarina de Albuquerque).

⁸⁹ 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>.

1. Water Shutoffs Do Not Meet Due Process Standards

19. 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.⁹⁰ 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."⁹¹ They further found that "people have no means to prove the errors and hence the bills are impossible to challenge."⁹² 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[.]"⁹³ 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."⁹⁴

2. Water Shutoffs Pose Additional Risks to Women and Children

20. Water shutoffs may also place mothers at risk of losing custody of their children.⁹⁵ Alarming, 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

⁹⁰ The Clinic's research into this aspect of water shutoffs is ongoing.

⁹¹ 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>.

⁹² 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>.

⁹³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15190&LangID=E>

⁹⁴ 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), p. 4, available at <http://www.blueplanetproject.net/wordpress/wp-content/uploads/Detroit-HRTW-submission-June-18-2014.pdf>

⁹⁵ 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>.

best interest of the child, because the household water supply was shut off.”⁹⁶ At a recent consultation between the U.S. government and civil society, a presenter provided information about “[a] single mother in Southern Illinois . . . [who] lost custody of her three children to state social services due to her inability to afford running water in her home[.]”⁹⁷ 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.”⁹⁸ 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.⁹⁹

21. 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[.]”¹⁰⁰

⁹⁶ 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 (by Catarina de Albuquerque).

⁹⁷ 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.

⁹⁸ 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/>.

⁹⁹ 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/>. Parents facing shutoffs in Baltimore also fear that they will lose custody of their children as a result. See 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/>.

¹⁰⁰ 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 (by Catarina de Albuquerque).

IV. *Low-Income Minority Communities in Rural California Lack Equal Access to Safe Drinking Water Due to Agricultural Contamination*

22. Low-income, minority communities in rural California lack access to safe drinking water due to contamination caused by insufficient regulation of the agricultural industry.¹⁰¹ 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.¹⁰² At the same time, a University of California study found that low-income minority communities are significantly more likely to have unsafe drinking water than their wealthier white counterparts.¹⁰³ As described below, this situation 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.¹⁰⁴

A. *Low-Income Minority Communities in the Salinas and San Joaquin Valleys Lack Access to Safe Drinking Water*

23. Low-income minority communities – predominantly comprised of farmworker families – in the Salinas and San Joaquin Valleys lack access to safe and affordable drinking water. More

¹⁰¹ 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.

¹⁰² 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; Camille Pannu, *Drinking Water and Exclusion: A Case Study from California’s Central Valley*, 100 Calif. 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)).

¹⁰³ 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).

¹⁰⁴ 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. 12-13, available at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17884_E.pdf;

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.¹⁰⁵ 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.¹⁰⁶

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

24. Similar to the problem in the Black Belt region of Alabama, 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. The most prevalent contaminants found in the drinking water systems of these communities – arsenic and nitrates – pose particularly serious risks for pregnant and nursing women, children, and the elderly.¹⁰⁷ Nitrate can cause serious health problems, such as gastrointestinal diseases and a range of long-term illnesses, including various cancers, digestive tract impairments, thyroid conditions, and nervous system disabilities.¹⁰⁸ It can also have immediate toxic effects on vulnerable individuals such as babies and pregnant women.¹⁰⁹ If an infant drinks water containing too much nitrate, it may suffocate and die without treatment, as

¹⁰⁵ 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>; U.S. 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.

¹⁰⁶ 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>.

¹⁰⁷ 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.

¹⁰⁸ 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.

¹⁰⁹ 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; Community Water Center, *Water And Health In The Valley: Nitrate Contamination Of Drinking Water And The Health Of San Joaquin Valley Residents*, (2011), p. 4, available at http://www.communitywatercenter.org/water_and_health_in_the_valley.

the nitrate decreases the ability of blood to carry oxygen (“Blue Baby Syndrome”).¹¹⁰ Pregnant women exposed to nitrate contamination can be affected with reduced cognitive functioning, miscarriage, stillbirth, premature birth and maternal reproductive complications.¹¹¹ Accordingly, nitrate contamination of groundwater in the Salinas and San Joaquin Valleys deprives low-income minority communities of equal access to safe drinking water and particularly endangers the health and personal integrity of women and children.

C. Contamination of California’s Water Supply Raises the Cost of Water

25. 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.¹¹² As a result of this situation, despite government guidelines specifying that no more than 2% 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.¹¹³ The UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation observed that in the San

¹¹⁰ 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>.

¹¹¹ 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>; U.S. 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.

¹¹² 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; 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 (by Catarina de Albuquerque); U.S. 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.

¹¹³ 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 (by Catarina de Albuquerque); U.S. 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.

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.¹¹⁴ 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.¹¹⁵ 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.

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

26. In addition to the problems mentioned above concerning communities in Alabama, Sacramento, Detroit, Baltimore, Boston, and rural California, indigenous peoples 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.”¹¹⁶ She further found that “[t]his disparity is particularly pronounced in Interior and Western Alaska communities and Navajo Nation.”¹¹⁷ In particular, Navajo communities lack access to safe drinking water due to contamination caused by unremediated uranium mine waste. Finally, she emphasized the “protection gap” faced by

¹¹⁴ 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 (by Catarina de Albuquerque); U.S. 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.

¹¹⁵ 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.

¹¹⁶ 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 (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 (noting the disparate impact of environmental pollution on indigenous peoples in the United States).

¹¹⁷ 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 (by Catarina de Albuquerque).

federally unrecognized tribes like the Winnemem Wintu tribe in California, which lacks access to adequate drinking water, sanitation, and water sources with cultural significance.¹¹⁸ This section addresses the effects of contaminated drinking water upon indigenous Navajo communities in New Mexico as well as the situation of the Winnemem Wintu.

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

27. Not only do a large percentage of indigenous Navajo communities lack a public water system,¹¹⁹ those in northwestern New Mexico further struggle to secure access to safe drinking water due to groundwater contamination caused by unremediated uranium mining waste.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.”¹²¹ 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.”¹²²

¹¹⁸ 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 (by Catarina de Albuquerque).

¹¹⁹ 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 (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>.

¹²⁰ Multicultural Alliance for a Safe Environment, 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), p. 3, available at http://www.ushrnetwork.org/sites/ushrnetwork.org/files/mase_cerd_shadow_report_final_1.pdf.

¹²¹ 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>.

¹²² 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.

28. Approximately 81% of New Mexico's heavily indigenous population relies on groundwater as drinking source.¹²³ 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 sources in an isolated and arid area.¹²⁴ For example, a well near the Navajo community of Churchrock was abandoned due to elevated uranium concentrations.¹²⁵ 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.¹²⁶

29. 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. RWPRC lies near three uranium mining and processing sites with hazardous waste resulting in exposure to radiation and heavy metals.¹²⁷ 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 chemically soluble forms that have been leaching into the area's drinking water, according to water testing []." ¹²⁸ Although the U.S. government has been conducting surface reclamation of these sites, the cleanup plan does not include groundwater remediation.¹²⁹ 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 a lake 20 miles away to serve RWPRC and 4500

¹²³ New Mexico Environment Department, *Water Resources and Management*, available at https://www.env.nm.gov/nav_water.html.

¹²⁴ 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>; U.S. 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.

¹²⁵ U.S. 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.

¹²⁶ 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>; U.S. 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.

¹²⁷ U.S. 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; 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/>.

¹²⁸ 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/>.

¹²⁹ 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).

other customers; however, the Navajo utility company has found increasing levels of uranium contamination in this supply as well.¹³⁰ 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.¹³¹

30. 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. 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.¹³² For pregnant women and children, uranium exposure appears to be associated with higher rates of 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.”¹³³

B. Federally Unrecognized Indigenous Tribes, like the Winnemem Wintu in Northern California, Lack Access to Adequate Water, Sanitation, and Cultural Uses of Water

31. 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.¹³⁴ The United States frequently deprives indigenous peoples of access to traditional water sources and sacred sites that are affected by water management decisions.¹³⁵ This practice represents a failure to

¹³⁰ U.S. 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_righttewater_1.pdf.

¹³¹ U.S. 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_righttewater_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>.

¹³² 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/>.

¹³³ 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/>.

¹³⁴ 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.

¹³⁵ 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:

respect the cultural rights of indigenous peoples and further undermines the ability of these communities to fully realize the human right to water.

32. The situation of the Winnemem Wintu, a federally unrecognized tribe in Northern California, illustrates these cultural barriers to the full enjoyment of the human right to water for indigenous communities in the United States. 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.¹³⁶ Despite this 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.¹³⁷ The federal U.S. government has also failed to protect the tribe's rights and has refused to recognize the Winnemem Wintu as a tribal group, which greatly limits their options to secure access to a continuous supply of safe drinking water and adequate sanitation, among other fundamental human rights.¹³⁸

<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>.

¹³⁶ 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.

¹³⁷ U.S. 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; (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; 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/>.

¹³⁸Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶¶ 67-68, 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 (by Catarina de Albuquerque); see also U.S. 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; Winnememwintu.us, *AJR 39 and NAHC Letter*, available at <http://www.winnememwintu.us/ajr-39-and-nahc-letter/>; 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), ¶24, available at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf.

VI. *These Case Studies Illustrate the Ways in Which Low-Income Minority and Indigenous Communities in the United States Lack Equal Access to Basic Levels of Safe and Affordable Drinking Water*

33. As these case studies indicate, low-income minority 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. 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. Low-income minority 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.”¹³⁹ 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[.]”¹⁴⁰ the State does not appear to have made meaningful progress towards implementing these recommendations.

¹³⁹ 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>.

¹⁴⁰ 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 (by Catarina de Albuquerque).