



July 28, 2015

Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
1889 F Street, N.W.
Washington, D.C. 20006

Hearing Request: Barriers to Access to Safe and Affordable Water in the United States

Dear Secretary Álvarez Icaza:

By way of this letter, we the undersigned organizations, respectfully request a hearing during the 156th period of sessions of the Inter-American Commission on Human Rights (the "Commission"). The hearing will address human rights violations generated by the lack of access to clean and affordable water for domestic purposes that disparately impacts racial minorities in urban, rural, and tribal areas across the United States (U.S.). There are numerous urgent situations nationwide involving a lack of access to clean and affordable water that merit the Commission's attention. This request will, however, highlight several critical situations that represent key water challenges in urban, rural, and indigenous communities. This request is submitted in the name of the US Human Rights Network (USHRN) on behalf of seventeen community based and advocacy organizations, three law school clinics and programs, as well as four law firms and individuals.

Human Rights Issues to be Addressed

While the United States has a well-developed legal and regulatory framework governing the quality and provision of water at both the federal and state level, many disadvantaged communities, particularly racial and ethnic minorities, are exposed to unsafe drinking water and face affordability challenges that severely impact their health and the quality of their lives. Indeed, African-American communities in Michigan and Maryland, Latino communities in rural California, and Indigenous communities in the Southwest have been disproportionately affected.

Water issues impacting communities of color in the U.S. have garnered attention from the international community and media. In 2011 the Special Rapporteur on the human right to safe drinking water and sanitation (Special Rapporteur on water and sanitation) conducted a country visit to the U.S. during which she observed policies and practices impacting the access to safe and affordable water for disadvantaged communities.¹ She noted the “serious water quality concerns in various parts of the US, which give rise to concern [sic] about health as well as additional costs involved in obtaining safe water” and further noted that “those households either unable to afford alternative solutions or forced to make difficult trade-offs fall into a protection gap.”²

In her report to the Human Rights Council she outlined serious concerns regarding water safety and affordability and noted that 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.”³ Affordability was highlighted as a key element of the human right to water clarifying that “securing water and sanitation must not compromise the ability to pay for other essential needs guaranteed by other human rights such as the rights to food, housing, education and health.”⁴ She further noted that not only were economic, social, and cultural rights implicated but also civil and political rights as a result of indirect discrimination and exclusion.⁵

Several recommendations addressing these pressing matters were issued, to which the U.S. government has failed to adequately respond. Among the recommendations: the adoption of comprehensive federal legislation on water and sanitation which ensures non-discrimination and identifies the duties at the federal, state, and local levels; the formulation of a national water and

¹ 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, available at:

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10807&LangID=E#sthash.BQjclVdy.dpuf>

(“I am concerned that several laws, policies and practices, while appearing neutral at face value, have a disproportionate impact on the enjoyment of human rights by certain groups.”).

² *Id.*

³ 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) [hereinafter UN Report].

⁴ *Id.* at ¶ 47.

⁵ *Id.* at ¶ 81.

sanitation policy and plan of action; and the establishment of minimum standards on affordability, including due process protections for water disconnections.⁶

Responding to inadequate action by the government to address water issues in Detroit, the Special Rapporteur returned to the U.S., along with the Special Rapporteur on Adequate Housing, to learn about ongoing water shut-off issues in the city. Again, the Special Rapporteurs remarked on the disparate impact on racial minorities, namely African-Americans, in the city, and the human rights violations resulting from a lack of affordable drinking water and sanitation.⁷ Specifically, the Special Rapporteurs were “deeply startled” by constructive evictions, foreclosures, and resulting homelessness, the unmeasured impact on already vulnerable groups, as well as due process concerns resulting from a “lack of information about the shut-offs, confusion regarding water bills and notices of unpaid bills . . . [and a] lack of effective remedies to challenge [shut-off] decisions.”⁸ To begin addressing these issues, the Special Rapporteurs issued a number of recommendations for the federal and local government. In addition to calling for an end to the shut-offs,⁹ they called on the government to establish standards regarding water affordability, to ensure that residents who cannot pay water fees receive the necessary assistance, that special considerations are made for households with vulnerable members, and that an investigation is conducted in to the disproportionate impact on African-Americans.¹⁰

More recently, as part of the Universal Periodic Review process, two recommendations were made to the U.S. regarding the human right to water. Significantly, Spain called on the U.S. to “[c]ontinue efforts to implement the human right to safe water and sanitation, ensuring this human right without discrimination for the poorest sectors of the population, including indigenous peoples and migrants.”¹¹ The U.S. government has not yet indicated whether it will accept or

⁶ *Id.*

⁷ 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, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Human Rights Council, Draft Report of the Working Group on the Universal Periodic Review: United States of America, A/HRC/WG.6/22/L.10 (May 2015) at 5.316.

reject the recommendation, but it marks a significant advance in recognizing the intersection between access to safe and affordable water and racial discrimination.

Despite these calls for action, water issues in the U.S. have shown little, if any, improvements in the interim period. Rather, for many disadvantaged communities the lack of access to affordable and clean water has become increasingly dire and would benefit from the Commission's monitoring and guidance

Below are several of the issues we wish to highlight for the Commission:

Water Shut-Offs and Affordability Challenges in Urban Areas

In the U.S. a water utility company may disconnect a resident's water service for an inability to pay the cost of water service. Water shut-offs are increasing in poor communities of color—where water rates are often disproportionately high¹²—without adequate mechanisms for residents to challenge or resolve billing issues. In some localities, water companies are systematically reviewing outstanding bills resulting in mass disconnections that have serious implications for low-income residents, people of color, and other vulnerable communities.

Detroit, Michigan

Water issues in the city of Detroit—where 41% of residents live below the poverty level—disproportionately affect African-Americans. Indeed, African-Americans are 80% of the city's population, but represent 99% of the poor. Exacerbating the dire conditions of this impoverished community, in 2014 Detroit's utility company shut off service to 33,000 accounts. Under human rights law all people have the right to safe and affordable water, even if they are unable to pay.¹³ Water shut-offs, particularly during harsh weather, have grave effects for its residents. Disconnections in Detroit are even more egregious as they are done without taking proper measures for protecting the public health and safety of vulnerable household members. Vulnerable groups

¹² UN Report, *supra* note 3, at ¶¶ 48-49.

¹³ 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)*, ¶ 56, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 20013), [hereinafter *General Comment 15*].

within these low-income racial minority communities fall through the cracks, as there is no official monitoring of the impact of water shut-offs on elderly persons, persons with disabilities, chronically ill persons, pregnant and nursing women, and children. In Detroit, 72,000 homes were scheduled for foreclosure in spring 2015. The municipal government shows no signs of addressing this urgent situation; as recently as May 2015, Detroit has disconnected water to thousands of additional households and public schools. Yet, adequate assistance programs do not exist to support these individuals and families when they face water disconnections, or resulting consequences like evictions, foreclosures, and homelessness. Water disconnections are inextricably linked to home foreclosures, which often result in homelessness or uninhabitable living conditions—situations, which have led to the loss of the legal custody of children. Furthermore, some residents, who are desperately seeking access to water and resort to informal measures to reconnect their homes to water sources, face criminal penalties, including felony charges.

Baltimore, Maryland

In the city of Baltimore, Maryland—where 25% of residents live below the poverty level and 63% of the population is African-American—the local water utility is threatening mass water shut-offs to tens of thousands of residents with an outstanding balance greater than \$250.¹⁴ Low-income renters—predominantly people of color—are particularly at risk because their water bills are linked to their tenancy, and unaffordable and unpaid water bills can lead to eviction. Moreover, Baltimore tenants cannot open water utility accounts in their own names because accounts must be under the property owner’s name. Thus, tenants cannot challenge inaccurate billing statements or obtain billing adjustments for leaks. The ability to challenge erroneous statements is especially important in Baltimore, a city with a history of chronic billing problems, like severely inflated statements.¹⁵

¹⁴ 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>.

¹⁵ 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>; Sarah Lazare, *Brewing Human Rights Crisis In Baltimore As City Threaten Mass Water Shutoffs*, BALTIMORE SUN. April 7, 2015, available at: <http://www.enewspf.com/latest-news/latest-national/latest-national-news/60209-brewing-human-rights-crisis-in-baltimore-as-city-threatens-mass-water-shutoffs.html>

Boston, Massachusetts

The City of Boston’s water utility, the Boston Water and Sewer Commission, also shuts off water to residences that are unable to pay their water bills. The Commission reports this as a “last resort” and states that it offers generous terms to repay water debts. It also states that it cannot reduce the principal owed and that it cannot index water rates to income. The result of these practices is that there are considerable inequalities in threatened and actual water-shutoff rates across the city and that these correspond closely to income and race/ethnicity. Communities of color including, African American, Latino and immigrant populations, are 10 times more likely to be threatened with water shutoffs than high income, largely white communities.¹⁶ Specifically, for every percentage increase in proportion of people of color by city ward, there is a corresponding 2 – 4% increase in threatened water-shutoff rates.¹⁷ Although community organizations believe that the City is acting in good faith and that it wishes to serve all communities, water and sanitation rate increases are planned for each year into the foreseeable future. These are likely to exacerbate the disparities identified. Already, water and sanitation rates in this water surplus region are well above the national average and increasing unaffordable for low-income communities, particularly the 17% of the city’s households earning less than \$15,000 each year.¹⁸ Such measures will result in higher levels of water insecurity that will disproportionately burden disadvantaged communities of color.

Access and Contamination in Rural Areas

The Central Valley and Salinas Valley of California

Rural communities in California’s agricultural regions are often exposed to contaminants that have been linked to serious and debilitating illnesses. And yet these communities are left with very little recourse to change the quality and safety of their water or seek remedy for the health impacts of the contamination. Several recent studies detail the extent of the contamination problem and the significant risks residents face, the disparate impact on disadvantaged communities—mostly racial minorities—and the steps needed to mitigate the harms and develop long-term solutions.^{19,20} While

¹⁶ 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.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See generally CENTER FOR WATERSHED SCIENCES, UNIVERSITY OF CALIFORNIA, DAVIS, ADDRESSING NITRATE IN CALIFORNIA’S DRINKING WATER: WITH A FOCUS ON TULARE LAKE BASIN AND SALINAS VALLEY GROUNDWATER

some legislative and programmatic efforts have sought to address these issues, these efforts have been gravely deficient and serious problems persist.

The San Joaquin and Salinas Valleys are areas comprised of majority Latino populations, many of whom are low-income, with a documented crisis of nitrate contamination resulting from intensive agricultural practices.²¹ Half of the 2.6 million people living in the Salinas Valley and in four counties in the San Joaquin Valley (Fresno, Tulare, Kings, and Kern counties) depend on drinking water with nitrate levels that have exceeded federal safety standards.²² Exposure to nitrates is known to cause serious health impacts, including gastrointestinal diseases and a range of long-term illnesses, including various cancers, digestive tract impairments, thyroid conditions, and nervous system disabilities.²³ It has also been linked to problems in pregnancy and childbirth, such as miscarriage, stillbirth, premature birth, and impaired growth in utero leading to disabilities.²⁴

Many of the same communities that are exposed to contaminants rely on water infrastructure that has been neglected for decades and therefore cannot adequately address these contamination issues. As a result, many residents in these regions pay twice for water for basic household use: once for the contaminated water that flows from their taps and a second time for bottled water that is safe for drinking and cooking. In the San Joaquin Valley, some households devote approximately 20% of their

(2012), [hereinafter UC DAVIS NITRATE REPORT] 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); PACIFIC INSTITUTE, THE HUMAN COSTS OF NITRATE-CONTAMINATED DRINKING WATER IN THE SAN JOAQUIN VALLEY 10, 37 (2011), available at http://www.pacinst.org/wp-content/uploads/sites/21/2013/02/nitrate_contamination3.pdf; Carolina Balazs et al., *Environmental justice implications of arsenic contamination in California's San Joaquin Valley: a cross-sectional, cluster-design examining exposure and compliance in community drinking water systems*, 11:84 ENVTL. HEALTH 1 (2012); COMMUNITY WATER CENTER, WATER AND HEALTH IN THE VALLEY: NITRATE CONTAMINATION OF DRINKING WATER AND THE HEALTH OF SAN JOAQUIN VALLEY RESIDENTS 1 (2011), available at http://www.communitywatercenter.org/water_and_health_in_the_valley [hereinafter WATER AND HEALTH IN THE VALLEY].

²⁰ See generally Patricia Leigh Brown, *The Problem is Clear: The Water is Filthy*, N.Y. TIMES (Nov. 13, 2012), available at <http://www.nytimes.com/2012/11/14/us/tainted-water-in-california-farmer-communities.html>; Ian Lovett, *Parched, California Cuts Off Tap to Agencies*, N.Y. TIMES (Jan. 31, 2014), http://www.nytimes.com/2014/02/01/us/amid-drought-california-agency-will-withhold-water-deliveries.html?_r=0; Scott Kraft, *In tiny Seville, trouble on tap*, L.A. TIMES (Nov. 7, 2010), available at <http://articles.latimes.com/2010/nov/07/local/la-me-seville-water-20101107>; Dean Murphy, *At War Against Dam, Tribe Turns to Old Ways*, N.Y. TIMES (Sept. 14, 2004), available at http://www.nytimes.com/2004/09/14/national/14tribe.html?_r=0.

²¹ UN Report, *supra* note 3, at ¶ 63.

²² UC DAVIS NITRATE REPORT, *supra* note 19.

²³ WATER AND HEALTH IN THE VALLEY, *supra* note 11, at 4; UC DAVIS NITRATE REPORT, *supra* note 11, at 9.

²⁴ *Id.*

annual median income of \$14,000 to pay for water and sanitation services and to purchase bottled water.²⁵ This is well above the EPA standard of 2% of annual household income and far exceeds the national average of .5% of household income.²⁶

When communities pursue infrastructure improvement projects, they often face complex application processes which require technical expertise. Even when funding is secured for such projects, many small, rural communities often cannot reach the economies of scale to pay the water rates necessary to operate and maintain modern water systems.²⁷ Some communities have been forced to shut down the upgraded water treatment systems they need and return to the regular use of contaminated water.²⁸ Other barriers to participation in decision-making processes for rural residents prevent communities from advocating on their own behalf, such as a lack of language translation services at public hearing or meetings convened long distances from impacted communities during work hours.²⁹

The Black Belt Region of Alabama

Residents of poor counties in Alabama's Black Belt region lack access to adequate sanitation infrastructure. In areas like Lowndes County, where 70% of the population is African-American, residents have struggled with either no sewer system or sewer systems that have not been improved for decades. According to 2010 census data, approximately 20% of residents of Lowndes County are connected to the municipal sewer system, while 80% must finance their own means to dispose of waste.³⁰ However, Lowndes is one of the poorest counties in the nation, with a quarter of its residents living in poverty and not able to afford the cost of installing or upgrading their own systems.

²⁵ UN Report, *supra* note 3, at ¶ 39.

²⁶ Environmental Protection Agency, *Water on Tap: what you need to know*, 2009, at 9, available at: http://www.epa.gov/ogwdw/wot/pdfs/book_waterontap_full.pdf; see also The United States Conference of Mayors, *Public Water Cost Per Household: Assessing Financial Impacts of EPA Affordability Criteria in California Cities*, November 29/14, available at: <http://www.usmayors.org/pressreleases/uploads/2014/1202-report-watercostsCA.pdf>.

²⁷ Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 Calif. L. Rev. 223, 238 (2012). In Lanare, the local community received \$1.3 million in federal money to construct a treatment plant for arsenic-tainted water. However, the small number of residents were unable to pay the increased rates necessary for its operation and the plant currently sits unused.

²⁸ California Rural Legal Assistance, *American Recovery and Reinvestment Act of 2009: Analysis of Drinking Water and Waste Water Investment in Fresno and Stanislaus Counties* 10 (2011), available at http://www.crla.org/sites/all/files/content/uploads/Resources/CRLA_CEI_ARRA_Water_Report-2012.pdf. See also Mark Grossi, *Lanare lacks health care, clean water, schools*, FRESNO BEE (Apr. 27, 2013), <http://www.fresnobee.com/2013/04/27/3277167/living-in-a-toxic-land-a-history.html>.

²⁹ The Environmental Justice Coalition for Water, *THIRSTY FOR JUSTICE: A PEOPLE'S BLUEPRINT FOR CALIFORNIA WATER* 61-64 (2005), available at <http://www.ejcw.org/ThirstyforJustice.pdf>.

³⁰ 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>.

Previously, lack of compliance with local ordinances regarding waste treatment has even resulted in the arrest of some low-income residents who were unable to pay for the necessary system or repairs.³¹

In her 2011 report on the U.S., the UN Special Rapporteur highlighted communities in Alabama's Black Belt, which have been historically poverty-stricken with little access to higher education or steady employment.³² The Alabama Department of Public Health estimates 40 - 90% of households have either inadequate or no septic system, and of the households that are connected to a system, half are not fully functional or expected to fail in the future.³³ The region's chalky clay soil further exacerbates the issue as water is not readily absorbed into the earth, causing even functioning septic tanks to back up, lagoons to run over, and sewage to pool in yards and on roads. Exposure to raw sewage on ground surfaces causes serious health impacts on local residents. Local advocates have noted the prevalence of gastrointestinal symptoms, as well as parasites and other infections which stem from poor sanitation in the community, including hookworm in Lowndes County's children.³⁴ Scientists and activists are concerned that persistent exposure from continued inadequate sanitation poses serious health risks, including the reemergence of diseases long thought eradicated in the U.S.³⁵

Impacts on Indigenous Communities

Native Americans disproportionately lack access to clean drinking water in the U.S.³⁶ Some communities face arsenic or other contamination of their drinking water, while others lack access to a continuous and reliable water supply.³⁷

³¹ 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> [hereinafter *Filthy water and shoddy sewers plague poor Black Belt counties*].

³² UN Report, *supra* note 3.

³³ *Id.*

³⁴ *Filthy water and shoddy sewers plague poor Black Belt counties*, *supra* note 31.

³⁵ *Id.*

³⁶ The Special Rapporteur on Safe Drinking Water and Sanitation noted that indigenous groups in the U.S. "lack access to safe drinking water . . . in disproportionate numbers." UN Report, *supra* note 3, at ¶ 63.

³⁷ Terria Smith, *Thirsty for drinkable water in Torres Martinez*, REPORTING ON HEALTH, CALIFORNIA ENDOWMENT (Sep. 30, 2013), <http://www.reportingonhealth.org/2013/09/30/thirsty-drinkable-water-torres-martinez>; see also REVEALING THE INVISIBLE COACHELLA VALLEY, Center for Regional Change, U.C. Davis, June 2013. Available at: <http://regionalchange.ucdavis.edu/ourwork/publications/ceva-ecv/revealing-the-invisible-coachella-valley-putting-cumulative-environmental-vulnerabilities-on-the-map>.

Navajo Communities in New Mexico

New Mexico has a long and tragic history of public health and environmental impacts from uranium development. Typical of the impacts visited on communities throughout uranium country is the situation of the Navajo community of Red Water Pond Road community (RWPRC). This small community, located within the Navajo Nation in northwestern New Mexico, lies near three uranium mining and processing sites. All of these sites are currently undergoing surface reclamation pursuant to the Comprehensive Environmental Response and Liability Act (CERCLA).³⁸ Significantly, however, none of these sites is undergoing groundwater remediation.³⁹

Potable groundwater is a particularly important resource in arid states like New Mexico where approximately 81% of the state's population relies on groundwater as their drinking water source.⁴⁰ Indeed, until 2003, the RWPRC relied on groundwater from a nearby well as its primary drinking water source. At one time, the Navajo Nation even designated this well, known as the Friendship well, as a public drinking water system. However, the Friendship well was closed in 2003 due to poor water quality, including high levels of arsenic, concentrated radium, and dissolved solids.⁴¹ As a consequence, the United States government and the Navajo Nation were forced to construct water infrastructure to serve the RWPRC. Currently, the RWPRC gets water from a public water system operated by the Navajo Tribal Utility Authority (NTUA). This system pumps water from wells in Mariano Lake, some 21 miles from the RWPRC.⁴² This supply serves not only the RWPRC, but also approximately 4500 other customers within the Navajo Nation. Since 2009, NTUA has measured increasing levels of uranium, which have ranged from 15 micrograms per liter ($\mu\text{g}/\text{l}$) to 28 $\mu\text{g}/\text{l}$. The

³⁸ 42 U.S.C. § 9601 *et. seq.* See also <http://yosemite.epa.gov/r9/sfund/r9sfdocw.nsf/vWSOAlphabetic?openview>. The United States Environmental Protection Agency and United States Nuclear Regulatory Commission are the Federal agencies primarily responsible for remediation of the CERCLA sites near the RWPRC. The New Mexico Environment Department is the state agency primarily responsible for uranium mine groundwater remediation where New Mexico has jurisdiction.

³⁹ See, e.g., *Engineering Evaluation/Cost Analysis: Northeast Churchrock (NECR) Mine Site, Gallup, New Mexico* at 10 (May 30, 2009).

⁴⁰ http://www.nmenv.state.nm.us/nav_water.html.

⁴¹ Closing wells due to contamination from uranium development is common in New Mexico in both indigenous and non-indigenous communities. A well in nearby Churchrock chapter was recently abandoned due to elevated uranium concentrations. In 1983, several private drinking water wells in Milan, New Mexico were abandoned because groundwater used by several neighborhoods was destroyed by contamination from the Homestake uranium mill tailings site. *EPA Superfund Record of Decision: Homestake Mining Co.*, EPA/ROD/R06-89/050 (1989), <http://www.epa.gov/superfund/sites/rods/fulltext/r0689050.pdf>.

⁴² These wells are located near another uranium mining CERCLA site, the Old Gulf Mine Superfund site. See, <http://www.epa.gov/region9/superfund/navajo-nation/pdf/stakeholders/2010/33-AndrewBain.pdf> at 8-9.

maximum contamination level for uranium in drinking water is 30µg/l.⁴³ In addition to the rising levels of uranium in their current drinking water supply, the RWPRC members continue to live near three superfund sites, areas of uncontrolled hazardous waste identified by the federal government for cleanup, resulting in significant exposures to radiation and heavy metals. Community members have requested relocation to a nearby area that had been traditionally used as a living area, but state, federal and local governments have refused to provide water infrastructure to facilitate a move to a safer location.

Finally, indigenous peoples throughout the Southwest, including Navajos, consider water to be spiritually and culturally important.⁴⁴ Contamination from uranium mining and milling has destroyed innumerable culturally significant water sources.

As a result of the United States' failure to require groundwater remediation from uranium mining and milling operations and without public investment in adequate water infrastructure, communities like RWPRC and others must haul water for domestic use.⁴⁵ The U.S.'s failure to secure communities' right to access to water is further aggravated by U.S. and New Mexico efforts to permit new uranium mining and processing operations.

Winnemem Wintu in California

Other native communities, such as the Winnemem Wintu in Northern California, risk losing access to important ceremonial sites through proposed infrastructure projects. A plan to raise the water level of the Shasta Dam, in order to store and provide water to urban and agricultural regions in other areas of the state, would result in the flooding of sacred sites.⁴⁶ The lack of federal recognition of the Winnemem Wintu has greatly limited the options available to the tribe to secure access to a continuous supply of safe drinking water as well as to traditional water sources for ceremonial

⁴³ <http://water.epa.gov/drink/contaminants/basicinformation/radionuclides.cfm>.

⁴⁴ Statement to the Permanent Forum on Indigenous Issues, Catarina de Albuquerque, Special Rapporteur to the human right safe drinking water and sanitation (May 24, 2011); http://www.un.org/esa/socdev/unpfii/documents/session_10_statement_SR_water.pdf

⁴⁵ See, e.g., <http://www.epa.gov/region9/superfund/navajo-nation/pdf/stakeholders/2011/USEPA-Uranium-Contaminated-Water-Sources-UCSW-Nov2011.pdf>.

⁴⁶ 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_Proceedings_Full_v2df_02-08-10.pdf; see also Don L. Hankins, *Water as Sacred*, in TRIBAL WATER STORIES 66-67 (Kym Trippsmith, ed., 2010).

purposes.⁴⁷ Lack of access to water has a special significance for indigenous groups as it not only poses a threat to health and livelihoods, but to the loss of traditional and cultural practices central to community identity.

International Legal Framework

The international community has explicitly recognized the human right to water, and, over the last decade, has developed a strong framework outlining the right's meaning to guide national and local policies and programs.⁴⁸ The human right to water was found to derive from the right to an adequate standard of living, while also being connected to the right to life and the right to health, and to be fundamental to the enjoyment of other human rights.⁴⁹ The U.N. Committee on Economic, Social, and Cultural Rights defines the water in the following way: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”⁵⁰ The Committee has identified five core components—quality, accessibility, acceptability, affordability and availability—as comprising the human right to water, which together are “indispensable for leading a life in human dignity.”⁵¹ Quality and affordability, the aspects of the right of primary importance to the communities described in this hearing request, have been defined and provide important standards for affected communities and governments alike. Quality is defined as water that is safe and does not pose a threat to human health.⁵² Affordability refers to economic accessibility and includes all direct and indirect costs for securing water for domestic use and should not compromise the realization of other human rights.⁵³

In 2010, the General Assembly adopted a resolution recognizing the right to water and sanitation, and acknowledged the “importance of equitable access to safe and clean drinking water and sanitation as an integral component of the realization of all human rights.” The Human Rights

⁴⁷ Marc Dadigan, *Winnemem Wintu Tribe Struggles to Protect Sacred Sites*, HUFFINGTON POST (July 17, 2012), http://www.huffingtonpost.com/2012/07/17/winnemem-wintu_n_1681397.html

⁴⁸ See U.N. General Assembly Res. 64/292, U.N. Doc. A/RES/64/292 (July 2010); Human Rights Council Res. 15/9, U.N. Doc. HRC/RES/15/60 (Oct. 2010).

⁴⁹ General Comment 15, *supra* note 13, at ¶ 2.

⁵⁰ *Id.* at ¶ 2.

⁵¹ General Comment 15, *supra* note 13, Introduction at ¶1.

⁵² *Id.* at ¶ 12(b).

⁵³ *Id.* at ¶ 12(c)(ii).

Council affirmed the human right to water in a resolution that same year.⁵⁴ While the International Covenant on Economic, Social, and Cultural Rights is the core treaty document related to the human right to water, other international treaties are implicated by the human right to water. While the U.S. has not ratified the International Covenant on Economic, Social, and Cultural Rights, as a signatory to the treaty it is obligated to not act in a way contrary to purpose of the treaty.⁵⁵ However, the U.S. does have a legal obligation under the International Covenant for the Elimination of All Forms of Racial Discrimination (ICERD), to ensure its laws and policies do not discriminate on the basis of race or ethnicity vis-à-vis social, economic, and cultural rights such as the right to health, housing, and an adequate standard of living.⁵⁶ Under the International Convention on Civil and Political Rights it is obligated to ensure the right to life, also recognized as a right from which the human right to water and sanitation is derived.⁵⁷

Regional Legal Context

The issues outlined above implicate several rights enshrined in regional human rights instruments, including the realization of economic, social, and cultural rights (as established in Charter of the Organization of American States and amended by the Protocol of Buenos Aires, Article 31); the rights to life, non-discrimination, religious freedom, special protections for nursing women and children, health and well-being, and the benefits of culture (the American Declaration of the Rights and Duties of Man, Articles I, II, III, VII, XI, and XIII respectively); and the rights to non-discrimination, life, freedom of thought and expression, property, right to participate in government, equal protection, and progressive development (the American Convention on Human Rights, Articles 1, 4, 13, 21, 23, 24, and 26 respectively). The Protocol of San Salvador further details the obligations of states to ensure economic, social, and cultural rights, specifically referencing access to basic public services as a component of the right to a healthy environment.⁵⁸ The Inter-American Court of Human Rights has acknowledged the essential role of water in the right to life, which it defined as not merely a negative obligation of the state but a positive one

⁵⁴ See U.N. General Assembly Res. 64/292, U.N. Doc. A/RES/64/292 (July 2010); Human Rights Council Res. 15/9, U.N. Doc. HRC/RES/15/60 (Oct. 2010).

⁵⁵ See Vienna Convention, art. 18, Jan. 27, 1980, 1155 U.N.T.S. 331, 8 I.L.M. 679.

⁵⁶ See International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e), Dec. 21, 1965, 660 U.N.T.S. 195; General Comment 15, *supra* note 13, at ¶3.

⁵⁷ International Covenant on Civil and Political Rights, art. 26, Dec. 16, 1966, 999 U.N.T.S. 171.

⁵⁸ Protocol of San Salvador, Art. 11(1), available at: <http://www.oas.org/juridico/english/treaties/a-52.html>

toward ensuring “a dignified existence.”⁵⁹ In its decision, the Court specifically referenced the General Comment 15 of the Committee on Economic, Social, and Cultural Rights, which outlines the human right to water as a right derived from the right to an adequate standard of living with various components necessary for its fulfillment, including that it be safe, affordable, accessible, and sufficient.⁶⁰

In recognition of the importance of the human right to water, the IACHR has held several thematic hearings pertaining to the right: the right of access to water for rural communities in Costa Rica; water, climate change, and human rights in the Americas; and water for indigenous peoples in the Andes region. Finally, the Commission has emphasized the importance of access to justice in the realization of economic, social, and cultural rights, which is a cross-cutting theme for all of the communities highlighted above, as well as access to information.⁶¹ In accordance with its commitment to economic, social, and cultural rights and recognition of the problem of income inequality in the Americas, including in the U.S., the Commission has established a unit on economic, social, and cultural rights which will develop in to an Office of the Special Rapporteur on Economic, Social and Cultural Rights.⁶² In light of the “fundamental importance the Inter-American Commission places on the protection and promotion of economic, social, and cultural rights in the region,”⁶³ addressing the right to water in the U.S. falls within the mandate of this office’s mission. The racial discrimination and affordability issues vis-à-vis the human right to water in the U.S. presents the commission with the opportunity to deepen this area of work, strengthen the commitment to economic, social, and cultural rights, and assist the U.S. in complying with its human rights obligations in this context.

⁵⁹ *Xakmok Kasek Indigenous Community v. Paraguay*, *Inter-Am. Ct. H.R., Judgment of August 24, 2010*, (Ser. C) No. 214 (2010) at ¶50.

⁶⁰ *Id.* at ¶45.

⁶¹ Inter-American Commission on Human Rights, *ACCESS TO JUSTICE AS A GUARANTEE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A REVIEW OF THE STANDARDS ADOPTED BY THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS*, OEA/Ser. L/V/II.129, Doc. 4 (September 2007), available at: <http://www.cidh.oas.org/pais.eng.htm>; Declaration of Principles on Freedom of Expression, adopted at the Commission’s 108th regular session, October 19, 2000, at AA-350, AA-351, ¶ 4.

⁶² Inter-American Commission for Human Rights, “IACHR to Create an Office of the Special Rapporteur on Economic, Social, and Cultural Rights”, April 3, 2014, available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/034.asp

⁶³ *Id.*

Proposed Hearing

The Commission has committed itself to ensuring the protection of the human rights of individuals within the Organization of American States system, and most recently to ensuring the economic, social and cultural rights of the region's peoples. Recognizing this as well as the attention water challenges in the U.S. has garnered from the international community, the Commission would provide an important regional framework which is currently lacking and strengthen communities' efforts to secure safe and affordable water. Given the urgency of the matters described above, we respectfully request a hearing to focus the Commission's attention on the situation of many low-income communities and racial minorities in the United States who lack access to safe and affordable water.

Our presentation will consist of an overview of the situation of the communities outlined above, a discussion of the legal standards setting out the obligations of United States, and recommendations for fulfilling those obligations. These issues will be presented in more depth at the hearing by community members and advocates most directly familiar with them. Some of the community representatives who will testify are those who met with the UN Special Rapporteur during her mission to the United States in 2011 (the Special Rapporteur's report to the Human Rights Council is attached) and during her informal visit to Detroit, Michigan in late 2014 with the Special Rapporteur on Adequate Housing. We respectfully request that the Commission invite the United States to be represented at the hearing.

Thank you for your thoughtful consideration of our request. Please contact Rebecca Landy at the US Human Rights Network with any questions (rlandy@ushrnetwork.org). We extend our appreciation, in advance, for the potential opportunity to present before the Commission.

Sincerely,

The US Human Rights Network (USHRN)

UC Berkley, School of Law, International Human Rights Law Clinic (IHRLC)

Community Based and Advocacy Organization Signatories:

Alabama Center for Rural Enterprise Co. Inc.
The Albuquerque Center for Peace and Justice
Detroit/Michigan Chapter of the National Lawyers Guild
Environmental Justice Coalition for Water (EJCW)
Food & Water Watch
Global Initiative for Economic, Social and Cultural Rights
Human Rights Advocates
Massachusetts Global Action/Color of Water Project
The Metro Atlanta Task Force for the Homeless
Michigan Welfare Rights Organization
People's Water Board
National Economic & Social Rights Initiative
National Lawyers Guild
New Mexico Environmental Law Center
The Program on Human Rights and the Global Economy (PHRGE), Northeastern University
Santa Clara University's International Human Rights Clinic School of Law
Unitarian Universalist Service Committee

Individuals and Law Firms/Legal Teams Signatories:

Curtis Cooper, the Law Office of Curtis Cooper
Cynthia Soohoo, Associate Professor CUNY Law School
Edwards and Jennings PC
Lyda et al. v City of Detroit, Dept of Water and Sewage, Pro Bono Legal Committee
Sugar Law Center

CC:

Paulo Vannuchi, IACHR Commissioner in charge of the Unit on Economic, Social, and Cultural Rights
Rose-Marie Belle Antoine, IACHR Commissioner and Rapporteur on the Rights of Indigenous Peoples

Attachment (Supporting Document Appendix):

Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation,
Catarina de Albuquerque, Mission to the United States, UN General Assembly, 2 August 2011.

US HUMAN RIGHTS NETWORK

BUILDING A PEOPLE-CENTERED MOVEMENT

