

January 20, 2016

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

Hearing Request: Towards Best Practices for Fulfilling the Human Rights to Water and Sanitation in the United States

Dear Secretary Álvarez Icaza:

1. In conformity with Article 66 of the Rules of Procedure of the Inter-American Commission on Human Rights (the Commission), the undersigned organizations respectfully request a hearing during the 157th period of sessions of the Commission, to promote a constructive dialogue on emerging better practices to remedy and prevent violations of the human rights to water and sanitation in the United States. The US Human Rights Network (USHRN) and the International Human Rights Clinic at Santa Clara University School of Law submit this request on behalf of sixteen community based and advocacy organizations, two law school clinics and programs, as well as law firms, and environmental science professionals.

2. This request provides an analysis of the need for the proposed hearing, background information about the requesting organizations and our expertise in this area, brief examples of violations of the human rights to water and sanitation in the U.S., a discussion of emerging better practices, and a brief overview of U.S. international legal obligations relative to the human rights to water and sanitation.

The Proposed Hearing Would Address Emerging Better Practices to Fulfill the Human Rights to Water and Sanitation in the U.S., a Priority Issue for this Honorable Commission and the U.S. Government

3. The proposed hearing would address emerging better practices to remedy and prevent the serious human rights violations generated by the lack of access to safe and affordable water and sanitation that disparately impacts low-income minority and indigenous communities across the United States (U.S.), particularly the elderly, children, pregnant women, the disabled, the chronically ill, and other vulnerable groups. As this Honorable Commission learned during its regional thematic hearing on the human right to water in the Americas last October, the U.S. violates the human rights to water and sanitation in multiple ways, and the situation has unfortunately continued to deteriorate. The current government-caused public health disaster in

Flint, Michigan, where drinking water contamination has caused lead poisoning of the city's residents, resulting in irreversible harm to its children, highlights the urgent need for leadership on this issue. However, not only has the U.S. government failed to uphold its obligations relative to the human rights to water and sanitation, but it has failed to take a leadership role in providing guidance, supervision, and resources to state and local government and corporate actors that have substantial influence on these rights. Emerging better practices to remedy and prevent these violations demand concerted government attention to ensure that these practices can be successfully replicated in those communities – like Flint – that most urgently need such assistance.

4. At the same time, the requested hearing would address issues that both this Honorable Commission and the U.S. government have identified as a priority. The proposed hearing would provide the Commission with further information relevant to its current focus on the human right to water through the Economic, Social and Cultural Rights (ESCR) Unit. It would also supplement the information that undersigned organizations provided in response to the Commission's questionnaire on the human right to water for its upcoming 2015 Annual Report and that will be presented at the upcoming civil society consultation with the ESCR Unit on January 27th.

5. The requested hearing would also offer a positive opportunity for the Commission to deepen its engagement with the U.S. government. Recently, the U.S. government has expressed an interest in water and sanitation issues. It supported the most recent UN General Assembly resolution on the human rights to water and sanitation (Resolution A/RES/70/169) and will host a historic White House Water Summit in March 2016. The undersigned organizations have already begun to engage with the U.S. government on the rights to water and sanitation, including through dialogue with officials and participation in civil society consultations such as the White House Water Summit. The proposed thematic hearing would allow this dialogue to continue with the guidance of this Honorable Commission. At this moment, when the interests of this Honorable Commission, the U.S. government, and U.S. civil society have aligned, the proposed hearing seeks to harness the potential of this shared interest to advance the development of better practices to remedy and prevent violations of the human rights to water and sanitation.

6. This request highlights new and continuing situations of egregious violations and an emerging set of promising better practices to remedy and prevent these violations. The human rights implications of unequal access to water and sanitation in the U.S. are complex and require clear leadership from the federal U.S. government to focus on these issues and develop sustainable policy solutions in consultation with civil society and affected communities. The requested thematic hearing, if granted, would facilitate a constructive dialogue between the U.S.

government, civil society, and affected communities to move towards this goal with the guidance of this Honorable Commission.

The Requesting Organizations Represent a National Coalition Advocating for Water and Sanitation Justice in the U.S.

7. USHRN convenes a national coalition, comprised of over 110 groups and individuals working on the human rights to water and sanitation throughout the United States. USHRN, as a whole, is a network of over 300 organizational members that builds and strengthens a human rights movement in the U.S., centered on those most directly affected by human rights violations. The coalition on the human rights to water and sanitation was formed a year ago, following several key national convenings of people struggling with similar violations of the human rights to water and sanitation in the U.S. We have come together to facilitate joint organizing and advocacy and share knowledge to create change.

8. The coalition includes national, local, grassroots, and faith-based organizations, as well as educational institutions and law schools. The members of the coalition and the issues they represent span across urban, rural, and indigenous communities from across the United States. The coalition includes grassroots activists and directly impacted people as well as lawyers, environmental science professionals, and experts on water policy, utilities, legislation, and human rights.

9. Some key accomplishments of coalition members include: coalition members organized the 2011 official U.S. country visit of the UN Special Rapporteur on the human right to safe drinking water and sanitation, and the 2014 site visit of the Special Rapporteur to investigate mass water shutoffs and home tax foreclosures due to water bill liens in Detroit. They also worked for the passage of California's Human Right to Water Bill. More recently, coalition members successfully advocated for UN Universal Periodic Review (UPR) recommendations to the U.S. on the right to water and joined with groups across the Americas to contribute the U.S. perspective to a historic thematic hearing on the human right to water in the Americas before this Honorable Commission during its 156th Period of Sessions in October 2015.¹ In January 2016, the coalition also provided a stakeholder submission to the U.S. National Action Plan on Responsible Business Conduct (NAP) regarding the human rights to water and sanitation.²

¹ For a video of the hearing, see Inter-American Commission on Human Rights, "Human Rights and Water in the Americas," Oct. 23, 2015, available at <https://www.youtube.com/watch?v=KJ9CoiyF6c4>. The Santa Clara Law International Human Rights Clinic also participated in a thematic hearing on the right of access to water for rural communities in Costa Rica before this Honorable Commission during its 154th Period of Sessions in March 2015.

² Letter from USHRN National Human Rights to Water and Sanitation Coalition, to President Obama (Jan. 15, 2016), available at www.ushrnetwork.org/sites/ushrnetwork.org/files/ushrn_human_rights_to_water_and_sanitation_coalition_nap_submission_1_15_16.pdf.

10. The diversity of the coalition and our expertise makes us well situated to provide this Honorable Commission with further information about the worsening water and sanitation crisis in the United States, address the urgent need for the U.S. government to take a leadership role in resolving this crisis, and explore emerging better practices to redress and prevent these ongoing violations.

The U.S. Violates the Human Rights to Water and Sanitation

11. In the United States, at least 1.8 million people lack access to safe and affordable water and sanitation,³ and existing measures deprive groups who have historically suffered discrimination of equal access to these basic rights.⁴ In many of these cases, communities lack access to safe drinking water despite paying high rates for water service. As the previous United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation recently noted after a country visit to the United States, “those who are facing obstacles in the enjoyment of the rights to water and sanitation are disproportionately Black, Latino, American Indian, homeless, or otherwise disadvantaged.”⁵ These communities lack access to water as a result of one or more of the following problems: they cannot **afford** a basic level of drinking water, available drinking water is **not safe** for human consumption, or they lack adequate water or sanitation **infrastructure**. Women and children face additional risks as a result of this situation, as demonstrated in cases like the current crisis in Flint, Michigan, where children continue to suffer irreversible health and developmental harms and women face risks to their reproductive health as a result of city-wide lead poisoning from contaminated drinking water caused by government negligence, deliberate indifference, and callous disregard. Accordingly, the cases presented briefly in this request 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.

12. The following section provides brief examples of violations of the human rights to water and sanitation in the U.S. As these examples demonstrate, violations of the human rights to water and sanitation in the U.S. fall into three broad and overlapping categories: lack of equal access to 1) affordable water and sanitation, 2) clean and safe drinking water, and 3) adequate water and sanitation infrastructure to meet basic human needs and protect human health. This section is followed by a discussion of some emerging better practices.

³ UUSC Report on Discrimination in the U.S. Water and Sanitation Sector, forthcoming, 2016. This is a conservative estimate; the preliminary findings of this study, which used official U.S. Census data, indicate that at least 1.8 million people in the U.S. lack basic water and sanitation services.

⁴ 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.

⁵ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 79, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf.

Affordability: Water and Sanitation Services Are Unaffordable and Mass Shutoffs Violate Human Rights

- a. Public utilities subject low-income communities, particularly those of color, to unaffordable water and sanitation rates to subsidize crumbling infrastructure and delinquent corporate and government accounts. In **Baltimore**, water rates have nearly tripled since 2000, and another 11% increase was approved in July 2015; rates in **Detroit** continue to climb as well, rising 119% in the last decade.⁶
- b. Rural communities face unaffordable water rate increases as well. For example, one of the poorest communities in the second poorest county in California, the community of **Lucerne in Lake County, CA**, has experienced a 50% water utility rate increase every year, since it was privatized by Cal Water – amounting to a 500% increase in 10 years.⁷ It has reached a tipping point where, like Detroit, many owe more in water bills than their home is worth, so people are fleeing, leaving fewer people behind to pay more and more per household.⁸
- c. Rather than providing relief, public utilities in cities like **Detroit, Baltimore, and Boston** are engaging in mass water shutoffs against thousands of low-income households, particularly those of color, without regard for those who cannot afford service or elders, children, the chronically ill, or other vulnerable groups.
- d. In **Flint, Michigan**, where the city is in crisis because of poisoned water, the utility continues to issue shutoff notices on past-due accounts, requiring residents to pay for contaminated water.⁹
- e. Shutoffs have been conducted without notice or due process opportunities to challenge the decision to shut off a household's water. Utilities in these cities have failed to collect or make publicly available data about the number of shut-offs and the demographics of affected households.
- f. Low-income communities of color are most affected and have been disproportionately targeted by utilities.
- g. UN experts found that the **Detroit** mass water shutoffs violate human rights and noted that shutoffs posed multiple harms to victims, including health problems, threatened

⁶ Blue Planet Project, *Water Crisis in Detroit: Putting Corporate Profit Ahead of Human Rights*. Submission to the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation (June 26, 2014), available at <http://www.globalresearch.ca/water-crisis-in-detroit-putting-corporate-profit-ahead-of-human-rights/5388726>.

⁷ Glenda Anderson, *Tiny Lucerne faces huge water bills*, *The Press Democrat* (Sept. 25, 2012), available at <http://www.pressdemocrat.com/news/2307387-181/tiny-lucerne-faces-huge-water>.

⁸ Elizabeth Larson, *Lucerne residents appeal to CPUC to deny Cal Water rate hike*, *Lake County News* (Apr. 13, 2013), available at http://www.lakeconews.com/index.php?option=com_content&id=30695:lucerne-residents-appeal-to-cpuc-to-deny-cal-water-rate-hike&Itemid=197.

⁹ Gary Ridley, *Flint Restarts Water Shutoff Notices After Brief Holiday Reprieve*, *Mlive* (Jan. 15, 2016), at www.mlive.com/news/flint/index.ssf/2016/01/city_to_restart_water_shutoff.html.

removal of children from homes, loss of housing through foreclosure, and other serious problems.¹⁰

- h.** In cities like **Detroit and Baltimore**, thousands of households have no water. It is estimated that dozens of Detroit area households have lived without residential water for over two years. Those who have reconnected themselves face criminal penalties.

Quality: Contamination Deprives Communities of Safe Water

- a.** Millions of people in the U.S. lack safe drinking water due to contamination by agriculture, mining, and other activities.
- b.** In **Flint, Michigan**, this low-income community has a majority of residents of color who are facing a public health crisis as a result of lead contamination of public drinking water and now a potential outbreak of Legionnaire's disease.¹¹ This crisis was caused by the Michigan state government's decision to save money by changing Flint's water supply to the contaminated Flint River in 2014.¹² Children and women have suffered the worst effects.
- c.** In 2015, testing revealed toxic lead levels in the bloodstreams of Flint's children in 2015, with drinking water contamination as the only plausible explanation.¹³ On January 5th, 2016, the effects of the lead in Flint's public water system were finally acknowledged, after massive public pressure, when Michigan's governor declared a state of emergency.¹⁴
- d.** Lead is a neurotoxin that can cause miscarriages and irreversible developmental damage to children's brains.¹⁵ Studies showed that after a similar incident in Washington, D.C. – which also has a majority of residents of color – the number of

¹⁰ 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>.

¹¹ Dylan Sevett, U.S. Uncut, People Are Dying in Flint and All Signs Point to the Water, Jan. 14, 2016, available at <http://usuncut.com/class-war/people-are-dying-in-flint-all-sings-point-to-water/>.

¹² Arthur Delaney and Philip Lewis, *How the Federal Government Botched Flint's Water Crisis*, HUFFPOST (Jan. 12, 2016), available at http://www.huffingtonpost.com/entry/flint-lead-water-epa_us_569522a8e4b086bc1cd5373c.

¹³ Sarah Hulett, National Public Radio, High Lead Levels in Michigan Kids After City Switches Water Source (Oct. 5, 2015), available at <http://www.npr.org/2015/09/29/444497051/high-lead-levels-in-michigan-kids-after-city-switches-water-source>. For official Michigan state data on the lead poisoning, see Michigan State Government, Taking Action on Flint Water, available at <http://www.michigan.gov/flintwater>.

¹⁴ Michigan State Governor's Office, Press Release, Gov. Snyder declares emergency for Genesee County, (Jan. 5, 2016), available at http://www.michigan.gov/snyder/0,4668,7-277-57577_57657-372653--,00.html.

¹⁵ Sarah Hulett, National Public Radio, High Lead Levels in Michigan Kids After City Switches Water Source (Oct. 5, 2015), available at <http://www.npr.org/2015/09/29/444497051/high-lead-levels-in-michigan-kids-after-city-switches-water-source>.

children with unsafe lead levels doubled¹⁶ and pregnant women experienced a subsequent increase in miscarriages and stillbirths,¹⁷ despite government attempts to cover up the public health impacts of lead contamination of drinking water.¹⁸

- e. The U.S. Department of Justice has also opened an investigation into the Flint crisis, and reportedly the U.S. Attorney's Office for the Eastern District of Michigan is working closely with the U.S. Environmental Protection Agency on this investigation.¹⁹ According to reports, the Michigan state government “continued to deny a lead poisoning problem even as evidence mounted [in 2014]”²⁰
- f. On January 16, 2016, President Obama declared a federal state of emergency in Flint, providing up to \$5 million in assistance with possible Congressional renewal.²¹
- g. In **California**, approximately one million people must drink and bathe with water that fails to meet national quality standards, yet they must pay high rates for this contaminated water. Contamination disproportionately affects rural, low-income communities of color.
- h. In **New Mexico**, government refusal to clean up uranium mine and mill contamination forces **indigenous Navajo communities** to choose between exposure to radiation and access to safe drinking water. In the Navajo Chapter of Churchrock, located in northwestern New Mexico, Federal and state regulators issued permits for a uranium mine to develop uranium in an underground source of drinking water. Federal regulatory agencies concede that if uranium mining occurs, the underground source of drinking water will be irrevocably contaminated. Although mining has not yet occurred, the threat is ever present because regulatory agencies have determined that mineral extraction should take precedence over every other use, including drinking water.
- i. Indigenous Navajo farming communities in Shiprock, New Mexico also have dealt with the contamination of their water source – the San Juan River – from a toxic mining waste spill caused by a government contractor (the King Gold Mine disaster), with devastating effects on their cultural practices and subsistence agricultural activities. It is incumbent on the US to develop an alternative water source for the Navajo farming communities.

¹⁶ Carol D. Leonnig, High Lead Levels Found in D.C. Kids, Washington Post (Jan. 27, 2009), available at www.washingtonpost.com/wp-dyn/content/article/2009/01/26/AR2009012602402.html?sid=ST2010120107897.

¹⁷ Lead in Washington, D.C. Drinking Water May Have Caused More Stillbirths And Miscarriages, HUFFPOST (Jan. 23, 2014), available at http://www.huffingtonpost.com/2013/12/27/lead-washington-dc-drinking-water_n_4508163.html.

¹⁸ *Id.*

¹⁹ Arthur Delaney, *Justice Department Investigating Toxic Tap Water In Flint*, HUFFPOST (Jan. 5, 2016), available at www.huffingtonpost.com/entry/flint-michigan-water-lead_us_568be5abe4b014efe0dbb159.

²⁰ *Id.*

²¹ Joe Barrett, *Obama Declares Emergency in Flint*, THE WALL STREET JOURNAL, (Jan. 16, 2016), available at www.wsj.com/articles/obama-declares-emergency-in-flint-1452982835.

- ii. The New Mexico Environment Department said it filed a notice of its intention to sue the U.S. Environmental Protection Agency (EPA) over the King Gold Mine spill clean-up.²²
- i. In **Shell Bluff, Georgia**, a rural low-income community of color located between two nuclear facilities, radiological contaminants have been found in increasing levels in the community’s water supply,²³ and the community’s cancer rates have increased since the facilities began operations.²⁴ Additionally, the community sits next to what recent reports have identified as the nation’s third most contaminated river, the Savannah River, which 1.4 million people rely on for drinking water.²⁵ The U.S. Department of Energy has failed to monitor radiation in the community, leaving residents without necessary information to understand the linkages between high cancer rates and contamination caused by the nuclear facilities.²⁶
- j. Following its country visit to the U.S., the UN Working Group on the issue of human rights and transnational corporations and other business enterprises expressed concern regarding allegations that inadequate regulation of surface coal mining in **West Virginia** had resulted in a number of “significant adverse human rights impacts . . . most notably related to physical and mental health, including cancer and birth defects, and access to clean water.”²⁷

Infrastructure and Accessibility: Low-Income Communities of Color Lack Adequate and Reliable Infrastructure for Water & Sanitation

- a. In 2013, the American Society of Civil Engineers gave the U.S. a water infrastructure grade of “D+,” yet consumers bear more than 90% of the costs for infrastructure improvements.

²² Russell Contreras and Susan Montoya Bryan, New Mexico Is 1st to Issue Plans to Sue EPA Over Mine Spill, ABC News (Jan. 14, 2016), available at <http://abcnews.go.com/Technology/wireStory/apnewsbreak-mexico-sue-epa-mine-spill-36293032>.

²³ Georgia Women’s Action for New Directions, “No New Nuclear Speak-Out!” (Dec. 4, 2015), available at <http://gawand.org/no-nukes-speak-out/> (citing to environmental monitoring results from the Georgia Environmental Protection Division).

²⁴ Bruce A. Dixon, The Griot, “Environmental racism: Is nuclear plant causing cancer for poor black residents of Shell Bluff, Ga.?” (Jan. 25, 2012), available at <http://thegriot.com/2012/01/25/nuclear-plants-and-cancer-epidemics-in-a-poor-black-georgia-town-environmental-racism-in-the-21st-ce/>.

²⁵ Dash Coleman, *Savannah River nation’s third most toxic, study shows*, Florida Times-Union, (June 27, 2014), <http://jacksonville.com/news/georgia/2014-06-27/story/savannah-river-nations-third-most-toxic-study-shows>.

²⁶ Bruce A. Dixon, The Griot, “Environmental racism: Is nuclear plant causing cancer for poor black residents of Shell Bluff, Ga.?” (Jan. 25, 2012), available at <http://thegriot.com/2012/01/25/nuclear-plants-and-cancer-epidemics-in-a-poor-black-georgia-town-environmental-racism-in-the-21st-ce/>.

²⁷ UN Working Group on the issue of human rights and transnational corporations and other business enterprises, Report on Visit to the United States of America, paras. 69, 72, May 6, 2014, available at www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx.

- b. Many of the country’s 1.5 million miles of pipes—some of which are more than a century old—are approaching a desperate need for replacement.²⁸
- c. Low-income residents of the country’s aging affordable housing stock live with the economic and health consequences of these infrastructure deficits, including higher water bills due to leaking pipes and contamination caused by lead or other toxic materials in old water distribution systems. Similarly, as wealthier residents leave cities like **Detroit and Baltimore**, the burden of paying for repairs to deteriorating water and sanitation infrastructure increasingly falls on the poor that remain.
- d. African-American communities in **Alabama’s** poorest counties - the **Black Belt** region - have no access to public sanitation and are forced to pay the high cost for on-site septic systems. Those who cannot pay are subject to criminal penalties, risk losing custody of children, and are exposed to diseases formerly eradicated in the U.S. like hookworm. Again, children suffer the worst effects, particularly from diseases related to poor sanitation that cause developmental problems.
- e. Local governments deprive homeless individuals of access to public water and sanitation services and criminalize them for exercising basic human functions. After her visit to a homeless encampment in **Sacramento, California**, the former UN Special Rapporteur on the human right to safe drinking water and sanitation noted 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.”²⁹

The U.S. Government Allows Commercial Interests to Dominate the Regulatory and Policymaking Process to the Detriment of the Human Right to Safe Drinking Water

13. With respect to contamination of drinking water, the U.S. has failed to take a strong protective regulatory stance and often prioritizes mining and other commercial interests over the protection of drinking water sources and public health. This gap can only be resolved with clear and decisive federal U.S. government leadership to ensure that the regulatory and policymaking process prioritizes safe drinking water over commercial interests. Several examples illustrate this dynamic:

- a. In **California**, for example, nitrate contamination by agriculture – particularly commercial dairies – is one of the primary contributors to drinking water violations in

²⁸ Laura Bliss, *Poor Customers Pay the Price for America's Crumbling Water Infrastructure*, CITYLAB (July 13, 2015), available at www.citylab.com/tech/2015/07/poor-customers-pay-the-price-for-americas-crumbling-water-infrastructure/398228.

²⁹ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 56, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf.

low-income farmworker communities. Not only does this contamination occur industry-wide, but the industry's substantial resources and political connections allow it to inequitably influence the regulatory process and the policymaking process to resist any effort to change the practices that cause this contamination or even to improve monitoring and data collection about nitrates in California's groundwater.

- b. Similarly, advocates working with communities affected by the Elk River chemical spill in **Charleston, West Virginia** – which sickened thousands and deprived hundreds of thousands of access to clean water – report that the impact of the spill was much worse than it would have been decades ago, since rural communities had lost access to clean groundwater due to contamination by the mining industry, and now depended on centralized water service from the water provider whose supply was contaminated by the chemical spill. In the aftermath of the spill, the mining industry vigorously resisted any efforts to protect the water supply by regulators and legislators.
- c. Finally, in northwestern **New Mexico**, low-income indigenous Navajo communities have experienced this dynamic: despite the fact that uranium mining has devastated their health and livelihoods and they continue to live with radioactive water due to the failure to address water contamination from three Superfund sites worth of uranium waste piles, the political and economic power of the uranium industry has allowed it to find new ways to get permits to continue mining on their traditional lands.

14. As the above examples indicate, violations of the human right to life and other fundamental human rights, including the heightened protections due to children, arise as a result of violations of the human rights to water and sanitation in the U.S. These examples also illustrate the failure of the federal U.S. government to exercise effective leadership and supervision toward commercial interests as well as state and local governments when these actors violate the rights to water and sanitation. Given the severity of these violations, the fundamental nature of these rights, and the complexity of water and sanitation regulation and provision in the U.S., the federal government needs to prioritize the human rights to water and sanitation and assume a leadership role in taking concrete measures to ensure universal, equal access to safe, affordable, and adequate water and sanitation in the U.S. The requested thematic hearing, if granted, would facilitate a constructive dialogue between the U.S. government, civil society, and affected communities to move towards this goal with the guidance of this Honorable Commission.

Emerging Better Practices Hold Promise to Remedy and Prevent These Violations

15. In the spirit of constructive dialogue and developing solutions to the water and sanitation crisis in the U.S., the proposed thematic hearing would focus primarily on emerging better practices to redress and prevent the violations of the human rights to water and sanitation

outlined above. We believe that this information would provide a helpful starting point for addressing the concerns faced by affected communities in the U.S. and would also contribute to this Honorable Commission’s important work on the human right to water in the Americas more broadly. Accordingly, this request provides a brief description of some of the emerging better practices that the proposed thematic hearing would address. Specifically, it provides information about California’s landmark human right to water law and implementation measures; a new water affordability program being developed by the city of Philadelphia, Pennsylvania; protections against water shut-offs under Massachusetts state law; proposed legislation to prevent violations of the human right to water in Michigan; local legislation to prevent uranium mining from continuing to contaminate the drinking water supply in the state of Colorado and the territory of the indigenous Navajo Nation; and recent Executive federal emergency action and investigations into the lead poisoning crisis in Flint, Michigan.

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

16. With passage of AB 685, California took a critical first step toward achieving full realization of the human right to water by recognizing the right under state law and directing relevant state agencies to consider this recognition in carrying out their functions.³⁰ AB 685 passed into law on September 25, 2012, but much work remains to ensure its effective implementation within California.³¹ The law declares “the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”³² It establishes that “[a]ll relevant state agencies . . . shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when . . . [they] are pertinent to the uses of water . . .”³³

17. Although this law represents an important advance for the human right to water in California, certain structural flaws weaken its potential. First, the law requires only that the policy be “considered” when state agencies are “revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and grant criteria are pertinent to

³⁰ For a detailed analysis of AB 685 and guidelines for its implementation, see *The Human Right to Water Bill in California: An Implementation Framework for State Agencies*. International Human Rights Law Clinic, UC Berkeley School of Law (May 2013), pp. 3-4, available at www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL.pdf. Through a consultation with government officials and civil society, the Berkeley clinic has also developed an implementation tool that provides useful guidance on better practices for implementing the human right to water. (on file with authors).

³¹ CA. ASSEMB. BILL 685 *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf.

³² *Id.*

³³ *Id.*; CA. WATER CODE § 106.3(b) *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf.

[human consumption, cooking, and sanitary purposes].”³⁴ Second, the law does not give individuals the ability to sue the state for violations of their human right to water, and it states that the right is not enforceable.³⁵ Third, while the law designates certain key state agencies for implementation,³⁶ it leaves out a large set of entities with significant power over the realization of the human rights to water and sanitation in California, including water and sanitation providers like irrigation districts and municipal utility districts.³⁷ Finally, the law fails to require state agencies to dedicate funding to secure the human right to water; instead it explicitly states that it “does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the” requirement noted above to consider the human right to water.³⁸

18. However, California has begun to take some promising measures toward meaningful implementation of the law. A number of state water planning documents now include elements relevant to the human right to water, including: 1) the California Water Action Plan includes an action to provide safe water for all communities;³⁹ and 2) the State Water Plan 2013 Update includes an objective to “ensure equitable distribution of benefits,” which places particular emphasis on implementation of the human right to water policy.⁴⁰ Likewise, on February 16, 2016, the California State Water Resources Control Board will consider for adoption a resolution which would instruct its staff to apply consideration of the human right to water policy to “all activities” of the Board, including quasi-adjudicatory decisions.⁴¹ In 2014-2015, the Governor's office moved the Drinking Water Program, which had languished within the California Department of Public Health, to the State Water Board.⁴² In November 2014, California voters passed Proposition 1, which dedicates an unprecedented amount of money and attention to the

³⁴ CA. ASSEMB. BILL 685 *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf; CA. WATER CODE § 106.3(b) *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Municipal utility districts tend to be the primary providers of municipal drinking water supply in California, so this gap in the law is significant.

³⁸ CA. ASSEMB. BILL 685 *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf; CA. WATER CODE § 106.3(b) *available at* http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf.

³⁹ California Environmental Protection Agency, California Water Action Plan 2016 Update, *available at* http://resources.ca.gov/docs/california_water_action_plan/Final_California_Water_Action_Plan.pdf.

⁴⁰ California State Water Plan 2013 Update, *available at* https://cwc.ca.gov/Documents/2014/04_April/April2014_Agenda_Item_9_Attachment_1_Objective13_4-3-14.pdf. (Note that the State Water Plan is generally considered a recommendation to State agencies and is, as such, also generally considered unenforceable and persuasive only.)

⁴¹ California State Water Resources Control Board, Calendar, *available at* www.waterboards.ca.gov/board_info/calendar/index.shtml#feb2016 (agenda pending).

⁴² California State Water Resources Control Board, Drinking Water Reorganization Plan, *available at* www.waterboards.ca.gov/drinkingwater/docs/dwreorg_wp072413.pdf. While not contemplated at this time, civil society advocates recommend additional consolidation of the otherwise fractured regulatory authority over water in the state.

water and sanitation needs of small and Disadvantaged Communities,⁴³ including resources for the provision of technical assistance, needs assessment, and engagement, though it does not include money for ongoing operations and maintenance and other sustainability challenges faced by water-disadvantaged communities.⁴⁴

19. Yet the state has failed to take several key actions to implement the law, which has resulted in weak responses by some key state agencies. Significantly, the Governor's Office has not yet issued statewide guidance to the State agencies subject to the human right to water policy. The Department of Water Resources' Proposition 84 Integrated Regional Water Management Program Proposal Solicitation Package makes only passing reference to the human right to water policy (AB 685 or California Water Code section 106.3).⁴⁵ The State Water Board adopted an order finding that California's Human Right to Water policy "does not apply to the issuance of a water quality order."⁴⁶

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

Philadelphia's New Income-Based Water Rate Affordability Program

21. In the midst of the crisis described in the previous section, a small number of U.S. jurisdictions have begun developing local water affordability measures that carry some promise

⁴³ "Disadvantaged Communities" is a technical term used in California to denote communities with a median household income (MHI) that is 80% or less of the statewide MHI. *See*

www.water.ca.gov/irwm/grants/resources_dac.cfm. It also often refers to communities that experience a disproportionate concentration of environmental harms. *See also*

<http://www.calepa.ca.gov/EnvJustice/GHGInvest/Documents/SB535DesCom.pdf>.

⁴⁴ California Proposition 1, 2014 Water Bond, available at [https://ballotpedia.org/California_Proposition_1,_Water_Bond_\(2014\)](https://ballotpedia.org/California_Proposition_1,_Water_Bond_(2014)).

⁴⁵ California Department of Water Resources, Integrated Regional Water Management Implementation Grant Program, 2015 Proposal Solicitation Package, available at www.water.ca.gov/irwm/grants/docs/p84_implementation/P84_IRWM_PSP_2015_Draft_2015_0312_Public.pdf.

⁴⁶ California State Water Resources Control Board, Order WQ 2013-0101 (Central Coast Ag Order), p. 67, available at http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2013/wqo2013_0101.pdf.

for better practices on this issue.⁴⁷ Specifically, in December 2015, the City of Philadelphia, Pennsylvania took an important step to address water affordability, adopting an ordinance, which requires the Philadelphia Water Department (PWD)⁴⁸ to create an Income-Based Water Rate Affordability Program (IWRAP) that restructures residential water billing to better account for income inequality. Much about this ordinance is very encouraging. If properly implemented, it will result in greater realization of Philadelphians' rights to water and sanitation. The new ordinance establishes a tiered approach to water affordability, with those in the lower income tiers being eligible for greater discounts on their water bills.⁴⁹ Additionally, customers who are enrolled in IWRAP will not be required to pay pre-IWRAP arrears to maintain service.⁵⁰ Some customers may be eligible for forgiveness of arrears, but the terms and conditions of such forgiveness are to be set by future regulation. This approach has the potential to bring Philadelphia into greater compliance with the human right to water and could potentially be replicated in other jurisdictions.⁵¹

22. While the new affordability bill is a significant step toward ensuring Philadelphians' right to water, its effect on the ground remains uncertain because the implementation of the new bill rests with PWD and the Water, Sewer, Storm Water Rate Board (Water Rate Board) who will determine what discounts apply to each income tier and when arrears will be forgiven. In addition, the new ordinance only addresses affordability, but not the problems with access to water, poor customer service, and the fundamentally broken appeals process documented by Community Legal Services, the legal aid organization designated as the Public Advocate on water for residential water customers. Indeed, the Community Lawyering Clinic at Drexel University has documented numerous stories of low-income Philadelphians who have gone for

⁴⁷ U.S. jurisdictions that currently offer some form of income-based water affordability programs include Chicago, St. Louis, and Cleveland. Cassie Owens, *Next City. Philly City Council Helps with Water Shutoffs and Blight Prevention* (June 25, 2015), available at <https://nextcity.org/daily/entry/philadelphia-water-bills-low-income-payment-plans>.

⁴⁸ Billing, collections, and certain customer service functions, including payment agreements, low income bill assistance, and the administration of informal dispute processes, are handled by the Water Revenue Bureau, a division of the Philadelphia Revenue Department. As used here, PWD refers to both the Water Department and the Water Revenue Bureau.

⁴⁹ City of Philadelphia, Bill No. 140607-AA, *Amending Title 19 of The Philadelphia Code (Finance, Taxes, and Collections), Chapter 1600 (Water and Sewer Rents), by providing for installment payment agreements, all under certain terms and conditions*, passed by City Council on Nov. 19, 2015 and signed by Mayor Nutter on Dec. 2, 2015. ("Monthly IWRAP bills shall be affordable for low-income households, based on a percentage of the household's income and a schedule of different percentage rates for (i) households with income up to fifty percent (50%) of FPL, (ii) households with income from fifty percent (50%) to (100%) of FPL, and (iii) households with income from one hundred percent (100%) to one hundred fifty percent (150%) of FPL, and shall be charged in lieu of the Department's service, usage, and stormwater charges.")

⁵⁰ *Id.* City of Philadelphia, Bill No. 140607-AA.

⁵¹ See Christine Ferretti, *The Detroit News. Advocates seek income-based water bills for Detroiters* (July 29, 2015), available at www.detroitnews.com/story/news/local/detroit-city/2015/07/29/water/30830703/. The Philadelphia affordability plan is relatively similar to the water affordability plan presented by Detroit civil society in 2006 that the city refused to implement, and both plans were designed with the input of the same economist, Roger Colton.

years purchasing jugs of water in order to satisfy their basic human need for water.⁵² Although many of them have tried to negotiate with PWD for access to water, they have been turned away because they could not provide PWD with the extensive documentation required for water service. These individuals would remain unaffected by the new IWRAP, which addresses affordability but not accessibility.

Proposed Legislation on the Human Right to Water in Michigan

23. In response to the mass water shut-off crisis in Detroit and Highland Park, Michigan, as well as the lead poisoning catastrophe in Flint, Michigan, the Michigan state legislature has, at the behest of members of civil society, begun to develop a set of legislative proposals aimed at improving the state's record on this issue. Specifically, Michigan State Representative Stephanie Chang (D - Detroit), and a bi-partisan group of Michigan state legislators have submitted a human right to water package of bills that will establish 1) the human right to water in state law (H.B. 5105 - Plawecki), 2) a water affordability program (H.B. 5097 - Chang), 3) protections against water shut offs for children, seniors, persons with disabilities and other vulnerable populations (H.B. 5122 - Chang), 4) transparency in reporting by utilities (H.B. 5093 - Plawecki), 5) decriminalization of lack of access to water and sanitation (H.B. 5095/5096 - Change/Garrett), and 6) a 72-hour notice requirement for drinking water quality violations like the Flint crisis (H.B. 5120 - Neely). However, until these reforms become law, their potential to remedy and prevent violations of the human rights to water and sanitation remains unfulfilled.

Water Shutoff Protections and the Right of Service in Massachusetts

24. Massachusetts state law prevents private utilities from conducting water shutoffs under certain circumstances, and the public utility Boston Water and Sewer Commission (BWSC) has adopted a "right of service" policy that mirrors these regulations. Under the state law, private utilities cannot shut off water service to low-income households that can demonstrate financial hardship where either an infant under the age of 12 months resides, or when someone in a household is seriously or chronically ill.⁵³ Private utilities also cannot shut off water service to a household where all members are over the age of 65 without written permission from the state's Department of Public Utilities.⁵⁴ However, the procedure to demonstrate illness and financial hardship can be burdensome for low-income families, and these protections do not generally extend to the public utilities that provide water service to the majority of MA households.

⁵² See *Needless Drought: The Water Deficit for Low Income Philadelphians*, the Community Lawyering Clinic at Drexel's Kline School of Law, Dec. 17, 2015.

⁵³ MassLegalHelp, Special Protections Against Shut-Offs, available at <http://www.masslegalhelp.org/special-protections-against-shut-offs>.

⁵⁴ *Id.*

25. The BWSC “right to service” policy is a welcome exception. The policy provides that BWSC will not shut off water service to households with persons with serious illness, nor low-income seniors.⁵⁵ Further strengthening water affordability protections in Boston, in January 2015, Boston’s Mayor Walsh announced a 30% rate discount for low income seniors and person with disabilities.⁵⁶ Protections against water shutoffs like Massachusetts’s right of service represent an emerging better practice that needs to be strengthened and adopted much more broadly to prevent mass water shutoffs like those being experienced in Detroit and Baltimore, and particularly to ensure that utilities cannot deprive low-income vulnerable individuals like children, the elderly, the disabled, and the chronically ill of access to basic levels of water service, regardless of their ability to pay.

Navajo Nation and Colorado State Laws to Prevent Uranium Contamination of Drinking Water

26. In recognition of the enduring harms caused by uranium mining in the southwest U.S., local government entities have begun to adopt laws to prevent further contamination. In 2005, the indigenous government of the Navajo Nation passed the Dine Natural Resources Protection Act, which bans any new uranium mining within Navajo Indian Country until existing contamination is remediated.⁵⁷ Similarly, the state of Colorado has passed legislation to regulate a new form of uranium mining known as in situ leach mining, which involves the injection of chemicals into aquifers to leach uranium out of the bedrock into the water, from which it is removed and processed.⁵⁸ The law provides that before Colorado administrative agencies can approve a permit for uranium ISL operations, the operator must provide 5 examples of instances where it has restored a mine aquifer to pre-mining quality.⁵⁹ No ISL operator, either in the U.S. or abroad, has ever restored a mined aquifer to pre-mining conditions. However, without federal leadership on this issue, other states like New Mexico continue to prioritize mining over safe drinking water, and the relevant federal agencies continue to grant permits for new mining operations that threaten drinking water supplies.

Federal Emergency Action and Investigations in Flint, Michigan

27. Although the violations described above demand long-term solutions to remedy and prevent current and future crisis situations as to the human rights to water and sanitation in the United States; the current crisis in Flint, Michigan calls for immediate, emergency measures. During the October 2015 IACHR thematic hearing on the right to water, and related meetings

⁵⁵ BWSC right of service, available at http://www.bwsc.org/SERVICES/billing_assistance/rights.asp.

⁵⁶ State of the City Address, Mayor Walsh, Boston, January 2015, available at www.cityofboston.gov/news/uploads/12672_37_13_45.pdf.

⁵⁷ Copy on file with authors.

⁵⁸ Colo. Rev. Stat. sec. 34-32-112.5(5). The regulations can be found at 2 CCR 407-1.

⁵⁹ *Id.*

with the U.S. government, we called for emergency measures to protect the fundamental human rights to an adequate standard of living and life, without discrimination based on race, gender, age, economic status, or ability, as they apply to the human rights to water and sanitation.⁶⁰ With respect to the current crisis in Flint, the Executive Branch of the federal government has begun to take some promising, though incomplete, steps towards recognizing the need for emergency measures. As noted above, President Obama recently took executive action by issuing a federal state of emergency in Flint, and the Department of Justice has opened an investigation into the crisis.

28. On January 16, 2016, in response to a request for assistance from Michigan's governor, President Obama declared a state of emergency in Flint. According to the White House, "[t]he President's action authorizes the Department of Homeland Security, Federal Emergency Management Agency (FEMA), to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, [], to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in Genesee County."⁶¹ The White House statement on the measure specifies that "[t]his emergency assistance is to provide water, water filters, water filter cartridges, water test kits, and other necessary related items for a period of no more than 90 days."⁶²

29. While this assistance will provide much-needed temporary relief to Flint residents, it does not begin to heal the damage that has already been caused. In addition to adoption of measures to prevent the repetition of this kind of crisis as a matter of urgency, the U.S. government should: 1) fully and fairly compensate the victims who have suffered severe and life-long injuries to their health and well-being, as well as extensive property damage, as a direct result of the deliberate actions to provide toxic water to an entire community and a callous disregard for the health and well-being of the residents of that community; 2) provide the requisite funding for necessary **health and public services for those affected by contaminated water**, including both emergency and long-term services to ensure adequate health care, community services, and nutrition to at least reduce the irreversible effects of lead poisoning on children; and 3) guarantee funding for removal and replacement of all lead water distribution pipelines in Flint.

30. In addition to providing emergency relief, the federal government has also taken steps to investigate the crisis in Flint. The U.S. Environmental Protection Agency opened an

⁶⁰ USHRN Human Rights to Water and Sanitation Coalition, *Violations of the Human Right to Water in the United States – Recommendations and Calls to Action* (p. 2), available at www.ushrnetwork.org/sites/ushrnetwork.org/files/right_to_water_long_fact_sheets.pdf.

⁶¹ White House Press Release, *President Obama Signs Michigan Emergency Declaration*, Jan. 16, 2016, available at <https://www.whitehouse.gov/the-press-office/2016/01/16/president-obama-signs-michigan-emergency-declaration>.

⁶² *Id.*

investigation in November 2015, and the Department of Justice initiated its own investigation in January 2016.⁶³ Flint residents and advocates are urging the federal government to ensure that these investigations:

- a. **Hold accountable those public officials responsible** for the decisions to prioritize economics over people in situations that lead to contaminated drinking water, such as that in Flint, MI, where the decision was made for the local utility to deliver corrosive, untreated river water to the homes of the people, when it would have cost less than \$100 a day to properly treat this water and where it has resulted in the irreversible lead poisoning of the city's children.
- b. Incorporate the relevant human rights frameworks in determining both civil and criminal responsibility for this crisis.
- c. Broaden federal attention to the U.S. water and sanitation crisis to offer emergency assistance to all communities without access to safe, affordable water and sanitation.
- d. Finally, we also recommend that the Department of Justice open other investigations in relation to the violations of the human rights to water and sanitation, including a Civil Rights Division of the Department of Justice investigation into the discriminatory impact of current water and sanitation services and the violations of the human rights to life, adequate water and sanitation, an adequate standard of living, non-discrimination, and equal protection.

31. These emerging better practices represent the beginning of a larger conversation about the way forward to remedy and prevent the wide range of violations of the human rights to water and sanitation currently experienced by low-income communities of color and Indigenous Peoples in the U.S. None of these promising but ad hoc efforts will resolve this crisis. The U.S. needs to devote concerted government attention, action, and resources to ensure that these practices can be successfully replicated in those communities – like Flint – that most urgently need such assistance. It must prioritize the thoughtful development of best practices in consultation with civil society and affected communities, followed by nationwide implementation and replication of those practices nationwide to guarantee full and equal enjoyment of the human rights to water and sanitation. As noted above, the human rights implications of unequal access to water and sanitation in the U.S. are complex and require clear leadership from the federal U.S. government to focus on these issues and develop sustainable policy solutions in consultation with civil society and affected communities. The requested thematic hearing, if granted, would facilitate a constructive dialogue between the U.S. government, civil society, and affected communities to move towards this goal with the guidance of this Honorable Commission.

⁶³ Arthur Delaney, *Justice Department Investigating Toxic Tap Water In Flint*, HUFFPOST (Jan. 5, 2016), available at www.huffingtonpost.com/entry/flint-michigan-water-lead_us_568be5abe4b014efe0dbb159.

The U.S. Government Has an International Obligation to Protect Against Violations of the Human Rights to Water and Sanitation

32. Although the United States has yet to recognize the human rights to water and sanitation at a national level, its international human rights commitments include a range of related rights, including the right to life, the right to non-discrimination, the right to freedom of information, and the right to freedom from cruel, inhuman, and degrading treatment or punishment. In particular, the U.S. is subject to the American Declaration on the Rights and Duties of Man and has ratified other treaties that are relevant to the human rights to water and sanitation, including the International Covenant on Civil and Political Rights (right to life)⁶⁴ and the International Convention on the Elimination of all forms of Racial Discrimination.⁶⁵ Additionally, though it has not ratified the treaties, the U.S. is a signatory to the American Convention on Human rights, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women.

33. During the second UN Universal Periodic Review (UPR), the U.S. made the following commitments on the human rights to water and sanitation when it adopted the below UPR recommendations:

309 - Guarantee the right by all residents in the country to adequate housing, food, health and education, with the aim of decreasing poverty, which affects 48 millions of people in the country;

311 - Continue efforts to implement the human right to safe water and sanitation, ensuring this human right without discrimination for the poorest sectors of the population, including indigenous peoples and migrants;

312 - Ensure compliance with the human right to water and sanitation according to General Assembly Resolution 64/292; and

314 - Continue efforts regarding access to the right to health.⁶⁶

34. Additionally, the U.S. supported a recent UN General Assembly Resolution on the human rights to safe drinking water and sanitation (GA Resolution A/RES/70/169),⁶⁷ stating that it “agreed with the importance of meeting basic needs related to water and sanitation.”⁶⁸

⁶⁴ For a more detailed analysis of the derivation of the human right to water from the right to life as enshrined in the ICCPR, see Inga Winkler, *The Human Right to Water* (2012), pp. 49-55.

⁶⁵ U.S. Department of State, U.S. Treaty Reports, available at <http://www.state.gov/j/drl/reports/treaties/index.htm>.

⁶⁶ US Human Rights Network, U.S. Government Addendum to the Working Group Report of The UN Human Rights Council Universal Periodic Review Of The United States: USHRNAnnotated Document with Insertion of Recommendation Language (2015), www.ushrnetwork.org/resources-media/us-government-addendum-working-group-report-un-human-rights-council-universal; <https://geneva.usmission.gov/2015/09/01/addendum-of-the-united-states-of-america-to-the-report-of-the-working-group-on-its-universal-periodic-review>.

35. Local governments in the U.S. have also taken steps to recognize the human rights to water and sanitation, including the states of California,⁶⁹ Massachusetts,⁷⁰ and Pennsylvania,⁷¹ which all recognize the human right to water under state law. However, the unfortunate reality that some local governments and public utilities in the U.S. refuse to recognize the human right to water while perpetrating significant violations of the right emphasizes the need for federal leadership on this issue. In U.S. cities that are carrying out mass water shutoffs, like Baltimore, Maryland; Detroit, Michigan; and Highland Park, Michigan, public officials have declared that water is not a human right. At the same time, they have adopted measures that violate the human right to water, including repeated rate increases, mass water shutoffs, and cost-saving practices that endanger residents' health. Municipalities with dwindling tax bases to support publicly-owned water systems argue that they cannot provide affordable water, citing to infrastructure costs. Utilities engaging in mass water shutoffs send consumers the message that if you cannot pay for water, you cannot have it, regardless of the devastating impacts. However, after mass water shutoffs prompted a special joint visit by the UN Special Rapporteur on the human right to safe drinking water and sanitation and the UN Special Rapporteur on adequate housing to Detroit officials in October 2014, the experts definitively repudiated this approach, reiterating that government may not use fiscal constraints as a justification for violating the human rights to water and sanitation.

36. Because violations of the human rights to water and sanitation are inextricably linked to violations of related rights that the U.S. does recognize, the U.S. should take affirmative steps to remedy these violations and a thematic hearing before this Honorable Commission would provide much-needed guidance and impetus to begin this process.

Conclusion and Request

37. Accordingly, the undersigned petitioners request that the Commission invite the United States government to participate in a hearing to address violations of the human rights to water and sanitation and emerging better practices to redress and prevent these violations and their disparate impact on low-income minority and indigenous communities as part of the Commission's upcoming 157th Period of Sessions. The requested thematic hearing, if granted, would facilitate a constructive dialogue between the U.S. government, civil society, and affected communities facilitated by this Honorable Commission.

⁶⁷ UN Office of the High Commissioner, Right to sanitation, a distinct human right – Over 2.5 billion people lack access to sanitation, (Dec. 18, 2015), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16903&LangID=E>.

⁶⁸ Email on file with authors from attendee of GA session where Resolution A/RES/70/169 was adopted.

⁶⁹ AB 685, 2011-2012 Leg. Reg. Sess. (Cal. 2012) (codified at Cal. Water Code § 106.3 (West 2012)), available at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf.

⁷⁰ See Constitution of the Commonwealth of Massachusetts, art. XCVII.

⁷¹ See Constitution of the Pennsylvania, Art. 1, sec. 27.

38. Additionally, if the Commission grants this request, we further request the opportunity to propose the names of specific U.S. government officials who are best situated to respond to the information that we plan to present and to engage in the constructive dialogue we are hopeful that this honorable Commission will be willing to facilitate. We are currently engaged in conversation with U.S. government officials from relevant federal and state agencies with jurisdiction over these matters, and they have indicated their interest in continuing this dialogue before this honorable Commission.

39. Thank you for your thoughtful consideration of our request. Please contact Rebecca Landy at the US Human Rights Network (rlandy@ushrnetwork.org) and Britton Schwartz at the International Human Rights Clinic at Santa Clara University School of Law (bschwartz@scu.edu) with any questions. We extend our appreciation, in advance, for the potential opportunity to present before the Commission.

Sincerely,

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