



January 15, 2016

*Via Electronic Mail*

The Honorable Barack H. Obama  
President of the United States of America  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500  
*Submitted via email to [NAP-RBC@state.gov](mailto:NAP-RBC@state.gov)*

**Re: Submission for U.S. National Action Plan on Responsible Business Conduct regarding the Human Rights to Water and Sanitation**

Dear President Obama:

On behalf of the US Human Rights Network (USHRN), the Environmental Justice Coalition for Water, the Unitarian Universalist Service Committee, the International Human Rights Clinic at Santa Clara University School of Law, and the undersigned organizations, we would like to thank you for the opportunity to provide this submission on the forthcoming U.S. National Action Plan on Responsible Business Conduct (NAP). We appreciate the federal government's commitment to the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises and welcome its emphasis on ensuring that U.S. businesses comport with international human rights standards at home and abroad. We hope that our submission will be useful in promoting and improving the important role of the NAP in protecting low-income communities of color and Indigenous Peoples in the U.S. from violations of their basic human rights, including impacts on the right to life deriving from violations of the rights to safe, affordable, and adequate drinking water and sanitation.

This submission outlines a set of recommended commitments to protect vulnerable U.S. communities against violations of their human rights to water and sanitation, as derived from the right to life, the right to non-discrimination, and the right to freedom of information. Specifically, the submission recommends that the NAP include commitments to take **immediate actions to remedy existing violations**, including a **moratorium on water shutoffs and activities that contaminate drinking water supplies**, as well as longer-term plans centered around the issuance of an **executive order** to announce a federal focus on assuring universal access to safe, affordable, adequate water and sanitation by creating a **high-level Inter-Agency Working Group on water and sanitation**.

As these comments demonstrate, it is critical that the NAP address domestic corporate impacts and the actions of public corporations such as utilities. Given the fundamental necessity of access to safe, affordable drinking water and adequate sanitation and the urgency of the

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situations described below, we respectfully recommend that the NAP include commitments to immediate as well as longer-term actions to ensure these basic necessities that can be taken within the existing authority of the Executive Branch.

***We Represent a National Coalition Advocating for Water and Sanitation Justice***

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.

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 California to Baltimore and everywhere in between. The coalition includes grassroots activists and directly impacted people as well as lawyers and experts on water policy, utilities, legislation, and human rights.

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 on the right to water and participated in a thematic hearing on the U.S. human rights to water and sanitation crisis at the Inter-American Commission on Human Rights in October 2015.

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The diversity of the coalition and our expertise makes us well situated to offer recommendations for the National Action Plan on Responsible Business Conduct regarding the Human Rights to Water and Sanitation.

***The NAP Should Ensure that U.S. Corporations, Including Public Utilities, Respect the Human Rights to Water and Sanitation***

As this submission will demonstrate, both public and private corporations in the U.S. violate the human rights to water and sanitation, as well as related rights including the right to life. These violations disparately impact low-income communities of color and Indigenous Peoples and, in many cases, amount to violations of the human right to non-discrimination. In cases like the egregious negligence leading to city-wide lead poisoning from contaminated drinking water in Flint, Michigan, the disproportionate impact on children, who will never recover from the neurotoxic effects of lead poisoning, these entities further violate the heightened protections due to children under the International Covenant on Civil and Political Rights. Given the

gravity of these violations and the unacceptable reality that so many U.S. communities continue to live without access to safe, affordable, and adequate water and sanitation, the NAP must address this issue as a priority for responsible business conduct and ensure that U.S. corporations, including public utilities, respect the human rights to water and sanitation.

#### 1. Public Utilities Must Be Covered by the NAP and Guarantee the Human Rights to Water and Sanitation

Not only do the undersigned organizations agree with the points made by prior submissions that the NAP must address domestic corporate impacts, we further note that the UN Guiding Principles set a higher duty on government bodies acting in the corporate sphere, including public utilities.<sup>2</sup> Because the majority of water and sewer customers in the U.S. are served by public rather than private utilities, the NAP should include commitments to address the responsibilities of these public entities as well as the human rights impacts of private utilities and other private corporations that affect the realization of the human rights to water and sanitation in the U.S.

#### *The NAP Must Address Domestic Corporate Impacts on Human Rights*

We strongly agree with prior submissions that the NAP must address domestic as well as foreign human rights impacts of U.S. corporations. The U.S. Government (USG) has acknowledged that “[t]he guidance set out in the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, two guiding documents to the NAP, apply universally and have both domestic and international implications for US companies.”<sup>3</sup> It is vital that the U.S. issue a NAP that addresses both domestic and foreign corporate impacts, not only to set a clear example for other States but also to address the significant negative human rights impacts that corporations have on vulnerable communities in the U.S.

To comply with the UN Guiding Principles, the NAP must address domestic impacts. The UN Guiding Principles require States to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>4</sup> Likewise, after its country visit to the U.S., the UN Working Group on the issue of human rights and transnational corporations and other business enterprises emphasized the need for the U.S. to promulgate a “comprehensive” NAP that “takes account of both the domestic and foreign dimensions of its duty to protect human rights.”<sup>5</sup> A NAP that fails to consider the domestic aspect of responsible business conduct would be fundamentally incomplete. We also share the concern expressed in prior submissions about the example the U.S. would set for other States were it to appear to take the erroneous position that the UN Guiding Principles do not require a State to take steps to protect communities within its own territory from corporate human rights abuses.

Nor is it appropriate to minimize the tremendous human rights impacts U.S. corporations have in the U.S.; such a perspective replicates the marginalization that leaves our low-income communities of color and Indigenous Peoples particularly vulnerable to and disproportionately

harmed by human rights abuses committed by U.S. corporations. It also demonstrates a willingness to abdicate the USG's responsibility to protect the human rights of its own most vulnerable communities and to allow corporations a free pass on U.S. soil, while reinforcing the dangerous misconception that human rights violations do not happen here. As the following text will demonstrate, in the context of water and sanitation, public and private U.S. corporations have responsibility for a wide range of domestic human rights violations that the Executive Branch has existing authority to address as a matter of urgency.

Accordingly, we echo the recommendations in prior submissions that the USG make clear through its commitments in the NAP that it understands that the UN Guiding Principles and OECD Guidelines apply equally to corporate operations in the U.S. and abroad. Likewise, the NAP should identify the key domestic business and human rights issues faced within the U.S., including water and sanitation; indicate an understanding of the shared characteristics of particularly vulnerable communities, including low-income communities of color and Indigenous Peoples; and make clear commitments to address these specific issues, including the recommendations listed below.

#### *The NAP Must Address the Human Rights Impacts of Public as well as Private Utilities*

The majority of U.S. residents receive water and sewer service from public utilities, and such utilities constitute the kind of state-owned or controlled enterprises that are subject to heightened obligations under the UN Guiding Principles. Under these circumstances, it is critical that the NAP address the human rights impacts of public as well as private utilities in the U.S., particularly with respect to the human rights to water and sanitation.

Public utilities represent a classic example of what Principle 4 of the UN Guiding Principles refers to as “business enterprises that are owned or controlled by the state.”<sup>6</sup> Under Principle 12, “[a]ll enterprises have the same responsibility to respect all internationally recognized human rights[.]”<sup>7</sup> However, the Guiding Principles specify that “States should take additional steps to protect against human rights abuses by”<sup>8</sup> public enterprises and that “an abuse of human rights by the [public] business enterprise may entail a violation of the State’s own international law obligations.”<sup>9</sup> According to the official interpretation of the UN High Commissioner for Human Rights, “[t]he legal obligations of the State to respect and protect human rights are additional to the enterprise’s own responsibility to respect human rights and do not diminish it in any regard.”<sup>10</sup> Given these heightened responsibilities, it is particularly important that the NAP include commitments to ensure that public enterprises, including utilities, comport with human rights norms.

Further underscoring the need to address these entities, the majority of U.S. residents depend upon public utilities for access to water and sanitation. The U.S. Environmental Protection Agency (EPA) reports that approximately 90% of Americans receive drinking water service from the country’s 155,000 public water systems,<sup>11</sup> and according to a 2007 survey, private companies run approximately 15% of these systems.<sup>12</sup> Even in an era where public-private partnerships have become more common in water and sewer service provision in the U.S., the majority of U.S. residents continue to receive water and sewer service from a public entity. Public utilities therefore operate in a context where they are most likely to have an impact on

the human rights to water and sanitation of U.S. residents, and the NAP must include commitments to ensure that these entities respect these fundamental rights.

## 2. Public and Private Utilities and Other Enterprises Violate the Human Rights to Water and Sanitation in the U.S.

In the United States, public and private enterprises violate the human right to life, by preventing the full realization of the human rights to water and sanitation. The right to life is enshrined in Article 3 of The Universal Declaration of Human Rights and Article 6 of The International Covenant on Civil and Political Rights, which the United States has ratified. These enterprises have an impact on all components of the human rights to water and sanitation; in particular, they prevent universal, equal access to safe, affordable water for basic human needs and adequate sanitation. The three main barriers to the full and equal realization of the human rights to water and sanitation in the U.S. are: **1) lack of affordability, 2) contamination, and 3) inadequate infrastructure.** Accordingly, the NAP should include immediate actions and longer-term plans in all three areas in order to redress and prevent these violations as a matter of urgency.

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

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,<sup>13</sup> 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. 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)<sup>14</sup> and the International Convention on the Elimination of all forms of Racial Discrimination.<sup>15</sup> Additionally, though it has not ratified the treaties, the U.S. is a signatory to 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.<sup>16</sup> 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.<sup>17</sup>

Local governments have also taken steps to recognize the human rights to water and sanitation,

including the states of California,<sup>18</sup> Massachusetts,<sup>19</sup> and Pennsylvania,<sup>20</sup> which all recognize the human right to water under state law. Because violations of the human rights to water and sanitation are inextricably linked to violations of related rights that the U.S. does recognize, and to fulfill its commitments under the UPR as well as the UN Guiding Principles and the OECD Guidelines, the U.S. must include commitments in the NAP to protect against such violations.

The human rights to water and sanitation have been internationally recognized since at least 2010, when the United Nations General Assembly (UNGA) adopted Resolution 64/292 to officially “recognize[] the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights[.]”<sup>21</sup> The Inter-American Human Rights System has similarly recognized the human rights to water and sanitation. The UNGA resolution was preceded by the UN Committee on Economic, Social, and Cultural Rights’ (CESCR) 2002 General Comment No. 15, which recognized the human right to water and sanitation as components of the right to an adequate standard of living and the right to health under the International Covenant on Economic, Social, and Cultural Rights (ICESCR). In General Comment 15, the CESCR declared that “the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”<sup>22</sup>

The CESCR statement on the right to sanitation provides that “States must ensure that everyone, without discrimination, has physical and affordable access to sanitation, ‘in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity’.”<sup>23</sup> On December 17, 2015 the UN General Assembly adopted Resolution A/RES/70/169 on the human rights to safe drinking water and sanitation.<sup>24</sup> This resolution explicitly recognized the human right to sanitation as a distinct right. The U.S. supported this resolution, stating that it “agreed with the importance of meeting basic needs related to water and sanitation.”<sup>25</sup> Upon the adoption of the resolution Waleed Sadi, Chair of the CESCR, said: “[t]he Committee welcomes the full recognition of the right to sanitation by States, and highlights the importance of complying with principles related to non-discrimination, gender equality, participation and accountability in this regard.”<sup>26</sup>

Although the human rights to safe drinking water and sanitation<sup>27</sup> derive primarily from the rights to an adequate standard of living, health, and housing under the ICESCR,<sup>28</sup> the 2010 UNGA resolution and a related 2010 Human Rights Council resolution based their recognition of the human rights to water and sanitation in a range of other international instruments that “entail obligations for States parties in relation to access to safe drinking water and sanitation[.]”<sup>29</sup> including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.<sup>30</sup>

Likewise, both CESCR and the UN Special Rapporteur on the human right to safe drinking water and sanitation have also emphasized that “[t]he human rights principles of non-discrimination and equality, access to information, participation and accountability must be

ensured in the context of realizing . . . the human rights to water and sanitation.”<sup>31</sup> The UN Special Rapporteur on the human right to safe drinking water and sanitation has also developed a helpful guide for implementation of the human rights to water and sanitation that further explores the connections between the human rights to water and sanitation and these other fundamental human rights.<sup>32</sup> These sources reflect a “broad consensus among states . . . that safe and accessible water supplies are closely linked to the realization of a number of other human rights.”<sup>33</sup>

Regardless of the U.S. position on the human rights to water and sanitation, both the UN Guiding Principles and the OECD Guidelines on Multinational Enterprises encompass these rights by grounding their understanding of human rights in the International Bill of Human Rights, which includes the UDHR, the ICCPR, and the ICESCR. Principle 12 of the UN Guiding Principles indicates that the human rights which companies should respect include, “at a minimum, [] those expressed in the International Bill of Human Rights[,]”<sup>34</sup> which means that “the human right[s] to water and sanitation . . . [are] captured within the definition of the corporate responsibility to respect under the Guiding Principles.”<sup>35</sup> Likewise, the OECD Guidelines for Multinational Enterprises direct companies to “[r]espect the internationally recognised human rights of those affected by their activities[,]”<sup>36</sup> and the commentary to the chapter on human rights specifies that “[i]n all cases and irrespective of the country or specific context of enterprises’ operations, reference should be made at a minimum to the internationally recognised human rights expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights[.]”<sup>37</sup> Accordingly, to reflect the U.S. government’s support for the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises, the NAP should include commitments to address corporate impacts to the human rights to water and sanitation.

The fact 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.

The violations enumerated below reflect these issues as well as the interconnectedness of the human rights to water and sanitation to other related rights. This submission provides brief

examples of U.S. cases that represent not only direct violations of the human rights to water and sanitation but also of other fundamental human rights, including the right to life; the right to non-discrimination; the right to freedom from cruel, inhuman, and degrading treatment, or punishment; the right to freedom of information; and other related rights.

*Public and Private Entities Fail to Ensure Equal Access to Safe, Affordable Water and Adequate Sanitation in the U.S.*

The following section provides brief examples of corporate violations of the human rights to water and sanitation in the U.S. As noted above, these violations disproportionately impact low-income communities of color and Indigenous Peoples; they also have particularly devastating consequences for children and women. 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.

**Affordability: Water and Sanitation Services Are Unaffordable and Mass Shutoffs Violate 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.<sup>38</sup>
- b. 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
- c. 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 shutoffs and the demographics of affected households.
- d. Low-income communities of color are most affected by water shutoffs and have been disproportionately targeted by utilities.
- e. 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 removal of children from homes, loss of housing through foreclosure, and other serious problems.<sup>39</sup>
- f. 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 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.
- c. In Flint, Michigan and Washington, D.C., these low-income communities have a majority of residents of color who have faced a public health crisis as a result of lead contamination of public drinking water and now a potential outbreak of Legionnaire’s disease. Children have suffered the worst effects.
  - a. On January 5th, 2016, the effects of the lead in Flint’s public water system were finally recognized, after massive public pressure, when Michigan’s governor declared a state of emergency because the drinking water was showing toxic lead levels in the bloodstreams of children, which causes irreversible brain damage.
- d. 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. Indigenous Navajo farming communities in Shiprock, New Mexico also have dealt with the contamination of their water source – the San Juan River – from the EPA contractor King Gold Mine disaster, with devastating effects on their cultural practices and subsistence agricultural activities.
- e. 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,<sup>40</sup> and the community’s cancer rates have increased since the facilities began operations.<sup>41</sup> 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.<sup>42</sup> The 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.<sup>43</sup>
- f. 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.”<sup>44</sup>

**Infrastructure and Accessibility: Low-Income Communities of Color Lack Adequate 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.
- 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.<sup>45</sup>
- 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 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.

*Business Impacts on the Rights to Water and Sanitation Can Be Systemic, Industry-Wide, and Undermine the Regulatory and Policymaking Process*

The NAP should reflect the reality that business impacts on the right to water in the U.S. can be systemic, industry-wide, and undermine the regulatory and policymaking processes. 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 low-income farmworker communities. Not only does this contamination occur industry-wide, but the industry has used every tool at its disposal to 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 uranium industry has found new ways to get permits to mine on their traditional lands.

The NAP must acknowledge this dynamic and include concrete commitments to transform this aspect of corporate impacts on the human rights to water and sanitation.

### 3. The NAP Should Prioritize the Human Rights to Water and Sanitation and Include Strong Executive Action to Guarantee These Essential Rights

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 government to exercise effective supervision toward corporations 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 to life, and the complexity of water and sanitation regulation and provision in the U.S., the NAP must prioritize commitments to address the human rights impact of U.S. enterprises on water and sanitation and place the federal government in a leadership role. Accordingly, the NAP should demonstrate a clear federal prioritization of the human rights to water and sanitation and include immediate actions and a longer-term plan to redress and prevent these violations as a matter of urgency.

#### *The NAP Should Include Immediate Actions to Redress and Prevent Human Rights Violations Arising from Lack of Access to Water and Sanitation*

In light of the crisis situation described above, we respectfully suggest that the NAP include the following **immediate, 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. We ask the U.S. government to include in the NAP all necessary steps to protect the fundamental rights of people in the United States as a matter of urgency, and immediately:

- a. Recognize the severity and magnitude of the lack of access to safe, affordable water and sanitation and act immediately to coordinate and extend emergency assistance to protect households without safe, affordable water and sanitation services and provide funding for local projects to meet safe, affordable drinking water and sanitation standards, waiving requirements that local communities match federal funds linked to providing these emergency services;
- b. Order an immediate **moratorium on water shutoffs** for lack of ability to pay and provide funding to guarantee affordable drinking water;
- c. Order an immediate **moratorium on home tax lien foreclosures** due to unpaid water bills;
- d. Order an immediate **moratorium on extractive and agricultural industry operations that contaminate current or potential drinking water resources**;
- e. Act immediately to secure communities' right to access clean and safe water by **providing emergency interim supplies of water and offering emergency assistance** to remediate ground and surface water sources contaminated by extractive and agricultural industries, among others.
- f. **Provide funding and technical assistance** to relieve communities paying for water that does not meet national quality standards and to complete feasibility studies, engineering plans, and to assist communities in meeting funding eligibility requirements;

- g. **Hold accountable those public officials responsible** for the decisions to prioritize economics over people in situations that lead to contaminated drinking water, such as that in Flint, MI, where the decision was made for the local utility to deliver corrosive, untreated river water to the homes of the people, when it would have cost \$100 a day to treat this water and where it has resulted in the irreversible lead poisoning of the city's children.
- h. Ensure the government provides the requisite funding for necessary **health and public services for those affected by contaminated water**, such as emergency services to ensure adequate medical care, community services, and nutrition to at least reduce the irreversible effects of lead poisoning on children.
  - a. In Flint, take immediate steps to guarantee funding for 1) removal and replacement of all lead water distribution pipes in the city and 2) long-term health care and services for children affected by lead poisoning;
- i. Direct the Department of Justice investigation of the manmade public health disaster in Flint, Michigan to include consideration of relevant human rights frameworks in determining responsibility for this crisis;
- j. Order an immediate moratorium on all criminal proceedings against individuals because of their inability to pay for water and sanitation due to lack of access to affordable options, and expunge the criminal records of all individuals previously convicted for said reasons;
  - a. Stop all prosecutions of previously disconnected household water reconnections;
  - b. Stop all criminal prosecutions of households without adequate sanitation;
  - c. Enforce the DOJ finding that criminalization of homelessness is unconstitutional and stop all prosecutions of homeless persons, particularly for offenses caused by the lack of adequate sanitation and drinking water;
- k. Order an immediate **moratorium on removing children from the custodial care of their parents solely on the grounds of a water shutoff or lack of adequate sanitation**; Recognize the right to family, and stop all charges of child neglect due to lack of the basic right of access to safe, affordable, and adequate water and sanitation; offer immediate emergency assistance to connect households with children and other vulnerable persons to water and sanitation services;
- l. Promote the adoption of legislation by the U.S. Congress that would achieve full realization of the human rights to water and sanitation. Discourage or commit to veto measures that run counter to this commitment or that would shield companies from compliance with relevant regulations or liability for harms caused in the course of their operations.
  - a. For example, commit to veto legislation that shields from liability mining companies that take over abandoned mine reclamation, like that proposed by Colorado's congressional delegation in the wake of the King Gold Mine spill.
- m. **Modify the U.S. Census survey and the American Communities Survey** to include questions that reflect whether households have access to safe, affordable drinking water and adequate sanitation. The new questions should also aim to collect information about households living with decentralized wastewater systems and/or septic tanks.

## *The NAP Should Include a Longer-Term Plan to Reflect an Executive Branch Focus on Water and Sanitation*

In addition to the immediate actions listed above, the NAP should also include commitments to prioritize addressing violations of the human rights to water and sanitation through a longer-term plan. The human rights implications of unequal access to water and sanitation are complex and require the involvement of multiple federal agencies and clear leadership from the Executive Branch to focus on these issues and develop sustainable policy solutions in consultation with civil society. Accordingly, we offer the following recommendations for commitments that should be included in the NAP for longer-term actions within the existing authority of the Executive Branch, including an executive order on water and sanitation, the issuance of guidance to key federal agencies and local governments, and the reallocation of resources to support agencies and offices that are well-situated to address these issues.

### **Executive Order on Water and Sanitation**

Accordingly, we suggest that the NAP include **an executive order on the water and sanitation crisis and the human rights to affordable, safe and adequate water and sanitation**. This executive order should establish an Executive Branch policy commitment to ensure universal, equal access to safe, affordable, and adequate water and sanitation in the U.S. and **create a high level Inter-Agency Working Group**, with White House leadership, which will serve as the focal point for an immediate national plan of action to:

- a. Direct emergency action to alleviate the suffering and public health crisis associated with mass water shut-offs, drinking water contamination, and lack of adequate sanitation;
- b. Implement NAP commitments that relate to the human rights to water and sanitation;
- c. Fulfill the constitutional and international legal obligations to ensure non-discriminatory access to basic public services sufficient for an adequate standard of living, and access to remedies when rights are violated;
  - a. Including by fulfilling the 2011 recommendation of the UN Special Rapporteur on the Human Right to Safe Drinking Water and Adequate Sanitation that the United States “devote priority attention to improving aging infrastructure, as well as innovative designs and approaches that promote human rights, are affordable and create more value in terms of public health improvements, community development and sustainability.” Ensure that low-income individuals do not bear the costs for such infrastructure improvements.
- d. Direct the Civil Rights Division of the U.S. Department of Justice to conduct an investigation into the discriminatory impact of current water and sanitation services and the violations of the human rights to life, adequate water and sanitation, an adequate standard of living, non-discrimination, and equal protection.
- e. Direct the Department of Justice, the Environmental Protection Agency Office of Water, and the National Environmental Justice Advisory Council, with oversight by the Office of Management and Budget, to conduct a comprehensive study of water affordability in the U.S., which should include collection and analysis of data on water and sewer rates, rate increases, water shutoffs, and related information for all major utilities in the country; and an analysis of existing state and federal legal provisions that address water and sanitation affordability, the right of service, and

- water shutoffs. The study should provide recommendations for proposed federal policy and guidance to utilities on affordability standards, shutoff protections, and the right of service to bring the U.S. in line with international human rights norms;
- f. Designate the appropriate federal agency to mandate reporting, collecting, analyzing, and publishing information about violations of these human rights, including information that would facilitate the identification of disparate impacts on the basis of race and socioeconomic status, and elaborate a plan of action to address gaps in regulation, policy, public funding, and oversight that have contributed to the crisis;
  - g. Direct the relevant agencies to take all necessary steps to alleviate the water and sanitation crisis and increase funding and staffing as needed to make such action prompt and effective;
  - h. Develop and impose heightened human rights due diligence requirements in industries that are likely to impact access to water and/or sanitation.
  - i. Develop and promote comprehensive federal guidelines for achieving universal, equal access to safe, affordable, adequate water and sanitation for federal and state agencies. Create model state legislation and regulation to achieve these policy targets and provide relevant agencies with resources and training to tailor and adopt these model policies;
  - j. Ensure consistency between U.S. climate change commitments and domestic water and sanitation policies;
  - k. Fulfill the commitments made by the United States government during the United Nations Universal Periodic Review to ensure the human right to affordable and safe water and adequate sanitation, as a matter of urgency.

The proposed high-level Inter-Agency Working Group should be led by the White House and have sufficient authority to carry out its mandate. Based on USHRN's experience with the Equality Working Group, created after the 2010 UPR, and chaired by the Department of State and the Department of Justice, an ad hoc body without sufficient authority or mandate to monitor agency actions, will not be successful. Similarly, the Interagency Working Group on Human Rights under Executive Order 13107, has had very limited engagement over the past six years with the implementation of the UPR and other treaty body recommendations in the United States.

Finally, the proposed Working Group should include, at a minimum, the following agencies: the Domestic Policy Council, the Environmental Protection Agency (including the Office of Water, the Office of Wastewater Management (including Decentralized Wastewater), and the Office of Environmental Justice), the Department of Housing and Urban Development, the Department of Justice (Civil Rights Division and Environmental and Natural Resources Division), the Department of Agriculture (including the Forest Service), the Department of Health and Human Services, the Department of the Interior (including the U.S. Geological Survey, the Bureau of Reclamation, the Bureau of Indian Affairs, the Bureau of Land Management, and the U.S. Fish and Wildlife Service), the Department of State, the Department of Homeland Security (including the Federal Emergency Management Agency), the Department of Commerce (including the National Oceanic and Atmospheric Administration), the Department of Energy, the Nuclear Regulatory Commission, and the Department of Transportation.

*The NAP Should Include Policy Guidance to Specific Agencies and Local Human Rights Commissions on the Human Rights to Water and Sanitation*

Because of the complexity of the water and sanitation sector in the U.S., the NAP should also include policy guidance to specific agencies, state and local governments, and the private sector on measures to respect and protect the human rights to water and sanitation. This guidance should be developed in consultation with affected communities and civil society. Specifically, we recommend that the NAP include commitments to:

- a. Develop and provide guidance to federal agencies on measures to respect and protect the human rights to water. Include analysis of existing measures and provide model regulation and policies to promote the achievement of universal access to safe, affordable, adequate water and sanitation.
  - a. Ensure that this guidance encompasses the responsibilities of regional offices as well as agency headquarters.
  - b. As part of the incorporation of environmental justice into review under the National Environmental Protection Act, ensure that all environmental impact assessments include an assessment of likely impacts to the quality, affordability, and accessibility of drinking water and sanitation.
- b. Develop and provide guidance to state and local governments on measures to respect and protect the human rights to water. Include analysis of existing measures and provide model legislation and policies to promote the achievement of universal access to safe, affordable, adequate water and sanitation.
  - a. This guidance should also include a section on measures to avoid, including those that shield companies from liability or other forms of responsibility to respect the human rights to water and sanitation or to provide a remedy for adverse impacts.
  - b. This guidance should draw from existing legislation such as California's AB 685 but should also recognize the weakness of this legislation, including its failure to extend to utilities or to create a private right of action.
  - c. Integrate the Human right to Water in long term integrated water resources planning efforts.
- c. Develop and provide guidance to utilities and other companies that impact the rights to water and sanitation on compliance with their obligation to respect the human rights to water and sanitation, including model policies for ensuring transparency, participation, and affordability.
  - a. Include guidance on the development of low-income affordability programs, looking to the program currently being developed by Philadelphia as a model.
  - b. Include guidance encouraging all utilities and other companies that impact water and sanitation to conduct watershed risk analysis and other due diligence measures that would allow them to predict and assess impacts to these rights from their activities.
- d. Develop and provide guidance to existing local human rights commissions to expand their focus to a broader array of human rights, including the rights to water and sanitation.
- e. To the extent that the NAP addresses the incorporation of human rights into the government procurement process, commit to include respect for the rights to water and sanitation in these contracts, particularly where the purpose of the contract is likely to

impact these rights.

- f. Include consideration of human rights, water affordability, access to water and sanitation, and the disparate impact of water and sanitation problems on vulnerable groups in all convenings relevant to water and sanitation, such as the upcoming White House Water Summit. Legal and policy tools should be considered as well as technological advances to meet the challenges of America's water and sanitation crisis.

*The NAP Should Include Commitments to Allocate Resources to Programs that Promote Universal Access to Safe, Affordable, and Adequate Water and Sanitation*

The NAP should further include commitments to allocate resources to programs that promote universal, equal access to safe, affordable, and adequate water and sanitation. In addition to commitments to allocate resources to the programs mentioned elsewhere in this submission, we recommend that the NAP also include commitments to allocate resources to:

- a. Increase the capacity of regional offices of key federal agencies to protect against violations of the human rights to water and sanitation.
- b. Ensure that federal agencies with responsibility to protect water quality have and can mobilize the necessary resources to discharge this responsibility effectively.
- c. Increase the capacity of offices that support or regulate decentralized wastewater and septic tanks, including regional offices or to otherwise promote the accessibility of these services for remote rural communities.
- d. Provide resources to promote the development of water and sanitation affordability programs.

*The NAP Should Include a Commitment to Establish a National Human Rights Institution or Commission with Oversight of Public and Private Actors*

During the second round of the UN Universal Periodic Review, the USG supported a recommendation that it “[c]onsider establishing a national human rights institution in accordance with the Paris Principles.”<sup>46</sup> Such an institution would be ideally situated to monitor and oversee U.S. adherence to the UN Guiding Principles and would serve as a federal focal point for coordination and implementation of U.S. international human rights obligations, including the human rights to water and sanitation.

*The NAP Should Include a Commitment to Strengthen the U.S. National Contact Point for the OECD Guidelines for Multinational Enterprises*

As the mechanism by which the U.S. implements the OECD Guidelines for Multinational Enterprises, the U.S. National Contact Point should play a critical role in protecting vulnerable communities from corporate human rights abuses. However, the U.S. National Contact Point has been criticized for its weakness, lack of transparency, and lack of connections to government offices that focus on human rights. The NAP should therefore include a commitment to strengthen this office and ensure that it addresses corporate impacts on the human rights to water and sanitation. Specifically, the NAP should commit to actions that will provide the U.S. National Contact Point for the OECD Guidelines with sufficient resources and authority to carry out its mandate effectively. Furthermore, the NAP should include a

commitment to direct the U.S. National Contact Point to prioritize and affirmatively investigate alleged violations of the human rights to water and sanitation, in accordance with the human rights and environmental chapters of the OECD Guidelines.<sup>47</sup>

*The NAP Should Include a Commitment to Guarantee the Right to Free, Prior, and Informed Consent for Communities Whose Rights to Water and Sanitation May Be Affected by a Corporate Project*

Both the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises apply the fundamental human rights principles of transparency and participation, guiding companies to ensure that affected communities have meaningful and timely opportunities to consult with companies and government on decisions that affect their human rights. In practice, however, communities rarely have the opportunity to receive accessible information and give meaningful input into corporate projects that have significant effects on their fundamental rights, including the human rights to water and sanitation. They also lack the power to say “no” to corporate projects that threaten their health by compromising their access to water and/or sanitation. The right to information and the right to participate in decisions that affect other rights are fundamental principles of human rights, in conjunction with the principles of accountability and transparency. To achieve responsible business conduct in the U.S., the NAP should include a commitment to develop a federal policy that guarantees communities that corporate projects that may affect their human rights will not proceed without their free, prior, and informed consent.

At a minimum, the NAP should include a commitment to establish a regular consultation mechanism for affected communities and a more stringent process for following community input into decisions that may affect a community’s human rights, including the human rights to water and sanitation. This mechanism should include to decisions that affect the affordability of water and sanitation service, such as the setting of water and sewer service rates by utilities.

In the case of tribal communities, whose right to free, prior, and informed consent is further supported by the UN Declaration on the Rights of Indigenous Peoples, the NAP should make a clear commitment to ensure that no decisions affecting the rights of Indigenous Peoples will take place without the free, prior, and informed consent of the affected community.

*The NAP Should Include a Commitment to Establish Transparent, Accountable, and Impartial Grievance Mechanisms to Address Community Human Rights Concerns*

Under the UN Guiding Principles, the OECD Guidelines for Multinational Enterprises, and as a fundamental principle of international human rights law, affected communities have a right to access to a remedy for violations of their human rights, including the rights to water and sanitation. The Third Pillar of the UN Guiding Principles centers on the right to access to a remedy, and Guiding Principle 22 provides that companies that have caused adverse human rights impacts “should provide for or cooperate in their remediation through legitimate processes.”<sup>48</sup> Likewise, the OECD Guidelines require the U.S. to encourage corporations to engage in responsible business conduct and respond to allegations that they have failed to do so.<sup>49</sup>

However, existing grievance mechanisms, as well as administrative and judicial remedies available to communities whose rights to water and/or sanitation have been impacted by companies are weak globally, including in the U.S. The NAP should include commitments to establish meaningful, timely, and accessible remedies for corporate human rights abuses, as well as to work with affected communities to develop a grievance mechanism<sup>50</sup> that allows for human rights concerns to be raised by communities and resolved in a transparent and impartial manner, even if that means stopping or redesigning a project. These grievance mechanisms should, at a minimum, reflect the “effectiveness criteria” set forth in the Guiding Principles.<sup>51</sup>

### *The NAP Should Include a Commitment to Hold the Financial Sector to a High Standard of Human Rights Accountability*

The financial sector can be an overlooked part of the corporate community that has a significant impact on human rights, including the rights to water and sanitation. The NAP should include commitments to ensure that the financial sector will be held to a high standard for following through on its business and human rights responsibilities. Whether through loans, direct investments, or other financial services, banks and other financial actors benefit from high-human-rights-risk projects and should be held accountable when they impact the rights to water and sanitation or other rights.

### **Conclusion**

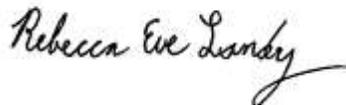
As outlined above, the NAP is crucially placed to initiate strong government action supported by Executive Branch authority to address the country’s current water and sanitation crisis, and we suggest that the NAP include commitments to:

1. Take immediate Executive Branch action as a matter of urgency to stop water shutoffs and contamination of drinking water while remedying the harms already caused by these violations.
2. Issue an executive order announcing a federal prioritization of achieving universal, equal access to safe, affordable, adequate water and sanitation by creating a high-level Inter-Agency Working Group to develop a national plan of action on water and sanitation.
3. Issue guidance to federal, state, and local agencies on achieving universal, equal access to safe, affordable, adequate water and sanitation, and allocate resources to reach this goal as expeditiously as possible.
4. Create a national human rights institution or commission that includes oversight of violations of the rights to water and sanitation in its mandate.
5. Provide the U.S. National Contact Point for the OECD Guidelines with sufficient resources and authority to carry out its mandate effectively, and direct it to prioritize and affirmatively investigate alleged violations of the human rights to water and sanitation.
6. Guarantee that affected communities will have the right to free, prior, and informed consent and to be consulted on decisions that affect their access to water and sanitation, and that affected communities will have access to a remedy for all violations of these rights.

7. Hold the financial sector and other sectors that pose a high risk to the human rights to water and sanitation to a high standard of human rights accountability.

Again, we thank you for the opportunity to provide our submission on this important plan. The USHRN and undersigned organizations remain committed to the full realization of the human rights to water and sanitation in the United States, and we hope that more opportunities for directly affected communities to provide meaningful input into federal initiatives in this area will arise in the future. Although we hope that the Administration will create additional opportunities to consult with affected communities and civil society on these issues, we believe that it would be vital to include our expertise and representation of the voices of communities that live without safe, affordable, and adequate drinking water and sanitation in the upcoming White House Water Summit on March 22, 2016. Should you require any additional information regarding our participation in the Summit or this submission, please do not hesitate to contact us at [rlandy@ushrnetwork.org](mailto:rlandy@ushrnetwork.org).

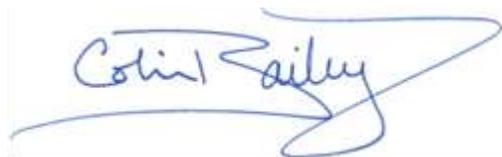
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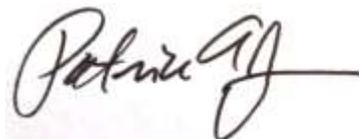
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Members of the Coalition that Signed-on to the IACHR hearing request include:

The US Human Rights Network (USHRN), UC Berkley, School of Law, International Human Rights Law Clinic (IHRLC), Alabama Center for Rural Enterprise Co. Inc. , The Albuquerque, Center for Peace and Justice, Detroit/Michigan Chapter of the National Lawyers Guild, Environmental Justice Coalition for Water (EJCW), Food & Water Watch, Global Initiative for Economic, Social and Cultural Rights , Human Rights Advocates, Massachusetts Global Action/Color of Water Project, The Metro Atlanta Task Force for the Homeless, Michigan Welfare Rights Organization, People’s Water Board, National Economic & Social Rights Initiative , National Lawyers Guild , New Mexico Environmental Law Center, The Program on Human Rights and the Global Economy (PHRGE), Northeastern University, Santa Clara University's International Human Rights Clinic School of Law , Unitarian Universalist Service Committee, Curtis Cooper, the Law Office of Curtis Cooper, Cynthia Soohoo, Associate Professor CUNY Law School, Edwards and Jennings, PC , Lyda et al. v City of Detroit, Dept of Water and Sewage, Pro Bono Legal Committee, and the Sugar Law Center.



## End Notes

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- <sup>1</sup> 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> (English portion begins at 18:35).
- <sup>2</sup> UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Respect, Protect, and Remedy” Framework, United Nations Office of the Commissioner on Human Rights, pp. 6-7, 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).
- <sup>3</sup> U.S. Department of State, USG National Action Plan on Responsible Business Conduct: Frequently Asked Questions, Feb. 12, 2015, available at <http://www.humanrights.gov/dyn/2015/usg-national-action-plan-on-responsible-business-conduct/>.
- <sup>4</sup> UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Respect, Protect, and Remedy” Framework, United Nations Office of the Commissioner on Human Rights, p. 3, 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).
- <sup>5</sup> 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, para. 102(a), May 6, 2014, available at [www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx).
- <sup>6</sup> UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Respect, Protect, and Remedy” Framework, United Nations Office of the Commissioner on Human Rights, Principle 4, pp. 6-7, 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).
- <sup>7</sup> United Nations Office of the High Commissioner for Human Rights, “The Corporate Responsibility to Respect Human Rights: An Interpretive Guide,” p. 20, 2012, available at [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf).
- <sup>8</sup> UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Respect, Protect, and Remedy” Framework, United Nations Office of the Commissioner on Human Rights, Principle 4, pp. 6-7, 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).
- <sup>9</sup> UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Respect, Protect, and Remedy” Framework, United Nations Office of the Commissioner on Human Rights, Principle 4, pp. 6-7, 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).
- <sup>10</sup> United Nations Office of the High Commissioner for Human Rights, “The Corporate Responsibility to Respect Human Rights: An Interpretive Guide,” p. 22, 2012, available at [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf).
- <sup>11</sup> U.S. Environmental Protection Agency, “Information about Public Water Systems,” available at <http://www.epa.gov/dwreginfo/information-about-public-water-systems>.
- <sup>12</sup> Institute for Agriculture and Trade Policy, “Privatizing U.S. Water,” p. 4, 2007, available at [http://www.iatp.org/files/451\\_2\\_99838.pdf](http://www.iatp.org/files/451_2_99838.pdf).
- <sup>13</sup> The right to life is enshrined in Article 3 of The Universal Declaration of Human Rights and Article 6 of The International Covenant on Civil and Political Rights, which the United States has ratified.
- <sup>14</sup> For a more detailed analysis of the derivation of the human right to water from the right to life as enshrined in the International Covenant on Civil and Political Rights, see Inga Winkler, *The Human Right to Water* (2012), pp. 49-55.
- <sup>15</sup> U.S. Department of State, U.S. Treaty Reports, available at <http://www.state.gov/j/drl/reports/treaties/index.htm>.
- <sup>16</sup> Under the Vienna Convention the U.S. is thus bound in good faith to uphold the object and purpose of these treaties, pending a decision on ratification. See Vienna Convention on the Law of Treaties, opened for signature May 23, 1969 (entered into force January 27, 1980), 1155 U.N.T.S. 331, art. 18 [hereinafter Vienna Convention] (the United States, though not a signatory to the Vienna Convention, regards it as “the authoritative guide to current treaty law and practice.” S. Exec. Doc. L., 92d Cong., 1st sess. (1971), p. 1).
- <sup>17</sup> US Human Rights Network, U.S. Government Addendum to the Working Group Report of The UN Human Rights Council Universal Periodic Review Of The United States: USHRNAnnotated Document with Insertion of Recommendation Language (2015), [www.ushrnetwork.org/resources-media/us-government-addendum-working-group-report-un-human-rights-council-universal](http://www.ushrnetwork.org/resources-media/us-government-addendum-working-group-report-un-human-rights-council-universal); <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>.
- <sup>18</sup> AB 685, 2011-2012 Leg. Reg. Sess. (Cal. 2012) (codified at Cal. Water Code § 106.3 (West 2012)), available at [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0651-0700/ab\\_685\\_bill\\_20120925\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf).
- <sup>19</sup> See Constitution of the Commonwealth of Massachusetts, art. XCVII.

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<sup>20</sup> See Constitution of the Pennsylvania, Art. 1, sec. 27.

<sup>21</sup> UNGA, Resolution: *The human right to water and sanitation*, 2010 (A/RES/64/292), available at <http://docbox.un.org/DocBox/docbox.nsf/GetFile?OpenAgent&DS=A/RES/64/292&Lang=E&Type=DOC>.

<sup>22</sup> Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 2, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>23</sup> Committee on Economic, Social and Cultural Rights (CESCR), Statement on the right to sanitation (E/C.12/2010/1) (quoting the UN Special Rapporteur on the human right to safe drinking water and sanitation).

<sup>24</sup> 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),

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16903&LangID=E>.

<sup>25</sup> Email on file with authors from attendee of GA session where Resolution A/RES/70/169 was adopted.

<sup>26</sup> UN High Commissioner for Human Rights, “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>.

<sup>27</sup> For a relatively complete listing of international instruments relevant to the human rights to water and sanitation, see Office of the High Commissioner on Human Rights, “References to Human Rights and Sanitation in International, Regional, and Domestic Standards,” available at

[http://www2.ohchr.org/english/issues/water/iexpert/docs/table\\_legal\\_standards.doc](http://www2.ohchr.org/english/issues/water/iexpert/docs/table_legal_standards.doc).

<sup>28</sup> Articles 11(1), 12(1). International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>29</sup> HRC, Resolution: Human rights and access to safe drinking water and sanitation, 2010 (A/HRC/RES/15/9), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/33/PDF/G1016633.pdf?OpenElement>. The Human Rights Council also created the mandate of the UN Special Rapporteur on the human right to safe drinking water and sanitation in this resolution.

<sup>30</sup> UNGA, Resolution: The human right to water and sanitation, 2010 (A/RES/64/292), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/479/35/PDF/N0947935.pdf?OpenElement>; HRC, Resolution: Human rights and access to safe drinking water and sanitation, 2010 (A/HRC/RES/15/9), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/166/33/PDF/G1016633.pdf?OpenElement>.

<sup>31</sup> Catarina de Albuquerque, *Realising the Human Rights to Water and Sanitation: A Handbook by the UN Special Rapporteur*, Introduction p. 29 (2014), available at <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>; see also Committee on Econ., Soc., & Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, paras. 48, 55, 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003), available at [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf).

<sup>32</sup> See UN Special Rapporteur on the human right to safe drinking water and sanitation (Catarina de Albuquerque), *Realising the Human Rights to Water and Sanitation: A Handbook by the UN Special Rapporteur*, (2014), available at <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>.

<sup>33</sup> Pacific Institute and Shift, *The CEO Water Mandate: Bringing a Human Rights Lens to Corporate Water Stewardship, Results of Initial Research* (Aug. 2012), p. 4, available at [http://pacinst.org/wp-content/uploads/2013/02/full\\_report33.pdf](http://pacinst.org/wp-content/uploads/2013/02/full_report33.pdf).

<sup>34</sup> UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Respect, Protect, and Remedy” Framework, United Nations Office of the Commissioner on Human Rights, Principle 12, pp. 13-14, 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>35</sup> Pacific Institute and Shift, *The CEO Water Mandate: Bringing a Human Rights Lens to Corporate Water Stewardship, Results of Initial Research* (Aug. 2012), p. 4, available at [http://pacinst.org/wp-content/uploads/2013/02/full\\_report33.pdf](http://pacinst.org/wp-content/uploads/2013/02/full_report33.pdf).

<sup>36</sup> OECD Guidelines on Multinational Enterprises (2011), Chp. 2, para. A(2), available at <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>37</sup> OECD Guidelines on Multinational Enterprises (2011), Chp. 4, Commentary on Human Rights, para. 39, available at <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

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<sup>39</sup> Office of the UN High Commissioner for Human Rights, Joint Press Statement by Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and to right to non-discrimination in this context, and Special Rapporteur on the human right to safe drinking water and sanitation, Visit to city of Detroit (United States of America 18-20 October 2014) (October 20, 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15188>.

<sup>40</sup> 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).

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<sup>42</sup> Dash Coleman, Florida Times-Union, "Savannah River nation's third most toxic, study shows," (June 27, 2014), available at <http://jacksonville.com/news/georgia/2014-06-27/story/savannah-river-nations-third-most-toxic-study-shows>.

<sup>43</sup> Bruce A. Dixon, The Grio, "Environmental racism: Is nuclear plant causing cancer for poor black residents of Shell Bluff, Ga.?" (Jan. 25, 2012), available at <http://thegrio.com/2012/01/25/nuclear-plants-and-cancer-epidemics-in-a-poor-black-georgia-town-environmental-racism-in-the-21st-ce/>.

<sup>44</sup> 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 <http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>.

<sup>45</sup> 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](http://www.citylab.com/tech/2015/07/poor-customers-pay-the-price-for-americas-crumbling-water-infrastructure/398228).

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<sup>47</sup> OECD Guidelines on Multinational Enterprises (2011), Chapters IV and VI, available at <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>48</sup> UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Respect, Protect, and Remedy" Framework, United Nations Office of the Commissioner on Human Rights, Principle 22, pp. 24-25, 2011, available at [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>49</sup> Organisation for Economic Cooperation and Development, "OECD Guidelines for Multinational Enterprises" (OECD Guidelines), preface and pt. II, sec. I, <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>50</sup> The UN Office of the High Commissioner for Human Rights provides useful guidance on such grievance mechanisms in its handbook on the Guiding Principles. See United Nations Office of the High Commissioner for Human Rights, "The Corporate Responsibility to Respect Human Rights: An Interpretive Guide," pp. 65-76, 2012, available at [http://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf).

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