

Drinking Water Access and Affordability & U.S. Compliance with the International Covenant on Civil and Political Rights

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Submitted by: Food & Water Watch, Center for Constitutional Rights, Community Members of Jackson
Mississippi, and the Northeastern Law School Program on Human Rights and the Global Economy

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I. Inequities in Access to Clean and Affordable Drinking Water in the United States: A Response to the UN List of Issues

This submission is in response to the List of Issues paragraph 15, copied below:

Right to life, including the death penalty and excessive use of force by law enforcement agents (art. 6)

Please indicate what steps the State party is taking to ensure access to safe and clean water for its population. In particular, describe efforts made to remedy the water crisis in Flint, Michigan, and efforts made to keep water affordable for low-income populations when publicly owned water services are privatized. Clarify the State party's initiatives to address significant threats to the right to life posed by the effects of climate change, such as flash floods, coastal flooding, wildfires, infectious diseases, extreme heat and air pollution.

II. Relevant ICCPR language

— Article 2.1

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”¹

— Article 6.1

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²

— Article 19.2

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.³

III. Human Rights Committee Position

The Human Rights Committee has not included water in their conclusions of previous ICCPR reviews of the United States. However, the Committee has established in General Comment 36 that the right to life encompasses water access.⁴ General Comment 36 states that:

The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity . . . The measures called for to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure

¹ G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 2.1 (Dec. 16, 1966).

² *Id.* at 6.1.

³ *Id.* at 19.2.

⁴ U.N. Hum. Rts. Comm., [General comment No. 36 \(2018\) on article 6 of the International Covenant on Civil and Political Rights, on the right to life](#), ¶ 26, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018).

access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions[.]⁵

IV. Overview

The ICCPR bars discrimination against people due to their race, ethnicity, and income, among other protected characteristics. The treaty further affirms the right to seek and receive information. Finally, the ICCPR recognizes that every individual has the inherent right to life. Water is a human right and is enshrined in the right to life under the ICCPR and General Comment 36.⁶ This submission calls attention to the discriminatory deprivation of access to clean and affordable drinking water that Black, brown, and Indigenous communities face in the U.S. compared to their white counterparts. Such discrimination persists due to a systemic failure to enforce federal environmental justice commitments on decision makers at all levels of our nation's water systems. The denial of this aspect of the right to life is compounded by the absence of information transparency at the federal, state, and local level in the funding and operation of drinking water systems.

This disproportionate failure of water systems located in communities of color is not random, but rather reflects systemic environmental racism, part of the broader context of historical and continual injustices perpetrated by federal and state actors since the inception of the United States.⁷ Drinking water crises in majority Black cities, like Jackson, Mississippi, Flint, Michigan, and Detroit, Michigan are occurring in a period of unprecedented investment in drinking water infrastructure at the federal level. However, achievements in securing infrastructure funding and the Biden Administration's commendable environmental justice commitments mean little without information transparency and accountability mechanisms to ensure that federal funding is actually distributed to historically disinvested communities to update their aging and ineffective water systems.

Some of the federal government actors who are responsible for mitigating environmental racism by assuring the right to life through supporting access to clean drinking water are: the Environmental Protection Agency (EPA),⁸ Department of Justice (DOJ),⁹ Department of Health and Human Services,¹⁰ Centers for Disease Control and Prevention,¹¹ Department of Agriculture,¹² Department of Housing and

⁵ *Id.*

⁶ See, e.g., G.A. Res. 64/292, [The human right to water and sanitation](#) (July 28, 2010); U.N. Hum. Rts. Comm., [General comment No. 36 \(2018\) on article 6 of the International Covenant on Civil and Political Rights, on the right to life](#), ¶ 26, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018).

⁷ FOOD & WATER WATCH, WATER INJUSTICE: ECONOMIC AND RACIAL DISPARITIES IN ACCESS TO SAFE AND CLEAN WATER IN THE UNITED STATES (Mar. 2017), https://www.foodandwaterwatch.org/wp-content/uploads/2021/04/ib_1703_water-injustice-web.pdf.

⁸ See *Safe Drinking Water Act*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/sdwa> (Mar. 20, 2023).

⁹ See *Water*, U.S. DEP'T OF JUST., <https://www.justice.gov/enrd/water> (Apr. 4, 2023).

¹⁰ *Low Income Household Water Assistance Program (LIHWAP)*, U.S. DEP'T OF HEALTH & HUM. SERVS.: OFF. OF CMTY. SERVS., <https://www.acf.hhs.gov/ocs/programs/lihwap> (Sept. 2, 2022).

¹¹ See *Flint Lead Exposure Registry*, CTR. FOR DISEASE CONTROL & PREVENTION: CHILDHOOD LEAD POISONING PREVENTION, <https://www.cdc.gov/nceh/lead/programs/flint-registry.htm> (May 12, 2023).

¹² *Water & Environmental Programs*, U.S. DEP'T OF AGRICULTURE: RURAL DEV., <https://www.rd.usda.gov/programs-services/water-environmental-programs> (last visited Sept. 11, 2023).

Urban Development,¹³ and the Federal Interagency Working Group on Environmental Justice.¹⁴

This submission outlines several examples of how the United States fails to meet its commitments to ensuring data transparency, preventing discrimination, and recognizing the right to life at every level of government.

V. Human Rights Concerns Raised by Water Inequities in the U.S.

A. In Their Own Words: Community Experiences

The drinking water crisis in Jackson Mississippi illustrates many of the ways in which the United States fails to comply with the ICCPR in relation to access to water.¹⁵ This complex crisis in the predominantly Black capital city of Mississippi is a consequence of decades of disinvestment in the water infrastructure. In 2022, the DOJ took the step of initiating a lawsuit against the city and state, alleging violations of federal law relating to water quality and access. Yet the DOJ's proposed interim water system lacks transparency in sharing data, plans, and insight into staffing decisions. Below, we summarize several accounts offered by community members during a July 12-13, 2023, status conference for the federal litigation (with the permission of partners in Jackson).¹⁶ Unfortunately, experiences like these are not unique to Jackson.

The reports from the status conference underscore that the current crisis built up over decades of neglect by federal, state, and local governments. Many longtime residents of Jackson, like Nsombi Lambright from the NAACP, reported experiencing boil water advisories decades ago while in high school; she expressed a consistent mistrust of the Jackson water supply and unpredictable water pressure that varies from day to day. Boiling water to wash dishes has become normal for many Jackson residents due to the frequency of boil water notices from the Mississippi Department of Health. Another resident, Dominic Deleo, noted that this crisis is not new, but rather the people at the public works department were aware of the aging infrastructure or "bad pipes" causing a loss of half of the treated water a decade ago.

The crisis encompasses water quality and access, as well as access to sanitation. Testimony from multiple community members described the tap water variously as oily, discolored, grainy, blackish or brown, with a bad taste or smell. One member of the community testified that she and her son suffer from eczema only when bathing in Jackson's water, but not while traveling. Brooke Floyd, a community member involved in the distribution of water during the water crisis, testified that lack of continuous access to safe drinking water is only half of the problem when a water line breaks. When the water service is reconnected, the pressure causes pipes to burst and force raw sewage into homes. This stress on the pipes in her own home caused by the lack of continuous water pressure led to \$300,000 in repairs over the past decade of home ownership.

¹³ See U.S. DEP'T OF HOUS. & URBAN DEV., FACT SHEET: HUD'S WORK TO ADDRESS LEAD-BASED PAINT AND ADDITIONAL HOUSING-RELATED HAZARDS (Jan. 13, 2023),

https://www.hud.gov/sites/dfiles/PA/documents/Lead_Hazards_Fact_Sheet.pdf

¹⁴ See *Federal Interagency Working Group on Environmental Justice (EJ IWG)*, U.S. ENV'T. PROT. AGENCY: ENV'T JUST., <https://www.epa.gov/environmentaljustice/federal-interagency-working-group-environmental-justice-ej-iwg> (July 24, 2023).

¹⁵ *United States v. The City of Jackson, Mississippi*, [22-CV-00686](#) (S.D. Miss. filed Nov. 29, 2022).

¹⁶ Transcript of Status Conference Volume 1 of 2, *United States v. The City of Jackson, Mississippi*, [22-CV-00686](#) (S.D. Miss. filed July 12, 2023); Transcript of Status Conference Volume 2 of 2, *United States v. The City of Jackson, Mississippi*, [22-CV-00686](#) (S.D. Miss. filed July 13, 2023).

And the crisis is compounded by lack of access to information and insufficient transparency regarding the administration of the water system. Most of the community members who spoke at this status conference asserted that the Jackson water system should be run by Jacksonians, without privatization. After the DOJ filed its suit against the City of Jackson, the interim JXN Water was established.¹⁷ According to Brooke Floyd, JXN Water has failed to provide adequate customer service or up to date information confirming Boiling Water notices. Efrén Nunez testified that in 2021 and 2022 many Latino members of the community never got access to the boil water notices and would get rashes, stomachaches requiring hospitalization. Access to information and general transparency are central to community member's demands about how this process of fixing Jackson's broken water system will work. Bishop Crudup highlights that the absence in transparency is not just in the process of fixing the water system, but in JXN Water's silence around the firing of the one African American administrator in the water department and larger concerns around contract justice for Black residents of Jackson. Danyelle Holmes, of the Poor People's Campaign, requested more community meetings as part of the general calls for increased transparency.

The issues in Jackson, Mississippi are acute, but not unique. Beyond the problems of aging water infrastructure, many rural communities of color are not connected to municipal water systems in the first place. Instead of funding connections to existing homes of long-time Black, brown, or Indigenous residents, some municipalities have chosen to fund extensions of water service lines to new higher-income housing developments. In an effort to address this discriminatory practice, EarthRights International is working with community members in Brunswick County, North Carolina to hold the county accountable for using federal funding received to connect rural low-income homes to municipal water supplies as "[a]nything short of that is a violation of their rights."¹⁸

Similarly, many indigenous communities in the U.S. experience disproportionately higher rates of diabetes and gastric cancers compared to white Americans due to a lack of water infrastructure.¹⁹ The disparity between access to drinking water for Indigenous peoples compared to their white counterparts dates back to discriminatory federal subsidy practices in the early 1900s, where the government subsidized drinking water for white settlers, at the expense of tribes.²⁰ For many indigenous people, the lack of drinking water infrastructure has led to a dependence on water from unregulated sources or sources that must be hauled as far as 40 miles.²¹ As of 2021, this lack of drinking water infrastructure caused over 30% of the Navajo Nation to rely upon water hauled from unregulated water sources.²²

¹⁷ *About JXN Water*, JXN WATER, <https://jxnwater.com/about/> (last visited Sept. 11, 2023).

¹⁸ *Brunswick County Residents Urge Officials to Address Water Inequity Problems*, EARTHRIGHTS INT'L (May 1, 2023), https://earthrights.org/media_release/brunswick-county-residents-urge-officials-to-address-water-inequity-problems/.

¹⁹ DIG DEEP & U.S. WATER ALLIANCE, CLOSING THE WATER ACCESS GAP IN THE UNITED STATES: A NATIONAL ACTION PLAN 40 (2019), https://static1.squarespace.com/static/5e80f1a64ed7dc3408525fb9/t/6092ddcc499e1b6a6a07ba3a/1620237782228/Dig-Deep_Closing-the-Water-Access-Gap-in-the-United-States_DIGITAL_compressed.pdf.

²⁰ *Id.* at 24 (citing STAFF OF H. COMM. ON NAT. RES., 114TH CONG., WATER DELAYED IS WATER DENIED: HOW CONGRESS HAS BLOCKED ACCESS TO WATER FOR NATIVE FAMILIES (Comm. Print Oct. 10, 2016), <http://blackfeetnation.com/wp-content/uploads/2016/10/House-NRC-Water-Report-Minority-10-10-16.pdf>).

²¹ *Id.* at 38.

²² COLORADO RIVER WATER USERS' ASS'N, ANNUAL REPORT 30 (2021), <https://www.crwua.org/assets/downloads/2021-CRWUA-Annual-Report.pdf#page=30>; KEELY LOVATO, HUMAN RIGHT TO WATER, LEGAL MAPPING FOR RESILIENCE: NAVAJO NATION 7 (May 2022), <http://humanright2water.org/wp-content/uploads/2022/05/Resilience-Checklist-HR2W-NavajoNation.pdf> ("These unregulated sources, usually shallow wells dug for livestock, generally do not conform with

B. Applying the Provisions of the ICCPR

Protections against Discrimination (Article 6.1)

The United States has a well-established infrastructure of civil rights protections. Yet racial, ethnic, and income-based discrimination continues to impact many facets of access to drinking water in the United States. Jackson, Mississippi is not alone as a Black-majority community experiencing a water crisis. Research studies at the municipal level from Massachusetts to the Great Lakes region, repeatedly find that water utilities' payment policies are more harshly applied to people of color.²³ The NAACP's 2019 Color of Water cumulative report on water and race confirmed that practices of water service shutoffs and lien sales leading to home foreclosures and evictions disproportionately impact people of color.²⁴

Beyond individual utilities, states' allocations of federal funding have also been found to discriminate against communities of color. For example, a 2022 report from the National Resources Defense Council (NRDC) and the Environmental Policy Innovation Center (EPIC) found that "smaller municipalities and those with larger populations of color are statistically less likely to receive [Clean Water State Revolving Fund] assistance."²⁵

Right to Life (Article 2)

The right to life requires that individuals have reliable access to clean and affordable drinking water. Failing to connect residents like those in Brunswick County, North Carolina to drinking water systems is a clear breach of rural residents' right to drinking water under the right to life.²⁶ The diversion of funds away from Jackson, Mississippi and its failing water infrastructure is the denial of the right to life for the residents who depend on that system for their drinking water. Even if a water system provides continuous, clean, and clear drinking water, charging an unaffordable rate for access does not comport with the right to life. Similarly, conducting shutoffs as punishment for an inability to afford the cost of water is the denial of the right to life.

drinking water standards and instead have dangerously high levels of uranium and other harmful pollutants.").

²³ See, e.g., Mario Zamudio & Will Craft, *So Close, Yet So Costly*, AM. PUB. MEDIA (Feb. 7, 2019), <https://www.apmreports.org/story/2019/02/07/great-lakes-water-shutoffs>; KIMBERLY FOLTZ-DIAZ, ET AL., MASS. GLOB. ACTION, *THE COLOR OF WATER: A REPORT ON THE HUMAN RIGHT TO WATER IN THE CITY OF BOSTON*, http://massglobalaction.org/projects/colorofwater/primary_report_shutoffs_pre-pub.pdf (last visited Sept. 11, 2023); *Water Research: Mapping and Visualizing Publicly Accessible Data*, WE THE PEOPLE OF DETROIT: WATER, <https://www.wethepeopleofdetroit.com/water> (last visited Sept. 11, 2023).

²⁴ COTY MONTAG, NAACP LEGAL DEF. & EDUC. FUND, INC., *WATER/COLOR: A STUDY OF RACE & THE WATER AFFORDABILITY CRISIS IN AMERICA'S CITIES* (May 2019), https://www.naacpldf.org/wp-content/uploads/Water_Report_Executive-Summary_5_21_19_FINAL-V2.pdf.

²⁵ KATY HANSEN, ENV'T POL'Y INNOVATION CTR., & BECKY HAMMER, NAT'L RESOURCES DEF. COUNCIL, *A FAIRER FUNDING STREAM: HOW REFORMING THE CLEAN WATER STATE REVOLVING FUND CAN EQUITABLY IMPROVE WATER INFRASTRUCTURE ACROSS THE COUNTRY* 4 (Oct. 2022), https://static1.squarespace.com/static/611cc20b78b5f677dad664ab/t/6358a6f8227cca7a13eed501/1666754307265/EPIC_NRDC_A+Fairer+Funding+Stream.pdf.

²⁶ U.N. Hum. Rts. Comm., [General comment No. 36 \(2018\) on article 6 of the International Covenant on Civil and Political Rights, on the right to life](#), ¶ 26, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018).

Information Transparency (Article 19.2)

The United States' failure to meet its obligations to provide the right to information in Article 19.2, directly impacts communities facing drinking water crises and virtually ensures that those crises will continue. Most municipal water systems across the United States fail to collect or share their data on rate affordability, payment plans, and collection practices, such as water shutoffs and home liens. Likewise, states fail to provide transparency in how they allocate the federal drinking water grant funding they receive. The federal government fails to provide transparency on funding allocation decisions for water infrastructure improvements.

Without data transparency, it is nearly impossible for community members to hold utilities accountable for discriminatory or unstandardized practices in water rates and consequences of missed payments. Water utilities across the country frequently fail to collect basic metrics including information about the number of water service disconnections performed for nonpayment.²⁷ Private water utilities are often even less transparent than their municipal counterparts. This lack of transparency within privatized systems is of particular concern because these companies often charge significantly higher water rates than their government peers.²⁸ A few states, notably Illinois, California, and New Jersey, do mandate periodic reporting from municipal water utilities.²⁹ The New Jersey law establishes the strongest water utility transparency policy in the country. The legislation requires all water utility companies (public and investor-owned) to submit zip-code level monthly data which includes: the number of water shut-offs, available customer assistance programs, and average customer bills.³⁰ Although there is some nationwide momentum, publicly accessible municipal water data in just three states falls far short of achieving transparency in this area.

This lack of transparency also extends to federal and state programs. Federal funding for drinking water infrastructure comes from the Drinking Water State Revolving Fund (SRF), the Drinking Water SRF for Lead Service Line Replacement, Drinking Water SRF for Emerging Contaminants, and Water Infrastructure Improvements for the Nation (WIIN) Grants.³¹ Despite the existence of the EPA's Drinking Water Infrastructure Needs Survey,³² environmental justice groups like EPIC and the Center for Public Integrity are concerned with the lack of transparency on how states actually allocate the money received.³³

²⁷ JACOB HAYWARD, DATA ON TAP: REALIZING HUMAN RIGHTS THROUGH WATER UTILITY REPORTING LAWS (NE. UNIV. SCH. OF L.: PROG. ON HUM. RTS. & THE GLOB. ECON, May 2023), <https://law.northeastern.edu/wp-content/uploads/2023/05/phrge-water-report-may2023.pdf>.

²⁸ *Water Privatization: Facts and Figures*, FOOD & WATER WATCH (Aug. 2, 2015), <https://www.foodandwaterwatch.org/insight/water-privatization-facts-and-figures>.

²⁹ HAYWARD, *supra* note 27.

³⁰ *Id.*

³¹ *Water Infrastructure Investments*, U.S. ENV'T PROT. AGENCY: BIPARTISAN INFRASTRUCTURE LAW, <https://www.epa.gov/infrastructure/water-infrastructure-investments> (May 3, 2023).

³² *EPA's 7th Drinking Water Infrastructure Needs Survey and Assessment*, U.S. ENV'T PROT. AGENCY: GROUND WATER AND DRINKING WATER, <https://www.epa.gov/ground-water-and-drinking-water/epas-7th-drinking-water-infrastructure-needs-survey-and-assessment> (Sept. 6, 2023).

³³ See, e.g., *An Initial Analysis of EPA's New State Funding Allotment for Lead Service Line Replacement*, ENV'T POL'Y INNOVATION CTR.: WATER INFRASTRUCTURE (June 2023), <https://www.policyinnovation.org/blog/an-initial-analysis-of-epas-new-state-funding-allotment-for-lead-service-line-replacement>; María Zamudio, *Study Finds Disparities in States' Distribution of Federal Funds for Water Systems*, The Ctr. for Pub. Integrity (Jan. 20, 2023), <https://publicintegrity.org/environment/natural-resources/study-finds-disparities-in-states-distribution-of-federal-funds-for->

A greater focus is needed on assessing funding outcomes rather than the initial disbursement to states.³⁴ Similarly federal monitoring of the operations of local water systems is often inaccurate and out of date.³⁵

C. Conclusion

The lack of access, uneven quality, and cost of drinking water for Black, brown, and Indigenous communities constitutes a violation of the right to life under the ICCPR. Changes must be made to the ways data is collected and published nationwide in terms of monitoring water access and quality, status of infrastructure, and federal funding distribution. Failure to do so means an inability to create the mechanisms of accountability required to effectively eradicate this form of environmental racism in the denial of access to clean and affordable drinking water to all regardless of race, ethnicity, or income. Water systems will only become increasingly strained as the impacts of the climate crisis build in the form of more regular flooding and droughts in different regions of the United States. Water rates are set to rise in the coming years which will only further deny the human right to drinking water to more members of vulnerable communities.

VI. Previous Recommendations from U.N. Treaty Bodies to which the U.S. is a State Party

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Although not specific to water, the CERD conclusions focus broadly on environmental justice concerns. The Committee repeated its recommendation that the United States enforce federal legislation prohibiting environmental pollution at the state and local level and urged the prioritization of cleaning up sites where minorities and Indigenous people live.³⁶

VII. Other UN and Regional Human Rights Bodies Recommendations

Special Rapporteur on Water and Sanitation

The Special Rapporteur's 2011 report recommended placing the human right to water and sanitation at the center of policy formation,³⁷ and the implementation of a stronger regulatory system to prevent water contamination and ensure affordability.³⁸ The Rapporteur warned that “[p]roblems of discrimination in the United States water and sanitation services may intensify in the coming years with climate change and competing demands for ever scarce water resources.”³⁹

[water-systems/](#).

³⁴ HANSEN, *supra* note 25, at 16.

³⁵ *Private Water Utilities: Actions Needed to Enhance Ownership Data*, U.S. GOV. ACCOUNTABILITY OFF. (Apr. 26, 2021), <https://www.gao.gov/products/gao-21-291>.

³⁶ U.N. Comm. on the Elimination of Racial Discrimination, [Concluding observations on the combined tenth to twelfth reports of the United States of America](#), ¶ 46, U.N. Doc. CERD/C/USA/CO/10-12 (Sept. 21, 2022).

³⁷ U.N. Hum. Rts. Council, [Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque](#), ¶ 92, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011).

³⁸ *Id.* at ¶ 90.

³⁹ *Id.* at ¶ 89.

Working Group on Business and Human Rights

Concerns about water contamination from industry arose in discussions about business impacts on Native Americans and Coal Mining in West Virginia.⁴⁰ The Working Group references submissions they received those connected impacts to the environment on the health and displacement of Native Americans because such pollution prevented achieving an adequate standard of living which includes food, water, sanitation, and self-determination.⁴¹

Working Group of Experts on Peoples of African Descent

This Working Group report echoed environmental justice concerns that Black or African Americans are disproportionately more exposed to environmental hazards that negatively impact their health and standard of living.⁴² The report specifically named the populations of the Curtis Bay neighborhood in Baltimore, Maryland, and Flint, Michigan as area of concern for contamination related health risks to populations of African Americans. The working group emphasized the need to uphold and affirm the rights to safe drinking water and sanitation among other rights to adequate standards of living.⁴³

Special Rapporteur on the Rights of Indigenous Peoples⁴⁴

The Special Rapporteur's report highlighted concerns about mining of radioactive materials next to sacred sites that have since contaminated water with uranium and radium,⁴⁵ as well as concerns about hydraulic fracturing and underground injection wells polluting water sources.⁴⁶ The report repeats and affirms that "water provides lifeways and subsistence and is of undeniable spiritual significance [or i]n Lakota, [...] Mni Wiconi: water is life."⁴⁷

Special Rapporteur on Extreme Poverty

The Special Rapporteur brings attention to how immigration status and access to water are intertwined as undocumented women are refused access to water and other utilities and do not want to seek assistance due to deportation fears.⁴⁸ The Rapporteur also highlights the low-income population in Alabama and West Virginia where many of the residents are not connected to public water or sanitation utilities. Data and plans to ameliorate this lack of access were not available.⁴⁹

⁴⁰ *Id.* at ¶ 69.

⁴¹ *Id.* at ¶ 78.

⁴² *Id.* at ¶ 52.

⁴³ *Id.* at ¶ 120.

⁴⁴ U.N. Hum. Rts. Council, [Report of the Special Rapporteur on the rights of indigenous peoples on her mission to the United States of America](#), U.N. Doc. A/HRC/36/46/Add.1, ¶¶ 86 (a), (b) (Aug. 9, 2017).

⁴⁵ *Id.* at ¶ 37.

⁴⁶ *Id.* at ¶ 41.

⁴⁷ *Id.* at ¶ 40.

⁴⁸ U.N. Hum. Rts. Council, [Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America](#), ¶ 59, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018).

⁴⁹ *Id.* at ¶ 69.

The Special Rapporteur highlighted disproportionate exposure to contaminated drinking water as an example of broader environmental justice concerns. This report references the report by the Working Group of Experts on Peoples of African Descent’s discussion and concerns about the disproportionate exposure to environmental hazards faced by Black people in the United States. Farming, mining, manufacturing, and aging infrastructure were all listed in the Special Rapporteur’s discussion of water issues. Beyond links between race and environmental hazard exposure, the Rapporteur listed Flint, Guam, Puerto Rico, and rural mainland regions as populations found to be exposed disproportionately to polluted drinking water. The rapporteur observed that clean-up of water contamination in municipalities that are majority Black, brown, or Indigenous “do not seem to be as sufficiently prioritized for clean-up as they should be, in an efficient or expedited manner.”⁵⁰ The report also highlighted the role of the American military in causing severe drinking water contamination in Guam and other overseas territories. The Special Rapporteur recommended a nationwide study on environmental justice and discrimination.⁵¹

VIII. Recommended Questions

1. What steps will the U.S. government take to address inequity and racism in access to water? What steps has the U.S. government taken to prevent situations like those in Jackson and Flint, especially given the role of state actors?
2. What protections is the federal government putting in place for individuals who are low or no-income to ensure access to water regardless of ability to pay? How is the federal government working to prevent water shut-offs?
3. What is the U.S. government’s commitment and plan to ensure clean, safe drinking water when local systems fail?
4. How will the EPA address the role of state actors in creating water systems that fail to allocate sufficient resources to majority Black, brown, and Indigenous regions? How can states be better held accountable for creating water crises like that in Jackson, Mississippi? What steps will the U.S. government take to exit contracts with private companies that failed to meet the community water needs of majority Black, brown, and Indigenous communities during water crises like that in Jackson, Mississippi? What steps will the US government take to support job training and local hiring for impacted residents to resume public operation of water services?

IX. Suggested Recommendations

Currently, the United States is not in compliance with the ICCPR due to its failures to protect individuals from discrimination based on their race, and income, to recognize the right to life, and to ensure information transparency. Accordingly, we recommend the following:

- That the federal government officially recognize and affirm that the “Right to Life” encompasses the general context in which a person lives and specifically includes the right to affordable, clean, and accessible drinking water and the right to sanitation;
- Passage of federal legislation or issuance of an EPA rule requiring transparency in state disbursement of funding received predicated on high need data from Black and brown

⁵⁰ *Id.* at ¶ 64.

⁵¹ *Id.* at ¶ 77.

- communities with aging water systems;
- Mandatory reporting and disclosure on a centralized public data dashboard on both federal funding and state funding decisions for drinking water and wastewater infrastructure;
 - DOJ processes to hold states accountable if funding received is diverted away from predominantly Black and brown communities;
 - A federal standard to provide protections against water shutoffs and tax sales of homes for vulnerable and marginalized groups;
 - Passage of the Water Affordability, Transparency, Equity and Reliability Act to create a trust fund to dedicate at least \$35 billion a year to improve the nation's drinking water and wastewater infrastructure and help ensure that every person in the country has access to safe and affordable water service;
 - Increased funding and staffing for agencies to have efficient and transparent data collection processes on water contamination and access issues to inform a more equitable distribution of funds. Specifically, the EPA must listen to the demands of Congress members to restart Community Water System Surveys and commence the needs assessment for nationwide rural and urban low-income community water assistance authorized in the Infrastructure Investment and Jobs Act, all of which should include data on water affordability, shutoff prevalence, and discrimination and civil rights violations with specific attention to Black, brown, and Indigenous populations.