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Members of the Human Rights Committee
Office of the United Nations High Commissioner for Human Rights
Palais Wilson
52 rue des Pâquis
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Suggested List of Issues to Country Report Task Force on the United States for the 125th Session of the Human Rights Committee, 4-29 March 2019

Food & Water Watch is an international non-governmental organization headquartered in Washington, D.C., United States of America that uses law and community organizing to protect our vital food and water systems, including the prevention of contamination of drinking water sources by agricultural and energy sector pollution while ensuring affordable access to those sources. We respectfully submit this suggested list of issues to the United Nations Human Rights Committee (“UNHRC”) in preparation for the meeting of the Country Report Task Force on the United States during its 125th Session.

The United Nations has acknowledged that “[o]bligations related to access to safe drinking water and sanitation are ... implicit in a number of ... international human rights treaties and are derived from obligations pertaining to the promotion and protection of other human rights, including *the rights to life*”.¹ Furthermore, “[i]n interpreting *the right to life* under the International Covenant on Civil and Political Rights (“ICCPR”), the Human Rights Committee, in its general comment No. 6 (1982), stressed that besides protecting against the active taking of life, the right also placed a duty on States to ensure access to the means of survival and required States to adopt positive measures”² to promote this access. This understanding of access to clean drinking water as a fundamental human right has been further reinforced since the ratification of the ICCPR. In July 2010, the General Assembly adopted a resolution which “recognized 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.”³

While the United States of America abstained from the July 28, 2010 General Assembly vote recognizing the human right to water and sanitation, the U.S. did later vote in favor of an even stronger

¹ United Nations Human Rights Commission. “Right to Water – Fact Sheet No. 35”. April 2011 at 5. Available at <https://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>. (hereinafter “UN Right to Water Fact Sheet No. 35”)

² *Ibid.*

³ G.A. Res 64/292. ¶ 1. U.N. Doc. A/64/L.63/Rev.1 and Add.1. (28 July 2010)

resolution as a member of the Human Rights Council on September 30, 2010.⁴ The U.S. went so far as to state that they were “proud” to take the significant step of joining consensus on the resolution making the right to water legally binding; which, given the U.S.’s historical hesitancy to sign on to such sweeping resolutions, demonstrates the commitment the nation has made to protecting these human rights.⁵

As the UNHRC has stated, “[a]ccess to safe drinking water is a fundamental precondition for the enjoyment of several human rights, including the rights to education, housing, health, life, work and protection against cruel, inhuman or degrading treatment or punishment. It is also a crucial element to ensure gender equality and to eradicate discrimination.”⁶ As such, equal access to clean drinking water is inherently a civil rights issue.

Food & Water Watch submits these issues to the UNHRC as the U.S. federal government and its component states have failed to make meaningful advances in their preservation of human rights related to clean water, particularly as it relates to non-discrimination against vulnerable populations and the proliferation of loosely regulated hydraulic fracturing for fossil fuels.

Respectfully submitted,

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⁴ U.N. Human Rights Council A/HRC/RES/15/9.

⁵ United Nations. “Historic re-affirmation that rights to water and sanitation are legally binding”. Amnesty International Press, 1 Oct. 2010.

⁶ UN Right to Water Fact Sheet No. 35

- I. **Issue 1:** Water privatization and shutoffs.
- II. **Reporting Organizations:** Food & Water Watch; Environmental Justice Coalition for Water; In the Public Interest
- III. **Issue Summary**

As the UN has seen over the past few decades, attempts to privatize public water and sewer services have become increasingly common. In the United States, water privatization has presented a threat to water affordability and access for low-income neighborhoods, as privately-owned water utility service costs the typical U.S. household 59 percent more than public water service.⁷ Private water companies are unlikely to adopt the same criteria as municipalities when deciding where to extend services; as such, they are prone to cherry-picking service areas to avoid serving low-income communities where low water use and frequent bill collection problems could hurt corporate profits.

Moreover, private water utilities lack the level of transparency that their municipal counterparts provide. They have frequently refused to provide basic metrics including information about the number of water service disconnections performed for nonpayment. This lack of transparency within privatized systems is of particular concern because these companies charge significantly higher water rates than their government peers, suggesting that affordability might be a bigger problem for their customers.⁸

Alongside the privatization of water services, the United States faces a growing water affordability crisis with large numbers of low-income community members and people of color experiencing service shutoffs, often caused by steady increases in water rates while unemployment and poverty levels within these communities remain high. An estimated 15 million U.S. residents lost water service for nonpayment in 2016. Water service is exceedingly unaffordable for low-income households in Detroit and New Orleans, in particular, where more than one in five households receive water bills that exceed 9 percent of their income.⁹ In 2015, Detroit, Michigan shut off water service to nearly 24,000 households, and Baltimore, Maryland shut off water service to more than 8,000 households, mostly in the lowest-income high-minority areas of the city.¹⁰

Unaffordable water service can tear families apart as a lack of running water access in the home may be considered child neglect in 21 states, and water shutoffs have led to children being taken from their homes under child protection laws.¹¹ Moreover, unaffordable water bills can lead to evictions and tax foreclosures. In some cities, like Baltimore, landlords can evict tenants who cannot afford their water

⁷ Food & Water Watch. "The State of Public Water in the United States" 2016. Available at https://www.foodandwaterwatch.org/sites/default/files/report_state_of_public_water.pdf

⁸ Food & Water Watch. "Water Privatization: Facts and Figures". 31 Aug. 2015. Available at <https://www.foodandwaterwatch.org/insight/water-privatization-facts-and-figures>

⁹ Food & Water Watch. "America's Secret Water Crisis." 22 Oct. 2018. Available at <https://www.foodandwaterwatch.org/insight/americas-secret-water-crisis>

¹⁰ Food & Water Watch. "Water Injustice: Economic and Racial Disparities in Access to Safe and Clean Water in the United States". March 2017. Available at https://www.foodandwaterwatch.org/sites/default/files/ib_1703_water-injustice-web.pdf

¹¹ *Id.*

bills, and homeowners can see their unpaid water bills added as tax liens that can allow a city to seize and sell a person's home over unpaid water bills.¹²

IV. Concluding Observations offered by the Human Rights Committee

None to date.

V. U.S. Government Report

None to date.

VI. Legal Framework

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

– Article 2.1 of the International Covenant on Civil and Political Rights

“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.”

– 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.”

– Article 26

VII. Human Rights Committee General Comments

“The right to water contains freedoms. These freedoms include protection *against arbitrary and illegal disconnections*; ... non-discrimination in access to safe drinking water and sanitation, notably on the basis of land or housing status; non-interference with access to existing water supplies”¹³

“Water services must be affordable to all. No individual or group should be denied access to safe drinking water because they cannot afford to pay. ... Overall, poorer households should not be disproportionately burdened with water and sanitation expenses.”¹⁴

¹² *Id.*

¹³ UN Right to Water Fact Sheet No. 35

¹⁴ *Id.*

“Where water services are operated by the private sector, concerns have been raised about arbitrary and illegal disconnections, the affordability of water and sanitation services, as well as about the extension of these services to vulnerable and marginalized groups.”¹⁵

“The obligation on States to protect human rights includes ensuring that non-State actors do not infringe upon the right to water.”¹⁶

VIII. Other UN Body Recommendations

“The US must do more to eliminate discrimination in practice,” said the Independent Expert [Catarina de Albuquerque] mandated by the UN Human Rights Council to examine the issue of human rights obligations related to access to safe drinking water and sanitation. “I am concerned that several laws, policies and practices, while appearing neutral at face value, have a disproportionate impact on the enjoyment of human rights by certain groups.”¹⁷

The Special Rapporteur also concluded that the U.S. should “[e]valuate the extent to which people living in poverty face challenges in paying for water and sanitation services, and adopt, at the federal level, a national minimum standard on affordability of water and sanitation, as well as due process guarantees in relation to disconnections.”¹⁸

IX. Recommended Questions

How are the United States federal and state governments addressing the prevention of water cut-offs within indigent and minority communities?

What legislative, policy, and other measures being taken by regulators within the federal and State governments to prevent rate hikes by for-profit water management corporations?

X. Suggested Recommendations

- Instead of promoting water privatization, the Federal government should promote and provide resources to help municipalities form public-public partnerships. Intermunicipal cooperation, interlocal agreements and bulk purchasing consortiums can improve public services and reduce costs, while allowing communities to retain local control.
- The United States should pass the Water Accountability, Transparency, Equity and Reliability Act to create a trust fund to dedicate \$35 billion a year to improve the nation’s drinking water

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ UN Human Rights, Office of the High Commissioner. “USA: from discrimination to accessibility, UN expert raises questions on water and sanitation.”

<https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10808&LangID=E>

¹⁸ United Nations. “[Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to the United States of America](#)” (22 February-4 March 2011). Section 6: Conclusions and recommendations, at 19-21.

and wastewater infrastructure and help ensure that every person in the country has access to safe and affordable water service.

- A federal standard should be established to provide protections against water shutoffs and tax sales of homes for vulnerable and marginalized groups.
- Local governments can set up percentage-of-income water affordability programs to tackle the problem head-on and employ best practices to ensure that households have sufficient time and notice to pay their bills prior to disconnection.
- States should require all utilities, including privately owned systems, to disclose shutoff and reconnection rates.
- States should require a voter referendum on any sale or lease of a publicly owned water or sewer system to a for-profit company.

- I. **Issue 2:** Environmental discrimination in siting of polluting facilities
- II. **Reporting Organizations:** Food & Water Watch; Environmental Justice Coalition for Water; In the Public Interest
- III. **Issue Summary**

Minority communities within the United States often share their neighborhoods with facilities, such as refineries and industrial agriculture operations, that emit a significant amount of hazardous pollution that threatens the public health by way of drinking water contamination. Nationwide studies have shown that communities near commercial hazardous-waste facilities consist mainly of racial and ethnic minorities.¹⁹ Moreover, members of racial minority groups are exposed to a level of nitrogen dioxide – a respiratory irritant emitted by cars and industrial sources – at an average rate 38 percent higher than white Americans.²⁰ In an analysis of all permitted industrial facilities across the U.S., research has shown that the worst emitters of hazardous pollutants disproportionately expose communities of color and low-income populations to chemical releases.²¹

Much of this siting has a history rooted in racially discriminatory practices of the past.²² While discriminatory lending policies aggregated racial minorities into certain segregated neighborhoods near high emitting facilities, States have failed to adequately address these historical issues and certain siting policies remain discriminatory in effect.

Moreover, the U.S. Environmental Protection Agency’s (“EPA”) External Civil Rights Compliance Office (“ECRCO”) has found a series of discriminatory practices perpetrated by State departments of environmental quality. In January, 2017, EPA ECRCO made its first finding of racial discrimination in its over 20-year history, stating:

“EPA finds that ... discriminatory treatment of African Americans by [Michigan Department of Environmental Quality] in the public participation process for the [permit of the Genesee Power Station] considered and issued from 1992 to 1994. In addition, EPA has concerns that MDEQ’s current policies are insufficient to address the potential for discrimination given deficiencies in MDEQ’s public participation program and procedures. ... For almost 30 years, MDEQ failed to provide the foundational nondiscriminatory program as required by non-discrimination regulations...”²³

¹⁹ Covert, Bryce. “Race Best Predicts Whether You Live Near Pollution.” *The Nation*. 18 Feb. 2016. Available at <https://www.thenation.com/article/race-best-predicts-whether-you-live-near-pollution/>

²⁰ Badger, Emily. “Pollution is segregated, too”. *Washington Post*. 15 April 2014. Available at https://www.washingtonpost.com/news/wonk/wp/2014/04/15/pollution-is-substantially-worse-in-minority-neighborhoods-across-the-u-s/?utm_term=.4346f044c977

²¹ Collin MB, et al. “Linking ‘toxic outliers’ to environmental justice communities.” *Environmental Research Letters*, Vol. 11, No. 1. 2016. <https://doi.org/10.1088>

²² Bullard, Robert D. “Race and Environmental Justice in the United States.” 18 *YALE J. INT’L L.* (1993).

²³ [US EPA ECRCO. “Letter to Michigan Department of Environmental Quality \(‘MDEQ’\)”. 19 Jan. 2017](#)

That same month, EPA stated that “ECRCO has deep concern about the possibility that African Americans, Latinos, and Native Americans have been subjected to discrimination as a result of [North Carolina Department of Environmental Quality]’s operation of the Swine Waste General Permit program, including the 2014 renewal of the Swine Waste General Permit.”²⁴

Despite these recent instances of action by the Agency, as of 2015, EPA’s ECRCO had denied 95 percent of all complaints alleging racial discrimination. Such failure by the ECRCO to meet its civil-rights obligations resulted in a 2016 report by the U.S. Commission on Civil Rights criticizing the office for its lack of compliance with both the Civil Rights Act of 1964 and an executive order requiring agencies to consider environmental justice when creating rules.²⁵ It found that “[r]acial minorities and low income communities are disproportionately affected by the siting of waste disposal facilities and often lack political and financial clout to properly bargain with polluters when fighting a decision or seeking redress.”

IV. Concluding Observations offered by the Human Rights Committee

None to date.

V. U.S. Government Report

None to date.

VI. Legal Framework

ICCPR Article 2.1; Article 6.1; Article 26

VII. Human Rights Committee General Comments

“Non-discrimination and equality are fundamental human rights principles and critical components of the right to water. Discrimination in relation to access to safe drinking water and sanitation can be rooted in discriminatory laws, policies or measures; exclusionary policy development; discriminatory water-management policies; denial of tenure security; limited participation in decision-making; or lack of protection against discriminatory practices by private actors.”²⁶

“The obligation on States to protect human rights includes ensuring that non-State actors do not infringe upon the right to water.”²⁷

²⁴ US EPA ECRCO. “Letter to North Carolina Department of Environmental Quality (‘MDEQ’)”. 12 Jan. 2017.

²⁵ U.S. Commission on Civil Rights. “Environmental Justice: Examining the Environmental Protection Agency’s Compliance and Enforcement of Title VI and Executive Order 12898.” Sept. 2016. Available at https://www.usccr.gov/pubs/2016/Statutory_Enforcement_Report2016.pdf

²⁶ UN Right to Water Fact Sheet No. 35.

²⁷ *Id.*

“The private sector, notably large-scale agricultural producers and industry, is also an important user of water. Irrigation remains the largest user of water but projections indicate that industry will account for most of the increase in water use to 2025. In such a context, there are risks that the interests of the poor might be pushed aside by large agricultural producers and industry, two constituencies with a strong political voice. While business can contribute positively to the enjoyment of human rights, the opposite is also true, for instance through pollution, over-extraction or encroachment upon water resources that communities rely upon for drinking.”²⁸

VIII. Other UN Body Recommendations

“To eliminate discrimination in practice, special attention must be paid, and priority must be given, to groups of individuals who suffer historical or persistent prejudice, instead of merely comparing the formal treatment of individuals in similar situations.”²⁹

“[T]he independent expert notes that there is a lack of data regarding who does and who does not have access to water and sanitation. Availability of accurate and disaggregated data is fundamental in the design of appropriate and efficient policies and programmes to address the many outstanding challenges related to water and sanitation.”³⁰

IX. Recommended Questions

Please provide information on the legislative, administrative, and other measures being taken to address the deficiencies in current state and federal initiatives related to non-discrimination in industrial siting permitting.

Please describe the education, legislative, policy and other measures taken by the United States to ensure that state and local agencies and officials have the capacity to respect and implement the United States’ commitments under the ICCPR. Specifically describe how the federal government effectively communicates these standards and recommendations to state and local agencies and officials to foster greater awareness of and compliance with human rights standards.

X. Suggested Recommendations

- Given the propensity for harm to local aquifers and water sources, the U.S. should restrict the permitting of new industrial sources of water and air pollution where waterways are impaired or air quality is in non-attainment of federal standards.
- Establishment of significant setback provisions for industrial facilities preventing the construction of such facilities within several thousand meters of residential buildings.
- Establishment of a nationwide ban on concentrated animal feeding operations.

²⁸ *Id.*

²⁹ United Nations. “[Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to the United States of America](#) (22 February-4 March 2011)”. Section 5: Non-discrimination and equality at 17-18.

³⁰ *Ibid.*

- More thorough oversight by the EPA's ECRCO on state siting policies that impact minority communities; this will likely only be achieved through Congressional budgeting to provide this division with more resources.
- Congress should establish a private right of action under the Title VI of the Civil Rights Act of 1964 to enable communities harmed by disproportionate impacts to use legal action to address racial discrimination when it comes to siting or permitting polluting, hazardous facilities.
- The U.S. should halt fossil fuel infrastructure expansion and transition to 100 percent renewable energy sources by 2035.

I. Issue 3: Discrimination Against Native American Communities

II. Reporting Organizations: Food & Water Watch; Environmental Justice Coalition for Water; In the Public Interest

III. Issue Summary

Thirteen percent of Native tribal members lack safe drinking water or sewer access. Nearly 30 percent of Native Americans and Alaska Natives lived in poverty in 2014 – approximately double the nation’s overall poverty rate. And about 7.5 percent of Native American and Alaska Native homes did not have safe drinking water or basic sanitation as of 2013.

Tribes have spent years lobbying the government for adequate funds to improve impoverished living conditions and to recover from crises such as exposure to water poisoned by uranium and arsenic, but they often have difficulty competing for aid compared with places like Flint, Michigan, which has received extensive media coverage and subsequent aid to solve its lead crisis.

The majority of America’s uranium mines opened during the early 20th century were dug on tribal land in the Southwest, with more than 500 abandoned uranium mines in the Navajo Nation alone, and the resulting water and soil contamination from those mines is so pervasive it’s believed to have contributed to the rise of a unique radiation-related disease among nearby residents called Navajo neuropathy. The disease causes symptoms such as muscle weakness, liver problems, birth defects and can be fatal. An analysis of water supplies in the Navajo Nation found disproportionately high levels of arsenic and uranium: 15 percent of unregulated water supplies had high levels of arsenic, and more than 12 percent had high levels of uranium.³¹

Overall, tribal public water systems are twice as likely to violate health-based water quality regulations as non-tribal systems. Nearly one in eight tribal public water systems violated a health standard in 2013.³²

IV. Concluding Observations offered by the Human Rights Committee

None to date.

V. U.S. Government Report

The Obama Administration responded to questions concerning discrimination in water access against Native Americans during the U.S.’s 2012 “Consideration of reports submitted by States parties under article 40 of the Covenant: Fourth Periodic Report.” However, administrations have changed since the filing of this report and non-governmental organizations throughout the U.S. question the current administration’s adherence to policies which would ameliorate historic discrimination.

³¹ Food & Water Watch. “Water Injustice: Economic and Racial Disparities in Access to Safe and Clean Water in the United States”. March 2017. Available at https://www.foodandwaterwatch.org/sites/default/files/ib_1703_water-injustice-web.pdf

³² *Id.*

VI. Legal Framework

ICCPR Article 2.1; Article 6.1; Article 26

VII. Human Rights Committee General Comments

“States have an obligation to prohibit and eliminate discrimination on all grounds, and ensure equality, in law and in practice, in relation to access to safe drinking water and sanitation.”³³

“Mining activities are reportedly leading to contamination and depletion of surrounding groundwater and surface-water resources, not only affecting access to clean drinking water, but also threatening the wildlife and plants used as traditional food sources and vital to traditional cultural practices. Additionally, the absence of accountability for pollution and clean-up harms use by future generations.”³⁴

VIII. Other UN Body Recommendations

“Enact the necessary legal action to change the status of unrecognized and terminated tribes to enable them to realize their rights to water and sanitation, as well as express religious and cultural rights;”³⁵

“Ensure adequate consultation and prior and informed consent of indigenous communities regarding activities affecting their access to water;”³⁶

According to international standards, tribal existence and identity do not depend on federal recognition or acknowledgment of the tribe. “I call for legal action to change the status of unrecognized and terminated tribes to enable all American Indians to gain the respect, privileges, religious freedom, and land and water rights to which they are entitled,” [UN independent expert Catarina de Albuquerque] stressed.³⁷

IX. Recommended Questions

Apart from the Drinking Water Infrastructure Grants Tribal Set-Aside, what are the federal and state governments doing to ensure affordable access to clean water for tribal members?

³³ UN Right to Water Fact Sheet No. 35

³⁴ *Id.*

³⁵ United Nations. “[Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to the United States of America](#) (22 February-4 March 2011)”. Section 6: Conclusions and recommendations, at 19-21.

³⁶ *Id.*

³⁷ UN Human Rights, Office of the High Commissioner. “USA: from discrimination to accessibility, UN expert raises questions on water and sanitation.” Available at <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10808&LangID=E>

What efforts are being made on a state and federal level to ensure that headwaters that flow into tribal lands are protected from contamination upstream?

How are water regulators in the arid western U.S. managing withdrawals upstream, particularly by energy operations and livestock growers, to ensure that water resources are protected for downstream nations?

X. Suggested Recommendations

- State and federal departments of environmental protection must ensure that industrial facilities siting is limited upstream of tribal waters and existing facilities are tightly restricted as to the content of their discharges.
- A special task force of state and federal actors should be developed to bring water accessibility to tribal members with a sense of urgency.

- I. **Issue 4: Failure to Modernize Water Infrastructure**
- II. **Reporting Organizations:** Food & Water Watch; Alabama Center for Rural Enterprise; Environmental Justice Coalition for Water; In the Public Interest
- III. **Issue Summary**

With the looming global threat of climate change, water systems in every U.S. state need to be modernized for a world of more powerful droughts, fiercer floods, and rising seas. Doing so will cost trillions of dollars, according to industry estimates, at a time where federal funding for water and sewer systems has fallen by 74 percent in real dollars since its peak in 1977.³⁸ Yet despite the widespread societal benefits of such investment, the U.S. Government has been slow to act – leaving the effects of climate change to fall principally upon low-income communities.

“Where water infrastructure is crumbling are the places without the ability to absorb the cost increases,” Stephen Gasteyer, a Michigan State University sociologist who studies water access, stated. “The people who were left in these cities are predominantly minorities. Where you see things falling apart are predominantly minority communities.”³⁹

While income for the top 5 percent of American households rose 60 percent between 1980 and 2014, income for the poorest 10 percent in the same period fell, according to the Center on Budget and Policy Priorities and the U.S. Census Bureau. An average water bill in some California cities represents 17 percent or more of household income for the poorest 10 percent.⁴⁰

While drinking water infrastructure is funded primarily through a rate-based system, the investment has been inadequate for decades and will continue to be underfunded without significant changes as the revenue generated will fall short as needs grow – especially in light of the U.S.’s 2017 tax cut legislation.⁴¹ According to the American Water Works Association, upgrading existing water systems and meeting the drinking water infrastructure needs of a growing population will require at least \$1 trillion.⁴²

Many small rural water systems have persistent water quality problems.⁴³ Small community water systems are more likely to violate federal water quality standards, and they are associated with more disease

³⁸ U.S. Congressional Budget Office. “Public Spending on Transportation and Water Infrastructure, (Pub. No. 49910)”. March 2015 at Supplemental Table W-8; Food & Water Watch. “U.S. Water Systems Need Sustainable Funding: The Case for the Water Affordability, Transparency, Equity and Reliability Act.” May 2016 at 1.

³⁹ Walton, Brett. “Water Affordability is a New Civil Rights Movement in the United States.” Circle of Blue. 22 March 2016. Available at <https://www.circleofblue.org/2016/water-policy-politics/water-rights-access/water-affordability-new-civil-rights-movement-united-states/>

⁴⁰ *Id.*

⁴¹ Klein, Aaron. Brookings Institution. “How the new tax bill will cut infrastructure investment.” 26 Dec. 2017. Available at <https://www.brookings.edu/blog/up-front/2017/12/26/how-the-new-tax-bill-will-cut-infrastructure-investment/>

⁴² American Water Works Association. “State of the Water Industry”. March 2016.

⁴³ Jepson, Wendy and Emily Vandewalle. “Household water insecurity in the Global North: A study of rural and periurban settlements on the Texas-Mexico border.” *The Professional Geographer*, 2015 at 1.

outbreaks. Many of the systems serve economically disadvantaged communities.⁴⁴ Many household septic systems are failing, which can contaminate water supplies and endanger human health.⁴⁵ In Alabama, failing septic systems have been associated with bacterial contamination of groundwater supplies.⁴⁶

Additionally, the U.S. Environmental Protection Agency requires public utilities to investment significant capital in order to prevent heavy rains from overwhelming sewer systems that also transport stormwater. This has placed responsibility for cleaning up farm pollution on cash-strapped municipalities, otherwise such waste is left to degrade downstream waterbodies without adequate treatment.⁴⁷

The U.S. can solve its water problem by building adequate updated equipment, but only with sufficient government investment and a taxation system that does not overburden the indigent. Forcing cities to shoulder all the costs is a subsidy to the industrial and agricultural polluters.

IV. Concluding Observations offered by the Human Rights Committee

None to date.

V. U.S. Government Report

None to date, though the U.S. Environmental Protection Agency has issues domestic reports:

- Environmental Protection Agency, *Drinking Water Infrastructure Needs Assessment, Fifth Report to Congress (2011)*, April 2013.
- Environmental Protection Agency, *Drinking Water Action Plan*, US EPA, November 2016.

VI. Legal Framework

ICCPR Article 2.1; Article 6.1; Article 26

VII. Human Rights Committee General Comments

“Overall, poorer households should not be disproportionately burdened with water and sanitation expenses.”⁴⁸

⁴⁴ Jessica C. Wedgeworth et al. “Associations between perceptions of drinking water service delivery and measured drinking water quality in rural Alabama”. *International Journal of Environmental Research and Public Health*, July 2014 at 7377 and 7378.

⁴⁵ Mohamed, R. “Why households in the United States do not maintain their septic systems and why state-led regulations are necessary: explanations from public goods theory.” *International Journal of Sustainable Development Planning*. Vol. 4, No. 2. 2009 at 41.

⁴⁶ Wedgeworth, Jessica C. and Joe Brown. “Limited access to safe drinking water and sanitation in Alabama’s Black Belt: A cross-sectional case study.” *Water Quality, Exposure and Health*, Vol. 5, Iss. 2. June 2013 at 70.

⁴⁷ Walton, Brett, “Water Affordability is a New Civil Rights Movement in the United States”. *Circle of Blue*. 22 March 2016.

⁴⁸ UN Right to Water Fact Sheet No. 35.

VIII. Other UN Body Recommendations

“Aging and deteriorating water and sanitation infrastructure forces the question of whether 19th and 20th century technology – appropriate at the time – will carry the country into the 21st century. Estimates indicate an annual \$4 billion to \$6 billion funding gap for infrastructure in the sector. The United States needs to develop a national water policy and plan of action guided by the normative content of the rights to water and sanitation.”⁴⁹

“Formulate a national water and sanitation policy and plan of action, guided by the normative content of the rights to water and sanitation, that 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.”⁵⁰

“More concerted efforts are required to ensure targeting of policies and programmes to reach the hidden and poorest segments of the population. Problems 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. Ensuring the rights to water and sanitation for all requires a paradigm shift towards new designs and approaches that promote human rights, that are affordable and that create more value in terms of public health improvements, community development, and global ecosystem protection.”⁵¹

“The US must ensure that water and sanitation are available at a price people can afford,” UN independent expert Catarina de Albuquerque said. “Ensuring the right to water and sanitation for all requires a paradigm shift – new designs and approaches that promote human rights, that are affordable and that create more value in terms of public health, community development, and global ecosystem protection.”⁵²

IX. Recommended Questions

How does the U.S. intend to raise the significant amount of capital necessary for rebuilding America’s vital water infrastructure while making public funding more difficult and reducing federal tax revenue?

How does the U.S. EPA intend to regulate agricultural pollution, particularly that of concentrated animal feeding operations, so as to remove processing burdens from indigent and rural municipalities?

X. Suggested Recommendations

⁴⁹ United Nations. “[Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to the United States of America](#) (22 February–4 March 2011).” Section 6: Conclusions and recommendations, at 19-21.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² UN Human Rights, Office of the High Commissioner. “USA: from discrimination to accessibility, UN expert raises questions on water and sanitation.”

- U.S. should plan ahead and create a dedicated source of public funding that will help public utilities protect the country's valuable water resources. A national water trust fund can achieve this feat and ensure the safe and sound operation of our water and sewer systems. With a renewed federal commitment, the U.S.'s public operators can keep our water safe, clean, and affordable.
- The United States should pass the Water Accountability, Transparency, Equity and Reliability Act to create a trust fund to dedicate \$35 billion a year for drinking water and wastewater infrastructure to repair aging systems, stop sewage backups and overflows, remove lead pipes, improve school drinking water, help households address contaminated wells and outdated septic systems, and prevent water shutoffs because of unaffordable water bills.
- Increase state and federal support for vocational training in the drinking water sector as engineers, operators, and maintenance staff begin to retire in large numbers.

I. Issue 5: Water contamination by hydraulic fracturing threatens vulnerable communities

II. Reporting Organizations: Food & Water Watch; Environmental Justice Coalition for Water; In the Public Interest

III. Issue Summary

According to 2005 estimates of U.S. water use, of the 1,552 billion liters of water withdrawn throughout the U.S. each day, thermoelectric power constitutes 49 percent of its usage, while domestic water use was under one percent of the total. Besides the sheer total volume of water used by fossil fuel power generation, a prioritization of hydraulic fracturing for oil and natural gas in the U.S. severely threatens access to clean water for domestic use, particularly for those on rural well-systems. While the U.N. recognizes access to clean drinking water as a fundamental human right, enshrined before its use by agriculture and industry, the U.S. federal government and its states have prioritized water use for oil and gas drilling and livestock, resulting in contaminated waterways and groundwaters.

Many of the largest corporations within the hydraulic fracturing industry have lost value in their assets, including BP, Encana, and Chesapeake. The Marcellus shale gas reserve estimates are down by 80 percent. The recovery efficiency for the five major U.S. shale gas companies averages 6.5 percent compared with 75–80 percent for conventional gas fields. The biggest companies, e.g. Exxon-Mobil, are now selling their assets.⁵³ Many economists are speculating a bust in the natural gas market due to artificially inflated company values.

Meanwhile, loosely regulated hydraulic fracturing continues unabated and with extreme collateral damage in the form of air pollution, groundwater depletion, and potential aquifer ruination. The threat to U.S. water supplies, particularly in low-income and rural areas, is immense and will only continue to rise as more and more wells are drilled. Deborah Rogers, expert in the economics of shale gas and a former advisor to the Obama administration, states that “[n]one of these impacts are at present covered financially by the gas companies – in other words, profits are to be privatized while costs and negative impacts will be borne by the people.”⁵⁴

IV. Concluding Observations offered by the Human Rights Committee

None to date.

V. U.S. Government Report

The Obama administration responded to concerns surrounding the impacts of the 2010 BP Deepwater Horizon oil spill and their impact on minority populations within the U.S.’s 2012 “Consideration of reports submitted by States parties under article 40 of the Covenant: Fourth Periodic Report.” However, since this report was filed, the Trump administration has attempted to repeal or replace a number of oil

⁵³ Rogers, Deboarah. “The economics of fracking”. Good Energies Alliance Ireland, 27 Oct. 2013. Available at <https://goodenergiesalliance.com/2013/10/27/the-economics-of-fracking/>

⁵⁴ *Id.*

and gas safety and environmental regulations, including a proposed rule that would exempt large volumes of wetlands from Clean Water Act protection. Moreover, the rates of environmental crime prosecution by the U.S. EPA has experienced a precipitous decline over the last two years under the leadership of two agency administrators with strong professional ties to the oil and gas industry.

VI. Legal Framework

ICCPR Article 2.1; Article 6.1; Article 26

VII. Human Rights Committee General Comments

“Water for personal and domestic uses must be safe and acceptable. In accordance with general comment No. 15, it must be free from microbes and parasites, chemical substances and radiological hazards that constitute a threat to a person’s health. Water must also be of an acceptable colour, odour and taste to ensure that individuals will not resort to polluted alternatives that may look more attractive. These requirements apply to all sources of water provision, including piped water, tankers, vendor-provided water and protected wells.”⁵⁵

“The right to water covers only personal and domestic uses, i.e., water for drinking, washing clothes, food preparation and personal and household hygiene. It does not cover water for agriculture or pastoralism or to sustain ecological systems.”⁵⁶

VIII. Other UN Body Recommendations

“While water for the realisation of the human right, represents a small percentage of total water use in the United States, the absence of clear legal standards to give priority to water for personal and domestic use threatens to undermine the realization of the human rights to water and sanitation for all.”⁵⁷

“Exemptions under the Safe Drinking Water Act, including for the oil and gas industry, must be re-assessed and repealed if resulting in a negative impact on the enjoyment of the right to water.”⁵⁸

IX. Recommended Questions

What safeguards exist under federal law to prevent watershed contamination by hydraulic fracturing fluids?

How do federal and state regulators track incidents of water contamination by the natural gas industry?

⁵⁵ UN Right to Water Fact Sheet No. 35.

⁵⁶ *Id.*

⁵⁷ United Nations. “[Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to the United States of America](#) (22 February-4 March 2011).” Section 3, at 16-17.

⁵⁸ *Id.* at Section 6, pp. 19-21.

How do U.S. regulators intend to address surface and groundwater contamination by the oil and gas industry?

With well recovery rates and natural gas prices so low, how do U.S. regulators intend to hold shale gas companies financially responsible for watershed contamination?

X. Suggested Recommendations

- Given the propensity for harm to local aquifers and water sources, an outright ban on hydraulic fracturing across the United States is recommended.
- Establishment of significant setback provisions for oil and gas facilities, preventing the construction of such facilities within several thousand meters of residential settings.
- A federal fee levied against oil and gas drillers employing hydraulic fracturing to be deposited into a national clean water fund, used in the event of catastrophic water contamination.
- Exemptions under the Safe Drinking Water Act, Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act, and the National Environmental Policy Act for the oil and gas industry must be repealed due to the negative impact on the enjoyment of the right to water.