**US Human Rights Network (USHRN) Responses to Questionnaire of the UN Special Rapporteur on the human rights to safe drinking water and sanitation on**

[**Service regulation and human rights to water and sanitation**](http://http/www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/ServiceRegulation.aspx)

**1. Please describe the role and responsibilities of your organization in the water and sanitation sector.**

The US Human Rights Network (USHRN) is a national network of organizations and individuals working to build and strengthen a people-centered human rights movement in the United States, where leadership is centered on those most directly affected by human rights violations, and the full range of diversity within communities is respected and embraced.

USHRN convenes a [National Coalition on the Human Rights to Water and Sanitation](http://www.ushrnetwork.org/our-work/project/waterisahumanright-human-rights-water-sanitation), comprised of over 160 groups and individuals working on the human rights to water and sanitation throughout the United States.

**2. How can a regulatory framework (e.g., legislative, institutional, policy) and bodies contribute to the realisation of the human rights to water and sanitation? Please provide examples.**

In order to achieve basic human rights standards, the U.S. federal government must prioritize the human rights to water and sanitation and assume a leadership role in taking concrete measures to ensure universal, equal access to safe, clean, affordable, and adequate water and sanitation in the U.S.

Some examples include:

Local governments can adopt percentage-of-income billing for low-income households

States can adopt regulations prohibiting water shutoffs to vulnerable populations: the elderly, folks with disabilities and serious medical conditions, children and pregnant women

The Federal government can provide dedicated funding as grants and other assistance targeted at water systems serving disadvantaged communities and low-income households.

**3. Are the contents and principles of the human rights to water and sanitation generally reflected in regulatory frameworks? How do you assess your country’s regulatory framework in this regard? Please provide examples of other countries if available.**

The United States Constitution does not recognize the human rights to water and sanitation, and these rights have yet to be recognized at a national level in any other regulatory framework. However, three out of fifty U.S. states: the states of California,[[1]](#footnote-1) Massachusetts,[[2]](#footnote-2) and Pennsylvania[[3]](#footnote-3) have recognized the human right to water under state law. The United States has also not ratified most of the international treaties that recognize these rights, such as the ICESCR, the San Salvador Protocol, or the American Convention on Human Rights. However, during the second UN Universal Periodic Review, the U.S. supported in part several recommendations that encouraged it to implement the human rights to water and sanitation.[[4]](#footnote-4)

The contents and principles of the human rights to water and sanitation are not generally reflected in the regulatory frameworks of the United States. The main federal regulations regarding water and sanitation are:

1. Safe Water Drinking Act: In the United States, the Safe Water Drinking Act (SWDA) was passed in 1974 to regulate the safety of drinking water.[[5]](#footnote-5) Under the SWDA, the Environmental Protection Agency is authorized to regulate standards for drinking water to protect the public from contaminants found in water.[[6]](#footnote-6)
2. Clean Water Act (CWA) was passed in 1972 and remains the primary source of water regulation for pollutants in the U.S. Through the CWA, a minimum set of standards are established while states are expected to adopt equal or higher standards.[[7]](#footnote-7)

Neither the SDWA nor the CWA state that their is a human right to water or sanitation in the U.S. Also, Neither the SDWA nor the CWA state that access to water should be guaranteed. Further, industries like oil and gas are exempt from the SDWA, while pollutants are not adequately regulated under the CWA. Currently, pollutants in the form of uranium mining, oil refining, and hydraulic fracturing (fracking) are not adequately regulated by the CWA.[[8]](#footnote-8)

**4. Please provide examples of situations where the lack of regulation, or inadequate regulation, in the water and sanitation sector could potentially lead to, or has actually led to, violations of the human rights to water and sanitation.**

There are numerous situations where lack of regulation has lead to violations of the human rights to water and sanitation in the United States, and disproportionately so for low-income, Indigenous, and communities of color. Examples of types of violations include:

* Water shutoffs across the country for unaffordable water bills
* Contamination of local water supplies
* Pipelines on indigenous land
* Rural areas without wastewater treatment
* Water privatization leading to rate hikes and potentially increased shutoffs (but private companies refuse to disclose shutoff numbers, so we don’t know if this is happening)

Below are a few State specific noteworthy examples:

**New Mexico**: In the Navajo Chapter of Churchrock, located in northwestern New Mexico, Federal and state regulators issued permits for a uranium mine to develop uranium in an underground source of drinking water. Federal regulatory agencies concede that if uranium mining occurs, the underground source of drinking water will be irrevocably contaminated. Although mining has not yet occurred, the threat is ever present because regulatory agencies have determined that mineral extraction should take precedence over every other use, including drinking water.[[9]](#footnote-9)

**Louisiana**: The United States government and its political subdivisions have authorized fourteen industrial facilities to manufacture, process, store, and discharge toxic and hazardous substances in close geographic proximity to Mossville, Louisiana residents.[[10]](#footnote-10) Each of the facilities in the Mossville area has received from governmental agencies the requisite permits to pollute the air, water, and land. Scientific evidence from several sources, including governmental agencies, shows that there are serious and disproportionate levels of chemicals in the blood of Mossville residents, as well as high levels of respiratory and other illnesses connected with the released chemicals. Despite this evidence, there continues to be exposure to chemicals and no remedy has been provided for the public health crisis in Mossville. Thus, in this situation inadequate regulation has exposed Mossville residents, the majority of which are African-Americans, to a disproportionate pollution burden, resulting in what they refer to as environmental racism.

In these cases of contamination, such as in New Mexico and Louisiana, some of the problems with the regulations in place is that they: (1) presume that human health and the environment are protected by requiring polluting companies to employ specific devices and equipment that are already in use by other polluting companies in the same industrial sector; (2) establishes air quality standards based on large geographic regions that obscure the harmful air pollution occurring in smaller areas where industrial facilities are concentrated; (3) sets emission controls for only a fraction of toxic chemicals released by permitted industrial facilities; and (4) relies on industrial facilities to monitor their impacts on the environment.

**North Dakota**: The Dakota Access Pipeline crossing project approval may lead to vast and dire consequences from potential leaks at the proposed Lake Oahe crossing’ violating the Standing Rock Sioux Tribe’s treaty rights and the human right to clean water.[[11]](#footnote-11) Further, as expressed by the UN Special Rapporteur on the Rights of Indigenous Peoples after her recent visit to the U.S.: “The legislative regime regulating consultation, while well intentioned, has failed to ensure effective and informed consultations with tribal governments. The breakdown of communication and lack of good faith in the review of federal projects leaves tribal governments unable to participate in dialogue with the United States on projects affecting their lands, territories, and resources.”[[12]](#footnote-12)

**Michigan:**

Violations of the human right to water in the city of Detroit, Michigan—where 41% of residents of live below the poverty level— disproportionately affect African-Americans. Indeed, African-Americans are 80% of the city’s population, but represent 99% of the poor.[[13]](#footnote-13) Exacerbating the dire conditions of this impoverished community, in 2014 Detroit’s utility company shut off service to 33,000 accounts and since then shut-offs have continued. Disconnections are done without taking proper measures for protecting the public health and safety of vulnerable household members.

In Flint, Michigan, a city that is more than 50 percent black, and 40 percent of the residents are living below the poverty line, over 99,000 people, including over 17,000 children, have been impacted by lead poisoning after the emergency manager appointed by Gov. Snyder switched the water source from Detroit to the notoriously polluted Flint River in April of 2014 under the guise of saving the city money.[[14]](#footnote-14) The State did not recognize there was water contamination until October of 2015, despite pleas and organizing on the part of Flint residents. During that time and through the present, Flint residents were paying expensive water bills with the threat of water shutoffs if bills were unpaid.

**5. What are the main challenges or obstacles encountered when trying to incorporate contents and principles of the human rights to water and sanitation into regulatory frameworks?**

Some of the main challenges in trying to incorporate the contents and principles of the human rights to water and sanitation into regulatory frameworks is a lack of political will, as well as corporate influences over elected officials.

Another main challenge has been resources to provide trainings and information session for communities on their rights and ability to engage in advancing human rights standards. Many Americans understand human rights violations as terminology for egregious acts that occur outside of US boundaries. The work of USHRN has been to attempt a level of education and empowerment to ensure human rights are respected, protected, and upheld for people everywhere, including in the US.

**6. Please provide specific examples of good practices where a human rights-compliant regulatory framework has led to the progressive realisation of the human rights to water and sanitation.**

There are some promising examples of good practices.

**California:** With passage of AB 685, California took a critical first step toward achieving full realization of the human right to water by recognizing the right under state law and directing relevant state agencies to consider this recognition in carrying out their functions.[[15]](#footnote-15)

A small number of U.S. jurisdictions have begun developing local water affordability measures that carry some promise for better practices on this issue. Specifically, in December 2015, the City of Philadelphia, Pennsylvania took an important step to address water affordability, adopting an ordinance, which requires the Philadelphia Water Department (PWD) to create an Income-Based Water Rate Affordability Program (IWRAP) that restructures residential water billing to better account for income inequality. Much about this ordinance is very encouraging. If properly implemented, it will result in greater realization of Philadelphians’ rights to water and sanitation.[[16]](#footnote-16)

**Massachusetts:**  State law in Massachusetts prevents private utilities from conducting water shutoffs undercertain circumstances, and the public utility Boston Water and Sewer Commission (BWSC) has adopted a “right of service” policy that mirrors these regulations. Under the state law, private utilities cannot shut off water service to low-income households that can demonstrate financial hardship where either an infant under the age of 12 months resides, or when someone in a household is seriously or chronically ill. 53 Private utilities also cannot shut off water service to a household where all members are over the age of 65 without written permission from the state’s Department of Public Utilities.[[17]](#footnote-17)

**Sovereign Navajo Territory & Colorado:** In recognition of the enduring harms caused by uranium mining in the southwest U.S., local government entities have begun to adopt laws to prevent further contamination. In 2005, the indigenous government of the Navajo Nation passed the Dine Natural Resources Protection Act, which bans any new uranium mining within Navajo Indian Country until existing contamination is remediated. Similarly, the state of Colorado has passed legislation to regulate a new form of uranium mining known as in situ leach mining, which involves the injection of chemicals into aquifers to leach uranium out of the bedrock into the water, from which it is removed and processed. The law provides that before Colorado administrative agencies can approve a permit for uranium ISL operations, the operator must provide 5 examples of instances where it has restored a mine aquifer to pre-mining quality. [[18]](#footnote-18)

**New York City:** In New York City water shut-off protections have been instituted for vulnerable populations. The Home Water Assistance Program, instituted in 2014, protects tens of thousands of low-income, senior, or disabled New Yorkers and saves most participants 25 percent on their annual water bills.[[19]](#footnote-19)

**7. Non-State actors have the responsibility to respect the human rights to water and sanitation and to exercise human rights due diligence in their operations. How should a regulatory framework reflect this responsibility? Please provide examples.**

With respect to contamination of drinking water, the U.S. has failed to take a strong protective regulatory stance and often prioritizes mining and other commercial interests over the protection of drinking water sources and public health. This gap can only be resolved with clear and decisive federal U.S. government leadership to ensure that the regulatory and policy-making process prioritizes safe drinking water over commercial interests.[[20]](#footnote-20)

More generally a regulatory framework should ensure the duty of non-state actors to protect the human rights to water and sanitation, by: 1) Respect indigenous rights and sovereignty; 2) Banning water privatization; and 3) Banning hydraulic fracturing (“fracking”).

A regulatory framework must establish transparent, accountable, and impartial grievance mechanisms to address community human rights concerns.[[21]](#footnote-21)

**8. Which model of regulatory mechanism would facilitate stronger compliance human rights standards by service providers? Why? What are advantages and disadvantage of an independent and autonomous regulatory body?**

The US Environmental Protection Agency (EPA) should conduct proper monitoring of injection wells to ensure that contamination does not travel beyond the aquifer exemption boundaries. EPA’s current regulations governing aquifer exemptions do not require ongoing monitoring for Class II injection wells. This lack of mandatory monitoring makes it difficult to spot migration of contaminants from exempt to non-exempt wells that may be sources of drinking water. [[22]](#footnote-22)

EPA should reassess outdated and inaccurate assumptions about the value of groundwater. Existing EPA regulations do not require EPA to consider the economic or social value of groundwater. As a result, EPA often underestimates its value.[[23]](#footnote-23)

The U.S. government should reform its existing environmental regulatory system to:

a. Establish in all regulatory programs pollution limits that protect against the multiple, cumulative, and synergistic health impacts of numerous toxic and hazardous substances released into the air, water, and land by one or more industrial facilities;

 b. Require a safe distance between a residential population and a hazardous industrial facility so that the population is not located within the area where deaths or serious injury would result in the event that a toxic or flammable substance stored, processed, or generated by the facility would be released to the environment through explosion, fire, or spill; and

c. Remedy past practices and prevent future actions that intentionally or inadvertently impose racially disproportionate pollution burdens.

**9. What mechanisms should be in place to ensure that the voice of persons and communities in vulnerable situations is heard and their needs are taken into consideration in the regulation of water and sanitation services? Please provide positive and negative examples.**

The U.S. Environmental Protection Agency has a National Environmental Justice Advisory Council (NEJAC), a federal advisory committee, which includes membership by grassroots groups.[[24]](#footnote-24) The Council provides advice and recommendations about broad, crosscutting issues related to environmental justice, from all stakeholders involved in the environmental justice dialogue.[[25]](#footnote-25)

The U.S. should consider establishing a national human rights institution in accordance with the Paris Principles.” 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.

**10. What measures could be envisaged in a regulatory framework to promote transparency and tackle corruption in the water and sanitation sector?**

Consolidation of the otherwise fractured regulatory authorities at the State and Federal level and better communications between different entities within the same agencies working on these issues.

Subject all water and wastewater utility providers to state Freedom of Information Act (FOIA) laws (investor owned utilities are not subject to them)

Require collection and publication of data about access to water and sanitation and water service disconnections

1. AB 685, 2011-2012 Leg. Reg. Sess. (Cal. 2012) (codified at Cal. Water Code § 106.3 (West 2012)), <http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0651-0700/ab_685_bill_20120925_chaptered.pdf>. [↑](#footnote-ref-1)
2. See Constitution of the Commonwealth of Massachusetts, art. XCVII. [↑](#footnote-ref-2)
3. See Constitution of the Pennsylvania, Art. 1, sec. 27. [↑](#footnote-ref-3)
4. 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: USHRN Annotated Document with Insertion of Recommendation Language (2015), http://www.ushrnetwork.org/sites/ushrnetwork.org/files/usg\_2015\_upr\_responses\_with\_recommendaitons\_language\_inserted\_ushrn\_final\_0.pdf. [↑](#footnote-ref-4)
5. Safe Drinking Water Act, Title XIV of the Public Health Service Act, 42 U.S.C. 300f–300j–9, Public Law 93–523, et seq., www.epw.senate.gov/sdwa.pdf. [↑](#footnote-ref-5)
6. United States Environmental Protection Agency, *Understanding the Safe Drinking Water Act*, June 2004. https://www.epa.gov/sites/production/files/2015-04/documents/epa816f04030.pdf. [↑](#footnote-ref-6)
7. Clean Water Act, Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., www.epw.senate. gov/water.pdf. [↑](#footnote-ref-7)
8. Patricia A. Jones and Amber Moulton, *The Invisible Crisis: Water Unaffordability in the United States*, Unitarian Universalist Service Committee, May 2016. http://www.uusc.org/sites/default/files/the\_invisible\_crisis\_web.pdf. [↑](#footnote-ref-8)
9. National Coalition on the Human Rights to Water and Sanitation, IACHR Hearing Request, Jan. 20, 2016, [www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\_.scuihrc.humanrightstowaterandsanitation.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_.scuihrc.humanrightstowaterandsanitation.pdf) (p. 7). [↑](#footnote-ref-9)
10. *See,* Mossville Environemtnal Action Now, Petition to the INter-America Cmmission on HUman Rights, June 23, 2008, <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/mossvilleamendedpetition.pdf>. [↑](#footnote-ref-10)
11. NOI Comment from USHRN on the Dakota Access Pipeline Crossing, January 26, 2017,

http://www.ushrnetwork.org/sites/ushrnetwork.org/files/ushrn\_1.26.17\_letter\_re\_hr\_and\_dapl.pdf. [↑](#footnote-ref-11)
12. UN expert urges consistent policies for US on indigenous peoples’ rights for projects like Dakota Access Pipeline, Mar. 3, 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21290&LangID=E#sthash.UWBrN3Tv.dpuf. [↑](#footnote-ref-12)
13. Inter-American Commission for Human Rights Hearing Request, Barriers to Access to Safe and Affordable Water in the United States, January 28, 2015, http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\_.righttowater\_0\_0\_0.pdf. [↑](#footnote-ref-13)
14. Media Advisory, National Coalition on the Human Rights to Water and Sanitation: Water Crisis is A Human Rights Crisis,, Feb. 16, 2016, http://www.ushrnetwork.org/news-updates/media-advisory-flint-water-crisis-human-rights-crisis. [↑](#footnote-ref-14)
15. National Coalition on the Human Rights to Water and Sanitation, IACHR Hearing Request, Jan. 20, 2016, [www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn\_.scuihrc.humanrightstowaterandsanitation.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/unitedstates.ushrn_.scuihrc.humanrightstowaterandsanitation.pdf) (p. 11). [↑](#footnote-ref-15)
16. *Id* (p. 13-14). [↑](#footnote-ref-16)
17. *Id* (p. 15-16). [↑](#footnote-ref-17)
18. *Id* (p. 16). [↑](#footnote-ref-18)
19. NYC, Dep. of Environmental Protection, Home Water Assistance Program, www.nyc.gov/html/dep/html/customer\_assistance/home\_water\_assistance\_program.shtml. [↑](#footnote-ref-19)
20. *Id* (p. 9-10). [↑](#footnote-ref-20)
21. National Coalition on the Human Rights to Water and Sanitation, L[etter](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/ushrn_human_rights_to_water_and_sanitation_coalition_nap_submission_1_15_16.pdf) to President Obama re. U.S. National Action Plan on Responsible Business Conduct (NAP) Jan. 15, 2016, http://www.ushrnetwork.org/sites/ushrnetwork.org/files/ushrn\_human\_rights\_to\_water\_and\_sanitation\_coalition\_nap\_submission\_1\_15\_16.pdf. [↑](#footnote-ref-21)
22. UC Berkeley Environmental Law Clinic Memo, U.S. EPA’s Obligation and Authority to Ensure Access to Affordable Drinking Water under the Clean Water Act and Safe Drinking Water Act,Feb. 22, 2017, <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/ucb_elc_epa_advocacy_memo_feb_22_to_nchrtws.pdf> (p. 16). [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. United States Environmental Protection Agency, Nominations to the NEJAC, [www.epa.gov/environmentaljustice/nominations-nejac](http://www.epa.gov/environmentaljustice/nominations-nejac). [↑](#footnote-ref-24)
25. United States Environmental Protection Agency, National Justice Advisory Council, https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council. [↑](#footnote-ref-25)