

Mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on extreme poverty and human rights; and the Special Rapporteur on the human right to safe drinking water and sanitation

REFERENCE: AL
USA 2/2016:

5 April 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the human right to safe drinking water and sanitation; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context pursuant to Human Rights Council resolutions 26/3, 24/18 and 31/9.

In this connection, we would like to bring to the attention of your Excellency's Government additional information we have received concerning the **water crisis in Flint, Michigan**. We acknowledge that a number of Special Procedures mandate holders previously transmitted to your Excellency's Government a joint communication on 2 March 2016 (AL, USA 1/2016),¹ raising concerns about the water crisis in Flint and the broad pattern of environmental injustice against the poor and ethnic minorities. While the signatory mandate holders await a reply of your Excellency's Government to that communication, we wish to raise further concerns, based on additional information available to us, about the ways in which the crisis was handled by the concerned Government agencies, which appear to point to serious failures and shortcomings in safeguarding the human rights of Flint residents.

According to information received:

¹ The signatory Special Procedures mandate holders to that communication are: the Chair-Rapporteur of the Working Group of experts on people of African descent; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on the human right to safe drinking water and sanitation.

Background

In April 2014, the city of Flint, Michigan, switched to using water from the Flint River for its public water supply. For decades, Flint had bought water from the Detroit water system, which is drawn from Lake Huron. Because of the high costs involved in buying water from Detroit, Flint decided to join a new regional authority that would draw and treat its own water from Lake Huron at lower costs.² The new regional system would not be operational immediately, however, and after the 2013 decision to join the regional authority the Detroit water system increased its rates. To save costs, the decision was made to temporarily obtain water from the Flint River until the regional authority became operational.³

The decision to save costs on the public water supply needs to be put in the context of structural economic problems in the city of Flint. The auto company General Motors was founded in the city at the start of the 20th century and was once its largest employer. In the mid-1980s, however, General Motors started closing down plants, which caused rapidly rising unemployment. While General Motors employed roughly 80,000 people in Flint in the late 1970s, it only employed around 8,000 in 2006.⁴ In the following decades, many residents left the city in response to high unemployment and crime figures.

In 2014, unemployment was at 13.2%⁵ and in September 2015 Flint was the third-most violent city in the United States, according to the Federal Bureau of Investigation (FBI). While its population once reached almost 200,000, it had only 99,000 residents in 2014.⁶ Poverty rates have been rising steadily over the last decades. As indicated in the joint communication of 2 March 2016 by Special Procedures mandate holders, the 2014 community survey revealed that 41.5% of the population of Flint lived below the poverty line, compared to 16.8% in the state of Michigan as a whole.⁷ In 2014, 56.6% of the residents of Flint were Black or African-American, while 37.4% were white. In the whole of Michigan, 14.2% of the population is Black or African-American and 78.9% is white.⁸

With residents leaving the city and a large proportion of the remaining residents living in poverty, Flint's tax base has steadily shrunk, leading to structural budget problems. The high costs of the public water system and the lack of budget of the municipality of Flint translated in very high water and sewer rates for customers. Flint has one of the highest water and sewer rates in the United States, with

² The New York Times, 'Flint Officials Are No Longer Saying the Water is Fine', 7 October 2015.

³ The Guardian, 'Flint's water crisis: what went wrong', 16 January 2016.

⁴ <http://www.thenation.com/article/in-flint-michigan-overpriced-water-is-causing-peoples-skin-to-erupt-and-hair-to-fall-out/>

⁵ http://www.mlive.com/news/flint/index.ssf/2015/09/homicide_rate_spikes_as_flint.html

⁶ <http://quickfacts.census.gov/qfd/states/26/2629000.html>

⁷ Ibid.

⁸ Ibid.

average household charges of around USD 150 per month in 2014.⁹ In August 2011, the city increased its water and sewer rates by 35%.¹⁰ In August 2015, a judge issued an injunction to the city of Flint to reverse the 35% rate increase.¹¹ Despite the reversal, water rates remain very high and many residents could not and cannot afford to pay for services. The city sent out 1,800 shutoff notices in early November 2015¹² and 7,000 shutoff notices in December 2015 to residents who had not paid their bills.¹³

Other cities in the United States are facing similar situations of high water tariffs and large-scale water disconnections. Earlier, for instance, we raised concern with regard to large-scale water disconnections in the city of Detroit, Michigan, in joint urgent appeals dated 24 June 2014 and 6 January 2015 (UA USA 9/2014; UA USA 21/2014), to which your Excellency's Government replied on 17 October 2014 and 8 April 2015, respectively. We furthermore raised our concern in an allegation letter about large-scale water disconnections in the city of Baltimore, Maryland, dated 15 May 2015 (AL USA 11/2015).

It has been reported that high water prices and related disconnections are ultimately caused by a significant decline in federal funding for water and sewer systems since the late 1970s.¹⁴ It has been left to users to pay for the increasing investments necessary to maintain and renew an aging water system.¹⁵ Poorer cities and their poorer residents are disproportionately affected by the passing on of these costs from the federal to the local level.

In the last two decades, Flint has repeatedly been run by emergency financial managers appointed by the state of Michigan because of financial emergencies; granted significant powers to run the city. An emergency manager ran Flint from June 2002 until July 2004 and then again from late 2011 until April 2015. It was during that last period, in April 2014, when a state-appointed emergency manager ran Flint, that Flint switched to using water from the Flint River.

The water crisis in Flint: what happened

Soon after the switch in April 2014, residents of Flint started complaining about a strange smell and discoloration of their tap water and unexplained rashes and illnesses.¹⁶ But city officials claimed that the water throughout the city met the

⁹ <http://www.thenation.com/article/in-flint-michigan-overpriced-water-is-causing-peoples-skin-to-erupt-and-hair-to-fall-out/>; <http://www.freep.com/story/news/local/michigan/2016/01/11/should-flint-residents-pay-lead-poisoned-water/78643368/>

¹⁰ <http://nbc25news.com/news/local/city-of-flint-35-water-and-sewer-hike-to-go-into-effect-next-month?id=652229>

¹¹ http://www.mlive.com/news/flint/index.ssf/2015/08/flint_ordered_to_cut_water_rat.html

¹² http://www.mlive.com/news/flint/index.ssf/2015/11/flint_sending_out_first_discon.html

¹³ <http://michiganradio.org/post/judge-sides-city-flint-court-fight-over-water-rates#stream/0>

¹⁴ <http://www.thenation.com/article/in-flint-michigan-overpriced-water-is-causing-peoples-skin-to-erupt-and-hair-to-fall-out/>

¹⁵ Ibid.

¹⁶ <http://www.nytimes.com/2015/03/25/us/a-water-dilemma-in-michigan-cheaper-or-clearer.html>

required standards and was safe to drink.¹⁷ In August 2014, E.coli bacteria were found in water samples by city water officials and several times in August and September 2014 the city advised its residents to boil their water before drinking it.¹⁸ In early January 2015, residents of Flint received a notice from the city that the level of certain chemicals (TTHM), formed as a byproduct of measures taken to disinfect the water, were too high. The notice mentioned that the water was safe to drink, but warned that those with a severely compromised immune system, infants and elderly persons might be at increased risk and should seek advice from a health care provider before drinking the tap water.¹⁹

The deteriorating water quality in the city resulted in several violations of National Primary Drinking Water Regulations (NPDWR). At a press conference on 6 January 2015, the mayor of Flint nevertheless claimed: “The city water is safe to drink. My family and I drink it and use it every day.”²⁰ On 21 January 2015, the city organized a public forum with experts from the Michigan Department of Environmental Quality (“DEQ”) and the Environmental Protection Agency (“EPA”) to reassure citizens that the water was safe.²¹ An official of the Office of Drinking Water and Municipal Assistance (“ODWMA”), a division of DEQ, explained that the water was safe for “healthy people to drink for a short time”.²² Because of the TTHM in the water, the same officials explained the water was “possibly a danger for the very young, the very old, or the very sick if they ingest it long-term. But we’re talking decades.”²³ While state officials publicly claimed that the water was safe, the Michigan state Department of Technology, Management and Budget, in an internal email, told its employees that it would start installing water coolers in state building for its employees in response to NPDWR violations in Flint.²⁴

In 2014, early signs appeared of yet another problem with the water. In October 2014, for example, General Motors announced it would stop using water from the Flint River for one of its plants in Flint because of fear that the chloride levels in the water caused corrosion of the metal used in the factory. A local hospital, McLaren Flint, replaced its water filters in 2014 after hospital staff in charge of cleaning surgical instruments reported corrosion of the instruments.²⁵ In early February of 2015, the University of Michigan-Flint announced that it had found elevated lead concentration in water tests it had undertaken on its campus in

¹⁷ http://www.mlive.com/news/flint/index.ssf/2014/07/flint_starting_to_flush_out_di.html

¹⁸ http://www.mlive.com/news/flint/index.ssf/2014/09/flint_expands_boil_water.html#incart_m-rpt-2

¹⁹ http://www.mlive.com/news/flint/index.ssf/2015/01/flint_water_has_high_disinfect.html

²⁰ <http://michiganradio.org/post/flint-officials-say-city-water-safe-drink-some-residents-are-skeptical#stream/0>

²¹ <http://www.freep.com/story/news/local/michigan/2015/01/22/water-woes-latest-hit-flint/22193291/>

²² Ibid.

²³ Ibid.

²⁴ <http://www.nytimes.com/2016/01/30/us/flint-michigan-purified-water.html?action=click&contentCollection=U.S.&module=RelatedCoverage®ion=Marginalia&pgtype=article>

²⁵ The New York Times, ‘Anger and Scrutiny Grow Over Poisoned Water in Michigan City’, 15 January 2016.

response to city-wide concern over water quality in Flint.²⁶ Occupants of one of the buildings with elevated lead concentrations were cautioned to “only use the water for cleaning purposes and not for consumption”. The University immediately took action by replacing fixtures, valves and piping and by installing water filtration units, in addition to regular testing of the water.²⁷

Local and state officials nevertheless continued to reassure residents about meeting water quality standards. At a press conference on 3 February 2015, the director of DEQ said “Flint's drinking water is meeting” standards for safe water.²⁸ Also on 3 February 2015, Flint’s emergency manager said that city water was “within all acceptable guidelines”.²⁹ On 23 March 2015, the Flint City Council had voted to reconnect to the Detroit water system in response to complaints about the water. In response, the city emergency manager, said: “Water from Detroit is no safer than water from Flint.”³⁰ On 2 April 2015, the mayor of Flint tweeted: “(My) family and I drink and use the Flint water every day, at home, work, and schools.”³¹

Meanwhile, in February 2015, a concerned resident had contacted the city of Flint to test the water from her taps because of concerns about the smell, taste and colour of the water and the rashes and hair loss her family had experienced. Tests by the city water department in her home on 11 and 18 February 2015, showed that the lead levels in the water far exceeded regulatory standards. The same resident then contacted the EPA on 25 February 2015 about these elevated lead levels. Further tests by the city confirmed elevated levels of lead in the water. The EPA contacted DEQ on 19 March 2015 about the high levels of lead in the water, but DEQ claimed this was due to lead sources in the resident’s plumbing.

Blood tests in late March 2015 found that one of the children in this home had lead poisoning. On April 3, the water was shut off in response. The EPA conducted two visits to the home of this resident in late April and early May 2015.³² The EPA concluded, other than DEQ, that the lead in the water was introduced outside of the home, likely from a lead service line. An EPA test of 28 April 2015 furthermore showed ‘extremely high lead levels’ in the water, so high as to qualify as ‘hazardous waste’.

²⁶ <https://www.umflint.edu/campus-water/campus-water-testing-results#accordion-february-5th-2015>

²⁷ According to information available online, 68% of students at the University of Michigan-Flint are white and 13% are Black or African-American: <https://bigfuture.collegeboard.org/college-university-search/university-of-michigan-flint>

²⁸ http://www.mlive.com/news/flint/index.ssf/2015/02/governor_awards_flint_2_millio.html

²⁹ http://www.mlive.com/news/flint/index.ssf/2015/02/gisd_shuts_off_flint_water_for.html

³⁰ <http://www.nytimes.com/2015/03/25/us/a-water-dilemma-in-michigan-cheaper-or-clearer.html>

³¹ http://www.mlive.com/news/flint/index.ssf/2015/04/flint_mayor_dayne_walling_on_t.html When checked on 1 February 2016, this tweet could no longer be found on the Twitter page of the then mayor.

³² <http://flintwaterstudy.org/wp-content/uploads/2015/11/Miguels-Memo.pdf>

On 13 July 2015, an internal memo from a Regulations Manager of the EPA in Michigan to superiors at the EPA and DEQ, written on 24 June 2015, was leaked. The above-mentioned case of elevated lead levels is described at length in the leaked memo. The memo furthermore mentioned that the city of Flint, after switching to water from the Flint River, stopped providing corrosion control treatment to the water supply to mitigate lead and copper levels in the water³³ and that in the absence of such treatment, lead levels in drinking water can be expected to increase. It also mentioned that Flint had added ferric chloride to the water to reduce TTHM levels, and that this causes increased corrosion of lead in plumbing networks. The memo pointed to the existence of the federal Lead and Copper Rule (“LCR”), which requires larger water systems to install and maintain corrosion control treatment for lead and copper.

The memo stated that the lack of corrosion treatment by the city was especially concerning as “high lead levels will likely not be reflected in the City of Flint’s compliance samples due to the sampling procedures used by the City of Flint for collecting compliance samples.” Residents were instructed to ‘pre-flush’ their taps prior to testing, which had been shown to result in underestimation of lead levels in drinking water. The EPA had raised concerns about this sampling method with DEQ, according to the same memo. DEQ had replied that the practice was not prohibited by the LCR and that it would not change the instructions.

The memo concluded with several recommendations. It recommended that the EPA follow-up on its recommendation of 10 June 2015 to DEQ and the City of Flint to offer technical assistance to Flint on managing water quality issues, including lead in the drinking water. It mentioned that external assessments of the water quality by outside researchers up to that date did not address the problem of lead levels in the drinking water, but had focused on other water quality issues. The memo also recommended that the EPA should review the compliance of Flint with the LCR requirement to install and maintain optimal corrosion control.³⁴ It further stated that the EPA should review the method of sampling of lead levels in Flint.

When the internal EPA memo leaked in July 2015, the EPA responded with a brief statement, which, among other things, mentioned that the EPA would work with DEQ and the city of Flint “to verify and assess the extent of lead contamination issues and to ensure that Flint’s drinking water meets federal

³³ Information obtained by ACLU of Michigan through a Freedom of Information Act request shows that DEQ misinformed the EPA about this by incorrectly stating in an email that the “City of Flint [...] [h]as an Optimized Corrosion Control Program.” <http://flintwaterstudy.org/2015/09/commentary-mdeq-mistakes-deception-flint-water-crisis/>

³⁴ According to information that has come to light, the city of Flint did not introduce optimal corrosion control until early September 2015. <http://michiganradio.org/post/state-admits-flint-did-not-follow-federal-rules-designed-keep-lead-out-water#stream/0>

standards.”³⁵ The city declined to comment. The spokesperson for DEQ said: “Let me start here – anyone who is concerned about lead in the drinking water in Flint can relax.”³⁶ The spokesperson also said: “It does not look like there is any broad problem with the water supply freeing up lead as it goes to homes.”³⁷

In the summer of 2015, additional sources confirmed the problems with heightened lead levels in Flint. A report by the ACLU of Michigan alleged irregularities in the testing of lead levels in the water supply by the city of Flint in the period 1 January 2015 to 30 June 2015. Flint was originally required to take 100 water samples over that period and send them to DEQ for review. According to the EPA’s “90th percentile test”, a city fails to meet its ‘lead action level’ if more than 10% of the samples are above the ‘action level’ of 15 parts lead per billion. If a city scores above the action level, it is required to immediately alert the public and has to initiate steps to reduce lead in the water supply. On 25 June 2015, 5 days before the 30 June deadline to submit all 100 water samples to DEQ, Flint had only provided DEQ with 39 samples. An official of DEQ wrote to a city water official in Flint on that day: “We hope you have 61 more lead/copper samples collected and sent to the lab by 6/30/15, and that they will be below the AL [Action Level] for lead. As of now with 39 results, Flint’s 90th percentile is over the AL for lead.”³⁸ Eventually, the city of Flint only provided DEQ with 71 water samples. The samples met the 90th percentile test described above. DEQ has stated it accepted the lower number of 71 instead of 100 samples because Flint has less than 100,000 inhabitants.³⁹ The ACLU of Michigan has claimed that the additional 32 water samples that were taken in Flint between 25 and 30 June 2015, deliberately included water samples from areas where it was likely that the water did not contain elevated levels of lead, in order to meet the 90th percentile test.⁴⁰ Other irregularities in the water sampling have also been alleged.⁴¹

In late August 2015, researchers from Virginia Tech, working with the ACLU of Michigan and a group of Flint residents, announced early findings of tests of lead and copper levels in Flint water they had privately undertaken. 20% of the 120 homes they had analyzed had lead levels above the ‘action level’ of 15 parts lead per billion. As explained above, according to the EPA a city is out of compliance if more than 10% of homes test above the action level. The city of Flint claimed that its latest sampling, the 71 water samples taken in the first half of 2015 mentioned above, showed that its water was in compliance with federal

³⁵ <http://michiganradio.org/post/leaked-internal-memo-shows-federal-regulator-s-concerns-about-lead-flint-s-water#stream/0>

³⁶ Ibid.

³⁷ Ibid.

³⁸ <http://flintwaterstudy.org/2015/09/commentary-mdeq-mistakes-deception-flint-water-crisis/>;
<http://www.metrotimes.com/Blogs/archives/2015/09/16/an-aclu-of-michigan-investigation-has-found-a-stream-of-irregularities-in-flints-water-tests>

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ <http://flintwaterstudy.org/2015/09/commentary-mdeq-mistakes-deception-flint-water-crisis/>

regulations.⁴² In response to the Virginia Tech findings, the city stated it was in compliance with state standards, although the mayor mentioned that concerned residents could get their water tested for free.⁴³ A spokesperson for DEQ said that tests indicated “Flint drinking water meets state and federal safe drinking water standards.”⁴⁴ Further tests released in early September 2015 by Virginia Tech researchers continued to find elevated levels of lead in a significant number of the houses they tested. A spokesperson for DEQ responded that, while the state “appreciates academic participation in this discussion, offering broad, dire public health advice based on some quick testing could be seen as fanning political flames irresponsibly.”⁴⁵

On 24 September 2015, a medical study by Hurley Medical Center showed elevated levels of lead in the blood of children after Flint switched to using water from the Flint River in April 2014.⁴⁶ The study recommended that the city switch back to using Detroit water drawn from Lake Huron. The percentage of children under 6 years old with more than 5 micrograms per deciliter of lead in their blood, a threshold level used by experts,⁴⁷ doubled from 2.1% to 4% after the switch. In some areas, the percentage was as high as 6.3%. According to the CDC, no safe blood lead level in children has been identified. Even low levels of lead in blood have been shown to affect IQ, ability to pay attention, and academic achievement. Effects of lead exposure cannot be corrected, meaning that the impact on the health of individuals is irreversible.⁴⁸ According to the WHO, lead “is associated with a wide range of toxicity in children across a very broad band of exposures, down to the lowest blood lead concentrations yet studied, both in animals and people. These toxic effects extend from acute, clinically obvious, symptomatic poisoning at high levels of exposure down to subclinical (but still very damaging) effects at lower levels. Lead poisoning can affect virtually every organ system in the body.”⁴⁹

In response to the medical study by Hurley Medical Center of September 2015, a spokesperson for the Michigan Department of Health and Human Services said that, according to the state’s data,⁵⁰ blood lead levels in Flint have remained fairly

⁴² <http://www.metrotimes.com/Blogs/archives/2015/09/01/independent-water-tests-show-lead-problems-far-worse-than-flint-claims>

⁴³ <http://www.washingtontimes.com/news/2015/sep/2/flint-water-is-risky-in-old-homes-researchers-say/>

⁴⁴ http://www.mlive.com/news/flint/index.ssf/2015/09/new_testing_shows_flint_water.html#incart_river

⁴⁵ http://www.mlive.com/news/flint/index.ssf/2015/09/university_researchers_dont_dr.html

⁴⁶ http://www.mlive.com/news/flint/index.ssf/2015/09/study_shows_twice_as_many_flin.html#incart_river_home

⁴⁷ “Experts now use a reference level of 5 micrograms per deciliter to identify children with blood lead levels that are much higher than most children’s levels. This new level is based on the U.S. population of children ages 1-5 years who are in the highest 2.5% of children when tested for lead in their blood.”

http://www.cdc.gov/nceh/lead/acclpp/blood_lead_levels.htm

⁴⁸ Ibid.

⁴⁹ <http://www.who.int/ceh/publications/leadguidance.pdf>

⁵⁰ Less than a week later it turned out that the same data provided by the State actually supported the Hurley study: <http://www.freep.com/story/opinion/columnists/nancy-kaffer/2015/09/26/state-data-flint-lead/72820798/>; Allegations have been made that the Department of Health and Human Services withheld information showing elevated lead levels

steady for children under 16 years old since the city switched from Lake Huron water to the Flint River.⁵¹ In response to the recommendation by Hurley Medical Center that the city should stop using water from the Flint River, the Flint City Administrator stated that there were no plans to reconnect the city of Flint to Lake Huron water until the regional authority became operational in 2016.⁵² The City Administrator also said that the city remained in compliance with all state and federal standards.⁵³ A spokesperson for the governor of Michigan responded to the study by stating that changing the city's water source "would not address the issues raised by some people in the community."⁵⁴ A day after the publication of the medical study, Flint officials issued a news release that suggested "customers flush cold water pipes by running water for approximately 5 minutes before using; use only water from the cold-water tap for drinking, cooking and making infant formula; and install a water filter certified for lead removal by the National Science Foundation."⁵⁵ Asked what the state of Michigan was doing about the lead contamination, the governor said on 28 September 2015 that the state was "working hard" and doing its best to resolve the issues, but did not give any specifics.⁵⁶

The eventual government response to the water crisis

After days of increased calls to take action after the publication of the health study on 24 September, Genesee county – the county in which Flint is located – declared a public health emergency on 1 October 2015.⁵⁷ County officials said that lead levels were threatening people's lives and that they hoped to start distributing water filters the next day. The mayor of Flint followed by urging people to follow the guidelines of the county's public health declaration. A day before the health emergency declaration, on 30 September 2015, it turned out that the governor's office had quietly helped an anonymous donor to distribute 1,500 water filters to a group of Flint pastors during that summer.⁵⁸

On 2 October 2015, the governor of Michigan announced a 'comprehensive action plan' to deal with the water crisis in Flint.⁵⁹ The plan included increased water testing, offering 'additional precautions for families with lead plumbing in their homes' (water filters) and providing 'long-term solutions' to address the water infrastructure problems. The plan was devised in cooperation with DEQ, the

in blood samples: <http://michiganradio.org/post/virginia-tech-researcher-accuses-state-health-officials-hiding-data-flints-water#stream/0>

⁵¹ http://www.mlive.com/news/flint/index.ssf/2015/09/state_says_its_data_shows_no_c.html

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ http://www.mlive.com/news/flint/index.ssf/2015/09/flint_makes_lead_advisory_offi.html

⁵⁶ <http://michiganradio.org/post/governor-says-hes-working-hard-resolve-flint-water-problems#stream/0>

⁵⁷ <http://michiganradio.org/post/genesee-county-declares-public-health-emergency#stream/0>

⁵⁸ <http://www.detroitnews.com/story/news/politics/2015/09/29/govs-office-helps-get-water-filters-flint-families/73055442/>

⁵⁹ <http://www.michigan.gov/som/0,4669,7-192-47796-366287--,00.html>

Department of Health and Human Services, the EPA and the city of Flint. The press release by the governor also stated however: “The water leaving Flint’s drinking water system is safe to drink, but some families with lead plumbing in their homes or service connections could experience higher levels of lead in the water that comes out of their faucets.”⁶⁰ On 8 October 2015 the governor announced a plan to reconnect Flint to the Detroit water system until the regional water authority would become operational.⁶¹ On 16 October 2015 Flint was reconnected to the Detroit water system.⁶²

But even after the switch to water from the Detroit system in October 2015, problems with water quality are continuing, which is likely due to the fact that Flint’s water pipes have been permanently damaged by the corrosion that occurred. On 1 December 2015, researchers of Virginia Tech warned that the water was still not safe to drink due to elevated lead levels.⁶³ On 3 December 2015 it was announced by the state that water tests at an elementary school found toxic lead levels, a problem state officials attributed to the type of fixtures in the school building.⁶⁴ In early December, the state Department of Health and Human Services announced that 2.2% of adults and children tested in Flint since October 2015 had elevated blood lead levels.⁶⁵

On 14 December 2015, the (new) mayor of Flint declared a state of emergency.⁶⁶ On 5 January 2016, the governor declared a state of emergency in Genesee County.⁶⁷ On 16 January 2016, the President of the United States signed a federal emergency declaration, authorizing the Federal Emergency Management Agency (FEMA) to cover 75% of the cost of water, filters, cartridges and other items for 90 days up to a total of USD 5 million.⁶⁸ On 19 January 2016, the governor of Michigan publicly apologized for the water crisis, promised to seek USD 28 million in state funds to provide bottled water, health care for children and improvements of Flint’s water infrastructure.⁶⁹ The USD 28 million in funds were approved by Michigan’s legislature on 28 January.⁷⁰ On 10 February 2016, Gov. Snyder presented his budget proposal that includes an additional \$195 million for

⁶⁰ Ibid.

⁶¹ http://www.mlive.com/news/flint/index.ssf/2015/10/governor_calls_for_16-million.html

⁶² http://www.mlive.com/news/flint/index.ssf/2015/10/detroit_water_begins_flowin_g_i.html

⁶³ <http://www.abc12.com/home/headlines/Water-in-Flint-still-not-safe-to-drink-according-to-research-team-at-Virginia-Tech-359697641.html>

⁶⁴ http://www.mlive.com/news/flint/index.ssf/2015/12/18_faucets_at_flints_eisenhowe.html#incart_story_package

⁶⁵ <http://www.abc12.com/home/headlines/State-releases-preliminary-findings-on-blood-lead-levels-in-Flint--360648741.html>

⁶⁶ http://www.mlive.com/news/flint/index.ssf/2015/12/read_flint_mayor_karen_weavers.html#incart_river_index

⁶⁷ <http://www.wxyz.com/news/governor-rick-snyder-declares-state-of-emergency-in-genesee-county-over-lead-in-flint-water-supply>

⁶⁸ <http://www.freep.com/story/news/local/michigan/2016/01/16/president-obama-declares-emergency-flint/78898604/>

⁶⁹ <http://www.nytimes.com/2016/01/20/us/obama-set-to-meet-with-mayor-of-flint-about-water-crisis.html?action=click&contentCollection=U.S.&module=RelatedCoverage®ion=Marginalia&pgtype=article>

⁷⁰ <http://www.freep.com/story/news/local/michigan/flint-water-crisis/2016/01/28/senate-unanimously-approves-28m-flint/79456750/>

relief of water bills in Flint, infrastructure needs, and food, nutrition, physical health and social well-being.⁷¹

Accountability

Meanwhile there have been several developments related to establishing accountability and finding remedies for the water crisis. After the acknowledgement of the water problem in Flint by authorities in October 2015, several steps have been taken.

On 3 November 2015, the EPA stated it would undertake a full review of actions taken to address drinking water quality issues in Flint.⁷² On 21 January 2016 it was announced that the regional director of EPA region 5, which includes Michigan, was stepping down.⁷³ On 6 January 2016, the U.S. attorney's office for the Eastern District of Michigan announced an investigation into the Flint water crisis.⁷⁴ Also in January 2016, the Michigan attorney general announced the appointment of a special counsel to help his office investigate whether laws were broken.⁷⁵ On 2 February 2016, the FBI announced it was investigating possible violations of federal environmental law in Flint together with the EPA.⁷⁶ Also on 2 February 2016, the former state-appointed emergency manager for Flint (at the time its water source was switched to the Flint River in April 2014) made public he would leave his current public position in the city of Detroit early.⁷⁷ On 3 February 2016 a hearing was organized before the US Congress, where officials of DEQ and the EPA gave testimony.⁷⁸

On 21 October 2015, the governor appointed a task force to examine the Flint water crisis, the Flint Water Advisory Task Force (FWATF).⁷⁹ In a letter of the task force to the governor of 29 December 2015 containing interim conclusions, the task force concludes that the “primary responsibility for what happened in Flint rests with the Michigan Department of Environmental Quality (MDEQ)”.⁸⁰ According to the letter, the city of Flint had the responsibility to operate its water system according to Safe Drinking Water Act (SDWA) requirements, under supervision of DEQ. They identified three failures on behalf DEQ. First, it claimed that DEQ had a “minimalist approach to regulatory and oversight responsibility”. Second, it concluded that the response by DEQ to outside criticism was one of “aggressive dismissal, belittlement, and attempts to discredit

⁷¹ <http://www.michigan.gov/snyder/0,4668,7-277--376542--,00.html>

⁷² http://www.mlive.com/news/flint/index.ssf/2015/11/us_epa_tells_kildee_it_will_ca.html

⁷³ <http://www.theguardian.com/us-news/2016/jan/21/epa-regional-director-resigns-flint-water-crisis>

⁷⁴ <http://www.cnn.com/2016/01/05/health/flint-michigan-water-investigation/>

⁷⁵ <http://www.theguardian.com/us-news/2016/feb/02/fbi-epa-flint-water-crisis-lead-contamination-criminal-violations>

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ <http://www.cnn.com/2016/02/03/us/flint-michigan-water-crisis/>

⁷⁹ <http://www.freep.com/story/news/politics/2015/10/21/task-force-appointed-examine-flint-water-controversy/74342628/>

⁸⁰ <http://flintwaterstudy.org/wp-content/uploads/2015/12/FWATF-Snyder-Letter-12-29-15.pdf>

these efforts and the individuals involved”. Finally, the task force concluded that DEQ misinterpreted the Lead and Copper Rule (LCR), which requires larger water systems to install and maintain corrosion control treatment for lead and copper. The letter also indicated that DEQ is not the only entity to blame, and that in its final report it would point to “other individuals and entities [that] made poor decisions”. On 29 December 2015, the head of DEQ resigned.

On 21 March 2016, the FWATF issued its final report.⁸¹ FWATF concluded that the Flint water crisis “is a story of government failure, intransigence, unpreparedness, delay, inaction and environmental injustice”. In addition to confirming the primary responsibility of MDEQ for causing the water crisis, the FWATF documents the “failings, shortcomings and problems in other agencies and entities as well, such as MDHHS, GCHD, the local water treatment plant, the EM structure, the Governor’s office, and the U.S. EPA.” The report also points to the context in which this happened, writing that poverty “is endemic in Flint, with 41.6 percent of the population living below federal poverty thresholds—2.8 times the national poverty rate.” What is more, the FWATF concludes that the water crisis is a case of environmental injustice: “Flint resident, who are majority Black or African American and among the most impoverished of any metropolitan area in the United States, did not enjoy the same degree of protection from environmental and health hazards as that provided to other communities. Moreover, by virtue of being subject to emergency management, Flint residents were not provided equal access to, and meaningful involvement in, the government decision making process.”

The impact of the water crisis on residents of Flint

The exact scope of the impact of the water crisis on residents of Flint is still uncertain. Available evidence shows, however, that in some instances the consequences have been devastating and far-reaching, affecting the mental and physical health, housing conditions, economic security and dignity of many Flint residents.

The American Academy of Pediatrics states that thousands of children aged under six in Flint have been exposed to lead poisoning and will need ongoing help with health and behavioral issues.⁸² Some physicians estimate that the number of children under 6 affected by lead contamination may be as high as 8,000.⁸³ Reports also indicate the psychological toll that the water crisis has had on the residents of Flint, with one newspaper reporting that residents “live in a state of

⁸¹ Flint Water Advisory Task Force, Final Report (March 2016), available from:

http://flintwaterstudy.org/wp-content/uploads/2016/03/Flint-task-force-report_2438442_ver1.0.pdf

⁸² <http://www.theguardian.com/us-news/2016/feb/03/flint-water-crisis-congress-michigan-officials-ignored-epa-warnings-lead>

⁸³ <http://www.nytimes.com/2016/01/30/us/flint-weighs-scope-of-harm-to-children-caused-by-lead-in-water.html>

indignity, fear and paranoia. Some refuse to shower, others eat only from paper plates, and many suffer rashes and hair loss.”⁸⁴

The water crisis furthermore has had a direct and severe impact on their enjoyment of adequate housing and appears to have worsened the poverty situation in Flint. In all households, day-to-day living with dignity requires the availability and use of clean water for cooking and cleaning and to maintain the health and well-being of all residents.

Until states of emergency were declared and water was provided for free, many residents of Flint had to use their limited resources to buy significant amounts of bottled water to cook, wash and clean. Even after the supply of free water, there are still reports that there are poor residents without adequate access to that water.⁸⁵ Civil society advocates have claimed that early water distribution efforts excluded persons without an address and persons with government-issued IDs. This has caused concern that homeless persons, poorer residents, undocumented people, and people of color, who are less likely to have a government-issued ID,⁸⁶ may be at greater risk of being excluded from access to water and other emergency services. In addition, concerns have also been raised that prisoners in Genesee County Jail were provided with contaminated water rather than bottled water.⁸⁷

Reports also indicate that poor residents who want to leave the city are not able to do so because the cost of moving, including putting down deposits for new rental contracts, is too high for them.⁸⁸ Reports furthermore indicate that banks refuse to provide mortgages for properties with lead contamination, making it harder for residents to buy and sell homes.⁸⁹ Meanwhile, the residents are apparently still paying for public water supply, against rates which are, as indicated, among the highest in the United States, and threatened with disconnections in case of failure to pay.⁹⁰

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about their serious nature and the severe impact the water crisis may have on the human rights of the residents of Flint.

Human rights to water and sanitation

⁸⁴ <http://www.theguardian.com/us-news/2016/jan/24/flint-michigan-water-crisis-lead-poisoning-families-children>

⁸⁵ *Ibid*; <http://www.nytimes.com/2016/01/10/us/flint-wants-safe-water-and-someone-to-answer-for-its-crisis.html>

⁸⁶ <https://www.brennancenter.org/analysis/voter-id>

⁸⁷ <http://www.independent.co.uk/news/world/americas/flint-prisoners-including-pregnant-women-were-forced-to-drink-poisoned-water-a6854326.html>

⁸⁸ <http://www.nytimes.com/2016/02/05/us/many-flint-residents-are-desperate-to-leave-but-see-no-escape.html>

⁸⁹ <http://www.wsj.com/articles/new-trouble-knocks-flint-as-mortgage-firms-require-proof-of-safe-water-1454544966>

⁹⁰ <http://www.freep.com/story/news/local/michigan/2016/01/11/should-flint-residents-pay-lead-poisoned-water/78643368/>

First, we are deeply concerned about the impact of the water crisis on the human rights to water and sanitation of the residents of Flint. Earlier, we raised concern with regard to large-scale water disconnections in the city of Detroit, Michigan, in joint urgent appeals dated 24 June 2014 and 6 January 2015. In reply to these joint urgent appeals, your Excellency's Government stated that various United States laws protect individuals from discrimination in the provision of services, and that there is a "widespread societal expectation in the United States that all ought to have access to safe drinking water and sanitation". We also note the assurance of your Excellency's Government in the reply that "public authorities throughout the United States take significant measures to provide access to safe drinking water and sanitation", including "state and local programs designed to help eligible low-income residents with the cost of their utilities".

However, we remain concerned with your Excellency's Government responses to these earlier communications in a number of respects. While it is positive that there is a 'widespread expectation' in the United States that all ought to have access to safe drinking water and sanitation, we are concerned about the significance the Government seeks to attach to the fact that there are no justiciable rights to water and sanitation provided in the United States Constitution or under federal law, something that is also of relevance in the case of Flint.

The United States joined consensus on a number of Human Rights Council and General Assembly resolutions reaffirming the human rights to safe drinking water and sanitation, most recently General Assembly resolution 70/169 of December 2015. In a statement delivered to the Human Rights Council on 25 September 2014 (and earlier statements), the United States explained that its joining consensus was not intended to imply that States must implement obligations under human rights instruments to which they are not a party (referring to the ICESCR). The United States also explicitly dissociated itself from consensus on preambular paragraph 21 (defining the right to safe drinking water and sanitation). However, we believe that the various statements made by your Excellency's Government over the years⁹¹ show acceptance of at least the following tenets:

- The human rights to safe drinking water and sanitation are essential for the full enjoyment of life and to all human rights, and are derived from the right to an adequate standard of living and are inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity. The emphasis on 'safe drinking' water and the close link to the human right to health require governments to take measures to ensure water quality.

⁹¹ Statements made by the United States at the Human Rights Council on 15 September 2011, 27 September 2012, 27 September 2013 and 25 September 2014 as well as the statement made by the United States at the General Assembly on 27 July 2011 and December 2015.

- Governments should strive to progressively realize universal access to safe drinking water and sanitation, and should seek to expand access, especially for underserved populations. Governments should develop and implement national policies and strategies, where needed, and commit sufficient budgetary resources so that they will be able to advance this goal as quickly as possible. Progressive realization also entails that governments must avoid retrogressions in the realization of the human rights to safe drinking water and sanitation.

- Governments have an obligation to ensure that access to safe drinking water and sanitation services is provided on a non-discriminatory basis.

- Governments should work towards greater transparency and accountability in water and sanitation service provision and include the public in government decision making.

In light of the foregoing, the fact that the United States has, on numerous occasions, joined consensus on Human Rights Council and General Assembly resolutions on the rights to safe drinking water and sanitation indicates, notwithstanding its statements explaining its votes and positions, that it accepts the existence of this right and a range of related obligations. Thus, the suggestion that issues relating to the right to water are rendered moot because there are no justiciable rights to water and sanitation provided in the United States Constitution or in federal law seems unconvincing to us.

We refer, moreover, to your Excellency's Government's expressed intention to move beyond its long-held reluctance to fully accept economic, social and cultural rights. In 2011, the then Assistant Secretary of State for Democracy, Human Rights and Labor announced that when negotiating language on United Nations resolutions and explaining its positions the United States would be guided by the following five considerations:

- First, economic, social and cultural rights addressed in U.N. resolutions should be expressly set forth, or reasonably derived from, the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights (ICESCR). While the United States is not a party to the Covenant, as a signatory, it is committed to not defeating the object and purpose of the treaty.

- Second, the United States will only endorse language that reaffirms the "progressive realization" of these rights and prohibits discrimination.

- Third, language about enforcement must be compatible with the domestic and constitutional framework.

- Fourth, the United States will highlight its policy of providing food, housing, medicine and other basic requirements to people in need.

- And fifth, the United States will emphasize the interdependence of all rights and recognize the need for accountability and transparency in their implementation, through the democratic participation of the people.

Moreover, the United States has ratified international human rights treaties that recognize the right to life and human dignity, to which the rights to safe drinking water and sanitation, and adequate housing are inextricably related. The United States has also ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which obliges the United States to guarantee the right of everyone to equality before the law in the enjoyment of economic, social and cultural rights “without distinction as to race, colour, or national or ethnic origin”. Similarly, article 26 of the International Covenant on Civil and Political Rights (ICCPR), to which the United States is a party, requires guaranteeing to all persons equal and effective protection against discrimination in all spheres of life, including in relation to the enjoyment of economic, social and cultural rights. In addition, as a signatory to the ICESCR, Convention on the Rights of the Child (CRC), Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Persons with Disabilities (CRPD), the United States is required not to defeat the object or purpose of these treaties.

Applying the foregoing to the water crisis in Flint, we have the following specific concerns in relation to the human rights to water and sanitation. First, residents of Flint have not had access to safe drinking water and sanitation since April 2014, in direct violation of the human right to safe drinking water. Second, there appear to be structural problems with the affordability of water and sanitation services in Flint. Third, we are concerned with the seemingly high levels of disconnections in Flint, especially in light of the water quality issues that have plagued the city since April 2014 and high water and sewerage costs. Fourth, we are deeply concerned that the Flint water crisis has disproportionately impacted individuals belonging to groups at risk and to marginalized groups, including on the grounds of race, colour, ethnicity, age, disability, income, homelessness and being in detention. It is especially worrying that a city that is majority African-American has been affected by a switch of water supply by an emergency manager appointed by state that is majority White, without democratic accountability⁹² to the residents of Flint. Similarly, we are concerned that some individuals belonging to marginalized groups might not have been able to access emergency response measures such as receiving bottled water. Fifth and finally, despite several initiatives to establish responsibility for the water crisis, we are concerned about what appears to be a structural lack of transparency, monitoring, oversight and accountability in the provision and regulation of public water supply.

⁹² We would like to refer to your Excellency’s Government to the international standards relevant to the protection and promotion of the rights of minorities, in particular to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities. Article 2.3 highlights that “Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation”.

The right to adequate housing

The United States is obligated to protect the human right to adequate housing under the Universal Declaration of Human Rights (art. 25), CERD (art. 5(e)(iii)), and as a signatory to the ICESCR and the CRC.

The right to adequate housing under international law requires access to clean drinking water without discrimination. In order for housing to be adequate, it must also be affordable – which means that water tariffs must not be set at levels that render housing unaffordable, particularly for those who are living in poverty. It also means that responses to the crisis on the part of governments must not be costly for affected residents. Moreover, where residents are forced out of their homes as a result of government action or inaction, residents must not be rendered homeless. Adequate, alternate accommodation, in consultation with residents, must be provided.

While the US government has not acknowledged broad obligations to uphold the right to adequate housing, it has acknowledged these obligations in the context of non-discrimination, and acknowledged a number of obligations with respect to the right to adequate housing when it accepted recommendations during the 2010 Universal Periodic Review that are in keeping with obligations which attach to the right to adequate housing, including to “reduc[e] the number of homeless people,” “continue its efforts in the domain of access to housing ... in order to meet the needs for adequate housing at an affordable price for all segments of American society,” and “take legislative and administrative measures to address a wide range of racial discrimination and inequalities in housing...”. Moreover, in light of the deep and obvious connections between the right to safe drinking water, the right to adequate housing and the right to life, we are confident the United States would not deny human rights obligations with respect to the Flint crisis.

Applying these obligations and commitments to the Flint crisis, we are concerned that:

- The Flint crisis has jeopardized the enjoyment of adequate housing for many residents, particularly those from marginalized groups, a situation that has not yet been resolved;

- It appears that cost-free water that was given to households as an emergency response is being distributed in a manner that is discriminatory, excluding the most vulnerable – those who are homeless and those without government issued ID.

- Adequate, alternative accommodation has not been provided to those who would prefer to relocate to places where the water quality is not compromised. People who want to sell their homes are unable to do so, and those who wish to rent elsewhere have not been provided with the necessary financial resources to do so.

- Water and sewerage rates in Flint are disproportionately high, causing housing affordability problems for many residents. Reports indicate that water shutoffs are occurring for arrears, placing many residents at severe risk.

- These conditions suggest the likelihood of increased rates of homelessness in Flint.

Rights of the child

The United States is the only State in the world that has not ratified the CRC. But as a signatory to the CRC, the United States is required not to defeat the object or purpose of this treaty. Article 24 (1) CRC guarantees the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. Article 24 (2) (c) furthermore provides that States Parties shall take appropriate measures to “combat disease [...] through, inter alia, [...] the provision of adequate [...] clean drinking-water, taking into consideration the dangers and risks of environmental pollution.” There are furthermore several international declarations that specifically underline the need to intervene and prevent lead poisoning in children. In the 1996 OECD Declaration on Risk Reduction for Lead, the governments of OECD Member Countries, declared that they would: “[c]ontinue to review lead levels in the environment and exposure to lead of sensitive populations (such as children and pregnant women) and of high risk populations (such as certain groups of workers) using the results to evaluate the effectiveness of national programs in reducing risks from exposure to lead and to identify priorities and opportunities for future actions;”⁹³ In 1997, the environmental ministers of the G-8 nations, including the United States, adopted the Miami Declaration on Children’s Environment Health.⁹⁴ The 1997 Miami Declaration, committed governments to the restriction of “lead in products that may result in ingestion in food and drinking water and to set schedules and develop strategies for elimination or reduction of lead from these sources.” G-8 countries agreed “to develop scientific protocols and programs to monitor blood lead levels in children to track our progress in this important effort.” Finally, in 2009, at a WHO Conference, the Busan Pledge for Action on Children's Health and the Environment was adopted, which acknowledged “chronic and acute health risks associated with children’s exposure to [...] lead.” These declarations demonstrate the importance the United States attaches to the detection and prevention of lead poisoning as a significant risk to children’s health.

Right to highest attainable standard of health

Article 12 ICESCR recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In this connection, we would

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http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=69&InstrumentPID=66&Lang=en&Book=Faalse#_ftn0

⁹⁴ <http://www.g8.utoronto.ca/environment/1997miami/children.html>

like to refer your Excellency's Government to General Comment no. 14 of the Committee on Economic, Social and Cultural Rights, which describes the right to health as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe drinking water (para. 11). Furthermore, General Comment 14 indicates that States are required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline. (para.36)

Consultation with affected persons and access to effective remedies

Engaging in meaningful consultations with those affected and access to effective remedies for violations of human rights are cornerstones of human rights law⁹⁵. Consultations should ensure that all affected community members are informed and updated regularly regarding the situation, positive actions being taken by authorities, and avenues for redress. From the information available to us, we have concerns about the access of residents of Flint to adequate consultation and remedies.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. There are indications that the water in Flint is still not safe to drink, even when lead filters are installed in homes.⁹⁶ Could you indicate clearly whether it is safe for residents of Flint to drink water from their taps at this time as well as on which basis you have made this determination?
3. Could you indicate clearly whether it is safe for residents of Flint to use the water from their taps for other purposes (cleaning, cooking, bathing, showering) as well as on which basis you have made this determination?
4. There are reports of residents of Flint who do still not have access to water filters, cartridges and bottled water.⁹⁷ What action are the city, state and federal authorities taking to ensure that every single individual, including people belonging to marginalized, minority groups, persons with disabilities, prisoners, elderly people,

⁹⁵ See for example: CERD, Article 6; ICCPR Article 2 (3).

⁹⁶ <http://www.theguardian.com/us-news/2016/feb/03/flint-water-crisis-congress-michigan-officials-ignored-epa-warnings-lead>

⁹⁷ <http://www.nytimes.com/2016/01/10/us/flint-wants-safe-water-and-someone-to-answer-for-its-crisis.html>

homeless people, people without government-issued IDs in Flint has access to these goods?

5. The federal emergency measures that include the distribution of bottled water, filters and related items are limited to a period of 90 days, whereas it seems likely that lead contamination will continue after this date and further federal help is needed after those 90 days. What measures will the federal government put in place after the end of these initial 90 days?

6. What measures are being taken to identify the lead services lines, plumbing and fixtures? Do residents have access to free inspections in their homes?

7. What measures are being taken to ensure that corroded pipes do not further contaminate the water? According to the mayor of Flint, replacing the city's water infrastructure could cost up to USD 1.5 billion.⁹⁸ Could you indicate whether this is an accurate estimate and whether there is any plan for the federal and state authorities to contribute to this investment? Are there alternatives to replacing the entire water infrastructure, such as recoating, that ensure water safety with certainty? What measures are being taken to ensure that residents can replace plumbing and fixtures in their homes that contribute to lead contamination due to corrosion?

8. What measures are being taken to replace plumbing and fixtures in schools, health centres, prisons and other government buildings that contribute to lead contamination?

9. What measures are being taken to identify all children and adults, in particular pregnant women, who have suffered lead poisoning? Do all Flint residents have access to free medical testing and services to identify lead poisoning and other health impacts of the water crisis and is there a guarantee that those health effects are treated without cost, both in the short and long-term?

10. In earlier cases of large-scale lead contamination of the water supply (for instance in Washington D.C. in the period 2001-2004), a significant increase in fetal death has been reported. Are measures being taken to measure the rate of fetal deaths in Flint?

11. What actions are taken to ensure that enough funds are available to address the impact of lead poisoning on children in Flint, including long-term health care and psychological support?

12. What housing supplement options will be available to tenants and homeowners to ensure they can afford to relocate to units where water quality is not compromised?

⁹⁸ Ibid.

13. Flint reportedly has water and sewerage rates that are among the highest in the country. At the same time, Flint is one of the poorer cities in the United States. What actions are the city, state and federal authorities taking, especially in light of the fact that Flint residents have had to pay for contaminated water since April 2014, to lower water and sewerage rates in Flint, both for the future and retroactively?

14. There are reports of thousands of water shutoff notices being sent by the city of Flint in recent months to residents who are unable to pay their water and sewerage bills and of residents consequently being disconnected from the public water supply. Please provide us with an up-to-date overview of the number of individual residents in Flint without access to water services because of non-payment of water bills.

15. What actions are the city, state and federal authorities taking to prevent any further residents from being disconnected from the water supply in the short term?

16. There are many indications that the failures in water testing procedures, monitoring, oversight and lack of transparency at the city, state and federal level with regard to Flint are not isolated incidents, but structural issues that occur in many places in the United States.⁹⁹ What actions are being taken by the federal government to ensure that there will never be another water crisis like in Flint?

17. What actions are being taken at the federal level to ensure that there are no future misinterpretations of the federal Lead and Copper Rule (LCR), as appears to have happened in Flint? Are there any initiatives underway to revise the Rule?

18. What actions are taken by the state of Michigan and the federal government to ensure that the serious allegations against DEQ and other responsible institutions are addressed and to ensure that no such failures are repeated?

19. When Flint decided to switch to using water from the Flint River, it was being run by an emergency manager with significant powers according to Michigan Public Act 436 of 2012 (Local Financial Stability and Choice Act). This act reduces the democratic accountability of local politicians and administrators to local residents, which is especially problematic when emergency managers make decisions with significant impacts on a city and its residents. What measures is the state of Michigan taking to evaluate and amend Public Act 436 to ensure that lessons are drawn from what happened in Flint?

20. What measures are being taken to ensure that every resident affected by the water crisis in Flint has access to adequate remedies including receiving adequate compensation for harm imposed and to ensure the accountability, criminally or civilly, of

⁹⁹ <http://www.theguardian.com/us-news/2016/feb/03/flint-water-crisis-congress-michigan-officials-ignored-epa-warnings-lead>

those public officials who are responsible for the Flint water crisis? What measures are being taken to improve compensation and accountability for possible future crises of this nature?

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

It is our intention to publicly express our concerns as, in our view, the information upon which a press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Philip Alston
Special Rapporteur on extreme poverty and human rights

Leilani Farha
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Léo Heller
Special Rapporteur on the human right to safe drinking water and sanitation