

**Mandates 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**

REFERENCE: AL  
USA 1/2016:

2 March 2016

Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group of experts on people of African descent; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the rights of indigenous peoples; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on the human right to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 27/25, 27/23, 24/6, 24/9, 25/5, 25/32, and 24/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **water supply in the city of Flint in the state of Michigan, and further information which suggests that Flint is not an isolated incident.**

According to information received:

On 25 April 2014, the city of Flint in the state of Michigan changed the source for tap water from Detroit water to a local river (Flint river) for cost-saving purposes. The contract was signed by Flint's "emergency financial manager," under the supervision of the Mayor. The change was supposed to save Flint USD 12 million a year.

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.<sup>1</sup> According to a 2014 survey, 41.5% of the population of Flint lived below the poverty line, compared to 16.8% in the state of Michigan as a whole.<sup>2</sup>

Between August and September 2014, residents were told to boil their water several times before drinking because of the presence of E. coli. To resolve the issue, additional chlorine was added, increasing the corrosiveness of the water. The state of Michigan failed to apply federal standards on the control of corrosion. As a result, water started to erode the water pipes, most of which are over 75 years old, which led to contamination of water with lead.

As a consequence, the inhabitants of the city of Flint (99,713 residents in 2013) have been consuming water contaminated with lead. According to the World Health Organization, there is no level of lead exposure that is safe. Children and pregnant women are especially vulnerable to its adverse health impacts.

Elevated lead levels have been detected in children in Flint. Childhood exposure to lead is associated with a wide range of effects, including various neurodevelopmental effects, mortality, impaired renal function, hypertension, impaired fertility and adverse pregnancy outcomes. This may lead to behavior or attention problems; difficulties in school; hearing problems; kidney damage; reduced IQ; slowed body growth; muscle weakness; and coma.

On 1 February 2015, a background memo sent to the Governor of Michigan dismissed the Mayor's call for state assistance, discussing the water quality problems in Flint, including the high level of trihalomethanes (TTHM), as well as the corrosion inside of cast-iron pipes. The Michigan Department of Environment Quality, the U.S. Environmental Protection Agency and other government officials reassured the public that the water was safe to drink during the beginning of 2015.

In February of 2015, studies began to show the presence and impact of lead in Flint. An independent study from a coalition including local residents, Virginia Tech Researchers and the American Civil Liberties Union of Michigan, showed the Flint River was leaching lead from water pipes that feed water into households. An independent study from a local pediatrician in March 2015 showed an increase in Flint children with elevated levels of lead.

---

<sup>1</sup> <http://quickfacts.census.gov/qfd/states/26/2629000.html>

<sup>2</sup> <http://quickfacts.census.gov/qfd/states/26/2629000.html>

U.S. EPA's "action level" for lead in water is 15 parts per billion (ppb). A local resident informed U.S. EPA in February 2015 that their drinking water contained 104 ppb of lead. A subsequent test the following month at the same home detected 397 ppb lead in the drinking water. Less than two weeks later, Veolia, hired by Flint, reported that the city's water meets state and federal standards. However, an EPA test of 28 April 2015 showed 'extremely high lead levels' in the water, so high as to qualify as 'hazardous waste'.

In September 2015, a study by the Hurley Medical Center showed that the percentage of Flint infants and children with above average lead levels had nearly doubled since Flint switched to using the Flint River as its water source. In high-risk areas of lead exposure, lead levels nearly tripled. The doctors urged the city of Flint to stop using the Flint River for water after having found high levels of lead in children's blood, but state authorities still insisted the water was safe.

On 1 October 2015, after government epidemiologists validated Flint's doctors' findings, and after months of disputing the research, the Governor of Michigan admitted the gravity of the situation and urged residents to stop drinking water from the tap. The Governor ordered the distribution of filters, the testing of water in schools, and the expansion of water and blood testing. In addition, he announced a USD 12 million plan to transfer Flint back to its original water source and appointed a task-force to investigate the cause of the crisis. On 16 October 2015, Flint reconnected to Detroit's water system.

On 29 December 2015, the Flint Safe Drinking Water Task Force released its report, alleging the Michigan Department of Environmental Quality (MDEQ) failed to properly treat the Flint River. It states that the City of Flint was not required by MDEQ to use corrosion control to prevent lead in the pipes from contaminating the water flowing to households, and the Department downplayed public complaints. According to the report, MDEQ officials were aware as of March 2015 that lead water levels in Flint were already above the threshold set by the U.S. EPA. Roughly half of the service lines to households in Flint are made of lead. Because the water wasn't properly treated, lead began to leach into the water, allegedly a failure by the city of Flint and the State of Michigan to properly follow federal drinking water standards.

The Task Force's report also alleged that U.S. EPA did not take emergency actions despite being aware of Flint's inappropriate use of corrosion control to treat its water so as to be fit for human consumption.

On 5 January 2016, the Governor of Michigan, Rick Snyder declared a state of emergency. On 16 January 2016, President Obama declared a Federal state of emergency for Flint in order to speed up the distribution of bottled water and

filters, enabling the supply of five million USD in aid by the Federal Emergency Management Agency (FEMA).

It is reported that the distribution of bottled water was not at the sufficient level in some prisons and that prisoners, including pregnant women, have continued to drink tap water and eat food cooked in contaminated water. It is also reported that irregular migrants have not been able to receive bottled water because they are required to show social security number at the distribution point.

Under pressure, the Governor of Michigan, disclosed 273 pages of emails relating to the crisis management by his services, covering the period between 2014 and 2015, not 2013. The emails revealed that the Governor had been informed of the water quality problem in Flint as of February 2014.

In a submission to the U.S. House of Representatives, dated 3 February 2016, the American Academy of Pediatrics states that, according to census data, an estimated 8,000 – 9,000 children under the age of 6 have been potentially exposed to lead via the Flint drinking water, and that this widespread lead exposure, coupled with the fact that the City of Flint is an impoverished community beset by a host of economic and infrastructure hardships, means that Flint’s children will require significant help in coping with the impact of lead on their physical and behavioural health and development, their schooling, and much more.<sup>3</sup>

*The case of Flint is not an isolated incident*

According to information received, including that which is available from the U.S. Centers for Disease Control and Prevention (CDC), the relationship between race, poverty and environmental contamination, as illustrated in the case of Flint, Michigan, is a much broader nationwide issue.

Across the United States, nearly twice as many African-American children (5.6 percent) have high levels of lead in their bloodstream as compared with white children (2.4 percent).<sup>4</sup> 2014 figures from U.S. Centers for Disease Control (CDC) show fifty-nine percent of children tested in one Alabama county have

---

<sup>3</sup> <https://www.aap.org/en-us/Documents/House%20OGR%20Flint%20Hearing%20AAP%20Letter%20Final.pdf>

<sup>4</sup> U.S. Centers for Disease Control and Prevention (CDC), *Blood Lead Levels in Children Aged 1–5 Years — United States, 1999–2010*, MORBIDITY AND MORTALITY WEEKLY REPORT, / 62(13);245-248, Table 1 (April 5, 2013), available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6213a3.htm>

high blood lead levels.<sup>5</sup> Numerous other states reported cases of elevated lead levels<sup>6</sup>; however, nearly twenty states did not report any data to the U.S. CDC.<sup>7</sup>

Lead is not the only toxic chemical to which people of color and the poor are disproportionately exposed. Government agencies have measured hundreds of toxic chemicals in people of all races and incomes across the United States. And, people of color and the poor continue to face greater exposure to these toxic chemicals.<sup>8</sup>

For example, a higher proportion of poor minorities live near facilities that use, store, process or emit harmful chemicals (table 1). Close proximity to such sites increases the risk of death, disease and other poor health outcomes in children and adults. People of color comprise nearly half the population (11.4 million) living near potential sources of toxic emissions, and they are almost twice as likely as whites to live on the “fenceline.”<sup>9</sup> More than one-quarter (1.6 million) of children living in these hazardous areas are children under the age of five, whose developing bodies are especially vulnerable to toxic exposure.<sup>10</sup>

---

<sup>5</sup> In Houston County, Alabama, 59.3 % of children tested have blood lead levels between 5-9 ug/dL. U.S. CDC, *Lead: Alabama Data, Statistics and Surveillance* (webpage, last accessed January 24, 2016), available at: <http://www.cdc.gov/nceh/lead/data/state/aldata.htm>

<sup>6</sup> CDC, *Lead: State Surveillance Data* (webpage, last accessed Jan. 24, 2016), available at: <http://www.cdc.gov/nceh/lead/data/state.htm>

<sup>7</sup> *Id.*

<sup>8</sup> See e.g. Cheryl Katz, *Unequal Exposures: People in poor non-white neighborhoods breathe more hazardous particles*, *Environmental Health Perspectives* (Nov. 2012).

<sup>9</sup> Center for Effective Government, *Living in the Shadow of Danger* (Jan. 2016), available at: <http://www.foreffectivegov.org/shadow-of-danger>

<sup>10</sup> *Id.*

Table 1: Percentage of population living in chemically hazardous zones, i.e. one mile of a facility subject to the U.S. Environment Protection Agency’s “Risk Management Plan.”<sup>11</sup>

<b>State</b>	<b>African-American</b>	<b>Latino</b>	<b>White</b>
Alabama	8	4.9	2.7
Alaska	3	5	3.1
Arizona	9.9	9	4.4
Arkansas	11	18.2	5.3
California	12.2	14.2	7.4
Colorado	7.7	8.9	4.5
Connecticut	8	8.8	3.8
Delaware	10.4	7.9	4.9
Florida	10.6	6.1	4.4
Georgia	7.9	9.8	3.8
Hawaii	4.2	3.3	3.4
Idaho	9.6	8	4.9
Illinois	15	20.4	10
Indiana	15.9	16.9	8.4
Iowa	20.5	20.8	11.8
Kansas	10.7	15.9	7.5
Kentucky	15.4	12.5	5.8
Louisiana	13.4	10	8.5
Maine	15.5	7.6	4.1
Maryland	10.3	5.3	5
Massachusetts	10.9	19.1	6
Michigan	8.6	11.1	4.5
Minnesota	14.8	14.2	8.8
Mississippi	9.2	12.4	4.3
Missouri	11.7	12	5.7
Montana	12.8	9.1	4.1
Nebraska	12.6	22.6	10.1
Nevada	6.9	5.8	3.1
New Hampshire	1	1.3	1.3
New Jersey	5.3	4.6	3.4
New Mexico	1.9	1.7	1.7

<sup>11</sup> From Center for Effective Government, *Living in the Shadow of Danger* (Jan. 2016), available at: <http://www.foreffectivegov.org/shadow-of-danger>

New York	2.6	2.1	3.3
North Carolina	6.4	5.5	3.4
North Dakota	17.9	16.1	12.9
Ohio	13.1	15.4	7.1
Oklahoma	9.2	9.4	6
Oregon	11	12.2	7.1
Pennsylvania	12.2	19.9	8.3
Rhode Island	5.7	5.5	6.9
South Carolina	6.2	7.5	4.6
South Dakota	7.8	8	3.2
Tennessee	12.5	7	4.5
Texas	12.9	14.7	8.2
Utah	10.9	9.6	6
Vermont	0.9	0.9	1.3
Virginia	4.6	3.3	2.9
Washington	5.9	13.8	6
West Virginia	6.5	4.7	4.7
Wisconsin	17.4	22.3	9.4
Wyoming	5.9	4.2	3

An independent analysis of 30 years of demographic data about the placement of U.S. hazardous waste sites and other polluting facilities concluded that minority and low-income neighborhoods and “communities in transition” are disproportionately targeted by industries that follow the path of least resistance when deciding where to locate such hazardous sites and facilities. It is alleged that minorities and low-income communities have fewer resources and political clout to oppose the siting of unwanted facilities, and may be viewed at the path of least resistance.<sup>12</sup>

People who reside in Alaska, in particular indigenous peoples, are exposed to much higher levels of persistent, bio-accumulative and toxic pollutants. These pollutants migrate north from southern sources of emission through wind, water and traditional food sources, resulting in the some of the highest readings recorded of these toxic chemicals in people of the Arctic.

Beyond the long-range environmental transport of pollution to the Arctic, it is alleged indigenous peoples of the United States have suffered higher levels of

---

<sup>12</sup> <http://ns.umich.edu/new/releases/23414-targeting-minority-low-income-neighborhoods-for-hazardous-waste-sites#.VqYhs5tE8CU.twitter>

adverse impacts from hazardous substances released or produced by extractive industries, agriculture and manufacturing, as well as the disposal of the resulting waste, including nuclear waste. One study found that soil and lead dust pollution from mining waste poses a more significant health concern for Indigenous Peoples in U.S. than other groups (Malcoe et al. 2002). Other studies have found that Indigenous Peoples in the U.S. are more likely to live in close proximity to severely contaminated (Superfund) sites (Anderton (1997)), and 1.8 times more likely to reside near a commercial toxic waste facility (Bullard et al. (2007)). Studies have shown Indigenous Peoples living near hazardous waste sites suffer from the highest rate of birth defects among nearby communities (Orr et al. (2002)).

It is alleged that processes within U.S. EPA need to better realize the right to an effective remedy in cases of discriminatory impacts. The U.S. EPA's Office of Civil Rights is charged with investigating complaints of discrimination filed against state and local agencies that receive EPA funds and, where evidence of discrimination is found, realizing an effective remedy for victims.

In its 22 year history of processing environmental discrimination complaints, the EPA's Office of Civil Rights has reviewed nearly 300 complaints filed by minority communities. However, it has never once made a formal finding of a civil-rights violation.

Agency regulations require a 20-day deadline for the office to determine whether it will investigate a case. Reportedly, it takes on average 350 days for the EPA's Civil Rights Office to decide whether to investigate a case. In nine cases, agency delays were long enough that investigators dismissed the allegations as moot. At least 17 communities are still waiting for a decision, most of these for over a decade, as the EPA reviews their civil rights claims.

The EPA has closed only 12 cases alleging discrimination with official action on behalf of minority communities. Nine of these cases were negotiated settlements, and the remainder resolved among the complainants and relevant agencies.<sup>13</sup>

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about, inter alia, the fundamental human right principles of non-discrimination and equality, and the rights to life, to the highest attainable standard of health to water and sanitation, to have access to information and to live in dignity. Additionally, we express our concern regarding accountability of decision makers and what appears to be

---

<sup>13</sup> <http://www.publicintegrity.org/2015/08/03/17668/environmental-racism-persists-and-epa-one-reason-why>



the limited potential for meaningful participation by the population, in particular minority and socio-economically disadvantaged African-American communities, in decision-making processes affecting their exposure to toxic chemicals. Furthermore, we express grave concern that the affected individuals have not been provided with any adequate remedies for the violation of their rights.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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. Please explain measures taken for an equal distribution of safe water without any discrimination under the state of emergency. Please also provide plans and measures to ensure the safety of water distributed to households and other customers.
3. Please provide in detail how your Government prevents recurrence of a case such as that of Flint, Michigan where safety of water and health of the population are put at risk by cutting cost in public services.
4. Please explain the measures taken by your Government to provide medical assessment and treatment to the residents of Flint, especially children, and the steps foreseen to fulfil the right to health of the affected individuals?
5. Please describe how the Government plans to ensure that the victims and affected communities receive an effective remedy.
6. Please provide in detail how your Government prevents exposure to hazardous substances and wastes by poor and minority communities who are at greater risk of exposure.

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 the intention of some of the Special Rapporteurs to publicly express their concerns in the near future as, in their view, the information upon which the present communication based is sufficiently reliable to indicate a matter warranting immediate attention.

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.

Mireille Fanon Mendes-France  
Chair-Rapporteur of the Working Group of experts on people of African descent

Baskut Tuncak  
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Victoria Lucia Tauli-Corpuz  
Special Rapporteur on the rights of indigenous peoples

Rita Izsák-Ndiaye  
Special Rapporteur on minority issues

Mutuma Ruteere  
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we wish to draw the attention of your Excellency's Government's obligations under international human rights laws, recalling article 6.1 of the International Covenant on Civil and Political Rights (ICCPR) on the right to life in conjunction with article 2 on the right of victims of human rights violations to an effective remedy. This Covenant was ratified by the United States of America on 8 June 1992. We would also recall article 7 of ICCPR which guarantees "that no one shall be subjected without his free consent to medical or scientific experiment."

In addition, we would like to draw your Excellency's Government's attention to the right to access information as part of the freedom of opinion and expression as established in article 19 of the Universal Declaration of Human Rights and article 19 of ICCPR. Notably, as indicated by the Human Rights Committee General Comment 34, "Article 19, paragraph 2 of ICCPR embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production."

Furthermore, we wish to draw your Excellency's Government's attention to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – signed by the United States of America on 5 October 1977 – which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. We also wish to draw your Excellency's Government's attention to its article 11 which protects the right to an adequate standard of living. The human right to safe drinking water and sanitation is recognized as a right which derives from the right to an adequate standard of living. While it has not ratified ICESCR, the United States Government agreed to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the international instrument, pending a decision on ratification.

In this connection, we would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights where the right to health is interpreted 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)

We further remind your Excellency's Government of article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, which the United States of America ratified on 21 October 1994. It provides that States Parties undertake "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law." We would also like to recall article 5 of the same Convention.

We would like to refer to your Excellency's Government to the international standards in relation to the protection of the rights to persons belonging to minorities, in particular to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on the Rights of Minorities). Article 1 of the Declaration establishes the obligation of States to protect the existence and identity of minorities within their territories and to adopt the appropriate measures to achieve this end, and article 2.3 states that persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning them or the regions in which they live, in a manner not incompatible with national legislation. Furthermore, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country (article 4.2).

Finally, we would also like to draw your attention to your Excellency's Government's advocacy on the risks of mercury pollution, with the United States of America becoming the first State Party to the Minamata Convention on Mercury. Although the Minamata Convention is not yet in force, your Excellency's Government has expressed its strong support for early implementation of the Convention before it enters into force. 14 The preamble refers to the "health concerns [of mercury] ... especially [for] women, children, and through them, future generations." To this end, we bring to your Excellency's Government's attention articles 18 and 19 of the Convention regarding research, education, training and public awareness related to the effects of exposure to mercury on human health. Furthermore, we bring to your Excellency's Government's attention article 16(1)(c), which states that Parties shall "promote appropriate health-care services for ... treatment and care for populations affected by the exposure to mercury or mercury compounds." We further note that for the purposes of the Minamata Convention, if an investigation has been conducted by your Excellency's Government, information on the health and safety of humans "shall not be regarded as confidential" (article 17(5)).

---

<sup>14</sup> See e.g. Earth Negotiations Bulletin, *Sixth Session of the Intergovernmental Negotiating Committee to Prepare a Legally Binding Instrument on Mercury* (Nov. 2014), available at: <http://www.iisd.ca/download/pdf/enb2828e.pdf>