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UNITED NATIONS
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HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandate of the Special Rapporteur on the human right to safe drinking water and sanitation

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Dear Mayor Johnson,

I am writing to you in my capacity as United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, appointed by the United Nations Human Rights Council. It has been brought to my attention that the City of Sacramento is going to hold a public hearing in the near future to decide whether to permit the provision of water and sanitation services to homeless tent camps. I greatly appreciate this initiative and hope that your local government will take into consideration international human rights standards when making a decision on this important human rights issue. Being aware of your dream to ensure that Sacramento becomes “a city that works for everyone”, I am writing to you to remind you that for your vision to become a reality, the promotion of the human rights of homeless people should become an integral part of the city’s policies.

As you may know, I was on an official visit to the United States of America under my UN mandate from 22 February to 4 March 2011 where I had the opportunity to meet with the authorities and talk to local communities in Sacramento. In my final statement at the end of my mission to the USA last year I specifically referred to the situation in Sacramento, California where I visited a community of homeless people. (I attach herewith the report I presented to the United Nations on my official mission to the USA, as well as the text of the declaration I made upon conclusion of the mission.)

On that occasion I met Tim, who called himself the “sanitation technician” for this community. He engineered a sanitation system that consisted of a seat with a two-layered plastic bag underneath. Every week Tim collected the bags full of human waste, which varied in weight from 130 to 230 pounds, and hauled them on his bicycle a few miles to a local public restroom. Once a toilet became available, he emptied the bags’ contents; packed the plastic bags with leftover residue inside a third plastic bag; tied it securely and disposed of them in the garbage; and then sanitized his hands with water and lemon. Tim said that even though this job was difficult, he did it for the community, especially the women.

The fact that Tim and others are left to provide such services is unacceptable. Because evacuation of the bowels and bladder is a necessary biological function and because denial of opportunities to do so in a lawful and dignified manner can both compromise human dignity and cause suffering, such denial could, in some cases, amount to cruel, inhuman or degrading treatment. An immediate and interim solution for those without housing is to ensure access to restroom facilities in public places, including during the night.

Moreover, during my visit, I observed the lack of access to adequate water and sanitation and adequate housing as well as health concerns of homeless people living along the American River. As you know, there were three sources of potable water ranging from one-half mile to one-and-a-half miles away from the camp, but one of them had been allegedly removed and capped by the City of Sacramento. Many people used the river water, which often caused sickness. Many parks operated by the City and County of Sacramento had reportedly closed restrooms to public access during the evening, night-time and morning hours. As a result, the homeless people's access to the public restrooms at night-time was prevented. Private restrooms available for the homeless were also very limited. I am concerned that the closure of public restrooms and the removal of water resources in the area of the Sacramento's American River Parkway have a serious negative impact on homeless individuals' access to water and sanitation and their health.

In addition, I have been informed that the City of Sacramento enforces the Sacramento City Code (which criminalizes public urination and/or defecation, camping and storage of personal property in public spaces and parks and on private properties) customarily against homeless persons, especially those residing in tent camps along the American River Parkway and other local parks. On 30 November 2011, the police of Sacramento City reportedly issued a notice to warn the homeless people that the camping location was scheduled for immediate clean-up by the Sacramento Police Department based on the Sacramento Penal Code. I am concerned about the disproportionate impact of the enforcement of the Code on persons living in poverty in general and on homeless persons in particular. The criminalization of life-sustaining behaviors of homeless persons in public spaces, such as sleeping, camping or public urination and defecation, in a context of lack of adequate shelter alternatives, has the potential to impede the enjoyment of human rights by poor and vulnerable groups, including the right to an adequate standard of living. The criminalization of public urination and defecation combined with a lack of public toilets leaves the homeless people in a desperate situation and without alternatives.

I would like to draw the attention of your local government to the applicable international human rights norms and standards, in particular, the following:

The human right to safe drinking water and sanitation derives from the right to an adequate standard of living which is protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),

which the US Government signed on 5 October 1977. While it has not ratified the Covenant, upon signing the ICESCR, the US 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. Moreover, on 28 July 2010 the United Nations General Assembly recognized water and sanitation as a human right. This decision was subsequently endorsed by the United Nations Human Rights Council in September 2010. The USA publicly declared that it was “proud to take the significant step of joining consensus” on the latter’s resolution, expressing thus clear support to the recognition of this fundamental human right.

The United Nations Committee on Economic, Social and Cultural Rights (CESCR), which monitors the implementation of the ICESCR, has asserted that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, which includes sanitation. In its General Comments 15 (2002), the CESCR affirmed that the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival, further explaining that this right is also inextricable related to the right to the highest attainable standard of health and the rights to adequate housing and adequate food. States’ obligations with regard to access to safe and potable water and adequate sanitation include the obligation to ensure that everyone has sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use and States must take all necessary measures to guarantee this right to all persons under their jurisdiction without discrimination. Furthermore, and regarding sanitation, I presented a report to the United Nations Human Rights Council in 2009 where I reminded States that, in order to meet human rights standards, everyone, without discrimination, must have physical and affordable access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity. This view was subsequently endorsed by the United Nations Committee on Economic, Social and Cultural Rights.

I would also like to draw the attention of your local government to the principles of equality and non-discrimination, which are core elements of the international human rights normative framework and enshrined, inter alia, in article 2 of the Universal Declaration of Human Rights and articles 2 of the ICESCR and of the International Covenant on Civil and Political Rights and other human rights treaties that the USA has ratified. In its General Comment 20 (paras. 34 and 35), the CESCR noted that “place of residence” and “economic and social status” are prohibited grounds for discrimination, implied in the phrase “other status” in article 2 of the ICESCR. Thus, measures which discriminate against individuals because they live in a situation of poverty may amount to a contravention of the prohibition of discrimination. Owing to their lack of or limited access to housing, persons living in poverty rely more heavily on public spaces for their daily activities. Quoting again the statement I made at the end of my country mission to the USA last year, local statutes prohibiting public urination and defecation, while they appear constitutional are often discriminatory in their effects. Discrimination often occurs because

such statutes are enforced against homeless individuals, who often have no access to public restrooms and are given no alternatives.

To conclude, I call on your government to take the right decision to ensure the realization of the human rights to water and sanitation of the homeless people living in the City of Sacramento, thereby ensuring their life in dignity.

Sincerely Yours,

A handwritten signature in cursive script that reads "Catarina de Albuquerque". The signature is written in black ink and is positioned centrally on the page.

Catarina de Albuquerque
Special Rapporteur on the human right to safe drinking water and sanitation