

## **Ensuring Adequate and Affordable Sanitation on an Equitable Basis**

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The Alabama Center for Rural Enterprise (ACRE), the predecessor to the Center for Rural Enterprise and Environmental Justice (CREEJ), evolved as an effort to address the root causes of poverty in Alabama. This led to the need to create a model that could be replicated in rural communities across the United States. Efforts to address the problems revealed a complex set of issues that needed multidisciplinary, grassroots-led solutions. One central issue that continued to surface was the lack of infrastructure, particularly wastewater infrastructure, necessary for sustainable economic development. The mission of CREEJ is to reduce health and economic disparities by improving access to clean air, water, and soil in marginalized rural communities by influencing policy, inspiring innovation, catalyzing relevant research, and amplifying the voices of community leaders, all within the context of a changing climate.

The Columbia Law School Human Rights Institute, founded in 1998, advances international human rights through education, advocacy, fact-finding, research, scholarship, and critical reflection. The Institute works in partnership with advocates, communities, and organizations pushing for social change to develop and strengthen the human rights legal framework and mechanisms, promote justice and accountability for human rights violations, and build and amplify collective power in the United States and throughout the world. The Institute's Human Rights in the U.S. Project challenges discrimination on the basis of race and ethnicity, advances economic and social rights protections, and promotes gender equity in order to combat inequality in the United States. Through this project, the Institute works to build the capacity of state and local governments to use human rights in their daily work and secure federal support for state and local human rights implementation.

The Institute for the Study of Human Rights (ISHR) at Columbia University, established in 1978, is committed to its three core goals of providing interdisciplinary human rights education to Columbia students, fostering innovative academic research, and offering its expertise in capacity building to human rights leaders, organizations, and universities around the world. Its Program on Economic, Social and Cultural Rights seeks to ensure greater attention to and integration of these rights in current debates.

## I. SUMMARY<sup>1</sup>

1. Sanitation is essential to everyday functions such as urination and defecation. While the large majority of people across the United States flush and forget, many rural communities lack access to access to basic sanitation.
2. Recent data indicates that an estimated 540,000 U.S. households (which translates to 1.4 to 1.7 million people) lacked complete plumbing in 2012, defined as missing a toilet, tub, shower, or running water.<sup>2</sup> This data does not distinguish between water and sanitation services.
3. Approximately, four out of five U.S. households with sanitation and wastewater services are connected to a municipal system, where sewer lines are provided and maintained by local governments. Conversely, about one in five households relies on individualized wastewater disposal methods.<sup>3</sup> Individual methods include on-site sewage systems, such as septic tanks, which are installed on individual properties and maintained at the cost of the homeowner.<sup>4</sup> The government's role for on-site solutions is largely limited to developing compliance standards and regulations for individual homeowners, and some limited government funding exists for such systems, as discussed below. Individuals who do not have the means to install on-site systems often resort to straight-piping, constructing makeshift pipes or channels to direct waste from homes and into yards.<sup>5</sup> In contrast to municipal and on-site systems, straight-piping does not contain wastewater, creating health risks for those who come in contact with feces and raw sewage that accumulate in yards and ditches.<sup>6</sup> Straight-piping does not comply with most state sanitation laws, and homeowners with straight pipes may be subject to fines, and face civil or criminal charges.<sup>7</sup>
4. Without a system in place to dispose of wastewater, individuals experience environmental contamination and health risks. Common health effects include hookworm and other tropical diseases that were thought to be eradicated in the United States.<sup>8</sup> A lack of adequate sanitation also perpetuates cycles of poverty and marginalization through long-term negative impacts on health, education, and employment.
5. Current law and policy regarding sanitation perpetuate discrimination and inequality. The burden for improving on-site sanitation and wastewater systems currently rests primarily on homeowners, who receive little government support. Securing sanitation can be costly, especially for individuals who lack access to central wastewater systems. Further, in some jurisdictions, failure to comply with sanitation regulations leads to fines and criminal records, in effect criminalizing poverty.<sup>9</sup>
6. Within many areas of the United States, wastewater infrastructure is failing and inadequate.<sup>10</sup> Existing centralized wastewater systems are often more than a hundred years old. In other areas on-site systems are inadequate and failing, often leading to overflow and feces and wastewater accumulating near people's homes. In 2017, the American Society of Civil Engineers gave the United States a D+ grade for its national wastewater infrastructure.<sup>11</sup>
7. Climate change, marked by more extreme rainfall in some areas and rising water levels, puts added stress on already overburdened centralized systems in these areas, as well as households responsible for individual systems across the country.<sup>12</sup>
8. The negative impacts are greatest on communities marginalized on the basis of race, ethnicity, and indigenous status, and households living in poverty.<sup>13</sup> Examples can be found across the country, in Alabama, Alaska, Arizona, Colorado, California, Florida, Kentucky, Louisiana,

Illinois Michigan, Mississippi, New Mexico, North Carolina, Ohio, Tennessee, Texas, Utah, Virginia, West Virginia, and Puerto Rico.<sup>14</sup>

9. While the impacts of lack of access to sanitation are severe, there is insufficient demographic data on who has access to sanitation in the United States, and who is denied this basic right. National census data on sanitation has not been collected since 1990. For 1990, the data indicates stark disparities. For instance, in rural Alabama 11.1% of Black households lacked complete plumbing, compared to 1.2% of White households.<sup>15</sup> A 2016 county-level analysis found that individuals in communities made up of a majority of residents of color are more likely to report a lack of access to complete plumbing facilities.<sup>16</sup> While current data is limited, research by NGOs and media demonstrate that lack of access to sanitation is a national problem driven by discrimination and inequalities.
10. The long term, structural impacts of lack of access to adequate sanitation primarily affect communities living in poverty: “There is the obvious cost to public and individual health, but there is also the cost in lower property values and increased debt that contribute to cycles of poverty, the unmet costs of installing sanitation systems, the cost of defending prosecutions and possible job loss due to criminal records.”<sup>17</sup>
11. The crisis in access to sanitation reflects decades of neglect and disinvestment in communities living in poverty and ongoing structural discrimination. There remains a lack of political will to fully investigate the scope of the problem and its impacts; provide adequate infrastructure funding; promote affordable sanitation and wastewater solutions; or remove barriers to equitable access to adequate sanitation. Perhaps unsurprisingly, the most impacted communities are those that have historically lacked political power, live in unincorporated communities, and have been excluded from decision-making, including through denial of the right to vote.
12. The reality in the United States stands in stark contrast to global human rights standards, which require that sanitation be safe, acceptable, affordable, accessible, and available without discrimination.<sup>18</sup> In order to foster transparency and accountability, human rights standards require access to information, including disaggregated data on access to sanitation,<sup>19</sup> and participation of the communities concerned in decisions that concern their lives.
13. A new, comprehensive, proactive and inclusive approach to sanitation and wastewater is imperative to avoid further harms to communities living in poverty in the United States. To be effective, federal, state, and local governments must take action now, working in concert with local community members.

## **II. DOMESTIC LEGAL FRAMEWORK**

14. The United States has ratified the CERD, the CAT, and the ICCPR, which by virtue of the U.S. Constitution, constitute “the supreme Law of the Land.”<sup>20</sup> The U.S. has not passed implementing legislation for these treaties and has yet to ratify the CEDAW, the CRC, the CED, the CRPD, ICESCR or ICRMW. There is scant recognition of economic and social rights protections in domestic law overall.
15. With regard to sanitation specifically, the federal legal framework, relevant policies, and local practices lack uniformity. Two main federal laws touch upon sanitation: The Clean Water Act and the Safe Drinking Water Act.<sup>21</sup> The Safe Drinking Water Act focuses on ensuring water quality in public water systems and does not address sanitation directly.<sup>22</sup> The Clean Water Act regulates discharge of sewage and pollutants, with the aim of eradicating pollution of U.S.

waterways.<sup>23</sup> These national laws are designed to provide minimum standards for the purpose of ensuring water quality.<sup>24</sup>

16. For the most part, sanitation is governed by state and tribal laws, implemented by a mix of state and local agencies. County and municipal laws also address sanitation in many states. Sanitation and wastewater laws vary by region, state, indigenous territory and municipality.<sup>25</sup> The limits of existing state sanitation laws are well-known. First, state laws are inconsistent, and many do not adequately address on-site systems. Over two decades ago, the EPA noted that state legislation “may be absent, vague, or not clearly applicable to decentralized systems.”<sup>26</sup> Even when they are clear, state laws often lack the flexibility necessary to support the systems that are appropriate for certain communities and conditions.<sup>27</sup> Second, state laws hinder government accountability and transparency. As the EPA has highlighted: “in almost all states, legislative authority... is split between at least two state agencies,” as well as between state and local authorities.<sup>28</sup> Homeowners may not know where to turn when they need assistance, and it is often hard to know which agencies make decisions regarding particular sanitation policies or practices.
17. Wastewater and sanitation funding is diffuse, further complicating the decision-making landscape. Most funding for sanitation management comes from federal agencies, but is disbursed by states to local entities. In most instances, funding supports municipal and other large systems. Community entities, non-profits, and individual homeowners in impacted communities, who often understand local needs best, are often ineligible for federal funding.<sup>29</sup> As a result, rural communities have often failed to secure funding required to meet sanitation needs.
18. At present, the legal framework and available financing are not adequate to address the sanitation challenges facing people in rural communities across the country. There is no federal minimum standard or even guidance for what constitutes adequate, accessible, or affordable sanitation. The current approach results in a situation where the individuals that are least able to afford it bear the bulk of the costs related to sanitation and wastewater services. This includes financial burdens, as well as negative consequences for health, and dignity, coupled with the threat of penalization and criminalization.

### **III. INTERNATIONAL HUMAN RIGHTS COMMITMENTS AND PAST RECOMMENDATIONS TO THE UNITED STATES**

19. The current reality of pervasive lack of access to adequate sanitation stands in stark contrast to the global recognition of the right to sanitation by UN member states; US obligations and commitments found in the Convention on the Elimination of all Forms of Racial Discrimination and the International Covenant on Civil and Political Rights; The Universal Declaration of Human Rights, recommendations by an array of UN Special Rapporteurs; and recommendations that the United States accepted in the last UPR of the United States in 2015.
20. The human right to sanitation, as articulated by the United Nations General Assembly, “entitles everyone, without discrimination” to affordable and accessible sanitation, “that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity.”<sup>30</sup> The UN Declaration on the Rights of Indigenous Peoples expressly emphasizes that “[i]ndigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment ... housing, sanitation, health and social security.”<sup>31</sup>
21. The human right to sanitation requires adequate methods of waste collection, transport, treatment, and disposal, or re-use in order minimize health risks for the people using the facilities as well as

others in the community.<sup>32</sup> To make this right a reality, the UN Special Rapporteur on the human rights to safe drinking water and sanitation has called on governments to “ensure that self-supply solutions comply with human rights obligations and are appropriate and affordable. Governments must put appropriate systems in place, including regulation and financial support for those who need it.”<sup>33</sup> Notably, fulfilling the right to sanitation further requires “active, free and meaningful” participation of impacted individuals in decision-making.<sup>34</sup>

22. United Nations resolutions on the human rights to water and sanitation indicate that these rights are derived from the right to an adequate standard of living as articulated in the Universal Declaration of Human Rights (UDHR)<sup>35</sup> and guaranteed in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). The United States has not ratified these three conventions, but has historically indicated support for economic and social rights.<sup>36</sup>
23. Human rights obligations related to the right to sanitation are also derived from treaties that the United States has ratified: the Convention Against Torture (CAT),<sup>37</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>38</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).<sup>39</sup> Of particular significance in the U.S. context are ICERD’s prohibition on racial discrimination and guarantee of health and basic services without discrimination, and the ICCPR’s provisions on equality and the right to life.<sup>40</sup>
24. The United States has co-sponsored resolutions on the human rights to water and sanitation, and joined consensus on others.<sup>41</sup> Through these actions, the federal government has demonstrated a commitment to ensure the realization of these rights both at home and abroad. This commitment, however, is continually tempered by the consistent position that the U.S. has no international *legal* obligations to ensure the right to sanitation.<sup>42</sup>
25. UN Special Procedures have identified steps the United States can take to improve access to sanitation. Following a 2011 visit to the United States, the UN Special Rapporteur on the human rights to water and sanitation further recommended that the United States:
  - “[a]dopt a comprehensive federal law on water and sanitation guaranteeing the rights to safe water and sanitation without discrimination and clearly delineating the responsibilities of public officials at the federal, state and local levels;”
  - “[f]ormulate a national water and sanitation policy and plan of action .... that devote priority attention to improving aging infrastructure, as well as innovative designs and approaches that promote human rights, are affordable and create more value in terms of public health improvements, community development and sustainability; and
  - [e]valuate the extent to which people living in poverty face challenges in paying for water and sanitation services, and adopt, at the federal level, a national minimum standard on affordability of water and sanitation.”<sup>43</sup>
26. In 2016, the Working Group of Experts on People of African Descent called on the United States government to uphold the human right to adequate sanitation.<sup>44</sup>
27. Most recently, during a 2017 visit to the United States, the UN Special Rapporteur on extreme poverty and human rights visited Alabama and looked at the problem of wastewater and

sanitation firsthand. He expressed deep concern about the lack of available services,<sup>45</sup> and emphasized the need to eliminate laws that criminalize poverty.<sup>46</sup>

28. During the second cycle of the UPR in 2015, the United States received several recommendations calling for the implementation of the human right to safe water and sanitation without discrimination for people living in poverty, indigenous peoples and migrants, as well as for the US to comply with the human right to water and sanitation as laid out in General Assembly resolution 64/292.<sup>47</sup> The United States accepted these recommendations in part,<sup>48</sup> stating that: “The U.S. is not a party to the ICESCR, and we understand the rights therein are to be realized progressively. We understand [the recommendations to the US] as referencing a right to safe drinking water and sanitation, derived from the right to an adequate standard of living. We continue to improve our domestic laws and policies to promote access to housing, food, health, and safe drinking water and sanitation, with the aim of decreasing poverty and preventing discrimination.”
29. While there has been some positive momentum in the arena of increasing funding for wastewater and sanitation in rural communities over the past two years, the lack of recognition of the right to sanitation, and corollary failure to adopt laws and policies that promote adequate sanitation that is affordable continues to perpetuate the crisis.

#### IV. CONCLUSION & RECOMMENDATIONS

30. The United States federal government, including Congress and federal agencies as well as state, local, and tribal governments can and must take concrete action to provide adequate and affordable sanitation on an equitable basis and improve the ability of rural residents to live a healthy life with dignity. Specifically, the United States should:
- **Publicly recognize that the lack of access to adequate sanitation impacts communities nationwide** and requires federal leadership and guidance, as well as collaboration with state, tribal and local governments to ensure solutions are tailored to local contexts.
  - **Improve accountability through better data collection and reporting** on access to sanitation and the impact of sanitation law and policy; **monitoring and assessing** current sanitation and wastewater systems; and **tracking and making publicly accessible** information on funding and flow of resources.
  - **Ensure adequate, affordable sanitation systems, regardless of race, ethnicity, national origin, socio-economic status, or location** through measures that include adoption of affordability standards, prioritization of resources to marginalized individuals and communities; and ensuring that administration requirements do not put an undue burden on small communities or individuals.
  - **Ensure meaningful participation in the creation and implementation of sanitation laws, policies, and programs** of rurally-based individuals and communities most impacted by lack of access to sanitation.
  - **Stop criminalization of poverty through incentives for the elimination of laws, policies, and practices that penalize and criminalize the failure to comply with sanitation regulations** when cost and/or lack of ability to attain or install functioning wastewater systems are the barrier to compliance.

## ENDNOTES

- <sup>1</sup> This submission draws heavily from research and outreach conducted by the submitting organizations, much of which is captured in the May 2019 report, *Flushed and Forgotten: Sanitation and Wastewater in Rural Communities in the United States*, at [https://www.law.columbia.edu/system/files/private\\_file/flushed\\_and\\_forgotten.final\\_report\\_0.pdf](https://www.law.columbia.edu/system/files/private_file/flushed_and_forgotten.final_report_0.pdf).
- <sup>2</sup> Stephen Gasteyer et al., *Basics Inequality: Race and Access to Complete Plumbing Facilities in the United States*, 13 DU BOIS REV.: SOC. SCI. RES. ON RACE 305, 306 (2016) (based on data from the American Community Survey).
- <sup>3</sup> *American Housing Survey*, U.S. CENSUS BUREAU, [https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html?s\\_areas=a00000&s\\_year=n2015&s\\_tableName=Table4&s\\_byGroup1=a1&s\\_byGroup2=a1&s\\_filterGroup1=t1&s\\_filterGroup2=g1&s\\_show=S](https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html?s_areas=a00000&s_year=n2015&s_tableName=Table4&s_byGroup1=a1&s_byGroup2=a1&s_filterGroup1=t1&s_filterGroup2=g1&s_show=S), year selected 2015 (last visited Feb. 10, 2019).
- <sup>4</sup> U.S. ENVTL. PROTECTION AGENCY, HOMEOWNER’S GUIDE TO SEPTIC SYSTEMS (2005), [https://www3.epa.gov/npdes/pubs/homeowner\\_guide\\_long.pdf](https://www3.epa.gov/npdes/pubs/homeowner_guide_long.pdf).
- <sup>5</sup> EARTHJUSTICE & ALA. RIVERS ALLIANCE, SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS IN PREPARATION FOR THE OFFICIAL 2017 VISIT TO THE UNITED STATES 2 (2017) (on file with authors); ACRE ET AL., SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS IN PREPARATION FOR THE OFFICIAL 2017 VISIT TO THE UNITED STATES 3-4 (2017), <https://www.ohchr.org/Documents/Issues/Poverty/VisitsContributions/USA/ACRE.pdf>.
- <sup>6</sup> Jackie Verrecchia, *The Feasibility of Septic Systems for Households in Poverty in Lee County, Virginia*, 24 J. APPALACHIAN STUD. 223, 227 (2018).
- <sup>7</sup> See e.g. MN. POLLUTION CONTROL AGENCY, *Straight-Pipe System Law, Guidance for Local Governments* (June 2018), <https://www.pca.state.mn.us/sites/default/files/wq-wwists2-38.pdf>.
- <sup>8</sup> Peter J. Hotez, *Neglected Parasitic Infections and Poverty in the United States*, 2(6) PLOS NEGLECTED TROPICAL DISEASES 1 (2008), <http://journals.plos.org/plosntds/article?id=10.1371/journal.pntd.0000256>.
- <sup>9</sup> Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), *Report on Mission to the United States of America*, U.N. Doc A/HRC/38/33/Add.1 (May 4, 2018).
- <sup>10</sup> AM. SOC’Y OF CIVIL ENG’RS, FAILURE TO ACT: THE ECONOMIC IMPACT OF CURRENT INVESTMENT TRENDS IN WATER AND WASTEWATER TREATMENT INFRASTRUCTURE (2011), [www.asce.org/uploadedFiles/Issues\\_and\\_Advocacy/Our\\_Initiatives/Infrastructure/Content\\_Pieces/failure-to-act-water-wastewater-report.pdf](http://www.asce.org/uploadedFiles/Issues_and_Advocacy/Our_Initiatives/Infrastructure/Content_Pieces/failure-to-act-water-wastewater-report.pdf).
- <sup>11</sup> See AM. SOC’Y OF CIVIL ENG’RS, 2017 INFRASTRUCTURE REPORT CARD: WASTEWATER, at 1 (2017), <https://www.infrastructurereportcard.org/wp-content/uploads/2017/01/Wastewater-Final.pdf>.
- <sup>12</sup> Christian Zurbrugg et al., *Vulnerability and Adaptability of Sanitation Systems to Climate Change*, 5 J. WATER & CLIMATE CHANGE 487, 491 (2014).
- <sup>13</sup> U.S. Water Alliance, *An Equitable Water Future*, 12 (2017), available at [http://uswateralliance.org/sites/uswateralliance.org/files/publications/uswa\\_waterequity\\_FINAL.pdf](http://uswateralliance.org/sites/uswateralliance.org/files/publications/uswa_waterequity_FINAL.pdf).
- <sup>14</sup> See e.g. KENA CADOR & ANGÉLICA SALCEDA, A SURVEY OF EFFORTS TO ACHIEVE UNIVERSAL ACCESS TO WATER AND SANITATION IN CALIFORNIA 5–6 (April 2018), available at <https://www.aclu.org/sites/default/files/SurveyReport.pdf>; Erin Riggs, *An Overview of Clean Water Access Challenges in the United States*, p. 1 (2017), available at [https://efc.sog.unc.edu/sites/www.efc.sog.unc.edu/files/2018/An%20Overview%20of%20Clean%20Water%20Access%20Challenges%20in%20the%20United%20States.Final\\_.pdf](https://efc.sog.unc.edu/sites/www.efc.sog.unc.edu/files/2018/An%20Overview%20of%20Clean%20Water%20Access%20Challenges%20in%20the%20United%20States.Final_.pdf); Sacoby M. Wilson et al., *Built Environment Issues in Unserved and Underserved African-American Neighborhoods in North Carolina*, 1 ENVIRONMENTAL JUSTICE 63, 63–64 (2008); Jacob Cantor et al., *Tracking the downstream impacts of inadequate sanitation in central Appalachia*, 15 JOURNAL OF WATER AND HEALTH 580 (2017).
- <sup>15</sup> <https://www.census.gov/prod/cen1990/ch2/ch-2-2.pdf>, pp. 30, 33.
- <sup>16</sup> Stephen P. Gasteyer et al., *Basics Inequality*, 13 DU BOIS REVIEW: SOCIAL SCIENCE RESEARCH ON RACE 305 (2016), available at <https://scholars.opb.msu.edu/en/publications/basics-inequality-race-and-access-to-complete-plumbing-facilities>.
- <sup>17</sup> PATRICIA A. JONES & AMBER MOULTON, UNITARIAN UNIVERSALIST SERV. COMM., THE INVISIBLE CRISIS: WATER UNAFFORDABILITY IN THE UNITED STATES, 15 (2016), [http://www.uusc.org/sites/default/files/water\\_report\\_july\\_2016\\_update.pdf](http://www.uusc.org/sites/default/files/water_report_july_2016_update.pdf) (focusing on the perpetual challenge of water affordability).
- <sup>18</sup> UN G.A. Res. 64/292 (July 28, 2010).

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<sup>19</sup> See CATARINA DE ALBUQUERQUE, REALISING THE HUMAN RIGHTS TO WATER AND SANITATION: A HANDBOOK BY THE UN SPECIAL RAPPORTEUR - MONITORING COMPLIANCE WITH THE HUMAN RIGHTS TO WATER AND SANITATION 8 (2014), <https://www.ohchr.org/en/issues/waterandsanitation/srwater/pages/handbook.aspx>; Comm. on Econ., Social & Cultural Rights, General Comment 20 on Non-Discrimination in Economic, Social and Cultural Rights, ¶ 41, U.N. Doc. E/C.12/GC/20 (July 2, 2009).

<sup>20</sup> U.S. Const. art. VI.

<sup>21</sup> 33 U.S.C. §§ 1251–1387 (2012); 42 U.S.C. § 300f (2012).

<sup>22</sup> 42 U.S.C. § 300f (2016).

<sup>23</sup> 33 U.S.C. § 1251 (1987).

<sup>24</sup> See ENVTL. LAW INST., STATE CONSTRAINTS: STATE IMPOSED LIMITATIONS ON THE AUTHORITY OF AGENCIES TO REGULATE WATERS BEYOND THE SCOPE OF THE FEDERAL CLEAN WATER ACT 11 (May 2013) (“The Clean Water Act establishes national minimum standards – essentially, a stringency “floor” – beneath which states are not allowed to fall in their protection of water quality.”); The Safe Drinking Water Act was adopted in order to “assure that water supply systems serving the public meet minimum national standards for protection of public health.” H.R. Rep. No. 1185, 93d Cong., 2d Sess. 1 (1974).

<sup>25</sup> Every U.S. state other than Michigan has some form of septic code in place. See Sean McBreaty, *Michigan Needs a Strong Statewide Sanitary Code*, CLEAN WATER ACTION BLOG (May 9, 2018), <https://www.cleanwateraction.org/2018/05/09/michigan-needs-strong-statewide-sanitary-code>.

<sup>26</sup> U.S. ENVTL. PROTECTION AGENCY, RESPONSE TO CONGRESS ON THE USE OF DECENTRALIZED WASTEWATER SYSTEMS, at iii (1997), [https://www.epa.gov/sites/production/files/2015-06/documents/septic\\_rtc\\_all.pdf](https://www.epa.gov/sites/production/files/2015-06/documents/septic_rtc_all.pdf).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> For example, under the Clean Water Act, non-government entities can generally receive funds from the Environmental Protection Agency. See Water Infrastructure Improvements for the Nation Act, Pub. L. No. 114-322, 130 Stat. 1628 (2016). However, states manage the funds and their disbursement. In Alabama, for instance, non-government entities are not eligible. AL. DEP’T OF ENVTL. MGMT., *Alabama State Revolving Fund*, <http://www.adem.state.al.us/programs/water/srf.cnt> (“Any public body, including water boards, utilities, and municipalities may apply for SRF financing. An ability to repay must be substantiated along with meeting other specified standards.”).

<sup>30</sup> G.A. Res. 70/169, The Human Rights to Safe Drinking Water and Sanitation, ¶ 2 (Dec. 17, 2015). UN resolutions on the human rights to water and sanitation indicate that these rights are derived from the right to an adequate standard of living as articulated in the Universal Declaration of Human Rights (UDHR)<sup>30</sup> and guaranteed in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).

<sup>31</sup> G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, art. 21 (Sept. 13, 2007). The United States has endorsed the UNDRIP. *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, U.S. DEP’T OF STATE (Jan. 12, 2011), <https://2009-2017.state.gov/s/srgia/154553.htm>.

<sup>32</sup> Inga Winkler, *The Human Right to Sanitation*, 37 U. PA. J. INT’L L. 1331, 1379 (2016); Anna Zimmer, Inga Winkler & Catarina de Albuquerque, *Governing Wastewater, Curbing pollution, and Improving Water Quality for the Realization of Human Rights*, 33 WATERLINES 337, 341 (2014).

<sup>33</sup> Léo Heller (Special Rapporteur on the Human Rights to Water and Sanitation), *Rep. to the UN General Assembly on Different Levels and Types of Services*, UN Doc. A/70/203, ¶ 60 (July 27, 2015).

<sup>34</sup> See Catarina de Albuquerque (Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation), *Human Right to Safe Drinking Water and Sanitation: Note by the Secretary-General*, ¶¶ 18-26, 87-88, U.N. Doc. A/69/213 (July 31, 2014); *Mission to the United States of America*, ¶ 6, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011). The UN Sustainable Development Goals (SDGs) also prioritize participation in meeting the goal of “ensuring availability and sustainable management of water and sanitation for all.” *Goal 6: Ensure Sustainability and Sustainable Management of Water and Sanitation for All*, UNITED NATIONS DEP’T ECON. & SOC. AFF. STAT. DIVISION, <https://unstats.un.org/sdgs/report/2017/goal-06/> (last visited Feb. 10, 2019). One of the targets established to achieve that goal is to “[s]upport and strengthen the participation of local communities in improving water and sanitation management.” *Sustainable Development Goal 6*, SUSTAINABLE DEV. GOALS KNOWLEDGE PLATFORM, PROGRESS & INFO (2017), <https://sustainabledevelopment.un.org/sdg6> (last visited Feb. 10, 2019). The ICERD further guarantees the right to participate in public affairs and decision-making at all levels. ICERD, art. 5(c). To fulfill this right governments must ensure that ethnic, racial, and religious groups participate in policy formation so that decision-making reflects their unique circumstances, and aims to address discrimination. The United Nations



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expert on extreme poverty has also emphasized that “meaningful and effective” political participation of people living in poverty is vital to ending cycles of inequality. Magdalena Sepúlveda Carmona (Special Rapporteur on Extreme Poverty and Human Rights), *Rep. of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, ¶¶ 14-19, U.N. Doc. A/HRC/23/36 (Mar. 11, 2013).

<sup>35</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948).

<sup>36</sup> See, e.g., *Human Rights Commitments and Pledges of the United States of America*, U.S. MISSION INT’L ORGS. GENEVA (Feb. 24, 2016), <https://geneva.usmission.gov/2016/02/24/human-rights-commitments-and-pledges-of-the-united-states-of-america/> (“The United States commits to continuing to engage on, and support, economic, social, and cultural rights, including at the UN Human Rights Council, in the UN General Assembly and elsewhere, in terms consistent with human rights instruments we have accepted, including the Universal Declaration of Human Rights.”).

<sup>37</sup> Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

Lack of access to sanitation may amount to inhuman and degrading treatment, which is prohibited under Art. 16 of the Convention Against Torture. See *Mission to the United States of America*, ¶¶ 58, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011)

<sup>38</sup> See International Covenant on Civil and Political Rights art. 6-7, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

<sup>39</sup> See International Convention on the Elimination of All Forms of Racial Discrimination art. 2, ¶ 1(a), *adopted* Dec. 21, 1965, 660 U.N.T.S. 195, 218 (entered into force Jan. 4, 1969) [hereinafter ICERD].

<sup>40</sup> The ICCPR includes a broad provision on non-discrimination and equality. Article 26 reads: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” ICCPR, art. 2;26. The ICCPR also protects the right to life, which the Human Rights Committee has recognized to entail a government obligation to address conditions “that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity,” including water and sanitation. See Human Rights Committee, General Comment 36 on the Right to Life UN Doc. CCPR/G/GC/36, ¶ 26 (2018).

<sup>41</sup> See, e.g., G.A. Res. 68/157, The Human Right to Safe Drinking Water and Sanitation (Feb. 12, 2014); Human Rights Council Res. 15/9, Human Rights and Access to Safe Drinking Water and Sanitation, U.N. Doc. A/HRC/RES/15/9 (Oct. 6, 2010).

<sup>42</sup> *Addendum of the United States of America to the Report of the Working Group on Its Universal Periodic Review*, U.S. MISSION INT’L ORGS. GENEVA (Aug. 31, 2015), <https://geneva.usmission.gov/2015/09/01/addendum-of-the-united-states-of-america-to-the-report-of-the-working-group-on-its-universal-periodic-review/> (last updated Sept. 16, 2015) [hereinafter *U.S. Addendum to the UPR Report*]. In the explanation of position to the 2014 resolution, the US delegate explained: “The United States joins consensus with the express understanding that it does not imply that States must implement obligations under human rights instruments to which they are not a party. The United States is not a party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the rights contained therein are not justiciable in U.S. courts.” See *Explanation of Position: The Human Right to Safe Drinking Water and Sanitation Resolution, Statement of the Delegation of the United States of America to the U.N. Human Rights Council*, U.S. MISSION INT’L ORGS. GENEVA (Sept. 25, 2014), <https://geneva.usmission.gov/2014/09/25/explanation-of-position-the-human-right-to-safe-drinking-water-and-sanitation/>. For more details on the US position regarding sanitation, see Inga T. Winkler & Catherine Coleman Flowers, “America’s Dirty Secret”: *The Human Right to Sanitation in Alabama’s Black Belt*, 49 COLUM. HUM. RTS. L. REV. 181, 201-206 (2017).

<sup>43</sup> *Mission to the United States of America*, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011) (recommendations b, c, and h).

<sup>44</sup> Working Group of Experts on People of African Descent, *Report on Mission to the United States of America*, ¶¶ 120, U.N. Doc A/HRC/33/61/Add.2 (August 18, 2016).

<sup>45</sup> Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), *Report on Mission to the United States of America*, U.N. Doc. A/HRC/38/33/Add.1, ¶ 69 (May 4, 2018) (discussing trends in criminalization of poverty) ¶ 69; Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights, *Statement on Visit to the USA*, UN OFF. HIGH COMMISSIONER HUM. RTS. (Dec. 15, 2017),

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<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22533> [hereinafter Alston, *Statement on Visit to the USA*].

<sup>46</sup> Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), *Report on Mission to the United States of America*, U.N. Doc. A/HRC/38/33/Add.1, ¶¶ 71-72 (May 4, 2018)

<sup>47</sup> Report of the Working Group on the Universal Periodic Review, United States of America, UN Doc. A/HRC/30/12, ¶ 176.311; 176.312 (Jul, 7, 2015).

<sup>48</sup> Mission of the United States to Geneva, Addendum of the United States of America to the Report of the Working Group on its Universal Periodic Review, ¶ 12 (Aug. 31, 2015). <https://geneva.usmission.gov/2015/09/01/addendum-of-the-united-states-of-america-to-the-report-of-the-working-group-on-its-universal-periodic-review/> (Aug. 31, 2015) (The US partial acceptance indicated that: “The U.S. is not a party to the ICESCR, and we understand the rights therein are to be realized progressively. We understand [the recommendations to the US] as referencing a right to safe drinking water and sanitation, derived from the right to an adequate standard of living. We continue to improve our domestic laws and policies to promote access to housing, food, health, and safe drinking water and sanitation, with the aim of decreasing poverty and preventing discrimination”).