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# Environmental Racism: Lack of Access to Adequate Sanitation in Communities of Color in the United States

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A Shadow Report Submitted to the U.N. Committee on the Elimination of Racial  
Discrimination in its 107<sup>th</sup> Session

The United States' Compliance with the International Convention on the  
Elimination of All Forms of Racial Discrimination

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## ABOUT THE AUTHORS

**Center for Rural Enterprise and Environmental Justice (CREEJ)** works to address the lack of wastewater infrastructure in rural communities across the United States. Through direct action and partnerships with institutional collaborators, CREEJ prioritizes policy influence, technology innovation, and health research while operating from a framework of human rights and environmental justice principles. Founded by Catherine Flowers, CREEJ evolved out of her efforts to tackle poverty in her hometown of Lowndes County, Alabama.

**The Human Rights at Home Litigation Clinic at St. Louis University School of Law** focuses on securing fundamental human rights for the most vulnerable persons in the United States. Through both litigation and projects, SLU Law students may get the chance to conduct interviews of clients and witnesses; provide legal advice and counseling to clients; draft pleadings; represent clients in court hearings; and interact with human rights legal systems, including U.N. Special Rapporteurs, U.N. Treaty Bodies, or the Inter-American Commission on Human Rights.

**Natural Resources Defense Council (NRDC)** is an environmental and public health nonprofit organization that works to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. NRDC is committed to protecting communities from health threats and works to lessen the disproportionate burdens borne by communities of color and low-income communities from environmental contamination and the impacts of climate change. One of NRDC's priorities is to help create strong, just, and resilient communities, including by improving access to safe and adequate sanitation systems.

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## **EXECUTIVE SUMMARY**

1. The authors and signatories of this shadow report acknowledge that the Committee for the Elimination of Racial Discrimination (CERD) has repeatedly expressed concerns to the United States regarding violations of Black, Indigenous, and other people of color’s rights, including relating to environmental racism. This report highlights the shortcomings of the United States in implementing the International Convention on the Elimination of All Forms of Racial Discrimination at federal, state, and local levels by focusing on the right to adequate sanitation. Pervasive and institutionalized discrimination on the basis of race in U.S. laws and policies perpetuates and facilitates a lack of access to basic sanitation services in ways that disproportionately harm communities of color. As a result of this discrimination, many communities are exposed to unsafe raw sewage, struggle with failing and outdated wastewater infrastructure, and cannot afford adequate sanitation systems. Lack of access to sanitation services seriously inhibits individuals’ ability to live with dignity and interferes with the rights to life, health, privacy, water, housing, and a healthy environment. The case study of Lowndes County, Alabama, reflects patterns of sanitation inequities seen across the United States.

2. To support equitable and sustainable solutions to sanitation failures, the United States must focus on examining and eliminating the legal, political, and structural causes of inadequate sanitation, including racism, disinvestment, and neglect. Addressing sanitation challenges as a human rights issue requires prioritizing accessibility, safety, and affordability grounded in the principles of non-discrimination and equity, community participation, and government accountability. Respectfully, we suggest that during its upcoming review, the CERD ask the United States to provide information about the measures adopted by federal, state, and local governments to ensure equitable and adequate access to sanitation for all Black, Indigenous, and other people of color, including measures to fund sanitation services and infrastructure and to invest in innovative technologies to serve rural areas.

## **I. INTRODUCTION**

3. Environmental racism is a substantial threat to human rights in the United States. As a result of centuries of slavery, racial terror, and racial discrimination, including structural racism, Black, Indigenous, and other people of color bear the brunt of the threats and harms from climate change and environmental degradation. Ongoing racism in the United States—including racist U.S. legal systems, laws, and policies—continues to disproportionately prevent people of color from realizing their basic human rights, including the rights to life, health, privacy, water, sanitation, housing, a healthy environment, and freedom from discrimination. This report focuses on the intersection of the right to non-discrimination on the basis of race for Black, Indigenous, and other people of color in the United States and the right to adequate sanitation services.

4. Below, we highlight the ways in which the U.S. system of environmental regulation perpetuates and facilitates growing racial inequalities in access to adequate sanitation services.<sup>1</sup> As the U.N. Special Rapporteur on extreme poverty and human rights has remarked:

The United States is a land of stark contrasts. It is one of the world's wealthiest societies, a global leader in many areas, and a land of unsurpassed technological and other forms of innovation... But its immense wealth and expertise stand in shocking contrast with the conditions in which vast numbers of its citizens live.<sup>2</sup>

Alarming, far too many communities of color across the United States have unmet basic human needs, including the shocking lack of access to adequate sanitation services.<sup>3</sup> A 2018 report concluded that race was the strongest predictor of a lack of adequate water and sanitation access in the United States, and that Black and Latino households were “nearly twice as likely to lack complete plumbing than white households.”<sup>4</sup> With failing or inadequate sanitation systems, raw sewage, feces, toilet paper, and untreated wastewater backup in and around homes. Improper disposal of wastewater creates environmental contamination and health risks including infections, as well as impacts on child development, pregnancy, and reproductive capacity.<sup>5</sup> Moreover, “[t]he perpetual appearance of wastewater in and around homes ... takes a significant toll on mental health and the ability of individuals to live with dignity.”<sup>6</sup>

5. Lack of adequate access to sanitation arises in many forms. While access to adequate sanitation services is an issue in both rural and urban communities in the United States, rural and remote communities are more likely to lack access due in part to unique geographic and structural challenges.<sup>7</sup> Some communities have outdated and failing centralized wastewater infrastructure. Others are forced to contend with ineffective and broken individual (on-site) sanitation systems,<sup>8</sup> such as overflowing or malfunctioning septic tanks or other individualized

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<sup>1</sup> See also Brittany A. Campbell et al., List of Issues Submission to the CERD Committee: *Racism in Access to Adequate Sanitation in the United States* 1 (May 2022), [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_NGO\\_USA\\_48714\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_48714_E.pdf).

<sup>2</sup> Philip Alston (Special Rapporteur on Extreme Poverty & Hum. Rts., U.N. Hum. Rts. Council), *Rep. of Special Rapporteur on extreme poverty and human rights on his mission to the United States of America*, ¶ 4, U.N. Doc. A/HRC/38/33/Add.1 (May 4, 2018), [https://digitallibrary.un.org/record/1629536/files/A\\_HRC\\_38\\_33\\_Add-1-EN.pdf?ln=en](https://digitallibrary.un.org/record/1629536/files/A_HRC_38_33_Add-1-EN.pdf?ln=en).

<sup>3</sup> See e.g., Ala. Ctr. For Rural Enterprise et al., *Flushed and Forgotten: Sanitation and Wastewater in Rural Communities in the United States* 6 (May 2019), <https://www.humanrightscolumbia.org/sites/default/files/Flushed%20and%20Forgotten%20-%20FINAL%20%281%29.pdf>.

<sup>4</sup> George McGraw & Radhika Fox, *Closing the Water Access Gap in the United States* 22 (2019), [http://uswateralliance.org/sites/uswateralliance.org/files/publications/Closing%20the%20Water%20Access%20Gap%20in%20the%20United%20States\\_DIGITAL.pdf](http://uswateralliance.org/sites/uswateralliance.org/files/publications/Closing%20the%20Water%20Access%20Gap%20in%20the%20United%20States_DIGITAL.pdf).

<sup>5</sup> *Flushed and Forgotten*, *supra* note 3, at 6.

<sup>6</sup> *Id.*

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

<sup>8</sup> Individualized wastewater disposal methods and individualized sanitation systems refer to conventional or engineered onsite wastewater management or treatment systems.

systems.<sup>9</sup> Between 20% and 25% of households in the United States depend on individualized wastewater disposal methods.<sup>10</sup>

6. Still others lack a sanitation system altogether, and are forced to use “straight pipes,” configurations of pipes that pump raw sewage from the home directly onto adjacent yards, ditches, or nearby creeks or forestation. Straight piping is often used as a patchwork solution when individualized systems cannot be installed due to soil conditions or funding issues.<sup>11</sup> Certain soils also present limitations and problems for individualized sanitation systems.<sup>12</sup> The extreme rainfall and rising water levels associated with climate change have further stressed already overburdened sanitation systems across the United States.<sup>13</sup> Overall, the United States’ national wastewater infrastructure is so poor that the American Society of Civil Engineers gave it a grade of D+ in 2021.<sup>14</sup>

7. State and local governments often provide little to no support for residents forced to maintain individualized sanitation methods. Government agencies are typically only responsible for creating and enforcing standards for installation and maintenance, but the onus of onsite wastewater management falls almost entirely on property owners.<sup>15</sup> This poses challenges for residents in low-income communities and communities of color, because installing and maintaining adequate individualized sanitation systems is exceedingly expensive, costing tens of thousands of dollars.<sup>16</sup> The cost renders safe sanitation inaccessible to many. This can lead to the criminalization of poverty when residents do not have the resources to install or maintain individualized wastewater disposal methods up to the standards required by state or local law.<sup>17</sup>

8. The U.S. Government has not adequately addressed these inequities. While most of the funding for managing sanitation is provided by the federal government in the United States, federal funds are distributed by states to local entities.<sup>18</sup> A majority of the federal funding is funneled into municipal or large systems, often never reaching rural communities and other communities of color.<sup>19</sup> Moreover, some states, including Alabama, have designed funding programs in ways that prevent available funding from reaching individuals who need access to on-site sanitation systems or communities with the greatest financial need for assistance to

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<sup>9</sup> See *Flushed and Forgotten*, *supra* note 3, at 27.

<sup>10</sup> Krista A. Capps et al., *Disparities between the Demand for On-Site Wastewater Treatment Systems & Treatment Options for Septage*, ACS EST Water 1, 2251 (2021).

<sup>11</sup> *Flushed and Forgotten*, *supra* note 3, at 6.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Am. Soc’y of Civil Eng’rs, 2021 *Infrastructure Report Card: Wastewater*, <https://infrastructurereportcard.org/wp-content/uploads/2020/12/Wastewater-2021.pdf>.

<sup>15</sup> See *Flushed and Forgotten*, *supra* note 3, at 15-16.

<sup>16</sup> See Patricia A. Jones & Amber Moulton, Unitarian Universalist Serv. Comm., *The Invisible Crisis: Water Unaffordability in the United States* 14 (May 2016), <http://uswateralliance.org/sites/uswateralliance.org/files/Invisible%20Crisis%20-%20Water%20Affordability%20in%20the%20US.pdf>.

<sup>17</sup> *Flushed and Forgotten*, *supra* note 3, at 6.

<sup>18</sup> *Id.* at 12.

<sup>19</sup> *Id.*

improve wastewater infrastructure.<sup>20</sup> Racism in state and local politics has also helped deepen the gap between those with adequate sanitation services and those without.

9. Current U.S. laws and policies are insufficient to prevent the perpetuation of environmental racism in the context of access to sanitation. As a result, Black, Indigenous, and other people of color across the United States continue to lack sanitation services that are safe, acceptable, affordable, accessible, and available without discrimination.<sup>21</sup> This violation of rights is a political choice.<sup>22</sup>

## II. CASE STUDY: WOEFULLY INADEQUATE SANITATION SERVICES IN LOWNDES COUNTY, ALABAMA

10. Lowndes County—with its roughly 10,000 residents—sits in the black belt<sup>23</sup> of Alabama and is a predominantly Black, rural community with deep ties to the U.S. civil rights movement.<sup>24</sup> For decades, many Lowndes County residents have lacked access to adequate sanitation. Some residents have broken or failed onsite systems that force them to live with pools of raw sewage outside their homes.<sup>25</sup> Others lack any type of wastewater treatment and use makeshift illegal straight pipes to transfer raw sewage from homes to adjacent outdoor spaces, where it pollutes nearby creeks and forestation.<sup>26</sup> Many residents that could be connected to centralized sewage systems are not, and the expense of installing and maintaining the specialized engineered onsite systems necessary for the impermeable soil<sup>27</sup> in the area is a barrier to residents, a quarter of whom live below the poverty

**Image:** A pool of raw sewage from straight pipes collects behind one resident's home in Lowndes.



<sup>20</sup> See *infra* note 39.

<sup>21</sup> See generally *Flushed and Forgotten*, *supra* note 3, at 7 (“situating the lack of access to sanitation in rural communities in the United States within a human rights framework”).

<sup>22</sup> Cf. Report of the Special Rapporteur, *supra* note 2, ¶ 17.

<sup>23</sup> The area is named for its rich, black topsoil that helped plantation crops, like cotton, thrive. The same characteristics of the soil that made it fertile, i.e., its ability to hold water, make it unsuitable for conventional onsite wastewater treatment systems.

<sup>24</sup> Alvin Benn, *Formerly ‘Bloody Lowndes,’ county to celebrate role in civil rights*, MONTGOMERY ADVERTISER (Apr. 8, 2018), <https://www.montgomeryadvertiser.com/story/opinion/columnists/2018/04/08/formerly-bloody-lowndes-county-celebrate-role-civil-rights/493999002/>.

<sup>25</sup> Bill Whitaker, *60 Minutes investigates: Americans fighting for access to sewage disposal*, CBS NEWS (Dec. 19, 2021), <https://www.cbsnews.com/news/alabama-sewage-disposal-60-minutes-2021-12-19/>.

<sup>26</sup> Lyndsey Gilpin, *The Rural South’s Invisible Public Health Crisis*, MONTGOMERY ADVERTISER (July 6, 2018), <https://www.montgomeryadvertiser.com/story/news/local/alabama/2018/07/06/story-first-series-ways-communities-addressing-rise-poverty-related-tropical-diseases-poor-sewage/754311002/>.

<sup>27</sup> Top layers become saturated but beneath the topsoil, the soil does not perc (layers inhibit percolation). See Emily Meza, *Examining Wastewater Treatment Struggles in Lowndes County, AL*, 5 (Masters in Env’tl. Mgmt. project, Duke Univ.) (Apr. 27, 2018), [https://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/16516/MP\\_2018\\_04\\_20\\_FinalDraft.pdf](https://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/16516/MP_2018_04_20_FinalDraft.pdf).

line.<sup>28</sup> Even those residents who are connected to centralized wastewater systems (about 20%) experience sewage backups into their sinks or tubs.<sup>29</sup> The centralized systems persistently fail, violating environmental permits and causing sewage lagoon overflows that flood the yards of adjacent homes. Some residents forbid their children from playing in their yards or avoid their yards altogether because of the stench of human waste.<sup>30</sup> These problems will only worsen as climate change intensifies, leading to rising water tables and more intense rains.<sup>31</sup> The state health department has no current estimate of how many residents lack proper sanitation.

11. The sanitation crisis in Lowndes County is “linked directly”<sup>32</sup> to the U.S.’s history of slavery and lack of political representation for and economic vulnerability of the County’s Black residents.<sup>33</sup> Nearly 70% of the county is Black and 27.7% of Black residents live below the poverty line.<sup>34</sup> The health consequences of a lack of access to sanitation systems—including potential exposure to hookworm<sup>35</sup> and other pathogens—thus disproportionately impact the majority Black community in Lowndes. Government policies—including imposing the financial burden on residents to install and maintain onsite wastewater systems and penalizing residents who cannot afford such systems with fines and jail time<sup>36</sup>—have caused and continue to cause disproportionate harms from lack of sanitation access to fall on Black

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<sup>28</sup> While 22% of all Lowndes County residents live below the poverty line that number is higher for Black residents. U.S. Census FactFinder, 2020 Census Summary File, <https://data.census.gov/cedsci/all?q=lowndes%20county,%20alabama>.

<sup>29</sup> Whitaker, *supra* note 25.

<sup>30</sup> Yamiche Alcindor, *In rural Alabama, raw sewage spurs investigation into racial inequality*, NBC NEWS (Apr. 22, 2022), <https://www.nbcnews.com/politics/politics-news/rural-alabama-raw-sewage-spurs-investigation-racial-inequality-rcna25475>.

<sup>31</sup> Jim Morrison, *Backed-up pipes, stinky yards: Climate change is wrecking septic tanks*, WASH. POST (Apr. 12, 2022), <https://www.washingtonpost.com/climate-environment/2022/04/12/backed-up-pipes-stinky-yards-climate-change-is-wrecking-septic-tanks/?request-id=015857c5-74bf-4f43-8284-fac5c8b4d5e1&pml=1>.

<sup>32</sup> See *Flushed and Forgotten*, *supra* note 3.

<sup>33</sup> Lowndes County was once known as “Bloody Lowndes,” a reference to the white violence used to control and terrorize the county’s Black residents. Due to systematic oppression, not a single Black citizen was registered to vote in 1964 despite the county being 80% Black. Lowndes residents contributed significantly to the Civil Rights movement with the creation of the Lowndes County Freedom Organization, which worked to register Black voters. During the 1965 Selma to Montgomery March, led by Dr. Martin Luther King Jr., protestors passed through Lowndes County, using the county as a rest stop and campsite. See ACRE, *Lowndes County Sewage Crisis*, <https://tfddmgmt.github.io/lowndes/>.

<sup>34</sup> U.S. Census FactFinder, 2020 Census Summary File, <https://data.census.gov/cedsci/all?q=lowndes%20county,%20alabama>.

<sup>35</sup> In a peer-reviewed study, nineteen of fifty-five participants (34.5%) tested positive for low levels of hookworms in Lowndes County. McKenna, et.al, *Human Intestinal Parasite Burden and Poor Sanitation in Rural Alabama*, 97(5) AM. J. TROPICAL MED. & HYGIENE 1623-28 (Sept. 2017).

<sup>36</sup> At least ten African American residents were formally charged with violating the Alabama State Code for operating sewage disposal systems that posed a public health risk. See Jennifer Carrera, *Sanitation and Social Power in the United States* 107-08 (2014) (Ph.D. dissertation, University of Illinois), available at <https://core.ac.uk/reader/29153060> (last accessed July 15, 2022).



residents.<sup>37</sup> One such law<sup>38</sup>—applicable only to Lowndes County—threatens residents with a lien on their home to recover costs if the county exercises its power to compel connection to a centralized system and the residents decline to or cannot afford to do so on their own. This law may disproportionately impact Black residents who are more likely to be impoverished and therefore more likely to have the lien assessed for their inability to pay. Moreover, Alabama laws and regulations implementing infrastructure funding programs under the Clean Water Act are designed in ways that disallow or create hurdles to prevent funding from going to support on-site sanitation systems where they are most needed.<sup>39</sup>

### III. CERD COMMITTEE POSITION

12. The CERD Committee has repeatedly called on the United States to address inequalities, recommending a series of measures that could help address the causes of discrimination in the United States and improve access to adequate sanitation. For example, the Committee has recommended that the United States review existing laws and policies to “ensure effective protection against any form of racial discrimination and any unjustifiably disparate impact.”<sup>40</sup>

13. In its 2014 Concluding Observations to the United States’ Combined Seventh to Ninth Periodic Reports, the CERD Committee addressed the disparate impact of environmental pollution, the criminalization of homelessness, and the discrimination and segregation in housing.<sup>41</sup> While these issues are interconnected with access to adequate sanitation, the CERD has not directly addressed racial discrimination in the context of the right to adequate sanitation.

14. In preparation for the review of the United States at its 107<sup>th</sup> Session in 2022, the CERD Committee included in its List of Themes the “impact of the measures adopted and further efforts to address the disproportionate effects of environmental pollution caused by

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<sup>37</sup> See Earthjustice et al., *Complaint Under Title VI of the Civil Rights Act of 1964* (Sept. 28, 2018), [https://earthjustice.org/sites/default/files/files/ACRE%20Title%20VI%20complaint%20with%20exhibits\\_09-28-2018.pdf](https://earthjustice.org/sites/default/files/files/ACRE%20Title%20VI%20complaint%20with%20exhibits_09-28-2018.pdf) (requesting federal investigation of Alabama Department of Public Health and Lowndes County Health Department for discrimination related to sanitation access).

<sup>38</sup> Ala. Code § 45-43-171.

<sup>39</sup> For instance, state regulations—unlike federal law—permit funds distributed through the Clean Water Act State Revolving Fund to go only to public entities, not nonprofits or individuals (as permitted by federal law), which presents a barrier to funding decentralized wastewater systems. Ala. Admin. Code 335-11-1-.01(e), (t), (s); *see also id.* 335-11-1-.02 (limiting eligible applicants to public entities), 335-11-1-.09(10) (loans shall only be made to public entities that meet certain criteria). Moreover, Alabama does not allow loans to be made with 100% subsidization, which may be required for very distressed communities to meaningfully access funds. Ala. Dep’t of Env’t Mgmt., CWSRF Intended Use Plan, Fiscal Year 2021, att.4 (attaching memo titled, Alabama Clean Water State Revolving Fund Add’l Subsidization & Affordability Criteria, effective September 30, 2015), <https://adem.alabama.gov/programs/water/srfreports/2021CWSRFIUP.pdf>.

<sup>40</sup> Comm. on the Elimination of Racial Discrimination (hereinafter “CERD”), Concluding Observations on the United States of America, ¶ 393, U.N. Doc. A/56/18 (Aug. 13, 2001); *see also* CERD, General Recommendation, at 14, U.N. Doc A/48/18(SUPP.), at 114 (Mar. 17, 1993).

<sup>41</sup> CERD, Concluding Observations on the United States of America, ¶¶ 10, 12-13, U.N. Doc. CERD/C/USA/CO/7-9 (Sept. 25, 2014).

extractive and manufacturing industries, radioactive toxic waste, climate and natural disasters on racial and ethnic minorities and Indigenous Peoples, including in non-autonomous territories.”<sup>42</sup> This theme does not fully or directly address the case studies highlighted above where infringement on the rights to non-discrimination and adequate sanitation services are interrelated.

15. In its General Recommendation No. 34, the CERD Committee has urged State parties to “[t]ake steps to remove all obstacles that prevent the enjoyment of economic, social, and cultural rights by people of African descent especially in areas of education, housing, employment and health.”<sup>43</sup> Discrimination in the context of the right to adequate sanitation systems is a true obstacle to living with dignity, including the full enjoyment of economic, social, and cultural rights, and the right to health.<sup>44</sup>

16. The CERD Committee has also emphasized that it is appropriate, and sometimes necessary, for governments to adopt special measures to “secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms.”<sup>45</sup> For example, to ensure that laws and policies are effective in achieving greater equality and eliminating discrimination, the Committee has called on governments to collect disaggregated data, which is essential to understand how law and policy impact particular communities and groups on the basis of race and identity, and to generate more effective and targeted solutions to address persistent forms of discrimination.<sup>46</sup> In the context of discrimination and the right to adequate sanitation services in the United States, much more data collection is necessary to fully understand these issues and craft realistic remedies.

#### IV. U.S. GOVERNMENT RESPONSE

17. Although the U.S. Government submissions to the CERD have long recognized racial disparities in health, access to housing, and harms from environmental contamination, to date the submissions have failed to meaningfully acknowledge or address the ways in which government laws and policies perpetuate racial disparities in access to adequate sanitation services.

18. In 2021, the United States addressed some issues related to the right to adequate sanitation in its Combined Tenth through Twelfth Periodic Reports to the CERD Committee.<sup>47</sup> The United States noted President Biden’s Executive Order 13985, which generally addressed

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<sup>42</sup> CERD, List of Themes in Relation to the Combined Tenth to Twelfth Reports of the United States of America, ¶ 19, U.N. Doc. CERD/C/USA/Q/10-12 (June 24, 2022).

<sup>43</sup> CERD, General Recommendation No. 34: Racial discrimination against people of African descent, ¶ 50, U.N. Doc. CERD/C/GC/34 (Oct. 3, 2011).

<sup>44</sup> Comm. on Economic, Social and Cultural Rights, Statement on the Right to Sanitation, ¶¶ 7-8, U.N. Doc. E/C.12/2010/1 (Mar. 18, 2011).

<sup>45</sup> CERD, General Recommendation 32, ¶¶ 11-12, U.N. Doc. CERD/C/GC/32 (Sept. 24, 2009).

<sup>46</sup> *See, e.g.*, CERD, General Recommendation 25, ¶ 6, U.N. Doc. CERD/C/365/ Rev.1, at 20, 21 (Mar. 20, 2000); CERD, Concluding Observations on the Combined Twenty-First to Twenty-Third Periodic Reports of the United Kingdom of Great Britain and Northern Ireland, ¶ 14, U.N. Doc. CERD/C/GBR/CO/21-23 (Oct. 3, 2016).

<sup>47</sup> CERD, Combined Tenth to Twelfth Periodic Reports Submitted by the United States of America, U.N. Doc. CERD/C/USA/10-12 (Dec. 20, 2021).

striving towards equity for all, including people of color and other historically marginalized communities.<sup>48</sup> The United States also discussed actions taken to address housing discrimination<sup>49</sup> and recounted efforts to further environmental justice.<sup>50</sup> While these issues—environmental justice, housing discrimination—are interconnected to the right to adequate sanitation, the United States’ only direct discussion of sanitation was the example of the Navajo COVID-19 Home Water and Wastewater Improvement Mission (a grant program).<sup>51</sup>

19. Earlier submissions to the CERD by the United States also recognized both health disparities and disparate burdens from environmental contamination borne by people of color. In 2013, the United States’ Combined Seventh to Ninth Periodic Reports to the CERD Committee highlighted a 2011 federal report discussing health disparities including exposure to environmental hazards.<sup>52</sup> While that report found that the United States had made substantial progress in reducing health disparities, it also admitted that health disparities “by race and ethnicity, along with other social characteristics, still persist.”<sup>53</sup> The 2013 CERD report also noted that the Obama Administration was committed to making environmental justice a central part of the government’s everyday decision-making process.<sup>54</sup> The 2007 United States’ Combined Fourth to Sixth Periodic Reports to the CERD Committee likewise emphasized environmental justice as a priority for federal agencies.<sup>55</sup>

20. In 2000, the United States’ Combined Initial to Third Periodic Reports to the Committee discussed the United States’ commitments to environmental justice, including the 1994 Executive Order 12898 signed by President Clinton that directed every federal agency to “identify and consider adverse human health or environmental effects of its programmes, policies, and activities on minority and low-income populations.”<sup>56</sup> In addition, the 2000 Report stated that the “United States recognizes that low-income and minority communities frequently bear a disproportionate share of adverse environmental burdens and is working to implement existing laws that better protect all communities.”<sup>57</sup>

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<sup>48</sup> *Id.* ¶ 7.

<sup>49</sup> *Id.* ¶¶ 50-53.

<sup>50</sup> *Id.* ¶¶ 32-41.

<sup>51</sup> *Id.* ¶ 35.

<sup>52</sup> CERD, Combined Seventh to Ninth Periodic Reports Submitted by the United States of America ¶ 136, U.N. Doc. CERD/C/USA/7-9 (Oct. 3, 2013); Ctrs. for Disease Control & Prevention, *Health Disparities and Inequalities Report – United States* (2011), <https://www.cdc.gov/minorityhealth/chdir/2011/CHDIR2011.html>.

<sup>53</sup> CERD, Combined Seventh to Ninth Periodic Reports Submitted by the United States of America ¶ 136, U.N. Doc. CERD/C/USA/7-9 (Oct. 3, 2013).

<sup>54</sup> *Id.* ¶ 144.

<sup>55</sup> CERD, Combined Fourth to Sixth Periodic Reports Submitted by the United States of America, ¶¶ 264-65, U.N. Doc. CERD/C/USA/6 (Oct. 24, 2007).

<sup>56</sup> CERD, Combined Initial to Third Periodic Reports Submitted by the United States of America, U.N. Doc. CERD/C/351/Add.1, ¶ 390 (Oct. 10, 2000).

<sup>57</sup> *Id.* ¶ 389.

## V. OTHER U.N. AND REGIONAL HUMAN RIGHTS BODIES RECOMMENDATIONS

21. The U.N. General Assembly describes the human right to sanitation as access—without discrimination—to affordable sanitation “that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity.”<sup>58</sup> This right includes safe wastewater collection and treatment, which requires as little human contact with waste as possible.<sup>59</sup> The U.N. Special Rapporteur on the human rights to safe drinking water and sanitation has stated that, for the human right to sanitation to be realized, individualized systems must be “appropriate and affordable. States need to put appropriate systems in place, including regulation and financial support for those who need it.”<sup>60</sup> Moreover, “[a]dequate sanitation not only guarantees an individual’s access, but also protects the human rights of others, including their rights to life, health, water and a healthy environment, by ensuring that the environment in which they live is not contaminated with faeces.”<sup>61</sup> The Special Rapporteur has noted that the right to sanitation must be accompanied by “active, free and meaningful” participation in decision-making at all levels.<sup>62</sup> The importance of the “participation of local communities” in the process of “improving water and sanitation management” was also recognized as part of the U.N. Sustainable Development Goals, which promote improving access to sanitation.<sup>63</sup>

22. As described in detail in the 2018 Flushed and Forgotten Report, the United States has received various recommendations from U.N. treaty bodies and human rights mechanisms to better ensure the rights to sanitation and non-discrimination.<sup>64</sup> After visiting the United States in 2011, the U.N. Special Rapporteur on the human rights to water and sanitation 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

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<sup>58</sup> G.A. Res. 70/169, The Human Rights to Safe Drinking Water and Sanitation, ¶ 2 (Dec. 17, 2015).

<sup>59</sup> *Flushed and Forgotten*, *supra* note 3, at 31.

<sup>60</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>61</sup> *Id.* ¶ 6.

<sup>62</sup> Catarina de Albuquerque (Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation), *Rep. to the UN General Assembly on Human right to safe drinking water and sanitation*, U.N. Doc. A/69/213 (July 31, 2014).

<sup>63</sup> *Flushed and Forgotten*, *supra* note 3, at 32 (citing Catarina de Albuquerque, *supra* note 62, ¶¶ 18-26, 87-88).

<sup>64</sup> *Id.* at 33-34.

- [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>65</sup>

23. The U.N. Human Rights Council in 2015 recommended that the United States implement the human rights to safe water and sanitation without discrimination for people living in poverty, indigenous peoples and migrants, and to comply with the human right to water and sanitation as laid out in UN General Assembly resolution.<sup>66</sup> In 2016, the Working Group of Experts on People of African Descent called on the U.S. government to “uphold[] the right to adequate standards of living,” including the right to adequate sanitation.<sup>67</sup> In addition, after a 2017 visit to the United States, the U.N. Special Rapporteur on extreme poverty and human rights “expressed deep concern” about the lack of available sanitation services in Lowndes County, Alabama, and “emphasized the need to eliminate laws that criminalize poverty,” including laws that punish individuals unable to afford basic services and exacerbate stigmatization.<sup>68</sup> We encourage the Committee to build on these efforts by other UN bodies to continue to review the United States’ action and inaction on the issue of sanitation access.

## VI. RECOMMENDED QUESTIONS FOR THE UNITED STATES

**Please provide detailed information on measures adopted by federal, state, and local governments to ensure equitable and adequate access to sanitation services for all Black, Indigenous, and other people of color.**

**Please provide detailed information regarding federal, state, and local government funding given to Black, Indigenous, and other communities of color to remedy disparities in sanitation access, services, and impacts from a lack of access to adequate sanitation systems.**

**Please provide detailed information regarding steps taken by federal, state, and local governments to identify innovative technologies to ensure adequate access to sanitation in rural areas, especially areas where the soil composition renders traditional septic systems ineffective.**

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<sup>65</sup> Catarina de Albuquerque (Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation), *Report of the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to the United States of America (addendum)*, ¶¶92(b), (c), (h), U.N. Doc. A/HRC/18/33/Add.4 (August 2, 2011).

<sup>66</sup> See Report of the Working Group on the Universal Periodic Review, United States of America, ¶¶176.311-312, UN Doc. A/HRC/30/12 (July 20, 2015).

<sup>67</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>68</sup> *Flushed and Forgotten*, *supra* note 3, at 33 (citing 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)).

## **VII. SUGGESTED RECOMMENDATIONS TO THE UNITED STATES**

**Take immediate action to ensure equitable access to adequate sanitation services for all, especially those living in rural areas and Black, Indigenous, and other people of color.**

**Take immediate action to incentivize the elimination of laws, policies, and practices that criminalize or penalize residents who fail to comply with sanitation regulations, due to cost or inability to install wastewater systems.**

**Fully fund necessary repairs, upgrades, and/or modifications to all sanitation systems, and fully fund the development and construction of adequate new sanitation infrastructure and governance structures where necessary, to prevent future human rights violations.**

**Take immediate action to ensure that on-site sanitation systems must be accompanied by warranties against manufacturing and installation defects and mechanical failures for a period of at least ten years.**

**Ensure the meaningful participation of Black, Indigenous, and other people of color most impacted by lack of access to adequate sanitation services in the revision, elaboration, and implementation of sanitation laws, policies, and programs.**

**Collect data and report publicly on the status of access to sanitation services for Black, Indigenous, and other people of color, including all health impacts from lack of access to adequate sanitation.**