

Universal Periodic Review of the United States: Third Cycle (2020) Ensuring Adequate and Affordable Sanitation on an Equitable Basis¹

- **SUMMARY:** Despite being one of the wealthiest countries, the United States experiences profound poverty and inequality. Approximately 540,000 U.S. households lack access to adequate and affordable sanitation, which is essential to a dignity and health. The spread of COVID-19 illustrates the ways that inadequate water and sanitation compromise the health of already marginalized individuals, with global implications.
- **Households have failing, inadequate, and in some cases non-existent systems to handle human waste.** Some residents build “straight pipes” and other makeshift ways to funnel waste. As a result, feces can collect inside homes and yards. Reflecting this reality, the US received a D+ grade for its wastewater infrastructure in 2017.²
- **Individuals’ right to health is put at risk** without adequate wastewater disposal, increasing susceptibility to diseases, including hookworm³ and COVID-19.
- **A lack of adequate sanitation leads to inequality and marginalization.** Failure to comply with sanitation regulations, which often place high financial burdens on homeowners, may lead to stigma, as well as fines and criminal charges, criminalizing poverty.
- **Impacted communities are those that have historically lacked political power,** including as a result of denial of the right to vote. The limited data available indicates that black, indigenous, and migrant communities are among the most impacted.

Rural communities in Alabama, Alaska, California, Illinois, Kentucky, Louisiana, Michigan, Mississippi, the Navajo Nation, North Carolina, Ohio, Puerto Rico, Texas, Virginia, and West Virginia, as well as other jurisdictions, lack adequate sanitation.

The reality in the United States stands in stark contrast to human rights standards, including non-discrimination and an adequate standard of living.

LEGAL FRAMEWORK: ICCPR Art. 6, 7, 26; CERD Art. 2, 5; UDHR Art. 25; CAT Art. 16; GA Res. 64/292.

The human right to sanitation includes affordable and accessible sanitation which is “safe, hygienic, secure,

socially and culturally acceptable and that provides privacy and ensures dignity” – available without discrimination.⁴ While the U.S. has historically supported economic and social rights, it has failed to ratify several core human rights treaties and denied a *legal* obligation to fulfill the right to sanitation.

U.S. domestic laws provide very limited economic and social rights protection. While two federal laws touch upon sanitation, they focus mainly on clean water. Sanitation and wastewater are largely governed by state, local, and tribal laws, implemented by a mix of state and local agencies. Existing laws are vague and inconsistent across states, with little accountability for inadequate or failing sanitation systems. While some federal funding exists, it is often inaccessible for the individuals and rural communities most in need.

UPR AND SPECIAL PROCEDURES: During the 2015 UPR, the U.S. received several recommendations focused on the right to water and sanitation, including:⁵

- Implement the human right to safe water and sanitation **without discrimination for the poorest sectors of the population, including indigenous peoples and migrants.**
- **Ensure compliance with the human right to water and sanitation** according to G.A. Res. 64/292.

The U.S. accepted these recommendations in part.

UN Special Procedures have also recommended that the United States take action to improve access to sanitation:

- The Special Rapporteur on water and sanitation called on the United States to **adopt a coherent water and sanitation policy that addresses the challenges faced by those living in poverty** (2011).⁶
- The Working Group of Experts on People of African Descent called on the United States to **uphold the human right to adequate sanitation** (2016).⁷
- The UN Special Rapporteur on extreme poverty addressed **the lack of wastewater and sanitation services** in Alabama, and emphasized the need to **eliminate laws that criminalize poverty** (2017).⁸

While there has been some positive momentum,⁹ the lack of U.S. government recognition of the right to sanitation, coupled with the failure to adopt policies that promote adequate and affordable sanitation, perpetuates the crisis.

SUGGESTED QUESTIONS

1. Please provide information on measures the federal government is taking to (a) promote access to adequate and affordable sanitation on an equal basis, including efforts to provide funding for rural households and individuals; (b) track and report disaggregated data on sanitation access; and (c) eliminate laws that criminalize noncompliance with sanitation regulations.
2. Please indicate what the U.S. is doing to ensure that state, local, and tribal governments have the knowledge and capacity to ensure affordable, adequate sanitation and to address gaps in the right to sanitation.

SUGGESTED RECOMMENDATIONS

To ensure adequate, affordable sanitation systems regardless of race, ethnicity, national origin, socio-economic status, or location, the U.S. Congress and federal agencies should:

1. **Recognize and ensure the right to sanitation in federal law** and develop specific policies that meet the needs of rural and marginalized communities, addressing the barriers to the equal enjoyment of this right.
2. **Establish national policies to improve quality and affordable** sanitation and waste management, including through public infrastructure upgrades and effective on-site solutions to ensure an adequate standard of living, health and dignity.
3. **Take appropriate measures to address the disparities in access to adequate sanitation**, including adopting affordability standards; prioritizing resources for marginalized communities; tracking disaggregated data on sanitation access; and ensuring sanitation policies do not unduly burden communities and individuals.
4. **Stop the criminalization of poverty through the elimination of laws, policies, and practices that penalize failure to comply with sanitation regulations** when cost and/or lack of ability to attain functioning wastewater systems are the barrier to compliance.

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¹ This factsheet is authored by the Columbia Law School Human Rights Clinic, in partnership with the Institute for the Study of Human Rights (ISHR) at Columbia University and the Center for Rural Enterprise and Environmental Justice (CREEJ). Further details can be found in the co-authors' formal UPR stakeholder report on sanitation, *available at* https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/upr_of_usa_adequate_and_affordable_sanitation_creej_hri_and_ishr_submission.pdf. These UPR submissions draw heavily from research conducted by the authors and detailed in the 2019 report *Flushed and Forgotten: Sanitation and Wastewater in Rural Communities in the United States*, *available at* https://www.law.columbia.edu/system/files/private_file/flushed_and_forgotten.final_report_0.pdf.

² See AM. SOC'Y OF CIVIL ENG'RS, 2017 INFRASTRUCTURE REPORT CARD: WASTEWATER, at 1 (2017).

³ U.S. WATER ALLIANCE, AN EQUITABLE WATER FUTURE 17 (2017), http://uswateralliance.org/sites/uswateralliance.org/files/publications/uswa_waterequity_FINAL.pdf.

⁴ G.A. Res. 70/169, The Human Rights to Safe Drinking Water and Sanitation, ¶ 2 (Dec. 17, 2015).

⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, U.N. Doc. A/HRC/30/12 176.311 (Jul. 20, 2015).

⁶ *Mission to the United States of America*, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011) (recommendations b, c, and h).

⁷ 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).

⁸ 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).

⁹ See, e.g., Water Justice Act, S.2466, 116th Cong. (2019); Low-Income Water Customer Assistance Programs Act of 2018, S.3564, 115th Cong. (2018).