



**Submission to the UN Special Rapporteur on Extreme Poverty and Human Rights  
in Preparation for the Official 2017 Visit to the United States**

**LACK OF ACCESS TO ADEQUATE SANITATION IN LOWNDES COUNTY, ALABAMA & THE  
IMPACT ON HEALTH, DIGNITY, AND INEQUALITY**

**I. REPORTING ORGANIZATION: ALABAMA CENTER FOR RURAL ENTERPRISE  
(ACRE)**

ACRE works to address root causes of poverty, with a focus on water and sanitation. ACRE is based in Lowndes County, Alabama, and works with partners across the country.

This submission was drafted with assistance from the Columbia Law School Human Rights Institute Human Rights in the U.S. Project and the Program on Economic, Social and Cultural Rights in the Institute for the Study of Human Rights at Columbia University.<sup>1</sup>

**II. SUMMARY**

The submission responds to a number of questions posed by the Special Rapporteur in the call for information related to the U.S. visit. It exemplifies conditions in low-income rural communities across the United States. While focusing on Lowndes County, Alabama, the challenges for the realization of human rights are emblematic of broader patterns of marginalization.<sup>2</sup>

Part III focuses on the human rights conditions in Lowndes County, Alabama, a place where Black Americans have long experienced overt racial discrimination and political

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<sup>2</sup> For other studies in relation to water and sanitation, see Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 CALIF. L. REV. 223, 235 (2012); Sacoby M. Wilson *et al.*, *Built Environment Issues in Unserved and Underserved African-American Neighborhoods in North Carolina*, ENVIRONMENTAL JUSTICE Vol. 1, No. 2, 63 (2008); J. MacDonald Gibson *et al.*, *Racial Disparities in Access to Community Water Supply Service in Wake County, North Carolina*, FRONTIERS IN PUB. HEALTH SERV. SYST RESEARCH 3, 3 (2014).

marginalization, and where current law, policies, and practices related to sanitation have the effect of perpetuating inequality, and infringing explicitly on the rights to sanitation, physical and mental health, and an adequate standard of living, as well as the right to be free from discrimination, the right to equality, as well as basic human dignity.<sup>3</sup>

Lowndes County, Alabama is paradigmatic of the ways that current U.S. laws, policies, and practice intersect with historical discrimination to perpetuate poverty and marginalization. Lowndes County residents are denied basic socio-economic rights, including the right to sanitation. Prolonged exposure to fecal matter in and around individual homes as a result of inadequate sanitation has deleterious effects on individual families and the community. Notably, there is also a troubling history of criminalization of poverty related to these particular rights, which compounds the negative impacts of lack of access to basic services. While not the focus of this submission, it is vital to note that the lack of access to basic services in the state of Alabama occurs in a context where the right to vote, a core civil and political right, has been continually under threat.<sup>4</sup>

The upcoming visit of the Special Rapporteur is an opportunity to visit Lowndes County to examine the human rights conditions and to engage with community members to better understand the context and identify practical solutions to address the root causes of current conditions. The Special Rapporteur's visit also offers an opportunity to build upon past Special Rapporteur recommendations to further analyze how federal and state policies and practices intersect with race and economics to perpetuate poverty and inequality, and to make solution-oriented recommendations.

### **III. ACCESS TO ADEQUATE SANITATION IN LOWNDES, COUNTY, ALABAMA**

#### **a. Situating Access to Sanitation: Demographics and Context**

Lowndes County is situated between the cities of Selma and Montgomery – hotbeds of civil rights activism. Yet, the County is sparsely populated, and like much of Alabama's "Black Belt"<sup>5</sup> is predominantly rural and poor. The County's population, mostly recently estimated to be 10,358 residents, is 72.4% Black.<sup>6</sup> Economically, Lowndes County is disadvantaged compared to many other areas in the United States. The median household

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<sup>3</sup> For a more in-depth discussion and analysis, see Inga T. Winkler and Catherine Coleman Flowers, "America's Dirty Secret": *The Human Right to Sanitation in Alabama's Black Belt*, (forthcoming November 2017 in the *Columbia Human Rights Law Review*).

<sup>4</sup> Alabama has a long history of efforts to exclude Black Americans from exercising the right to vote, including disenfranchisement of individuals convicted of an array of crimes (see Samantha Michaels, *Alabama's Republican Governor Just Helped Thousands of Felons Get Their Voting Rights Back*, MotherJones (May 25, 2017), <http://www.motherjones.com/politics/2017/05/alabama-governor-signs-law-could-restore-voting-rights-thousands-people/>), and barriers to voting including requiring voter identification and additional efforts that make obtaining identification more onerous. See JoAnn Kamuf Ward, *The New and Not So Subtle Threat to Your Right to Vote*, HuffPost (Oct. 23, 2016), [http://www.huffingtonpost.com/joann-kamuf/alabama-voting-rights\\_b\\_8357408.html](http://www.huffingtonpost.com/joann-kamuf/alabama-voting-rights_b_8357408.html). These laws and policies have a disparate impact on the civil and political rights of communities of color.

<sup>5</sup> The name refers to the fertile soil that permeates the region. See Terance L. Winemiller, *Black Belt Region in Alabama*, Encyclopedia of Alabama, <http://www.encyclopediaofalabama.org/article/h-2458>.

<sup>6</sup> United States Census Bureau, *Lowndes County, Alabama*, <https://www.census.gov/quickfacts/table/PST045216/01085.00>.

income (\$26,000) is approximately half of the median income of the United States.<sup>7</sup> The rates of poverty in the County are almost triple the rate for the United States as a whole.<sup>8</sup> The Bureau of Labor Statistics estimates the unemployment rate at 7.4%,<sup>9</sup> (higher than the median across the United States), which further suggests that many of the residents are employed, yet still living in poverty.

The economic vulnerability of Lowndes County residents, which impacts all aspects of life, is a key impediment to residents' ability to access adequate sanitation. In Lowndes County, the vast majority of the population relies on on-site sanitation systems for management and disposal. According to state law, residents are responsible for the installation and maintenance of systems to handle the waste that results from everyday life: showers, washing, and using the toilet. Due to the clay soil that permeates the region, households may need specially engineered septic systems, and installation of such on-site systems can be up to \$30,000.<sup>10</sup> Local law thus places the costly burden of maintaining wastewater on individual homeowners – most of who live below or close to the poverty line. The result is that many homes lack adequate wastewater disposal. The Alabama Department of Public Health has estimated that 40 – 90 % of households have either inadequate or no septic system, and of the households with septic systems, 50% are failing.<sup>11</sup>

The most common waste disposal system for rural households living in poverty is “straight piping,” referring to “a series of ditches or crudely constructed piping systems to guide human waste from a residence.”<sup>12</sup> In some Lowndes County homes, the wastewater, including excrement, runs into the yard. In others, septic tanks have been installed but are failing as a result of improper installation and maintenance, which leads to waste backing up into sinks, bathtubs, and toilets. This situation is at its worst during periods of heavy rain, which are on the rise due to increasingly severe weather.<sup>13</sup> The

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<sup>7</sup> *Id.* A recent article by the Guardian estimated the median salary even lower, at \$18,046. See Ed Pilkington, *Hookworm, a disease of extreme poverty, is thriving in the US south. Why?*, The Guardian (Sept. 5, 2017), <https://www.theguardian.com/us-news/2017/sep/05/hookworm-lowndes-county-alabama-water-waste-treatment-poverty>

<sup>8</sup> It is estimated that 13.5% of persons in the U.S. are living in poverty. The estimate for Lowndes County is 35.2%.

<sup>9</sup> U.S. Dep't of Labor, Bureau of Labor Statistics, *Local Area Unemployment Statistics Map* (including unemployment rate for August 2017),

<https://data.bls.gov/map/MapToolServlet?survey=la&map=county&seasonal=u>

<sup>10</sup> Patricia Jones & Amber Moulton, *The Invisible Crisis: Water Unaffordability in the United States* (May 2016), at [http://www.uusc.org/sites/default/files/the\\_invisible\\_crisis\\_web.pdf](http://www.uusc.org/sites/default/files/the_invisible_crisis_web.pdf) (citing costs of a septic system in the range of \$6,000-\$30,000).

<sup>11</sup> See Ashley Cleek, *Filthy water and shoddy sewers plague poor Black Belt counties*, AL JAZEERA AMERICA (June 3, 2015), <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-belt-counties.html>.

<sup>12</sup> See Megan L. McKenna *et al.*, *Human Intestinal Parasite Burden and Poor Sanitation in Rural Alabama*, *American J. of Tropical Medicine and Hygiene*, 2 (September 2017).

<sup>13</sup> As one resident explained: ““When the weather man goes to talking about bad storms, you worry sick that everything is going to flood up. [Sewage] was coming back in my bathtub one time. I broke down crying.” See Ashley Cleek, *Filthy water and shoddy sewers plague poor Black Belt counties*, AL JAZEERA AMERICA (June 3, 2015), <http://america.aljazeera.com/articles/2015/6/3/filthy-water-and-poor-sewers-plague-poor-black-belt-counties.html> (quoting Lowndes County resident Charlie Mae Martin Holcombe).

health impacts of inadequate sanitation in Lowndes County are wide-ranging, and most recently documented in a study detailing the prevalence of hookworm, often considered a tropical disease that has been eradicated in the United States.<sup>14</sup>

The following sections further discuss the current state of sanitation in the County, including the domestic legal framework, the barriers residents face in securing adequate sanitation in their homes, and the individual, family, and community impacts.

#### **b. Domestic Legal, Regulatory and Financing Framework for Sanitation**

According to Alabama state law “every person, firm or corporation or municipal corporation ... owning or occupying property within the state ... [shall] install ... sewage collection, treatment, and disposal facilities” in conformity with state and/or county regulations or otherwise dispose of sewage in compliance with these regulations.<sup>15</sup> The State’s Public Health Code further states that onsite disposal systems should include toilet and plumbing facilities and that “sanitary drainage piping shall be connected to a properly permitted system of sewage disposal used solely to treat, transport and dispose of sewage.”<sup>16</sup>

Failure to comply with the applicable regulations qualifies as a misdemeanor. Thus, residents that “build, maintain or use an insanitary sewage collection, treatment and disposal facility or one that is or is likely to become a menace to the public health” can be subject to fines, arrest and litigation for failure to maintain and install plumbing, septic tanks, or other waste disposal systems.<sup>17</sup> As noted below, residents of Lowndes County have been criminalized for failure to comply with these regulations, as have others across Alabama.

Federal law also touches upon water and sanitation. The Safe Water Drinking Act focuses on public water systems with the aim of ensuring water quality, it does not directly address sanitation.<sup>18</sup> The Clean Water Act regulates discharge of sewage and pollutants, with the aim of eradicating pollution of U.S. waterways.<sup>19</sup>

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<sup>14</sup> Megan L. McKenna *et al.*, *Human Intestinal Parasite Burden and Poor Sanitation in Rural Alabama*, *American J. of Tropical Medicine and Hygiene* (September 2017) (finding that among 55 individuals in 24 households studied, 34.5 percent tested positive for *Necator americanus*, a species of hookworm); see also Lindsey Gilpin, *In the American South, an Inequity of Diseases*, 29 June 2016, available at <https://undark.org/article/rural-american-south-tropical-diseases/>; Rachel Nuwer, *How a Worm Gave the South a Bad Name*, PBS (Apr. 27, 2016), available at <http://www.pbs.org/wgbh/nova/next/nature/how-a-worm-gave-the-south-a-bad-name/>.

<sup>15</sup> Code of Alabama, Chapter 26, Sewage Collection, Treatment and Disposal Facilities, § 22-26-2 (1975), <http://alisondb.legislature.state.al.us/alison/CodeOfAlabama/1975/125823.htm>

<sup>16</sup> Alabama Department of Public Health, Administrative Code, Ch. 420-3-1-.02, Use Of An Onsite Sewage Treatment And Disposal System (OSS), available at <http://www.alabamaadministrativecode.state.al.us/docs/hlth/420-3-1.pdf>.

<sup>17</sup> AL Code § 22-26-1 (2014); see also Patricia Jones & Amber Moulton, *The Invisible Crisis: Water Unaffordability in the United States*, 12 (May 2016).

<sup>18</sup> 1974 Safe Drinking Water Act, 42 U.S.C. § 300f (2012)

<sup>19</sup> 1972 Clean Water Act, 33 U.S.C. § 1251 (2012)

The Environmental Protection Agency (EPA) does provide some funding to support small wastewater systems, as part of the Clean Water State Revolving Fund.<sup>20</sup> Additional EPA and U.S. Department of Agriculture programs target specific communities in the United States (such as tribal and border communities).<sup>21</sup> For the most part, federal grant funding is earmarked for communities, tribes, organizations or public bodies, rather than individual households that would install septic systems.<sup>22</sup> As the UN Special Rapporteur the Human Rights to Safe Drinking Water and Sanitation has highlighted, even where funding exists, there are barriers to access them, particularly for the communities most in need: historically marginalized communities of color.<sup>23</sup> There are some limited public funds for owners or on-site sanitation and septic systems, but they come in the form of direct loans, with credit rating and other approval requirements, which limit their accessibility to individuals in poverty.<sup>24</sup>

These factors are important in the Lowndes County context, and the Black Belt more generally. Municipalities and counties have a limited tax base to draw from because many residents have low incomes and low property values. Therefore, funding for investments in public infrastructure are lacking overall.<sup>25</sup>

### c. Access to Sanitation in Practice: Costs and Consequences

Current estimates indicate that 18% of households in Lowndes County are connected to a centralized, municipal sewerage system, and over 80% of the households rely on some form on on-site wastewater systems.<sup>26</sup> This is significantly higher than rates in Alabama (where approximately 43.6% of the population had on-site systems), and the United States overall (where approximately 18% of homes rely on onsite systems).<sup>27</sup>

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<sup>20</sup> See Environmental Protection Agency, *Small and Rural Wastewater Systems* <https://www.epa.gov/small-and-rural-wastewater-systems/funding-sources-small-and-rural-wastewater-systems>; United States Environmental Protection Agency, CLEAN WATER STATE REVOLVING FUND: FISCAL YEAR 2014, NATIONAL FINANCIAL REPORTS 6, [https://www.epa.gov/sites/production/files/2015-04/documents/cwsrf\\_2014\\_financial\\_statements.pdf](https://www.epa.gov/sites/production/files/2015-04/documents/cwsrf_2014_financial_statements.pdf).

<sup>21</sup> For an overview see United States Environmental Protection Agency, *Funding Sources for Small and Rural Wastewater System*, <https://www.epa.gov/small-and-rural-wastewater-systems/funding-sources-small-and-rural-wastewater-systems>. For instance, some of the programs are geared towards pollution control or watershed protections, while others are targeted at tribal communities or US-Mexico border communities.

<sup>22</sup> See Maxwell Izenberg et al., *Nocturnal Inconvenience: The Problem of Securing Universal Sanitation Access in Alabama's Black Belt*, *Environmental Justice*, Vol. 6, No. 6 (2013).

<sup>23</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Mission to the United States of America, 2 August 2011, A/HRC/18/33/Add.4, ¶27 (“poor, disadvantaged, minority and indigenous communities [in the United States] are often unable to access federal, state and local funding sources due to technical, managerial and financial capacity requirements, among others.”)

<sup>24</sup> Maxwell Izenberg et al., *Nocturnal Inconvenience: The Problem of Securing Universal Sanitation Access in Alabama's Black Belt*, *Environmental Justice*, Vol. 6 No. 6 (2013), 203-204.

<sup>25</sup> Sabrina Tavernise, *A Toilet, but No Proper Plumbing: A Reality in 500,000 U.S. Homes*, *New York Times*, 26 September 2016, at [https://www.nytimes.com/2016/09/27/health/plumbing-united-states-poverty.html?\\_r=0](https://www.nytimes.com/2016/09/27/health/plumbing-united-states-poverty.html?_r=0)

<sup>26</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Mission to the United States of America, UN Doc. A/HRC/18/33/Add.4, ¶ 20 (Aug. 2, 2011).

<sup>27</sup> Complete data sets are from the 1990s. See United States Census Bureau, *Historical Census of Housing Tables: Sewage Disposal*, <https://www.census.gov/hhes/www/housing/census/historic/sewage.html> (24.1%



The statistics in Lowndes County reflect a trend in southern rural communities that households bear responsibility for maintaining and installing their own wastewater disposal systems.<sup>28</sup> Yet, the burden of maintaining sewage is not borne equally. Residents in wealthier sections of the County benefit from publicly provided wastewater systems, which are a fraction of the cost of installing specially engineered on-site systems. Residents in the more rural parts of the County – largely Black, and underemployed – are required to create their own wastewater solutions. Due to the conditions of dense clay soil that prevents water absorption and drainage, they have to bear the relatively high cost of specially engineered on-site waste water systems. Alternatively, they face the physical, emotional, and even legal costs of makeshift, self-generated solutions, including PVC piping and drainage ditches.

In Lowndes County, adults and children living in homes with inadequate sanitation and wastewater management experience prolonged exposure to feces with severe health consequences. Residents are exposed to hookworm, which can cause anemia and impaired mental function, among other health problems, and which is especially harmful to children.<sup>29</sup> The experience of living near raw sewage, or recurring sewage backing up into one’s home also impacts the ability to live with dignity.

The threat of criminalization further exacerbates the insecurity and stigma that community members experience.<sup>30</sup> County residents have been fined, and in some cases arrested for the inability to put proper sanitation systems in place. In her 2011 report, Special Rapporteur Catarina de Albuquerque noted that the Alabama Department of Public Health has initiated more than forty legal actions for inadequate sanitation in 1999, and referred to additional cases brought in 2008.<sup>31</sup> This practice extends to other parts of Alabama, and arrests have been documented in the state as recently as 2014.<sup>32</sup> While

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of households rely on onsite systems. Yet, more recent surveys confirm the overall trend (18% of U.S. households rely on on-site systems. See United States Census Bureau, 2013 *American Housing Survey*, [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS\\_2013\\_C04AO&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=AHS_2013_C04AO&prodType=table).

<sup>28</sup> See Julia Marie Naman & Jacqueline MacDonald Gibson, *Disparities in Water and Sewer Services in North Carolina: An Analysis of the Decision-Making Process*, Am. J. Public Health Vol. 105, e20-e26 (Oct. 2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4566538/>

<sup>29</sup> See Megan L. McKenna et al., *Human Intestinal Parasite Burden and Poor Sanitation in Rural Alabama*, *American J. of Tropical Medicine and Hygiene* (September 2017) (finding that among 55 individuals in 24 households studied, 34.5 percent tested positive for *Necator americanus*, a species of hookworm); see also Lindsey Gilpin, *In the American South, an Inequity of Diseases*, 29 June 2016, available at <https://undark.org/article/rural-american-south-tropical-diseases/>

<sup>30</sup> Jennifer Suzanne Carrera, *Sanitation and Social Power in the United States*, Dissertation, University of Illinois at Urbana-Champaign, 134 (Sept. 16, 2014), available at <https://www.ideals.illinois.edu/handle/2142/50688134> (emphasizing how criminalization of individuals living in poverty “mark[s] them physically and symbolically in their unsanitary status”).

<sup>31</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Mission to the United States of America, UN Doc. A/HRC/18/33/Add.4, ¶¶ 21-22 (Aug. 2, 2011). Additional studies detail arrests in 1999 and 2002. See, e.g., Jennifer Suzanne Carrera, *Sanitation and Social Power in the United States*, Dissertation, University of Illinois at Urbana-Champaign, 101 (Sept. 16, 2014), available at <https://www.ideals.illinois.edu/handle/2142/50688>.

<sup>32</sup> April Garon, *Church Protests Pastor’s Arrest*, <http://www.troymessenger.com/2014/09/29/church-protests-pastors-arrest/>; Sabrina Tavernise, *A Toilet, but No Proper Plumbing: A Reality in 500,000 U.S. Homes*, New York Times, 26 September 2016, at <https://www.nytimes.com/2016/09/27/health/plumbing->

criminalization has abated in practice in recent years, the provisions that qualify the failure to comply with regulations on installing septic systems as misdemeanor remain in place. Thus, the threat of criminalization remains. As a result, people are scared to report any sanitation and wastewater problem – they do not expect any support from the public authorities but rather see the public health department as a threat, eroding any trust in public officials.<sup>33</sup>

Lowndes County exemplifies the severe costs and impacts of inadequate access to sanitation in the United States. As the Unitarian Universalist Service Committee notes, the costs “are wide ranging. 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, and the unquantifiable cost of trying to raise families with dignity when a community’s health needs are ignored.”<sup>34</sup>

The UN Special Rapporteur on the Human Rights to Water and Sanitation has previously identified the needs for states to “ensure that self-supply solutions comply with human rights obligations and are appropriate and affordable. States need to put appropriate systems in place, including regulation and financial support for those who need it.”<sup>35</sup> Addressing the impacts of inadequate sanitation in the U.S. requires publicly financed wastewater solutions in the short-term in order to foster equality in access to affordable and adequate sanitation, and re-allocation of existing resources.<sup>36</sup> Long-term solutions must go beyond redistribution of the resources allocated to sanitation to include creating conditions that support living wages, improved healthcare and housing, and provide for meaningful participation of impact communities in decision-making at all levels of government.

As the recent months have demonstrated, climate change is devastating communities that lack adequate and resilient infrastructure – in the U.S, India, Mexico, and elsewhere. A proactive and inclusive approach to sanitation in Lowndes County is imperative to avoid a similar fate for its residents. Disaster can be avoided if the federal, state, and local communities take action now, working in concert with local community members. As emphasized below, the Special Rapporteur on Extreme Poverty’s upcoming visit to the United States offers a critical moment to influence federal and local action to enhance

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[united-states-poverty.html?\\_r=0](#) (“The department cited about 700 people in the 12 months that ended in March, often because someone complained.”)

<sup>33</sup> Ed Pilkington, *Hookworm, a disease of extreme poverty, is thriving in the US south. Why?*, The Guardian (Sept. 5, 2017), <https://www.theguardian.com/us-news/2017/sep/05/hookworm-lowndes-county-alabama-water-waste-treatment-poverty>.

<sup>34</sup> Patricia Jones & Amber Moulton, *The Invisible Crisis: Water Unaffordability in the United States*, 15 (May 2016), at [http://www.uusc.org/sites/default/files/the\\_invisible\\_crisis\\_web.pdf](http://www.uusc.org/sites/default/files/the_invisible_crisis_web.pdf)

<sup>35</sup> Special Rapporteur on the Human Rights to Water and Sanitation, Report to the UN General Assembly on Different Levels and Types of Services, UN Doc. A/70/203, ¶ 60 (July 27, 2015).

<sup>36</sup> Special Rapporteur on the Human Rights to Water and Sanitation, Report to the Human Rights Council on the Affordability of Water and Sanitation Services, UN Doc. A/HRC/30/39, ¶ 49 (Aug. 5, 2015) (“The first step to ensuring that public financing is targeted toward the most disadvantaged is to acknowledge the inherent inequalities and biases in the current distribution of public financing. On that basis, States must adopt measures to reach the people who rely on public finance to ensure the affordability of water and sanitation services for all and to reduce inequalities in access. States need to reallocate resources to the most disadvantaged.”)

human rights protections for Lowndes County residents and others in the United States for whom adequate sanitation remains out of reach.

#### IV. Relevant Human Rights Principles and Recommendations

The conditions in Lowndes County (and other parts) of the United States contravene the right to sanitation as laid out by the UN Independent Expert on the topic, who has indicated that “States must ensure without discrimination that everyone has physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity,” which includes “system[s] for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene.”<sup>37</sup> The conditions also violate provisions of the treaties ratified by the United States, particularly the Convention on the Elimination of All Forms of Racial Discrimination’s prohibition on discrimination in the “The right to public health, medical care, social security and social services,” as well as the governments obligations to undertake concrete measures to “ensure equal enjoyment of human rights and fundamental freedoms”<sup>38</sup>

Through the Universal Periodic Review, the United States has already received recommendations to implement the human right to safe water and sanitation without discrimination for the poorest sectors of the population, including indigenous peoples and migrants and comply with the human right to water and sanitation as laid out in General Assembly resolution 64/292,<sup>39</sup> which the Obama Administration accepted in part. Little action has been taken, and the partial acceptance included a significant caveat, 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.<sup>40</sup>

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<sup>37</sup> HRC, *Report on Sanitation*, A/HRC/12/24, ¶ 63 (footnotes omitted). The U.S. has already registered its position that articulations of the right to water and sanitation, particularly UN GA Resolution 64/292 (U.N. Docs. A/RES/64/292 (Aug. 3, 2010)), are not legally binding on the United States. See 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).

<sup>38</sup> The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), arts. 1, 2(1)(c); 2(2), 5(iv), opened for signature Mar. 7, 1966, 660 U.N.T.S. 195.

<sup>39</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>40</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).



Failure of the US to ratify the ICESCR, or to commit to economic and social rights as legal requirements is a significant hurdle to realizing the right to adequate sanitation. Nevertheless, the strides made in domestic discourse and laws regarding the right to health demonstrate that positive change is possible.

The Special Rapporteur on Extreme Poverty’s visit offers an opportunity to analyze in depth issues that include: (1) how the rural-urban divide, racial disparities, and poverty intersect and impact on the lack of access to sanitation and many other human rights; (2) if and how the provision of public services and the related financing is skewed towards wealthier areas, thereby providing ‘hidden subsidies’; (3) how criminalization (or the threat thereof) perpetuates the stigmatization and marginalization of entire communities; and (4) how the long-term neglect of entire communities resulting in devastating impacts on individual and public health leads to an erosion of trust in public institutions.

The visit will also contribute to shaping new and lasting rights-based solutions. The visit can build upon prior work of Special Rapporteurs and highlight the need for (1) a comprehensive evaluation of the challenges that communities living in poverty face in accessing sanitation on an affordable and adequate basis; (2) a robust federal law on water and sanitation, which includes affordability standards; and (3) a national level policy, grounded in human rights to foster affordable and innovative approaches to sanitation, and other basic needs and services.<sup>41</sup> At this pivotal moment, the Special Rapporteur’s visit provides an opportunity to develop recommendations on possible further changes in the U.S. legal, regulatory and financing framework. This could include recommendations calling for changes to end the potential criminalization of failing to comply with regulations on the individual responsibility to install sanitation and wastewater systems, where homeowners – for reasons beyond their control – do not have the capacity to do so. Such recommendations would intersect with existing calls to end the criminalization of poverty affecting homeless populations.<sup>42</sup> In addition, a visit to Lowndes County would elevate questions of financing for infrastructure. In line with broader discussions at the political level, and the recognized need for significant spending on infrastructure, the visit provides an opportunity to call for an allocation of funding that puts the needs of marginalized communities first and reverses decades of neglect.

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<sup>41</sup> See Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque, Mission to the United States of America, UN Doc. A/HRC/18/33/Add.4, ¶ 92 (Aug. 2, 2011).

<sup>42</sup> See National Law Center on Homelessness & Poverty, No Safe Place, the Criminalization of Homelessness in U.S. Cities (2014), *available at* [https://www.nlchp.org/documents/No\\_Safe\\_Place](https://www.nlchp.org/documents/No_Safe_Place).