

**Protecting human rights during and after the COVID-19
Responses to Select Questions from the Special Procedure Mandate Holders
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Rural Access to Sanitation and COVID 19 in the United States

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This submission responds to the Common Questions presented jointly by the Rapporteurs and are of particular relevance to the Rapporteur on Indigenous Peoples; the Working Group on People of African Descent, and the Special Rapporteur on Extreme Poverty and Human Rights.

SUMMARY

This submission focuses on the ongoing lack of access to sanitation in rural communities across the United States, and how this crisis has exacerbated longstanding inequality and furthered compromised the health and well-being of historically marginalized communities. Lack of access to sanitation sits at the intersection of systemic racism and an ongoing failure to recognize economic, social, and cultural rights.

The data that exists illustrates that the communities that have been denied access to adequate and affordable sanitation face heightened chances of contracting COVID. To date, relief efforts have failed to adequately provide rural communities or households the resources and support needed to ensure the right to sanitation. Today, this is compounded by a lack of federal leadership on the use of masks and social distancing, and the divergent approaches being employed at the subnational level – despite ample evidence that these measures help prevent the spread of coronavirus. The disproportionate harm has, and will continue to fall upon Black, Indigenous, and migrant communities, as well as White communities living at, or close, to the poverty line.

THE CRISIS IN ACCESS TO SANITATION EXACERBATES DISPARITIES IN HEALTH AND PERPETUATES INEQUALITY

Coronavirus has exposed the myriad ways that structural discrimination and exclusion put people living at, or close to, poverty at the greatest health risk. Globally, including in the United States, communities hit the hardest by the pandemic are the same communities that have been systematically discriminated against and denied political power.

[Data released](#) on June 10th by the APM research lab, illustrates that “COVID-19 mortality rate for Black Americans is 2.3 times as high as the rate for Whites and Asians, and 2.2 times as high as the Latino rate.” The same study indicated that:

- “1 in 1,625 Black Americans has died (or 61.6 deaths per 100,000)”, and
- “1 in 2,775 Indigenous Americans has died (or 36.0 deaths per 100,000)”

Early data from officials in the State of Michigan showed that Black individuals made up [40% of the population dying of COVID](#), despite the fact that Black individuals are only 14% of the state's population. Data from the State of [North Carolina](#) also confirmed racial disparities. There are many causal factors that contribute to these disparities, including [inequitable access to health care, as well environmental factors](#). Indeed, the government's longstanding failure to recognize and ensure basic economic and social rights on an equal basis in in the United States set the stage for illness and death resulting from coronavirus.

Water and sanitation are essential to slow the spread of COVID. In the United States, the lack of access to adequate and affordable [water](#) and [sanitation](#), which results from neglect and exclusion, disproportionately impacts Black, Latinx, and Indigenous communities. These communities now must weather [the worst of the pandemic](#).

Before the onset of COVID, more than 1.5 million [people lacked the water and sanitation systems](#). That makes it impossible for many people to prevent the spread of coronavirus through activities such as handwashing. It also means that individuals are exposed to feces on a regular basis because wastewater pools in and around homes that lack access to sanitation. [A study from the Journal of the American Medical Association released in March](#) found live specimens of the COVID virus in feces.

Wastewater infrastructure has long been failing, inadequate, and in some cases, non-existent — [earning the U.S. a D+ grade in 2017](#). Across the country, the municipal infrastructure meant to service the majority of homes is crumbling. In rural communities, on-site systems are common. [One in five households](#) are responsible for maintaining and installing their own on-site sewage systems – often at great costs. When residents cannot afford on-site systems, they resort to straight-piping—makeshift channels that run sewage from homes to yards and ditches. Because straight-piping does not comply with regulations, homeowners can face fees, fines, and other penalties.

The burden of securing sanitation falls heavily on [residents who often lack the means to afford the systems or repairs they need](#). Residents of [Centreville, Illinois, Lowndes County, Alabama, and Riverside County, California](#) — all majority-Black and Latinx — have seen raw sewage back up into their households and yards. Residents of the Alaskan Native community of Kivalina have no septic system, instead [emptying their waste into pots multiple times per day](#). These communities are the rule, not the exception; we see the same conditions nationwide in Kentucky, Louisiana, Michigan, and the Navajo Nation, among others. And the quickening pace of climate change [exacerbates the harms of lack of access to sanitation](#).

Recent news has highlighted that rural communities that [lack access to water and sanitation](#) are especially susceptible to COVID-19. Lowndes County, Alabama, where lack of adequate sanitation is endemic [has the highest rate of coronavirus in the state, as well as the highest unemployment rates](#).

It is vital to recognize that rural communities that lack access to adequate and affordable sanitation faced health risks long before COVID-19 reached the United States. In Martin County, Kentucky, inadequate sanitation is tied to [high rates of disease and bacteria](#). Data from Lowndes County has revealed that exposure to raw sewage [correlates to tropical diseases like hookworm, thought](#) to have been eradicated in the United States. Exposure [is also linked to](#) reproductive and developmental harm, acute infections, and diarrhea. Individuals living in constant proximity to the parasites and bacteria in human waste are more likely to develop dementia, diabetes, and cancer in the long run.

Without a federal framework that protects and prioritizes the rights to water and sanitation for all, the drastic disparities that put lives and health at risk will continue. Failure to take action now will amplify the impact of COVID-19 and resign communities to poor health outcomes as a matter of policy.

Yet, the Federal government has been slow to act to improve sanitation funding and infrastructure. The initial coronavirus relief packages did not provide direct support for [water and wastewater infrastructure](#). And, the federal funding that does exist has always been difficult for [rural communities](#) and individual households to access.

The federal government was also late to provide guidance to prevent or slow the spread of coronavirus, despite ample evidence of the effectiveness of social distancing and masks. The Center for Disease Control has called on everyone to wear masks in public. The White House has continually refused to make masks mandatory, and has [threatened to take action against state authorities that do not re-open quickly](#), despite evidence of ongoing health threats from COVID. The lack of federal guidance has led to divergent approaches across the country – [with some states and cities requiring masks, while many are reopening and refuse to require mask](#). For example, in some Alabama jurisdictions, where cases of COVID are on the rise, disproportionately affecting Black residents, [mandatory masks have been rejected](#), despite medical testimony calling for this measure. This includes in Lowndes County, referenced above.

An array of U.S. cities and states have taken steps meant to aid those lacking water and sanitation, such as [suspending water shutoffs during the coronavirus pandemic](#). This is welcome, but it is not enough. The federal government must incentivize *all* states and localities receiving federal funds to end water shutoffs, [and eliminate any fees](#) for residents to garner ongoing service. It is also essential to ensure that those denied water and sanitation before COVID-19 can enjoy these basic human rights. Funding to improve municipal and on-site systems should be increased, and actually accessible to small communities and households. Broader solutions must account for those that are homeless or housing-insecure, for whom [water and sanitation are constantly out of reach](#). At the national level, the United States federal government can take action to develop sanitation and water affordability schemes consistent with human rights. This would build off efforts of US cities that have [developed water affordability schemes](#) in recent years. States and cities can also continue to pave the way towards initiatives that ensure access to adequate and affordable water and wastewater regardless of identity or economic status.

PAST UPR AND UN SPECIAL PROCEDURE RECOMMENDATIONS TO THE UNITED STATES ON SANITATION

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

- 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 previously 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).ⁱⁱⁱ
- The Working Group of Experts on People of African Descent called on the United States to uphold the human right to adequate sanitation (2016).^{iv}
- 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).^v

CONCLUSION & RECOMMENDATIONS

In order to address the disparities that COVID 19 has laid bare, UN Special Procedures should recommend that national and subnational governments take concrete action to ensure access to affordable healthcare, housing, water and sanitation on an equal basis in the United States and globally.

To respond to the current crisis in access to sanitation, laws and policies should be strengthened through measures that include:

- Prioritizing access to affordable water and potable water and basic wastewater and sanitation for all;
- Providing direct funding targeted for infrastructure improvements on indigenous lands, and in rural communities;
- Eliminating laws that penalize poverty.

Further detailed recommendations can be found in the 2019 report, *Flushed and Forgotten: Sanitation and Wastewater in Rural Communities in the U.S.*

ⁱ For further information, please contact JoAnn Kamuf Ward, Director, Human Rights in the U.S. Project at Columbia Law School's Human Rights Institute (jward@law.columbia.edu).

ⁱⁱ 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).

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

^{iv} 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).

^v 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).